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Rules and Regulations

Federal Register
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ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

1 CFR Part 3

Federal Register Subscription Rate

AGENCY: Administrative Committee of the Federal Register.

ACTION: Final rule.

SUMMARY: The Administrative Committee of the Federal Register raises the annual subscription price of the **Federal Register** to $340 and the microfiche edition to $188 in order to recover production and distribution costs to the Government for sales copies. The Committee also publishes conforming technical amendments.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Denise Normandin, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, 202–523–5240.

SUPPLEMENTARY INFORMATION: The Administrative Committee of the Federal Register, which establishes prices for **Federal Register** publications, has determined that the annual subscription price for the daily **Federal Register** shall be $340, the price for a six months subscription shall be $170, the price for a single issue shall be $1.50, and the annual subscription price for the microfiche edition shall be $188. The increase represents the incremental costs to the Government of printing and distributing copies for sale to the public.

The Committee also agreed to technical amendments changing the citation of regulations of the National Archives to reflect current codification following its independence from the General Services Administration as of April 1, 1985.

The Committee has determined that this regulation is a major rule under E.O. 12291 and does not have a significant effect under the criteria of the Regulatory Flexibility Act.

List of Subjects in 1 CFR Part 3

Government publications, Organization and functions (Government agencies).

For the reasons set out in the preamble and under the authority given the Administrative Committee of the Federal Register by 44 U.S.C. 1506, Part 3 of Chapter I of Title 1 is amended as follows:

PART 3—SERVICES TO THE PUBLIC

1. The authority citation for Part 3 continues to read as follows:

Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR Parts 1954–1958 Comp., p. 189.

2. Section 3.3 is revised to read as follows:

§ 3.3 Reproductions and certified copies of acts and documents.

The regulations for the public use of records in the National Archives (36 CFR Parts 1252–1258) govern the furnishing of reproductions of acts and documents and certificates of authentication for them. Section 1258.14 of those regulations provides for the advance payment of appropriate fees for reproduction services and for certifying reproductions.

3. In § 3.4, paragraph (b)(3) is revised to read follows:

§ 3.4 Subscriptions and availability of Federal Register publications.

* * * * *

(b) * * *

(3) **Federal Register.** Daily issues will be furnished by mail to subscribers for $340 per year, or $170 for six months, and $188 per year for the microfiche edition. Subscription fees are payable in advance to the Superintendent of Documents, Government Printing Office. Limited quantities of current or recent copies may be obtained for $1.50 per copy from the Superintendent of Documents, Government Printing Office.

* * * * *

Frank G. Burke,
Chairman.
Ralph E. Kennickell, Jr.,
Member.
Douglas W. Kmiec,
Member.
Approved:
Edwin Meese III,
Attorney General.
Frank G. Burke,
Acting Archivist of the United States.

[FR Doc. 86–16958 Filed 7–28–86; 8:45 am]
BILLING CODE 1505–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86–AWP–9]

Revision of the Salinas, CA, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This revision extends the Salinas, California, control zone to the southeast of the Salinas Municipal Airport. This action is necessary to provide controlled airspace for aircraft executing the Instrument Landing System (ILS) approach to the Salinas Municipal Airport.

EFFECTIVE DATE: 0901 UTC, October 23, 1986.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, at 15000 Aviation Boulevard, Lawndale, California 90260; telephone (213) 297–1649.

SUPPLEMENTARY INFORMATION:

History

On May 29, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to extend the Salinas, California, control zone to the southeast of the Salinas Municipal Airport (51 FR 19358). Interested parties were invited to participate in this

rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B, dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations extends the Salinas, California, control zone to the southeast of the Salinas Municipal Airport. This is necessary to provide controlled airspace for aircraft executing the ILS approach to the Salinas Municipal Airport.

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

List of Subjects in 14 CFR Part 71

Aviation safety/Control zones

Adoption of the Amendment

PART 71—[AMENDED]

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

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.171 is amended as follows:

Salinas, CA—[Revised]

Within a 5-mile radius of the Salinas Municipal Airport (lat. 36°39'40" N., long. 121°36'20" W.); within 2 miles northeast and 3 miles southwest of the Salinas VORTAC 319° radial, extending from the 5-mile radius zone to 6 miles northwest of the VORTAC, excluding the portion within the Fort Ord, CA, control zone; within 2 miles each side of the Salinas localizer extending from the 5-mile radius zone to 11.5 miles southeast of the Salinas VORTAC, excluding the portion within the Monterey, CA, control zone.

Issued in Los Angeles, California, on July 15, 1986.

Wayne C. Newcomb,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 86-16921 Filed 7-28-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM-85-19-000]

Generic Determination of Rate of Return on Common Equity for Public Utilities

Correction

In the document beginning on page 26237 in the issue of Tuesday, July 22, 1986, make the following correction:

On page 26241, the file line was omitted and should have appeared as follows:

[FR Doc. 86-16415 Filed 7-21-86; 8:45 am]

BILLING CODE 1505-01-M

[Docket No. RM86-3-000]

18 CFR Parts 154, 157, 270, 271, and 284

Ceiling Prices; Old Gas Pricing Structure

Issued: July 18, 1986.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; suspension of effectiveness.

SUMMARY: On June 6, 1986, the Federal Energy Regulatory Commission (Commission) issued Order No. 451 modifying the pricing structure of old natural gas pursuant to sections 104(b)(2) and 106(c) of the Natural Gas Policy Act of 1978 and adopting regulations governing implementation of the revised pricing structure. 51 FR 22168 (June 18, 1986). The order became effective on July 18, 1986. At the request of the United States Court of Appeals for the Eighth Circuit, the Commission stayed the rule, effective upon issuance of its stay order, until July 30, 1986.

EFFECTIVE DATE: This document, staying effectiveness of Order No. 451 until July 30, 1986, is effective July 18, 1986.

FOR FURTHER INFORMATION CONTACT: Richard Howe, Jr., Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, DC 20426 (202) 357-8308.

SUPPLEMENTARY INFORMATION:

Order Staying the Effectiveness of Order No. 451

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

Ceiling Prices; Old Gas Pricing Structure

[Docket No. RM86-3-000]

Issued July 18, 1986.

On June 6, 1986, the Commission issued Order No. 451 modifying the price structure of old natural gas pursuant to sections 104(b)(2) and 106(c) of the Natural Gas Policy Act of 1978 and adopting regulations governing implementation of the revised pricing structure. 51 FR 22168 (June 18, 1986). The order became effective on July 18, 1986.

On July 1, 1986, KN Energy filed a petition in the United States Court of Appeals for the Eighth Circuit requesting issuance by the Court of a writ of prohibition or, alternatively, a writ of mandamus directing the Commission to vacate Order No. 451. On July 17, 1986, KN Energy filed a motion requesting the Court to stay the effectiveness of Order No. 451 pending disposition by the Court of its petition for a writ and pending this Commission's ruling on its application for rehearing of Order No. 451. The Commission was today contacted by the Court and requested to agree to stay the effective date of Order No. 451 for approximately ten days in order to allow additional time for the Court to consider KN Energy's pending petition for a writ and motion for stay, as well as numerous answers filed in response thereto.

Without in any way changing our view as to the merits of KN Energy's petition and motion, the Commission, as a matter of comity and based on our desire to accommodate the Court, will stay the rule, effective upon issuance of this order, until July 30, 1986.

The Commission orders:

The effectiveness of Order No. 451 is hereby stayed until July 30, 1986, effective July 18, 1986.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-16950 Filed 7-28-86; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 175

[T.D. 86-144]

Decision on Domestic Interested Party Petition Concerning Tariff Classification of Imported Duck-Type Footwear

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

ACTION: Final interpretative rule.

SUMMARY: Customs has completed review of a petition filed by a domestic interested party, seeking reclassification of certain imported unfinished duck-type footwear. The petitioner contends that the articles are currently incorrectly classified under a provision of the Tariff Schedules of the United States (TSUS) which has a low duty rate and entitles the articles to duty-free treatment under the Generalized System of Preferences (GSP), if they are imported from a beneficiary develo; ing country. The petitioner believes that the articles should be reclassified under either of two provisions of the TSUS, both of which carry a higher duty rate and do not entitle the articles to duty-free treatment under the GSP. Following review of the petition and responses to a solicitation of comments, customs has concluded that the petitioner is correct. Accordingly, the petition requesting reclassification is granted.

DATES: This decision will be effective with respect to merchandise entered, or withdrawn from warehouse, for consumption after 30 days from the date of publication in the Customs Bulletin.

FOR FURTHER INFORMATION CONTACT: Donald F. Cahill, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202-566-8181).

SUPPLEMENTARY INFORMATION

Background

On November 23, 1984, a notice was published in the Federal Register (49 FR 46163) indicating that Customs had received a petition from a domestic interested party filed under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), requesting the reclassification of imported unfinished duck-type footwear.

The articles, in their imported condition, consist of gum rubber rolled soles to which heels of the same material have been attached. The interiors of the footwear possess heel counters and textile linings, as well as vamps, boxed toes, quarters, molded portions of the uppers, shanks, and formed in-steps. The articles are fully and permanently lasted and they have been manufactured to the point that their shoe sizes, both as to length and width, have been established. The unfinished footwear is completed in the U.S. by having the remaining portion of the upper stitched to it and, in some cases, an insole inserted.

The described articles are currently classified under the provision for "Articles not specially provided for, of rubber or plastics: Other: Parts of Footwear," in item 774.50, Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202), at a 6.9 percent duty rate. Articles classified under this provision are eligible for duty-free treatment under the Generalized System of Preferences (GSP); 19 U.S.C. 2461 *et seq.*) if imported from a beneficiary developing country.

The petitioner sought reclassification under the provision for "Footwear . . . which is over 50 percent by weight of rubber or plastics or over 50 percent by weight of fibers and rubber or plastics with at least 10 percent by weight being rubber or plastics: Hunting boots, galoshes, rainwear, etc.: . . . Other" in item 700.53, TSUS, which carries a duty rate of 37.5 percent. In the alternative, the petitioner contended that the imported articles are correctly classifiable under the residual provision for "Other footwear: . . . Other" in item 700.95, TSUS, which has a duty rate of 12.5 percent. The imported articles are not eligible for GSP treatment under these two tariff classifications.

Customs current classification of the imported articles under the provision for other articles not specially provided for, of rubber or plastics, parts of footwear, is based upon past Customs rulings wherein unfinished footwear susceptible to more than one tariff classification in its contemplated finished condition had been classified under the provision for parts of footwear according to component material of chief value, rather than as finished footwear under other provisions of the TSUS. In these rulings, Customs stated that General Interpretative Rule 10(h), TSUS, which provides that "unless the context requires otherwise, a tariff description for an article covers such article whether assembled or not assembled and whether finished or not finished", was not applicable in cases in which the imported article was not susceptible of proper classification. The unfinished footwear in these cases, in their contemplated finished condition, would be classifiable under different tariff provisions, depending upon the nature of the finishing operation. The footwear was therefore deemed not susceptible of proper classification in its condition as imported and, consequently, the "not finished" principle of General Interpretative Rule 10(h) was inapplicable.

The petitioner claimed that despite the fact that the imported articles could be finished into articles which would fall into different footwear classification provisions, depending upon the nature of the finishing operation, the imported articles should nevertheless be classifiable under tariff provisions for finished footwear, in accordance with long-recognized statutory and judicial principles of Customs jurisprudence. The petitioner stated that the exclusion of the unfinished footwear from the purview of General Interpretative Rule 10(h) and its classification under a tariff provision for parts of footwear, which disregards the finishing operation altogether, is unwarranted and unjustified.

The petitioner further claimed that since more than one tariff provision could embrace the duck-type unfinished footwear after the finishing operation, General Interpretative Rule 10(d), TSUS, becomes applicable in determining under which of the competing tariff provisions the imported footwear should be classified. Under this rule, in part, if two or more tariff descriptions are equally applicable to an article, the article is subject to duty under the description for which the original statutory rate is highest. Petitioner stated that of all the finished footwear tariff provisions, item 700.53, TSUS, carries the highest original statutory duty rate of 75 percent for column 2 countries and 37.5 percent for column 1 countries. Therefore, item 700.53, TSUS, must be the footwear provision under which the imported unfinished duck-type footwear is classifiable.

In the alternative, the petitioner argued that if Customs were to reject classification of the imported articles as finished footwear under any of the specific footwear provisions contained in items 700.05 through 700.90, TSUS, because they potentially satisfy more than one specific footwear classification provision, they would qualify for classification under item 700.95, TSUS, the residual footwear classification provision.

Petitioner contended that this is mandated by Headnote 1 of Subpart A, Part 1, Schedule 7, TSUS, which provides that all footwear, including unfinished footwear, by operation of General Interpretative Rule 10(h), must be classified in Subpart A, Part 1 of Schedule 7, TSUS, which covers items

700.05 through 700.95, with exceptions for footwear with permanently attached skates or snowshoes, hosiery, and imported knit footwear.

Analysis of Comments

Four comments were submitted in opposition to the petition. Two of the comments were general in nature. One of these stated that the current tariff classification of the footwear under item 774.50, TSUS, is correct and should not be changed. The other commenter asserted that Customs has already resolved the problem correctly in Internal Advice Request No. 147/79, October 17, 1980, which held that rubber bottoms of the type in issue are classified as parts of footwear under item 774.50, TSUS.

The two commenters presenting substantive legal arguments in opposition to the petition made the following points:

(1) The condition of the footwear as imported controls its classification, rather than what it is made into after importation. As imported, the rubber or plastics bottoms are parts of footwear properly classifiable under item 774.50, TSUS.

(2) General Interpretative Rule 10(d), TSUS, only comes into effect if there are equally applicable descriptions which describe the merchandise. Here, the petitioner assumes that the footwear in its imported condition comes within two competing provisions. There is no description under any provisions of the tariff schedules which equally meets the description of "parts of footwear of rubber or plastics". Comparisons cannot be based upon results after modifications have been made.

(3) An imported article may not be classified as the unfinished article when at the time of importation the import has no predetermined, completed state, and, can be and is completed into articles classified under different tariff provisions. General Interpretative Rule 10(h), TSUS, and its predecessors apply only to imported merchandise dedicated to use as the complete article. This rule has no application when the final tariff identity of the article is not fixed at the time of importation. *Avins Industrial Products Co.* v. *United States*, 62 CCPA 83, C.A.D. 1150 (1975); *American Import Co.* v. *United States*, 26 CCPA 72, T.D. 49612 (1938); *The Harding Co.* v. *United States*, 23 CCPA 250, T.D. 48109 (1936).

4. General Interpretative Rule 10(h), TSUS, does not apply where "the context requires otherwise". Congress has provided for the classification of footwear parts. Therefore, to invoke Rule 10(h) so as to classify the imported articles as unfinished footwear, when Congress has made a provision for parts of footwear, would be misuse of the Rule and must be avoided. *United States* v. *J. Gerber and Co., et al.*, 58 CCPA 110, C.A.D. 1013, (1971).

(5) General Interpretative Rule 10(d), TSUS, applies only when "two or more tariff descriptions are equally applicable". Here, none of the various tariff descriptions urged by petitioner are applicable unless Rule 10(h) may be invoked. However, Rule 10(h) may not be invoked when the imported article is finished into articles classified under various tariff provisions. If Rule 10(h) may not be invoked, there is no basis on which to proceed under Rule 10(d) because in the absence of Rule 10(h), there is but a single applicable provision.

(6) The alternative argument that the imported articles are classifiable under item 700.95, TSUS, covering other footwear is based on an unsupportable premise. The premise is that the imported articles are classifiable as footwear. This is not so. The articles, as imported, are unfinished. Classification as the finished article may proceed only in the event Rule 10(h) applies. However, for the reasons set forth previously, Rule 10(h) does not apply and consequently classification under item 700.95, TSUS, is precluded.

Decision on Petition

It is our position that the unfinished duck-type footwear in issue has been incorrectly classified under item 774.50, TSUS, and is properly classifiable under item 700.53, TSUS, pursuant to General Interpretative Rules 10(h) and 10(d), TSUS, for the following reasons:

(1) General Interpretative Rule 10(h) is in its essence prospective and requires us to consider what an item will become in terms of its ultimate use or construction rather than its condition as imported. See 14 Cust. Bull. 737, C.S.D. 80–8 (1980).

(2) General Interpretative Rule 10(d) is applicable to the unfinished duck-type footwear because several footwear provisions are equally applicable to the footwear in its contemplated finished conditions.

(3) In the case of *American Import Co.* v. *United States*, 26 CCPA 72, TD 49612 (1938), the court stated that "It has long been the generally accepted rule that a thing may be classified for tariff duty purposes under the eo nomine provision for the article unfinished if that thing has been so far processed toward its ultimate completed form as to be dedicated to the making of that article or *that class of articles alone*" (underscoring added). Thus, the articles in issue may be considered unfinished footwear because they are so far processed as to be dedicated to the making of a class of articles alone, namely, footwear. It is not necessary that the article be completed into one specific category of footwear.

(4) We do not discern a legislative intent that the unfinished duck-type footwear be classified under a parts provision rather than as unfinished footwear. It is our observation that the merchandise in its condition as imported is substantially complete footwear. See *Daisy-Heddon, Div. of Victor Comptometer* v. *United States*, 66 CCPA 97, C.A.D. 1228 (1979).

Authority

This notice is published under the authority of section 516(b), Tariff Act of 1930, as amended (19 U.S.C. 1516(b)), and § 175.22(a), Customs Regulations (19 CFR 175.22(a)).

Drafting Information

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

Alfred R. De Angelus,

Acting Commissioner of Customs.

Approved: July 10, 1986.

Francis A. Keating, II,

Assistant Secretary of the Treasury.

[FR Doc. 86–16982 Filed 7–28–86; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 522 and 556

Animal Drugs, Feeds, and Related Products; Ivermectin Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Merck Sharp & Dohme Research Laboratories providing for safe and effective use of IVOMEC® (ivermectin) injection in swine for treating and controlling infection caused by certain species of gastrointestinal roundworms, lungworms, lice, and mites. The regulations are also amended to establish the tolerance and safe

concentrations for drug residues in edible swine tissue.

EFFECTIVE DATE: July 29, 1986.

FOR FURTHER INFORMATION CONTACT: Adriano R. Gabuten, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–433–4913.

SUPPLEMENTARY INFORMATION: Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc., P.O. Box 2000, Rahway, NJ 07065, filed NADA 135–008 providing for subcutaneous use of IVOMEC® (ivermectin) injection in swine for treating and controlling infections caused by certain species of gastrointestinal roundworms, lungworms, lice, and mites. The drug is currently approved for intramuscular use in horses and subcutaneous use in cattle and in reindeer (21 CFR 522.1192).

The NADA is approved. The regulations are amended to reflect the approval and to establish a tolerance for the market residue and safe concentrations for total residues of ivermectin in edible swine tissue. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the Federal Register of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an environmental assessment under 21 CFR 25.31a(a).

List of Subjects

21 CFR Part 522

Animal drugs.

21 CFR Part 556

Animal drugs; Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 522 and 556 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. In § 522.1192 by revising the heading of paragraph (a)(2) and adding new paragraph (d)(4) to read as follows:

§ 522.1192 Ivermectin injection.

(a) * * *

(2) *Cattle, reindeer, and swine.* * * * * * * * * *

(d) * * *

(4) *Swine*—(i) *Amount.* 10 milligrams (1 milliliter) per 75 pounds of body weight.

(ii) *Indications for use.* It is used in swine for treatment and control of gastrointestinal nematodes (adults and fourth-stage larvae) (*Ascaris suum, Hyostrongylus rubidus, Oesophagostomum* spp., *Strongyloides ransomi* (adults only)); lungworms (*Metastrongylus* spp. (adults only)); lice (*Haematopinus suis*); and mites (*Sarcoptes scabie* var. *suis*).

(iii) *Limitations.* For subcutaneous injection in the neck of swine only. Do not treat swine within 18 days of slaughter. Do not use in other animal species as severe adverse reactions, including fatalities in dogs, may result. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR Part 556 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

4. By revising § 556.344 to read as follows:

§ 556.344 Ivermectin.

The marker residue tolerance and safe concentrations for total residues in edible tissues of target animals are as follows:

(a) *Cattle and reindeer.* The marker residue used to monitor the total residues of ivermectin in cattle and reindeer is 22,23-dihydro-avermectin B_1a. The target tissue selected in liver. A tolerance is established for 22, 23-dihydro-avermectin B_1a in cattle and reindeer of 15 parts per billion in liver. A marker residue concentration of 15 parts per billion in liver corresponds to a concentration for total residues of ivermectin of 50 parts per billion in liver. The safe concentrations for total residues of ivermectin in uncooked edible tissues of cattle and reindeer are 25 parts per billion in muscle, 50 parts per billion in liver, 75 parts per billion in kidney, and 100 parts per billion in fat.

(b) *Swine.* The marker residue used to monitor the total residues of ivermectin in swine 22,23-dihydro-avermectin B_1a. The target tissue selected is liver. A tolerance is established for 22,23-dihydro-avermectin B_1a in swine of 20 parts per billion in liver. A marker residue concentration of 20 parts per billion in liver corresponds to a concentration for total residues of ivermectin of 75 parts per billion in liver. The safe concentrations for total residues of ivermectin in uncooked edible tissues of swine are 25 parts per billion in muscle, 75 parts per billion in liver, 100 parts per billion in kidney, and 100 parts per billion in fat.

Dated: July 22, 1986.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 86–16938 Filed 7–28–86; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF JUSTICE

28 CFR Part 50

[Order No. 1139–86]

Statement of Policy Concerning Indemnification of Department of Justice Employees

AGENCY: Department of Justice.

ACTION: Statement of policy.

SUMMARY: Existing Department policy precludes the payment of Department funds to indemnify Department employees who suffer adverse money judgments as a result of official acts, or the settlement of personal damages claims by the payment of Department funds. This amendment announces a change in policy to permit such payment in appropriate cases, as determined by the Attorney General.

EFFECTIVE DATE: July 29, 1986.

FOR FURTHER INFORMATION CONTACT: Gregory S. Walden, Associate Deputy Attorney General, Department of Justice, Room 4119, Main Building, Washington, DC 20530; (202) 633–2268.

SUPPLEMENTARY INFORMATION: Unlike most state and local governments and general corporate practice, the Department of Justice does not now indemnify its employees who are sued personally and suffer an adverse judgment as a result of conduct taken within the scope of employment, nor does it settle individual capacity claims with Department funds. Lawsuits against federal employees in their individual capacity have proliferated since the 1971 Supreme Court decision in *Bivens* v. *Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388. In this brief time over 12,000 claims have been filed against federal employees personally; nearly 3,000 are pending today. These suits personally attack officials at all levels of government and target all federal activities, particularly law enforcement. Although the federal workforce is on the whole exceptionally well-disciplined—the Department is aware of only 32 adverse judgments against individual federal employees—the risk of personal liability and the burden of defending a suit for money damages, simply a result of doing one's job, are real enough in many cases.

It is obvious that an adverse judgment has detrimental consequences for the federal employee, both pecuniary and otherwise. Of greater consequence to the federal government, however, is the fear of personal liability, because it is this concern which affects governmental operations, decision making, and policy determinations. The prospect of personal liability, and even the uncertainty as to what conduct may result in a lawsuit against the employee personally, tend to intimidate all employees, impede creativity and stifle initiative and decisive action. As Professor Kenneth Culp Davis has noted, "The public suffers whenever a government employee resolves doubts in order to protect his own pocketbook instead of resolving doubts in order to protect the public interest. . . . Courageous action of public employees is often essential, and it should not be discouraged by the threat of a lawsuit against the employee personally." K. Davis, *Constitutional Torts* at 25, 26 (1984).

The Department believes that lawsuits against federal employees in their personal capacity now constitute a major impediment to the effective conduct of the public's business and enforcement of the law. A change in Department policy to permit the indemnification of Department employees would go a long way toward removing this impediment, and would accord Department employees the same protection now enjoyed by most state and local government employees as well as employees of most corporate employers.

This change in policy permits, but does not require, the Department to indemnify a Department employee who suffers an adverse verdict, judgment, or other monetary award provided that the actions giving rise to the judgment were taken within the scope of employment and that such indemnification is in the interest of the United States, as determined by the Attorney General. The criteria for payment are substantially similar to the criteria used to determine whether a federal employee is entitled to Department of Justice representation under 28 CFR 50.15(a).

The policy also allows the Department in rare cases to settle an individual capacity claim by the payment of Department funds, upon a similar determination by the Attorney General. Absent exceptional circumstances, the Department will not agree either to indemnify or settle before entry of an adverse judgment. The change in policy is thus designed to discourage the filing of lawsuits against federal employees in their individual capacity solely in order to pressure the government into settlement. In the usual case, the denial of dispositive motions or the delay in deciding them will not lead to settlement before trial and judgment.

The policy will not have a significant economic impact on substantial number of small entities within the meaning of 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 50

Administrative practice and procedure, Government employees, Employment, Tort claims.

By virtue of the authority vested in me by 28 U.S.C. 509 and 510 and 5 U.S.C. 301, Part 50 of Title 28 of the Code of Federal Regulations is amended as follows:

PART 50—[AMENDED]

1. The authority citation for Part 50 is revised to read as follows:

Authority: 28 U.S.C. 503, 509, 510, 516, 517, 518, 519; 5 U.S.C. 301, 552, and 552a; 15 U.S.C. 16(d); E.O. 11247; 3 CFR (1964–65 Comp.) 348.

2. Section 50.15(a)(7)(iii) is amended by adding the following phrase, after the semicolon, to read as follows:

§ 50.15 [Amended]

(a) * * *

(7) * * *

(iii) * * * but that, where authorized, the employee may apply for such indemnification from his employing agency upon the entry of an adverse verdict, judgment, or other monetary award;

* * * * *

Section 50.15 is amended by adding a new paragraph (c) to read as follows:

§ 50.15 [Amended]

* * * * *

(c)(1) The Department of Justice may indemnify the defendant Department of Justice employee for any verdict, judgment, or other monetary award which is rendered against such employee, provided that the conduct giving rise to the verdict, judgment, or award was taken within the scope of employment and that such indemnification is in the interest of the United States, as determined by the Attorney General or his designee.

(2) The Department of Justice may settle or compromise a personal damages claim against a Department of Justice employee by the payment of available funds, at any time, provided the alleged conduct giving rise to the personal damages claim was taken within the scope of employment and that such settlement or compromise is in the interest of the United States, as determined by the Attorney General or his designee.

(3) Absent exceptional circumstances as determined by the Attorney General or his designee, the Department will not entertain a request either to agree to indemnify or to settle a personal damages claim before entry of an adverse verdict, judgment, or award.

(4) The Department of Justice employee may request indemnification to satisfy a verdict, judgment, or award entered against the employee. The employee shall submit a written request, with appropriate documentation including copies of the verdict, judgment, award, or settlement proposal if on appeal, to the head of his employing component, who shall thereupon submit to the appropriate Assistant Attorney General, in a timely manner, a recommended disposition of the request. Where appropriate, the Assistant Attorney General shall seek the views of the United States Attorney; in all such cases the Civil Division shall be consulted. The Assistant Attorney General shall forward the request, the employing component's recommendation, and the Assistant

Attorney General's recommendation to the Attorney General for decision.

(5) Any payment under this section either to indemnify a Department of Justice employee or to settle a personal damages claim shall be contingent upon the availability of appropriated funds of the employing component of the Department of Justice.

Dated: June 21, 1986.

Edwin Meese III,

Attorney General.

[FR Doc. 86-16925 Filed 7-28-86; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Approved State Plans for Enforcement of State Standards; Approval of Supplements to the Oregon State Plan; Notice of Amendment to the Level of Federal Enforcement

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Approval of Supplements to the Oregon State Plan; Notice of Amendment to the Level of Federal Enforcement.

SUMMARY: This document gives notice of approval of State plan supplements including a revised Oregon field compliance manual, an industrial hygiene technical manual, an inspection scheduling system, amendments to administrative regulations, and State-initiated changes associated with administrative reorganization, compliance procedures and agreements with other agencies. This document also gives notice of an amendment to the operational status agreement which reflects a change in the level of Federal enforcement in the State.

EFFECTIVE DATE: July 29, 1986.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 (202) 523-8148.

SUPPLEMENTARY INFORMATION:

Background

The Oregon Occupational Safety and Health Plan was approved under section 18(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667(c)) (hereinafter referred to as the Act) and Part 1953 of this chapter provides procedures for the review and approval of State plan change supplements and agreements recognizing the level of Federal enforcement within a State plan by the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary).

Description of Supplements

A. Oregon Field Compliance Manual

The State submitted a revised manual on March 7, 1984, with subsequent revisions on April 17, 1984, January 3, 1985, May 17, 1985, and October 16, 1985, respectively, which details compliance procedures for its occupational safety program. The manual is modeled generally after the Federal manual, and revisions thereto through February 11, 1985.

B. Oregon Industrial Hygiene Technical Manual

The State submitted its manual detailing industrial hygiene technical procedures on January 15, 1985. The State manual is modeled after the Federal manual as issued March 30, 1984.

C. Inspection Scheduling System

The State submitted a supplement providing its safety and health inspection scheduling system on December 30, 1982, consistent with its rules governing inspection scheduling which were approved in the **Federal Register** on September 24, 1982 (47 FR 42108). Inspections are programmed using lists of employers which have a high incidence of workers compensation claims, whose operations are within industries with high injury rates, or which have a high potential for health problems. The State also submitted a supplement on December 8, 1983, providing acceptable program planning goals as a response to those issued Federally on October 31, 1983.

D. Amendments of Legislation

On July 27, 1983, the State submitted amendments to the Oregon Safe Employment Act, its enabling legislation, to replace gender specific pronouns with gender neutral language and to substitute synonymous language in the section prohibiting discrimination against employees who exercise their rights under the legislation. The amendments made no substantive changes.

E. Guidelines for Superfund and Other Hazardous Waste Sites

The State submitted a supplement on June 17, 1984, advising that it would not provide coverage of private sector employees at Superfund waste sites and acknowledging responsibility to protect State and local public sector employees at such sites. The State does cover both private and public sector employees at other toxic waste dumps not designated as Superfund sites. The State supplement responded to Federal policy issued December 30, 1983.

F. Policy on MSHA/OSHA Jurisdiction

The State submitted procedures effective May 18, 1981, to ensure consistency with OSHA policy issued March 14, 1980, providing guidance on determining enforcement responsibility in situations where the Mine Safety and Health Administration's and OSHA's jurisdiction overlapped. The policy resulted from an MSHA/OSHA jurisdictional agreement.

G. Regulations Concerning Personal Sampling

The State submitted an amendment to its regulations (436-46-015 and 090) on July 22, 1983, closely comparable to Federal changes to regulations at 29 CFR 1903.7, effective January 10, 1983, which provided authority for use of personal sampling devices during inspections.

H. Petitions for Modification of Correction Period

The State submitted an amendment to its regulations (436-46-251), effective February 1, 1983, which places the burden of proof on an employer at hearings on petitions to modify correction, provides procedures for reconsideration of a denied petition under certain conditions subsequent to decisions by the review board, and clarifies posting requirements to ensure employee notification of such reconsiderations. The amendment implemented assurances made as a condition for approval of the State administrative regulations as a completed developmental step on September 24, 1982 (47 FR 42108).

I. Repeat Violations

The State submitted an amendment to its regulations (436-46-015 and 145) effective November 1, 1984, which sets a 3 year limit on repeat violations (consistent with Federal policy), and which precludes penalty adjustments for repeat violations contributing to actual employee injury, illness or death.

J. Recordkeeping

Oregon submitted amendments to its regulations effective March 15, 1984 (436-46-015, 052, 701, and 725), reflecting Federal regulations at 29 CFR 1904.12, providing exemption from recordkeeping

requirements for employers of fewer than 10 employees and certain low-hazard industries, except for employers within those groups with two serious compensation claims in the preceding year.

K. Voluntary Compliance

The State submitted supplements, effective June 10, 1985, which reflected procedures identical to those issued Federally December 3 and December 4, 1984, concerning inspection exemption through consultation, and assistance with employer-operated workplace safety and health programs.

L. Organization Changes

The State submitted a supplement to reflect changes in organization and staffing, effective July 1, 1984, to more accurately reflect that several positions divided work hours between consultative and technical support functions, and that an industrial hygienist trainee position was assigned to both enforcement and technical support functions.

M. Interagency Agreements

The State submitted a supplement on December 8, 1983, to reflect agreements between the Oregon Workers' Compensation Department and the Bureau of Labor and Industries providing for investigation and litigation by the latter agency of complaints alleging discrimination against employees for exercising their rights under the Oregon Safe Employment Act.

N. Guidelines for Inspection of Marine Grain Elevators

The State submitted a supplement on September 9, 1985, which provides procedures for inspecting marine grain handling facilities which are identical to Federal procedures issued on July 15, 1985.

O. Special Projects Section

The State submitted a supplement on March 10, 1984, which established a special projects section within its voluntary compliance program to assist employers in development of safety management programs and in elimination of ergonomic workplace hazards, as part of the State training and education services.

P. Various Administrative and Enforcement Policies

The State submitted State-initiated supplements addressing several procedural changes, including procedures for response to Federal policy changes and correspondence effective March 1, 1984; a revision to the State poster effective January 1, 1984, advising employers and employees that a Complaint About State Program Administration (CASPA) may be filed with Federal OSHA; procedures for handling complaints about the State's administration filed with the State, including a requirement to inform complainants that they may also file a CASPA, effective August 15, 1983; and revised procedures for identifying and informing employers of conditions which are potentially harmful to safety or health which are not addressed by standards, effective June 1, 1983.

Q. Amendment to the Operational Status Agreement

The State signed an agreement effective December 12, 1983, amending its earlier operational status agreement [40 FR 18427] recognizing that Federal OSHA will enforce occupational safety and health standards within all Federal military reservations in Oregon.

Location of plan supplements for inspection and copying

A copy of the plan and its supplements may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003 Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Workers' Compensation Department, Labor and Industries Building, Salem, Oregon 97310; and the OSHA Office of State Programs, Room N3476, 200 Constitution Avenue, NW. Washington, DC 20210.

Public Participation

Under § 1953.2(c) of this chapter the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable law. The Assistant Secretary finds that the State amendments to its legislation, administrative rules and procedures, and compliance procedures, were adopted in accordance with procedural requirements of State law. The plan supplements which provide State procedures in response to Federal program changes are substantially in agreement with their requirements and other State-initiated program change supplements do not significantly alter the State program. Good cause is therefore found for approval of these supplements, and further public participation would be unnecessary.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational Safety and health.

Decision

After careful consideration and extensive review by the OSHA Regional and National Offices, the Oregon plan supplements described above are found to be as effective as comparable Federal procedures and are hereby approved under Part 1953 of this chapter. In addition, pursuant to § 1954.3 (f)(3), notice is given that the operational status agreement between OSHA and the State of Oregon has been amended to more accurately reflect the level of Federal enforcement in the State.

(Secs. 8, 18, Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 667); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable)

Signed at Washington, DC this 24th day of July 1986.

John A. Pendergrass,

Assistant Secretary of Labor.

PART 1952—[AMENDED]

Accordingly 29 CFR Part 1952 is hereby amended as follows:

1. The authority citation for Part 1952 continues to read as follows:

Secs. 8, 18, Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 667); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059) or 9–83 (48 FR 35736), as applicable.

2. Subpart D of 29 CFR Part 1952 is hereby amended by revising §§ 1952.107 and 1952.110 to read as follows:

§ 1952.107 Level of Federal enforcement.

(a) Pursuant to §§ 1902.20(b)(1)(iii) and 1954.3 of this chapter under which an agreement has been entered into with Oregon, effective January 23, 1975, and as amended, effective December 17, 1983, and in recognition of the State's June 17, 1984 supplement advising OSHA that it would not enforce standards applying to Superfund hazardous waste sites for private sector employees, and pursuant to a determination made under 29 CFR 1902.2(c)(3); and based on a determination that Oregon is operational in the issues covered by the Oregon occupational safety and health plan, discretionary Federal occupational safety and health plan, discretionary Federal enforcement authority under section 18(c) of the Act, 29 U.S.C. 667(c), will not be initiated with regard to Federal occupational safety and health standards in issues covered under 29 CFR Parts 1910, 1926 and 1928 except as

provided herein. The U.S. Department of Labor will continue to exercise authority among other things with regard to: complaints filed with the U.S. Department of Labor alleging discrimination under section 11(c) of the Act (29 U.S.C. 660(c)); standards in the maritime issues covered by 29 CFR Parts 1917, 1918, and 1919 (marine terminals, longshoring, and gear certification) which have been specifically excluded from coverage under the plan; enforcement of new Federal standards until the State adopts a comparable standard; enforcement of occupational safety and health standards at worksites located within the Warm Springs Indian Reservation; enforcement of occupational safety and health standards at worksites located within Federal military reservations; enforcement of occupational safety and health standards for protection of private sector employees at Superfund wastesites and investigations and inspections for the purpose of the evaluation of the plan under sections 18 (e) and (f) of the Act (29 U.S.C. 667 (e) and (f)).

(b) The Regional Administrator for Occupational Safety and Health will make a prompt recommendation for resumption of exercise of Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) whenever, and to the degree, necessary to assure occupational safety and health protection to employees in the State of Oregon.

§ 1952.110 Changes to approved plans.

In accordance with Part 1953 of this chapter, the following Oregon plan changes were approved by the Assistant Secretary:

(a) The State submitted a revised field operations manual patterned after the Federal field operations manual, including modifications, in effect February 11, 1985, which superseded the State's previously approved manual. The Assistant Secretary approved the manual on July 29, 1986.

(b) The State submitted an industrial hygiene technical manual patterned after the Federal manual, including modifications, in effect March 30, 1984. The Assistant Secretary approved the manual on July 29, 1986.

(c) The State submitted an inspection scheduling system which schedules inspections based on lists of employers with a high incidence of workers compensation claims, whose operations are within industries with high injury rates, or which have a high potential for health problems. The Assistant Secretary approved the supplement on July 29, 1986.

(d) The State submitted several changes to its administrative regulations concerning personal sampling, petition to modify abatement dates, penalties for repeat violations, and recordkeeping exemptions. The Assistant Secretary approved these changes on July 29, 1986.

[FR Doc. 86-16995 Filed 7-28-86; 8:45 am]
BILLING CODE 4510-26-M

VETERANS ADMINISTRATION

DEPARTMENT OF DEFENSE

38 CFR Part 21

Veterans Education; Educational Assistance Test Program

AGENCY: Veterans Administration and Department of Defense.

ACTION: Final regulations.

SUMMARY: These regulations issued jointly by the VA (Veterans Administration) and the Department of Defense are designed to implement those provisions of the Department of Defense Authorization Act, 1981, which were codified as chapter 107, title 10, United States Code. These provisions established an Educational Assistance Test Program which was available to some individuals who enlisted or reenlisted in the Army, Navy, Air Force and Marine Corps after September 30, 1980 and before October 1, 1981. These regulations will implement this program.

EFFECTIVE DATE: September 8, 1980.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 389-2092.

SUPPLEMENTARY INFORMATION: On pages 50632 through 50641 of the **Federal Register** of December 11, 1985, there was published a notice of intent to amend Part 21 to provide rules for administering the Educational Assistance Test Program. Interested people were given 30 days to submit comments, suggestions or objections. The VA and the Department of Defense received no comments, suggestions or objections. Accordingly, the agencies are making these regulations final.

The final regulations contain corrections to the typographical errors which appeared in the proposal.

The VA and the Department of Defense find that good cause exists for making these regulations, like the sections of the law they implement, retroactively effective on September 8, 1980. To achieve the maximum benefit of this legislation for the affected individuals, it is necessary to implement these provisions of law as soon as possible. A delayed effective date would be contrary to statutory design; would complicate administration of these provisions of law; and might result in denial of a benefit to a veteran who is entitled by law to it.

The VA and Department of Defense have determined that these regulations do not contain a major rule as that term is defined by E.O. 12291, entitled, Federal Regulation. The annual effect on the economy will be less than $100 million. The regulations will not result in any major increases in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans' Affairs and the Secretary of Defense have certified that these regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The regulations are exempt under 5 U.S.C. 605(b) from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. This certification is based on the fact that the regulations contain few of the administrative requirements which the VA now requires of schools under other educational programs which the VA administers. Furthermore, since only 7,000 people qualified for this program, their total impact upon schools, both large and small, will be small.

The information collection requirements that are contained in §§ 21.5810 and 21.5812 of these regulations have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned control numbers 2900-0073 and 2900-0156.

This is a new program for which there is no Catalog of Federal Domestic Assistance number.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans,

Vocational education, Vocational rehabilitation.

Approved: April 23, 1986.

Thomas K. Turnage,

Administrator.

Approved: July 8, 1986.

E.A. Chavarrie,

Lt. Gen, USAF, Deputy Assistant Secretary of Defense (Military Manpower & Personnel Policy).

PART 21—[AMENDED]

38 CFR Part 21, Vocational Rehabilitation and Education, is amended by adding a new Subpart H containing §§ 21.5701 through 21.5901, intermittently, to read as follows:

Subpart H—Educational Assistance Test Program

Sec.
21.5701 Establishment of educational assistance test program.
21.5703 Overview.
21.5705 Transfer of authority.

General

21.5720 Definitions.
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Claims and Applications

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21.5740 Eligibility.
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Measurement of Courses

21.5870 Measurement of courses.

Sec.
Administrative

21.5900 Administration of benefits program—ch. 107, title 10, U.S.C.
21.5901 Delegation of authority.

Authority. 10 U.S.C. ch. 107; Pub. L. 96—342 unless otherwise noted.

Subpart H—Educational Assistance Test Program

§ 21.5701 Establishment of educational assistance test program.

(a) *Establishment.* The Departments of Army, Navy and Air Force have established an educational assistance test program. (10 U.S.C. 2141(a); Pub. L. 96–342)

(b) *Purpose.* The purpose of this program is to encourage enlistments and reenlistments for service on active duty in the Armed Forces of the United States during the period from October 1, 1980 through September 30, 1981. (10 U.S.C. 2141(a); Pub. L. 96–342)

(c) *Funding.* The Department of Defense is bearing the costs of this program. Participants in the program do not bear any of the costs. (10 U.S.C. 2141(a); Pub. L. 96–342)

§ 21.5703 Overview.

This program provides subsistence allowance and educational assistance to selected veterans and servicemembers and, in some cases, to dependents of these veterans and servicemembers. (10 U.S.C. 2141(b); Pub. L. 96–342)

§ 21.5705 Transfer of authority.

The Secretary of Defense delegates the authority to administer the benefit payment portion of this program to the Administrator of Veterans' Affairs and his or her designees. See § 21.5901. (10 U.S.C. 2141(b); Pub. L. 96–342)

General

§ 21.5720 Definitions.

For the purpose of regulations in the § 21.5700, § 21.5800 and § 21.5900 series and payment of benefits under the educational assistance and subsistence allowance program, the following definitions apply:

(a) *Veteran.* This term means a person who—

(1) Is not on active duty.

(2) Served as a member of the Air Force, Army, Navy or Marine Corps.

(3) Enlisted or reenlisted after November 30, 1980, and before October 1, 1981, specifically for benefits under the provisions of 10 U.S.C. 2141 through 2149; Pub. L. 96–342; and

(4) Meets the eligibility requirements for the program as stated in § 21.5740. (10 U.S.C. 2141(a); Pub. L. 96–342)

(b) *Accredited institution.* This term means a civilian college or university or a trade, technical or vocational school in the United States (including the District of Columbia, the Commonwealth of Puerto Rico, Guam and the U.S. Virgin Islands) that—

(1) Provides education on a postsecondary level (including accredited programs conducted at overseas locations) and

(2) Is accredited by—

(i) A nationally recognized accrediting agency or association, or

(ii) An accrediting agency or association recognized by the Secretary of Education. (10 U.S.C. 2143(c); Pub. L. 96–342)

(c) *Dependent child.* This means an unmarried legitimate child (including an adopted child or a stepchild) who either—

(1) Has not passed his or her 21st birthday; or

(2) is incapable of self-support because of a mental or physical incapacity that existed before his or her 21st birthday and is, or was at the time of the veteran's or servicemember's death, in fact, dependent on him or her for over one-half of his or her support; or

(3) Has not passed his or her 23rd birthday; is enrolled in a full-time course of study in an institution of higher learning aproved by the Secretary of Defense or the Secretary of Education, as the case may be; and is, or was at the time of the veteran's or servicemember's death, in fact, dependent upon him or her for over one half of his or her support. (10 U.S.C. 1072(2)(E) 2147(d)(1))

(d) *Surviving spouse.* The term means a widow or widower who is not remarried. (10 U.S.C. 2147(d)(2); Pub. L. 96–342).

(e) *Servicemember.* This term means anyone who—

(1) Meets the eligibility requirements for the program, and

(2) Is on active duty in the Air Force, Army, Navy or Marine Corps. (10 U.S.C. 2142; Pub. L. 96–342).

(f) *Spouse.* This term means a person of the opposite sex who is the husband or wife of the veteran or servicemember. (10 U.S.C. 2147; Pub. L. 96–342).

(g) *Divisions of the school year.* (1) "Standard academic year" is a period of 2 standard semesters or 3 standard quarters. It is 9 months long.

(2) "Standard quarter" is a division of the standard academic year. It is from 10 to 13 weeks long.

(3) "Standard semester" is a division of the standard academic year. It is 15 to 19 weeks long.

(4) "Term" is either

(i) Any regularly established division of the standard academic year, or

(ii) The period of instruction which takes place between standard academic years. (10 U.S.C. 2142; Pub. L. 96–342).

(h) *Full-time training.* This term means training at the rate of 12 or more semester hours per semester, or the equivalent. (10 U.S.C. 2144; Pub. L. 96–342).

(i) *Part-time training.* The term means training at the rate of less than 12 semester hours per semester or the equivalent. (10 U.S.C. 2144; Pub. L. 96–342).

(j) *Enrollment period.* This term means an interval of time during which an eligible individual—

(1) Is enrolled in an accredited educational institution; and

(2) Is pursuing his or her program of education. (10 U.S.C. 2142; Pub. L. 96–342).

§ 21.5725 Obtaining benefits.

(a) *Actions required of the individual.* In order to obtain benefits under the educational assistance and subsistence allowance program, an individual must—

(1) File a claim for benefits with the VA, and

(2) Ensure that the accredited institution certifies his or her enrollment to the VA. (10 U.S.C. 2149; Pub. L. 96–342).

(b) *VA Action upon receipt of a claim.* Upon receipt of a claim from an individual the VA shall—

(1) Determine if the individual, or the veteran upon whose service the claim is based, has or had basic eligibility;

(2) Determine that the eligibility period has not expired;

(3) Determine that the individual has remaining entitlement;

(4) Verify that the individual is attending an accredited institution;

(5) Determine whether payments may be made for the course, and

(6) Make appropriate payments of educational assistance and subsistence allowance. (10 U.S.C. 2142–2149; Pub. L. 96–342).

Claims and Applications

§ 21.5730 Applications, claims and informal claims.

(a) *Applications.* An individual shall file all claims for benefits with the VA. The claim must be in the form prescribed by the Administrator. (10 U.S.C. 2149; Pub. L. 96–342)

(b) *Informal claim.* The VA may consider any communication from an individual, an authorized representative or a member of Congress indicating an intent to apply for educational assistance or subsistence allowance to be an informal claim. Upon receipt of an informal claim, if a formal claim has not been filed, the VA will provide an application form to the claimant. If the VA receives the application from the claimant within one year from the date the VA provided it, the VA will consider the claim to have been filed as of the date the VA received the informal claim. (10 U.S.C. 2149; Pub. L. 96–342)

(c) *Enrollment is not an informal claim.* The mere act of enrollment in an accredited institution does not constitute an informal claim to the VA. (10 U.S.C. 2141; Pub. L. 96–342)

§ 21.5732 Time limits.

(a) *Completion of claim.* The VA will consider a claim to be abandoned when the VA requests evidence in connection with the claim, and the claimant does not furnish the evidence within one year after the date of the request. After the expiration of one year, the VA will not take further action unless a new claim is received. (10 U.S.C. 2141; Pub. L. 96–342)

(b) *New claim.* When a claim has been abandoned, the VA will consider any subsequent communication which meets at least the requirements of an informal claim to be a new claim. The VA will consider the date of receipt of the subsequent communication to be the date of the new claim. (10 U.S.C. 2141; Pub. L. 96–342)

(c) *Failure to furnish form or notice of time limit.* The time limits stated in this section will not be extended even if the VA fails to furnish—

(1) Any form or information concerning the right to file a claim, or

(2) Notice of the time limit for filing a claim, or

(3) Notice of the time limit for the completion of any other required action. (10 U.S.C. 2141; Pub. L. 96–342)

Eligibility and Entitlement

§ 21.5740 Eligibility.

(a) *Establishing eligibility.* To establish eligibility to educational assistance under 10 U.S.C. ch. 107 an individual must—

(1) Enlist or reenlist for service on active duty as a member of the Army, Navy, Air Force or Marine Corps after September 30, 1980 and before October 1, 1981 specifically for benefits under the provisions of 10 U.S.C. 2141 through 2149, Pub. L. 96–342,

(2) Have graduated from a secondary school,

(3) Meet other requirements as the Secretary of Defense may consider appropriate for the purpose of this chapter and the needs of the Armed Forces,

(4) Meet the service requirements stated in paragraph (b) of this section, and

(5) If a veteran, have been discharged under honorable conditions. (10 U.S.C. 2142(b), 38 U.S.C. 3103A; Pub. L. 96–342; Pub. L. 97–306)

(b) Service Requirements. (1) The individual must complete 24 continuous months of active duty of the enlistment or reenlistment described in paragraph (a)(1) of this section; or

(2) If the enlistment described in paragraph (a) of this section is the individual's initial enlistment for service on active duty, the individual must—

(i) Complete 24 continuous months of active duty, or

(ii) Be discharged or released from active duty—

(A) Under 10 U.S.C. 1173 (hardship discharge), or

(B) Under 10 U.S.C. 1171 (early-out discharge), or

(C) For a disability incurred in or aggravated in line of duty; or

(iii) Be found by the VA to have a service-connected disability which gives the individual basic entitlement to disability compensation as described in § 3.4(b) of this title. Once the VA makes this finding, the individual's eligibility will continue notwithstanding that the disability becomes noncompensable.

(2) In computing time served for the purpose of this paragraph, the VA will exclude any period during which the individual is not entitled to credit for service as specified in § 3.15 of this title. However, those periods will not interrupt the individual's continuity of service. (10 U.S.C. 2142; 38 U.S.C. 3103A; Pub. L. 97–306)

§ 21.5741 Eligibility under more than one program.

(a) *Veterans and servicemembers.* A veteran or servicemember who is eligible for educational assistance under either 38 U.S.C. ch. 31 or 34, or subsistence allowance under 38 U.S.C. ch. 31 may also be eligible for the Educational Assistance Test Program. (See § 21.5824 for restrictions on duplication of benefits.) (10 U.S.C. 2142; Pub. L. 96–342)

(b) *Spouse, surviving spouse or dependent child.* A spouse, surviving spouse or dependent child who is eligible to receive educational assistance under 38 U.S.C. chs. 31, 32, 34 and 35 may also be eligible for the Educational Assistance Test Program. (See § 21.5824 for restrictions on duplication of benefits.) (10 U.S.C. 2142; Pub. L. 96–342)

(c) *Limitation on benefits.* (1) Before March 2, 1984 the 48 month limitation on

benefits under two or more programs found in 38 U.S.C. 1795 does not apply to the Educational Assistance Test Program when taken in combination with any program authorized under title 38 U.S.C.

(2) After March 1, 1984 the aggregate period for which any person may receive assistance under the Educational Assistance Test Program and the provisions of any of the laws listed below may not exceed 48 months (or the part-time equivalent thereof):

(i) Parts VII or VIII, Veterans Regulations numbered 1(a) as amended,

(ii) Title II of the Veterans' Readjustment Assistance Act of 1952,

(iii) The War Orphans' Educational Assistance Act of 1956,

(iv) Chapters 32, 34, 35 and 36 of title 38 U.S.C. and the former chapter 33,

(v) Section 903 of the Department of Defense Authorization Act, 1981 (Pub. L. 96–342, 10 U.S.C. 2141 note).

(vi) The Hostage Relief Act of 1980.

(3) After October 19, 1984 the aggregate period for which any person may receive assistance under the Educational Assistance Test Program and any of the laws listed in paragraph (c)(2) of this section, may not exceed 48 months (or the part-time equivalent thereof):

(i) Chapter 30 of title 38, U.S.C., and

(ii) Chapter 106 of title 10, U.S.C. (38 U.S.C. 1795; Pub. L. 98–525)

§ 21.5742 Entitlement.

(a) *Educational assistance.* A veteran or servicemember shall be entitled to one standard academic year (or the equivalent) of educational assistance for each year of service following the first enlistment beginning after November 30, 1980 (up to a maximum of four years). If the veteran or servicemember completes two years of active duty in the term of enlistment, but fails to complete the enlistment or fails to complete four years of active duty in an enlistment of more than four years, his or her entitlement to educational assistance shall be calculated as follows:

(1) The VA shall determine the number of years, months and days in the veteran's qualifying period of service by subtracting the entry on duty date from the release from active duty date. Any deductible time under § 3.15 of this chapter (during the period of service on which eligibility is based) will be excluded from the calculation.

(2) The VA shall convert the number of years determined in paragraph (c)(1) of this section to months by multiplying them by 12.

(3) The VA shall convert the number of days determined in paragraph (a)(1) to 0 months if there are 14 days or less, and to 1 month is there are more than 14 days.

(4) The VA shall determine the number of total months by adding the number of months determined in paragraph (a)(1) of this section (exclusive of years and days) to the number of months determined in paragraph (a)(2), and the number of months in paragraph (a)(3).

(5) The VA shall multiply the number of total months in paragraph (a)(4) of this section by .75. (10 U.S.C. 2142(a)(2); Pub. L. 96–342)

(b) *Subsistence allowance.* A veteran or servicemember shall be entitled to nine months of subsistence allowance for each standard academic year of entitlement to educational assistance. For each period of entitlement to educational assistance which is shorter than a standard academic year, a veteran or servicemember will be entitled to one month of subsistence allowance for each month of entitlement to educational assistance. This entitlement shall not exceed nine months. (10 U.S.C. 2144; Pub. L. 96–342)

§ 21.5743 Transfer of entitlement.

(a) *Entitlement may be transferred after reenlistment.* (1) A veteran or servicemember may transfer all or part of his or her entitlement to educational assistance and subsistence allowance to a spouse or dependent child. He or she may not transfer entitlement to more than one person at a time. No transfer may be made until the veteran or servicemember—

(i) Has completed the enlistment upon which his or her entitlement is based or has been discharged for reasons described in § 21.5740(b)(2), and

(ii) Has thereafter reenlisted.

(2) The servicemember or veteran may revoke the transfer at any time.

(3) If a veteran attempts to transfer entitlement after 10 years have elapsed from the date he or she has retired, has been discharged or has otherwise been separated from active duty, the transfer shall be null and void. (10 U.S.C. 2147(a), 2148; Pub. L. 96–342)

(b) *Transfer of entitlement upon death of veteran or servicemember.* (1) A veteran's or servicemember's entitlement to educational assistance and subsistence allowance shall be transferred automatically subject to provisions of paragraph (b)(2) of this section, provided he or she—

(i) Completed the enlistment upon which the entitlement is based;

(ii) Thereafter reenlisted;

(iii) Never elected not to transfer entitlement; and

(iv) Dies while on active duty or within 10 years from the date he or she retired, was discharged, or was otherwise separated from active duty.

(2) The veteran's or servicemember's entitlement will be transferred to—

(i) The veteran's or servicemember's surviving spouse, or

(ii) If the veteran or servicemember has no surviving spouse, the veteran's or servicemember's dependent children.

(3) A surviving spouse who receives entitlement under paragraph (b)(2) of this section may elect to transfer that entitlement to the veteran's or servicemember's dependent children.

(4) If a servicemember transfers entitlement and then dies, and the effective date of the transfer is more than 10 years from the date of his or her death, the transfer shall be void. The entitlement will be transferred automatically as provided in paragraph (b)(2) of this section. [10 U.S.C. 2147(a); Pub. L. 96–342]

(c) *Effect of transfer upon educational assistance and subsistence allowance: veteran or servicemember living.* (1) A person to whom a veteran or servicemember transfers entitlement is entitled to educational assistance and subsistence allowance in the same manner and at the same rate as the person from whom entitlement was transferred.

(2) The total entitlement transferred to the veteran's or servicemember's spouse and children shall not exceed the veteran's or servicemember's remaining entitlement. The veteran or servicemember may transfer entitlement to only one person at a time. [10 U.S.C. 2147; Pub. L. 96–342]

(d) *Effect of transfer upon educational assistance and subsistence allowance: veteran or servicemember deceased.* (1) A person to whom entitlement is transferred after the death of a veteran or servicemember is entitled to payment of educational assistance and subsistence allowance in the manner as the veteran or servicemember. The rate of educational assistance and subsistence allowance will be as stated in §§ 21.5820 and 21.5822.

(2) If entitlement is transferred to more than one person following the death of a veteran or servicemember, the total remaining entitlement to educational assistance and subsistence allowance of all is equal to the total entitlement of the person on whose service entitlement is based. [10 U.S.C. 2147; Pub. L. 96–342]

(e) *Revocation of a transfer of entitlement.* A surviving spouse who has transferred entitlement to a dependent child may revoke the transfer by notifying the VA in writing. A veteran or servicemember who has transferred

entitlement may revoke that transfer by notifying the VA in writing. The veteran, servicemember or surviving spouse may choose the effective date of the revocation subject to the following conditions:

(1) If the person to whom entitlement is transferred never enters training, the effective date of the revocation may be any date chosen by the veteran, servicemember or surviving spouse who transferred the entitlement.

(2) If the person to whom entitlement is transferred is not in training on the date the VA processes the revocation, but he or she has trained before that date, the effective date of the revocation may be no earlier than the last date that person was in training for which educational assistance and subsistence allowance were payable.

(3) If the person to whom entitlement is transferred is in training (for which educational assistance and subsistence allowance are payable) on the date the VA processes revocation, the effective date of the revocation may be no earlier than—

(i) The last date of the term, quarter, or semester at the accredited institution where that person is enrolled, or

(ii) If the accredited institution is not organized on a term, quarter or semester basis, the last date of the course or the last date of the school year, whichever is earlier. [10 U.S.C. 2147; Pub. L. 96–342]

§ 21.5744 Charges against entitlement.

(a) *Charges against entitlement to educational assistance.* (1) Except as provided in paragraph (a)(2) of this section the VA will make a charge against an individual's entitlement to educational assistance of—

(i) One month for each month of a term, quarter or semester—

(A) For which the servicemember receives educational assistance, and

(B) During which the servicemember is a full-time student; and

(ii) One-half month for each month of a term, quarter or semester—

(A) For which the individual receives educational assistance, and

(B) During which the servicemember is a part-time student.

(2) The VA will prorate the entitlement charge if the individual—

(i) Is a student for only part of a month, or

(ii) The individual is a full-time student for part of a month and a part-time student for part of the same month.

(3) The charge against entitlement to educational assistance should always equal the charge against entitlement to subsistence allowance for the same enrollment period. (10 U.S.C. 2142; Pub. L. 96–342)

(b) *Charges against entitlement to subsistence allowance.*

(1) For each individual, except servicemembers, the VA will make a charge against an individual's entitlement to subsistence allowance of—

(i) One month for each month the individual is a full-time student receiving subsistence allowance; and

(ii) One-half for each month the individual is a part-time student receiving subsistence allowance.

(2) Even though a servicemember may not receive subsistence allowance, the VA will make a charge against a servicemember's entitlement to subsistence allowance of—

(i) One month for each month of a term, quarter or semester—

(A) For which the servicemember received educational assistance and

(B) During which the servicemember is a full-time student; and

(ii) One-half month for each month of a term, quarter or semester—

(A) For which the servicemember received educational assistance, and

(B) During which the individual is a part-time student.

(3) The VA will prorate the entitlement charge as stated in paras. (b)(1) or (2) of this section during any month for which a servicemember receives educational assistance or for which the individual receives subsistence allowance—

(i) For less than a full month, or

(ii) At the full-time rate for part of a month and at the part-time rate for part of the same month. (10 U.S.C. 2142; Pub. L. 96–342)

§ 21.5745 Period of entitlement.

(a) *Veterans.* The period of entitlement of a veteran expires on the first day following ten years from the date the veteran retires or is discharged or otherwise separated from active duty. (10 U.S.C. 2148; Pub. L. 96–342)

(b) *Spouses, surviving spouses, and dependent children.* If the veteran's or servicemember's entitlement is transferred, the period of entitlement of the spouse, surviving spouse, or dependent child expires 10 years from—

(1) The date the veteran retires, is discharged or otherwise separated from active duty, or

(2) If the servicemember dies on active duty, the date of the servicemember's death. (10 U.S.C. 2148; Pub. L. 96–342)

Courses

§ 21.5800 Courses.

(a) *Courses permitted.* An individual may receive educational assistance and subsistence allowance only while receiving instruction in a postsecondary course offered at any institution in the United States (including the District of Columbia, the Commonwealth of Puerto Rico, Guam and the U.S. Virgin Islands) that is accredited by a nationally recognized accrediting agency or association or by an accrediting agency or association recognized by the Secretary of Education. (10 U.S.C. 2142; Pub. L. 96–342)

(b) *Courses precluded.* An individual shall receive neither educational assistance nor subsistence allowance while pursuing any of the following courses:

(1) A course offered at the secondary level or below;

(2) A course offered by an institution located outside the United States (except in Guam, the Commonwealth of Puerto Rico and the U.S. Virgin Islands);

(3) A course offered by a nonaccredited institution; and

(4) Courses which do not require the student to receive instruction at the institution. These include—

(i) Correspondence courses,

(ii) Combination correspondence—residence courses, and

(iii) Courses offered through independent study. (10 U.S.C. 2143; Pub. L. 96–342)

Certifications

§ 21.5810 Certifications of enrollment.

(a) *Enrollment certifications.* An individual who wishes to receive educational assistance and subsistence allowance shall ensure that the accredited institution he or she is attending certifies the individual's enrollment to the VA. (10 U.S.C. 2141; Pub. L. 96–342)

(b) *Content of certification.* The certification should include—

(1) The number of credit hours or clock hours in which the individual is enrolled;

(2) The amount of the cost of tuition, fees, books, laboratory fees, and shop fees for consumable materials used as part of classroom or laboratory instruction which the individual will incur during the period of enrollment; and

(3) The beginning and ending dates of the period of enrollment. (10 U.S.C. 2142; Pub. L. 96–342)

(c) *Length of certification.* A school should not certify more than one term, quarter or semester at a time. (10 U.S.C. 2141; Pub. L. 96–342)

(Approved by the Office of Management and Budget under control number 2900–0073

§ 21.5812 Reports of withdrawals, and terminations of attendance and changes in training time.

(a) *Reports of withdrawals and terminations of attendance.* (1) An individual shall report to the VA field station of jurisdiction whenever he or she withdraws from school or terminates his or her attendance. He or she shall report the last day of attendance. The individual may request that the school verify this information.

(2) The report shall include—

(i) The date of withdrawal or last date of attendance, as appropriate; and

(ii) The amount of educational expenses actually incurred by the individual during the period of enrollment before the date of withdrawal, or if the individual does not formally withdraw when he or she stops attending the amount of educational expenses actually incurred by the individual during the period of enrollment before the last date of attendance. (10 U.S.C. 2141; Pub. L. 96–342)

(b) *Reports of changes in training.* (1) An individual shall report to the VA field station of jurisdiction each time the individual increases or decreases the number of credit hours or clock hours of training in which he or she is enrolled or otherwise alters the duration of the enrollment.

(2) The report shall include—

(i) The new number of credit hours or clock hours in which the individual is enrolled;

(ii) The amount of educational expenses, enumerated in § 21.5810(b)(2), which the individual will incur during the revised period of enrollment; and

(iii) The effective date of the change in the number of credit hours or clock hours, including any revision in the term of the enrollment.

(3) The individual or the VA may ask the school to verify the individual's reports of changes in training. (10 U.S.C. 2141; Pub. L. 96–342)

(Approved by the Office of Management and Budget under control number 2900–0156)

§ 21.5816 False or fraudulent claims.

Each individual, or school officer or official shall be subject to civil penalties or criminal penalties, or both, under applicable Federal law for submitting a false or fraudulent report, revision to a report, or verification of accuracy of a report used to support an individual's claim, even though the report or verification is provided gratuitously or voluntarily to the VA. (31 U.S.C. 3729–3731, 18 U.S.C. 1001)

Payments—Educational Assistance and Subsistence Allowance

§ 21.5820 Educational assistance.

(a) *Educational assistance.* Educational assistance will be paid to cover the educational expenses incurred by an eligible servicemember, veteran, spouse, surviving spouse or dependent child while attending an accredited institution. Educational assistance payments will be made to the eligible individual.

(1) The educational expenses are limited to—

(i) Tuition,

(ii) Fees,

(iii) Cost of books,

(iv) Laboratory fees, and

(v) Shop fees for consumable materials used as part of classroom or laboratory instruction.

(2) Educational expenses may not exceed those normally incurred by students at the same educational institution who are not eligible for benefits from the educational assistance test program. (10 U.S.C. 2143(a); Pub. L. 96–342)

(b) *Amount of educational assistance.* The amount of educational assistance may not exceed $1470 per standard academic year, adjusted annually by regulation.

(1) The amount of educational assistance payable to a servicemember, veteran, spouse or dependent child of a living servicemember or veteran for an enrollment period shall be the lesser of the following:

(i) The total charges for educational expenses the eligible individual incurs during the enrollment period, or

(ii) An amount determined by—

(A) Multiplying the number of whole months in the enrollment period by $163.33 for a full-time student or by $81.67 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $5.44 for a fulltime student or by $2.72 for a part-time student; and

(C) Adding the two results. If the enrollment period is as long or longer than a standard academic year, this amount will be increased by $.03 for a full-time student and decreased by $.03 for a part-time student; and

(2) The amount of educational assistance payable to each surviving spouse or dependent child of a deceased servicemember or veteran for an enrollment period shall be the lesser of the following:

(i) The total charges for educational expenses the eligible individual incurs during the enrollment period, or

(ii) An amount determined by—

(A) Multiplying the number of whole months in the enrollment period by $163.33 for a full-time student or by $81.67 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $5.44 for a full-time student or by $2.72 for a part-time student; and

(C) Adding the two results. If the enrollment period is as long or longer than a standard academic year, this amount will be increased by $.03 for a full-time student and decreased by $.03 for a part-time student; and

(D) Dividing the amount determined in paragraph (b)(2)(ii)(C) of this section by the number of the decreased veteran's dependents receiving educational assistance for that enrollment period. If one or more dependents is receiving educational assistance for part of the enrollment period, the amount calculated in paragraph (b)(2)(ii)(C) will be prorated on a daily basis. The amount for each day when more than one dependent is receiving educational assistance will be divided by the number of dependents receiving educational assistance on that day. The total amount for the days when only one dependent is receiving educational assistance will not be divided. (10 U.S.C. 2143; Pub. L. 96–342)

(c) *Time of educational assistance payments.* The VA shall make payments of educational assistance at the end of the first month of each semester, quarter or term in which the individual is entitled to such a payment, provided the VA receives a timely enrollment certification. If the VA receives the enrollment certification so late that payment cannot be made at the end of the month in which the individual is enrolled, the VA shall make payment as soon as practicable. (10 U.S.C. 2143; Pub. L. 96–342)

§ 21.5822 Subsistence allowance.

(a) *Subsistence allowance.* Except as provided in paragraph (a)(2) of this section, the VA will pay subsistence allowance to a veteran, spouse, surviving spouse or dependent child during any period for which he or she is entitled to educational assistance. No subsistence allowance is payable to

(1) A servicemember, even if he or she is entitled to educational assistance, or

(2) A spouse or dependent child of a servicemember, even if the spouse or dependent child is entitled to educational assistance. (10 U.S.C. 2144(a); Pub. L. 96–342)

(b) *Amount of subsistence allowance.* (1) The following rules govern the amount of subsistence allowance payable to veterans and to spouses and

dependent children of veterans who are alive during the period for which subsistence allowance is payable. As stated in paragraph (a) of this section, these amounts are payable only for periods during which the veterans, spouses or dependent children are entitled to educational assistance.

(i) If a person is pursuing a course of instruction on a full-time basis, his or her subsistence allowance is $367 per month, adjusted annually by regulation.

(ii) If a person is pursuing a course of instruction on other than a full-time basis, his or her subsistence allowance is $183.50 per month.

(iii) If a person does not pursue a course of instruction for a complete month the VA will prorate the subsistence allowance for that month on the basis of 1/30th of the monthly rate for each day the person is pursuing the course.

(2) The following rules govern the amount of subsistence allowance payable to surviving spouses and dependent children of deceased veterans and servicemembers.

(i) The VA shall determine the monthly rate of subsistence allowance payable to a person for a day during which he or she is pursuing a course of instruction full-time by dividing $367 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day.

(ii) The VA shall determine the monthly rate of subsistence allowance payable to a person for a day during which he or she is pursuing a course of instruction on other than a full-time basis by dividing $183.50 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day.

(iii) The total amount of subsistence allowance payable to a person for a month is the sum of the person's daily rates for the month. (10 U.S.C. 2144; Pub. L. 96–342)

(c) *Time of subsistence allowance payments.* The VA shall make payments of subsistence allowance on the first day of the month following the month for which subsistence allowance is due, provided that the VA receives a timely enrollment certification. If the VA receives the enrollment certification so late that payment cannot be made on the first day of the month following the month for which subsistence allowance is due, the VA shall make payment as soon as practicable. (10 U.S.C. 2144; Pub. L. 96–342)

§ 21.5824 Nonduplication: Federal progams.

(a) *Duplication of some benefits prohibited.* An individual who is receiving educational assistance under programs authorized by 38 U.S.C. chs. 30, 31, 32, 34, 35 or 36 may not receive concurrently either educational assistance or subsistence allowance under the § 21.5700, § 21.5800 and § 21.5900 series of regulations for the same program of education, but may receive them sequentially. (10 U.S.C. 2141; Pub. L. 96–342, 98–223)

(b) *Debts may result from duplication.* (1) If an individual receives benefits under 38 U.S.C. chs. 30, 31, 32, 34, 35 or 36 for training, and he or she has previously received educational assistance or subsistence allowance (or both) under § 21.5700, § 21.5800, § 21.5900 series of regulations the amount of the benefits received under 38 U.S.C. chs. 30, 31, 32, 34 or 35 shall not constitute a debt due the United States.

(2) If an individual receives benefits under 38 U.S.C. ch. 34, and had signed an agreement with the Department of Defense to waive those benefits in return for receiving benefits under the educational assistance test program:

(i) Any benefits already paid under the educational assistance test program will constitute a debt due the United States, and

(ii) No further benefits under the educational assistance test program will be paid to the individual or to anyone to whom entitlement may be transferred. (10 U.S.C. 2141; Pub. L. 96–342)

§ 21.5828 False or misleading statements.

(a) *False statements.* An individual who attempts to obtain educational assistance or subsistance allowance or both through submission of false or misleading statements is subject to civil penalties or criminal penalties or both under applicable Federal law. (31 U.S.C. 3729–3731; 18 U.S.C. 1001)

(b) *Effect of false statements on subsequent payments.* A determination that false or misleading statements have been made will not constitute a bar to payments based on training to which the false or misleading statements do not apply. (10 U.S.C. 2141, 2144; Pub. L. 96–342)

§ 21.5830 Payment of educational assistance.

(a) *Timing and release of payments.* The VA will pay educational assistance to the individual on the last day of the calendar month during which the individual enters or reenters training. (10 U.S.C. 2143; Pub. L. 96–342)

(b) *Period covered by payments.* The payments cover those expenses, listed in § 21.5820(a) incurred for the period beginning on the commencing date of the individual's subsistence allowance and ending on the ending date of the individual's subsistence allowance. See § 21.5831. (10 U.S.C. 2143; Pub. L. 96–342)

§ 21.5831 Commencing date of subsistence allowance.

The commencing date of an award or increased award of subsistence allowance will be determined by this section

(a) *Entrance or reentrance.* Latest of the following dates:

(1) Date certified by school or establishment under paragraph (b) or (c) of this section.

(2) Date 1 year before the date of receipt of the application or enrollment certification.

(3) Date of reopened application under paragraph (d) of this section.

(4) In the case of a spouse, surviving spouse, or dependent child, the date that transfer of eligibility and entitlement to the individual was effective. (10 U.S.C. 2144; Pub. L. 96–342)

(b) *Certification by the school-course leads to a standard college degree.* The date of registration or the date of reporting where the student is required by the school's published standard to report in advance of registration, but not later than the date the individual first reports for classes. (10 U.S.C. 2144; Pub. L. 96–342)

(c) *Certification by school or establishment-course does not lead to a standard college degree.* First date of class attendance. (10 U.S.C. 2144(a); Pub. L. 96–342)

(d) *Reopened application after abandonment.* Date of receipt in the VA of application or enrollment certification, whichever is later. (10 U.S.C. 2144; Pub. L. 96–342)

(e) *Increase due to increased training time.* The date the school certifies the individual became a full-time student. (10 U.S.C. 2144; Pub. L. 96–342)

(f) *Liberalizing laws and administrative issues.* In accordance with facts found, but not earlier than the effective date of the act or administrative issue. (10 U.S.C. 2144; Pub. L. 96–342)

(g) *Correction of military records.* When a veteran becomes eligible following corection or modification of military records under 10 U.S.C. 1552 or change, correction or modification of a discharge or dismissal under 10 U.S.C. 1553; or other competent military authority, the commencing date of subsistence allowance will be in accordance with the facts found, but not earlier than the date the change, correction or modification was made by the service department. (10 U.S.C. 2142; Pub. L. 96–342)

§ 21.5834 Discontinuance dates: general.

(a) *Educational assistance.* Although educational assistance is paid only once in a term, quarter, or semester, the VA may discontinue it under the circumstances stated in § 21.5835. The discontinuance may cause an overpayment. (See also § 21.5838.) If the individual dies during an enrollment period, the provisions of §21.5835(a) will apply, even if other types of discontinuances are involved. In all other cases where more than one type of reduction or discontinuance is involved, the earliest date found in § 21.5835 will control. (10 U.S.C. 2143; Pub. L. 96–342)

(b) *Subsistance allowance.* The effective date of a reduction or discontinuance of subsistence allowance will be as specified in § 21.5835. If more than one type of discontinuance is involved, the earliest date will control. (10 U.S.C. 2144; Pub. L. 96–342)

§ 21.5835 Specific discontinuance dates.

The following rules will govern reduction and discontinuance dates for educational assistance and subsistence allowance.

(a) *Death of individual.* If an individual dies—

(1) The VA will discontinue educational assistance effective the last day of the most recent term, quarter, semester or enrollment period of which the individual received educational assistance.

(2) The VA will discontinue subsistence allowance effective the individual's last date of attendance. (10 U.S.C. 2144; Pub. L. 96–342)

(b) *Lump-sum payment.* When a servicemember accepts a lump-sum payment in lieu of educational assistance, the VA will discontinue educational assistance effective the date on which he or she elects to receive the lump-sum payment. (10 U.S.C. 2146; Pub. L. 96–342)

(c) *Reduction due to decreased training time.* (1) If a decrease in an individual's training time requires a decrease in educational assistance, the decrease is effective the end of the month in which the individual become a part-time student or the end of the term, whichever is earlier.

(2) When an individual decreases his or her training time from full-time to part-time, the VA will decrease his or her subsistence allowance effective the end of the month in which the individual became a part-time student, or the end of the term, whichever is earlier. (10 U.S.C. 2143, 2144; Pub. L. 96–342)

(d) *Course discontinued, interrupted, terminated or withdrawn from.* If an individual withdraws, discontinues, ceases to attend, interrupts or terminates all courses, the VA will discontinue educational assistance and subsistence allowance effective the last date of attendance. (10 U.S.C. 2143; Pub. L. 96–342)

(e) *False claim.* The VA will discontinue educational assistance and subsistence allowance effective the first day of the term for which the false claim is submitted. (10 U.S.C. 2141; Pub. L. 96–342)

(f) *Withdrawal of accreditation.* If an accrediting agency withdraws accreditation from a course in which an individual is enrolled, the VA will discontinue educational assistance and subsistence allowance effective the end of the month in which the accrediting agency withdrew accreditation, or the end of the term, whichever is earlier. (10 U.S.C. 2143(c) 2144; Pub. L. 96–342)

(g) *Remarriage of surviving spouse.* The VA will discontinue educational assistance and subsistence allowance effective the last date of attendance before the date on which the surviving spouse remarries. (10 U.S.C. 2147(d); Pub. L. 96–342)

(h) *Divorce.* If entitlement has been transferred to the veteran's or servicemember's spouse, and the spouse is subsequently divorced from the veteran or servicemember, the spouse's award of educational assistance and subsistence allowance will end on the last date of attendance before the divorce decree becomes final. (10 U.S.C. 2147(d); Pub. L. 96–342)

(i) *Revocation of transfer.* If a veteran or servicemember revokes a transfer of entitlement, the spouse's or dependent child's award of educational assistance will end on the effective date of the revocation. See § 21.5743(e). (10 U.S.C. 2147; Pub. L. 96–342)

(j) *Dependent child ceases to be dependent: veteran or servicemember living.* If a veteran or servicemember is living and has transferred entitlement to his or her dependent child who is not incapable of self support due to physical or mental incapacity, the VA will discontinue the dependent child's award of educational assistance and subsistence allowance whenever the child does not meet the definition of a "dependent child" found in § 21.5720(c). The effective date of discontinuance is the earliest of the following:

(1) The child's 21st birthday, if on that date—

(i) The veteran or servicemember is not providing over one-half the child's support, or

(ii) The child is not enrolled in a full-time course of study in an institution of higher learning approved by the Secretary of Defense or the Secretary of Education, as the case may be;

(2) The date, following the child's 21st birthday, on which the veteran or servicemember stops providing over one-half the child's support;

(3) The date, following the child's 21st birthday, on which he or she is no longer enrolled in a full-time course of study in an institution of higher learning approved by the Secretary of Defense or the Secretary of Education, as the case may be;

(4) The child's 23rd birthday;

(5) the date the child marries. (10 U.S.C. 2147(d); Pub. L. 96–342)

(k) *Dependent child ceases to be dependent: veteran or servicemember deceased.* If a veteran or servicemember is deceased and his or her dependent child is not incapable of self support due to physical or mental incapacity, the VA will discontinue the dependent child's award of educational assistance whenever the child does not meet the definition of a "dependent child" found in § 21.5720(c). The effective date of discontinuance is the earliest of the following:

(1) The day after the child's 21st birthday, if on that date the child is not enrolled in a full-time course of study in an institution of higher learning approved by the Secretary of Defense or the Secretary of Education, as the case may be;

(2) The date following the child's 21st birthday on which he or she is no longer enrolled in a full-time course of study in an institution of higher learning approved by the Secretary of Defense or the Secretary of Education, as the case may be;

(3) The child's 21st birthday; or

(4) The date the child marries. (10 U.S.C. 2147(d); Pub. L. 96–342)

§ 21.5836 Overpayments.

(a) *Educational assistance.* If an individual receives educational assistance but the educational assistance must be discontinued according to § 21.5835, the amount of educational assistance attributable to the portion of the term, quarter or semester following the effective date of discontinuance shall constitute a debt due the United States.

(1) The amount of the debt is equal to the product of—

(i) The number of days the individual was entitled to receive subsistence allowance during the enrollment period for which educational assistance was paid, divided by the total number of days in that enrollment period, and

(ii) The amount of educational assistance provided for that enrollment period.

(2) Nothing in this method of calculation shall change the fact that the number of months of educational assistance to which the individual remains entitled shall always be the same as the number of months of subsistence allowance to which the individual is entitled. (10 U.S.C. 2143; Pub. L. 96–342)

(b) *Subsistence allowance.* If an individual receives subsistence allowance under any of the following conditions, the amount of that subsistence allowance shall constitute a debt due the United States unless the debt is waived as provided by §§ 1.955 through 1.970 of this chapter.

(1) Subsistence allowance received for courses pursued while on active duty;

(2) Subsistence allowance received for courses which are precluded under § 21.5800(b);

(3) Subsistence allowance received by a person who is not eligible for educational assistance under § 21.5740;

(4) Subsistence allowance received by an individual who has exhausted all entitlement provided under § 21.5742;

(5) Subsistence allowance received by an individual for a period before the commencing date determined by § 21.5831.

(6) Subsistence allowance received by an individual for a period following a discontinuance date determined by § 21.5835.

(7) Subsistence allowance received by an individual in excess of the part-time rate for a period following a reduction date determined by § 21.5835. (10 U.S.C. 2144; Pub. L. 96–342)

Assessment of Course

§ 21.5870 Measurement of courses.

(a) *Credit hour measurement: undergraduate, standard term.* An individual who enrolls in a standard quarter or semester for 12 undergraduate credit hours is a full-time student. An individual who enrolls in a standard quarter or semester for less than 12 undergraduate credit hours is a part-time student. (10 U.S.C. 2144(c): Pub. L. 96–342)

(b) *Credit hour measurement: Undergraduate, nonstandard term.* (1) If an individual enrolls in a nonstandard term, quarter or semester, and the school measures the course on a credit-hour basis, the VA will determine whether that individual is a full-time student by—

(i) Multiplying the credits earned in the term by 18 if credit is granted in semester hours, or by 12 if credit is granted in quarter hours, and

(ii) Dividing the product by the number of whole weeks in the term.

(2) In determining whole weeks the VA will—

(i) Divide the number of days in the term by 7;

(ii) Disregard a remainder of 3 days or less, and

(iii) Consider 4 days or more to be a whole week.

(3) If the number obtained by using the formula in paragraph (b) (1) and (2) of this section is 12 or more, the individual is a full-time student. If that number is less than 12, the individual is a part-time student. (10 U.S.C. 2144(c); Pub.L. 96–342)

(c) *Credit hour measurement: graduate.* (1) If it is the established policy of a school to consider less than 12 credit hours to be full-time for graduate students, the VA will accept the statement of a responsible school offical as to whether the student is a full-time or part-time student. If the school does not have such a policy, the VA will measure the student's enrollment according to the provisions of paragraphs (a) and (b) of this section.

(2) The VA will measure undergraduate courses required by the school according to the provisions of paragraphs (a) and (b) of this section, even though the individual is enrolled as a graduate student. If the individual is taking both graduate and undergraduate courses, the school will report the credit-hour equivalent of the graduate work. The VA will first measure the undergraduate courses according to the provisions of paragraphs (a) and (b) of this section and combine the result with the credit-hour equivalent of the graduate work in order to determine the extent of training. (10 U.S.C. 2144(c); Pub. L. 96–342)

(d) *Clock hour measurement.* (1) If an individual enrolls in a course measured in clock hours and shop practice is an integral part of the course, he or she is a full-time student when enrolled in 22 clock hours or more per week with not more than a 2½ hour rest period allowance per week. For all other enrollments the individual is a part-time student. The VA will exclude supervised study in determining the number of clock hours in which the individual is enrolled.

(2) If an individual enrolls in a course measured in clock hours and theory and class instruction predominate in the course, he or she is a full-time student enrolled in 18 clock hours or more per week. He or she is a part-time student when enrolled in less than 18 clock hours per week. Customary intervals not to exceed 10 minutes between classes will be included in measuring net instruction. Shop practice, rest periods, and supervised study are excluded. Supervised instruction periods in schools' shops and the time involved in field trips and individual and group instruction may be included in computing the clock hour requirements. (10 U.S.C. 2144(c); Pub.L. 96–342)

Administrative

§ 21.5900 Administration of benefits program—chapter 107, title 10, United States Code.

In administering benefits payable under chapter 107, title 10, United States Code, the VA will be bound by the provisons of the § 21.5700, § 21.5800 and § 21.5900 series of regulations. (10 U.S.C. 2144(c); Pub.L. 96–342)

§ 21.5901 Delegations of authority.

(a) *General delegation of authority.* Except as otherwise provided, authority is delegated to the Chief Benefits Director of the VA and to supervisory or adjudication personnel within the jurisdiction of the Education Service of the VA, designated by him or her to make findings and decisions under 10 U.S.C. ch. 107 and the applicable regulations, precedents and instructions concerning the program authorized by these regulations. (10 U.S.C. 2144(c); Pub.L. 96–342)

(b) *Delegation of authority concerning the Civil Rights Act of 1984.* The Chief Benefits Director is delegated the responsibility to obtain evidence of voluntary compliance with title VI of the Civil Rights Act of 1964 from educational institutions and from recognized national organizations whose representatives are afforded space and office facilities under his or her jurisdiction. See Part 18 of this title. (42 U.S.C. 2000)

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BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[A–9–FRL–3055–5]

Delegation of New Source Performance Standards (NSPS) for the State of Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation.

SUMMARY: The EPA hereby places the public on notice of its delegation of

NSPS authority to the Maricopa County Health Department (MCHD). This action is necessary to bring the NSPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS categories from EPA to State and local governments.

EFFECTIVE DATE: November 12, 1985.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A–3–1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974–8221 FTS 454–8221.

SUPPLEMENTARY INFORMATION: The MCHD has requested authority for delegation of certain NSPS categories. Delegation of authority was granted by a letter dated November 12, 1985 and is reproduced in its entirety as follows:

Robert W. Evans, Chief,
Bureau of Air Pollution Control, Maricopa County Health Department, 1825 East Roosevelt, Phoeniz, AZ 85006

Dear Mr. Evans: In response to your request of October 23, 1985, I am pleased to inform you that we are delegating to your agency authority to implement and enforce the New Source Performance Standard (NSPS) category in 40 CFR Part 60: Subpart PPP—Standards of Performance for Wool Fiberglass Insulation Manufacturing Plants. We have reviewed your request for delegation and have found your present programs and procedures to be acceptable.

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Part 60, including use of EPA approved test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the Federal Register in the near future.

Sincerely,

Judith E. Ayres,
Regional Administrator.

With respect to the areas under the jurisdiction of the MCHD, all reports, applications, submittals, and other communications pertaining to the above listed NSPS source categories should be directed to the MCHD at the address shown in the letter of delegation.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

Authority: Section 111 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*)

Dated: July 16, 1986.

John Wise,
Acting Regional Administrator.

[FR Doc. 86–16971 Filed 7–28–86; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Part 60

[A–9–FRL–3055–8]

Delegation of New Source Performance Standards (NSPS) for the State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of delegation.

SUMMARY: The EPA hereby places the public on notice of its withdrawal of delegation of NSPS authority to the California Air Resources Board (CARB) on behalf of the San Diego Country Air Pollution Control District (SDCAPCD). This action was requested by the SDCAPCD. This action does not create any new regulatory requirements affecting the public. The effect of the withdrawal of delegation is to shift the primary program responsibility for the affected NSPS category to the EPA from State and local governments.

EFFECTIVE DATE: November 6, 1985.

ADDRESS: San Diego Country Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A–3–1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974–8221, FTS 454–8221.

SUPPLEMENTARY INFORMATION: The CARB has requested withdrawal of delegation for one NSPS category on behalf of the SDCAPCD. Withdrawal of authority was granted by a letter dated November 6, 1985 and is reproduced in its entirety as follows:

Mr. James D. Boyd,
Executive Officer, California Air Resources Board, 1102 Q Street, P.O. Box 2815, Sacramento, CA 95812

Dear Mr. Boyd: In response to your request of October 23, 1985, we are granting your request for withdrawal of delegation of authority for one New Source Performance Standard, on behalf of the San Diego Country Air Pollution Control District.

We have reviewed the information provided and determined that authority to implement and enforce Subpart J, Petroleum Refineries can be withdrawn.

Sincerely,

Judith E. Ayres,
Regional Administrator.

cc: San Diego County APCD

With respect to the areas under the jurisdiction of the SDCAPCD, all reports, applications, submittals, and other communications pertaining to the above listed NSPS source category should be directed to the address shown in the "For Further Information Contact" section of this notice.

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

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

Authority: Section 111 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*)

Dated: July 16, 1986.

John Wise,
Acting Regional Administrator.

[FR Doc. 86–16973 Filed 7–28–86; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Part 60

[A–9–FRL–3055–9]

Delegation of New Source Performance Standards (NSPS) for the State of Hawaii

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS authority to the Hawaii Department of Health (HDOH). This action is necessary to bring the NSPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS categories from EPA to State and local governments.

EFFECTIVE DATE: October 10, 1985.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A–3–1) Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974–8221, FTS 454–8221.

SUPPLEMENTARY INFORMATION: The HDOH has requested authority for delegation of certain NSPS categories. Delegation of authority was granted by a letter dated September 30, 1985 and is reproduced in its entirety as follows:

Melvin K. Koizumi,
Deputy Director for Environmental Health, Hawaii Department of Health, P.O. Box 33780 Honolulu, HI 96801

Dear Mr. Koizumi: In response to your request of September 10, 1985, I am pleased to inform you that we are delegating to your agency authority to implement and enforce one additional New Source Performance Standard (NSPS) category in 40 CFR Part 60. We have reviewed your request for delegation and have found your present programs and procedures to be acceptable.

This delegation amends the NSPS/NESHAPS agreement between the U.S. EPA and the Hawaii Department of Health dated August 15, 1983 and the amendments dated October 25, 1984, December 18, 1984 and March 18, 1985. The agreement is amended by adding subparagraph "p" to paragraph No. 1 under "Permits" as follows:

(p. Nonmetallic Mineral Processing Plants, Subpart 000.)

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Part 60, including use of EPA approved test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,

Regional Administrator.

With respect to the areas under the jurisdiction of the HDOH, all reports, applications, submittals, and other communications pertaining to the above listed NSPS and NESHAPS source categories should be directed to the HDOH at the address shown in the letter of delegation.

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

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

Authority: Section 111 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.)*

Dated: July 16, 1986.

John Wise,

Acting Regional Administrator

[FR Doc. 86-16975 Filed 7-28-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 60

[A-9-FRL-3056-1]

Delegation of New Source Performance Standards (NSPS) for the State of Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS authority to the Nevada Department of Conservation and Natural Resources (NDCNR). This action is necessary to bring the NSPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS categories from EPA to State and local governments.

EFFECTIVE DATE: Date of each letter.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A-3-1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94015, Tel: (415) 974-8221, FTS 454-8221.

SUPPLEMENTARY INFORMATION: The NDCNR has requested authority for delegation of certain NSPS categories. Delegation of authority was granted by letters dated September 30, 1985, December 18, 1985, and March 25, 1986 and are reproduced in their entirety as follows:

September 30, 1985.

Mr. Dick Serdoz, P.E.
Air Quality Officer, Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, Capitol Complex, Carson City, NV 89710

Dear Mr. Serdoz: In response to your request of September 9, 1985, I am pleased to inform you that we are delegating to your agency authority to implement and enforce the New Source Performance Standard (NSPS) category in 40 CFR Part 60: Subpart 000, Standards of Performance for Nonmetallic Mineral Processing Plants. We have reviewed your request for delegation and have found your present programs and procedures to be acceptable.

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Part 60, including use of EPA approved test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,

Regional Administrator.

December 18, 1985.

Mr. Dick Serdoz, P.E.
Air Quality Officer, Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, Capitol Complex, Carson City, NV 89710

Dear Mr. Serdoz: In response to your request of November 15, 1985, I am pleased to inform you that we are delegating to your agency authority to implement and enforce the New Source Performance Standard (NSPS) category in 40 CFR Part 60: Subpart LLL-Standards of Performance for Onshore Natural Gas Processing: SO_2 Emissions. We have reviewed your request for delegation and have found your present programs and procedures to be acceptable.

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Part 60, including use of EPA approved test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,

Regional Administrator.

March 25, 1986.

Dick Serdoz, P.E.,
Air Quality Officer, Nevada Department of Conservation & Natural Resources, Division of Environmental Protection, Capitol Complex, Carson City, NV 89710

Dear Mr. Serdoz: In response to your request of February 7, 1986, I am pleased to inform you that we are delegating to your agency authority to implement and enforce the New Source Performance Standard (NSPS) category in 40 CFR Part 60: Subpart Na—Standards of Performance for Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for which Construction is Commenced After June 11, 1983. We have reviewed your request for delegation and have found your present programs and procedures to be acceptable.

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Part 60, including use of EPA approved test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,

Regional Administrator.

With respect to the areas under the jurisdiction of the NDCNR, all reports, applications, submittals, and other communications pertaining to the above listed NSPS source categories should be directed to the NDCNR at the address shown in the letter of delegation.

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

Authority: Section 111 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.)*

Dated: July 16, 1986.

John Wise,

Acting Regional Administrator.

[FR Doc. 86-16974 Filed 7-28-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 60 and 61

[A-9-FRL-3055-7]

Delegation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS), State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS and NESHAPS authority to the California Air Resources Board (CARB) on behalf of the Fresno County Air Pollution Control District (FCAPCD). This action is necessary to bring the NSPS and NESHAPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS and NESHAPS categories from EPA to State and local governments.

EFFECTIVE DATE: April 10, 1986.

ADDRESS: Fresno County Air Pollution Control District, 1221 Fulton Mall, Fresno, CA 93721.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A-3-1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-8221, FTS 454-8221.

SUPPLEMENTARY INFORMATION: The CARB has requested authority for delegation of certain NSPS and NESHAPS categories on behalf of the FCAPCD. Delegation of authority was granted by a letter dated April 10, 1986 and is reproduced in its entirety as follows:

Mr. James D. Boyd,
Executive Officer, California Air Resources Board, 1102 Q Street, P.O. Box 2815, Sacramento, CA 95812

Dear Mr. Boyd: In response to your request of March 18, 1986, I am pleased to inform you that we are delegating to your agency authority to implement and enforce certain categories of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) on behalf of the Fresno County Air Pollution Control District (FCAPCD). We have reviewed your request for delegation and have found the FCAPCD's programs and procedures to be acceptable. This delegation includes authority for the following source categories:

NSPS	40 CFR part 60 subpart
Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After 8-17-83.	AAa
Flexible Vinyl and Urethane Coating and Printing.	FFF
Petroleum Dry Cleaners	JJJ
Nonmetallic Mineral Processing Plants	OOO
Wool Fiberglass Insulation Manufacturing	PPP

NESHAPS	40 CFR part 61 subpart
Equipment Leaks (Fugitive Emission Sources) of Benzene.	J
Equipment Leaks (Fugitive Emission Sources)	V

In addition, we are redelegating the following NSPS and NESHAPS categories since the FCAPCD's revised programs and procedures are acceptable:

NSPS	40 CFR part 60 subpart
General Provisions	A
Fossil-Fuel Fired Steam Generators	D
Electric Utility Steam Generator	Da
Incinerators	E
Portland Cement Plants	F
Nitric Acid Plants	G
Sulfuric Acid Plants	H
Asphalt Concrete Plants	I
Petroleum Refineries	J
Storage Vessels for Petroleum Liquids	K
Petroleum Storage Vessels	Ka
Secondary Lead Smelters	L
Secondary Brass & Bronze Ingot Production Plants.	M
Primary Emissions from Basic Oxygen Process Furnaces (C. after 6/11/73).	N
Sewage Treatment Plants	O
Primary Copper Smelters	P
Primary Zinc Smelters	Q
Primary Lead Smelters	R
Primary Aluminum Reduction Plants	S
Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants.	T
Phosphate Fertilizer Industry: Superphosphoric Acid Plants.	U
Phosphate Fertilizer Industry: Diammonium Phosphate Plants.	V
Phosphate Fertilizer Industry: Triple Superphosphate Plants.	W
Phosphate Fertilizer Industry: Granular Triple Superphosphate.	X
Coal Preparation Plants	Y
Ferroalloy Production Facilities	Z
Iron and Steel Plants (Electric Arc Furnaces)	AA
Kraft Pulp Mills	BB
Glass Manufacturing Plants	CC
Grain Elevators	DD
Surface Coating of Metal Furniture	EE
Stationary Gas Turbines	GG
Lime Manufacturing Plants	HH
Lead-Acid Battery Manufacturing Plants	KK
Automobile & Light-Duty Truck Surface Coating Operations.	MM
Phosphate Rock Plants	NN
Ammonium Sulfate	PP
Graphic Arts Industry: Publication Rotogravure Printing.	QQ
Pressure Sensitive Tape and Label Surface Coating Operations.	RR
Industrial Surface Coating: Large Appliances	SS
Metal Coil Surface Coating	TT
Asphalt Processing and Asphalt Roofing Manufacture.	UU
Synthetic Organic Chemical Manufacturing Industry: Equipment Leaks of VOC.	VV
Beverage Can Surface Coating	WW
Equipment Leaks of VOC, Petroleum Refineries and Synthetic Organic Chemical Manufacturing Industry.	GGG
Synthetic Fiber Production Facilities	HHH

NESHAPS	40 CFR part 61 subpart
General Provisions	A
Beryllium	C
Beryllium Rocket Motor Firing	D
Mercury	E
Vinyl Chloride	F
Asbestos	M

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Parts 60 and 61, including use of EPA's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you or the District of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,
Judith E. Ayres,
Regional Administrator.
cc: Fresno County APCD
bc: Terry McGuire
Technical Support Division, CARB

With respect to the areas under the jurisdiction of the FCAPCD, all reports, applications, submittals, and other communications pertaining to the above listed NSPS and NESHAPS source categories should be directed to the FCAPCD at the address shown in the letter of delegation.

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

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

Authority: Sections 111 and 112 of the Clean Air Act, as amended [42 U.S.C. 1857, *et seq.*]

Dated: July 16, 1986.

John Wise,
Acting Regional Administrator.

[FR Doc. 86-16977 Filed 7-28-86; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Parts 60 and 61

[A-9-FRL-3056-2]

Delegation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS), State of Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation.

SUMMARY: The EPA hereby places the public on notice of its delegation of

NSPS and NESHAPS authority to the Washoe County District Health Department (WCDHD). This action is necessary to bring the NSPS and NESHAPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS and NESHAPS categories from EPA to State and local governments.

EFFECTIVE DATE: November 13, 1985.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A–3–1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974–8221, FTS 454–8221.

SUPPLEMENTARY INFORMATION: The WCDHD has requested authority for delegation of certain NSPS and NESHAPS categories. Delegation of authority was granted by a letter dated November 13, 1985 and is reproduced in its entirety as follows:

Michael Ford, M.P.H.,
District Health Officer, Washoe County District Health Department, P.O. Box 11130, Reno, NV 89520

Dear Mr. Ford: In response to your request of October 18, 1985, I am pleased to inform you that we are delegating to your agency authority to implement and enforce certain categories of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS). We have reviewed your request for delegation and have found your present programs and procedures to be acceptable. However, EPA is delaying delegation authority for NESHAPS Subpart B, Radon-222 and Subpart H, I, and K, Radionuclides until the recordkeeping and recording requirements are promulgated next year. This delegation includes authority for the following source categories:

NSPS	40 CFR part 60 subpart
General Provisions	A
Nitric Acid Plants	G
Sulfuric Acid Plants	H
Petroleum Refineries	J
Petroleum Storage Vessels	Ka
Secondary Brass & Bronze Ingot Production Plants.	M
Iron and Steel Plants (BOPF)	N
Primary Copper Smelters	P
Primary Zinc Smelters	Q
Primary Lead Smelters	R
Primary Aluminum Reduction Plants	S
Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants.	T
Phosphate Fertilizer Industry: Superphosphoric Acid Plants.	U
Phosphate Fertilizer Industry: Diammonium Phosphate Plants.	V
Phosphate Fertilizer Industry: Triple Superphosphate Plants	W
Phosphate Fertilizer Industry: Granular Triple Superphosphate.	X
Coal Preparation Plants	Y
Ferroalloy Production Facilities	Z
Iron and Steel Plants (Electric Arc Furnaces)	AA
Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed after August 7, 1983.	AAa
Kraft Pulp Mills	BB
Glass Manufacturing Plants	CC
Grain Elevators	DD
Surface Coating of Metal Furniture	EE
Stationary Gas Turbines	GG
Lime Manufacturing Plants	HH
Lead-Acid Battery Manufacturing Plants	KK
Automobile & Light-Duty Truck Surface Coating Operations.	MM
Phosphate Rock Plants	NN
Ammonium Sulfate	PP
Pressure Sensitive Tape & Label Surface Coating Operations.	RR
Industrial Surface Coating: Large Appliances	SS
Metal Coil Surface Coating	TT
Asphalt Processing and Asphalt Roofing Manufacture.	UU
Synthetic Organic Chemical Manufacturing Industry: Equipment Leaks of VOC.	VV
Beverage Can Surface Coating Industry	WW
Flexible Vinyl and Urethane Coating and Printing.	FFF
Equipment Leaks of VOC, Petroleum Refineries and Synthetic Organic Chemical Manufacturing Industry.	GGG
Synthetic Fiber Production Facilities	HHH
Petroleum Dry Cleaners	JJJ
Wool Fiberglass Insulation Manufacturing Plants	PPP

NESHAPS	40 CFR part 61 subpart
General Provisions	A
Beryllium Rocket Motor Firing	D
Vinyl Chloride	F
Equipment Leaks (Fugitive Emission Sources) of Benzene.	J
Asbestos	M
Equipment Leaks (Fugitive Emission Sources)	V

In addition, we are redelegating the following NSPS and NESHAPS categories since your revised programs and procedures are acceptable:

NSPS	40 CFR part 60 subpart
Fossil-Fuel Fired Steam Generators	D
Incinerators	E
Portland Cement Plants	F
Asphalt Concrete Plants	I
Storage Vessels for Petroleum Liquids	K
Sewage Treatment Plants	O
Metallic Mineral Processing Plants	LL
Graphic Arts Industry: Publication Rotogravure Printing.	QQ
Bulk Gasoline Terminals	XX

NESHAPS	40 CFR part 61 subpart
Beryllium	C
Mercury	E

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Parts 60 and 61, including use of EPA's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,
Regional Administrator.

cc: Brian Wright, Coordinator
Environmental Health Services
Washoe District Health Department

With respect to the areas under the jurisdiction of the WCDHD, all reports, applications, submittals, and other communications pertaining to the above listed NSPS and NESHAPS source categories should be directed to the WCDHD at the address shown in the letter of delegation.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

Authority: Section 111 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*)

Dated: July 16, 1986.

John Wise,
Regional Administrator.

[FR Doc. 86–16978 Filed 7–28–86; 8:45 am]
BILLING CODE 6560–50–M

40 CFR Parts 60 and 61

[A–9–FRL–3055–4]

Delegation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS), State of Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS and NESHAPS authority to the Arizona Department of Health Services (ADHS). This action is necessary to bring the NSPS and NESHAPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS and NESHAPS categories from EPA to State and local governments.

EFFECTIVE DATE: September 18, 1985.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A–3–1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974–8221, FTS 454–8221.

SUPPLEMENTARY INFORMATION: The ADHS has requested authority for delegation of certain NSPS and NESHAPS categories. Delegation of authority was granted by a letter dated September 18, 1985 and is reproduced in its entirety as follows:

Mr. Charles Anders,
Assistant Director for Environmental Health Services, Division of Environmental Health, Arizona Department of Health Services, State Health Building, 1740 West Adams Street, Phoenix, AZ 85007

Dear Mr. Anders: In response to your request of September 5, 1985, I am pleased to inform you that we are delegating to your agency authority to implement and enforce certain categories of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS). We have reviewed your request for delegation and have found your present programs and procedures to be acceptable. This delegation includes authority for the following source categories:

NSPS	40 CFR part 60 subpart
Metallic Mineral Processing Plants	LL
Pressure Sensitive Tape & Label Surface Coating Operations	RR
Synthetic Organic Chemical Manufacturing Industry: Equipment Leaks of VOC	VV
Beverage Can Surface Coating Industry	WW
Flexible Vinyl and Urethane Coating and Printing	FFF
Equipment Leaks of VOC, Petroleum Refineries and Synthetic Organic Chemical Manufacturing Industry	GGG
Synthetic Fiber Production Facilities	HHH

NESHAPS	40 CFR part 61 subpart
Equipment Leaks (Fugitive Emission Sources) of Benzene	J
Asbestos	M
Equipment Leaks (Fugitive Emission Sources) of Benzene	V

In addition, we are redelegating the following NSPS category since your revised programs and procedures are acceptable:

NSPS	40 CFR part 60 subpart
Lime Manufacturing Plants	HH
Bulk Gasoline Terminals	XX

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Parts 60 and 61, including use of EPA's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,
Judith E. Ayres,
Regional Administrator.

With respect to the areas under the jurisdiction of the ADHS, all reports, applications, submittals, and other communications pertaining to the above listed NSPS and NESHAPS source categories should be directed to the ADHS at the address shown in the letter of delegation.

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

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

Authority: Section 111 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.)*

Dated: July 16, 1986.

John Wise,
Acting Regional Administrator

[FR Doc. 86-16976 Filed 7-28-86; 8:45 am]
BILLING CODE 6560-50-M7

40 CFR Part 261

[SWH-FRL-3056-6]

Hazardous Waste Management System; Identification and Listing of Hazardous Wastes; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA is correcting errors to its final rule which excludes site-specific solid wastes from hazardous waste control at two facilities. Specifically, the facilities cited in the final notice include, the Amoco Oil Company, located in Wood River, Illinois and the Cincinnati Metropolitan Sewer District, located in Cincinnati, Ohio. This final rule was published in the **Federal Register** on September 13, 1985 (50 FR 37364).

FOR FURTHER INFORMATION CONTACT: Ms. Lori DeRose at (202) 382-5096.

SUPPLEMENTARY INFORMATION: Pursuant to 40 CFR 260.20 and 260.22, EPA can exclude wastes on a "site-specific basis" from the list of hazardous wastes contained in 40 CFR 261.31. On September 13, 1985 [50 FR 37364], EPA published its final decision regarding the delisting petitions submitted by the Amoco Oil Company, located in Wood River, Illinois and the Cincinnati Metropolitan Sewer District, located in Cincinnati, Ohio. The published decisions contained errors which are discussed briefly below and are corrected by this notice. The corrections to this notice are typographical and do not alter or change the intent of the Agency's decisions as originally published.

Dated: July 22, 1986.

J.W. McGraw,
Acting Assistant Administrator.

The following corrections are made in SWH-FRL-2896-5, Hazardous Waste Management System; Identification and Listing of Hazardous Wastes published in the **Federal Register** on September 13, 1985 (50 FR 37364).

PART 261—CORRECTED

1. On page 37370, under the heading "PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE", the amendments to Tables 1 and 2 are correctly added to read as follows:

Appendix IX—Wastes Excluded under §§ 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
•	•	• • •
Cincinnati Metropolitan Sewer District.	Cincinnati, OH.	Sluiced bottom ash (approximately 25,000 cubic yards) contained in the South Lagoon, on September 13, 1985 which contains EPA Hazardous Waste Nos. F001, F002, F003, F004, and F005.
•	•	• • •

TABLE 2.—WASTE EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
•	•	• • •
Amoco Oil Co.	Wood River, IL.	150 million gallons of DAF from petroleum refining contained in in four surge ponds after treatment with the Chemfix® stabilization process. This exclusion applies to the Hazardous Waste No. K048. This exclusion applies to be 150 million gallons of waste after chemical stabilization as long as the mixing ratios of the reagent with the waste are monitored continuously and do not vary outside of the limits presented in the demonstration samples; one grab sample is taken each hour from each treatment unit, composited, and EP toxicity tests performed on each sample. If the levels of lead or total chromium exceed 0.5 ppm in the EP extract, then the waste that was processed during the compositing period is considered hazardous; the treatment residue shall be pumped into bermed cells to ensure that the waste is identifiable in the event that removal is necessary.
•	•	• • •

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[FR Doc. 86-16987 Filed 7-28-86; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 261

[SW-FRL-3056-7]

Identification and Listing of Hazardous Waste; Mobile Incineration System; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Correction.

SUMMARY: EPA is correcting errors to its final rule which excludes site-specific solid wastes from hazardous waste control at EPA's Mobile Incineration System located in McDowell, Missouri. This final rule was published in the **Federal Register** on July 25, 1985 (50 FR 30271).

FOR FURTHER INFORMATION CONTACT: Ms. Lori DeRose at (202) 382-5096.

SUPPLEMENTARY INFORMATION: Pursuant to 40 CFR 260.20 and 260.22, EPA can exclude wastes on a "site-specific basis" from the list of hazardous wastes contained in 40 CFR 261.31. On July 25, 1985 [50 FR 30271], EPA published its final decision regarding the delisting petition submitted by EPA's Mobile Incineration System located in McDowell, Missouri. This published decision contained errors which are discussed briefly below and are corrected by this notice. The corrections to this notice are typographical and do not alter or change the intent of the Agency's decisions as originally published.

Dated: July 22, 1986.

J.W. McGraw,

Acting Assistant Administrator.

The following corrections are made in SW-FRL-2869-3, the Identification and Listing of Hazardous Waste; Mobile Incineration System published in the Federal Register on July 25, 1985 (50 FR 30271).

PART 261—CORRECTED

1. On page 30274, under the heading "PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE", The amendment in item 2 is correctly designated as Appendix IX to read as follows:

2. In Appendix IX, add the following wastestreams in alphabetical order:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

* * * * *

[FR Doc. 86-16986 Filed 7-28-86; 8:45 am]
BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-17

[FPMR Temporary Regulation D-71, Supplement 2]

Program Management; Government Work Space Management Reform

AGENCY: Public Buildings Service, General Services Administration.

ACTION: Temporary regulation.

SUMMARY: This regulation provides agencies with the revised GSA Form 3530, Work Space Management Plan and Budget Justification, as well as instructions for use of the form. Other changes to Temporary Regulation D-71, which resulted from revision of the form, are also included in this supplement.

DATES: Effective date: July 29, 1986.

Expiration date: June 30, 1987, unless sooner revised or superseded.

Comments due by: To ensure their consideration in drafting additional regulations and bulletins regarding work space management, comments should be submitted to GSA by September 29, 1986.

FOR FURTHER INFORMATION CONTACT: Philip Kogan or Cheryl L. De Atley, Office of Government-wide Real Property Policy and Oversight (202 535-0856).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purpose 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. Therefore, a Regulatory Impact Analysis has not been prepared. 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.

Before issuing a final rule, GSA will make all necessary evaluations of economic effects, major costs to consumers or others, and significant adverse effects.

List of Subjects in 41 CFR Part 101-17

Administrative practices and procedures, Federal buildings and facilities, Government property management.

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c).

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of the subchapter D to read as follows:

Paul Trause,

Acting Administrator of General Services.

July 16, 1986.

Federal Property Management Regulations Temporary Regulation D-71 Supplement 2

To: Heads of Federal Agencies

Subject: Annual Work Space Management Plans

1. *Purpose.* The purpose of this supplement is to provide agencies with the revised GSA Form 3530, Work Space Management Plan and Budget Justification, as well as instructions for use of the form. Other changes to Temporary Regulation D-71, which result from revision of the form, are also included.

2. *Effective Date.* This supplement is effective upon publication in the **Federal Register.**

3. *Expiration Date.* This supplement expires June 30, 1987, unless sooner revised or superseded.

4. *Background.* FPMR Temporary Regulation D-71 requires the head of each Federal agency to submit GSA Form 3530, Work Space Management Plan, to the General Services Administration no later than May 15 of each year. It had been determined by GSA and OMB officials, as well as agency representatives, that the GSA Form 3530 should be combined with Exhibit 24D of OMB Circular A-11, Rental Payments to GSA. Supplement 1 to D-71, published in the **Federal Register** on May 14, 1986, suspended the requirement for submission of GSA Form 3530 by May 15, 1986, because the new form was being developed. It also stated that further instructions with respect to the new form and the revised reporting date would be issued.

5. *Revised Procedures.* Attachment A contains revised regulations concerning the new GSA Form 3530, Work Space Management Plan and Budget Justification, including new reporting dates, as well as other changes to be made to Temporary Regulation D-71 as a result of the revision of the form.

6. *Comments.* Comments concerning the effect or impact of this regulation may be submitted to the General Services Administration, Office of Real Property Development (PQ), Washington, DC 20405. Comments should be submitted within 60

days of publication in the Federal Register of this supplement.

7. *Effect on other directives.* Certain provisions of FPMR Temporary Regulation D–71, Part 101–17, are superseded by the regulations in Attachment A. The subsection numbers in Attachment A correspon with those in D–71

8. *Availability of forms.* Agencies may obtain their initial supply of GSA Form 3530, Work Space Management Plan and Budget Justification, from GSA National Forms and Publications Center, Box 17550, 819 Taylor Street, Fort Worth, TX 76102–0550. Agency field offices should submit all future requirements to their Washington headquarters office which will forward consolidated annual requirements to the General Services Administration, CAR, Washington, DC 20405.

9. *PBS Task Force on the Future Work Space Environment.*

a. The Public Buildings Service (PBS) has organized a Task Force to develop new policies and procedures governing the future work space environment. In fiscal year 87 there will be a revision of D–71 requirements to reflect the future policy direction. The Task Force objective is to develop a policy framework for reducing the total GSA space inventory while improving the quality of the work environment which will enhance morale and productivity.

b. A combination of incentives and enforcement measures will be used to achieve this goal. A utilization rate reduction program is being developed which will provide incentives such as time financed alterations; new methods for furniture systems acquisition; and free space planning services. A target agency campaign will be aimed at informing agency management of their present status while encouraging them to reduce space inventories commensurate with personnel reductions and to improve office utilization rates.

c. The Task Force is also looking at other opportunities to reduce space including a survey of warehouse, parking, and general storage space to identify potential savings. Agency consolidations and building purchases have been targeted as a means of achieving space reduction while improving the quality of Federal work space, and these efforts will be increased. An enhanced space disposal program will ensure that excess vacant space will be efficiently managed.

d. Supplement 2 is being issued at this time to allow agencies to begin using the revised GSA Form 3530 immediately. The coordination of space plans and budgets is an essential element in the effort to reduce space to the absolute minimum required by agency missions. Therefore, Federal officials are being provided the new form for use in the fiscal year 1988 budget cycle. These officials are also encouraged to work with GSA to reduce inventories to absolute minimum requirements, make new assignments at or below 135 square feet per workstation, and improve the quality of work space whenever possible.

PART 101–17—GOVERNMENT WORK SPACE MANAGEMENT

1. Section 101–17.002 is amended by revising paragraph (c) to read as follows:

§ 101–17.002 Basic policy.

* * * * *

(c) Each agency head shall ensure that requests for space are consistent with agency plans and that the amount of office space is held to the minimum necessary to accomplish the tasks which must be performed. The objective is to achieve, by the end of Fiscal Year 1990, an adjusted office utilization rate of 135 square feet or less per workstation for both agency-controlled and GSA-controlled space.

* * * * *

2. Section 101–17.003 is amended by revising paragraphs (d), (m), (s), (u), (x) and (y), and by removing paragraphs (z) and (aa) to read as follows:

§ 101–17.003 Definition of terms.

* * * * *

(d) "Conversion" is a technique for agencies to convert space under their control from "gross square footage" or "net square footage" to "occupiable square footage." Agency-controlled work space measured in terms of gross square footage will be converted to occupiable square footage by subtracting a factor of up to 25 percent. Agency-controlled work space measured in terms of net square footage will be converted to occupiable square footage by subtracting a factor of up to 10 percent.

* * * * *

(m) "Personnel" means the peak number of persons to be housed, regardless of how many workstations are provided for them. In addition to permanent employees of the agency, this includes temporaries, part-time, seasonal, and contractual employees, and budgeted vacancies. Employees of other agencies and organizations who are housed in the space assignment will also be included in the personnel total.

* * * * *

(s) "Supplemental space factor" is the average amount of supplemental space per workstation. It is computed by dividing the square foot area of supplemental space by the total number of workstations. This factor will be applied to an agency's average office utilization rate to develop an adjusted office utilization rate for determining agency progress in achieving the 135 square feet per workstation goal.

* * * * *

(u) "Office utilization rate" is an indicator of the efficiency with which office space is used. It is calculated by dividing the total office square footage by the total number of workstations occupying that space. Since total office space includes supplemental space which is not used for office purposes, it is necessary to adjust the average office utilization rate by the supplemental space factor for purposes of measuring agency progress against the 135 square feet per workstation goal. See § 101–17.003(s) for a definition of "supplemental space factor" and § 101–17.003(y) for a definition of "workstation."

* * * * *

(x) "Work space management plan" means an annual plan prepared and submitted to GSA in accordance with § 101–17.009.

(y) "Workstation" means a location within an office space assignment that provides a working area for one or more persons during a single 8-hour shift. The number of workstations in an office space assignment is the number of such locations that must be provided to support the maximum number of personnel housed in that office space during any 8-hour shift. In general, the number of workstations in an office space assignment should not exceed the number of personnel housed in that assignment. Agencies that require more workstations than personnel must attach a justification for this requirement to their work space management plans.

3. Section 101–17.004 is revised to read as follows:

§ 101–17.004 Utilization standards for work space.

Each agency shall achieve an overall agency-wide adjusted office utilization rate of 135 square feet per workstation or less. All agencies must report their office utilization rates in GSA-controlled work space. However, only agencies that classify their agency-controlled work space by actual use, i.e., by assignment, will be able to report the office utilization rates in that space. Agencies that classify their agency-controlled work space by predominant use, i.e., by building, will not be able to identify their actual office space or the corresponding office utilization rates. These agencies are only required to report their total occupiable work space, which is converted from gross or net square footage estimates according to § 101–17.003(d). Agencies that classify their agency-controlled space by predominant use should report the conversion factors used in an attachment to their plans.

4. Section 101–17.009 is revised to read as follows:

§ 101–17.009 Work space management plan.

(a) The head of each Federal agency shall prepared an annual work space management plan to report progress and plans for achieving the Government's work space management goals and to support the annual budget request to OMB. An agency plan should be organized to support the agency's budget justification. Each agency plan will provide estimates of office utilization rates, personnel and workstations, work space, and rent and related obligation amounts for the fiscal years covered by the corresponding budget cycle.

(b) Agency plans will be submitted on the form shown under § 101–17.4902 and completed according to the instructions which accompany that form. All references in this regulation to the "Work Space Management Plan" or "plan" mean this form. This report has been cleared in accordance with FIRMR 201–45.6 and has the same control number, 0323–GSA–XX, as the previous Work Space Management Plan. In addition, this report supersedes 0307–GSA–AN, Annual Space Reduction Plan and 0308–GSA–AN, Work Space Management Plan.

(c) Agencies shall report all work space owned or paid for, whether GSA-controlled or agency-controlled, wherever located. Agency estimates of GSA-controlled work space should only include work space assigned to the agency. Agencies should contact GSA to resolve any major differences (+/− 5% in any category) between their estimates and GSA's and should submit an explanation of these differences with their plans.

(d) Each plan will show separately the agency's estimates of FTE, personnel, and workstations that are housed in the work space reported on the plan. Agencies that require more workstations than the number of personnel housed in the corresponding office space must attach a justification for this requirement to their plans.

(e) Agencies must estimate their average office utilization rates for each year reported in their plans. Agencies must only use supplemental space factors approved by GSA in computing adjusted office utilization rates. The plans will also indicate the respective years in which the 135 square feet per workstation goal is expected to be achieved in GSA-controlled and agency-controlled work space.

(f) Agencies' estimates of rent and related obligation amounts will be based on the work space estimates reported in their plans. The rent and related obligation estimates will be developed according to the guidance provided in OMB Circular No. A–11.

(g) Agencies will submit copies of their plans to both GSA and OMB to coincide with their budget submissions. In addition, agencies will update their plans to reflect final budget decisions and submit copies of their updated plans to both GSA and OMB by the March 1 following the publication of the President's Budget.

(h) Each plan shall guide agencies in determining the amounts and type of work space to be acquired under direct or delegated authority or requested from GSA. Agencies are responsible for ensuring compliance with their plans in the acquisition of work space. If major acquisitions (through purchase, construction, or leasing), renovations, or consolidations are required to implement an agency's plan, the agency must submit with its plan a list of such actions, their timing, the amounts of work space involved, and the cost.

(i) GSA shall review agency plans for accuracy and technical feasibility in conformity with Executive Order 12411, the provisions of this regulation including the 135 square feet goal, and other relevant factors. GSA will provide comments back to the agencies, as appropriate, within 60 days of plan submission. GSA shall also report agencies' progress in improving the management of work space.

(j) GSA shall, upon agency request, provide technical assistance in the development and implementation of plans.

5. Section 101–17.102 is amended by revising paragraph (a) to read as follows:

§ 101–17.102 Basic policy.

(a) GSA and other Federal agencies shall take all necessary measures to ensure the use of the absolute minimum space required to perform agency missions. The objective is to achieve an adjusted office utilization rate of 135 square feet or less per workstation. Agencies must achieve this goal as soon as practical but not later than Fiscal Year 1990. To accomplish this, each agency shall devise and implement a plan to improve the utilization of all space and shall indicate when this utilization rate accomplishment is to be realized. GSA shall issue guidance from time to time to assist agencies in improving space utilization. GSA and other Federal agencies shall work towards the most cost-effective solution practicable in each circumstance.

* * * * *

6. Section 101–17.103 is amended by removing paragraph (b) and the paragraph is reserved to read as follows:

§ 101–17.103 Definition of terms.

(b) (Reserved).

7. Section 101–17.104–1 is revised to read as follows:

§ 101–17.104–1 Policy overview.

This policy is designed to identify and take into account those areas not used for typical office work in calculating adjusted office utilization rates. Supplemental space will continue to be classified, measured, and billed to agencies as office space.

8. Section 101–17.104–3 is amended by revising paragraph (e) to read as follows:

§ 101–17.104–3 Supplemental space allowance procedures.

* * * * *

(e) This factor will be used for determining the amount of space to be provided to a given bureau or operational unit in response to a space request. All space requests which meet the 135 square feet per workstation office utilization rate goal will be expeditiously processed by the GSA regional office.

9. Section 101–17.4902 is amended by revising paragraph (b) to read as follows:

§ 101–17.4902 GSA forms.

* * * * *

(b) Agencies may obtain their initial supply of GSA forms from GSA National Forms and Publications Center, Box 17550, 819 Taylor Street, Fort Worth, TX 76102–0550. Agency field offices should submit all future requirements to their Washington headquarters office which will forward consolidated annual requirements to the General Services Administration, (CAR), Washington, DC 20405.

(Note.—Remove the GSA Form 3530 (6–85), Work Space Management Plan, and the instructions and replace with the following revised GSA Form 3530 (Rev 5–86), Work Space Management Plan and Budget Justification, and the instructions.)

BILLING CODE 6820–23–M

FPMR Temp. Reg. D-71, Supp. 2
Attachment A

July 16, 1986

WORK SPACE MANAGEMENT PLAN AND BUDGET JUSTIFICATION

INTERAGENCY REPORT CONTROL NO. 0323-GSA-XX

AGENCY | ACCOUNT TITLE

BUREAU | ACCOUNT ID CODE

SECTION I – WORK SPACE MANAGEMENT PLAN

				PRIOR YEAR 19__	CURRENT YEAR 19__	BUDGET YEAR 19__
A. OFFICE UTILIZATION RATE ESTIMATES (NOTE: Only agencies, that classify their rented or owned office space according to actual use rather than predominant use will be able to complete items 2, 3, and 4.	1. GSA CONTROLLED SPACE		AVERAGE OFFICE UTILIZATION RATE			
			SUPPLEMENTAL SPACE FACTOR			
			ADJUSTED OFFICE UTILIZATION RATE			
	2. AGENCY-RENTED SPACE		AVERAGE OFFICE UTILIZATION RATE			
			SUPPLEMENTAL SPACE FACTOR			
			ADJUSTED OFFICE UTILIZATION RATE			
	3. AGENCY-OWNED SPACE		AVERAGE OFFICE UTILIZATION RATE			
			SUPPLEMENTAL SPACE FACTOR			
			ADJUSTED OFFICE UTILIZATION RATE			
	4. TOTAL SPACE		AVERAGE OFFICE UTILIZATION RATE			
			SUPPLEMENTAL SPACE FACTOR			
			ADJUSTED OFFICE UTILIZATION RATE			
	5. FY UTILIZATION RATE OF 135 WILL BE ACHIEVED					
	GSA CONTROLLED SPACE		AGENCY-CONTROLLED SPACE			
B. PERSONNEL AND WORK-STATION ESTIMATES (Applies only to space reported on this form.) NOTE: Only agencies that classify their rented or owned office space according to actual use rather than predominant use will be able to complete items 3b, 3c, and 3d.	1. TOTAL AGENCY FTE					
	2. PERSONNEL	a. GSA CONTROLLED SPACE	PERMANENT			
			PEAK PT AND CYCLICAL			
			NON-AGENCY			
			TOTAL GSA SPACE			
		b. AGENCY-RENTED SPACE	PERMANENT			
			PEAK PT AND CYCLICAL			
			NON-AGENCY			
			TOTAL AGENCY-RENTED SP.			
		c. AGENCY-OWNED SPACE	PERMANENT			
			PEAK PT AND CYCLICAL			
			NON-AGENCY			
			TOTAL AGENCY-OWNED SP.			
	3. WORK-STATIONS	a. GSA-CONTROLLED SPACE				
		b. AGENCY-RENTED SPACE				
		c. AGENCY-OWNED SPACE				
		d. TOTAL WORKSTATIONS				
C. WORK SPACE ESTIMATES (SQ. FT. 000) (Use end of year estimates, except where noted.) NOTE: Item 2 must include all space obtained from non-Federal sources, whether or not the agency pays for it. Items 2, 3, and 4: Agencies that classify their rented or owned space according to actual use must report all categories. Agencies that classify their rented or owned space by predominant use should convert their total gross or net space to occupiable as prescribed in Sect. 101-17.003(d) of FPMR Temp. Reg. D-71 as supplemented.	1. GSA CONTROLLED SPACE	a. MARCH 15, PY BASE (Agency estimates)	OFFICE SPACE			
			NON-OFFICE SPACE (Ex. park.)			
			PARKING-INSIDE			
			PARKING-OUTSIDE			
			TOTAL			
		b. REQUIRED	OFFICE SPACE			
			NON-OFFICE SPACE (Ex. park.)			
			PARKING-INSIDE			
			PARKING-OUTSIDE			
			TOTAL			
	2. AGENCY-RENTED SPACE		OFFICE SPACE			
			NON-OFFICE SPACE (Ex. park.)			
			PARKING			
			TOTAL			
	3. AGENCY-OWNED SPACE		OFFICE SPACE			
			TOTAL			
	4. TOTAL SPACE NOTE: This total is the sum of 1b, 2, and 3.		OFFICE SPACE			
			PARKING (1b and 2 only)			
			TOTAL			

NAME AND TITLE OF PREPARER | TELEPHONE NO. | DATE

GENERAL SERVICES ADMINISTRATION

GSA FORM 3530 (REV. 5-86)

July 16, 1986

FPMR Temp. Reg. D-71, Supp. 2
Attachment A

WORK SPACE MANAGEMENT PLAN AND BUDGET JUSTIFICATION				INTERAGENCY REPORT CONTROL NO. 0323-GSA-XX		
AGENCY			ACCOUNT TITLE			
BUREAU			ACCOUNT ID CODE			
SECTION II – RENT AND RELATED OBLIGATION ESTIMATES				PRIOR YEAR 19__	CURRENT YEAR 19__	BUDGET YEAR 19__
A. GSA CONTROLLED SPACE	1. AVERAGE RATES PER SQUARE FOOT ($/Sq. Ft.)	a. FROM GSA RENT BILLS OR BUDGET ESTIMATES	OFFICE SPACE			
			NON-OFFICE SPACE			
			TOTAL			
		b. AGENCY EST. (Explain difference over +/—5% in "REMARKS")	OFFICE SPACE			
			NON-OFFICE SPACE			
			TOTAL			
	2. AVERAGE WORK SPACE ESTIMATES (Sq. Ft. 000) (To compute annual GSA rental amounts)		OFFICE SPACE			
			NON-OFFICE SPACE			
			TOTAL			
	3. ANNUAL GSA RENTAL AMOUNTS ($000)		OFFICE SPACE			
			NON-OFFICE SPACE			
			TOTAL			
	4. ADJUSTMENTS ($000)		— CONGRESSIONAL LIMITATIONS			
			• JOINT USE SPACE			
			+/— OTHER (Explain in "REMARKS")			
	5. TOTAL RENTAL PAYMENTS TO GSA ($000) (Object Class 23.1)					
	6. FUNDING SOURCES ($000)		a. DIRECT APPROPRIATION			
			b. OTHER (List separately in "REMARKS")			
	7. OTHER PAYMENTS ($000) (Object Class 25.0)		a. EXTRA SERVICES (Above level provided by basic GSA rent)			
			b. SUB-LEASES OF GSA CONTROLLED SPACE			
B. AGENCY-RENTED SPACE AND LAND	1. RENTAL PAYMENTS BY TYPE ($000)		OFFICE SPACE			
			NON-OFFICE SPACE (Ex. parking)			
			PARKING			
			OTHER LAND			
			OTHER RENTALS			
	2. TOTAL RENTAL PAYMENTS TO OTHERS ($000) (Object Class 23.2)					
	3. OTHER PAYMENTS ($000) (Object Class 25.0)		a. EXTRA SERVICES (Above level provided by basic rent)			
			b. SUB-LEASES OF NON-GSA CONTROLLED SPACE			

REMARKS (If additional space necessary, attach separate sheets and key answers to item numbers)

NAME AND TITLE OF PREPARER	TELEPHONE NO.	DATE

GSA FORM 3530 BACK (REV. 5-86)

July 16, 1986.

Attachment A—FPMR Temp. Reg. D–71, Supp. 2

INSTRUCTIONS FOR PREPARING GSA FORM 3530 (REV. 5/86) WORK SPACE MANAGEMENT PLAN AND BUDGET JUSTIFICATION

(41 CFR 101–17.4902)

General

Authority. FPMR Temporary Regulation D–71, Government Work Space Management Reform, as supplemented, requires the head of each Federal agency to prepare an annual work space management plan. Both this regulation and OMB Circular No. A–11, Preparation and Submission of Budget Estimates, require that agencies submit to GSA and OMB copies of their work space management plans and related rent and obligation estimates as part of their annual budget submissions.

Organization of Agency Submissions. Each agency's submission must be organized to support its budget request. This means that, for most large agencies, the agency's submission will consist of: (1) separate plans prepared by each bureau, operating entity, or other subordinate organization that makes rental payments or owns property; and (2) an agency-wide summary of the bureau plans. Agencies whose real property is held and/or paid for centrally will only have to submit a single agency-wide plan.

Fiscal Years Covered by Plans. Each plan will provide estimates for the fiscal years covered by the corresponding budget cycle. For example, for the 1988 budget cycle, the "prior year" is 1986, the "current year" is 1987, and the "budget year" is 1988.

Timing of Submissions. Plans are to be submitted to GSA and OMB with the agency's initial budget submission according to the schedule established by OMB. Agencies must also submit updated plans which reflect any changes based on OMB budget guidance for the budget year, Congressional action for the current year, and final end-of-year actual numbers for the prior year. The updated plans are due by March 1.

Agencies are encouraged to submit their plans in a computer-readable format. Those agencies wishing to do so should contact GSA for the proper record format.

Section I: Work Space Management Plan

Part A—Office Utilization Rate Estimates

Item 1. GSA-controlled space. Compute the average office utilization rate by dividing the square feet of GSA-controlled office space, including supplemental space, by the number of workstations in GSA-controlled space. Compute the adjusted office utilization rate by subtracting the supplemental space factor from the average office utilization rate. Only use supplemental space factors that have been approved by GSA. If the agency and GSA have not reached agreement on the supplemental space factors, leave these fields blank. An example for computing the adjusted office utilization rate follows:

If the average office utilization rate, including supplemental space, is 135 square feet per workstation and the supplemental space factor is 15 square feet per workstation, compute the adjusted office utilization as:

Adj. office util. rate
=135−15
=120 square feet per workstation

Items 2 and 3. Agency-rented space and agency-owned space. Compute the average and adjusted office utilization rates in the same manner as the corresponding rates for GSA-controlled space. Note that only agencies that classify their rented or owned office space according to actual use (by assignment) rather than predominant use (by building) will be able to compute rates for such space.

Item 4. Total space. Compute the agency's total average office utilization rates in the same manner as the corresponding rates for GSA-controlled space. Compute the supplemental space factor for the total agency based on the total supplemental space and workstations throughout the agency.

Note that only agencies that complete Items 2 and 3 will be able to compute office utilization rates for their total space.

Item 5. FY utilization rate of 135 will be achieved. Show separately for both GSA-controlled and agency-controlled space the fiscal years in which the agency plans to achieve the 135 square feet per workstation office utilization rate goal.

Part B—Personnel and Workstation Estimates

Item 1. Total agency FTE. Note that these estimates only apply to work space reported on the form. For example, bureau-level plans should only report that portion of the agency's total FTE ceiling that applies to the bureau.

Item 2. Personnel. Estimate and report all personnel housed in all types of work space in the following categories: full-time permanent personnel; part-time, cyclical or temporary employees of the agency; and non-agency personnel (e.g., contractors or other agencies' staff).

Item 3. Workstations. Develop workstation estimates only for personnel housed in office space. Note that agencies that are not able to estimate separately their office space for agency-rented or agency-owned space will not be able to estimate the number of workstations in that space. However, all agencies are required to estimate the number of workstations in their GSA-controlled space. If the agency requires more workstations in its office space than the number of personnel housed there, attach a justification for this requirement.

Part C—Work Space Estimates

Item 1. GSA-controlled space. Present all estimates of GSA-controlled work space levels according to the categories shown on the form. Except for the "March 15, PY Base" estimates, all work space estimates should be end-of-year square footage levels. All estimates must only include work space assigned to the agency and must not include any joint-use space that is shown on the GSA rent bills but is not assigned to the agency. Obtain the "March 15, PY Base" data from agency records of GSA-controlled work space rather than from the information reported by GSA in its annual rent budget estimates. Attach an explanation of any major differences (i.e., +/−5% in any category) between agency and GSA estimates and the actions taken to resolve them.

If major acquisition, renovation, or consolidation projects are required to implement an agency's plan, full details must be attached in accordance with Section 101–17.009(h) of FPMR Temporary Regulation D–71, as supplemented.

Items 2 and 3. Agency rented and agency-owned space. Estimate and report separately and total occupiable work space leased directly from *non-Federal sources* (i.e., agency-rented space) and occupiable work space owned (i.e., agency-owned space). Non-Federal sources include commercial landlords, other governments, private individuals, universities, and other institutions. If the agency classifies its rented or owned work space according to actual use rather than predominant use, provided separate estimates of agency-rented office, non-office, and parking space and agency-owned office space. If the agency classifies its rented or owned space by predominant use, convert total gross or net square feet estimates to occupiable square feet as prescribed in Section 101–17.003(d) of FPMR Temporary Regulation D–71, as

supplemented. Do not include in the estimates of agency-rented space any work space leased, subleased, or otherwise obtained from other Federal entities. Such work space is reported in the plans of those entities.

Item 4. Total space. Report the total end-of-year estimates for all work space owned or paid for. Note that only those agencies that report their rented and owned office space and parking will be able to provide subtotals of their work space in these categories.

Section II: Rent and Related Obligation Estimates

Agencies that wish to do so may use this section to report to OMB the budget information that it requires to justify estimated rental payments for space and land. Otherwise, agencies are required to submit to OMB Section I of this form and a separate report in the format of Exhibit 24D in OMB budget circular. The following instructions for completing Section II of this form are consistent with OMB guidance.

Part A—GSA-Controlled Space

Item 1. Average rates per square foot. Report the average GSA rental rates for each year based on the most recent GSA rent bills or budget estimates for that year. Then, show the average rental rate estimates used by the agency to compute its annual GSA rental amounts. If the agency's estimates differ from the corresponding GSA-published rates by more than 5%, attach an explanation of those differences.

Item 2. Average work space estimates. Compute and report average work space estimates for each fiscal year that are weighted to reflect the size and timing of planned increases and decreases from the end of year square footage estimates shown in Section I. Do not include any joint-use space in the average work space estimates.

Item 3. Annual GSA rental amounts. Compute the estimated total annual GSA rental amounts for each fiscal year by multiplying the average work space estimates for the year by the corresponding average rental rates.

Item 4. Adjustments. Estimate and report separately any adjustments that must be made to the estimated annual GSA rental amounts to determine the final obligation estimates for rental payments to GSA. Guidance on these adjustments is given in Section 24.4 of the OMB budget circular.

Item 5. Total rental payments to GSA. Compute the final obligation estimates for total rental payments to GSA for each year as the sum of the total annual GSA rental payments plus or minus the indicated rent adjustments. Verify that these estimates equal the corresponding amounts reported to OMB under object class 23.1 in the object classification schedule.

Item 6. Funding sources. Indicate the amount of the estimated obligations funded out of direct appropriations to the agency and the amounts funded from other sources (e.g., revolving funds or reimbursements).

Item 7. Other payments. Estimate and report any payments for extra services (e.g., cleaning, security, etc.) in GSA-controlled space beyond those services provided by the basic GSA rental rate. Also estimate and report any reimbursements to be made to other agencies or bureaus for GSA-controlled space subleased by the agency but for which the other agencies or bureaus actually pay GSA. Such space and the rental payments associated with it are reported by the agency or bureau that pays GSA. Include both types of estimates in the amount reported to OMB under object class 25.0 in the object classification schedule.

Part B—Agency-Rented Space and Land

Item 1. Rental payments by type. For space, other structures and facilities, and land rented by the agency from non-Federal sources (e.g., commercial landlords, other governments, private owners, etc.), estimate and report separately the annual rental payments for office space, non-office space (excluding parking if identified separately), parking, other land, and other rentals (e.g., other structures and facilities).

Item 2. Total rental payments to others. Compute and report the total rental payments to others (i.e., to non-Federal sources) for each year as the sum of the rental payments by type for that year. Verify that these totals equal the corresponding amounts reported to OMB under object class 23.2 in the object classification schedule.

Item 3. Other payments. Estimate any payments for extra services (e.g., cleaning, security, etc.) in space obtained from non-Federal sources beyond those services provided by the basic rental rate. Also estimate any reimbursements to other agencies or bureaus for any non-GSA space which the other agencies own or for which those agencies pay non-Federal sources. Such space and any rental payments associated with it are reported by the agency or bureau that owns the space or pays the rental bills. Include both types of estimates in the amounts reported to OMB under object class 25.0 in the object classification schedule.

Summary of Potential Attachments

(Note.—Please refer to the following attachment numbers when combining separate attachments on a single sheet of paper.)

1. Justification for number of workstations exceeding number of personnel in office space.
2. Explanation of differences of 5% or more between GSA and agency estimates of "March 15, PY Base" square footage.
3. List of major acquisitions, renovations, or consolidations required to implement agency plan. This list must also include timing, amount of work space, and cost of each action.
4. Conversion factors used by agencies that classify their owned or rented work space by predominate rather than actual use in converting gross or net square footage estimates to occupiable square footage.
5. Explanation of differences of 5% or more between GSA and agency average rates per square foot used to compute annual GSA rental amounts.
6. Explanation of unusual adjustments to annual GSA rental amounts to determine annual obligations estimates.

[FR Doc. 86-16991 Filed 7-28-86; 8:45 am]
BILLING CODE 6820-23-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1039 and 1312

[Ex Parte No. 346 (Sub-21)]

Railroad Exemption; International Joint Through Rates

AGENCY: Interstate Commerce Commission.

ACTION: Final rules and exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission adopts final rules and exempts rail carriers from the requirements in 49 CFR Parts 1039 and 1312 that they file international joint rates on regulated traffic. The Commission has found that regulated joint rail-ocean rates are so uncommon, that railroad filing of these rates on regulated traffic is not necessary to carry out the national transportation policy, is limited in scope, and the regulation of joint rail-ocean rates is not necessary to prevent an abuse of railroad market power.

EFFECTIVE DATE: August 28, 1986.

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw, Jr., (202) 275-7245.

SUPPLEMENTARY INFORMATION: Notice of proposed rulemaking in this proceeding was published at 51 FR 10642, March 28, 1986.

Additional information is contained in the Commission's full decision in this proceeding. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area), or toll free (800) 424–5403.

This action will not significantly affect the quality of the human environment or energy conservation, nor will it have a significant economic impact on a substantial number of small entities, because it reduces regulatory burdens.

List of Subjects

49 CFR Part 1039

Administrative practice and procedure, Agricultural commodities, Intermodal transportation, Railroads.

49 CFR Part 1312

Motor carrier, Railroads, Water carriers and Freight forwarders.

Dated: July 18, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Vice Chairman Simmons commented with a separate expression. Commissioner Lamboley dissented with a separate expression.

Noreta R. McGee,

Secretary.

Appendix

PART 1039—[AMENDED]

1. The authority citation for 49 CFR Part 1039 is revised to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10708, 10713, 10762, and 11105; and 5 U.S.C. 553.

2. A new § 1039.21 is added as follows:

§ 1039.21 International joint through rates.

Rail carriers are exempt from the provisions of 49 CFR 1312.37 that require the filing of tariffs containing international joint through rates. Rail carriers must continue to comply with Commission accounting and reporting requirements. This exemption shall remain in effect, unless modified or revoked by a subsequent order of this Commission.

PART 1312—[AMENDED]

3. The authority citation for 49 CFR Part 1312 is revised to read as follows:

Authority: 49 U.S.C. 10708(d)(2) and 10762; 5 U.S.C. 553.

4. 49 CFR 1312.37(c)(1) is revised as follows:

§ 1312.37 Export and import traffic and joint rates with ocean carriers.

* * * * *

(c) *Tariff provisions* (1) Tariffs filed with the Commission under the provisions of paragraph (b) of this section shall comply with all of the other requirements of this part. Rail carriers are exempt from this tariff filing requirement. See 49 CFR 1039.21, International joint through rates. The division or rate to be received by the domestic carrier for its share of the revenue covering a through shipment or aggregate of shipments may, but need not, be shown in the tariff.

* * * * *

[FR Doc. 86–16955 Filed 7–28–86; 8:45 am]

BILLING CODE 7035–01–M

Proposed Rules

Federal Register
Vol. 51, No. 145
Tuesday, July 29, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

Nonimmigrant Classes

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule would add to 8 CFR 214.2, paragraph (b)(3) barring classification and admission as business visitors, aliens seeking to enter the country to perform building or construction work. The purpose of the rule is to insure that United States construction workers will not be denied access to construction jobs if construction work is required for the installation, service, or repair of foreign-built equipment.

DATES: Written comments must be submitted on or before September 29, 1986.

ADDRESS: Please submit comments in duplicate to the Director, Office of Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Room 2011, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT:

For general information: Loretta Shogren, Director Policy Directives and Instructions Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633–4048.

For specific information: Aaron Bodin, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633–3946.

SUPPLEMENTARY INFORMATION:

Published decisions by the Board of Immigration Appeals have held that eligibility for the business visitor, or B–1, classification under section 101(a)(15)(B) of the Immigration and Nationality Act (the Act) is appropriate if work which may be performed in the United States is a necessary incident of international trade or commerce and the employer and principal employment site are located abroad. The Immigration and Naturalization Service (Service) has found that a frequently recurring, customary business practice to which this policy applies is the installation, service, and repair of foreign-built equipment by employees of the manufacturer. In its Operations Instructions at 214.2(b)(5), the Service gives the following example of eligibility for the B–1 classification:

> An alien coming to install, service, or repair commercial or industrial equipment or machinery purchased from a company outside the U.S. or to train U.S. workers to perform such service, provided: the contract of sale specifically requires the seller to perform such services or training, the alien possesses specialized knowledge essential to the seller's contractual obligation to provide services or training, the alien will receive no remuneration from a U.S. source, and the trip is to take place within the first year following the purchases.

On August 28, 1985, the District Court for the Northern District of California in *International Union of Bricklayers* v. *Meese*, No. 85–2593 (N.D. Cal.), enjoined the Operations Instruction quoted above. Following the District Court's order, which precluded the admission of even the most highly specialized technicians, the Service and the Department of State received communications from U.S. industries and foreign governments which indicated a problem of crisis proportions. Industry predicted that equipment under warranty would not be repaired or serviced, with resultant losses of investment and lay-offs of American workers, and that access to state-of-the-art foreign technology would be limited with resultant losses of competitive position. Foreign governments generally viewed this new restriction as a constraint on trade and hinted at reciprocal actions.

The Government filed an appeal with the Ninth Circuit Court of Appeals and was subsequently joined by the plaintiffs in a joint motion for a stay of the District Court's order pending appeal.

Under the joint motion, B–1 visas could not be issued under Operations Instruction 214.2(b)(5) to alien nonimmigrants seeking to enter the country to perform building or construction work, whether on-site or in-plant, with the proviso that alien nonimmigrants otherwise qualified as B–1 nonimmigrants may enter for the purpose of supervision or training of others engaged in building or construction work, but not for the purpose of actually performing any such building or construction work themselves.

This joint motion was granted by the court on December 19, 1985. The parties have since agreed that it would be appropriate to commence a rulemaking proceeding based on a proposal to embody the substance of the stay motion in a regulation, and to suspend further proceedings on the appeal until the rulemaking is completed. Accordingly, the Service is proposing the following amendment to its rules. The Service is, by this notice, soliciting comments from the public and particularly from workers, labor representatives, and purchasers of foreign-built equipment or machinery. We are most interested to learn the views of such individuals and organizations as to how the proposed rule would either beneficially or adversely affect their interests.

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

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

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign Officials, Reporting and recordkeeping requirements.

Accordingly, Chapter I of Title 8 Code of Federal Regulations would be amended as follows:

PART 214—NONIMMIGRANT CLASSES

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

> **Authority:** Sections 101(a)(15) (A), (B), (E), (G), (I), and (J); 103 and 214 of the Immigration and Nationality Act, as amended; 8 U.S.C. 1101(a)(15) (A), (B), (E), (G), (I), and (J), 1103 and 1184.

2. In § 214.2 a new paragraph (b)(3) would be added to read as follows:

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

* * * * *

(b) * * *

(3) *Construction workers not admissible.* Aliens seeking to enter the country to perform building or construction work, whether on-site or in-plant, are not eligible for classification or admission as B–1 nonimmigrants under section 101(a)(15)(B) of the Act; provided that alien nonimmigrants otherwise qualified as B–1 nonimmigrants may be issued visas and may enter for the purpose of supervision or training of others engaged in building or construction work, but not for the purpose of actually performing any such building or construction work themselves.

* * * * *

Dated July 10, 1986.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 86–17015 Filed 7–28–86; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 102 and 114

[Docket No. 86–014]

Viruses, Serums, Toxins, and Analogous Products; Revision of the Virus-Serum-Toxin Act

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The purpose of this proposed rule is to revise the regulations governing licenses and production requirements for biological products to conform with the amendment to the Virus-Serum-Toxin Act. Additionally, this proposed rule would remove obsolete references to establishment license numbers on product licenses, would reduce restrictions on producers of autogenous biologics, and make other conforming changes.

Current regulations limit licensure of autogenous biologics to manufacturers licensed to prepare at least one nonautogenous biologic. This revision of the regulations would provide for licensure of autogenous biologics without the simultaneous production of nonautogenous biologics as presently required. This would be subject to conditions which assure acceptable product control.

The requirement that each biological product license contain the U.S. Veterinary Biologics Establishment License Number for the establishment where the product is packaged and labeled was made obsolete with the adoption of the revision of 9 CFR 114.3 which provides for split manufacture. Therefore, it is proposed that this requirement be removed. The license number of the establishment from which the product was released to market would continue to appear.

The amendment to the Virus-Serum-Toxin Act provides for the issuance of special or conditional licenses under expedited procedures for products needed to meet emergency conditions, limited market or local situations, or other special circumstances including production solely for intrastate use under a State-operated program. This proposed revision of the regulations would provide for shortened and simplified procedures for licensure which are consistent with the intent of the Act, as amended.

DATE: Comments must be received on or before September 29, 1986.

ADDRESS: Interested parties are invited to submit written data, views, or arguments regarding the proposed regulations to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Peter L. Joseph, Chief Staff Veterinarian, Veterinary Biologics Staff, VS, APHIS, USDA, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8674.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This proposed rule contains no new or amended recordkeeping, reporting, or application requirements or any type of information collection requirement subject to the Paperwork Reduction Act of 1980.

Executive Order 12291

This proposed action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 to implement Executive Order 12291 and has been classified as a "Nonmajor Rule."

The proposed rules would not have a significant effect on the economy and would not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises, in domestic markets.

Certification Under the Regulatory Flexibility Act

The Administrator of the Animal and Plant Health Inspection Service, has determined that this action would not have a significant economic impact on a substantial number of small entities. The regulatory amendments proposed herein reduce restrictions, remove obsolete language, and make changes to conform to the amendment to the Act.

Background

An amendment to the Virus-Serum-Toxin Act was adopted on December 23, 1985. The amendment requires that, with certain exceptions to be provided by regulation, all manufacturers of veterinary biological products for shipment in or from the United States must be licensed by the Department of Agriculture.

Persons currently preparing biological products solely for intrastate shipment of for export will be required to be in compliance with the Act and the regulations. These manufacturers frequently prepare autogenous biologics as their only product. The regulations in 9 CFR 102.2 require that each establishment preparing one or more autogenous biologics must hold an unexpired, unrevoked, or unsuspended license for a nonautogenous biological product. This restriction was considered to be necessary to assure that licensees preparing autogenous biologics which are not evaluated for potency or efficacy had sufficient expertise to prepare potent, effective autogenous biologics. This expertise was considered to be demonstrated by achieving licensure of similar products which are subjected to potency and efficacy tests. The Department now considers this restriction unnecessary. Adequate assurance of expertise may be achieved through the current system of review of Outlines of Production submitted as specified in 9 CFR 114.8, frequent inspection of facilities, personnel, and records, and careful review of reports of production and testing. Therefore, the Department proposes to revise 9 CFR 102.2 and 102.4(f) to delete the licensing restrictions concerning autogenous biologics. This would have the desirable effect of permitting establishment that only produce autogenous biologics to obtain licensure if qualified. The Department expects that adoption of this revision of the regulations would increase the number of licensed producers of autogenous biologics which

are the products most commonly used to meet emergency needs.

The current regulations in 9 CFR 102.5(b) provide that the U.S. Veterinary Biologics Establishment Number of the establishment in which the product is packaged and labeled and from which the product is released for marketing shall appear on the U.S. Veterinary Biological Product License. A recent revision of 9 CFR 114.3 provides for licensure of products for further manufacture which are properly identified for movement to another establishment, but are not considered to be packaged and labeled. This proposed revision would delete the reference to packaging and labeling from 9 CFR 102.5(b). This would serve to avoid the conflict that could occur when the establishment packaging and labeling the product is not the same as the estabishment releasing the product to the market. The Department considers that the U.S. Veterinary Biologics Establishment Number of the establishment releasing the product to market would be adequate for all products, whether released for final use or for further manufacture.

The Act, as amended, provides that the Secretary may issue special licenses under expedited procedures to ensure availability of biological products to meet emergency conditions, limited market or local situations, or other special circumstances. This proposed revision of the regulations includes specifications for special licenses to conform to the amendment. Such special licenses shall be referred to as "conditional" licenses.

The regulations in 9 CFR 102.5(e) provide for restrictions to be placed on U.S. Veterinary Biological Product Licenses. These restrictions essentially fall into two categories. The first category provides for restriction of the product based on its properties and use. The second category provides for termination of the license at a predetermined time and conditions for reissuance. This proposed revision would separate these two categories of restrictions, placing provisions for predetermined product license termination dates in a new 9 CFR 102.6. The provisions for issuance of licenses with termination dates would describe such conditional licenses issued under shortened procedures to ensure the availability of products needed to meet emergency conditions, limited market or local situations or other special circumstances.

The shortened procedure may include acceptance of serological response, lowered numbers of host species test animals, or other means of establishing a resonable expectation of efficacy without requiring a complete efficacy study and a potency test correlated with host animal efficacy. The references in 9 CFR 102.5(b) would be revised to reflect the changes in 9 CFR 102.5(e) and the addition of 9 CFR 102.6.

The regulations in 9 CFR 114.1 limit the applicability of Part 114 to products prepared or delivered for shipment interstate. The amendment of the Virus-Serum-Toxin Act removed interstate limitations. Therefore, a conforming change would be made to delete the reference to shipment interstate from 9 CFR 114.1.

List of Subjects in 9 CFR Parts 102 and 114

Animal biologics.

PART 102—LICENSES FOR BIOLOGICAL PRODUCTS

Accordingly, 9 CFR Part 102 would be amended as follows:

1. The authority citation for Part 102 continues to read as follows:

Authority: 21 U.S.C. 151–158; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 102.2 would be revised to read:

§ 102.2 Licenses required.

Every person who prepares biological products subject to the Virus-Serum-Toxin Act shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biologics Establishment License and at least one unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product license issued by the Deputy Administrator to prepare a biological product.

3. Section 102.4(f) would be revised to read:

§ 102.4 U.S. Veterinary Biologics Establishment License.

* * * * *

(f) When a licensee no longer holds an unexpired, unsupended, or unrevoked product license authorizing the preparation of a biological product, the establishment license shall be submitted to the Deputy Administrator for termination.

* * * * *

4. Section 102.5(b) and (e) would be revised as follows:

§ 102.5 U.S. Veterinary Biological Product License.

(a) * * *

(b) The following shall appear on the U.S. Veterinary Biological Product License:

(1) The U.S. Veterinary Biologics Establishment License Number for the establishment from which the product is released for marketing.

(2) The true man of the product.

(3) The product code number for the product.

(4) The date of issuance.

(5) Any restrictions designated by the Deputy Administrator under paragraph (e) of this section.

(6) When necessary to comply with Section 102.6 of this Part, a termination date and a brief description of requirements to be met for reissuance.

(c) * * *

(d) * * *

(e) Where the Deputy Administrator determines that the protection of domestic animals or the public health, interest, or safety, or both, necessitates restrictions on the use of a product, the product shall be subject to such additional restrictions as are prescribed on the license. Such restrictions may include, but are not limited to, limits on distribution of the product or provisions that the biological product is restricted to use by veterinarians, or under the supervision of veterinarians, or both.

* * * * *

5. Section 102.6 would be added as follows:

§ 102.6 Conditional licenses.

In order to meet an emergency condition, limited market, local situation, or other special circumstance, including production solely for intrastate use under a State-operated program, the Deputy Administrator may, in response to an application submitted as specified in § 102.3 of this Part, issue a conditional U.S. Veterinary Biological Product License under an expedited procedure which assures purity and safety, and evidences a reasonable expectation of efficacy. The preparation of a licensed product under such conditions may be restricted as follows:

(a) The preparation may be limited to a predetermined time period which shall be established at the time of issuance and specified on the license. Prior to termination of the license, the licensee may request reissuance. Such request shall be substantiated with data and information obtained since the license was issued. After considering all data and information available, the Deputy Administrator shall either reissue the U.S. Veterinary Biological Product License or allow it to terminate.

(b) Distribution may be limited to the extent necessary to assure that the product will meet the basic criteria for issuance of the conditional license.

(c) Labeling for the product may be required to contain information on the conditional status of licensure.

PART 114—PRODUCTION REQUIREMENTS FOR BIOLOGICAL PRODUCTS

Accordingly, 9 CFR Part 114 would be amended as follows:

1. The authority citation for Part 114 would be raised to read as follows:

Authority: 21 U.S.C. 151–158; 7 CFR 2.17, 2.51, and 371.2(d).d

2. Section 114.1 would be revised to read:

§ 114.1 Applicability.

Unless exempted by regulation or otherwise authorized by the Deputy Administrator, all biological products prepared, sold, bartered or exchanged, shipped or delivered for shipment in or from the United States, the District of Columbia, any Territory of the United States, or any place under the jurisdiction of the United States shall be prepared in accordance with the regulations in this part. The licensee or permittee shall adopt and enforce all necessary measures and shall comply with all directions the Deputy Administrator prescribes for carrying out such regulations.

Done at Washington, DC, this 23rd day of July 1986.

B.G. Johnson,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 86–16924 Filed 7–28–86; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35 and 37

[Docket No. RM86–12–000]

Generic Determination of Rate of Return on Common Equity for Public Utilities

July 21, 1986.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission hereby institutes a proceeding under Part 37 of its regulations. The purpose of this proceeding is to determine an estimate of the average cost of common equity for the jurisdictional operations of public utilities for the year ending June 30, 1986 and a quarterly indexing procedure to establish benchmark rates of return on common equity for use in individual rate cases.

DATES: Any person wishing to participate in this proceeding must file a notice of intent on or before August 18, 1986. Initial comments addressing the issues in this proceeding are due on or before September 2, 1986, and reply comments are due on or before September 16, 1986.

ADDRESSES: All filings should reference Docket No. RM86–12–000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Ronald L. Rattey, Federal Energy Regulatory Commission, 824 North Capitol Street, NE., Washington, DC 20426, (202) 357–8293.

SUPPLEMENTARY INFORMATION:

I. Introduction

Following Part 37 of its regulations, the Federal Energy Regulatory Commission (Commission) hereby institutes its third annual proceeding to determine: (1) An estimate of the average cost of common equity for the jurisdictional operations of public utilities for the year ending June 30, 1986; and (2) A quarterly indexing procedure to establish benchmark rates of return on common equity for use in individual rate cases. The benchmark rates of return resulting from the first two annual proceedings were advisory only. In this proceeding, however, the allowed rate of return would presumptively be set at the benchmark rate of return in effect at the time a company files either an initial rate schedule or a change in an existing rate schedule. Although the Commission will give consideration to all comments filed in response to this notice, the Commission expects that issues previously resolved in earlier proceedings will not be revisited. However, to the extent experience gained during the two year advisory period serves as the basis for additional comments on the advisability of continuing this process and establishing a presumptive benchmark rate of return, those comments will assist the Commission in its ongoing assessment of this process.

II. Discussion

The procedures established in Part 37 were designed to serve three purposes: "to produce more accurate and consistent rate of return decisions, to involve the Commission more directly and currently in a consideration of the financial and operating circumstances of the electric utility industry, and ultimately to reduce some of the burdens that rate filings impose on applicants, intervenors, and the Commission." [1] The Commission has stated that it would use "the results from the initial two year advisory period under Part 37 as a test of the likely consequences of moving to a rebuttable presumption standard." [2]

It appears that in recent years the cost of service portion of some 90% of rate cases has been settled. Rate of return testimony has been filed in seven cases initiated since the advisory period began. In six of these cases, a settlement in principle has subsequently been achieved. In the seventh, an initial decision has been issued and is pending before the Commission.

Commenters are asked to address the foregoing considerations in their comments on the proposed rule discussed herein.

A. Average Cost of Common Equity on Jurisdictional Operations and Quarterly Indexing Procedure

1. The Proposed Model

The Commission proposes to adopt the same method of analysis as originally proposed and ultimately adopted on rehearing in Docket No. RM85–19–000.[3] That is, the Commission proposes to rely on the following constant growth discounted cash flow (DCF) model to determine the average market required rate of return for electric utilities for the year ending June 30, 1986:

$$k = \frac{D_0}{P_0}(1+.5g)+g$$

where:

k = market required rate of return

$\frac{D_0}{P_0}$ = current dividend yield (current annual dividend rate divided by current market price)

g = dividend growth rate

(1 + .5g) = dividend adjustment factor for quarterly dividend payments

Because this model was first adopted in Order No. 420, the Commission will refer

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[1] Order No. 389, 49 FR 29,946 (July 25, 1984).

[2] Order No. 420, 50 FR 21,802 at 21,803 (May 20, 1985).

[3] Notice of Proposed Rulemaking, Generic Determination of Rate of Return on Common Equity for Public Utilities, Docket No. RM85–19–000, 50 FR 30207 at 30208 (July 24, 1985); Order No. 442–A, Order on Rehearing, 51 FR 22505 at 22508 (June 20, 1986).

to it hereafter on occasion as the "420 Model."

The Commission proposes that the following procedures be used to compute the dividend yield for the base year estimate of the market required rate of return as well as for the quarterly indexing procedure.

The Commission proposes to use a sample of 99 electric utilities [4] based on the standards adopted in its first two annual proceedings for three reasons. First, the sample is representative of the electric utility industry as a whole. Second, the relevant price and dividend data are generally available for all of these companies. Finally, the data is readily accessible from more than one source. The sample consists essentially of those publicly traded electric utilities or combination companies that meet explicit standards; these are that the utility:

(1) Is predominantly electric; [5]

(2) Has its stock traded on either New York or American Stock Exchanges;

(3) Is included in the Utility Compustat II data base; and

(4) Is not excluded by the Commission on a case-by-case basis, based on unique circumstances.[6]

The fourth standard gives the Commission the discretion to eliminate companies for which data may be unavailable or inappropriate.

Second, the Commission proposes to continue using the following screening criteria in each quarterly calculation to ensure that the data for each company is available and that it can reasonably be employed in a mechanical fashion without producing distorted statistics. That is, companies will be dropped from the sample if:

(i) The company's common stock, through merger or other action, no longer is publicly traded;

(ii) The company has decreased or omitted a common dividend payment in the current or prior three quarters; or

(iii) The Commission determines on a case-by-case basis that some other occurrence causes the dividend yield for that company to be substantially misleading and bias the resulting quarterly average.

The first screen ensures data availability. If a company is no longer publicly traded, it will not have a current market price (and yield). The second screen eliminates companies for which data would probably be inappropriate in a constant growth DCF model. The third screen gives the Commission the discretion to further eliminate atypical companies when necessary.

The Commission further proposes that the appropriate dividend yield for the industry average cost determination be the median dividend yield for the 99 company sample.[7] The rationale for using the median is based on one of the objectives of the generic approach being to minimize adjudication of the rate of return issue. The Commission believes that the distribution of dividend yields (and, by inference, the distribution of the cost of common equity) for electric utilities is skewed rather than symmetrical. Under this circumstance, the dividend yields (and, presumably, the cost of common equity) for a greater number of utlities are closer to the median than the mean. The median evenly splits utilities so that 50% have dividend yields above the median and 50% have dividend yields below. The Commission also believes that, compared to the mean, the median is less likely to be affected by extreme values in the data.[8]

In computing the dividend yield for each company, the Commission proposes that the dividend rate be the "indicated dividend rate," which is the last declared quarterly dividend times four. This rate approximates the rate at which most companies are paying dividends. The price used in the calculation would be the simple average of the three monthly high and low prices for the quarter. This provides a reasonable estimate of the average price at which the individual stocks were sold during the quarter. The Commission proposes that the average of the quarterly median dividend yields for the sample utilities calculated in this manner be used for the base year cost determination and for the quarterly indexing procedure. The base year cost would use the average of four quarterly median dividend yields. The quarterly indexing procedure would use the average of two quarterly median dividend yields.

In estimating the (constant) growth rate that would apply to the base year determination of the cost of common equity and serve as a basis for the fixed parameters in the quarterly indexing procedure, the Commission proposes to rely on both a fundamental analysis approach and a two-stage growth model. That is, it intends to examine and evaluate the two underlying components of dividend growth: growth from retention of earnings (br) and growth from sales of new common stock (sv).[9] The Commission also intends to evaluate past and forecast data within the context of a two-stage growth DCF model. The Commission will also look at other data and methods for estimating the expected growth, but primarily as a check on the reasonableness of its determination from fundamental and non-constant growth analyses.

The Commission requests comments on the above proposals. The Commission specifically asks whether there are reasons for the Commission to depart from placing primary reliance on the DCF method. Also, are the proposals for the model chosen and for determining the components reasonable?

Commenters are especially directed to provide estimates of the market required rate of return using the proposed DCF model and to support all estimates with corroborative evidence. To the extent that alternative models are proposed, commenters are requested to provide a comprehensive explanation of the method and major assumptions used to derive their estimates of the market required rate of return.

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[4] *See* Order No. 420, 50 FR at 21831. As a result of a recent merger between Cleveland Electric Illuminating Company and Toledo Edison Company to form Centerior Energy Corporation, the number of companies in the sample has been reduced to 99 from the 100 company sample previously used.

[5] Operationally, the Commission has selected all companies classified in the industry groupings "Electric Service" or "Electric and Other Services Combined" by Standard and Poor's Compustat Services, Inc. These industry groupings are supposed to conform as nearly as possible to the Office of Management and Budget Standard Industry Classification Codes. The Compustat "Electric Services" (Industry Classification Number 4911) is defined as establishments engaged in the generation, transmission and distribution of electric energy for sale where these services constitute 90% or more of revenues. "Electric and Other Services Combined" (Industry Classification Number 4931) is defined as establishments primarily engaged in providing electric services in combination with other services, with electric services as the major part, though less than 90% of revenues. (Standard and Poor's Compustat Services, Inc., Utility Compustat II User Manual (1985)).

[6] In order No. 442, three companies which meet the first three standards were eliminated from the sample. Southwestern Public Service Company was eliminated because it used a non-standard fiscal year. This causes its dividend yields to be out of time with the rest of the companies. CP National was deleted because, in spite of its being listed as a predominantly electric company, only 18.6 percent of its revenues in 1984 were derived from electric sales. Finally, UNITIL was eliminated because it was a new utility and insufficient data was available.

[7] In Order Nos. 420 and 442, the Commission estimated the median dividend yield for each of the four quarters of the base year and then averaged them for the year. The Commission proposes to adopt the same procedure in this proceeding.

[8] Order No. 420, 50 FR at 21814.

[9] Growth from retained earnings, or internal growth, is a function of the expected return on common equity (r) and the expected retention ratio (b). Growth from common stock sales, or external growth, is a function of how much stock is expected to be sold (s) and at what price relative to book value (v).

2. Flotation Costs

The Commission believes that utilities should be compensated only for issuance expenses, that is, the out-of-pocket expenses for underwriting, legal work, and publishing. This represents a continuation of the Commission's existing policy on flotation costs.[10] The Commission also believes that any adjustment to the market required rate of return should reflect recovery of only the average annual costs, that is, only the costs associated with new stock issues. In addition, it believes that an industry average adjustment to the market required rate is the best way of dealing with these costs since they have a relatively small quantitative impact, the adjustment is subject to forecasting errors, and overrecovery and underrecovery of these costs by individual utilities should be offset over time.[11]

The Commission proposes to estimate the adjustment to the required rate of return for flotation costs using the following formula:

$$k^* = \frac{fs}{(1 + s)}$$

where:

k^* = flotation cost adjustment to required rate of return

f = industry average flotation cost as a percentage of offering price.

s = proportion of new common equity expected to be issued annually to total common equity

This formula estimates an adjustment that reflects the average annualized amount of flotation costs incurred by utilities. The resulting adjustment factor would be added to the required rate of return as determined above.

The Commission requests that commenters submit estimates of the parameters in the above formula for estimating the appropriate flotation cost adjustment to the market required rate of return for the base year ending June 30, 1986.

3. Quarterly Indexing Procedure

In Docket No. RM85–19–000, the Commission amended Part 37 of its regulations to include § 37.9 which is a quarterly indexing procedure for determining benchmark rates of return on common equity for the jurisdictional operations of electric utilities. The Commission proposes to adopt the same procedure for the current proceeding and requests comments on any changes that would improve the procedure.

In summary, the adopted indexing procedure ties the cost of common equity to changes in utility dividend yields. The benchmark rate of return is set equal to the cost of common equity except where the quarter-to-quarter change in the cost is greater than 50 basis points. The initial benchmark rate established in each annual proceeding, however, will not be subject to the 50 basis point cap.

The dividend yield index is set as the average of the median dividend yields for the 99 company sample for the two most recent calendar quarters prior to the period to which the benchmark is intended to apply. The procedures for determining the median dividend yield are the same as those described above with reference to the estimation of the base year cost of common equity. This dividend yield will be used in a formula whose parameters are determined through the base year cost determination. The formula is essentially the DCF model referred to above, adjusted for flotation costs:

$k = a(y) + b$

where:

k = average cost of common equity

$$Y = \frac{D_0}{P_0} = \text{current dividend yield (current dividend rate divided by current market price)}$$

a = 1 + .5g or one plus one-half the growth rate (to adjust the current dividend yield for quarterly dividend payments), and

b = the expected dividend growth rate (g, assumed constant between annual proceedings) plus adjustment for flotation costs.

4. Jurisdictional Risk

Concerning the question of whether there is a difference in risk between the wholesale and retail operations of electric utilities, the Commission proposes to adopt the finding of Order No. 442 that there is no appreciable difference in risk due to this factor.[12]

B. Ratemaking Rate of Return: Concept and Application

In the staff report attached to Order No. 442–A, the Office of Regulatory Analysis (ORA) explanied that the 420 Model provides an estimate of the rate of return that the firm is required to pay out to investors. If investors obtain the dividends implied by this return, they will have an opportunity to earn their effective required rate of return. By paying dividends quarterly, the firm makes it possible for the investor to reinvest the dividends during the year; however, the firm does not have to pay out the income received from this reinvestment of dividends since investors produce this income by their own actions.

According to the staff report, the logic underlying the ratemaking rate of return in Order No. 442 suggests not only that the firm's "pay out rate" is less than the investors' effective required return, but also that the rate which ratepayers have to pay in is less than the firm's required "pay out rate." The staff report notes that in a fashion analogous to the investors' opportunity for intrayear reinvestment of dividends, the firm can increase income through the intrayear reinvestment of its earnings. The firm obtains earnings throughout the year from its sales revenues, yet it is only obligated to pay a portion of these earnings out (as dividends) and at specific times during the year. For that portion of its earnings going ultimately to pay dividends, the firm can keep its earnings in an income yielding investment (like a bank account, or an investment in Treasury bills) until the day dividends have to be paid out and thereby earn more income. Similarly, during the course of the year, the firm can keep that portion of its earnings going to retained earnings in an income yielding investment and earn still more income. By this logic, if the ratepayers paid in at the estimated "pay out rate" the firm would have the opportunity to earn more than it is required to pay out.[13]

The ORA staff report raises three questions in connection with the ratemaking rate of return concept which the public is invited to address:

(1) Is the concept valid: will investors earn a higher rate of return than they require if the allowed rate of return is the rate of return produced by the model adopted in Order No. 442–A?[14] In other

[10] Order No. 442, 51 FR 343 at 365 (Jan. 6, 1986).

[11] In Order No. 442 the Commission stated that flotation costs can be recognized on a current basis or amortized. The Commission adopted a current cost recovery method. 51 FR at 365.

[12] 51 FR at 366.

[13] 51 FR at 22511.

[14] *Id.* at 22,508 or through some other

words, does a utility have the opportunity to earn a higher rate of return than the Commission allows, through the utility's ability to reinvest its intrayear retained earnings; through an inconsistency in the way rate base is defined or estimated for cost of service, mechanism?[15] Are there any offsetting factors in utility operations or the way rates are set that should be considered in this regard?

(2) If the Commission determines that the ratemaking rate of return concept is correct, how should the Commission use the concept in determining just and reasonable rates? Should the Commission consider accounting for the utility's intrayear reinvestment income by adjusting the allowed rate of return such as with a "ratemaking rate of return?" Alternatively, should the Commission account for the intrayear reinvestment income by adjusting some other aspect of the cost of service, not within the scope of this rule, such as cash working capital, or should the Commission determine that earnings from reinvested retained earnings should be ignored for purposes of determining utility revenue requirements?[16]

(3) If it is determined that the allowed rate of return should be adjusted, how should this adjustment be accomplished? If the concept involves the firm's intrayear reinvestment of earnings, this determination entails the empirical questions of how often a company compounds its earnings and at what rate. How might reasonable estimates of these two parameters be obtained for the industry? Should the quarterly nominal rate as described in Order No. 442 [17] be used as an approximation of the rate that would result from the interaction of these two parameters?

C. Codification of Base Year Cost Estimation Procedures

To reduce the scope of debate in future proceedings, the Commission proposes to codify in its regulations all aspects of the base year DCF analysis except the growth rate component and flotation cost adjustment which will be determined in the annual proceedings. At this time the Commission is not prepared to propose a mechanical procedure for determining the growth rate and flotation cost adjustment. All other elements of the allowed return will be determined by means of the codified methodology, based on the methods indicated above, as approved in Order Nos. 442, and 442-A. Commenters are requested to evaluate the value of this limited codification and propose approaches that could make the determination of the growth rate and flotation cost adjustment more routine and thereby reduce the resources devoted to the annual proceedings.

D. Significant Risk Difference Determination

Under the approach first adopted in Order No. 389 and subsequently continued in Order Nos. 420 and 442,[18] the presumption that the allowed rate of return in an individual rate case should be the benchmark rate of return can be rebutted by a showing that the risk of the operations is significantly different from the industry average risk.

The Commission stated in Order No. 389 that the adoption of this significant risk difference standard was based upon three considerations: (1) Differences in risk are synonymous with differences in the cost of capital; (2) Since more confidence can generally be placed on an industry average cost of equity estimate than on an estimate for an individual firm, a strict standard should govern attempts to rebut the presumption; and (3) Ther is some merit to not recognizing risk differences that may be based on efficiency differences.[19]

The Commission now proposes that only by meeting specific, objective criteria would any participant be allowed a hearing on the rate of return on common equity issue. A company would be presumed to have a cost of common equity equal to the benchmark unless it were shown, as of the date of the filing, to fall outside of a specified range for certain risk measures. If this *prima facie* case were made, the rate of return issue would be dealt with through further adjudication. The Commission proposes to use aggregate risk measures to determine the specified range because such measures reflect the aggregation of more specific risks and thus tend to avoid the problems associated with identifying which specific risk factors to rely on and what weight to accord each factor.

The aggregate company risk measures that the Commission proposes to use are Standard and Poor's and Moody's bond ratings. The range for the bond ratings within which companies will be presumed to have average risk will be established on a quarterly basis at the same time as the benchmark rate of return, based on the distribution of bond ratings of the companies in the benchmark sample that:[20]

(1) Are predominatly electric;[21]

(2) Have first mortgage bonds that are rated by Standard and Poor's and Moody's;

(3) Are included in the Utility Compustat II data base;

(4) Have their stock traded on the New York or American Stock Exchanges; or, if a subsidiary, its parent has stock traded on the New York or American Stock Exchanges; and

(5) Are not excluded by the Commission on a case-by-case basis based on unique circumstances.

Specifically, the range for the bond ratings will be established as follows:

(1) The distributions of Standard and Poor's and Moody's bond ratings will be based on the most recent bond ratings for the sample companies as of the last day of the quarter;

(2) The lower bounds of the Standard and Poor's and Moody's ranges will be established as those bond ratings within which the 25th percentile company falls; and [22]

(3) The upper bounds of the Standard and Poor's and Moody's ranges will be established as those bond ratings within which the 75th percentile company falls.

For rate filings of companies that do not have Moody's and Standard and Poor's bond ratings, the appropriate

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[15] Commenters are also requested to evaluate whether this logic is applicable in any way to the costs of debt and preferred stock capital.

[16] In Opinion No. 110, *Louisiana Power and Light Company*, 14 FERC ¶ 61,075 (1981), the Commission stated that it would not approve the use of funds allocable to interest and dividends not yet paid as an offset to a utility's cash working capital needs on the ground that such payments are below-the-line items. [14 FERC at 61,122]. *See also*, Opinion No. 611, *Florida Gas Transmission Company*, 47 FPC 341 at 356 (1972).

[17] 51 FR at 348.

[18] 49 FR at 29951.

[19] *Id.*

[20] Commenters should note that the sample used here will be different than that used in determining dividend yields. The basic reason for this difference is that dividend yields require stock market prices which are only available for the parent companies of holding company systems. In contrast, bond ratings are generally only available for the subsidiaries of the holding company systems.

[21] *See* note 5, *supra*.

[22] The Commission proposes to identify the 25th and 75th percentile companies in the following way. If the sample consists of 99 companies, the 25th percentile company would be the 25th company ranked in order of *increasing* bond rating risk (.25 × 99, rounnded upward to 25). The rating category in which this company falls would be the lower bound of the average risk range. If the 25th percentile company had a Standard & Poor's AA− rating, then AA− would be the lower bound of the average risk range.

Similarly, the 75th percentile company would be the 75th company ranked in order of increasing bond rating risk (.75 × 99, rounded upward to 75). The rating category in which this company falls would be the upper bound of the average risk range. If the 75th percentile company had a Standard & Poor's BBB rating, then BBB would be the upper bound of the average risk range.

bond ratings to use for the purpose of determining whether the company falls within the specified bounds for obtaining the benchmark will be determined as follows:

(a) If the filing utility has one or more affiliated companies that are predominantly electric with first mortgage bonds that are rated, the appropriate bond ratings (Moody's and Standard and Poor's) will be the simple averages of the bond ratings for such affiliated companies;

(b) In all other cases where the filing company does not have first mortgage bonds that are rated, the filing company or any interested participant can obtain a hearing on the rate of return issue by request.

Under this approach, companies with bond ratings within the specified ranges would be presumed to be of average risk. Bond ratings are used as a surrogate measure of the risk to common stockholders.[23] When a company files a proposed rate, it will be presumed to deserve the benchmark, or industry average cost of common equity, unless both its Standard and Poor's and Moody's bond ratings fall outside of the specified ranges for these ratings. For example, if the range of bond ratings of average risk companies for Standard and Poor's ratings is AA− to BBB+, and that for Moody's is Aa3 to Baa1, a utility with a Standard and Poor's rating of BBB or lower and a Moody's rating of Baa2 or lower would make a *prima facie* showing of significantly more risk. Conversely, for a utility with bond ratings above the range for average risk companies, a showing of such ratings would constitute a *prima facie* showing of significantly less risk, so that the benchmark return would not apply to such a company either. Any company with at least one of its bond ratings within the specified ranges would get the benchmark in effect at the time of filing and not be allowed a hearing on the rate of return issue.[24]

Comments are requested on whether one or both of the indicated bond ratings are appropriate for the purpose, whether other bond ratings (Fitch or Duff and Phelps) or other risk measures should also be used, whether the criteria for sample selection are appropriate and complete, and finally, whether the percentile values for the upper and lower bounds should be greater or less than those indicated.

The proposed approach relies solely on bond ratings as a measure of relative risk. There are alternatives that may warrant consideration by commenters. Among the alternative aggregate company risk measures that commenters may wish to consider are common stock ratings and some mechancial DCF calculations using consensus analyst forecasts for the growth rates.

E. Reduced Filing Requirements

To reduce the administrative burden on the Commission and participants in rate proceedings, the Commission proposes to reduce the § 35.13 filing requirements for applicants who request a rate of return on equity equal to the benchmark and who submit evidence of current bond ratings within the parameters discussed above. Such applicants will not be required to file the following portions of Statement AV:

§ 35.13(h)(22)(iv) (Common stock capital); and

§ 35.13(h)(22)(v) (Supplementary financial data). Such applicants also will be exempt from filing information in response to § 35.13(d)(6) (Additional information) of the Commission's regulations.

F. Burden of Proof

One concern with the use of a benchmark approach to the rate of return on equity is the question of whether the use of a benchmark rate of return on a presumptive basis is consistent with the fact that the Federal Power Act places the burden of proof on the utility filing increased rates.[25]

The Commission has stated that under § 37.7 of the regulations, as adopted by Order No. 389 and as continued by Order Nos. 420 and 442, "the burden of going foward with evidence rebutting the benchmark presumption is on any participant contesting the use of the applicable benchmark rate of return in an individual rate case."[26] The Commission concluded that the result was that "[a]lthough the ultimate burden of proof remains with the filing company, the presumption constitutes evidence sufficient to make a prima facie case and therefore shifts the burden to any participant wishing to rebut it."[27]

The Commission proposes that the participants in a rate proceeding would only be allowed to present evidence for a return on equity different from the benchmark return if the utility met the criteria for showing that the utility was significantly different in risk from the average utility. If the utility did not meet the criteria, the Commission would treat the benchmark return and the record upon which the benchmark return was based as part of the record in the individual utility rate proceeding, so that the utility proposing increased rates would be regarded as having met its burden of proof on the question of basing its rates on the benchmark rate. This treatment would apply regardless of whether a rate case participant wished to argue for a rate of return higher or lower than the benchmark rate, so long as the criteria for application of the benchmark rate were met. The Commission is interested in receiving comments on this proposal.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (Act) requires Federal agencies to consider whether the rule, if promulgated, will have a "significant economic impact on a substantial number of small entities." Nearly all of the jurisdictional utilities which must comply with the rule proposed here are too large to be considered "small entities" within the meaning of the Act.[28] The Commission

[23] In March 1986, the middle 50 percent range would have been from AA− to BBB+ (by Standard and Poor's). There was an 80 basis point spread between these categories for the average yields on first mortgage bonds with approximately 20 years to maturity. For the same period, the middle 90 percent range would have been from AA to BBB− and the spread was 90 basis points.

Several commenters in Docket No. RM80–36–000 suggested that bond ratings be used as the sole means of classifying companies into risk categories. *See* Initial Comments of Middle South Utilities at 2, Public Service Company of New Mexico at 2, and Southern Company at 11.

[24] In practice, basing the ranges on the 25th and 75th percentile companies and requiring a utility to fall outside both bond rating ranges will likely mean that fewer than 50 percent of utilities meet the threshold test for rebutting the presumptive rate of return. There are two reasons for this. First, the bond rating of the 25th or 75th percentile company may be the same as that of some companies below the 25th or above the 75th percentile company. Second, the requirement that a utility have bond ratings that fall outside of both ranges means that to the extent that the ratings of the two agencies are not perfectly coincident, less than 50 percent of the companies will satisfy the threshold. Applying the proposed rule to data for 1985 and setting the bounds based on the middle 50 percent range results in 60 to 65 percent of the companies being classified as average risk or, in other words, 35 to 40 percent of the companies meeting the threshold test to rebut the presumptive rate of return. Basing the standard on the 20th and 80th percentile companies (the middle 60 percent) results in approximately 85 percent of the companies being classified as average risk using 1985 data. Basing the standard on the 30th and 70th percentile companies (the middle 40 percent) results in 55 to 60 percent of the companies being classified as average risk using 1985 data. The work papers containing the data analysis upon which these conclusions are based have been placed in the Commission's public files for this docket.

[25] 16 U.S.C. 824d(e) (1982).

[26] 49 FR at 29954.

[27] *Id.*

[28] The Act defines a "small entity" as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. 5 U.S.C. 601(6) (1982). A "small business" is defined, by reference to section

Continued

certifies, therefore, that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act Statement

The information collection provisions in this rule are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act [29] and OMB's implementing regulations.[30] Interested persons can obtain information on these information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Ellen Brown (202) 357-8273). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer of the Federal Energy Regulatory Commission).

V. Comment Procedures

The Commission invites interested persons to submit comments, data, views, and other information concerning the matters set out in this notice. Any person wishing to participate in this proceeding should file in writing a notice of intent on or before August 18, 1986. Each person submitting a notice of intent should include his or her name and address and telephone number of one person to whom communications concerning the notice may be addressed. The Commission will establish a service list of those persons who submit such notices of intent and sent it to everyone on the list.

To facilitate the Commission's review of the comments, commenters are requested to provide a 2-4 page executive summary of their position on the issues raised in this NOPR. Commenters are requested to identify the page or section of the NOPR that their discussion addresses and to use as many headings as possible. Additionally, commenters should double space their comments, use elite type, and only use white, 8½" by 11" paper.

The original and 14 copies of such comments must be received by the Commission before 5:00 p.m., Tuesday, September 2, 1986. The original and 14 copies of any reply comments must be received by the Commission before 5:00 p.m., Tuesday, September 16, 1986.

Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 and should refer to Docket No. RM86-12-000.

All written comments will be placed in the Commission's public files and will be available for public inspection in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426 during regular business hours.

List of Subjects in 18 CFR Part 37

Electric power rates, Electric utilities, Rate of return.

In consideration of the foregoing, the Commission proposes to amend Chapter I, Title 18, Code of Federal Regulations.

By direction of the Commission.

Lois D. Cashell,

Acting Secretary.

PART 37—(AMENDED)

1. The authority citation for Part 37 continues to read as follows:

Authority: Federal Power Act, 16 U.S.C. 792-825r (1982); Department of Energy Organization Act 42 U.S.C. 7101-7352 (1982).

2. Section 37.3 is amended by adding a new paragraph (d) to read as follows:

§ 37.3 Definitions.

* * * * *

(d) "Predominantly electric" means those companies primarily engaged in providing electric services which includes the generation, transmission and distribution of electric energy for sale.

3. Section 37.4 is revised to read as follows:

§ 37.4 Annual proceedings.

(a) *Average cost of common equity determination.* An estimate of the average cost of common equity for the jurisdictional operations of public utilities for each year ending June 30 based on the procedures in § 37.4(b) through 37.4(d) will be determined annually through informal rulemaking proceedings under 5 U.S.C. 553.

(b) *The model.* For purposes of estimating the average cost of common equity for the jurisdictional operations of public utilities under § 37.4(a), the following model will be used:

$$k_t = [(1 + .5g)(Yt) + g] + f$$

where

k_t = average cost of common equity for the jurisdictional operations of public utilities for period t;

y_t = average current dividend yield applicable to period t determined under § 37.4(c);

g = growth rate component determined annually according to § 37.4(c);

f = flotation cost component determined annually according to § 37.4(d); and

t = successive base years ending June 30.

(c) *The dividend yield (y_t).*

(1) For use in the annual cost of common equity estimations, the average dividend yield applicable to period t (y_t) will be determined as the simple average of the median dividend yields for the four calendar quarters of the period t year ending June 30, where the median dividend yield (d_t) for each calendar quarter is defined as in § 37.4(c)(2).

$$Y_t = \frac{d_t^1 + d_t^2 + d_t^3 + d_t^4}{4}$$

Y_t = the median dividend yield of § 37.4(b); and

d_t^1 through d_t^4 = the median dividend yields of the four quarters of the year t ending June 30.

(2) The median dividend yield for a calendar quarter will be determined as the median of the current dividend yields of the sample of companies defined in § 37.4(c)(3), where the current dividend yield for company i for period t is defined as follows:

$$d_{it} = \frac{D_{it}}{P_{it}}$$

where

D_{it} = annual common dividend rate for company i based on the latest common dividend payment by ex-date as of the end of the most recent calendar quarter prior to period t; and

P_{it} = average of the monthly high and low common stock prices for company i for the most recent calendar quarter prior to period t.

(3) Except as provided in § 37.4(c)(4), the sample of companies used to calculate the average current dividend yield for the purpose of this section will consist of those publicly traded electric utilities or combination companies that:

(i) Are predominantly electric;

(ii) Have stock traded on either the New York or American Stock Exchanges;

(iii) Are included in the Utility Compustat II data base; and

(iv) Are not excluded by the Commission on a case-by-case basis, based on unique circumstances.

(4) Companies will be excluded from the sample used in the calculation of the dividend yield for any quarter if the following conditions occur:

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3 of the Small Business Act, as an enterprise which is "independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. 632(a)(1982).

[29] 44 U.S.C. 3501-3520 (1982).

[30] 5 CFR 1320 (1986).

(i) The company's common stock, through merger or other action, no longer is publicly traded; or

(ii) The company has decreased or omitted a common dividend payment in the current or prior three quarters; or

(iii) The Commission determines on a case-by-case-basis that some other occurrence causes the dividend yield for that company to be substantially misleading and bias the resulting quarterly average.

(d) *The growth rate component (g) and the flotation cost component (f).* The growth rate and flotation cost components will be determined on the basis of the Commission's analysis of the comments in the annual informal rulemaking proceeding. These same values will be used in the quarterly indexing procedure of § 37.9.

4. Section 37.6(b)(ii) is revised to read as follows:

§ 37.6 Application of benchmark rate of return in individual rate proceedings.

* * * * *

(b) *Exceptions.* The benchmark rate of return will not be binding if:

* * * * *

(ii) The Commission determines that the risk of the public utility operations at the time of filing is significantly different from the average risk for the jurisdictional operations of public utilities; or

* * * * *

5. Section 37.7 is revised to read as follows:

§ 37.7 Rebuttable presumption standard.

(a) *Burden of going forward.* The burden of going forward with evidence rebutting the presumption under § 37.6(a) is on any participant contesting the use of the applicable benchmark rate of return in an individual rate proceeding.

(b) *Bond rating criterion.* The presumption under § 37.6(a) can be rebutted by a showing that the ratings by both Standard and Poor's and Moody's rating services on the first mortgage bonds of the filing utility at the time of the filing are outside the bond rating ranges as determined under § 37.7(c).

(c) *Determination of bond rating ranges.*

(1) The ranges for the Standard and Poor's and Moody's bond ratings within which utilities will be presumed to be of average risk will be determined on a quarterly basis by reference to the distributions of the most recent bond ratings as of the last day of the calendar quarter for the sample of companies determined in § 37.7(c)(2).

(2) The sample of companies to be used for determining the ranges for the bond ratings will consist of those companies that:

(i) Are predominantly electric as defined in § 37.3;

(ii) Have first mortgage bonds that are rated by Standard and Poor's and Moody's;

(iii) Are included in the Utility Compustat II data base;

(iv) Have their stock traded on the New York or American Stock Exchanges; or, if a subsidiary, its parent has stock traded on the New York or American Stock Exchanges; and

(v) Are not excluded by the Commission on a case-by-case basis due to unique circumstances.

(3) The lower bounds of the ranges of bond ratings will be the Standard and Poor's and Moody's bond ratings within which the 25th percentile company falls in the distribution of bond ratings determined under § 37.7(c)(1).

(4) The upper bounds of the ranges of bond ratings will be the Standard and Poor's and Moody's bond ratings within which the 75th percentile falls in the distribution of bond ratings determined under § 37.7(c)(1).

(d) *If filing utility does not have first mortgage bonds rated by Standard and Poor's and Moody's rating services.*

(1) Except as provided in paragraph (d)(2) below, if a utility does not have first mortgage bonds rated by Standard and Poor's and Moody's, any participant in the rate proceeding may obtain a hearing on the rate of return issue by request.

(2) If the filing utility has one or more affiliated companies that are predominantly electric, as defined in § 37.3, and that have first mortgage bonds rated by Standard and Poor's and Moody's, the applicable bond ratings for determining whether the utility falls within the bounds specified in § 37.7(c) will be determined as the simple average of the bond ratings for the predominantly electric affiliated companies.

§ 37.8 [Removed]

6. Section 37.8 is removed in its entirety.

7. In § 37.9, paragraphs (a)(1) and (c)(1) are revised to read as follows:

§ 37.9 Quarterly indexing procedure.

(a) *Procedure for determining quarterly benchmark rates of return.* In accordance with § 37.4, the Commission will use the following indexing procedure to update quarterly the benchmark rate of return on common equity.

(1) For purposes of establishing the benchmark rate of return on common equity for period t, the average cost of common equity for the jurisdictional operation of public utilities will be calculated as follows:

$$k_t + [(1 + .5g)(Y_t) + g] + f$$

where:

k_t = average cost of common equity for the jurisdictional operations of public utilities for period t;

Y_t = average current dividend yield applicable to period t determined under paragraph (b) of this section;

g = growth rate component determined annually according to § 37.4(d)

f = flotation cost component determined annually according to § 37.4(d)

t = successive three month time periods: February 1 though April 30, May 1 through July 31, August 1 through October 31, and November 1 through January 31.

* * * * *

(c) *Sample of companies used to calculate dividend yields.*

(1) Except as provided in paragraph (c)(2) of this section, the sample of companies used to calculate the average current dividend yield for the purpose of this section will consist of those publicly traded electric utilities or combination companies that:

(i) Are predominantly electric;

(ii) Have stock traded on either the New York or American Stock Exchange;

(iii) Are included in the Utility Compustat II data base; and

(iv) Are not excluded by the Commission on a case-by-case basis, based on unique circumstances.

* * * * *

8. The authority citation for § 35.13 continues to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791–828c; Dept. of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12009, 42 FR 46267, 3 CFR 142 (1978); Pub.L. 96–511, 94 Stat. 2812 (44 U.S.C. 3501 *et seq.*)

9. In § 35.13, paragraphs (d)(6), (h)(22)(iv), and (h)(22)(v) are revised to read as follows:

§ 35.13 Filing of changes in rate schedules.

* * * * *

(d) *Cost of service information.*

* * * * *

(6) *Additional information.* For the first full calendar quarter beginning after the Commission issues an order initiating an investigation of a rate schedule change, and for each subsequent calendar quarter until the Commission issues a final order concluding the investigation, a utility requesting a rate of return on equity not

equal to the benchmark rate of return determined under Part 37 must submit:

(i) Information concerning any actions involving significant changes in the utility's financial condition, accounting methods, or operations including but not limited to:

(A) Issuance of any securities, reported in the form required in Statement AV under paragraph (h)(22),

(B) Significant increases or decreases in proposed construction program expenditures,

(C) Mergers, consolidations or other major changes in the utility's corporate organization, and

(D) Changes in the utility's capital structure; and

(ii) A copy of each order issued by any regulatory agency approving, rejecting or otherwise disposing of an application for an increase in the electric rates of the utility and a copy of each transmittal letter or equivalent written document by which a utility summarizes and submits a new application, for each rate increase pending before a state regulatory agency.

* * * * *

(h) *Cost of service statements.*

* * * * *

(22) *Statement AV—Rate of return*

* * * * *

(iv) *Common stock capital.* A utility requesting a rate of return on equity not equal to the benchmark rate of return determined under Part 37 must provide the following information for each sale of common stock during the five-year period preceding the date of the balance sheet for the end of Period I and for each sale of common stock between the end of Period I and the date that the changed rate is filed:

(A) The number of shares offered;

(B) The date of offering;

(C) The gross proceeds at offering price;

(D) The underwriters' commissions;

(E) The dividends per share;

(F) The net proceeds to company;

(G) The issuance expenses; and

(H) An explanation whether the issue was offered to stockholders through subscription rights or to the public and whether common stock was issued for property or for capital stock of others.

(v) *Supplementary financial data.* A utility requesting a rate of return on equity not equal to the benchmark rate of return determined under Part 37 must submit a statement indicating the sources and uses of funds for Period I and as estimated for Period II and a copy of the utility's most recent annual report to the stockholders. The utility must also supply a prospectus for its most recent issue of securities and a copy of the latest prospectus issued by any subsidiary of the filing utility or by any holding company of which the filing utility is a subsidiary.

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[FR Doc. 86-16826 Filed 7-28-86; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

Enforcement of Protection of Semiconductor Chip Products

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to require that persons seeking exclusion of infringing semiconductor chip products first obtain a court order enjoining, or an order of the U.S. International Trade Commission excluding, the importation of the products. Customs will then enforce the court order or exclusion orders. This action is being taken to protect the rights that have been granted to owners of semiconductor chip products under the Semiconductor Chip Protection Act of 1984.

DATE: Comments must be received on or before September 29, 1986.

ADDRESS: Written comments (preferably in triplicate) may be submitted to and inspected at the Regulations Control Branch, U.S. Customs Service Headquarters, Room 2426, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Legal Aspects: Samuel Orandle, (202) 566-5765; Operational Aspects: Louis S. Alfano, (202-566-8651).

SUPPLEMENTARY INFORMATION:

Background

On November 8, 1984, the President signed into law (Pub. L. 98-620) a bill (H.R. 6163) containing a wide array of intellectual property reforms. Title III of Pub. L. 98-620, cited as the "Semiconductor Chip Protection Act of 1984," adds a new chapter 9 to title 17, United States Code (17 U.S.C. 901-914), providing for protection of mask works that are fixed in semiconductor chip products. A mask work is defined as a series of related images, however fixed or encoded, that represent the three-dimensional patterns in the layers of a semiconductor chip. It is fixed in a simiconductor chip product when its embodiment in the product is sufficiently permanent or stable to permit the mask work to be perceived or reproduced from the product for a period of more than transitory duration.

The development costs for a single new semiconductor chip can reach $100 million The same chip can be copied for approximately $50,000. As a result, firms with no research and development costs to recoup can set their prices far lower than can firms which have underwritten the development costs. Thus, firms producing unauthorized copies of mask works have a large unearned competitive advantage over the innovating firm. This suggests that the scope of the problem of unauthorized importations of infringing semiconductor chips may be considerable. However, no factual data exists as to the extent of unauthorized importations.

As a condition of the protection extended to mask works under 17 U.S.C. 908(a), protection terminates "if application for registration of a claim of protection in the mask work is not made . . . within 2 years after the date on which the mask work is first commercially exploited." The U.S. Copyright Office has been designated to administer the registration system for mask works.

The owner of a registered mask work has the exclusive right, under 17 U.S.C. 905, to reproduce it and to import and distribute a semiconductor chip product in which the mask work is embodied. In addition, pursuant to 17 U.S.C. 906, the owner of a particular semiconductor chip product made by the owner of the mask work may import or distribute or otherwise dispose of or use, but not reproduce, that particular semiconductor chip product without the authority of the owner of the mask work. The term of protection for the mask work owner is 10 years from the date on which the mask work is the first commercially exploited anywhere in the world, whichever occurs first.

Under 17 U.S.C. 901(c)(1), the Secretary of the Treasury and the U.S. Postal Service are empowered to separately or jointly issue regulations for the protection of the rights of the mask work owner with respect to importations. These regulations may require, as a condition for the exclusion of articles from the U.S., that the person seeking exclusion take any one or more of the following actions:

(1) Obtain a court order enjoining, or an order of the U.S. International Trade Commission under section 337, Tariff Act of 1930 (19 U.S.C. 1337), excluding, importation of the articles;

(2) Furnish proof that the mask work involved is protected under 17 U.S.C. 905 and that the importation of the articles would infringe the rights of the mask work owner; and/or

(3) Post a surety bond for any injury that may result if the detention or exclusion of the articles proves to be unjustified.

Under options (2) or (3), which involve a Customs determination on its own that an imported mask work is infringing, without the intervention of a court or the USITC, articles which are imported in violation of the rights set forth in 17 U.S.C. 905 are subject to seizure and forfeiture in the same manner as property imported in violation of the customs laws. Any such forfeited article may be destroyed as directed by the Secretary of the Treasury, except that the article may be returned to the country of export whenever it is shown to the satisfaction of the Secretary that the importer had no reasonable grounds for believing that his acts constituted a violation of the law.

The Semiconductor Chip Protection Act became effective upon its enactment on November 8, 1984. However, 17 U.S.C. 913(a) held the registration and enforcement mechanisms in abeyance for 60 days. These registration mechanisms and enforcement provisions, therefore, went into effect on January 9, 1985.

Customs has considered all three of the options for protection of the mask work owner's rights under 17 U.S.C. 905 and decided that options (2) and (3) are not advisable. These options would require that Customs provide mask work protection in a similar manner to the way it protects copyrights. Under either of these options, owners would be required to record their registered mask works with Customs for a prescribed fee and Customs officers would have to interdict imported articles containing semiconductor chip products in order to identify those which infringe a recorded mask work.

There are several reasons which militate against Customs adoption of procedures similar to those used for enforcement of the copyright laws to protect the rights of mask work owners. First, an expert knowledge of semiconductor chip technology is required of anyone testing a semiconductor chip to determine whether the mask work embodied in the chip is infringing. Customs has neither the required expertise on the part of its inspectional staff nor the resources of funds to allocate or to train Customs officers for this task.

Secondly, the suspected infringing semiconductor chip is often incorporated in such consumer articles as personal computers, microwave ovens and projection televisions. These articles would have to be disassembled in order to extract the suspected infringing chip for testing purposes. Considering Customs limited resources and the time-consuming nature of this enterprise, it would be operationally unfeasible.

Thirdly, once a chip is extracted for testing, the process of determining whether infringement exists would involve a full adjudicatory review by Customs, with most likely multiple presentations of evidence and in-depth analysis of highly technical material. Customs does not have hearing examiners for such adjudications, nor a panel of experts to review the technical evidence. It would most likely be necessary for Customs to resort to outside expert witnesses to assist in the administrative review process. This could easily lead to a period in excess of 18 months, particularly since Customs is involved in many enforcement tasks and does not have the time or resources to commit to an expedited adjudication of semiconductor infringement cases. Also, the necessity to adjudicate mask work infringement matters would place Customs in a position of adjudicating in an area in which there are no legal guidelines for making an infringement determination (as there are for copyright cases), due to the recentness of the semiconductor protection law. Absent such guidelines, Customs would not be in a position to deal with infringement issues effectively. Any attempt to do so could result in length and costly administrative proceedings, without effective enforcement. During the pendency of the administrative proceedings, Customs would anticipate considerable difficulties in locating storage facilities for articles under detention. Also, the costs of storage to the government and the importer would be considerable. Under the option Customs is proposing, high storage costs would not be anticipated.

Customs believes that the adjudication of semiconductor chip infringement issues is the appropriate domain of the USITC or the courts for several reasons. First, the USITC was created to decide issues relating to trade. This Commission, because of its experience with such matters as patents, has acquired an expertise that is essential to the resolution of complex infringement issues such as those raised by the Semiconductor Chip Protection Act. Secondly, in consideration of the novelty and controversial nature of chip infringement cases, and the lack of any guidelines upon the matter, it is appropriate for the courts or the USITC to decide these cases in order to establish legal precedents, as they now do with respect to patent, trademark, and copyright infringement issues. Once the case is decided, Customs will enforce the court order, or USITC orders pursuant to § 12.39(b), Customs Regulations (19 CFR 12.39(b)), as modified by this proposal.

Customs further believes that an adjudication of the subject infringement issue in the courts or the USITC would be preferable to its own enforcement because the courts and the USITC can expeditiously and successfully balance the competing interests of the importer and the domestic producer of semiconductor chips. The importer of suspected infringing chips would perfer to have the chips or the articles incorporating the chips allowed into the U.S. pending resolution of the infringement question. Also, the domestic producer of semiconductor chips would perfer to have all suspected infringing chips or articles containing them detained pending the determination. The adjudication procedures of the USITC and the courts can expeditiously accommodate these interests. Pursuant to § 210.12, U.S International Trade Commission Regulations (19 CFR 210.12), the USITC has 30 days after receipt of a complaint or, in exceptional circumstances, as soon after such period as possible, in which to institute an investigation. Thereafter, under section 337(b), Tariff Act of 1930 (19 U.S.C. 1337(b)), the USITC is required to conclude its investigation and make a determination at the earliest practicable date, but not later than one year (or 18 months in more complicated cases) after the date of publication of notice of the investigation. During the course of investigation, however, if the Commission determines that there is reason to believe that there is a violation of 19 U.S.C. 1337(a), it may direct that the articles concerned, imported by any person with respect to whom there is reason to believe such person is violating this section, be excluded from entry into the U.S., unless such exclusion is deemed not to be in the public interest. The courts may also expedite and provide for several alternative procedures in handling infringement cases.

It should be noted that, as stated in House Report 98-781, dated May 15, 1984, Customs assistance in enforcing the protection extended to owners of rights in a mask work incorporated into a semiconductor chip is in addition to, not in lieu of, the owner's other rights

and remedies, such as the right to attempt to secure an injunction against importation from a court or an exclusion order from the USITC under 19 U.S.C. 1337. However, as the House Report further notes, Customs may insist upon such orders as a condition precedent to its action, when the nature of the case so requires to prevent error or injustice.

Action

To address this problem, Customs proposes to amend § 12.39, Customs Regulations (19 CFR 12.39), by adding a new paragraph (d) to require that persons seeking exclusion of infringing semiconductor chip products first obtain a court order enjoining, or an order of the U.S. International Trade Commission (USITC) under Section 337, Tariff Act of 1930 (19 U.S.C. 1337), excluding, importation of the articles. Exclusion orders issued by the USITC are enforceable by Customs under § 12.39(b), Customs Regulations.

The proposed amendment would specify that the regulation would be effective against all importers regardless of whether they know knowledge that their importations are in violation of the Semiconductor Chip Protection Act. Thus, importers who claim that they had no knowledge that their importations were violative would not be able to use this claim as a defense against injunctive relief obtained by the mask work owner.

It is noted that the Commissioner of Customs would not be a party to the action in which injunctive relief is being sought from the court. Inasmuch as Customs will enforce any order of the court, it is not necessary to name the Commissioner as a defendant in the action. The proper parties to be named as defendants before the court are those persons involved in the importation of the alleged violative articles.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. In particular, we are requesting the submission of information that would contribute to an improved understanding concerning the extent of importations alleged to infringe protected mask works embodied in semiconductor chips. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendment will not have a significant economic impact on a substantial number of small entities. It will affect only importers of semiconductor chip products and owners of these products who register them. Accordingly, the proposed amendment is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

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

List of Subjects in 19 CFR Part 12

Customs duties and inspection, Imports, Unfair competition.

Proposed Amendments

It is proposed to amend Part 12, Customs Regulations (19 CFR Part 12), as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation for Part 12 would continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote 11, Tariff Schedules of the United States), 1624. § 12.39 also issued under 19 U.S.C. 1337, 1623; 17 U.S.C. 910.

2. It is proposed to amend § 12.39 Customs Regulations, by adding a new paragraph (d) to read as follows:

§ 12.39 Imported articles involving unfair methods of competition or practices.

* * * * *

(d) *Importations of semiconductor chip products.* (1) When the owner of a mask work which is registered with the Copyright Office seeks to have Customs deny entry to any imported semiconductor chip products which infringe his rights in such mask work, the owner must obtain a court order enjoining, or an order of the U.S. International Trade Commission (USITC) under § 337, Tariff Act of 1930, as amended, excluding, importation of such products. Exclusion orders issued by the USITC are enforceable by Customs under § 12.39(b), Customs Regulations (19 CFR 12.39(b)). Court orders or exclusion orders issued by the USITC shall be forwarded, for enforcement purposes, to the Director, Entry, Procedures and Penalties Division, U.S. Customs Service, Washington, DC 20229.

(2) The district director shall enforce any court order based upon a mask work recordation in accordance with the terms of such order. Court orders may require either denial of entry or the seizure of violative semiconductor chip products. Forfeiture proceedings in accordance with Part 162 of this chapter shall be instituted against any such products so seized.

(3) This regulation will be effective against all importers regardless of whether they have knowledge that their importations are in violation of the Semiconductor Chip Protection Act (17 U.S.C. 901–904).

William von Raab,
Commissioner of Customs.

Approved: April 11, 1986.

Francis A Keating, II,
Assistant Secretary of the Treasury.

[FR Doc. 86–16981 Filed 7–28–86; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 733

Conference and Public Comment Period on Topics Pertaining to Federal Oversight of State Regulatory Programs Under the Surface Mining Control and Reclamation Act

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Notice of conference and public comment period; reopening of comment period on petition for rulemaking.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement is sponsoring a conference on the following topics: (1) OSMRE's use of ten-day notices and Federal notices of violations, and (2) criteria and procedures for substituting Federal enforcement and withdrawing approval of State regulatory programs under the Surface Mining Control and Reclamation Act (SMCRA). All interested persons are invited to attend the conference and/or

submit written coments to OSMRE in advance. Comments may also be submitted within two weeks of the close of the conference.

OSMRE is also reopening the comment period on a petition for rulemaking submitted by ten citizen organizations to allow further consideration of the issue a rised by petitioners concerning substitution of Federal enforcement and withdrawal of approval of State programs. OSMRE published a notice of availability and request for comment on this petition in the January 3, 1986 **Federal Register** (51 FR 272), and later reopened the comment period on the petition from February 4, 1986 to March 5, 1986 (51 FR 4396, February 4, 1986).

DATES: The conference will be held on August 13 and 14, 1986, starting at 9:00 a.m. and continuing unitl 4:30 p.m. on each of those days. The criteria and procedures for substitution of Federal enforcement and withdrawal of approval of State regulatory programs will be the discussion topic on August 13, and OSMRE's use of ten-day notices and Federal notices of violation will be the discussion topic on August 14. Persons wishing to make a persentation on one or both of the topics should contract one of the persons listed below under "ADDRESSES" no later than August 6, 1986. Persons wishing to submit written comments to be made available to other conference participants should send their comments to one of the persons listed below under "ADDRESSES" no later than August 1, 1986. A compilation of all written comments received in advance of the conference will be made available to participants at the time of the conference. Persons wishing to submit comments following the conference should do so no later than August 28, 1986. Comments received after that date will not necessarily be considered by USMRE in formulating any programmatic or regulatory revisions relevant to the topics discussed at the conference.

ADDRESSES: The conference will be held at the Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.

Written comments or statements should be sent to Mr. Arthur Abbs or Mr. Richard Bryson, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Room 210, Washington, DC 20240; Telephone: (202) 343-5351.

Persons wishing to make a formal presentation on one or both of the conference topics should contact Mr. Abbs or Mr. Bryson at the address or telephone number above.

FOR FURTHER INFORMATION CONTRACT: Mr. Arthur Abbs or Mr. Richard Bryson, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Room 210, Washington, DC 20240, Telephone: (202) 343-5351.

SUPPLEMENTARY INFORMATION: The Office of Surface Mining Reclamation and Enforcement is sponsoring a conference on aspects of OSMRE's oversight of regulatory programs under the Surface Mining Control and Reclamation Act. The purpose of the conference is to have an exchange of views on the following topics: (1) OSMRE's use of ten-day notices and Federal notices of violations, and (2) criteria and procedures for substitution of Federal enforcement and withdrawal of approval of a State regulatory program under SMCRA. All interested persons are invited to attend the conference and provide comments on one or both of the conference topics and/or submit written comments in advance to OSMRE. All comments received by August 1, 1986, will be distributed to all conference participants.

At the beginning of each day of the conference, OSMRE staff will provide an overview of existing policies and procedures relevant to the topic to be discussed and outline the concerns or issues related to OSMRE's implementation of those policies and procedures. All persons who have indicated a desire to present views on the topic will be given an opportunity to address the conference participants. Each speaker will have fifteen minutes to present his or her views. After all persons wishing to speak have addressed the conferees, there will be an opportunity for open discussion.

Conferees are encouraged to submit any additional comments addressing the views presented by other participants no later than August 28, 1986. OSMRE requests that all recommendations submitted be sufficiently specific to serve as the basis for OSMRE guidelines, procedures or proposed rules, if adopted by the Director. A transcript of the conference and all written comments submitted prior to or following the conference will be filed in the OSMRE administrative record and made available to the public.

OSMRE will consider the recommendations and comments presented by the conferees in formulating its decisions on two petitions for rulemaking which are pending disposition. One of the petitions, which was submitted on November 13, 1985, by ten citizen organizations and announced in the January 3, 1986 **Federal Register** (51 FR 272), requests, among other things, that OSMRE establish by regulation the circumstances under which the Director must initiate the process described in 30 CFR Part 733 for Federally enforcing or withdrawing approval of a State regulatory program under SMCRA. Conference recommendations and comments relating to that issue will be considered in analyzing this aspect of the petition.

The other petition, submitted on May 30, 1986, by the Mining and Reclamation Council of America (MARC), requests that OSMRE (1) repeal existing regulations which authorize the issuance of Federal notices of violation in States with approved regulatory programs, and (2) establish a uniform standard of review for evaluation of State responses to ten-day notices. A notice of availability of the MARC petition will appear separately in the **Federal Register** in the near future. Conference recommendations and comments will be considered in evaluating both aspects of this petition.

In addition, OSMRE will review and consider all comments and recommendations in formulating any programmatic or regulatory revisions.

Dated: July 21, 1986.

Brent Wahlquist,

Assistant Director, Program Operations.

[FR Doc. 86-16867 Filed 7-25-86; 8:45am]

BILLING CODE 4310-05-M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 390

Collection by Administrative Offset

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: The proposed rule would amend the Bureau of the Public Debt's regulations for collection by administrative offset of claims due the United States arising from transactions involving the Bureau, including transactions in Treasury securities.

DATE: Comments must be received by August 28, 1986.

ADDRESS: Send comments to the Office of the Chief Counsel, Bureau of the Public Debt, E Street Building, Washington, DC 20239-0001.

FOR FURTHER INFORMATION CONTACT: Rochelle Granat, Attorney-Advisor, Bureau of the Public Debt, Office of the Chief Counsel, Divisions Office (202) 447–9859.

SUPPLEMENTARY INFORMATION: The amendments are needed to cover two areas addressed in the final version of the administrative offset provisions of the Federal Claims Collection Standards, 4 CFR Part 102, issued jointly by the Department of Justice and the General Accounting Office under authority of the Debt Collection Act of 1982. The first proposed amendment to the Bureau of the Public Debt's administrative offset regulations would allow the Bureau to effect administrative offset prior to the completion of the due process required by the statute and by 31 CFR 390.2 and 390.3 if failure to initiate the offset would substantially prejudice the Bureau's ability to collect the debt, and if the time remaining before payment is to be made does not reasonably permit completion of the due process procedures. Such prior offset must be followed by completion of those procedures. This amendment follows the Federal Claims Collections Standards provision found at 4 CFR 102.3(b)(5).

The second amendment, advised by § 102.3(b)(2) of the Federal Claims Collections Standards, 4 CFR 102.3(b)(2), would establish procedures for making offset requests to other agencies holding funds payable to the Bureau's debtor and for processing requests for offset received from other agencies for debts owed those agencies.

Executive Order 12291

The proposed rule is not a "major rule," as defined in Executive Order 12291, dated February 17, 1981, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with Foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The Paperwork Reduction Act, Pub. L. 96–511, 94 Stat. 2812 (44 U.S.C. Chapter 35) does not apply to this rule because it does not contain information collection requirements which necessitate approval by the Office of Management and Budget.

Regulatory Flexibility Act

The Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1167, does not apply to this proposed rule. The Commissioner of the Public Debt certifies under the provisions of 5 U.S.C. 605(b) that this proposed rule, if issued as a final rule, will not have a significant economic impact on a substantial number of small entities or impose significant reporting or compliance burdens on a substantial number of small entities.

List of Subjects in 31 CFR Part 390

Administrative practice and procedure, Claims.

Accordingly, it is proposed to amend Title 31 of the Code of Federal Regulations as follows:

PART 390—COLLECTION BY ADMINISTRATIVE OFFSET

1. The authority citation for Part 390 continues to read as follows:

Authority: 31 U.S.C. 3701, 3711, and 3716.

1. Section 390.5 is revised to read as follows:

§ 390.5 Administrative offset.

(a) If the debtor does not exercise the right to request a review within the time specified in § 390.3, or if, as a result of the review, it is determined that the debt is due and no written agreement is executed, then administrative offset shall be ordered in accordance with these regulations without further notice.

(b) The Bureau may effect an administrative offset against a payment to be made to the debtor prior to the completion of the procedures required by §§ 390.2 and 390.3 of this part if failure to take the offset would substantially prejudice the Bureau's ability to collect the debt, and the time before the payment is to be made does not reasonably permit the completion of those procedures. Such prior offset shall be promptly followed by the completion of those procedures. Amounts recovered by offset but later found not to be owed to the Bureau shall be promptly refunded.

3. Sections 390.6 and 390.7 are added to read as follows:

§ 390.6 Requests for offset to other Federal agencies.

The Commissioner of the Public Debt, or designee, may request that funds due and payable to a debtor by another Federal agency be administratively offset in order to collect a debt owed to the Bureau by that debtor. In requesting administrative offset, the Bureau as creditor will provide the Federal agency holding funds of the debtor with written certification (a) that the debtor owes the debt; (b) of the amount and basis of the debt; and (c) that the Bureau has complied with the requirements of §§ 390.2 and 390.3 of this Part and with the requirements of 4 CFR Part 102.

§ 390.7 Requests for offset from the other Federal agencies.

Any Federal agency may request that funds due and payable to its debtor by the Bureau of the Public Debt be administratively offset in order to collect a debt owed to such Federal agency by the debtor. The Bureau shall initiate the requested offset only upon:

(a) Receipt of written certification from the creditor agency stating: (1) That the debtor owes the debt; (2) the amount and basis of the debt; (3) that the agency has prescribed regulations for the exercise of administrative offset; and (4) that the agency has complied with its own offset regulations and with the applicable provisions of 4 CFR Part 102, including any hearing or review; and

(b) A determination by the Bureau that collection by offset against funds payable by the Bureau would be in the best interest of the United States as determined by the facts and circumstances of the particular case, and that such offset would not otherwise be contrary to law.

Dated: June 2, 1986.

W.M. Gregg,

Commissioner of the Public Debt.

[FR Doc. 86–16723 Filed 7–28–86; 8:45 am]

BILLING CODE 4810–35–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SHW-FRL-3056-5]

Hazardous Waste: Identification and Listing; Leachate

AGENCY: Environmental Protection Agency.

ACTION: Notice of Data Availability and Request for Comment.

SUMMARY: The Agency is today announcing the availablity of additional data related to the Agency's proposed model for predicting the concentration of organic compounds in leachate when evaluating delisting petitions. Specifically, additional leachate data that has been incorporated into the data base is being made available for public comment. In addition, several of the comments received argued that the data-handling procedures used by the Agency to develop the organic leaching model require changes. The Agency agrees

with the commenters and has made a number of changes to the model. The Agency, therefore, is noticing the revised model for comment. Based on these changes to the model, we are also announcing how these changes will affect those petitions that have already been proposed for exclusion.

Today's notice also announces the availability of, and requests comments on, several background documents supporting the regulatory standards for the November 27, 1985 delisting notices. Since these background documents were not available for comment during the entire comment period, the Agency is re-opening the comment period on the documents and the standards that were derived from them.

DATES: EPA will accept public comments on this data until August 28, 1986. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this notice by filing a request with Eileen B. Caussen, whose address appears below, by August 13, 1986. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Three copies of the comments ont he data being noticed today (*i.e.*, the additional leachate data, the data-handling procedures and resultant new equation for the model, and the supporting documentation for the health-based standards) should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Requests for a hearing should be addressed to Eileen B. Claussen, Director, Characterization and Assessment Division, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Communications should identify the regulatory docket number "F-86-CRFP-FFFFF—section 3001(3)—Delisting Petitions; Organic Leaching Model Data." These documents are available for public viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding holidays, in the Docket Office for the Office of Solid Waste, Room S212A, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Call Mia Zmud at (202) 475-9327 or Kate Blow at (202) 382-4675 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346, or at (202) 383-3000. For technical information contract Mr. David Topping, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-8551.

SUPPLEMENTARY INFORMATION:

A Recalculation of the Organic Leachate Model

On November 27, 1985, the Agency proposed an organic leachate model (OLM) to estimate the amount of organic contaminants that will leach from a waste; this model will be used in concert with the vertical and horizontal spread (VHS) model [1] in the evaluation of delisting petitions for wastes that contain organic compounds. The OLM is an empirical equation which was developed through application of modeling techniques to a data base of waste constituent concentrations techniques to a data base of waste constituent concentrations and experimentally measured leachate concentrations. The references used to develop the original data base were cited in the November 27, 1985 notice (see 50 FR 48053-4, fn. 2 and 5). In response to public comments received concerning the OLM, EPA has revised the model and expanded its supporting data base. One commenter noted that the original data base excluded data pairs where the leachate concentration was less than the detection limit. These data pairs have been reincorporated and as a worst-case assumption, the detection limit was used as the leachate concentration. The Agency also has expanded the data base to include lysimeter data and data from the development of the Toxicity Characteristic Leaching Procedure (TCLP). The revised data base was used to recalculate the baseline OLM, which is shown below:

$$C_l = 0.00211\ C_w^{0.678} S^{0.373}$$

Where:

C_l = Constituent concentration in leachate (ppm)

C_w = constituent concentration in waste (ppm)

S = Constituent solubility (ppm)

The procedures used to develop this equation are described in detail in the Background Document for the Organic Leachate Model. This document is available in the public docket to this notice.

[1] The Agency uses the VHS model in evaluating delisting petitions submitted pursuant to 40 CFR 260.20 and 260.22. The VHS model is used to estimate the potential for ground water contamination. The final VHS model was published in the **Federal Register** on November 27, 1985 (see 50 FR 48896-48911).

B. 95 Percent Confidence Interval

As originally proposed, a 95 percent confidence interval was applied to this baseline equation. As a result of public comments, the Agency has revised the original methodology for calculating the 95 percent confidence interval. The new methodology is explained in the Background Document for the Organic Leachate Model. The log form of the equation used to calculate the 95 percent confidence interval is:

$$95\text{ percent C.I.} = t_{5\%,\,n-2}\,MSE\,(X_h'(X'X)^{-1}X_h)$$

Where:

$t_{5\%}$ = Factor for the 95 percent confidence interval

$n-2$ = Degrees of freedom

MSE = Mean square error

$X.X'$, X_h' = Various versions of the waste and leachate concentration data matrix

This equation is discussed in Neter and Wasserman, *Applied Linear Statistical Models*, p. 233. A matrix containing the results of the baseline OLM and the 95 percent confidence interval is provided in the docket to today's notice.

The Agency specifically requests comments on whether the baseline (best fit) OLM or the 95 percent confidence version of the OLM should be used. The effect of both verisons on previously proposed exclusions is presented in the following section.

C. Effect of Revised OLM on Previously Proposed Exclusions

Since the proposal of the OLM on November 27, 1985, the Agency has been using that model (as proposed) in the evaluation of delisting petitions for wastes that contain organic toxicants. A total of nine such petitions have been proposed for exclusion. In evaluating the petition for Eli Lilly & Company, however, the OLM was erroneously applied to a liquid waste. (Eli Lilly petitioned to exclude two wastes—retention area solids and scrubber effluent. For details, see 50 FR 48945, November 27, 1985.) The Agency intends, therefore, to re-propose its decision on the scrubber effluent portion of Eli Lilly's petition. This re-proposal will appear in the **Federal Register** in the near future. For there tention area solids, no organic constituents of concern were detected at levels that exceeded the health-based standards. The OLM, therefore, was not used in the Agency's evaluation of that waste. Since the OLM was not a factor in the evaluation, the following discussion does not address Eli Lilly's petition.

In order to illustrate the effects of the baseline and 95 percent confidence versions of the OLM, Table 1 presents the compliance-point concentrations for

the eight other previously proposed exclusions according to all three versions of the OLM (*i.e.*, the as-proposed, revised baseline, and revised 95 percent confidence versions). Application of either the baseline or 95 percent confidence versions of the revised OLM results in compliance point concentrations that may exceed the regulatory standards for two of the eight petitions—American Cyanamid and Square D Company.[2]

TABLE 1.—EFFECT OF REVISED OLM ON PREVIOUSLY PROPOSED EXCLUSIONS

Petitioner	Compound	Compliance-point concentration (mg/l)			Regulatory standard (mg/l)
		As proposed	Revised baseline	95 pct confidence	
American Cyanamid, Hannibal, MO	phorate	2.5×10^{-6}	8.8×10^{-5}	5.4×10^{-4}	7×10^{-3}
	formaldehyde	1.6×10^{-3}	1.9×10^{-3}	3.3×10^{-3}	NA [1]
	1,2-dichloroethane	2.6×10^{-4}	4.5×10^{-4}	7.0×10^{-4}	3.8×10^{-4}
Continental Can Co., Milwaukee, WI	chlorobenzene	4.9×10^{-7}	1.4×10^{-5}	3.0×10^{-5}	1.05
	methyl ethyl ketone	3.7×10^{-2}	2.1×10^{-3}	3.0×10^{-3}	1.75
	toluene	3.4×10^{-5}	1.4×10^{-4}	2.0×10^{-4}	10.5
	1,1,1-trichloroethane	1.9×10^{-4}	1.7×10^{-4}	2.3×10^{-4}	1.2
	benzene	1.0×10^{-4}	2.4×10^{-4}	3.2×10^{-4}	1.2×10^{-3}
	bis(2-ethythexyl)phthalate	1.2×10^{-4}	5.5×10^{-5}	9.6×10^{-5}	7.0×10^{-1}
	di-n-butyl phthalate	2.5×10^{-5}	3.9×10^{-4}	4.6×10^{-4}	3.5
	methylene chloride	4.1×10^{-3}	1.4×10^{-3}	1.9×10^{-3}	5.6×10^{-2}
Star Expansion Company, Mountainville, NY	trichloroethylene	1×10^{-4}	5.2×10^{-4}	6.7×10^{-4}	3.2×10^{-3}
	1,1,1-trichloroethane	2×10^{-4}	2.2×10^{-4}	3.0×10^{-4}	1.2
	chloroform	3×10^{-4}	2.8×10^{-4}	3.8×10^{-4}	5×10^{-4}
Texas Eastman Co., Longview, TX	dichloromethane	1.7×10^{-2}	5.9×10^{-3}	8.2×10^{-3}	5.6×10^{-2}
	naphthalene	6.5×10^{-6}	8.4×10^{-4}	1.0×10^{-3}	NA [1]
	formaldehyde	3.2×10^{-2}	1.4×10^{-4}	2.6×10^{-2}	NA [1]
	bis(2-ethylexyl) phthalate	4.0×10^{-2}	1.8×10^{-3}	2.9×10^{-3}	7.0×10^{-1}
	diethyl phthalate	2.0×10^{-3}	3.2×10^{-3}	4.1×10^{-3}	3.5×10^{-2}
	toluene	2.0×10^{-5}	1.7×10^{-4}	2.5×10^{-4}	10.5
General Electric Co., Shreveport, LA	chloroform	1.18×10^{-3}	5.4×10^{-3}	7.3×10^{-3}	5×10^{-4}
	ethyl benzene	4.77×10^{-4}	2.1×10^{-3}	2.6×10^{-3}	3.5
	tetrachloroethylene	3.91×10^{-5}	5.1×10^{-4}	7.4×10^{-5}	6.9×10^{-4}
	toluene	4.53×10^{-4}	1.4×10^{-3}	1.8×10^{-3}	10.5
	trichloroethylene	9.33×10^{-4}	1.8×10^{-2}	2.4×10^{-3}	3.2×10^{-3}
	vinyl chloride	9.35×10^{-7}	2.5×10^{-3}	3.0×10^{-3}	2×10^{-3}
Waterloo Ind., Pocahontas, AR	toluene	7.1×10^{-5}	2.4×10^{-4}	3.1×10^{-4}	10.5
	formaldehyde	1.5×10^{-2}	5.3×10^{-3}	8.5×10^{-3}	NA [1]
Lake City Army Plant, Independence, MO	1,1,1-trichloroethane	5.18×10^{-5}	2.4×10^{-4}	3.6×10^{-4}	1.2
	methylene chloride	4.15×10^{-3}	2.1×10^{-3}	3.0×10^{-3}	5.6×10^{-2}
	toluene	1.87×10^{-5}	1.6×10^{-4}	2.4×10^{-4}	10.5
	resorcinol	2.42×10^{-2}	5.4×10^{-3}	7.7×10^{-3}	2
Square D Company, Oxford, OH	methyl ethyl ketone	1.8×10^{-2}	7.3×10^{-3}	1.0×10^{-2}	1.75
	1,1,1-trichloroethane	1.0×10^{-3}	1.0×10^{-3}	1.3×10^{-3}	1.2
	polychlorinated biphenyls	1.3×10^{-1}	1.9×10^{-1}	3.2×10^{-1}	8×10^{-6}

[1] NA—regulatory standard is not available. For explanations as to why the compliance-point concentrations are believed to be of no regulatory concern, see the individual proposals for exclusion.

For American Cyanamid, the predicted compliance-point concentration of 1,2-dichloroethane may exceed the regulatory standard when either the revised baseline or 95% confidence version of the OLM is used (see Table 1). Although this value may be slightly higher that the regulatory standard, the Agency continues to believe that American Cyanamid's petition should be granted. The basis for this conclusion is: (1) 1,2-dichloroethane was not detected (with a detection limit of 10 pbb) in any of the four samples that were analyzed; and (2) 1,2-dichloroethane would not reasonably be expected to be present in the waste but rather to be destroyed in the incineration process. For these reasons, the Agency believes that 1,2:dichloroethane is not present in American Cyanamid's waste at levels of regulatory concern; thus the Agency believes their petition should not be denied due to the presence of that compound.[3]

For Square D, the predicted compliance-point concentration of polychlorinated biphenyls (PCBs) may exceed the regulatory standard when either version of the revised model is used. As with 1,2-dichloroethane in the evaluation of American Cyanamid's petition, PCBs were not detected in any of the samples. As is the Agency's policy in evaluating delisting petitions, the value of the detection limit is used as the constituent concentration in calculating the compliance-point concentration. When this is done, the actual predicted compliance-point concentration may or may not exceed the regulatory standard. Unlike the American Cyanamid evaluation, however, the Agency has a reasonable basis to expect PCBs to be present in Square D's waste (based upon the raw materials used). The Agency has, therefore, requested that Square D re-test their waste for PCBs, using a lower detection limit. When that analytical data is available, the Agency will make the data (along with the Agency's evaluation) available for public comment.

D. Availability of Additional Background Documents to Support the Health-based Standards

In the November 27, 1985 notice, EPA made available for comment a list of regulatory standards and solubilites for 35 compounds which the Agency will be

[2] While Table 1 indicates that the compliance-point concentration of vinyl chloride from General Electric Company's waste may also exceed the regulatory standard, the higher concentrations (as compared to the as-proposed concentration) are primarily due to the use of a higher value for solubility. The presence of vinly chloride in General Electric's waste is, therefore, discussed in Section E, *Effect of Proposed Regulatory Standards and Solubilities on Previously Proposed Exclusions.* Also, as in the as-proposed value, chloroform exceeds its regulatory standard when the revised versions of the OLM are used. The Agency continues to believe that these values do not reflect the true concentration of chloroform and that chloroform is not present at levels of regulatory concern in General Electric's waste (see 50 FR 48949, November 27, 1985 for details on the basis for this conclusion).

[3] As with other petitions discussed in today's notice, however, the Agency is in the process of evaluating public comments on the proposed exclusions. The Agency may conclude that petitions should be denied based upon issues raised by the commenters (*i.e.*, issues other than the predicted compliance-point concentrations).

using in the evaluation of delisting petitions. Eighteen of these standards were applied in petition evaluations that appeared in the November 27, 1985 notices.[4] [5] Not all of the background documents for these standards, however, were available in the public docket at that time. We are, therefore, re-opening the comment period for these background documents to allow the public an additional period of time to review these 18 standards and solubilities. The public is encouraged to examine the background documents for all of the standards prior to the Agency's publication of delisting decisions which use these standards.

E. Effect of Proposed Regulatory Standards and Solubilities on Previously Proposed Exclusions

While the regulatory standards for the 18 compounds being proposed today are the same values as those used to evaluate the nine petitions proposed since November 27, 1985,[6] the solubility for one compound is different. When evaluating the petition for General Electric Company's Shreveport, LA facility (see 50 FR 48949–48951, November 27, 1985 for the proposed exclusion), the Agency used a solubility of 1.1 mg/l for vinyl chloride. This resulted in a compliance-point concentration of $<9.35 \times 10^{-7}$ mg/l, which is less than the regulatory standard (2×10^{-3} mg/l). More recent data, however, indicates that the solubility of vinyl chloride is much higher (2.7×10^{3} mg/l—see docket to today's notice). The use of this value for solubility in the originally proposed, baseline revised, and 95 percent confidence versions of the OLM results in compliance point concentrations of $<2.2 \times 10^{-3}$mg/l, $<2.5 \times 10^{-3}$mg/l, and $<3.0 \times 10^{-3}$mg/l, respectively. Although these values may be higher than the regulatory standard, the Agency believes that General Electric's petition should still be granted (*i.e.*, not denied due to the presence of vinyl chloride). Vinyl chloride was identified in only one of the ten samples that was analyzed. In that one sample, vinyl chloride was reported as an identifiable spike that was less than the detection limit. The Agency believes that this value (0.25 mg/l) does not represent the true concentration of vinyl chloride in General Electric's waste because: (1) The compound was identified in only one of the ten samples; (2) the compound volatilizes rapidly; and (3) since the compound is not currently used in General Electric's processes, it would no longer be expected to be present in the waste. The Agency concludes, therefore, that vinyl chloride is not present at levels of regulatory concern and that General Electric's petition should not be denied for this reason.

Dated: July 22, 1986.

J. W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 86–16980 Filed 7–28–86; 8:45 am]

BILLING CODE 6560–50–M

[4] Standards were proposed for the following 18 compounds: chlorobenzene, 1,2-dichloroethane, and phorate (50 FR 48915); methyl ethyl ketone, toluene, 1,1,1-trichloroethane, benzene, bis-(2-ethylhexyl) phthalate, di-n-butyle phthlate, and methylene chloride (50 FR 48917); trichloroethylene and chloroform (50 FR 48937); diethyl phthalate (50 FR 48950); carbon tetrachloride and 1,1,2-trichloroethane (50 FR 48949); ethylbenzene, tetrachloroethylene, and vinyl chloride (50 FR 48950).

[5] Due to a typographical error, the regulatory standard for 1,2-dichloroethane was incorrectly listed as 4 ppb in both the notice (50 FR 48915) and the original Support Document. The actual standard is 0.4 ppb.

[6] See footnote 5.

Notices

Federal Register
Vol. 51, No. 145
Tuesday, July 29, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

West Gardiner Access; Gallatin National Forest, Park County, MT; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement (EIS) for a proposal to acquire access to National Forest lands west of Gardiner, Montana. The approximately 40,000 acre "West Gardiner" study area is located on the Gardiner Ranger District of the Gallatin National Forest.

Secretary of Agriculture regulation and National policy directs the Forest Service to acquire appropriate access for the management and public use of National Forest lands. Reasonable access in the West Gardiner area is not currently available. Acquisition of legal access would ensure long-term public and administrative use.

Management objectives for the National Forest lands in the West Gardiner area are described in the proposed Forest Plan for the Gallatin National Forest. The proposed Forest Plan has undergone public review and the final Forest Plan is scheduled to be released in the fall, 1986.

The scoping process for this analysis has largely been completed. The nature and complexity of the proposed action and the extent of environmental analysis necessary for an informed decision are known.

Public involvement has been ongoing over the past two years. Relevant issues and concerns have been identified through public comments received in response to the proposal.

Affected private landowners, representatives of the National Park Service, Montana Department of Fish, Wildlife, and Parks, and interested sportsman, environmental, and wildlife organizations have participated with the Forest Service in a collaborative problem-solving process. Although full concensus has not been achieved, this participatory process has resulted in mutual understanding of the issues and concerns, and in the identification of a range of reasonable alternatives. One of the alternatives which will be considered is continuation of the existing situation. Other alternatives to be evaluated would provide for access over a number of different road and trail locations. Exchange of land to resolve the need for access will also be considered.

The effects of implementing each of the alternatives will be compared in the environmental analysis process. Effects on resource values and private landowner concerns will be fully evaluated. The U.S. Fish and Wildlife Service, Department of Interior, will be consulted as a cooperating agency to assess potential impacts on threatened and endangered species habitat. All alternatives will be evaluated and a preferred alternative will be identified. Results of this analysis will be documented in the environmental impact statement.

Robert E. Breazeale, Forest Supervisor, Gallatin National Forest, Bozeman, Montana, is the responsible official.

The draft environmental impact statement should be available for public review by September, 1986. The final environmental impact statement is scheduled to be completed by December, 1986.

Written comments and suggestions concerning the analysis should be sent to Robert E. Breazeale, Forest Supervisor, Gallatin National Forest, Bozeman, Montana 59771.

Questions about the proposed action and environmental impact statement should be directed to Robert L. Dennee, Public Information Officer, Gallatin National Forest, phone (406) 587-6744.

Dated: July 18, 1986.

Robert E. Breazeale,

Forest Supervisor.

[FR Doc. 86-16929 Filed 7-28-86; 8:45 am]

BILLING CODE 3410-11-M

Proposed Catamount/Harrison Creek Ski Area; Routt National Forest, Routt County, CO; Intent To Prepare an Environmental Impact Statement

In response to receipt of a Special Use Application from the Lake Catamount Joint Venture, the U.S. Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) for a proposal to permit the development of a ski area on the Hahns Peak and Yampa Ranger Districts of the Routt National Forest. The Land and Resource Management Plan for the Routt National Forest was approved on November 15, 1983. One of the management decisions in the Plan was to allocate the Catamount/Harrison Creek as a potential winter sports site.

A range of alternatives will be considered. One of these will be no development on the National Forest System lands. Other alternatives will consider the development of the site as proposed by the proponent or development of the site with different capacities as build out and varying set of mitigations. Alternative locations for uphill facilities, ski runs, and support facilities will be considered.

Other Federal, State, and local agencies; potential developers; and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Determination of potential cooperating agencies and assignment of responsibilities.

The Environmental Protection Agency, the Army Corps of Engineers, and the United States Fish and Wildlife Service will be invited to participate as cooperating agencies in the environmental analysis and the preparation of this Environmental Impact Statement. Additional cooperating agencies may be identified during the scoping process.

The Forest Supervisor will hold public meetings at the following locations:

Thursday, August 21, 1986, 7:00 p.m., Oak Creek, CO. Community Center Building, 227 Dodge St., Senior Citizens Room

Friday, August 22, 1986, 7:00 p.m., Steamboat Springs, CO. Yampa Valley Electric Building, 32 10th Street, Conference Room.

Jerry E. Schmidt, Forest Supervisor Routt National Forest, is the responsible official.

The draft EIS should be available for public review by February 1988. The final EIS is estimated to be completed by June of 1988.

Written comments should be sent to Jerry E. Schmidt, Forest Supervisor, Routt National Forest, 29587 West U.S. 40, Suite No. 20, Steamboat Springs, Colorado 80487, by September 31, 1986.

Questions about the proposed action and EIS should be directed to Dave Hackett, Recreation and Lands Forester, Routt National Forest, Hahns Peak Ranger District, P.O. Box 771212 Steamboat Springs, Colorado 80477, phone 303–879–1870.

Dated: July 23, 1986.

Edward M. Ryberg,

Acting Forest Supervisor, Routt N.F.

[FR Doc. 86–16996 Filed 7–28–86; 8:45 am]

BILLING CODE 3401-11-M

COMMISSION ON CIVIL RIGHTS

Colorado Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Colorado Advisory Committee to the Commission will convene at 1:00 a.m. and adjourn at 4:00 p.m. on September 8, 1986 at the U.S. Commission on Civil Rights, Conference Room, 1405 Curtis Street, Suite 2950, Denver, Colorado. The Subcommittee will meet to plan short term activities and formulate recommendations to present to the full Committee at its next meeting.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Maxine Kurtz or William Muldrow, Acting Director of the Rocky Mountain Regional Office at (303) 844–2211, (TDD 303/844–3031). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 24, 1986.

Ann E. Goode,

Program Specialist for Regional Programs.

[FR Doc. 86–16960 Filed 7–28–86; 8:45 am]

BILLING CODE 6335-01-M

Hawaii Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Hawaii Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 12:00 noon on August 18, 1986, at the Waikiki Trade Center, 2255 Kuhio Avenue, Honolulu, Hawaii. The purpose of the meeting is to plan for implementation of the Hawaiian Homelands project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Andre Tatibouet or Philip Montez, Director of the Western Regional Office at (213)894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 24, 1986.

Donald A. Deppe,

Program Specialist for Regional Programs.

[FR Doc. 86–16961 Filed 7–28–86; 8:45 am]

BILLING CODE 6335-01-M

Iowa, Kansas, Missouri & Nebraska Advisory Committees; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Iowa, Kansas, Missouri & Nebraska Advisory Committees to the Commission will convene at 9:00 a.m. and adjourn at 5:00 p.m., on August 20, 1986, at the Phillips House Hotel, 106 West 12th Street, Kansas City, Missouri. The purpose of the meeting is to discuss the Bigotry and Violence proposal and develop plans for its implementation.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin Jenkins, Director of the Central States Regional Office at (816) 374–5253, (TDD 816/374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at Least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 24, 1986.

Donald A. Deppe,

Program Specialist for Regional Programs.

[FR Doc. 86–16962 Filed 7–28–86; 8:45 am]

BILLING CODE 6335-01-M

Nevada Advisory Committee; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Nevada Advisory Committee to the Commission previously scheduled for Septebmer 30, 1986, convening at 10:00 a.m. and adjourning at 2:00 p.m., at the Holiday Inn South, 5851 South Virginia, Reno, Nevada (FR Doc. 86–16583, Page 26457) has a new meeting date.

The meeting convening and adjourning times and location will remain the same. The meeting date will change to September 20, 1986.

Dated at Washington, DC, July 24, 186.

Donald A. Deppe,

Assistant Staff Director for Regional Programs.

[FR Doc. 86–16963 Filed 7–28–86; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

[Docket No. 5665–01]

Kinyo Shipping Co. Ltd.

In the matter of Kinyo Shipping Co., Ltd., Respondent.

Appearance for Respondent: Kinyo Shipping Co., Ltd. (pro se), 3rd Floor Green Building, 33–9 Shinbashi 5-chome, Minato-Ku, Tokyo, Japan.

Appearance for Government: Thomas C. Barbour, Esq., Attorney-Advisor Office of the Deputy Chief Counsel for Export Administration, U.S. Department of Commerce 14th and Constitution Ave., NW., Washington, DC 20230.

Decision and Order

On may 28, 1985, the Office of Export Enforcement, International Trade Administration, U.S. Department of Commerce, issued a charging letter against Kinyo Shipping Co., Ltd., also known as Kinyo Kauin and as Kinyo Sempaku KK (hereinafter collectively referred to as Respondent). This letter charged that Respondent had violated § 387.6 of the Export Administration Regulations (currently codified at 15 CFR Parts 368–399 (1986)) (the Regulations), issued pursuant to the Export Administration Act of 1979 (50 U.S.C. app. 2401–2420 1982)). (This Act was subsequently amended by the Export Administration Amendments Act

of 1985. Pub. L. 99–64, 99 Stat. 120 (July 12, 1985).)

Respondent replied to the charging letter, initially in Japanese, by letter dated August 16, 1985, and later in English, by letter dated January 9, 1986. The January 9 letter was ruled to be a timely filed answer. In these and other submissions neither Respondent, nor Departmental Counsel in its submissions, requested a hearing. Consequently, an April 4, 1986 Order provided that this case would be decided on the record, pursuant to § 388.14 of the Regulations. Final submissions for the record were made by June 5, 1986; and the case is now ready for decision.

In its submission, Departmental Counsel presented evidence that, in 1983, Respondent had diverted a shipment of two helicopters to North Korea, contrary to the Regulations (Departmental Counsel's May 19 and June 5, 1986 submissions). As an appropriate sanction, Departmental Counsel proposed a three-year denial of all U.S. export privileges (Departmental Counsel's June 5, 1986 submission).

Respondent, for its part, denied the allegations in the charging letter (Respondent's August 16, 1985 letter, penultimate paragraph, as translated in its January 9, 1986 letter; and Respondent's May 6, 1986 letter 6th paragraph); and Respondent suggested that it had not violated Japanese laws (Respondent's May 6, 1986 letter, 6th paragraph, and that letter's enclosure, 3rd English language paragraph). Finally, Respondent asserted that it had been approached in an investigation involving the Tokyo Metropolitan Police and assistance to the U.S. Government under the International Investigation Cooperation Act of 1980, and that the subject matter of this investigation and of the instant administrative proceeding is the same (Respondent's April 8 and May 6, 1986 letters). Respondent's concern apparently was that information obtained from it in the investigation, where it claimed to be only a witness, might be used against it in the instant proceeding, where it is the Respondent.

As to Respondent's arguments, it offered no persuasive evidence in support of its denial of the allegations in the charging letter. Its suggestion that it violated no Japanese laws fails to constitute a defense to a charge of violating the Regulations, which are a matter of U.S. law. Its contention regarding the concurrent investigation also fails to supply a defense. Departmental Counsel stated that its charging letter was issued prior to any investigation by the Tokyo Metropolitan Police, and that the U.S. Government's request to the Tokyo Metropolitan Police for assistance in investigating this whole transaction was not made to support this charging letters (Departmental Counsel's June 5, 1986 submission). Further, Departmental Counsel stated that it has received no report from the Tokyo Metropolitan Police regarding the investigation, and that its evidence in the instant proceeding has been obtained independently of the Tokyo Metropolitan Police's Investigation (*id.*).

Based on the submissions of Respondent and of Departmental Counsel, the undersigned makes the following findings of fact. In mid-March 1983, two helicopters were shipped by boat from Long Beach, California to Respondent in Tokyo. Two shipping documents accompanying this shipment contained this notation: "These commodities licensed by the U.S. for ultimate destination: Japan—Diversion contrary to U.S. law prohibited." After the arrival of this shipment in Yokohama, Japan, Respondent arranged for the two helicopters to be reexported by boat to Nampo, North Korea in mid-April 1983. For an export or reexport of these helicopters to North Korea, the Regulations required a validated export license or reexport authorization from the Department; and no such license or authorization was issued for this shipment.

On basis of these findings of fact, the undersigned concludes that Respondent violated § 387.6 of the Regulations, and that an Order denying all U.S. export privileges to Respondent for a period ending three years from the date a final Order becomes effective in this proceeding is apporopiate.

Accordingly, pursuant to the authority delegated to the undersigned by Part 388 of the Regulations, it is hereby

Ordered

1. All outstanding validated export licenses in which Respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation.

2. For a period of three years from the date that this order becomes effective, Respondent Kinyo Shipping Co., Ltd., a/k/a Kinyo Kauin, a/k/a Kinyo Sampaku KK, 3rd Floor Green Building, 33–9, Shinbashi 5-chome, Minato-ku, Tokyo, Japan, and his successors or assignees, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States, in whole or in part, or that are otherwise subject to the Regulations. Without limitation of the generality of the foregoing, participation, in any such transaction, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to a validated export license application, (b) in preparing or filing any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data that are subject to the Regulations.

3. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

4. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, during such denial period, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Respondent or any related party, or whereby Respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of

any commodity or technical data exported or to be exported from the United States.

5. In accordance with section 13(c) of the Export Administration Act (currently codified at 50 U.S.C. app 2401–2420 (1982)), as amended and extended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985), the foregoing constitute the Decision and Order of the undersigned in this proceeding. The Order shall become effective if and when it is affirmed by the Secretary pursuant to section 13(c).

Dated: June 18, 1986.

Thomas W. Hoya,

Administrative Law Judge.

Having reviewed the record and based on the facts addressed in this case, I affirm the above Decision and Order of the Administrative Law Judge. This constitutes final agency action in this matter.

Dated July 18, 1986.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

[FR Doc. 86–16780 Filed 7–28–86; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

Western Pacific Fishery Management Council; Public Meetings

The Western Pacific Fishery Management Council and its advisory bodies will convene separate public meetings, August 4–8, 1986, at the King Kamehameha Hotel, 75–5660 Palani Road, Kailua-Kona, Hawaii, as follows:

Advisory Panel (AP)—will convene August 4, from 7 p.m. to 10 p.m., and reconvene August 5 from 9 a.m. to 4 p.m., to review and comment on possible implementation of a limited entry system for the bottomfish fisheries of the Northwestern Hawaiian Islands (NWHI); discuss biological and economic impacts associated with establishing different minimum legal sizes for the slipper lobsters of the NWHI; review additional information regarding bycatches of pelagic species made by purse seiners and pole-and-line-vessels; make recommendations to the Council on all aspects of industry issues, concerns and needs of fisheries in American Samoa, Guam, the Commonwealth of the Northern Mariana Islands and Hawaii; respond to the National Oceanic and Atmospheric Administration (NOAA) study recommending elimination of the Council, and to discuss any other AP business.

Scientific and Statistical Committee (SSC)—will convene August 5 from 9 a.m. to 4 p.m., and reconvene August 6 from 9 a.m. to 4 p.m., to discuss the same agenda items as those of the Council's AP, above, as well as to recommend data and research needs to the Council for input into the FY89 National Marine Fisheries Service (NMFS) budget; review and comment on ongoing and future contract work including a draft report of bottomfish catch rates, and to discuss any other SSC business.

Council—will convene August 7 from 8 a.m. to 4 p.m., and reconvene August 8 from 9 a.m. to 2 p.m., to review and approve for public hearing possible implementation of a limited entry system for the bottomfish fisheries of the NWHI; discuss biological and economic impacts associated with establishing different minimum legal sizes for the slipper lobsters of the NWHI; discuss the status of escape gap work on lobster traps; be apprised by the NMFS Southwest Fisheries Center and Regional Director of Council-related work which the NMFS will be conducting in FYs 87, 88, and 89; discuss the status of ongoing international tuna access negotiations in the South Pacific; appoint a Bottomfish Monitoring Team and appoint chairmen to the Council's advisory subpanels; approve the Council's statement of organization, practices and procedures for publication in the **Federal Register**, respond to the NOAA study recommending elimination of the Council, and to discuss any other Council business.

Additionally, on August 6 from noon to 4 p.m., the Council will convene a closed session (not open to the public) to discuss employment matters. For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 546–8923.

Dated: July 23, 1986.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology.

[FR Doc. 86–16993 Filed 7–28–86; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Change in the Textile Category System

CITA provides for the placement of new T.S.U.S.A. numbers in the textile category system in the CORRELATION, Textile and Apparel Categories with the Tariff Schedules of the United States, Annotated (T.S.U.S.A.). In order to implement new bilateral textile and apparel agreements covering vegetable fibers (other than cotton) and silk blends, as they are negotiated, CITA has developed a new correlation of categories in numbers 800 through 899. A description of the new textile categories in terms of T.S.U.S.A. numbers follows this notice.

EFFECTIVE DATE: August 1, 1986.

FOR FURTHER INFORMATION CONTACT: Martin Walsh, International Agreements and Monitoring Division, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC 20230 (202) 377–4212.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Brief description	Silk blends and other veg. fibers
Non-MFA apparel:	
Gloves and mittens	831
Hosiery	832
M&B suit-type jackets	833
M&B other coats and jackets	834
W,G&I coats and jackets	835
Dresses	836
Knit shirts, blouses, and tops	838
Not knit shirts and blouses	840
Skirts	842
M&B suits	843
W,G&I suits	844
Sweaters of veg. fibers	845
Sweaters of silk	846
Trousers, slacks, and shorts	847
Robes and dressing gowns	850
Pajamas and other nightwear	851
Underwear	852
Neckwear	858
Other apparel	859
Non-MFA non-apparel:	
Yarn and thread	800
Fabrics	810
Towels	863
Luggage	870
Handbags and flatgoods	871
Other made-ups	899

Category	TSUSA
800	305.0400
800	305.0600
800	305.0800
800	305.0900
800	305.1000
800	305.1200
800	305.1400
800	305.1600
800	305.1800
800	308.8010
800	308.9010
810	335.7500
810	335.9500
810	337.6045
810	337.8045
810	337.9045
810	345.1095
810	345.3545
810	346.5035
810	346.5645
810	346.8000
810	346.8610
810	347.4510
810	347.5010
810	353.5038
810	353.5041
810	353.5046
810	353.5063
810	353.5065
810	353.5067
810	355.5500
810	356.7000

Category	TSUSA
810	356.8000
810	357.0530
810	357.4010
810	359.2000
810	359.4010
831	704.0595
831	704.1095
831	704.1595
831	704.4095
831	704.4595
831	704.5095
831	704.7510
831	704.8010
832	374.0510
832	374.1010
832	374.1510
832	374.3575
832	374.4010
832	374.4510
832	374.5510
832	384.2738
832	384.7787
833	381.3567
833	381.6691
833	381.6987
833	381.8560
833	381.8683
833	381.9978
834	381.3568
834	381.6692
834	381.6989
834	381.8566
834	381.8685
834	381.9979
835	384.2729
835	384.2789
835	384.5325
835	384.5690
835	384.7778
835	384.7894
835	384.9684
835	384.9685
836	384.2728
836	384.2788
836	384.5320
836	384.5689
836	384.7777
836	384.7889
836	384.9680
838	381.3571
838	381.6695
838	381.8550
838	381.9982
838	384.2731
838	384.5310
838	384.7775
838	384.9691
840	381.3573
840	381.6993
840	381.8689
840	381.9984
840	384.2792
840	384.5687
840	384.7882
840	384.9693
842	384.2730
842	384.2795
842	384.5330
842	384.5694
842	384.7779
842	384.7896
842	384.9687
843	381.3585
843	381.6697
843	381.6995
843	381.8575
843	381.8691
843	381.9977
844	384.2732
844	384.2791
844	384.5340
844	384.5693
844	384.7780
844	384.7895
844	384.9689
845	381.3578
845	381.3583
845	381.6685
845	381.6688
845	381.9985
845	381.9987
845	384.2735
845	384.2736
845	384.5316
845	384.5317
845	384.9694
845	384.9695
846	381.3574
846	381.3576
846	381.8554
846	381.8557
846	384.2733
846	384.2734
846	384.7781
846	384.7782
847	381.3587
847	381.6698
847	381.6996
847	381.8580
847	381.8693
847	381.9988
847	384.2737
847	384.2794
847	384.5350
847	384.5697
847	384.7784
847	384.7893
847	384.9696
850	381.3589
850	381.6693
850	381.6990
850	381.8585
850	381.8695
850	381.9991
850	384.2739
850	384.2793
850	384.5322
850	384.5695
850	384.7785
850	384.7890
850	384.9683
851	381.3570
851	381.6694
851	381.6991
851	381.8570
851	381.8687
851	384.2740
851	384.2790
851	384.5327
851	384.5691
851	384.7786
851	384.7891
851	384.9686
852	378.0548
852	378.0557
852	378.0568
852	378.0579
852	378.1040
852	378.1515
852	378.1532
852	378.1538
852	378.1544
852	378.3000
852	378.5010
852	378.5510
858	373.0535
858	373.0575
858	373.1010
858	373.2035
858	373.2235
859	370.1200
859	370.1700
859	370.1910
859	370.7200
859	370.7600
859	370.8000
859	370.8410
859	370.8460
859	372.1034
859	372.1068
859	372.2000
859	372.5010
859	372.5510
859	372.6030
859	372.6060
859	372.6530
859	372.6560
859	376.0440
859	376.1210
859	376.2456
859	376.2496
859	376.2856
859	376.2898
859	381.3591
859	381.6699
859	381.6999
859	381.8590
859	381.8697
859	381.9993
859	384.2741
859	384.2796
859	384.5365
859	384.5698
859	384.7790
859	384.7898
859	384.9681
859	384.9698
859	702.0800
859	702.1400
859	702.8510
859	702.9010
859	702.9510
863	365.8305
863	366.3000
863	366.3300
863	366.3600
863	366.3900
870	706.3465
870	706.3850
870	706.4155
871	706.3455
871	706.3475
871	706.3700
871	706.3840
871	706.4150
899	316.0500
899	316.1000
899	316.2000
899	316.2500
899	316.3000
899	348.0530
899	348.0558
899	351.1000
899	351.2080
899	351.2580
899	351.4030
899	351.4400
899	351.4680
899	351.5080
899	351.6030
899	351.7080
899	351.8080
899	352.1010
899	352.2080
899	355.0400
899	355.2010
899	355.4200
899	357.7080
899	363.0530
899	363.2520
899	363.3500
899	363.4010
899	363.4510
899	363.5020
899	363.5050
899	363.5210
899	363.5310
899	363.5520
899	363.5550
899	363.6020
899	363.6050
899	363.8010
899	365.2900
899	365.8000
899	365.8100
899	365.8310
899	365.8400
899	365.9115
899	366.1200
899	366.1540
899	366.4820
899	366.4840
899	366.5100
899	366.5400
899	366.5740
899	366.7200
899	366.8100
899	366.8400
899	367.3510
899	367.4010
899	367.4510
899	703.8000
899	703.8500

[FR Doc. 86-17082 Filed 7-28-86; 8:45 am]

BILLING CODE 3510-DR-M

Requesting Public Comment on Bilateral Textile Consultations With the Government of Malaysia To Review Trade in Category 342

July 24, 1986.

On June 27, 1986, the Government of the United States requested consultations with the Government of Malaysia with respect to Category 342 (women's, girls' and infants' cotton shirts). This request was made on the basis of the agreement between the Governments of the United States and Malaysia relating to trade in cotton, wool, and man-made fiber textile products, effected by exchange of notes dated July 1 and July 11, 1985. The agreement provides for consultations when the orderly development of trade between the two countries may be impeded by imports due to market disruption, or the threat thereof.

The purpose of this notice is to advise the public that, pending agreement on a mutually satisfactory solution concerning this category, the Government of the United States has decided to control imports during the ninety-day consultation period which began on June 27, 1986 and extends through September 24, 1986 at a level of 16,999 dozen. If no solution is agreed upon in consultations between the two governments, CITA, pursuant to the agreement, may establish a prorated specific limit of 60,678 dozen for Category 342 for the entry and withdrawal from warehouse for consumption of textile products, produced or manufactured in Malaysia and exported during the period beginning on September 24, 1986 and extending through December 31, 1986.

In the event the limit established for the ninety-day period is exceeded, such excess amounts, if allowed to enter, may be charged to the levels established during the subsequent restraint period.

A summary market statement for this category follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 342 under the agreement with Malaysia, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. William H. Houston III, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Ave. NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Malaysia—Market Statement

Category 342—Cotton Skirts

June 1986.

Summary and Conclusions

U.S. Imports of Category 342 from Malaysia were 54,206 dozens during year-ending April 1986, close to four times the 14,145 dozens imported in the same period of 1985. Imports reached 45,984 dozens in the first four months of 1986, 14 times the level in the first four months of 1985.

The U.S. market for cotton skirts has been disrupted by imports. The sharp and substantial increase in imports from Malaysia has contributed to this disruption and continuation of the growth would create a real risk of further disruption.

U.S. Production and Market

In 1984, domestic production of cotton skirts was 2,027,000 dozens, 3 percent below the 1982 level of 2,090,000 dozens.

The market for domestically produced and imported cotton skirts grew by approximately 26 percent between 1982 and 1984, however U.S. producers did not share in the growth. Their share of the market fell from 63 percent in 1982 to 49 percent in 1984.

U.S. Imports and Import Penetration

Imports from all sources increased 75 percent from 1,226,000 dozens in 1982 to 2,146,000 dozens in 1984. The import production ratio correspondingly rose from 59 percent in 1982 to 106 percent in 1984.

In 1985, U.S. imports of Category 342 rose 6 percent, increasing to 2,270,000 dozens. This increase of imports is continuing into 1986.

Duty-Paid Values and U.S. Producer's Prices

Approximately 87 percent of Category 342 imports during the first four months of 1986 from Malaysia entered under the following two TSUSA numbers: 384.3440—women's, girls' and infants' other cotton knit skirts, not ornamented; 384.5251—women's other cotton skirts, except those of corduroy, denim and velveteen, not knit, not ornamented. These garments from Malaysia entered the U.S. at landed, duty paid values below U.S. producers' prices for comparable garments.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

July 24, 1986.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement, effected by exchange of notes dated July 1 and July 11, 1985, 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 July 30, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 342, produced or manufactured in Malaysia and exported during the ninety-day period which began on June 27, 1986 and extends through September 24, 1986, in excess of 16,999 dozen.[1]

Textile products in Category 342 which have been exported to the United States prior to June 27, 1986 shall not be subject to this directive.

Textile products in Category 342 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) of 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

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[1] The limit has not been adjusted to account for any imports exported after June 26, 1986.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-16985 Filed 7-28-86 8:45 am]

BILLING CODE 3510-DR-M

Limits for Certain Cotton Textile Products Produced or Manufactured in Turkey

July 25, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651, has issued the directive published below to the Commissioner of Customs to be effective on July 29, 1986. For further information contact Ann Fields, International Trade Specialist (202) 377-4212.

Background

On August 15, 1985, a notice was published in the **Federal Register** (50 FR 32883), which established an import restraint limit for women's girls' and infants' cotton trousers in Category 348, produced or manufactured in Turkey and exported during the twelve-month period which began on July 29, 1985 and extends through July 28, 1986. The limit filled on February 21, 1986.

In accordance with previously announced policy to prevent market disruption (See 49 FR 48979), the Chairman of CITA is directing the Commissioner of Customs to permit entry into the United States for consumption and withdrawal from warehouse for consumption of textile products in Category 348, exported during the period which began on July 29, 1985 and extended through July 28, 1986 in amounts not to exceed 77,936 dozen during each of five thirty-day periods beginning on July 29, 1986 and extending through December 26, 1986.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1986).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

July 25, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Agreement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed, effective on July 29, 1986, to permit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 348, produced or manufactured in Turkey and exported during the twelve-month period which began on July 29, 1985 and extended through July 28, 1986, in the following amount during each specified thirty-day period:

Category	Amount to be entered
348	77,936 dozen

The thirty-day periods shall be as follows:
July 29—August 27, 1986
August 28—September 26, 1986
September 27—October 26, 1986
October 27—November 25, 1986
November 26—December 26, 1986

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-17126 Filed 7-28-86; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Prepare an Environmental Impact Statement on Cleanup of World War II Debris; Urunao Beach, Guam

The U.S. Air Force will contract with the U.S. Army Corps of Engineers in Hawaii to prepare an Environmental Impact Statement on a proposal to cleanup World War II debris in Urunao Beach, Guam. The proposal will include an assessment of whether any explosives or hazardous materials were disposed of on the property by the government during World War II. An assessment of the environmental impact associated with any debris or hazardous material cleanup operation will also be included. An archeological survey and extensive site survey will be conducted in the analysis.

The Air Force will solicit items of concerns from the public by a written scoping process. Letters will be sent to all known interested persons, groups, and agencies. Persons or representatives of group and government entities should forward their concerns to the individual identified below.

FOR FURTHER INFORMATION CONTACT: Mr. Vern Tobey, 43 CDG/DE, Andersen AFB, Guam (APO San Francisco 96334).

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 86-16988 Filed 7-28-86; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA-C&E-86-39; OFP Case No. 61060-9315-20-24]

Capitol District Energy Center Cogeneration Associates; Exemption

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Order granting Capitol District Energy Center Cogeneration Associates exemption from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or the "Act"), to Capitol District Energy Center Cogeneration Associates ("Petitioner").

The permanent cogeneration exemption permits the use of natural gas as the primary energy source, with fuel oil serving as a back-up, for the proposed cogeneration facility to be located on Aetna Life & Casualty Company's (Aetna) Capitol Avenue property in Hartford, Connecticut. The final exemption order and detailed information are provided in the "SUPPLEMENTARY INFORMATION" section below.

DATES: The order shall take effect on September 29, 1986.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-093, Washington, DC 20585, Telephone (202) 252-4523

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 252-6749

SUPPLEMENTARY INFORMATION: On March 24, 1986, Capitol District Energy Center Cogeneration Associates petitioned ERA for a permanent cogeneration exemption from the prohibitions of FUA for a facility consisting of a gas turbine, a waste heat recovery boiler, three package boilers and associated equipment. Electricity will be provided to meet all Aetna's needs with approximately 45 MWe sold to Connecticut Light and Power, a subsidiary of Northeast Utilities.

The cogeneration facility is classified as an electric powerplant under FUA because more than 50 percent of its net annual electric generation will be sold.

Basis for Permanent Exemption Order

The permanent exemption order is based upon evidence in the record including the petitioner's certification to ERA, in accordance with 10 CFR 503.37(a)(1), that:

1. The oil or gas to be consumed by the subject cogeneration unit will be less than that which would otherwise be consumed in the absence of the unit, pursuant to the methodology for computing such savings set forth in 10 CFR 503.37; and

2. The use of a mixture of natural gas and coal or oil and coal is not economically or technically feasible.

Procedural Requirements

In accordance with the procedural requirements of section 701(c)(of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the **Federal Register** on May 29, 1986, (51 FR 19387), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing.

The comment period closed on July 13, 1986; no comments were received and no hearing was requested.

NEPA Compliance

On May 22, 1986, DOE published in the **Federal Register** (51 FR 18866) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of a permanent cogeneration exemption under FUA, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

In the original petition, the petitioner included an Environmental Analysis pursuant to 10 CFR 503.13(a). Subsequent to the issuance of the Notice of Acceptance of Petition, the petitioner submitted an Environmental Certification pursuant to 10 CFR 503.13(b)(1) certifying in accordance with the requirements of the above listed May 22, 1986, **Federal Register** notice that, it will, prior to operating the facility, secure all applicable environmental permits and approvals pursuant thereto. The petitioner submitted an environmental checklist pursuant to 10 CFR 503.13(b)(2). DOE reviewed the completed environmental checklist and has concluded that the grant of the exemption will not significantly affect the quality of the human environment.

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that the petitioner has satisfied the eligibility requirements for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent cogeneration exemption to Capitol District Energy Center Cogeneration Associates, to permit the use of natural gas as the primary energy source for its cogeneration facility.

Pursuant to section 702(c) of the Act of 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, DC, on July 21, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-16945 Filed 7-28-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-40; OFP Case No. 5224-9319-20-24]

Pacific Gas and Electric Co.; Exemption

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Order granting to Pacific Gas and Electric Company (PGandE) exemption from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act"), to Pacific Gas and Electric Company (PGandE). The permanent cogeneration exemption permits the use of natural gas as the primary energy source in the operation of a proposed facility to be called the San Francisco Cogeneration Facility.

PGandE requested this exemption both to construct and operate the San Francisco Cogeneration Facility. The facility, to be built on land immediately adjacent to PGandE's presently operating installation, will contain a gas turbine generator and an exhaust Heat Recovery Steam Generator. The facility is to be located in San Francisco, California and all power produced will be sold to PGandE's customers. The entire 32-49.9 MW of new capacity to be provided by the proposed San Francisco Cogeneration Facility is projected to displace less efficient units at PGandE's two older powerplants.

The final exemption order and detailed information on the proceeding are provided in the **"SUPPLEMENTARY INFORMATION"** section, below.

DATES: The order shall take effect on September 29, 1986.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E–190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Xavier Puslowski, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA–093, Washington, DC 20585, Telephone (202) 252–4708.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A–113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 252–6749.

SUPPLEMENTARY INFORMATION:

Basis for Permanent Exemption Order

The permanent exemption order is based upon evidence in the record including PGandE's certification to ERA, in accordance with 10 CFR 503.37(a)(1), that:

1. The oil or natural gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of such cogeneration facility, in accordance with 10 CFR 503.37(a)(1)(i); and

2. The use of a mixture of natural gas and coal or oil and coal in the cogeneration facility, will not be technically feasible, in accordance with 10 CFR 503.37(a)(1)(ii).

Procedureal Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the **Federal Register** on May 29, 1986 (50 FR 39755), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on July 13, 1986; no comments were received and no hearing was requested.

NEPA Compliance

After review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act NEPA).

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined the Pacific Gas and Electric Company has satisfied the eligibility requirements for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent cogeneration exemption to the Pacific Gas and Electric Company, to permit the use of natural gas as the primary energy source for its proposed cogeneration facility.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, DC, on July 21, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–16946 Filed 7–28–86; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. ERA–C&E–86–50; OFP Case No. 61063–9326–20 thru 31–24]

Consumers Power Co., Midland, MI; Exemption

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of acceptance of petition for exemption and availability of certification by Consumers Power Company, Midland, Michigan.

SUMMARY: On July 11, 1986, Consumers Power Company (Consumers or the petitioner) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption based on the "lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum" for 12 proposed combined cycle gas turbine generators to be located at the Midland Conversion Project in Midland, Michigan, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules setting forth criteria and procedures for petitioning for this type of exemption from the prohibitions of Title II of FUA are found in 10 CFR 503.37.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **"SUPPLEMENTARY INFORMATION"** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E–190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATES: Written comments are due on or before September 12, 1986. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA–093, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket No. ERA–C&E–86–50 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Ellen Russell, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA-093, Washington, DC 20585, Telephone (202) 252-9624

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 252-947

SUPPLEMENTARY INFORMATION:

Consumers proposes to install a total of 12 (76.3 MW each) combined cycle gas turbine generators at its Midland Energy Center in a two step construction program. Consumers plans to install 730 MW capacity in 1990 by bringing on line a total of eight turbine generators (one of which will be maintained as a spare), and an additional four turbine generators (435 MW) in 1994. One of the 12 units will always be maintained as a spare.

The Midland Energy Center was originally designed to operate as a two-unit nuclear station. Consumers stopped construction of the nuclear facility in mid-1984 after it was 85 percent complete. Much of the equipment and auxilliaries from nuclear unit No. 1 will be utilized by the Midland Conversion Project's gas turbine generator installation. Each operating (and one spare) gas turbine will drive a 76.3 MW generator. The gas turbine exhaust will be discharged, as currently planned, to individual, natural-circulation unfired heat recovery steam generators. Steam from these steam generators will be combined and piped to the low-pressure section of the unfinished nuclear plant's Unit 1 turbine-generator, which would provide an additional 371 MW for a total unit gross generating capacity of 1210 MW (1165 MW net of station power).

Section 212(a)(A)(ii) of the Act provides for a permanent exemption due to lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. To qualify the petitioner must certify that:

(1) A good faith effort has been made to obtain an adequate and reliable supply of an alternate fuel for use as a primary energy source of the quality and quantity necessary to conform with the design and operational requirements of the proposed unit;

(2) The cost of using such a supply would substantially exceed the cost of using imported petroleum as a primary energy source during the useful life of the proposed unit as defined in § 503.6 (cost calculation) of the regulations;

(3) No alternate power supply exists, as required under § 503.8 of the regulations;

(4) Use of mixtures is not feasible, as required under § 503.9 of the regulations; and

(5) Alternative sites are not available, as required under § 503.11 of the regulations.

In accordance with the evidentiary requirements of § 503.32(b) (and in addition to the certifications discussed above), the petitioner has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR 1500 *et seq.;* and DOE guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation: (1) An Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment.

If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that Consumers is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC on July 18, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-16965 Filed 7-28-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket NO. ERA-C&E-86-47; OFP Case No. 61062-9323-20, 21-24]

Continental Cogeneration Corp; Exemption

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of acceptance of petition for exemption and availability of certification by Continental Cogeneration Corporation.

SUMMARY: On June 13, 1986, Continental Cogeneration Corporation (CCC) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for a proposed electric powerplant to be located at the Humboldt Industrial Park (HIP), Hazleton, Pennsylvania, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). CCC seeks the exemption by demonstrating that granting such an exemption would be in the public interest. Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

The proposed powerplant for which the petition was filed is an approximately 125 MW (net) combined cycle cogeneration facility consisting of: (1) Two gas turbine generators, (2) two waste heat recovery steam generators, and (3) a steam extraction turbine generator. The plant will burn natural gas and coal gas from solid anthracite waste coal (CULM) and have oil firing capability as a back-up. The low BTU content (135 Btu's per cubic foot) coal gas will be from an existing and proposed expanded CULM gasification facility located in the HIP. It is expected that over 50 percent of the net annual electric power produced by the cogenerator will be sold to Pennsylvania Power and Light (PP&L), making the cogeneration facility an electric power plant pursuant to the definitions contained in 10 CFR 500.2. The facility will produce an estimated steam flow for the high pressure steam of 484,000 lbs/hr 653 PSIG 877 °F. The high pressure steam will be used in the steam turbine to generate electricity. The steam turbine will have extraction points at which steam will be extracted for NO_x control and for the process and heating requirements of present and future industries, at subsidized rates, in the HIP. CCC will operate the facility.

ERA has determined that the petition appears to include sufficient evidence to

support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR § 501.3. A review of the petition is provided in the "SUPPLEMENTARY INFORMATION" section below.

As provided for in sections 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials in this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibition of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATES: Written comments are due on or before September 12, 1986. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-093, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket No. ERA-C&E-86-47 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

George Blackmore, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-093, Washington, DC 20585, Phone (202) 252-1774

Steven Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Phone (202) 252-6947

SUPPLEMENTARY INFORMATION: Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of §503.37(a)(1), CCC has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(b);

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible; and

3. Prior to operation, all applicable environmental certifications will be secured.

On May 22, 1986, DOE published in the **Federal Register** (51 FR 18866) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of a cogeneration FUA permanent exemption, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. CCC has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption.

DOE's Office of Environment, in consultation with the Office of General Counsel, will review the completed environmental checklist submitted by CCC pursuant to 10 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on CCC's petition that the grant or denial of the exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

The acceptance of the petition by ERA does not constitute a determination that CCC is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on July 17, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-16966 Filed 7-28-86 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-21; OFP Case No. 50076-9142-20, 21-22]

Municipal Light and Power; Exemption

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Order Granting Municipal Light and Power, Anchorage, Alaska, Exemption from Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent reliability of service exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act"), to Municipal Light and Power (ML&P or "the petitioner"), of Anchorage, Alaska. The permanent reliability of service exemption for a proposed new electric powerplant permits the use of two (2) natural gas-fired combustion turbines each with a nameplate rating of 80 MW, that will operate as combined cycle combustion turbine units to produce electrical power at ML&P's plant in Anchorage, Alaska. The new units, identified as Sullivan 11 and Sullivan 12 are expected to commence operation to meet the load forecast electrical demands commencing in the winter of 1999-2000. The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: The order shall take effect on September 29, 1986. The public file containing a copy of the order, other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

George G. Blackmore, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-093, Washington, DC 20885, Telephone (202) 252-1774.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 252-6749.

SUPPLEMENTARY INFORMATION: ML&P proposes to install a new combustion turbine powerplant at Anchorage,

Alaska. The two new units will operate as a baseload integrated system producing electricity to meet forecast demands commencing with the winter of 1999–2000.

Sullivan 11 and Sullivan 12 as proposed will be constructed in phases starting in the Spring of 1977. Each thermal unit will, when construction is complete, operate in a combined cycle with a heat recovery steam unit as a base load integrated system.

The combustion gas turbine at Sullivan 11 and also at Sullivan 12 will each be nameplate rated at 80 MW (the two units total 160 MW), with the steam unit rated at 65 MW. The base load integrated system, when construction is complete, will meet forecast electrical demand for the Winter of 1999–2000 and beyond.

Natural gas will be the primary fuel; distillate oil may be used as backup fuel for emergency purposes only. Natural gas consumption, at base rated load, will be approximately 815 MCF per hour per turbine.

Basis for Permanent Exemption Order

The permanent exemption order is based upon evidence in the record including ML&P's certification to ERA, in accordance with 10 CFR 503.40(a)(c) that:

1. ML&P is not able to construct an alternate fuel fired powerplant that would prevent an impairment or reliability of service;

2. Despite diligent good faith efforts, ML&P is not able to make the demonstration necessary to obtain a permanent exemption for lack of alternate fuel supply, site limitations, environmental requirements, inadequate capital, or state and local requirements in the time required to prevent an impairment of reliability of service;

3. No alternate power supply exists; and

4. Use of mixtures is not feasible.

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the **Federal Register** on December 27, 1985, commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on February 10, 1986; no comments were received and no hearing was requested.

NEPA Compliance

After review of the petitioner's environmental impact analysis, together with other relevant information, ERA had determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act.

Order Granting Permanent Reliability of Service Exemption

Based upon the entire record of this proceeding, ERA has determined that ML&P has satisfied the eligibility requirements for the requested permanent reliability of service exemption, as set forth in 10 CFR 503.40. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent reliability of service exemption to ML&P to permit the use of natural gas as the primary energy source for its proposed facility in Anchorage, Alaska.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, DC, on July 17, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–16967 Filed 7–28–86; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget.

SUMMARY: The Department of Energy (DOE) has submitted the energy information collections, listed at the end of this notice, to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by DOE.

Each entry contains the following information and is listed by the DOE sponsoring office: (1) The collection number(s); (2) Collection title; (3) Type of request, e.g., new, revision, or extension; (4) Frequency of collection; (5) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (6) Affected public; (7) An estimate of the number of respondents; (8) Annual respondent burden, i.e., an estimate of the total number of hours needed to respond to the collection; and (9) A brief abstract describing the proposed collection and, briefly, the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. Last notice published Friday, July 18, 1986, (51 FR 25595).

ADDRESS: Address comments to Mr. Vartkes Broussalian, Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments may also be addressed to, and copies of the submissions obtained from, Mr. Gross at the **ADDRESS** below.)

FOR FURTHER INFORMATION CONTACT: John Gross, Director, Data Collection Services Division (EI–73), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 252–2308.

SUPPLEMENTARY INFORMATION: If you anticipate commenting on a collection, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise Mr. Broussalian of your intent as early as possible.

Issued in Washington, D.C., July 22, 1986.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

DOE COLLECTIONS UNDER REVIEW BY OMB

Collection No. (1)	Collection title (2)	Type of request (3)	Response frequency (4)	Response obligation (5)	Affected public (6)	Estimated number of respondents (7)	Annual respondent burden hours (8)	Abstract (9)
EIA								
EIA-781A/F	Nonresidential Building Energy Consumption Survey.	Revision	Triennially	Mandatory	Owners/managers of selected nonresidential buildings and their energy suppliers.	7,616	4,760	EIA-871A/F will collect data on energy consumption by nonresidential buildings and the characteristics of these buildings. These surveys fulfill planning, analyses and decision-making needs and requirements within DOE, other Federal agencies, State governments, and the private sector.
IE								
IE-400	Survey of Surplus Natural Gas.	Extension (one-year).	Quarterly	Voluntary	Suppliers of natural gas.	100	33	IE-400 provides a means by which DOE can monitor surplus natural gas supplies. The data are used to identify firms with surplus supplies, and to use this information to help alleviate any shortage situation.

[FR Doc. 86-16947 Filed 7-28-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP86-612-000 et al.]

Natural gas certificate filings; K N Energy, Inc., et al.

Take notice that the followings filings have been made with the Commission:

1. K N Energy, Inc.

[Docket No. CP86-612-000]

July 22, 1986.

Take notice that on July 10, 1986, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado, 80215, filed in Docket No. CP86-612-000, a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that K N be allowed to construct and operate sales taps for the delivery of gas to end users under authorization issued in Docket Nos. CP83-140-000, CP83-140-001 and CP83-140-002, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

K N proposes the construction and operation of sales taps to various end users located along its jurisdictional pipelines in Kansas and Nebraska. K N states that the proposed sales taps are not prohibited by and of its existing tariffs and that the additional taps will have no significant impact on K N's peak day and annual deliveries. K N further states that the gas delivered and sold by K N to the various end users will be priced in accordance with the currently filed rate schedules authorized by the applicable state or local regulatory body having jurisdiction.

Comment date: September 5, 1986, in accordance with Standard Paragraph G at the end of this notice.

2. Colorado Interstate Gas Company

[Docket No. CP86-602-000]

July 23, 1986.

Take notice that on July 7, 1986, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP86-602-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing CIG to transport natural gas for a limited term for Western Sugar Company (Western Sugar), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG proposes to transport up to 2,500 Mcf per day of natural gas on an interrupitible basis for Western Sugar for a term of two years from the date of a June 20, 1986 agreement between CIG and Western Suagr. It is stated that gas purchased be Western Sugar from Koch Hydrocarbon Company would be delivered to CIG at three existing points of delivery in Adams County, Colorado and Park and Fremont Counties, Wyoming, and that equivalent quantities of gas would be redelivered by CIG to Western Sugar at an existing interconnection in Morgan County, Colorado.

CIG also requests flexible authority to add and delete delivery points in the event Western Sugar obtains alternative sources of natural gas.

It is asserted that CIG would charge Western Sugar 63.04 cents per Mcf for the transportation service. It is further stated that CIG would collect a Gas Research Institute surcharge of 1.35 cents per Mcf of gas redelivered to Western Sugar.

CIG states that the proposed transportation service would be conditioned upon sufficient upon sufficient capacity for CIG to perform the proposed services without detriment or disadvantage to its customers.

Comment date: August 13, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Mountain Fuel Resources, Inc.

[Docket No. CP86-622-000]

July 22, 1986.

Take notice that on July 16, 1986, Mountain Fuel Resources, Inc. (MFR), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP86-622-000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authority to (1) abandon 31 jurisdictional sales taps which have served as delivery and redelivery points to Mountain Fuel Supply Company (MFS), MFR's local distribution company affiliate, under Rate Schedules CD-1 and X-33 of MFR's FERC Gas Tariff (CD-1/X-33 delivery points) and (2) install new regulating facilities required to reactivate service at two existing, but inactive, CD-1/X-33 delivery points. The request was filed under the certificate issued to MFR in Docket No. CP82-491-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open public inspection.

MFR states that the 31 taps it proposes to abandon vary in size from ¾ inch to 3 inches and are located in (1) Uinta and Sweetwater Counties, Wyoming, (2) Summit, Morgan, Duchesne, Carbon, Sanpete and Emery Counties, Utah, and (3) Moffat County,

Colorado. It is explained that since no end-use customers are presently served by MFS through the 31 taps proposed to be abandoned and because MFS, MFR's sole customer served by the taps, forsees no future customer demand developing in the immediate areas served by the 31 taps, MFR now seeks authorization to abandon the taps and terminate use of these facilities as CD-1/X-33 delivery points to MFS. MFR's application contains a July 10, 1986, letter whereby MFS consents to the abandonment of such facilities.

MFR further proposes to install new regulating stations at its Layton and L. Gilbert CD-1/X-33 delivery points, located, respectively, in Uinta County, Wyoming, and Duchesne County, Utah in order to reactivate service to MFS at these points. MFR advises that these residential customers will typically use approximately 50 Mcf and 500 Mcf of natural gas per year, respectively.

MFR further advises that the gas would be sold to the two customers by MFS pursuant to MFS' Rate Schedule GS-1 which is included in its Tariff No. 200 in the State of Utah and Tariff No. 8 in the State of Wyoming.

Comment date: September 5, 1986, in accordance with Standard Paragraph G at the end of this notice.

4. Northern Natural Gas Company, a Division of Enron Corporation

[Docket No. CP70-69-001]

July 22, 1986.

Take notice that on July 9, 1986, Northern Natural Gas Company, a Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP70-69-001 an application pursuant to Executive Order No. 10485, as amended by Excecutive Order No. 12038, and Delegation Order 0204-112 by the Secretary of Energy, to amend its Presidental Permit issued May 11, 1972 in Docket No. CP70-69, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that it was issued a Presidential Permit on May 11, 1972 in Docket No. CP70-69 to operate border facilities located near Willow Creek, Saskatchewan as part of its Montana System. Northern notes that the Montana System was constructed and operated to export, for eventual reimport, natural gas produced in Montana and purchased by Northern for system supply. Northern filed, concurrently with its application, an application in Docket No. CP86-607-000, to abandon its Montana System by sale to Tricentrol Holdings, Inc. (THI). It is stated that an interim spot purchase agreement between Northern's affiliate, Enron Gas Marketing, Inc. (EGM), and THI would commence when Northern opens its pipeline system under Order No. 436, and EGM obtains all Canadian and United States regulatory approvals required to export, transport and import the gas.

Northern has filed in Docket No. CP86-435-000 an application for blanket certificate authority to transport on an open-access basis. Northern states that EGM is concurrently filing applications with the Economic Regulatory Administration (ERA) for authority to export and import natural gas.

Northern requests an amendment to its Presidential Permit authorizing Northern to export third party gas at its Willow Creek border facility, in addition to its current authority to export gas for its own system supply. It is stated that amendment of the Presidential Permit in such a general way would simplify and expedite applications for similar applications and the Commission's review of them. It is further stated that the actual use of the border facilities under the requested amended general authority would be subject to an explicit condition that each underlying transaction would have received all other necessary authorizations from the Commission and the ERA and would be performed subject to all attached terms and conditions. Northern states that upon the granting of the abandonment authority requested in Docket No. CP86-607-000, THI would own and operate the border facilities, and that THI file for appropriate authorizations to do so.

Northern requests that the Commission issue interim amended Presidential Permit authority effective immediately, subject to the eventual concurrence of the Departments of State and Defense. It is stated that such interim authority would enable any potential export arrangement to proceed expeditiously once Northern opens its pipeline system to interstate transportation on behalf of shippers eligible under section 311 of the Natural Gas Policy Act.

Comment date: August 8, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. Northern Natural Gas Company, a Division of Enron Corporation

[Docket No. CP86-607-000]

July 22, 1986.

Take notice that on July 9, 1986, Northern Natural Gas company, a Division of Enron Corporation (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP86-607-000 an application pursuant to section 7(b) of the Natural Gas act for authorization to abandon certain facilities in Montana by sale to Tricentrol Holdings, Inc. (THI), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that its Montana System was authorized by Commission orders issued in Docket Nos. CP69-70 and CP70-71, *et al.* (47 FPC 1202 (May 11, 1972)) and in Docket No. CP73-166 (50 FPC 177 (July 20, 1972)). It is said that the Montana System consists of approximately 494 miles of gathering and transmission pipeline and two compressor stations totaling 12,350 horsepower. The Montana System is said to gather Nothern's gas purchases in the Tiger Ridge and Sherard fields, located in Blaine, Hill and Chouteau Counties, Montana and transport the gas to an interconnection with a Northern affiliate, Consolidated Natural Gas Limited (Consolidated), at the Montana-Saskatchewan border. Consolidated is said to purchase the gas from Northern, transport it through Canada, via the facilities of Consolidated and TransCanada PipeLines, Limited (TransCanada), and resell the gas to Northern at the Manitoba-Minnesota border where it is delivered to Great Lakes Gas Transmission Company (Great Lakes) for Northern's account. Northern proposes to sell the Montana System to THI for $240,000 (said to reflect reimbursement of Investment Tax Credits) plus the net depreciated book value of the Montana System (estimated to be $18.5 million on December 31, 1985).

Additionally, Northern states that it has entered into other agreements with THI which provide for:

(1) Northern's release of gas purchased from THI and affiliates which is exempt from Commission jurisdiction pursuant to Section 601 of the Natural Gas Policy Act of 1978 (NGPA);

(2) Northern's assignment of unspecified (section 601 NGPA) gas purchase contracts with other Montana producers to THI when nominated by THI and agreed to by Northern;

(3) Northern's rateable take of Natural Gas Act (NGA) jurisdictional gas produced by THI;

(4) THI's agreement to sell certain Montana produced natural gas to Northern's marketing affiliate, Enron Gas Marketing, Inc. (EGM), for resale to United States spot markets, in the event that Northern becomes an Order No. 436 open-access transporter;

(5) Northern's agreement to assign portions of Canadian transmission

capacity currently contracted for by Northern to THI, and for Northern to subsidize THI's share of capacity on the TransCanada system by $50,000 per month for two years;

(6) The settlement and release of take-or pay claims THI's affiliate, Tricentrol United States, Inc., has against Northern for the period to 1986; and

(7) An interim spot purchase agreement whereby EGM would purchase at least 6,000 Mcf per day of THI's Montana production for resale in the spot market for the period ending with the closing date of the proposed sale of the Montana System.

Further, Northern states that it has entered into an Agreement of Noncompetition with THI, whereby Northern will not compete with THI for the transportation, or purchase of Montana gas produced in Hill, Blaine and Chouteau Counties, Montana for a period of five years.

Northern asserts that the proposed sale of the Montana System would result in an approximately $12.3 million reduction in rate base in its next section 4 rate filing.

Northern states that its annual cost of service would decline by approximately $6.5 million. Further it is stated that, as a result of the settlement of take-or-pay with THI, resulting from an undisclosed lump sum payment to THI, Northern would be relieved of approximately $3.3 million in claims for 1984 and 1985 and would avoid incurring take-or-pay estimated at $8.7 million for 1986 and 1987.

Northern further states that THI has agreed to transport Northern's remaining gas in Montana to the Canadian border for a fee of 47¢ per Mcf.

Comment date: August 8, 1986, in accordance with Standard Paragraph F at the end of this notice.

6. Southern Natural Gas Company

[Docket No. CP86-615-000]

July 22, 1986.

Take notice that on July 11, 1986, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP86-615-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) to add a new measuring station within a delivery point for delivery of gas to Atlanta Gas Light Company (Atlanta), an existing customer, for resale under the authorization issued in Docket No. CP82-406-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern proposes to construct, own and operate the new measuring station within the Atlanta area delivery point with costs and expenses associated with construction to be reimbursed by Atlanta. It is asserted that the proposed point, designated as the Fulton Industrial Boulevard delivery point, would be located in the vicinity of Fulton Industrial Boulevard at or near Mile Post 448.514(+) on Southern's 20-inch Main Line and 20-inch North Main Loop Line in Fulton County, Georgia. Southern states that the gas would be delivered at main line pressure with a maximum daily delivery capability of 48,000 Mcf with Atlanta providing regulation as needed for its system. Southern also states that the new delivery point would enable Atlanta to more efficiently and effectively serve new and existing customers with natural gas in an area experiencing rapid industrial and commercial development. Southern asserts that the deliveries through the proposed delivery point would be within Atlanta's certificated entitlements. Further, Southern states that (1) it has sufficient capacity to accomplish deliveries through the new facilities without detriment or disadvantages to its other customers, (2) the new delievery point would not impact Southern's peak day and annual deliveries, and (3) the addition is not prohibited by any existing tariff of Southern.

Comment date: September 5, 1986, in accordance with Standard Paragraph G at the end of this notice.

7. Transcontinental Gas Pipe Line Corporation

[Docket No. CP86-597-000]

July 23, 1986.

Take notice that on July 1, 1986, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP86-597-000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing a firm transportation service for South Jersey Gas Company (South Jersey) and the construction and operation of certain related incremental facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that pursuant to a transportation agreement with one of its distribution customers, South Jersey, dated April 1, 1986, it would transport for South Jersey on a firm basis, quantities of natural gas of up to the dekatherm (dt) equivalent of 5,500 Mcf per day (Contract Demand Quantity or CDQ). Applicant further states that it would receive such quantities at existing points of connection with South Jersey in New Jersey and deliver equvalent quantities to Consolidated Gas Transmission Corporation (Consolidated) at an existing point of connection at Leidy, Potter County, Pennsylvania (Leidy), for further transportation by Consolidated to Equitable Gas Company (Equitable). Equitable would store the gas for South Jersey. Upon withdrawal from storage, Applicant proposes to receive the gas from Consolidated at Leidy and deliver equivalent quantities to South Jersey at its existing points of connection.

Applicant states that some of the gas to be transported may be acquired by South Jersey from sources other than Applicant, such as Equitable or other suppliers. Applicant further states that it may transport on any day, if tendered by South Jersey, a quantity of gas in excess of the CDQ.

It is averred that South Jersey would initially pay Applicant a monthly demand charge of $36,190 based upon the CDQ of 5,500 Mcf per day equivalent, representing a charge of $6.58 per Mcf of CDQ per month. For any quantities transported in excess of the CDQ, South Jersey would initially pay 21.6¢ per dt. It is stated that these are curently effective rates for firm transportation on Applicant's Leidy Line and market area facilities under Commission order dated February 13, 1986, in Applicant's Docket Nos. CP84-146-001, TA86-3-29-000 and 001, and CP84-336-000.

It is stated that the transportation agreement would remain in force for a primary term commencing on the date of initial delivery and continuing through March 31, 2002, and year to year thereafter, subject to termination at the end of the primary term or any year thereafter.

In connection with the proposed service, Applicant proposes to construct and operate 1.25 milies of 36-inch diameter pipeline loop and appurtenant facilities on its Leidy Line in Pennsylvania, between Compressor Stations 515 and 505. The cost of such facilities is estimated to be $1,767,000, to be financed through short-term loans and funds on hand, with permanent financing to be arranged as part of Applicant's overall financing program.

Comment date: August 13, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-16952 Filed 7-28-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-75-004]

Northern Natural Gas Co., Division of Enron Corp.; Change in Tariff Revisions

July 23, 1986.

Take notice that on July 17, 1986, Northern Natural Gas Company, Division of Enron Corp. (Northern) tendered for filing with the Commission to be effective June 24, 1986, the following tariff sheets to be included in Northern's FERC Gas Tariff:

Third Revised Volume No. 1

First Substitute Original Sheet No. 70d.2

Original Volume No. 2

Substitute Original Sheet No. 1i-2c

On June 23, 1986, Northern filed with the Commission certain tariff sheets in compliance with the Commission's Order issed June 6, 1986 in [Docket No. RP86-75-000. Northern herein seeks to make one additional change to the specific tariff sheets listed above to comply with said order. Northern is adding language which states that regarding the three percent (3%) margin of liability established under the flexible PGA provision, Northern is not relieved from the fraud and abuse standards of the Northern Gas Policy Act or the prudence standards of the Natural Gas Act. The Iowa State Commerce Commission has authorized Northern to represent that the addition of that language satisfies the concerns expressed in their protest filed in the above-referenced proceeding.

Northern has served copies of this filing upon all of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before July 30, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-16951 Filed 7-28-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $40,000 obtained as a result of a consent order which the DOE entered into with H.C. Lewis Oil Company, a reseller-retailer of petroleum products located in Welch, West Virginia. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund of a portion of the H.C. Lewis consent order funds must be filed in duplicate and must be received within 90 days of publication of this notice in the **Federal Register**. All applications should refer to Case Number HEF-0115 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Nancy L. Kestenbaum, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The decision relates to a consent order entered into by the DOE and H.C. Lewis Oil Company which settled all claims and disputes between H.C. Lewis and the DOE regarding the manner in which the firm applied the federal price regulations with respect to its sales of motor gasoline during the period April 1, 1979, through December 20, 1979. A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the H.C. Lewis consent

order funds was issued on December 13, 1985. 50 FR 51927 (December 20, 1985).

The Decision sets forth procedures and standards that the DOE has formulated to distribute the contents of an escrow account funded by H.C. Lewis pursuant to the consent order. The DOE has decided to accept Applications for Refund from firms and individuals who purchased motor gasoline from H.C. Lewis. In order to receive a refund, a claimant must furnish the DOE with evidence which demonstrates that it was injured by H.C. Lewis' pricing practices. Applicants must submit specific documentation regarding the date, place, and volume of product purchased, whether the increased costs were absorbed by the claimant or passed through to other purchasers, and the extent of any injury allegd to have been suffered. An applicant claiming $5,000 or less, however, will be required to document only its purchase volumes.

As the Decision and Order published with this Notice indicates, applications for refunds may now be filed by customers who purchased motor gasoline from H.C. Lewis during the consent order period. Applications will be accepted provided they are received no later than 90 days after publication of this Decision and Order in the **Federal Register**. The specific information required in an Application for Refund is set forth in the Decision and Order.

Dated: July 15, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

July 15, 1986.

Name of Firm: H.C. Lewis Oil Company.

Date of Filing: October 13, 1983.

Case Number: HEF–0115.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. On October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with H.C. Lewis Oil Company (H.C. Lewis).

I. Background

H.C. Lewis is a "reseller-retailer" of motor gasoline as that term was defined in 10 CFR 212.31 and is located in Welch, West Virginia. Based on an audit of H.C. Lewis' records, ERA issued a Notice of Probable Violation (NOPV) on July 17, 1980, in which it alleged that H.C. Lewis had committed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F. The NOPV stated that between April 1, 1979 and December 20, 1979, H.C. Lewis committed certain pricing violations with respect to its sales of motor gasoline.

In order to settle all claims and disputes between H.C. Lewis and the DOE regarding the firm's sales of motor gasoline during the period covered by the audit, H.C. Lewis and the DOE entered into a consent order on March 19, 1981. The consent order fund represents 71 percent of the amount of the overcharge orginally alleged in the NOPV. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. In addition, the consent order states that H.C. Lewis does not admit that it violated the regulations.

Under the terms of the consent order, H.C. Lewis agreed to deposit $40,000 into an interest-bearing escrow account for ultimate distribution by the DOE. H.C. Lewis remitted this sum on April 22, 1981. This decision concerns the distribution of the funds in the H.C. Lewis escrow account.[1]

On December 13, 1985, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of refunds to parties that can make a reasonable demonstration of injury as a result of H.C. Lewis' alleged violations in its sales of motor gasoline during the consent order period. 50 FR 51,927 (December 20, 1985). The PD&O stated that the basic purpose of a special refund proceeding is to make restitution for injuries that were experienced as a result of actual or alleged violations of the DOE regulations.

In order to give notice to all potentially affected parties, a copy of the Proposed Decision was published in the **Federal Register** and comments regarding the proposed refund procedures were solicited. Copies were also sent to various service station dealers' associations. None of H.C. Lewis' customers submitted comments on the proposed procedures. Comments were submitted on behalf of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia. Those comments concern the distribution of any funds remaining after all refunds have been made to injured parties. However, the purpose of this Decision is to establish procedures for filing and processing claims in the first stage of the H.C. Lewis refund proceeding. Any procedures pertaining to the disposition of any monies remaining after the first stage will necessarily depend on the size of the fund. *See Office of Enforcement*, 9 DOE ¶ 82,508 (1981). Therefore, we will not address the issues raised by the states' comments at this time.

II. Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharge or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

As in other Subpart V cases, we believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will attempt to provide refunds to identifiable purchasers of motor gasoline that were injured by H.C. Lewis' alleged pricing practices between April 1, 1979 and December 20, 1979 (the consent order period). Any funds that remain after all meritorious first-stage claims have been paid may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*).

A. Refunds to Identifiable Purchasers

The funds currently in escrow will be distributed to claimants who demonstrate that they were injured by H.C. Lewis' alleged overcharges. As we have done in many prior refund cases, we are adopting certain presumptions to help determine the level of a purchaser's injury.

The use of presumptions in refund cases is specifically authorized by

[1] As of May 31, 1986, the H.C. Lewis escrow account contained a total of $67,930, representing $40,000 in principal and $27,930 in accrued interest.

applicable DOE procedural regulations. 10 CFR 205.282(e). The presumptions we are adopting in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. First, we presume that the alleged overcharges were dispersed evenly among all sales of products made during the consent order period. In the past, we have referred to a refund process that uses this presumption as a volumetric system. Second, we are adopting a presumption of injury with respect to small claims. Third, we will adopt a rebuttable presumption that spot purchasers were not injured by the alleged overcharges. As a separate matter, we find that end users of H.C. Lewis' products were injured by H.C. Lewis' pricing practices.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges by a consent order firm were spread equally over all gallons of product marketed by that firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. This presumption is rebuttable, however. A claimant which believes that it suffered a disproportionate share of the alleged overcharges may submit evidence proving this claim in order to receive a larger refund. *See Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984), and cases cited therein at 88,164.

Under the volumertric system, a claimant will be eligible to receive a refund equal to the number of gallons purchased from H.C. Lewis times the volumetric factor. The volumetric factor is the average per gallon refund and in this case equals $.004686 per gallon.[2] In addition, successful claimants will receive a proportionate share of the accrued interest.

Second, we presume that purchasers of H.C. Lewis' products seeking small refunds were injured by H.C. Lewis' pricing practices. Under the small-claims presumption, if a refund is below a certain sum, a reseller- or retailer-claimant will not be required to make a showing of injury other than evidence of the volumes of H.C. Lewis motor gasoline which it purchased. In this case, $5,000 is a reasonable value for the threshold. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,210 (1984); *Office of Special Counsel*, 11 DOE ¶ 85,226 (1984) (*Conoco*), and cases cited therein.

Unlike threshold claimants, an applicant which claims a refund in excess of $5,000 will be required to document its injury. A reseller will be required to demonstrate that it maintained a "bank" of unrecovered product costs.[3] In addition, a reseller claimant must show that market conditions would not permit it to pass through those increased costs. *See, e.g., Triton Oil and Gas Corporation/Cities Service Company*, 12 DOE ¶ 85,107 (1984); *Tenneco Oil Company/Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982).

Retailer claimants will be subject to a diferent requirement for demonstrating injury than that outlined above for reseller applicants. We believe a modification of the injury requirement for retailers is justified because during most of the H.C. Lewis consent order period, specifically, from July 16, 1979 to December 20, 1979, retailers of motor gasoline were not required to compute MLSPs with reference to May 15, 1973 selling prices and increased costs. *See* 10 CFR 212.93; 45 FR 29546 (1980). Instead, effective July 16, 1979, a retailer was required to calculate its MLSP under a fixed-margin approach set forth in the new rule. Unrecouped increased product costs could not longer be banked for later recovery. *Id.*

We note that retailer applicants in other refund proceedings are generally unable to claim refunds above the threshold amount if they lack a showing of banks of unrecouped product costs, since banks tend to prove that a firm absorbed rather than passed through its increased product costs. However, for the purposes of this proceeding, retailers which lack banks subsequent to July 16, 1979 may still file a claim for a refund for that period which exceeds the small claim for a refund for that period which exceeds the small claim threshold.[4] Retailers should, however, submit bank calculations from April 1, 1979 through July 16, 1979. In addition, like resellers, they must show that market conditions prevented them from recovering those increased costs. Indicators of a competitive disadvantage include a detailed description of lowered profit margins, decreased market shares, or depressed sales volumes.[5]

If a reseller or retailer made only spot purchases, it should not receive a refund since it is unlikely to have experienced injury. This is true because

> [t]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. Firms which made only spot purchases from H.C. Lewis will not receive refunds unless they present evidence which rebuts this presumption and establishes the extent to which they experienced injury.

As noted above, we find that end users whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges. These entities were not subject to DOE regulations during the relevant period, and are thus outside our inquiry about pass-through of overcharges. *See Office of Enforcement* 10 DOE ¶ 85,072 (1983) (*PVM*); *See also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. Therefore, for end users of motor gasoline sold by H.C. Lewis, documentation of purchase volumes will provide a sufficient showing of injury.

In addition, firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement will not be required to provide a detailed demonstration that they absorbed the alleged overcharges associated with H.C. Lewis' sales of motor gasoline. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 85,538 (1982) (*Tenneco*), and *Office of Special Counsel*, 9 DOE ¶ 85,545 at 85,244 (1982) (*Pennzoil*). Those firms should provide with their applications a full explanation of the manner in which

[2] This figure is derived by dividing the $40,000 principal amount by the 8,535,372 gallons of products sold by H.C. Lewis during the consent order period.

[3] This injury requirement reflects the nature of the petroleum price regulations in effect beginning on August 19, 1973, and ending on July 16, 1979 for retailers, and on May 1, 1980 for resellers. Under the original rules, a reseller or retailer of motor gasoline was required to calculate its maximum lawful selling price (MLSP) by summing its selling price on May 15, 1973 with increased costs incurred since that time. A firm which was unable to charge its MLSP in a particular month could "bank" any unrecovered increased product costs, so that those costs could be recouped in a later month, if possible. *See* 10 CFR 212.93; 45 FR 29546 (1980).

[4] The cost bank requirement has been relaxed in other instances regarding the change in the pricing regulations for motor gasoline. *See* Tenneco Oil Company/United Fuels Corporation, 10 DOE ¶ 85,005 at 88,017 n.1 (1982) (Tenneco).

[5] Resellers or retailers who claim a refund in excess of $5,000 but who do not attempt to establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,122 (1982) (Ada).

refunds would be passed through to their customers and of how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

As in previous cases, only claims for at least $15 plus interest will be processed. In prior refund cases we have found that the cost of processing claims for smaller amounts outweights the benefits of restitution. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

III. Applications for Refund

In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of motor gasoline from H.C. Lewis. The Appendix contains a list of 50 H.C. Lewis customers, which may help to identify those firms which were overcharged. This list is not exhaustive, however. Purchasers will be required to provide schedules of their monthly purchases of motor gasoline from H.C. Lewis, including specific information as to the volume of motor gasoline purchased, the date of purchase, the name of the firm from which the purchase was made, and the extent of any injury alleged. If they claim injury at a level greater than the threshold level, they must document this injury in accordance with the procedures described above. A claimant must also indicate whether it has previously received refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying this proceeding. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in any DOE enforcement or private, § 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

Finally, each application must include the following statement: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001. All applications must be filed in duplicate and must be received within 90 days from the date of publication of this Decision and Order in the **Federal Register**. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any applicant which believes that its application contains confidential information must indicate this and submit two additional copies of its application from which the information has been deleted. All applications should refer to Case No. HEF–0115 and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

It Is Therefore Ordered That

(1) Applications for refunds from the funds remitted to the Department of Energy by H.C. Lewis Oil Company pursuant to the consent order executed on March 19, 1981, may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: July 15, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appendix

H.C. LEWIS OIL COMPANY

Customer Name	City*	Zip Code
Allen Trucking	Kimball	24853
B&G Shell	Lester	25865
Bailey's Grocery	Mohawk	24862
Bailey Lumber	Welch	24801
Bentree Shell	Bentree	25018
Big Four Shell	Kimball	24853
Blizzards Inc.	Coaldale	24717
Brinhee Coal Company	Thoyre	24888
Bryant's Shell	Raspal	24879
Carmelton Industries	Carmelton	25036
City of Gary	Gary	24836
City of Welch	Welch	24801
Consolidation Coal Company	Maitland	
Cook Brothers Drilling	Wayne	25770
Corte Co., Inc.	Kimball	25701
East Pineville Shell	Pineville	24874
English Shell	English	25901
Fountain Shell	Oak Hill	24836
Gary Country Club	Gary	24836
H&C Bantam Market	Welch	24801
Hawley Coal Mining	Keystone	24852
Henlawson Shell	Logan	25601
Hi Ock Oil No. 2	Welch	24801
Terry Justice	Panther	24872
M&B Coal Company	Welch	24801
Mayberry Produce	Mayberry	24861
McDowell Tire & Tread	Gary	24836
McDowell Trucking	Davy	24828
McKinney's Shell	New Richmond	24867
Matney Junk Company	Welch	24801
Mountain State Shell	Mt. Hope	25880
Mullens Shell	Mullens	25882
New Berry Trucking	Iaeger	24844

H.C. LEWIS OIL COMPANY—Continued

Customer Name	City*	Zip Code
Northfork Coca-Cola	Welch	24801
Olga Coal Company	Coalwood-Coretta	
Owens Shell	War	24892
Oyler's Shell	Ikes Fork	24845
P&L Shell	Welch	24801
Perry & Hutton, Inc.	Maitland	
Royalty Smokeless	Premier	24878
Saulsville Shell	Saulsville	25876
Seven-up Bottling Company	Welch	24801
Shannon Porghontas Mining	Welch	24801
Skygarty Grocery	Skygarty	24883
Squire Shell	Squire	24884
Steuer Shell	War	24892
Sugar Hill Dist. Co.	Welch	24801
Threeway Shell	Iaeger	24844
Wilkinson Shell	Wilkinson	25653
Wyomac Coal Company	Welch	24802

*All companies are located in West Virginia.

[FR Doc. 86–16948 Filed 7–28–86; 8:45 am]

BILLING CODE 6450–01–M

Proposed Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $2,108,900.03 (plus accrued interest) obtained from Armstrong Petroleum Corporation and the City of Newport Beach, California, Case No. KEF–0041. The OHA has tentatively decided that the funds will be distributed in accordance with the DOE Policy of Restitution for Crude Oil Overcharges.

DATE AND ADDRESS: Comments must be filed in duplicate by August 28, 1986, and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display conspicuously a reference to Case No. KEF–0041.

FOR FURTHER INFORMATION CONTACT: Thomas Wieker, Deputy Director or Irene Bleiweiss, Attorney, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252–2400.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute monies obtained from

Armstrong Petroleum Corporation (Armstrong) and the City of Newport Beach, California (the City). Armstrong and the City remitted monies to the DOE to settle alleged pricing violations with respect to Armstrong's sales of crude oil under contract with the City. The refund amount is being held in an interest-bearing escrow account pending distribution by the DOE.

The DOE has tentatively decided that distribution of the monies received from Armstrong and the City will be governed by the DOE Policy of Restitution for Crude Oil Overcharges, 50 FR 27400 (1985). That policy states that all overcharge funds associated with crude oil miscertifications should be held in escrow pending Congressional action.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1:00 p.m. and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: July 11, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

July 11, 1986.

Name of Case: Armstrong Petroleum Corporation and City of Newport Beach, California.

Date of Filing: June 18, 1986.

Case Number: KEF-0041.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. *See* 10 CFR Part 205, Subpart V. Such procedures enable the DOE to refund monies to those injured by alleged violations of the DOE pricing regulations.

The ERA has requested that the OHA formulate procedures to distribute $2,108,900.03 which the DOE received from Armstrong Petroleum Corporation (Armstrong) and the City of Newport Beach, California (the City).

I. Background

During the period September 1976 through January 27, 1981 Armstrong was a crude oil producer and therefore was subject to the federal petroleum price and allocation regulations. Armstrong operated the D.W. Elliot Lease in Orange County, California, pursuant to a contract with the owner of the property, the City of Newport Beach. Under the terms of the lease, profits were divided as follows: ⅞ to Armstrong and ⅛ to the City. Following an audit of Armstrong's operations, the DOE issued a Proposed Remedial Order to Armstrong, alleging that the firm miscertified crude oil from the Elliot Lease. On August 4, 1982 the Office of Hearings and Appeals issued a Decision and Order finding that Armstrong violated the DOE regulations and requiring Armstrong and the City to refund the overcharges.[1] *Armstrong Petroleum Corp.*, 10 DOE ¶ 82,503 (1982).

On June 4, 1985, Armstrong, the City and the DOE entered into a Consent Order resolving all claims by the DOE regarding Armstrong and the City's compliance with the DOE regulations for the period September 1976 through January 27, 1981. *See* 50 FR at 25752 (June 21, 1985). Under the terms of the settlement, Armstrong and the City, in ⅞ and ⅛ shares respectively, remitted $2,108,900.03 to the DOE.[2] These monies are currently being held in an interest-bearing escrow account pending distribution by the DOE.

II. Jurisdiction and Authority to Fashion Refund Procedures

The general guidelines which the OHA may use to formulate and implement a plan to distribute funds are set forth in 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of alleged or adjudicated violations or to ascertain the amount of each person's injuries. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

The DOE's audit of Armstrong showed that Kern Oil Refinery (Kern) was the sole purchaser of Armstrong's crude oil from the Elliot Lease. However, in prior proceedings the DOE was unable to determine whether or to what extent Kern and/or others were injured by Armstrong's overcharges. *See Armstrong Petroleum Corp.*, 10 DOE ¶ 82,503 (1982). Therefore, we find that it is appropriate to implement Subpart V proceedings.

III. DOE Policy Regarding Crude Oil Overcharges

The monies which Armstrong and the City remitted to the DOE settle alleged crude oil overcharges. Therefore, we propose that the DOE Policy of Restitution for Crude Oil Overcharges, 50 FR 27400 (1985) (DOE Policy), govern the distribution of the funds.

The DOE Policy is to hold all overcharge funds associated with crude oil miscertifications in escrow, pending Congressional action. The Policy arose out of a report which the OHA issued in the Stripper Well Exemption Litigation. *Report of the Office of Hearings and Appeals, In Re: The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan. filed June 21, 1985), Fed. Energy Guidelines ¶ 90,507 (1985) (the OHA Report). The OHA Report examined the general effect of crude oil miscertifications of the Entitlements Program.[3]

On the basis of the OHA's findings, the Deputy Secretary of Energy issued a statement establishing the DOE Policy on June 21, 1985. The statement concluded that an indirect means of effectuating restitution was appropriate. 50 FR 27400 (July 2, 1985). Accordingly,

[1] Prior to the August 4, 1982 Decision and Order, the OHA issued another Decision and Order, dated November 23, 1979, requiring Armstrong to refund its overcharges. *Armstrong Petroleum Corp.*, 4 DOE ¶ 83,029 (1979). In July of 1980, the Federal Energy Regulatory Commission remanded the 1979 Decision and Order to the OHA with instructions to vacate. *Armstrong Petroleum Corp.*, [1978-81] *FERC* Appeals Decisions ¶ 46,074, *aff'g Armstrong Petroleum Corp.*, 12 FERC ¶ 61,012 (1980). The remand was based on the Commission's finding that the OHA inadvertently denied Armstrong the opportunity for oral argument. After holding oral argument, the OHA vacated the November 23, 1979 Decision and Order and issued the August 4, 1982 Decision and Order which modified the PRO and issued it as a final Remedial Order.

[2] This payment represents $1,450,000 plus interest earned on that amount from July 1, 1982 through the date of payment.

[3] The Crude Oil Entitlements Program, part of the DOE's system of mandatory petroleum price and allocation controls, was in effect from November 1974 through January 1981. The program was intended to equalize access to the benefits of crude oil price controls among all domestic refiners and their downstream customers. To accomplish this end, refiners were required to make transfer payments among themselves through the purchase and sale of entitlements. Because of the manner in which the program worked, it had the effect of dispersing overcharges resulting from crude oil miscertifications throughout the domestic refining industry. *Amber Refining, Inc.*, 13 DOE ¶ 85,217 (1985).

the policy statement announced that the DOE would maintain overcharge monies in escrow to afford Congress the opportunity to select the means of making indirect restitution.

Should Congress decline to act on the issue by the fall of 1986, the DOE stated that the funds should be paid to the miscellaneous receipts accounts of the United States Treasury in order to benefit all Americans.

In light of the DOE Policy, the OHA issued an order announcing that it intended to apply the DOE policy in special refund cases involving crude oil. 50 FR 27402 (July 2, 1985). The OHA solicited comments which were considered and rejected in *Amber Refining, Inc.*, 13 DOE ¶ 85,217 (1985) (*Amber*). Thus, the OHA has determined that it will apply the DOE policy in implementing special refund procedures in all cases like the present one.

IV. Refund Procedures

In view of the OHA's decision in *Amber*, we propose that the refund monies received from Armstrong and the City should be pooled with other crude oil settlement funds and distributed in accordance with the DOE Policy.

Before taking the action which we have proposed, we intend to publicize our proposal and to solicit comments on it. Comments regarding the tentative distribution process set forth in this Proposed Decision should be filed with the Office of Hearings and Appeals within 30 days of publication of this Proposed Decision and Order in the **Federal Register**.

It is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Armstrong Petroleum Corporation and the City of Newport Beach, California pursuant to a Consent Order executed on June 4, 1985 will be distributed in accordance with the foregoing Decision.

[FR Doc. 86-16949 Filed 7-28-86; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51633; FRL-3056-9]

CERTAIN CHEMICALS PREMANUFACTURE NOTICES

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty eight such PMNs and provides a summary of each.

DATES: Close of Review Period:

P86-1294, 86-1295, 86-1296, and 86-1297—October 8, 1986.

P86-1298, 86-1299, and 86-1300—October 11, 1986.

P86-1301, 86-1302, 86-1303, 86-1304, 86-1305, 86-1306, 86-1307, 86-1308, 86-1309, 86-1310, 86-1311, 86-1312, 86-1313, and 86-1314—October 12, 1986.

P86-1315, 86-1316, and 86-1317—October 13, 1986.

P86-1318, 86-1319, 86-1320, and 86-1321—October 14, 1986.

Written comments by:

P86-1294, 86-1295, 86-196, and 86-197—September 8, 1986.

P86-1298, 86-1299m and 86-1300—September 11,1986.

P86-1301, 86-1302, 86-1303, 86-1304, 86-1305, 86-1306, 86-1307, 86-1308, 86-1309, 86-1310, 86-1311, 86-1312, 86-1313, and 86-1314—September 12, 1986.

P86-1315, 86-1316, and 86-1317—September 13, 1986.

P86-1318, 86-1319, 86-1320, and 86-1321—September 14, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS-51633]" and the specific PMN number should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street SW., Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-cnfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 86-1294

Manufacturer. Confidential.

Chemical. (G) Blocked isocyanate.

Use/Production. (G) Electrical insulation intermediate. Prod. range; Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-1295

Manufacturer. Confidential.

Chemical. (G) Polyester-modified epoxy methacrylate.

Use/Production. (G) Vehicle for electronic coatings. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. No release.

P 86-1296

Manufacturer. Confidential.

Chemical. (G) Polyester-modified epoxy methacrylate.

Use/Production. (G) Vehicle for electronic coatings. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. No release.

P 86-1297

Manufacturer. Confidential.

Chemical. (G) Polyester-modified epoxy, methacrylate.

Use/Production. (G) Vehicle for electronic coatings. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. No release.

P 86-1298

Manufacturer. Pilot Chemical Company.

Chemical. (S) Benzenesulfonic acid, C_{16-24} alkyl derivatives, monoethanolamine salt.

Use/Production. (S) Industrial antioxidant for rubber compounds. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 2 workers, up to 8 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. No release.

P 86-1299

Manufacturer. Confidential.

Chemical. (G) Multi-functional urethane polymer.

Use/Production. (S) Monomer used in UV-cure ink systems. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-1300

Manufacturer. Confidential.

Chemical. (G) Cross linked acrylic resin.

Use/Production. (S) The cross linked acrylic microgel is used in high solids basecoats. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-1301

Manufacturer. ANG Coal Gasification Company.

Chemical. (S) Naphth(coal), gasification, light.

Use/Production. (S) Site-limited and industrial boiler fuel for steam generation and crude feed stock for physical/chemical extraction of component chemicals. Prod. range: 42,400,000 kg/yr.

Toxicity Data. CHO clonal cytotoxicity: Moderately toxic.

Exposure. Manufacture: dermal and inhalation, a total of 18 workers, up to 8 hrs/da, up to 235 da/yr.

Environmental Release/Disposal. 6 to 770 kg/day released to air.

P 86-1302

Manufacturer. ANG Coal Gasification Company.

Chemical. (S) Tar acids, coal gasification.

Use/Production. (S) Site-limited and industrial boiler fuel for steam generation and crude feed stock for physical/chemical separation/recovery of component chemicals. Prod. range: 60,100,000 kg/yr.

Toxicity Data. CHO clonal cytotoxicity: Moderately toxic.

Exposure. Manufacture: dermal, a total of 18 workers, up to 8 hrs/da, up to 235 da/yr.

Environmental Release/Disposal. 6 to 770 kg/day released to air. Disposal by incineration.

P 86-1303

Manufacturer. ANG Coal Gasification Company.

Chemical. (S) Tar acids, coal gasification, low temperature.

Use/Production. (S) Site-limited boiler fuel for steam generation, commercial fungicide for wood preservative and commercial and consumer crude feed stock for physical/chemical extraction of component chemicals. Prod. range: 170,700,000 kg/yr.

Toxicity Data. Ames test: Non-mutagenic.

Exposure. Manufacture: dermal, a total of 18 workers, up to 8 hrs/da, up to 235 da/yr.

Environmental Release/Disposal. 6 to 1,395 kg/day released to air. Disposal by incineration.

P 86-1304

Manufacturer. Confidential.

Chemical. (G) Dicyclopentadiene-maleic anhydride polymer, alkyl imide.

Use/Production. (G) Varnish for printing inks. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. No release. Disposal by publicly owned treatment work (POTW).

P 86-1305

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Hydrocarbon modified maleinated rosin ester.

Use/Production. (S) Industrial resin component in production of ink vehicle varnishes. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 5 workers, up to 8 hrs/da, up to 365 da/yr.

Environmental Release/Disposal. 0.5 kg/day released to land with 15 kg/day to air. Disposal by sanitary landfill.

P 86-1306

Manufacturer Confidential.

Chemical. (G) Reaction product of polyalkenylacid anhydride with amine.

Use/Production. (G) Emulsifier/dispersant. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

P 86-1307

Manufacturer. Confidential.

Chemical. (G) Reaction product of polyalkenyl acid anhydride with amine.

Use/Production. (G) Emulsifier/dispersant. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

P 86-1308

Manufacturer. Milliken Chemical.

Chemical. (G) Substituted aromatic alcohol.

Use/Production. (G) Polymer additive. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. No data submitted.

P 86-1309

Manufacturer. Confidential.

Chemical. (G) Aromatic amine terminated expoxy adduct.

Use/Production. (G) The curative component of a two component polyurethane elastomer. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-1310

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Phenolic modified rosin ester.

Use/Production. (S) Industrial printing ink. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 5 workers, up to 8 hrs/da, up to 24 da/yr.

Environmental Release/Disposal. 15 kg/day released to air with 500 g/day to land.

P 86-1311

Manufacturer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (G) Ethylene interpolymer.

Use/Production. (G) Molded parts. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-1312

Manufacturer. Disogrin Industries Corporation

Chemical. (S) Polymer of epsilon-caprolactone and polyethylene glycol, 1,3-benzenedicarboxylic acid, polymer with 1,6-hexanediol and nonanedioic acid, 1,1'biphenyl, 4,4'-diisocyanato-3,3'dimethyl, poly(oxy-1,4-butanediyl), alpha-[[(3-isocyanatomethyl carbonyl)amino]carbonyl]-omega-[[[(3-isocyanatomethyl phenyl) amino]carbonyl] oxy], polytetramethylene amide-di-p-aminobenzoate, and 1,4 butane-diol.

Use/Production. (S) Site-limited to be molded on-site into mechanical goods, i.e. machinery components. Prod. range: 17,431 to 26,147 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 1 worker, up to 8 hrs/da, up to 60 da/yr.

Environmental Release/Disposal. No data submitted. Released to control technology.

P 86-1313

Manufacturer. Monsanto Company.
Chemical. (S) 1-(3-chlorophenoxy)-3-phenoxybenzene.
Use/Production. (S) Site-limited chemical intermediate. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: dermal, a total of 23 workers, up to 2 hrs/da, up to 30 da/yr.
Environmental Release/Disposal. Less than 0.0001 to < .01 g/batch released to air. 0.36 kg/batch incinerated.

P 86-1314

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Hydrocarbon resin.
Use/Production. (S) Industrial tackifier component in production of various adhesive systems. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 5 workers, up to 8 hrs/da, up to 57 da/yr.
Environmental Release/Disposal. 6 to 200 kg/day released to land with 15 kg/day to air. Disposal by approved landfill and mechanical filter system.

P 86-1315

Manufacturer. Confidential.
Chemical. (G) Alkylolamide.
Use/Production. (G) Monomer for solution polymers. Prod. range: Confidential.
Toxicity Data. BOD_5 (5 day): 141,667 mg/1; BOD_5 (10 day): 269, 000 mg/1; COD: 474,300 mg/1.
Exposure. Manufacture and processing: dermal, a total of 3 workers, up to 1 hrs/da, up to 114 da/yr.
Environmental Release/Disposal. Less than 100 kg/year released to water and land. Disposal by POTW, approved landfill, navigable waterway and biodegradation.

P 86-1316

Manufacturer. Distritex, Inc.
Chemical. (G) Neutralized acrylic copolymer.
Use/Production. (G) The product is used to control the water based drilling mud rheology.
Toxicity Data. Acute oral: 5,040 mg/kg.
Exposure. Manufacture: dermal, a total of 3 workers, up to 8 hrs/da, up to 60 da/yr.
Environmental Release/Disposal. 0.5 to 1 kg/batch released to water. Disposal by POTW.

P 86-1317

Importer. Davos Chemical Corporation.
Chemical. (S) Pyrophosphoryl chloride.
Use/Import. (S) Site-limited reagent for phosphorylation of organic substances, nucleotides, salcharides and alcohols, and hydrolysis and commercial chlorinating reagent of alcohols or organic acids. Import range: 750 to 3,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 86-1318

Manufacturer. Confidential.
Chemical. (G) (Substituted carbonyl, alkylsulfonylamino)aryl and (dialkylaryl alkylamino and halo) aryl substituted pentanamide.
Use/Production. (G) Contained use in an article. Prod. range: 150,000 to 300,000 kg/yr.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture and processing: dermal and inhalation, a total of 195 workers, up to 8 hrs/da, up to 25 da/yr.
Environmental Release/Disposal. 1 kg/batch released to water. Disposal by incineration and biological treatment.

P 86-1319

Manufacturer. Confidential.
Chemical. (G) (Halo substituted phenyl)substituted arylbutanamide
Use/Production. (G) Contained use in an article. Prod. range: 75,000 to 150,000 kg/yr.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: dermal and inhalation, a total of 150 workers, up to 8 hrs/da, up to 20 da/yr.
Environmental Release/Disposal. 1 kg/batch released to water. Disposal by incineration.

P 86-1320

Manufacturer. Confidential.
Chemical. (G) Substituted alkene-imide co-polymer.
Use/Production. (S) Industrial, commercial and consumer automative parts and appliance housings. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 35 workers, up to 8 hrs/da, up to 120 da/yr.
Environmental Release/Disposal. 1 to 5 kg/batch released to water. Disposal by incineration.

P 86-1321

Manufacturer. Confidential.
Chemical. (G) Drying oil.
Use/Production. (G) Overprint varnish for printing inks potential use as a vehicle in pigmented printing inks. Prod. range: 51,700 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. No release. Disposal by incineration.

Dated: July 22, 1986.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 86-16969 Filed 7-28-86; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-59777; (FRL-3056-8)]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of three such PMNs and provides a summary of each.

DATES: Close of Review Period:

Y 86-192 and 86-193—August 4, 1986.
Y 86-194—August 5, 1986.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential

version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 86–192

Manufacturer. Confidential.
Chemical. (G) Unsaturated polyester.
Use/Production. (S) Coatings. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

Y 86–193

Manufacturer. Confidential.
Chemical. (G) Unsaturated polyester.
Use/Production. (S) Coatings. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

Y 86–194

Importer. Confidential.
Chemical. Polyurethane.
Use/Production. (S) Industrial breathable coating for textile fabrics. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal, a total of 2 workers, up to 8 hrs/da, up to 50 da/yr.
Environmental Release/Disposal. Release to air. Disposal by vapor extraction.

Dated: July 21, 1986.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 86–16970 Filed 7–28–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL HOME LOAN BANK BOARD

[No. 86—754]

Liquidity Requirement

Date: July 23, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board ("Board") has submitted a new information collection request, "Liquidity Requirements" to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Comments

Comments on the information collection request are welcome and should be submitted within 15 days of publication of this notice in the **Federal Register**. Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection request and supporting documentation are obtainable at the Board address given below: Director, Information Service Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, Phone: 202–377–6933.

FOR FURTHER INFORMATION CONTACT: Ben F. Dixon, Office of Examinations and Supervision, (202) 377–6399, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

By the Federal Home Loan Bank Board.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 86–16953 Filed 7–28–86; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, 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.: 202–010270–015.
Title: Gulf-European Freight Association.
Parties:
Compagnie Generale Maritime (CGM)
Lykes Bros. Steamship Co., Inc.
Gulf Container Line (GCL), B.V.
Hapag-Lloyd AG
Sea-Land Service, Inc.
Trans Freight Lines

Synopsis: The proposed amendment would modify the agreement by excluding any member organized under FMC Agreement No. 207–009498, from the provisions requiring that related companies offering common carrier service in the trade comply with the Agreement in respect to the transport by Wallenius Line of set-up packed or unpacked automobiles and trucks in any car carrier vessel operated by Wallenius Line. The parties have requested a shortened review period.

Agreement No.: 202–010656–010.
Title: North-Europe-U.S. Gulf Freight Association.
Parties:
Atlanticargo (South Atlantic Cargo Shipping NV)
Compagnie Generale Maritime (CGM)
Lykes Bros. Steamship Co., Inc.
Gulf Container Line (GCL), B.V.
Hapag-Lloyd AG
Sea-Land Service, Inc.
Trans Freight Lines
United States Lines, Inc.

Synopsis: The proposed amendment would exempt any member of the agreement organized under FMC Agreement No. 207–009498 from the requirement that related companies offering common carrier service in the trade comply with the agreement in respect to the transport by Wallenius Line of certain vehicular and noncontainerizable cargo in any car carrier vessel operated by Wallenius Line to any U.S. port within the scope of the agreement not served by roll-on/roll-off vessels of such member. The parties have requested a shortened review period.

Agreement No.: 217–010703–004.
Title: Hyundai Merchant Marine Co., Ltd./Hanjin Container Lines, Ltd. Space Charter and Sailing Agreement.
Parties:
Hyundai Merchant Marine Co., Ltd. (Hyundai)
Hanjin Container Lines, Ltd. (Hanjin)

Synopsis: The proposed amendment would modify the agreement by (1) revising Hyundai's fleet with the substitution of five new vessels with capacity of 2,266 TEU each; (2) shifting three vessels of Hanjin's on the Korea/Japan route to the Korea/Taiwan/Hong Kong route; and (3) indicating Hyundai vessels will call Taiwan on "Loop One", and Hanjin vessels will call Japan on "Loop Two."

Agreement No.: 224–010975.
Title: Baltimore Terminal Agreement.

Parties:

Maryland Port Administration
Ceres Corporation (Ceres)

Synopsis: The proposed agreement would permit Ceres to lease space at the North Locust Point Marine Terminal in the Port of Baltimore for a period of three years with renewal options for two additional three year terms. The parties have requested a shortened review period.

Agreement No.: 224–010976.

Title: Port of New York and New Jersey Terminal Customs Agreement.

Parties:

International Terminal Operating Co., Inc.
Global Terminal & Container Services
Universal Maritime Service Corporation
Maersk Container Services Co., Inc.
Maher Terminals, Inc.
Staten Island Operating, Inc.

Synopsis: The proposed agreement would permit the parties to establish terminal rates, charges, classifications, rules, regulations and practices applicable to the inspection of cargoes as required by U.S. Customs Service. It would also permit any party to withdraw from the agreement or take independent action upon giving thirty (30) days' written notice to the other parties. The parties have requested a shortened review period.

Dated: July 24, 1986.

By Order of the Federal Maritime Commission

Joseph C. Polking,

Secretary.

[FR Doc. 86–16984 Filed 7–28–86; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Applications To Engage de Novo in Permissible Nonbanking Activities; The Chattahoochee Financial Corp. et al.

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 18, 1986.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *The Chattahoochee Financial Corporation*, Marietta, Georgia; to engage *de novo* through its subsidiary, Chattachoochee Mortgage Corporation, Marietta, Georgia, in making, acquiring, and servicing of loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *F & M Financial Services Corporation*, Menomonee Falls, Wisconsin; to engage *de novo* through its subsidiary, F & M Trust Company, Inc., Menomonee Falls, Wisconsin, in all of the functions and activities authorized under Wisconsin law for a trust company bank pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 23, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–16922 Filed 7–28–86; 8:45 am]

BILLING CODE 6210–01–M

Formation of, Acquisition by, or Merger of Bank Holding Companies; Meridian Bancorp, Inc.

The company listed in this notice has applied for Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding that application must be received not later than August 20, 1986.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Meridian Bancorp, Inc.*, Reading, Pennsylvania; to acquire 100 percent of the voting shares of The First National Bank of Pike County, Milford, Pennsylvania.

Board of Governors of the Federal Reserve System, July 23, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–16923 Filed 7–28–86; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 85N–0083 (DESI 5731); Formerly Docket No. FDC–D–696]

Deprol Tablets; Hearing

Correction

In FR Doc. 86–12621 beginning on page 20551 in the issue of Thursday, June 5, 1986, in the DATES caption on that page,

the date of the prehearing conference should read "September 24, 1986."

BILLING CODE 1515-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-060-06-4212-14]

Realty Action; Competitive Sale of Public Lands is Goshen County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Competitive sale of land parcels in Goshen County, Wyoming.

SUMMARY: The Bureau of Land Management (BLM) has determined that the lands described below are suitable for public sale and will accept bids on these lands. BLM is required to receive fair market value for the land sold and any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest on the land for sale if the sale would not be consistent with FLPMA or other applicable law. This disposal action is consistent with the Platte River Resource Area's Resource Management Plan. These lands were never classified pursuant to the Classification and Multiple Use Act.

Detailed bidding instructions and other sale details are available on request at BLM, Platte River Resource Area Office, 111 South Wolcott, Room 111, Casper, Wyoming 82601 (phone (307) 261–5191). Failure to submit a bid in accordance with these detailed instructions may result in rejection of the bid.

Parcels

Serial No.	Legal description	Acreage	Appraised value
W-88726	T. 23 N., R. 64 W., 6th P.M.; Sec. 31: SESE	40.00	$1,700.00
W-88741	T. 23 N., R. 62 W., 6th P.M.; Sec. 4: lot 3; SEWN, NESW, NWSE	161.11	12,325.00

The lands described are hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action.

The sale on September 24, 1986 will be conducted by competitive bidding, and each parcel will be offered by a sealed bid process. If any parcels fail to sell, the land will be reoffered for sale under a competitive bidding process. Reappraisals of the parcels will be made periodically to reflect the current market value. If the value of the parcel(s) change(s), it/they will be published and the land will remain open for competitive bidding. A more detailed description of the competitive bidding process is available from the Platte River Resource Area office.

A bid will also constitute an application for conveyance of those mineral interests offered for conveyance in the sale. The mineral interests being offered have no known mineral values. At the time of the sale, the purchaser will be required to pay a $50.00 nonreturnable filing fee.

The patent for all parcels will include reservations for ditches and canals, coal, oil and gas to the United States. All parcels will be subject to existing oil and gas leases. Parcel W–88741 is subject to William A. Garrelts grazing use and is subject to rights-of-way W–64392 and County Road 114/211. A detailed description of these reservations is available from the Platte River Resource Area office.

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Casper District Office, 951 North Poplar, Casper, Wyoming 82601. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become final.

Dated: July 21, 1986.

James W. Monroe,

Casper District Manager.

[FR Doc. 86–16931 Filed 7–28–86; 8:45 am]

BILLING CODE 4310-22-M

[WY-060-06-4212-14]

Realty Action; Direct Sale of Public Lands in Platte and Goshen Counties, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Direct sale of land parcels in Platte and Goshen Counties, Wyoming.

SUMMARY: The Bureau of Land Management (BLM) has determined that the lands described below are suitable for public sale. BLM is required to receive fair market value for the land sold and any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest on the land for sale if the sale would not be consistent with FLPMA or other applicable law. This disposal action is consistent with Platte River Area's Resource Management Plan. These lands were never classified pursuant to the Classification and Multiple Use Act.

Detailed bidding instructions and other sale details are available on request at BLM, Platte River Resource Area Office, 111 South Wolcott, Room 111, Casper, Wyoming 82601 (phone (307) 261–5191). Failure to submit a bid in accordance with these detailed instructions may result in rejection of the bid.

Parcels

Serial No.	Legal description	Acreage	Appraised value
W-88721	T. 23 N., R. 65 W., 6th P.M.; Sec. 8: NENE	40.00	$3,400.00
W-88723	T. 22 N., R. 63 W., 6th P.M.; Sec. 29: SESE	40.00	3,060.00
W-88725	T. 23 N., R. 64 W., 6th P.M.; Sec. 30: lot 2	40.91	1,700.00
W-88730	T. 23 N., R. 65 W., 6th P.M.; Sec. 27: NESE	40.00	2,550.00
W-88733	T. 24 N., R. 65 W., 6th P.M.; Sec. 24: N½SW	80.00	850.00
W-88735	T. 24 N., R. 65 W., 6th P.M.; Sec. 26: SENW	40.00	500.00

The lands described are hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action.

The sale on September 24, 1986 will be conducted by direct sale to the adjoining landowner. If any parcels fail to sell, the land will be reoffered for sale under a competitive bidding process. Reappraisals of the parcels will be made periodically to reflect the current market value. If the value of the parcel(s) change(s), it/they will be published and the land will remain open for competitive bidding. A more detailed description of the competitive bidding process is available from the Platte River Resource Area office.

A bid will also constitute an application for conveyance of those mineral interests offered for conveyance in the sale. The mineral interests being offered have no known mineral values. At the time of the sale, the purchaser

will be required to pay a $50.00 nonreturnable filing fee.

The patent for all parcels will include reservations for ditches and canals, coal, oil and gas to the United States. All parcels will be subject to existing oil and gas leases. A detailed description of these reservations is available from the Platte River Resource Area office.

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Casper District Office, 951 North Poplar, Casper, Wyoming 82601. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become final.

Dated: July 21, 1986.

James W. Monroe,

Casper District Manager.

[FR Doc. 86-16932 Filed 7-28-86; 8:45 am]

BILLING CODE 4310-22-M

[WY-060-06-4212-14]

Realty Action Modified Competitive Sale of Public Lands in Platte and Goshen Counties, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Modified competitive sale of land parcels in Platte and Goshen Counties, Wyoming.

SUMMARY: The Bureau of Land Management (BLM) has determined that the lands described below are suitable for public sale and will accept bids on these lands. BLM is required to receive fair market value for the land sold and any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest on the land for sale if the sale would not be consistent with FLPMA or other applicable law. This disposal action is consistent with the Platte River Resource Area's Resource Management Plan. These lands were never classified pursuant to the Classification and Multiple Use Act.

Detailed bidding instructions and other sale details are available on request at the BLM, Platte River Resource Area Office, 111 South Wolcott, Room 111, Casper, Wyoming 82601 (phone (307) 261-5191). Failure to submit a bid in accordance with these detailed instructions may result in rejection of the bid.

Parcels

Serial No.	Legal description	Acreage	Appraised value
W-88720	T. 22 N., R. 65 W., 6th P.M.; Sec. 4: NW¼SE¼	40.00	$2,040.00
W-88724	T. 23 N., R. 64 W., 6th P.M.; Sec. 29: SW¼SW¼	40.00	8,000.00
W-88731	T. 22 N., R. 61 W., 6th P.M.; Sec. 7: SE¼SE¼	40.00	4,250.00
W-88732	T. 22 N., R. 63 W., 6th P.M.; Sec. 7: SE¼SE¼, Sec. 18: NE¼NE¼	80.00	1,275.00

The lands described are hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action.

The sale on September 24, 1986 will be conducted by modified competitive bidding, and each parcel will be offered by a sealed bid process to adjoining landowners. The apparent high bidder will be required to submit evidence of adjoining landownership before the high bid can be accepted or terminated. If any parcels fail to sell, the land will be reoffered for sale under a competitive bidding process. Reappraisals of the parcels willl be made periodically to reflect the current market value. If the value of the parcel(s) change(s), it/they will be published and the land will remain open for competitive bidding. A more detailed description of the competitive bidding process is available from the Platte River Resource Area office.

A bid will also constitute an application for conveyance of those mineral interests offered for conveyance in the sale. The mineral interests being offered have no known mineral values. At the time of the sale, the purchaser will be required to pay a $50.00 nonreturnable filing fee.

The patent for all parcels will include reservations for ditches and canals, coal, oil and gas to the United States. All parcels will be subject to existing oil and gas leases. Parcel W-88731 is subject to right-of-way W-64392. A detailed description of these reservations is available from the above address.

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Casper District Office, 951 North Poplar, Casper, Wyoming 82601. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become final.

Dated: July 21, 1986.

James W. Monroe,

Casper District Manager.

[FR Doc. 86-16933 Filed 7-28-86; 8:45 am]

BILLING CODE 4310-22-M

[Group 863]

California; Filing of Plat of Survey

July 17, 1986.

1. These plats of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

San Bernardino Meridian, Riverside County

T. 3 S., R. 3 E.
T. 2 S., R. 3 E.

2. These plats, representing the dependent resurvey of a portion of the subdivisional lines, the retracement of a portion of the center line of the Colorado River Aqueduct, the survey of the subdivision of section 2, and the metes and bounds survey of a portion of the Metropolitan Water District right-of-way boundaries in section 2, Township 3 South, Range 3 East, San Bernardino Meridian, California, and a dependent resurvey of a portion of the south boundary and a portion of the subdivisional lines, and a survey of the subdivision of section 35, Township 2 South, Range 3 East, San Bernardino Meridian, California, under Group No. 863, was accepted June 11, 1986.

3. These plats will immediately become the basic record of describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

4. These plats were executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room #-2841, Sacramento, California 95825.

Lawrence A. Weitzel,

Acting Chief, Records and Information Section.

[FR Doc. 86-16732 Filed 7-28-86; 8:45 am]

BILLING CODE 4310-40-M

New Mexico; Filing of Plat of Survey

July 21, 1986.

The Supplemental plat of survey described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on July 21, 1986.

The supplemental plat showing Lot 18 and the acreage contained therein in section 11, Township 14 North, Range 3 West, of the New Mexico Principal Meridian, New Mexico, was approved July 3, 1986, under Group 807.

This survey was requested by the Area Director, Bureau of Indian Affairs, Albuquerque Area Office, Albuquerque, New Mexico.

The plat will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Gary S. Speight,

Chief, Branch of Cadastral Survey.

[FR Doc. 86-16934 Filed 7-28-86; 8:45 am]

BILLING CODE 4310-FB-M

New Mexico; Filing of Plat of Survey

July 21, 1986.

The plats of surveys described below were officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on July 21, 1986.

A dependent resurvey of the west boundary, a portion of the subdivisional lines and subdivision of section 19, Township 12 South, Range 4 West and the dependent resurvey of a portion of the subdivisional lines and subdivision of section 24, Township 12 South, Range 5 West, New Mexico Principal Meridian, New Mexico, under Group 858.

This survey was requested by the District Manager, Las Cruces District, New Mexico.

The plat will be in the open files of the the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plats may be obtained from that office upon payment of $2.50 per sheet.

Gary S. Speight,

Chief, Branch of Cadastral Survey.

[FR Doc. 86-16935 Filed 7-28-86; 8:45 am]

BILLING CODE 4310-FB-M

New Mexico; Filing of Plat of Survey

July 21, 1986

The plat of survey described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on July 21, 1986.

A survey representing the dependent resurvey of portions of the south and west boundaries, a portion of the subdivisional lines, and the subdivision of sections 20, 29, 30, 31, and 32, the survey of lots 6 and 9 in section 32, a portion of the 1642 feet above mean sea level elevation line in sections 20, 29, 30, 31, and 32, T. 19 N., R. 13 W., Indian Meridian, Oklahoma, under Group 38 OK.

This survey was requested by the Acting Area Director, Bureau of Indian Affairs, Anadarko, Oklahoma.

The plat will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Gary S. Speight,

Chief, Branch of Cadastral Survey.

[FR Doc. 86-16936 Filed 7-28-86; 8:45 am]

BILLING CODE 4310-FB-M

Fish and Wildlife Service

Receipt of Endangered Species Permit Applications

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Department of Energy, Savannah River Operations Office, Aiken, SC—PRT 678364

The applicant requests to amend an existing permit to include taking of up to 30 American alligator (*Alligator mississippiensis*) eggs from each nest site for contaminant analysis and scientific research.

Applicant: San Diego Zoo, San Diego, CA—PRT 708799

The applicant requests a permit to import a captive-born male marsh deer (*Blastocerus dichotomus*) from the Berlin Zoo. The animal will be used to help establish a captive population and eventual reproduction.

Applicant: San Diego Zoo, San Diego, CA—PRT 709833

The applicant requests a permit to import two captive-born female L'Hoest's monkeys (*Cercopithecus lhoesti*) from Stanley Park Zoo, Vancouver, Canada. The animals will be incorporated into a long term breeding project.

Applicant: San Diego Zoo, San Diego, CA—PRT 709562

The applicant requests a permit to re-export a male Siberian tiger (*Panthera tigris altaica*) to the Calgary Zoo, Canada. The tiger species survival plan coordinator does not object to re-export of this animal from the U.S. and subsequent loss of its genetic contribution to the U.S. tiger population.

Applicant: National Zoological Park, Washington, DC—PRT 708225

The applicant requests a permit to import up to 12 Komodo monitors (*Varanus komodoensis*) from existing captive populations and from the wild in Indonesia. These animals will be used in programs to educate the public concerning the species' conservation needs and for propagation.

Applicant: New York Zoological Society, Bronx, NY—PRT 709493

The applicant requests a permit to import one male lowland gorilla (*Gorilla gorilla*) taken from the wild in 1974 and held in captivity at Toronto Metropolitan Zoo, Toronto, Canada. Applicant indicates the animal will be incorporated into the coordinated species survival program, for breeding gorillas.

Applicant: Yerkes Regional Primate Center, Emory University, Atlanta, GA—PRT 659233

The applicant requests an amendment to their existing permit to take (harass) endangered and threatened species to include the white-collared mangabey (*Cercocebus torquatus*). Activities identified are unspecified scientific biomedical and behavorial research and the export of unspecified blood and tissue samples.

Applicant: Gus Vogeler, Elko, NV—PRT 709537

The applicant requests a permit to import a trophy of a bontebok (*Damaliscus dorcas Dorcas*) which was a member of a captive herd maintained by J. Pohl, Riebeek East, Republic of South Africa. The herd is maintained for the purpose of sport hunting. The applicant contends that permission to import this trophy will enhance the likelihood of the continued maintenance of this herd and thereby enhance the likelihood of the survivial of the species.

Applicant: International Animal Exchange, Ferndale, MI—PRT 709603

The applicant requests a permit to purchase in foreign commerce two captive-born Asian elephants (*Elehoas maximus*) from the Timber Corporation, Rangoon, Burma, to sell in foreign commerce and ship to the Taipei Municipal Zoo in Taipei, Taiwan. The applicant contends that these animals will be used in unspecified conservation

education activities and thereby will enhance the survival of the species. Taiwan is not a party to the "Convention on International Trade in Endangered Species of Wild Fauna and Flora."

Applicant: International Animal Exchange, Ferndale, MI—PRT 709607

The applicant requests a permit to purchase in foreign commerce two pairs of captive-born cheetahs (*Acinonyx jubatus*) from Greystone Wild Park in Cape Town, South Africa, to sell in foreign commerce and ship to the Taipei Municipal Zoo in Taipei, Taiwan. The applicant contends that these cheetahs will be used in unspecified conservation education activities and thereby will enhance the survival of the species. Taiwan is not a party to the "Convention on International Trade in Endangered Species of Wild Fauna and Flora."

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 a.m. to 4:15 p.m.), Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: July 24, 1986.

Earl B. Baysinger,

Chief, Federal Wildlife Permit Office.

[FR Doc. 86-1700 Filed 7-28-86; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Endangered Species Permit Applications

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973 as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Mesa Garden, Belen, NM—PRT-678845

The applicant requests a permit to export and conduct interstate commerce with artificially propagated specimens of Lloyd's hedgehog cactus (*Echinocereus lloydii*) and Arizona hedgehog cactus (*Echinocereus triglochidiatus* v. *arizonicus*). This will serve to encourage artificial propagation and decrease the need for take of these species from the wild.

Applicant: James E. Deacon, University of Nevada, Las Vegas, NV—PRT-709821

The applicant requests a permit to collect 20 Devil's Hole pupfish (*Cyprinodon diabolis*), 10 males, 10 females, from the population established at the Amargosa Pupfish station. The objective of this take is to establish a breeding population in a laboratory.

Applicant: Franz Czeisler, Sarasota, FL 33581—PRT-709817

The applicant requests a permit to purchase one female Asian elephant (*Elephas maximus*), that is presently in captivity, for conservation education.

Applicant: Greater Baton Rouge Zoo, Baker, LA—PRT-709845

The applicant requests a permit to export one female captive born margay (*Felis wiedii*) to the Scottish National Zoological Park, Edinburgh, Scotland, for the purpose of captive breeding and public display.

Applicant: Henry Doorly Zoo, Omaha, NE—PRT—709858

The applicant requests a permit to export one female captive born jaguar (*Panthera onca*) to the Metro Toronto Zoo, West Hill, Ontario, Canada, for the purpose of captive breeding and public display.

Applicant: Robert B. Moore, New Baltimore, MI—PRT-709866 & 709862

The applicant requests a permit to purchase three female Asian elephants (*Elphas maximus*) from Joyce Vidbel, Windham, NY, to export and reimport for the purposes of conservation education and possible breeding.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Date: July 23, 1986.

Earl B. Baysinger,

Chief Federal Wildlife Permit Office.

[FR Doc. 86-17001 Filed 7-28-86; 8:45 am]

BILLING CODE 4310-5-M

Finding of No Significant Impact; Proposed Master Plan for San Bernardino National Wildlife Refuge, Arizona

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that, based upon a review of the Environmental Assessment (EA) prepared on the proposed Master Plan for San Bernardino National Wildlife Refuge, the U.S. Fish and Wildlife Service (FWS) has determined that no significant environmental impact will occur as a result of the implementation of that plan. The management goals set forth by this plan have been designed to optimize aquatic habitats for six species of endangered, threatened and proposed Rio Yaqui fishes. The plan also addresses public use requirements, enhancement of terrestrial habitats to benefit resident and migrant wildlife species, and land management practices necessary to restore former agricultural and pastoral lands to more natural conditions. Three alternatives were considered and the preferred alternative of developing existing waters with limited land management and moderate public use developments was not found to constitute a "major federal action which would significantly affect the quality of the human environment" within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969.

DATES: Written comments are requested by: (30 days from publication).

ADDRESS: Comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103.

FOR FURTHER INFORMATION CONTACT: Minda Stillings, Refuge Planner, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103 (telephone 505/766-8041 or FTS 474-8041).

Individuals wishing copies of the EA should immediately contact the above individual. Copies have already been sent to agencies and individuals who participated in the planning process and to all others who have already requested copies.

Coordination

Other Government agencies and several members of the general public contributed to the planning and evaluation of the proposal.

All agencies and individuals are urged to provide comments and suggestions for improving this plan as soon as possible. The FWS has determined that

this document does not contain a major proposal requiring preparation of an economic impact analysis under Executive Order (E.O.) 11821, as amended by E.O. 11949, and OMB Circular A–107.

Dated: July 17, 1986.

Michael J. Spear,

Regional Director.

[FR Doc. 86–16930 Filed 7–28–86; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Serivce before July 19, 1986. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by August 13,1986.

Carol D. Shull,

Chief of Registration, National Register.

HAWAII

Hawaii County

Kamuela vicinity, *Brown, Francis H. Ii, House,* Keawaiki Bay

Honolulu County

Honolulu, *Coke, James L., House,* 3649 Nuuanu Pali Dr.
Honolulu, *Cooke, Clarence H., House,* 3860 Old Pali Rd.
Honolulu, *Eyman, Jessie-Judson, Wilma, House,* 3114 Paty Dr.
Honolulu, *Linn, R.N., House,* 2013 Kakela Dr.

Maui County

Wailuku, *Wailuku Civic Center Historic District,* S. High St. between Kaohu and Wells Sts.

INDIANA

Cass County

Logansport vicinity, *Barnett, Thompson, House,* IN 25

Warren County

Carbondale, *Brier, Andrew, House,* Old Hwy. 41

IOWA

Dubuque County

Dubuque, *Holland, Ora, House,* 1296 Mt. Pleasant St.

Jefferson County

Fairfield, *Old Settlers' Association Park and Bonnifield, Rhodham, House,* B St.

NEVADA

Carson City (Independent City)

Carson City, *Cavell, Dr. William Henry, House* 402 W. Robinson St.

NEW JERSEY

Bergen County

Saddle River, *Ackerman, Garret Augustus, House (Saddle River MRA),* 212 E. Saddle River Rd.
Saddle River, *Ackerman, Garret and Maria, House (Saddle River MRA),* 150 Saddle River Rd.
Saddle River, *Ackerman—Dewsnap, House (Saddle River MRA),* 176 E. Saddle River Rd.
Saddle River, *Ackerman—Smith House (Saddle River MRA),* 171 E. Allendale Rd.
Saddle River, *Carlock, J.J., House (Saddle River MRA),* 2 Chesnut Ridge Rd.
Saddle River, *Evangelical Lutheran Church of Saddle River and Ramapough Building (Saddle River MRA),* 96 E. Allendale Rd.
Saddle River, *Foringer, Alonzo, House and Studio (Saddle River MRA),* 107 and 107B E. Saddle River Rd.
Saddle River, *Jefferson, Joe, Clubhouse (Saddle River MRA),* 29 E. Saddle River Rd.
Saddle River, *O'Blenis House (Saddle River MRA),* 220 E. Saddle River Rd.
Saddle River, *Osborn, Garret K., House and Barn (Saddle River MRA),* 88 and 90 E. Allendale Rd.
Saddle River, *Roy, Dr. E.G., House (Saddle River MRA),* 229 W. Saddle River Rd.
Saddle River, *Saddle River Center (Saddle River MRA),* Along W. Saddle River Rd. at intersection with E. Allendale Rd.
Saddle River, *Stillwell—Preston House (Saddle River MRA),* 9 E. Saddle River Rd.
Saddle River, *Wandell, B.C. House—The Cedars (Saddle River MRA),* 223, 224, and 214 W. Saddle River Rd.
Saddle River, *Wandell, F.L., Estate and Ward Factory Site (Saddle River MRA), 225–261 E. Saddle River Rd.*
Saddle River, *Ware, Dr. John Christie, Bungalow (Saddle River MRA),* 246 E. Saddle River Rd.

NEW YORK

Broome County

Binghamton, *Whitmore, John T., House,* 111 Murray St.

Greene County

Prattsville, *Pratt, Zadock, House,* Main St.

Tompkins County

Ithaca, *East Hill Historic District,* Roughly bounded by Cascadilla Creek, Eddy St., Six Mile Creek, and Aurora St.

NORTH CAROLINA

Craven County

Trent Woods, *Sloan, Dr. Earl S., House,* 3701 Country Club Rd.

Grantville County

Bullock vicinity, *Red Hill,* NC 1501

Hyde County

Swindell Fork, *Swindell, Albin B., House and Store,* US 264

Johnston County

Smithfield, *Hood Brothers Building,* 100–104 S. Third St.

Lenoir County

LaGrange, *LaGrange Presbyterian Church,* 201 S. Caswell St.

Mecklenburg County

Charlotte, *Carolina Theater,* 224–232 N. Tryon St.

Nash County

Spring Hope, *Brantley, Dr. Hassell, House,* 301 Branch St.

Orange County

Carrbor, *Thomas F. Lloyd Historic District,* Roughly bounded by E. Carr St., Maple Ave. and S.. Greensboro St.

Wake County

Knightdale, *Walnut Hill Cotton Gin,* NC 2509

Wilson County

Black Creek vicinity, *Black Creek Rural Historic District (Wilson MRA), Along NC 1628*
Stantonburg vicinity, *Evansdale Rural Historic District (Wilson MRA),* Along NC 1602 roughly between NC 1622 and NC 1626
Wilson vicinity, *Upper Town Creek Rural Historic District (Wilson MRA), Roughly bounded by NC 1003, NC 1411, NC 1414, and Town Creek (also in Edgecombe County)*
Wilson vicinity, *Woodard Family Rural Historic District (Wilson MRA), Along US 264*

OHIO

Cuyahoga County

Cleveland (also in Cleveland Heights), *Forest Hill Historic District,* Roughly bounded by Glynn Rd., Northdale and Mt. Vernon Blvds., Wyatt and Brewster Rds.
Cleveland Heights, *Cleveland Heights City Hall,* 2953 Mayfield Rd.

Hamilton County

Wyoming, *Baldwin, Joseph W., House (Wyoming MRA),* 217 Springfield Pike
Wyoming, *Bromwell, Jacob, House (Wyoming MRA),* 69 Mt. Pleasant Ave.
Wyoming, *Fay, Charles, House (Wyoming MRA),* 325 Reily Rd.
Wyoming, *Hess, Elmer, House (Wyoming MRA),* 333 Springfield Pike
Wyoming, *Kirby, Josiah, House (Wyoming MRA),* 65 Oliver Rd.
Wyoming, *Luethstrom—Hirin House (Wyoming MRA),* 30 Reily Rd.
Wyoming, *Moore, Charles H., House (Wyoming MRA),* 749 Stout Ave.
Wyoming, *Pabodie, Professor William, House (Wyoming MRA),* 731 Brooks Ave.
Wyoming, *Pollock, John C., House (Wyoming MRA),* 88 Reily Rd.
Wyoming, *Reily, Robert, House (Wyoming MRA),* 629 Liddle La.
Wyoming, *Retszch, W. C., House (Wyoming MRA),* 129 Springfield Pike
Wyoming, *Riddle—Friend House (Wyoming MRA),* 507 Springfield Pike

Wyoming, *Rychen, John, House (Wyoming MRA)*, 224 W. Hill La.
Wyoming, *Sawyer, Louis, House (Wyoming MRA)*, 315 Reily Rd.
Wyoming, *Stearns, Edward R., House (Wyoming MRA)*, 333 Oliver Rd.
Wyoming, *Stearns, William, House (Wyoming MRA)*, 320 Reily Rd.
Wyoming, *Tangeman, John House (Wyoming MRA)*, 550 Larchmont
Wyoming, *Village Historic District (Wyoming MRA)*, Roughly bounded by Wentworth Ave., B & O RR Tracks, E. Mill Ave., and Springfield Pike
Wyoming, *Woodruff, Charles, House (Wyoming MRA)*, 411 Springfield Pike

Pickaway County

Circleville vicinity, *Gill—Morris Farm*, 10104 OH 56

Ross County

Baum, Howard, Site (33 Ro 270)

TEXAS

Austin County

Bellville, *Old Masonic Hall*, 15 N. Masonic St.

[FR Doc. 86-16989 Filed 7-28-86; 8:45 am]

BILLING CODE 4310-70-M

Golden Gate National Recreation Area Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area Advisory Commission will be held at 7:30 p.m. (PDT) on Thursday, August 14, 1986 at Fort Mason, San Francisco, California.

The Advisory Commission was established by Pub. L. 92-589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Services system in Marin, San Francisco and other San Mateo Counties.

Members of the Commission are as follows:

Mr. Frank Boerger, Chairman
Ms. Amy Meyer, Vice Chair
Mr. Ernest Ayala
Mr. Richard Bartke
Ms. Margot Patterson Doss
Mr. Jerry Friedman
Ms. Daphne Greene
Mr. Burr Heneman
Mr. John Mitchell
Ms. Gimmy Park Li
Mr. Merritt Robinson
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams

The main agenda items include a presentation of two draft additional use alternatives for the Haslett Warehouse Historic Structures Report. These alternatives were drafted in response to the public comments received at the public hearing on April 9, 1986. Also on the agenda will be a presentation of a study sponsored by the American Society of Landscape Architects (ASLA) providing a visibility analysis, recreation analysis, and maps on a workable scale for the Presidio of San Francisco. The project is a part of a program in which ASLA leaves behind a "legacy" to each city hosting its national convention—this year being held in San Francisco.

The meeting is open to the public. Any member of the public may file with the Commission a written statement concerning matters to be discussed.

Persons wishing to receive further information on this meeting or who wish to submit written statements may contact General Superintendent Brian O'Neill, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Minutes for the meeting will be available for public inspection by September 15, 1986 in the office of the General Superintendent, Golden Gate National Recreation Area, Fort Mason, San Francisco, California 94123.

Dated: July 18, 1986.

John Cheng,

Acting Regional Director, Western Region.

[FR Doc. 86-16990 Filed 7-28-86; 8:45 am]

BILLING CODE 9310-70-M

Bureau of Reclamation

Klamath Project, Oregon-California; Realty Action Competitive Sale of Public Land

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The following described land has been identified for disposal under the Act of February 2, 1911 (36 Stat. 895, 43 U.S.C. 374), at not less than the appraised fair market value. The Bureau of Reclamation will accept bids on the lands described below and will reject any bids for less than the appraised values:

DATE: July 30, 1986.

FOR FURTHER INFORMATION CONTACT: James Bryant, Repayment Specialist at Klamath Project Office, 6600 Washburn Way, Klamath Falls, OR 97603, telephone (503) 883-6937.

SUPPLEMENTARY INFORMATION: .

Tract K-10-103 (84-1)

A tract of land in the northeast quarter at the northeast quarter (NE¼ NE¼) of Section Thirty-five (35), Township Forty (40) South, Range Ten (10) East, Willamette Meridian, County of Klamath, State of Oregon, containing an area of 3.1 acres, more or less.

Tract K-19-25 (84-4)

A tract of land being a portion of Lot 6 of Section Fourteen (14) and Lot 1 of Section Fifteen (15), Township Thirty-nine (39) South, Range Ten (10) East, Willamette Meridian, County of Klamath, State of Oregon, according to the official plat thereof, containing an area of 5.56 acres, more or less.

Said above tracts shall be subject to easements or rights-of-way existing or of record in favor of the public as to third parties.

The tracts will be offered for sale through the competitive bidding process. A sealed bid sale will be held at 6600 Washburn Way, Klamath Falls, OR 97603 on September 30, 1986 at 10:00 a.m., at which time the sealed bids will be opened. Sealed bids will be accepted at the Bureau of Reclamation, Klamath Project Office, 6600 Washburn Way, Klamath Falls, OR 97603 until close of business on September 29, 1986. Reclamation may accept or reject any and all offers, or withdraw any land or interest in land for sale, if, in the opinion of the Authorized Officer, consummation of the sale would not be fully consistent with the Act of February 2, 1911 (36 Stat. 895, 43 U.S.C. 374), or other applicable laws. In order to promote full and free competition, a certificate of independent price determination must accompany each sealed bid which is included in the bid package. This can be obtained from the Klamath Project office.

Both tracts are within the County of Klamath, State of Oregon. Tract K-10-103 (84-1) has the potential for rural residential homesite and Tract K-19-25 (84-4) has the potential for grazing land. The sales are consistent with the Bureau of Reclamation land use planning and it was determined that the public interest would best be served by offering these lands for sale.

Resource clearances consistent with the National Environmental Policy Act requirements have been completed and approved. Categorical Exclusion checklists, and Land Reports have been completed and approved, and are available for public review at the Bureau of Reclamation, Klamath Project Office 6600 Washburn Way, Klamath Falls, OR 97603.

The quitclaim deeds issued for the tracts sold will be subject to easements or rights-of-way existing or of record in favor of the public or third parties.

For a period of 60 days from the date of this notice, interested parties may submit comments to the Regional Director, Mid-Pacific Region, Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825. Any adverse comments will be evaluated by the Regional Director who may vacate or modify this Realty Action and issue a final determination. In the absence of any action by the Regional Director, this Realty Action will become the final determination of the Department of the Interior.

Dated: July 14, 1986.

Neil W. Schild,

Acting Regional Director, Mid-Pacific Region, Bureau of Reclamation.

[FR Doc. 86-16968 Filed 7-28-86; 8:45 am]

BILLING CODE 4310-09-M

Office of Surface Mining Reclamation and Enforcement

Public Meeting on Abandoned Mine Land Reclamation Through Remining

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Notice of public meeting.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement will conduct a Public Meeting on the following topic: Abandoned Mine Land Reclamation through Remining. All interested persons are invited to attend the meeting and/or submit written comments to OSMRE in advance. Comments may also be submitted within one week after the close of the meeting.

DATES: The meeting will be held on September 23, 1986, starting at 9:00 a.m. and continuing until 4:00 p.m. or until all persons wishing to speak are provided an opportunity to do so. Persons wishing to submit comments following the meeting should do so no later than September 30, 1986. Comments received after that date will not necessarily be considered by OSMRE in formulating any programmatic or regulatory revisions relevant to the topics discussed at the meeting.

ADDRESSES: The conference will be held at the Main Interior Building, Room #8068, 19th and C Streets NW., Washington, DC 20240.

Written comments or statements should be sent to Mr. Raymond E. Aufmuth, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Room 214, Washington, DC 20240; Telephone: (202) 343-5843.

Persons wishing to make a formal presentation should contact Mr. Aufmuth at the address or telephone number above.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond E. Aufmuth, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Room 214, Washington, DC 20240, Telephone: (202) 343-5843.

SUPPLEMENTARY INFORMATION: The Office of Surface Mining Reclamation and Enforcement will conduct a meeting on aspects of OSMRE's Proposed Remining regulatory program under the Surface Mining Control and Reclamation Act. The purpose of the meeting is to have an exchange of views on the following topic: Abandoned Mine land reclamation through Remining. All interested persons are invited to attend the meeting and provide comments on and/or submit written comments in advance to OSMRE.

At the beginning on the meeting, OSMRE staff will provide an overview of existing policies and procedures relevant to the topic to be discussed and outline the concerns or issues related to OSMRE's implementation of those policies procedures. All persons who have indicated a desire to present views on the topic will be given an opportunity to address the meeting attendees. Each speaker will have fifteen minutes to present his or her views. After all persons wishing to speak have addressed the attendees, there will be an opportunity for open discussion.

Attendees are encouraged to submit any additional comments addressing the views presented by other participants no later than September 30, 1986. OSMRE requests that all recommendations submitted be sufficiently specific to serve as the basis for OSMRE guidelines, procedures or proposed rules, if adopted by the Director. A transcript of the meeting and all written comments submitted prior to or following the meeting will be filed in the OSMRE administrative record and made available to the public.

OSMRE will consider the recommendations and comments presented by the attendees in formulating its decisions with respect to implementation of remining initiatives.

Dated: July 23, 1986.

Brent Wahlquist,

Assistant Director, Program Operations.

[FR Doc. 86-16994 Filed 7-28-86; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

[Docket No. MC-F-17030]

Burlington Northern, Inc. and Burlington Northern Motor Carriers, Inc.; Control Exemption; Stoops Express, Inc., Wingate Trucking Co., Inc., and Taylor-Maid Transportation, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 11343(e), the Commission exempts from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, the acquisition of control by Burlington Northern, Inc. (BN) and Burlington Northern Motor Carriers, Inc. (BNMC), of Stoops Express, Inc., Wingate Trucking Company, Inc. (Wingate), and Taylor-Maid Transportation, Inc. (Taylor-Maid), and the merger of Wingate and Taylor-Maid.

DATE: This exemption will be effective on August 27, 1986.

FOR FURTHER INFORMATION CONTACT: Donald T. Shaw, Jr., (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to: T.S. InfoSystems, Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: July 18, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, and Commissioner Lamboley concurred in part and dissented in part with separate expressions.

Noreta R. McGee

Secretary

[FR Doc. 86-16954 Filed 7-28-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-1 (Sub-No. 177)]

Chicago and North Western Transportation Company; Abandonment and Discontinuance of Service; Fond du Lac County, WI; Findings

The Commission has found that the public convenience and necessity permit Chicago and North Western Transportation Company to: (1) Abandon its 18.4-mile line of railroad between Fond du Lac (milepost 0.7) and Ripon (milepost 19.1); and (2) discontinue service over its 1.4-mile line of railroad between mileposts 19.1 and

20.5 at Ripon in Fond du Lac County, WI.

A certificate will be issued authorizing this abandonment and discontinuance unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Noreta R. McGee,

Secretary.

[FR Doc. 86–17087 Filed 7–28–86; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program; Unemployment Insurance Program Letter on Implementing Income and Eligibility Verification System

Section 2651 of the Deficit Reduction Act of 1984, Pub. L. 98–369 (DEFRA), amended Title XI of the Social Security Act to establish an income and eligibility verification system for exchange of information among State agencies administering programs of unemployment compensation, AFDC, Medicaid, Food Stamps, and any State program under a plan approved under Titles I, X, XIV, or XVI of the Social Security Act. The provisions took effect April 1, 1985, with the exception of the requirement for employers to report quarterly wages which is effective not later than September 30, 1988. Programs participating in the income and eligibility verification system are required to share information to assist in the child support program and to assist the Secretary of Health and Human Services in verifying eligibility or benefit amounts under Titles II and XVI of the Social Security Act.

Section 2651 of DEFRA also amended section 303 of Title III of the Social Security Act to require the State agency charged with administering the unemployment compensation law to participate in the income and eligibility verification system. Section 303 had previously required only that State unemployment compensation agencies disclose certain specified information to Federal and State Food Stamp agencies, and State and local child support enforcement agencies.

Under the new verification system, employers will be required to make quarterly wage reports to a State agency (which may be the State unemployment compensation agency) except that the requirement may be waived if an alternate system for providing employment-related income and eligibility data is approved by the Secretary of Labor (in consultation with the Secretaries of Health and Human Services and Agriculture). The wage data will be available for all of the participating programs under the income and eligibility verification system. All agencies will also have access to wage, income, and other information from the Social Security Administration and unearned income from the Internal Revenue Service.

The Department of Labor published the proposed rule on March 14, 1985 (50 FR 10450, 10455) and has issued the final rule at 20 CFR Part 603 regarding income and eligibility verification system. The final rule was published in the **Federal Register** on February 28, 1986 (51 FR 7178, 7207) and became effective on May 29, 1986.

The Employment and Training Administration (ETA) published this proposed Unemployment Insurance Program Letter in the **Federal Register** on June 14, 1985 (50 FR 24957). Written comments were solicited through July 29, 1985. This final Unemployment Insurance Program Letter incorporates changes and improvements in the published proposal.

The ETA received 3 written responses from State employment security agencies. Responses were received from the California Employment Development Department, the Mississippi Employment Security Commission and the New Jersey Department of Labor.

California's first comment compared the language of the "common preamble section" of the proposed rule published March 14, 1985 to portions of the proposed UIPL. Paragraph B.1.(c)(2) of the common preamble of the proposed rule, 50 FR 10450, 10453 (1985), provided that "[a]ll programs except UC are required by regulation to obtain SSA data at application in a manner prescribed by the Commissioner of Social Security." Paragraphs 4 and 7 of the proposed UIPL require State Employment Security Agencies (SESAs) to enter into agreements with the Social Security Administration, "to obtain information from the Social Security Administration to the extent useful in verifying eligibility and benefit amounts."

California urges the Department to follow the language of the common preamble section of the proposed rule to exempt verification for unemployment compensation as such a requirement for all UI claims would be burdensome and costly.

In responding to comments on the proposed rule, ETA concluded that requiring SESAs to obtain such information from the SSA and any requesting agency "as may be useful" in verifying eligibility for, and the amount of benefits may be too broad. ETA determined that, with respect to 20 CFR 603.8, the statute requires SESA's to obtain information "as may be needed" in verifying eligibility and benefit amounts. It is not the intent that all claimants be verified with the Social Security Administration, but only in those cases where the information may be needed. Thus, the language in paragraph 4 of the UIPL has been changed to be consistent with the final rule at 20 CFR 603.8. The provision has also been clarified by citing some examples of instances in which such information may be needed. However, the ultimate determination of the extent to which SSA data is needed in verifying eligibility and benefit amounts rests with the SESAs. Therefore, we do not believe such action to be burdensome or costly, but part of an ongoing program to assure correct payments.

California's second comment dealt with the language in paragraph 6 of the proposed UIPL relating to agreements between SESAs and requesting agencies. California feels the UIPL should contain language indicating that responsibility for confidentiality of information furnished should be shifted to the receiving agency, and that the UIPL provide a means of enforcement of disputed costs. In addition, California suggests the UIPL should insure that the agency will not have to rearrange priorities to provide requested information to the detriment of its own programs. The agency also suggests that language in the introductory narrative could be interpreted to mean that outside agencies are entitled to access to confidential tax information that is not disclosed under provisions of State law or agreements.

The ETA disagrees with California's suggestions. The information disclosed by the furnishing agency is UI information. Under section 1137(a)(5)(B) of the Social Security Act, which was enacted by DEFRA, the Secretary of Labor is responsible for issuing regulations on protection of UI information. Therefore, the final rule at 20 CFR 603.7 requires requesting agencies receiving UI information to comply with the measures outlined in the rule to protect the confidentiality of the information against unauthorized access or disclosure. Since any violations of disclosure are covered under State UI law, the ultimate responsibility must lie with the UI agency to protect its own information. The agreements between the SESA and requesting agency should contain the cost criteria associated with providing information. Any failure to reimburse the SESA for costs is a matter of violation of the agreement and any sanctions come under the provisions of the agreement. In addition, the DEFRA rule, and this UIPL list those agencies that must share information. The agreements will limit the extent of information to be furnished to these agencies following standardized formats as outlined in paragraph 5 of the UIPL. Lastly, ETA, at this time, does not believe the exchange of information will require any rearrangement of priorities. SESAs that have experience with providing wage and benefit information on a daily basis, as well as quarterly tape exchanges with other agencies, have not, so far, had any difficulty maintaining UI program priorities.

Both the Mississippi comments and the New Jersey comments dealt with the information contained in the Social Security System files that are available to SESAs through the Bendex system and Third Party Query System. The agencies both indicate the date is not too useful for their needs.

As indicated in paragraph 4 of the UIPL, the SESA is only required to obtain such information "as may be needed" for program purposes. Therefore, within the parameters of available information the SESA will determine what is needed.

We have deleted the reference in paragraph 5 of the UIPL to an agreement for standardized formats in the Internet program since that was a test program and the agreement expired. In addition, we have clarified the process for developing the standardized formats and the steps in issuing the formats.

In paragraph 8 of the proposed UIPL, we indicated that the mechanism for consultation among the Secretaries and the criteria for waiver of the requirement for quarterly wage reporting had not been finalized. The ETA has given consideration to possible alternatives to quarterly wage reporting and has consulted with the needs based program agencies. While the ETA and the other agencies believe there is no alternative system which is as timely and effective as quarterly wage reporting, States seeking waiver should file an application with the Secretary of Labor. The application should include a full analysis of the timeliness and effectiveness of the alternative system in comparison with quarterly wage reporting.

Other technical and clarifying changes have been made in the UIPL.

This final UIPL supplements UIPL 1–85 and the final rule at 20 CFR Part 603. The UIPL provides instructions for use of social security data, for agreements with requesting agencies, funding for wage record systems and notification to claimants on use of information.

As revised, Unemployment Insurance Program Letter No. 24–86 is published below, and is effective upon publication.

Dated: July 23, 1986.

Robert T. Jones,

Deputy Assistant Secretary of Labor.

Directive: Unemployment Insurance Program Letter No. 24–86
To: All State Employment Security Agencies
From: Barbara Ann Farmer, Acting Administrator of Regional Management
Subject: Implementation of the State Income and Eligibility Verification System

1. *Purpose.* To provide additional guidance to States on implementation of the income and eligibility verification system.

2. *References.* Section 2651, P.L. 98–369; UIPL 1–85; Final rules at 20 CFR Part 603, published in the **Federal Register** on February 28, 1986.

3. *Background.* Section 2651 amended Title XI of the Social Security Act to establish an income and eligibility verification system for exchange of information among State agencies administering programs for AFDC, Medicaid, Food Stamps, UI, and any State program under a plan approved under Title I, X, XIV, or XVI of the Social Security Act. The guidance in this UIPL is intended to supplement UIPL 1–85 and the final regulations. The provisions took effect April 1, 1985, with the exception of the requirement for employers to report quarterly wages which is effective not later than September 30, 1988.

4. *Social Security Administration (SSA) Benefit Data.* Section 603.8 of the Final Rule requires SESAs to obtain information from the Social Security Administration and other requesting agencies as may be needed in verifying eligibility and benefit amounts. States where benefit eligibility and/or amount is affected by receipt of a Social Security or disability retirement pension should enter into an agreement to obtain benefit information from SSA. Such agreements were to be entered into by April 1, 1985 (see paragraph 7 below). We recommend verification in those instances where the claimant cannot produce documentary evidence of entitlement or benefit amount, and in those instances where the individual is retirement age but indicates non-receipt of a pension, or in other cases where there is a question regarding entitlement to a pension or, if needed, to verify the accuracy of a social security number (SSN).

The SSA administers and maintains records on a wide variety of benefit programs. SSA will supply selected information to State agencies having an agreement with them for the data. SSA has two basic systems for providing this information. The first is Brendex, which permits mass cross-matching of computer files on a periodic (usually monthly) basis. Once an inquiry is made, the periodic cross-matching of an individual(s) will continue until the inquiry is deleted by the State agency. The other method is the Third Party Query System. This is a one time request through a SSA field office involving use of a mark-sensed card for individual cases. Responses are generally available in 24 hours.

The SSA will enter into a Bendex agreement with only one agency in each State. In all States, this is currently the State welfare agency. Therefore, SESAs electing to use the Bendex system will have to reach an agreement with the State welfare agency for access to the system. Periodically the welfare agency transmits a tape inquiry to SSA containing the name, SSN, date of birth, sex, and other data information. SSA matches for valid SSNs, and if valid will match against two data bases. The first data base is SSA's Title II beneficiaries. It contains primary and secondary social security pension data, as well as Medicaid, railroad retirement, and disability payments. The other data base contains earnings reported by employers on Internal Revenue Service (IRS) forms, primarily, the W–2 and 1099P. This includes regular wages, self-employment and agricultural earnings, and private and governmental pensions.

If an individual's SSN matches a SSN in one or both data bases, the State

welfare agency will receive an initial output record on tape and subsequent records everytime a data base is updated unless the State agency advises SSA to delete the individual(s) from the record. The output record will contain the name, month and year of birth, and sex of the individual assigned the SSN, even if it differs from the inquiry. The record will also contain Title II data including whether an individual is a primary or secondary beneficiary. It will also show the most recent gross yearly earnings reported by employers coded by type of earnings. The output will also list the name, address and Federal Employer Identification Number of the employer reporting the earnings. Since SSA's earnings data base is based on IRS forms submitted, the output is not current. For example, SSA updated the 1983 data file with 1984 data in March, August, and November 1985. This earnings file does not break down whether private or governmental pensions are primary or secondary since they are not reported on the IRS forms in that manner.

The Third Party Query System, based on an individual request, will yield only Title II information if there is a match of SSNs. The earnings data base and SSN verification is not part of the system. SESAs will have to reach an agreement with a SSA field office in the State for access to this system.

Although IRS is required to disclose information on unearned income, ETA is not requiring SESAs to sign agreements with IRS for access to this data. Unearned income is normally not a factor in determining UI eligibility.

5. *Standardized Formats.* As required by the Act, SESAs will be furnished standardized formats for tape exchange of data. The Secretary of Health and Human Services is issuing standardized formats for purposes of crossmatching and verification. These formats were developed based on an 18-State pilot project and the results of a task force. ETA will transmit these formats in a UIPL when they are released and request SESA input on any difficulties in utilizing them. Comments received from the SESAs will be forwarded to the Department of Health and Human Services for consideration. It is expected that SESAs will utilize the formats for the interstate exchange of data to requesting agencies and on an interstate basis to the extent it is necessary to ensure the exchange of data as required in the Act. The formats will not be required for existing border crossmatches between SESAs.

6. *Agreements between SESAs and Requesting Agencies.* Effective April 1, 1985, agencies covered by the income and eligibility verification system must exchange information that is needed and productive in verifying eligibility and benefit amounts. In order to exchange information, SESAs must sign agreements with agencies providing information as well as those requesting information. When the SESA is the provider, rather than the user of wage and/or benefit data, the using agency should initiate the agreement process. This applies to AFDC, Food Stamp, Medicaid, Title XVI (SSI), and Child Support.

The law also refers to State programs under Title I (Old Age Assistance), Title X (Aid to the Blind), Title XIV (Permanently and Totally Disabled), and Title XVI (Aid to the Aged, Blind or Disabled). These programs are operative only in Guam, Puerto Rico, and the Virgin Islands. The SESA must be able to enter into an agreement, which includes having statutory authority to release data, and preparing in advance the procedural arrangements, such as forms and timing, necessary to complete an agreement by April 1, 1985 (See paragraph 7 below). In addition, SESAs are responsible for ensuring that agreements adequately provide for users' safeguarding these data and users' reimbursement of SESA costs for providing the information.

Agreements already in place (i.e., with AFDC, Child Support Enforcement, and Food Stamp agencies) may be adequate or may require modification. Note that under the rules, SESAs may enter into agreements with a single agency which can redisclose information to other agencies, so long as such redisclosure is provided for in the agreement.

7. *Waiver of April 1, 1985, Deadline for Agreements.* As pointed out in paragraph 4, the statute provides that SESAs were to enter into agreements with SSA by April 1, 1985. The Secretary of Labor may, by waiver, grant a delay in this effective date if the State submits a plan describing a good faith effort to comply. The waiver may not extend beyond September 30, 1986.

Any State which could not meet the April 1, 1985, deadline is to request a waiver from the Secretary of Labor via the appropriate regional office within 90 days of the date of final publication of the rules in the Federal Register. Section 603.9 of the Final Rule provides for this deferral in requesting a waiver of the effective date. The request should include in detail what the State did to conclude the agreements on time, why agreements were not reached, plans for completing and signing agreements, and firm target dates for completion. Requests for waiver should be signed by the Governor or his formally appointed designee.

Copies of signed agreements are to be furnished to the appropriate regional office.

8. *Quarterly Wage Reporting.* Those request reporting States which enact legislation to adopt quarterly wage reporting for UI purposes are eligible for funding from Title III grants for start-up and continuing costs. However, funds are not available for planning activities prior to the enactment of legislation.

States which elect to operate a wage-record system apart from the UI program administration, but which will provide crossmatch capabilities with benefit payments, will not receive advance planning or developmental funds from Title III Grants. However, Title III administrative grant funds (from the State's existing benefit payment control allocation) may be utilized for the SESA's share of ongoing use of the system in accordance with cost principles and cost allocation methodologies set forth in OMB Circular A-87, as codified at 41 CFR 1-15.7. SESAs are encouraged to participate in the development of any such cost allocation plan and/or carefully review it to ensure costs reflect use of the wage-record system for crossmatch purposes only.

ETA has considered and has consulted with the other Federal agencies administering the needs-based programs as to possible alternatives to quarterly wage reporting. Any such alternative system must meet program needs to verify eligibility and benefits of applicants and recipients for AFDC, Medicaid, Food Stamps, Child Support, and UI, as well as any State program under a plan approved under Title I, X, XIV, or XVI of the Social Security Act.

After considering possible alternatives, the ETA and the other agencies believe there is no alternative system to quarterly wage reporting which is as timely, comprehensive and cost effective for verifying eligibility and benefits for all programs. Accordingly, by September 30, 1988 (Quarter beginning July 1, 1988) all States electing to have a wage record system should have an approved system in place for employers to report quarterly wages at least to the extent required to be reported under the State Employment Security Law to an agency (which may be the unemploymnent compensation agency).

Any State seeking waiver of this requirement should file an application with the Secretary of Labor. The application must include a full analysis of the alternative system being as

timely, comprehensive, and cost effective in comparison with quarterly wage reporting.

9. *Other Actions That Were Necessary by April 1, 1985.* The law also requires that SESAs obtain security numbers (SSN) from claimants and use the numbers (as identifiers) in maintaining records.

Another requirements is that claimants be advised of the potential disclosure of their data to other agencies. Under section 1137(a)(6) of the Social Security Act, the SESAs are required to notify claimants at the time of filing an initial claim and periodically thereafter that information available through the system will be requested and utilized. Provision of a printed notice on or attached to any subsequent additional claims will satisfy the requirement for periodic notice thereafter required by in § 603.4 of the Final Rule.

In addition, if not already provided for on the initial claim form, SESAs should consider adding a statement advising claimants that the information they provide is confidential and that this confidentiality will be protected.

10. *OMB Approval.* These reporting requirements are approved under OMB No. 1205–0238. OMB expiration is December 31, 1988.

11. *Action Required.* SESAs are requested to take steps to implement the amendments as explained above.

12. *Inquiries.* Direct inquiries to appropriate regional office.

[FR Doc. 86–16999 Filed 7–28–86; 8:45 am]

BILLING CODE 4510–30–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on I&E Programs; Meeting

The ACRS Subcommitee on I&E Programs will hold a meeting on August 14, 1986, 5th Floor Hearing Room, East West Towers—West Building, 4350 East West Highway, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Thursday, August 14, 1986—10:30 A.M. until the conclusion of business.

The Subcommittee will review the activities of the I&E Office with focus on the various inspection programs either underway or planned.

Oral statements may be presented by members of the public with concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 202/634–3267) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: July 24, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86–17004 Filed 7–28–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–483]

Union Electric Company; Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by the licensee for an amendment to Facility Operating License No. NPF–30, issued to the Union Electric Company (the licensee) for operation of the Callaway Plant, Unit No. 1 (the facility), located in Callaway County, Missouri.

The proposed amendment would have revised Technical Specification 4.6.1.2 and its associated bases regarding containment leakage surveillance requirements to provide clarifications on the leak rate testing of valves pressurized with fluid from a seal system. The amendment would have permitted local leak rate testing of certain containment isolation valves using water instead of air as required by Appendix J to 10 CFR Part 50. Notice of consideration of issuance of this amendment was published in the **Federal Register** on September 11, 1985 (50 FR 37091). The licensee's application for the amendment was dated July 17, 1984, and supplemented October 3, 1984.

The request was found unacceptable since the water inventory of the proposed passive seal water system could not be assured and could not be monitored and replenished following accidents. Therefore, the proposed passive seal system could not perform the needed function of a seal system as required by Appendix J.

The licensee was notified of the Commission's denial of this request by letter dated July 23, 1986.

By August 28, 1986 the licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date.

A copy of any petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated July 17, 1984, as supplemented October 30, 1984, and (2) the Commission's letter to Union Electric Company dated July 23, 1986, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Fulton City Library, 709 Market Street, Fulton, Missouri 65251 and the Olin Library of Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of PWR Licensing–A.

Dated at Bethesda, Maryland, this 23rd day of July 1986.

For The Nuclear Regulatory Commission.

Dave Wigginton,

Acting Director, PWR Project Directorate No. 4, Division of PWR Licensing–A.

[FR Doc. 86–17006 Filed 7–28–86;8:45am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, (202) 632–6817.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on June 25, 1986 (51 FR 23175). Individual authorities established or revoked under Schedule A, B, or C between June 1, 1986, and June 30, 1986, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

No Schedule A exceptions were established during June. However, the following exceptions are revoked:

Department of Commerce

The National Oceanic and Atmospheric Administration's Schedule A excepted appointing authority for temporary positions engaged in inspection of fishery products was revoked because it is no longer needed. Effective June 5, 1986.

Department of Health and Human Services

Schedule A excepted appointing authority for 64 positions on the Refugee Program Staff, Office of Refugee Resettlement, was revoked because the organization is no longer responsible for providing direct assistance to refugees and, consequently, its positions no longer require qualifications that cannot be measured through a competitive examination. Effective June 5, 1986.

Schedule B

No Schedule B exceptions were established during June. However, the following exception was revoked:

National Endowment for the Humanities

Schedule B excepted appointing authority for one position of Humanist Administrator, Humanities Projects in Museums and Historical Organizations, Division of General Programs, was revoked because the position has been abolished. Effective June 5, 1986.

Schedule C

Department of Agriculture

One Confidential Assistant to the Under Secretary for Small Community and Rural Development. Effective June 2, 1986.

One Confidential Assistant to the Chief, Soil Conservation Services. Effective June 6, 1986.

One Confidential Assistant to the Deputy Secretary. Effective June 9, 1986.

One Staff Assistant to the Administrator, Farmers Home Administration. Effective June 9, 1986.

One Private Secretary to the Deputy Secretary. Effective June 9, 1986.

One Confidential Assistant to the Assistant Secretary for Natural Resources and Environment. Effective June 11, 1986.

One Assistant to the Deputy Secretary. Effective June 12, 1986.

One Confidential Assistant to the Administrator, Agricultural Research Service. Effective June 19, 1986.

Department of Commerce

One Confidential Assistant to the Deputy Assistant Secretary for Africa, Near East and South Asia, International Trade Administration. Effective June 2, 1986.

One Special Assistant to the Director, Office of Public Affairs. Effective June 2, 1986.

One Confidential Assistant to the Director, Minority Business Development Agency. Effective June 3, 1986.

One Confidential Assistant to the Assistant Secretary for the Economic Development Administration. Effective June 3, 1986.

One Confidential Aide to the Special Assistant to the Secretary. Effective June 10, 1986.

One Special Assistant to the Deputy Assistant Secretary for Operations, Economic Development Administration. Effective June 11, 1986.

One Confidential Assistant to the Assistant Secretary for Communications and Information. Effective June 18, 1986.

One Confidential Assistant to the General Counsel. Effective June 18, 1986.

Department of Defense

One Staff Assistant to the Assistant Secretary of Defense. Effective June 18, 1986.

One Personal and Confidential Assistant to a Judge, U.S. Court of Military Appeals. Effective June 24, 1986.

One Private Secretary to a Judge, U.S. Court of Military Appeals. Effective June 30, 1986.

Department of Education

One Confidential Assistant to the Chief of Staff/Counselor to the Secretary. Effective June 3, 1986.

One Special Assistant to the Deputy Under Secretary for Planning, Budget and Evaluation. Effective June 9, 1986.

One Staff Assistant to the Deputy Under Secretary for Management. Effective June 12, 1986.

One Executive Assistant to the Assistant Secretary for Legislation. Effective June 18, 1986.

One Confidential Assistant to the Assistant Secretary for Civil Rights. Effective June 18, 1986.

One Personal Assistant to the Executive Secretariat. Effective June 20, 1986.

One Special Assistant to the Secretary. Effective June 24, 1986.

One Special Assistant to the Deputy Assistant Secretary for Policy and Planning, Office of Educational Research and Improvement. Effective June 24, 1986.

One Confidential Assistant to the Director of Public Affairs, Office of Planning, Budget and Evaluation. Effective June 24, 1986.

Department of Energy

One Staff Assistant to the Deputy Secretary of Energy. Effective June 9, 1986.

One Secretary to the Deputy Secretary. Effective June 16, 1986.

One Confidential Assistant (Secretary) to the Director, Office of Communications. Effective June 18, 1986.

Department of Health and Human Services

One Special Assistant to the Administrator, Health Care Financing Administration. Effective June 6, 1986.

One Deputy Director to the Director, Office of Refugee Resettlement, Social Security Administration. Effective June 12, 1986.

Department of Housing and Urban Development

One Staff Assistant to the President, Government National Mortgage Association. Effective June 17, 1986.

Department of Interior

One Special Assistant to the Director, National Park Service. Effective June 2, 1986.

One Public Affairs Specialist to the Assistant to the Secretary and Director, Office of Public Affairs. Effective June 9, 1986.

One Special Assistant to the Assistant Secretary for Policy, Budget and Administration. Effective June 9, 1986.

One Special Assistant to the Assistant Secretary for Indian Affairs. Effective June 9, 1986.

Two Confidential Assistants to the Director, Fish and Wildlife Service. Effective June 18, 1986.

Department of Justice

One Senior Liaison Officer to the Director, Office of Liaison Services. Effective June 9, 1986.

One Confidential Assistant to the Deputy Assistant Attorney General, Office of Legislative Affairs. Effective June 9, 1986.

One Confidential Assistant to the Director, Office of Liaison Services. Effective June 9, 1986.

One Senior Liaison Officer to the Administrator, Office of Juvenile Justice and Delinquency Prevention. Effective June 9, 1986.

One Special Assistant to the Attorney General. Effective June 9, 1986.

One Legislative Aide to the Assistant Attorney General, Civil Division. Effective June 17, 1986.

One Legislative Aide to the Assistant Attorney General, Civil Division. Effective June 17, 1986.

Department of Labor

One Deputy Liaison Officer to the Deputy Under Secretary for Congressional Affairs. Effective June 3, 1986.

One Special Assistant to the Deputy Director, Women's Bureau. Effective June 9, 1986.

One Special Assistant to the Deputy Under Secretary for Intergovernmental Affairs. Effective June 24, 1986.

Department of Navy

One Private Secretary to the Assistant Secretary of the Navy (Research, Engineering and Systems). Effective June 30, 1986.

National Transportation Safety Board

One Confidential Assistant to a Member. Effective June 24, 1986.

Department of State

One Foreign Affairs Officer to the Assistant Secretary for the Bureau of International Organization Affairs. Effective June 18, 1986.

Department of Transportation

One Special Assistant to the Regional Representative of the Secretary. Effective June 6, 1986.

Department of Treasury

One Research Assistant to the Deputy Assistant Secretary for Administration. Effective June 9, 1986.

One Special Assistant to the Assistant Secretary for Management. Effective June 11, 1986.

One Executive Assistant to the Secretary. Effective June 18, 1986.

ACTION

One Special Assistant to the Deputy Director. Effective June 9, 1986.

One Staff Assistant to the Associate Director for Legislative, Public and Intergovernmental Affairs. Effective June 18, 1986.

Administrative Conference of the United States

One Secretary (Typing) to the Chairman. Effective June 6, 1986.

One Staff Assistant (Writing and Editing) to the Chairwoman. Effective June 9, 1986.

Agency for International Development

One Special Assistant to the Assistant Administrator for Private Enterprise. Effective June 12, 1986.

Arms Control and Disarmament Agency

One Secretary (Stenography) to the Director. Effective June 9, 1986.

Consumer Product Safety Commission

One Special Assistant to a Commissioner. Effective June 30, 1986.

Environmental Protection Agency

One Assistant to the Deputy Administrator. Effective June 20, 1986.

Equal Employment Opportunity Commission

One Special Assistant to the Chairman. Effective June 9, 1986.

Farm Credit Administration

One Special Assistant to the Chairman. Effective June 12, 1986.

Federal Home Loan Bank Board

One Secretary to a Board Member. Effective June 9, 1986.

Federal Mine Safety and Health Review Commission

One Confidential Assistant (Secretary) to a Commissioner. Effective June 6, 1986

General Services Administration

One Confidential Assistant to the Commissioner, Federal Property Resources Services. Effective June 12, 1986.

U.S. International Trade Commission

One Confidential Assistant to the Chairworman. Effective June 6, 1986.

One Staff Assistant to a Commissioner. Effective June 6, 1986.

Office of Management and Budget

One Public Affairs Specialist to the Assistant Director for Public Affairs. Effective June 11, 1986.

One Secretary to the Deputy Director. Effective June 19, 1986.

One Secretary to the Associate Director for Legislative Affairs. Effective June 20, 1986.

Office of Personnel Management

One Congressional Relations Officer to the Assistant Director for Congressional Relations. Effective June 6, 1986.

Small Business Administration

One Special Assistant to the Associate Administrator for Finance and Investment. Effective June 9, 1986.

One Special Assistant to the Administrator. Effective June 24, 1986.

One Special Assistant to the Assistant Administrator for Public Communications. Effective June 26, 1986.

United States Tax Court

One Trial Clerk to a Judge. Effective June 4, 1986.

One Secretary (Confidential Assistant) to a Judge. Effective June 18, 1986.

One Secretary (Confidential Assistant) to a Judge. Effective June 19, 1986.

U.S. Information Agency

One Staff Assistant to the Director. Effective June 2, 1986.

One Special Assistant to the Director, Television and Film Service. Effective June 4, 1986.

United States Trade Representative

One Confidential Assistant to the Deputy United States Trade Representative. Effective June 2, 1986.

One Public Affairs Specialist to the Assistant U.S. Trade Representative for

Public and Private Intergovernmental Affairs. Effective June 12, 1986.

Veterans Administration

One Confidential Assistant to the Associate Deputy Administrator for Congressional and Intergovernmental Affiars. Effective June 18, 1986.

One Confidential Assistant to the Administrator. Effective June 18, 1986.

Authority: 5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., P. 218.

U.S. Office of Personnel Management

Constance Horner,

Director.

[FR Doc. 86–17003 Filed 7–28–86; 8:45 am]

BILLING CODE 6325–01–M

POSTAL RATE COMMISSION

[Docket Nos. N86–1 and MC86–3]

Change in Collect on Delivery Service

July 24, 1986.

Take notice that the hearing previously scheduled to be held in the proceeding in Docket Nos. N86–1, *et al.*, on July 23, 1986 (and postponed until further notice), is now scheduled to be held on August 5, 1986, at 9:30 a.m., Postal Rate Commission, 1333 H Street, NW., Suite 300, Washington, DC.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 86–16992 Filed 7–28–86; 8:45 am]

BILLING CODE 7715–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) Collection title: Statement Regarding Contributions and Support
(2) Form(s) submitted: G–134
(3) Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection
(4) Frequency of use: On occasion
(5) Respondents: Individuals or households
(6) Annual responses: 400
(7) Annual reporting hours: 117
(8) Collection description: Dependency on the employee for one-half support at the time of the employee's death can be a condition affecting eligibility for a survivor annuity provided for under Section 2 of the Railroad Retirement Act.

Additional Information or Comments

Copies of the proposed forms and supporting documents can be obtained from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Judy McIntosh (202–395–6880), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 86–16937 Filed 7–28–86; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

July 23, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

AFG Industries, Inc.
Common Stock, $1.00 Par Value (File No. 7–9070)
Ausimont Compo N.V.
Common Stock, 5 Dutch Guilders Par Value (File No. 7–9071)
British Telecommunications plc
American Depositary Receipt (File No. 7–9072)
Brock Hotel Corporation (New)
Common Stock, $0.10 Par Value (File No. 7–9073)
Cameron Iron Works, Inc. (Holding Co.)
Common Stock, $0.2083 Par Value (File No. 7–9074)
Carlisle Companies, Inc. (Holding Co.)
Common Stock, $1.00 Par Value (File No. 7–9075)
Caterpillar, Inc. (DE)
Common Stock, No Par Value (File No. 7–9076)
Centerior Energy Corporation (Holding Co.)
Common Stock, No Par Value (File No. 7–9077)
Champion International Corporation
Common Stock, $0.50 Par Value (File No. 7–9078)
Chrysler Corporation (Holding Co.)
Common Stock, No Par Value (File No. 7–9079)
COMPAQ Computer Corporation
Common Stock, $0.01 Par Value (File No. 7–9080)
DPL Inc. (Holding Co.)
Common Stock, $7.00 Par Value (File No. 7–9081)
Fairfield Communities, Inc.
Common Stock, $0.10 Par Value (File No. 7–9082)
Glenfed, Inc.
Common Stock, $0.01 Par Value (File No. 7–9083)
Illinois Tool Works, Inc.
Common Stock, $3.33⅓ Par Value (File No. 7–9084)
Indiana Energy Inc. (Holding Co.)
Common Stock, No Par Value (File No. 7–9085)
Inland Steel Industries, Inc.
Common Stock, No Par Value (File No. 7–9086)
Keystone International, Inc.
Common Stock, $1.00 Par Value (File No. 7–9087)
Lockheed Corporation (DE)
Common Stock, $1.00 Par Value (File No. 7–9088)
Lorimar-Telepictures Corporation
Common Stock, $0.01 Par Value (File No. 7–9089)
Marantz Company, Inc. (DE)
Common Stock, $1.00 Par Value (File No. 7–9090)
Nucor Corporation
Common Stock, $0.40 Par Value (File No. 7–9091)
Occidental Petroleum Corporation (DE)
Common Stock, $0.20 Par Value (File No. 7–9092)
Pandick, Inc.
Common Stock, $0.10 Par Value (File No. 7–9093)
The Pittston Company (DE)
Common Stock, $1.00 Par Value (File No. 7–9094)
Portland General Corporation (Holding Co.)
Common Stock, $3.75 Par Value (File No. 7–9095)
Public Service Enterprises Group Incorporated (Holding Co.)
Common Stock, No Par Value (File No. 7–9096)
The Times Mirror Company (DE)
Common Stock, No Par Value (File No. 7–9097)
Warnaco Incorporated
Common Stock, Class "A", No Par Value (File No. 7–9098)
Whittaker Corporation (DE)
Common Stock, $1.00 Par Value (File No. 7–9099)
Cetec Corporation (DE)
Common Stock, No Par Value (File No. 7–9101)
Gulf Canada Corporation
Common Stock, No Par Value (File No. 7–9102)
The Horn & Hardart Company

Common Stock, $0.66⅔ Par Value (File No. 7–9103)
Kay Corporation
Common Stock, $1.00 Par Value (File No. 7–9104)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 13, 1986, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–17011 Filed 7–28–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–23454; File No. SR-NSCC–86–9]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change of the National Securities Clearing Corporation

Pursuant to section 19(b) (1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b) (1), notice is hereby given that on July 21, 1986, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amend NSCC's SCC Division Rules and Procedures by revising the Fee Structure as follows:

National Securities Clearing Corporation Fee Structure

* * * * *

IV. Other Service Fees

A. Correspondent Delivery and Collection Service (CDCS) [(6)]:

1. Deliveries (6) other than international deliveries through International Securities Clearing Corporation—$9.00 per envelope plus pass-through cost to reach locations outside of immediate local delivery areas

2. International receives through International Securities Clearing Corporation—$.35 per envelope

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concening the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish the fee for the receipt of international Correspondent Delivery and Collection Service deliveries made through International Securities Clearing Corporation and to exempt International Securities Clearing Corporation from the delivery charges for these items.

The proposed change for NSCC's Fee Structure is consistent with the requirements of the Securities Exchange Act of 1934 (the "1934 Act"), as amended, and the rules and regulations thereunder applicable to a self-regulatory organization in that it allows for the equitable allocation of fees among NSCC Participants. Inasmuch as the proposed rule change relates only to NSCC's Fee Structure, it does not affect the safeguarding of securities and funds in NSCC's custody or control for which it is responsible.

B. Self-Regulatory Organization's Statement on Comments on the Burden on Competition

NSCC does not perceive that the proposed rule change will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or others

No comments on the proposed rule change have been solicited or received. NSCC will notify the Securities and Exchange Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b) (3) (A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Securities Exchange Act of 1934.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NSCC. All submissions should refer to File No. SR-NSCC–86–9 and should be submitted within 21 days after the date of this publication.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 22, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 17009 Filed 7–28–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34-23459; File No. SR-OCC-86-15]

Self-Regulatory Organizations; Options Clearing Corporation; Proposed Rule Change

On July 16, 1986, the Options Clearing Corporation ("OCC") filed a proposed rule change with the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). Under the proposal, Clearing Members could gain access to OCC's Clearing Member Accounting and Control System ("C/MACS") [1] by direct dial-up from a personal computer using multiple security features but without the call-back feature which is currently in place. The Commission is publishing this notice to solicit comment.

I. Description of the Proposal

The proposed rule change modifies OCC procedures to provide for access to C/MACS through the use of a personal computer ("PC") with a synchronous modem operating at 2400 bits per second, a synchronous data link control transmission protocol and a system security board resident in the PC. Currently, Clearing Members gain access to C/MACS on-line system either through dedicated leased lines, or by dail-up from a PC with call-back by OCC. The proposal would implement access by direct dail-up using other multiple security features in place of the call-back feature.

The new dail-up system would involve the OCC-Packet Switched Network ("OCC–PSN"), a private network which would operate in a closed manner. That is, the Packet Assemblers and Disassemblers ("PADS") and the switches are interconnected by private leased lines which are leased and controlled by OCC. Access to the network is allowed only through dail-in ports located in OCC-controlled access facilities. All accesses must adhere to the strict security parameters built into this network.

A 2400 bps synchronous modem will be required in order to communicate with the OCC–PSN. Due to compatability requirements, the brand of modem required will be specified by OCC.

All access to the network will be initiated by an OCC developed program, which will auto-dail the closest network node (initially Chicago or New York). The answering modem at that node will be synchronous and will operate at 2400 bps. The switch located at the called node will request a password from the calling device. If the password provided is valid the call will be passed through the network to the processing location.

Once the session is established, the user will be prompted for his C/MACS user identification ("logon-id") and password. Not only must these match each other, but they must also match the terminal from which the call is made. Only after all these conditions are met will the user obtain access to the data and individual functions authorized by the user's logon-id and password.

II. OCC's Rationale for the Proposal

OCC states in its filing that the proposed rule change is consistent with the requirements of Section 17A of the Act because it will promote the use of the C/MACS system while maintaining a level of system security. OCC states that the proposed access procedure will entail material cost savings to Clearing Members, especially those outside of clearing cities, which in turn will promote a more widespread use of the C/MACS system with its advantages over hard-copy and machine-readable input. At the same time, OCC states that the security inherent in the proposed access procedure is superior to that offered by dial-up with call-back. Because the security features are embedded in the hardware, OCC believes that the proposed system offers a level of comfort preferable to that offered by call-back.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 22, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-17013 Filed 7-28-86; 8:45 am]

BILLING CODE 8010-01-M

[1] C/MACS is a computerized communication system linking OCC's Clearing Members to OCC. Through C/MACS, Clearing Members can retrieve daily activity and position reports, inquire about current positions and activity, and enter instructions for same-day security and cash movements.

[Release No. 34-23457; File No. SR-PCC-86-03]

Self-Regulatory Organizations; Proposed Rule Change by Pacific Clearing Corporation; Pacific Participant Terminal System and Pacific Automated Services

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 17, 1986, Pacific Clearing Corporation ("PCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Clearing Corporation ("PCC") in conjunction with its affiliated depository, Pacific Securities Depository Trust Company ("PSDTC"), offers automated services to its members whereby members can communicate directly to the data center.

Access to PSDTC's automated services is accomplished in two modes: (1) Online, through the Pacific Participant Terminal System ("PPTS") and (2) computer-to-computer transmission or magnetic tape through the Pacific Automated Services ("PASS").

Pacific Participant Terminal System (PPTS)

PPTS facilitates the remote automated processing of certain existing PSDTC services.

PPTS permits: (1) Online trade affirmation, cancellation, automatic confirmation printing for trades submitted to the National Institutional Delivery System ("NIDS"), and inquiry on the status of NIDS trade throughout the trade cycle; and (2) depository

movement (inter- and intra-participant) of shares versus money or free, the initation of special payment orders (cash only movements), and inquiry on depository movements including a screen accounting of current money settlement requirements for the day's online activity.

Pacific Automated Services (PASS)

PASS is an integrated system which provides the facilities for the exchange of information between PCC/PSDTC and its members and enables the timely receipt and transmittal of data and reports.

PASS provides direct links with a member's mainframe or microcomputer. For members without an in-house computer installation, PCC/PSDTC is linked to them through service bureaus. PCC/PSDTC members may also receive and send information through the physical exchange of magnetic tapes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) *Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.* PPTS and PASS facilitate rapid and efficient communication between PCC/PSDTC and its members and thus, eliminates the labor intensive aspect and unnecessary cost resulting from the manual processing of input. By providing a direct and immediate automated communicatons link between PCC/PSDTC and its members, PPTS and PASS ecourages the use of depository/clearance facilities. The proposed rule change is, therefore, consistent with section 17A(b)(3)(F) of the Securities Exchange Act of 1934 ("Act") in that it furthers the objectives of the Act with respect to enhancing the prompt and accurate clearance and settlement of securities transactions, reducing physical deliveries of securities to assure the safeguarding of securities which are in the custody or control of PCC/PSDTC and supplementing existing interfaces between registered securities depositories.

(B) *Self-Regulatory Organization's Statement on Burden on Competition.* PCC perceives no burden on competition by reason of the proposed rule change.

(C) *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others.* Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (iii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth St. NW., Washington, DC 20549. Copies of the submisson, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth St. NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR-PCC-86-03 and should be submitted by August 19, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 22, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-17008 Filed 7-28-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23456; File No. SE-PSDTC-86-05]

Self-Regulatory Organizations; Proposed Rule Change by Pacific Securities Depository Trust Company Relating to Its Pacific Participant Terminal System and Its Pacific Automated Services

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 17, 1986, the Pacific Securities Depository Trust Company ("PSDTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Securities Depository Trust Company ("PSDTC") offers automated services to its participants whereby participants can communicate directly to the data center.

Access to PSDTC's automated services is accomplished in two modes: (1) Online, through the Pacific Participant Terminal System ("PPTS") and (2) computer-to-computer transmission or magnetic tape through the Pacific Automated Services ("PASS").

Pacific Participant Terminal System (PPTS)

PPTS facilitates the remote automated processing of certain existing PSDTC services.

PPTS permits: (1) Online trade affirmation, cancellation, automatic confirmation printing for trades submitted to the National Institutional Delivery System ("NIDS"), and inquiry on the status of NIDS trades throughout the trade cycle; and (2) depository movements (inter- and intra-participant) of shares versus money or free, the initiation of special payment orders (cash only movements), and inquiry on depository movements including a screen accounting of current money settlement requirements for the day's online activity.

Pacific Automated Services (PASS)

PASS is an integrated system which provides the facilities for the exchange of information between PCC/PSDTC and its participants and enables the

timely receipt and transmittal of data and reports.

PASS provides direct links with a participant's mainframe or microcomputer. For participants without an in-house computer installation, PCC/PSDTC is linked to them through service bureaus. PCC/PSDTC participants may also receive and send information through the physical exchange of magnetic tapes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) *Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.* PPTS and PASS facilities rapid and efficient communication between PCC/PSDTC and its participants and thus, eliminates the labor intensive aspect and unnecessary cost resulting from the manual processing of input. By providing a direct and immediate automated communications link between PCC/PSDTC and its participants, PPTS and PASS encourages the use of depository/clearance facilities. The proposed rule change is, therefore, consistent with section 17A(b)(3)(F) of the Securities Exchange Act of 1934 ("Act") in that it furthers the objectives of the Act with respect to enhacing the prompt and accurate clearance and settlement of securities transactions, reducing physical deliveries of securities to assure the safeguarding of securities which are in the custody or control of PCC/PSDTC and supplementing existing interfaces between registered securities depositories.

(B) *Self-Regulatory Organization's Statement on Burden on Competition.* PSDTC perceives no burden on competition by reason of the proposed rule change.

(C) *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others.* Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth St., NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth St., NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–PSDTC–86–05 and should be submitted by August 19, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 22, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–17007 Filed 7–28–86; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

July 23, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stock:

Domtar, Inc.

Common Stock, No Par Value (File No. 7–9069)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 13, 1986 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–17010 Filed 7–28–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–15213 (File No. 812–6360)]

IDS Special Tax-Exempt Series Trust; Application

July 23, 1986.

Notice is hereby given that IDS Special Tax-Exempt Series Trust, 1000 Roanoke Building, Minneapolis, MN 55474 (the "Trust"), IDS Financial Services Inc., IDS Tower, Minneapolis, MN 55474 ("IDS"), and Financial Guaranty Insurance Company, 175 Water Street, New York, NY 10035 ("Finanical") (collectively, "Applicants"), filed an application on April 24, 1986, for an order pursuant to sections 6(c), 17(b) and 17(d) of the Investment Company Act of 1940 ("Act") exempting Applicants from sections 17(a) and 17(b) of the Act. and Rule 17d–1 thereunder to the extent necessary to permit the Trust to purchase from Financial insurance guaranteeing the scheduled payment of principal and interest with respect to some or all of the securities in certain of its series ("Funds"), to make and receive payments with respect thereto and to

perform other acts contemplated thereby. All interested persons are referred to the application of file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of a applicable provisions thereof.

The application states that the Trust is an open-end management investment company organized as a Massachusetts business trust, for which IDS will serve as investment adviser and principal underwriter. Financial is a wholly owned subsidiary and the principal asset of FGIC Corporation ("FGIC"), a holding company owned by several investors including Shearson Lehman Brothers Inc. Shearson Lehman Brothers Inc. is a wholly-owned subsidiary of American Express Company, the parent of IDS. Therefore, Financial may be deemed to be an affiliated person of the Trust.

Applicants state that each Fund designated an insured fund will invest primarily in securities that are insured. Such securities will be either (1) insured by the issuer thereof or third parties, with premiums paid by such persons ("Pre-insured Securities") or (2) insured by the Trust through Portfolio Insurance acquired from Financial. (Some or all of the Pre-insured Securities may be insured under policies issued by Financial.) The Fund will select its purchases (other than Pre-insured Securities) from a list of eligible securities maintained by Financial. In addition to identifying the securities, the list will establish the maximum principal amount that will be insured by Financial, the annual premium for Portfolio Insurance and the premium payable at any later date to purchase Secondary Market Insurance. Once a security becomes subject to Portfolio Insurance, Financial will guarantee the full and timely payment of principal and interest due on the stated maturity, mandatory sinking fund and interest payment dates. (Accelerations of payment of principal in the event of default, or other advancement of maturity, are not covered by Portfolio Insurance.) The Trust undertakes not to settle any claim under Portfolio Insurance for less than full payment without obtaining an exemptive order from the Commission.

According to the application, Portfolio Insurance applies only while insured securities are retained in the Fund's portfolio. When the Fund decides to sell a security subject to Portfolio Insurance, it may purchase Secondary Market Insurance. The premium for Secondary Market Insurance is determined at the time of the original purchase of the security by the Fund. Secondary Market Insurance guarantees the scheduled payment of principal and interest on the security to any subsequent holder. The fund will purchase Secondary Market Insurance at the time of the sale of the security only when the insured value of the portfolio security, less the cost of the premium for Secondary Market Insurance, exceeds the value of the security without insurance. The premium for Secondary Market Insurance will be paid out of the proceeds from the sale of the security and will never constitute an expense of the Fund. Applicants state that premium rates for Portfolio Insurance will be at least as favorable as rates charged by Financial to its customers who are unaffiliated entities and will be comparable to prevailing rates charged by insurers of similar stature and creditworthiness who are not affiliated with IDS or the Trust. Financial has agreed to provide the Trustees annually with a certificate as to premium rate comparability. The Portfolio Insurance, including the Secondary Market Insurance feature, is noncancelable except for nonpayment of premium and continues in force as long as the Trust is in existence, the insurer is in business and eligible portfolio securities continue to be held by the Trust.

To the extent that the acquisition of Portfolio Insurance or Secondary Market Insurance may be deemed to be the sale of property by Financial to the Trust, and to the extent settlement of any claims under the policy and transfer of any interest in the securities held by the Trust to Financial may be deemed to involve the sale of property or securities by the Trust to Financial, Applicants request an exemption from the provisions of section 17(a) of the Act. To the extent the payment of premium to, the receipt of payments from or the settlement of claims with Financial by the Trust may be deemed to involve a joint enterprise or other joint arrangement, Applicants also request an order pursuant to section 17(d) of the Act and Rule 17d–1 thereunder to permit Financial to provide Portfolio Insurance and Secondary Market Insurance to the Trust with respect to its portfolio securities.

It contended that the insurance features will be consistent with the investment policies of the Fund and the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned. Applicants submit that the premium rates will be determined by Financial within a rate framework applicable to all mutual funds and filed with applicable state insurance regulatory authorities, and will be based upon Financial's determination of the creditworthiness of the issuer of the bonds, the risk of default by the bond issuer, the potential liability arising from insuring such bond issue and the demand of mutual funds for such insurance. The terms on which either Portfolio Insurance or Secondary Market Insurance will be offered will be no less favorable than the terms offered to any nonaffiliated mutual fund. The Fund will purchase Secondary Market Insurance only if the net sales price of the portfolio security is greater with the Insurance.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than August 14, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the addresses stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–17012 Filed 7–28–86; 8:45 am]

BILLING CODE 8010–01–M

Internal Revenue Service

[Delegation Order No. 219]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of Authority.

SUMMARY: Delegation Order No. 219 provides for the approval level required to make jeopardy and termination assessments in situations where a District Director is precluded from personal involvement. The text of the delegation order appears below.

EFFECTIVE DATE: July 14, 1986.

FOR FURTHER INFORMATION CONTACT: Robert J. Sweeney, Chief, Tax Avoidance Section, (OP:EX:D:T), 11111 Constitution Ave., NW., Room 2413, Washington, DC 20224, (202) 566–4678.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury directive appearing in the Federal Register for Wednesday, November 8, 1979.

Robert J. Sweeney,

Acting Director, Office of District Examination, Programs OP:EX:D.

Delegation Order; Delegation of Authority To Make Jeopardy and Termination Assessments

1. Pursuant to the authority vested in the Commissioner of the Internal Revenue under 26 CFR 301.6020–1, 26 CFR 301.6201–1, 26 CFR 301.7701–9 and Treasury Department Order No. 150–37, authority is hereby delegated to the District Director to make jeopardy and termination assessments in accordance with Internal Revenue Code sections 6861, 6862, 6851, respectively, and the regulations promulgated thereunder.

2. In the event the District Director has to exclude himself, herself from personal involvement for reasons prescribed in IRM 4500; then jeopardy and/or termination assessments will be personally approved by the Assistant District Director if that position exists, or if that position does not exist, by the official delegated in the order prescribed below:

a. Chief, Examination Division.

b. Chieif, Collection Division.

c. Chief, Criminal Investigation Division.

d. Chief, Examination Section in Streamlined Districts.

3. If all District Officials identified above must exclude themselves from personal involvement, the personal approval of the Regional Commissioner is required. In any event, the person approving the jeopardy and/or termination assessment must not fall within any of the exclusionary situations that prevent a District Director from being personally involved.

4. This authority may not be redelegated.

5. To the extent that the authority previously exercised consistent with this order may require ratification, it is hereby approved and ratified.

Dated: July 14, 1986.

Approved:

James I. Owens,

Deputy Commissioner.

[FR Doc. 86–17014 Filed 7–28–86; 8:45 am]

BILLING CODE 4830–01–M

VETERANS ADMINISTRATION

Veterans Administration Medical Center, Jackson, MS; Inpatient/Outpatient Psychiatric, Alcohol and Surgical Building; Notice of Finding of No Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impacts that may occur as a result of the construction of an Inpatient/Outpatient Psychiatric, Alcohol and Surgical Building and has determined that the potential environmental impacts from the development of this project will be minimal.

The VA proposes construction of a new major addition comprised of approximately 147,000 gross square feet at the VA Medical Center in Jackson, Mississippi. The preferred concept, which would be implemented if the project receives administrative approval and pending the availability of budgetary resources, provides new construction at the front of the main hospital. Also included will be renovation and backfill of vacated space for additional medical beds.

Construction of this project will have impacts on the human and natural environment affecting open space and minor soil erosion. Air quality impacts will be short term and minimal, resulting primarily from construction activity. The "No Action" option would not exhibit the magnitude of environmental effects compared to other alternatives considered.

The VA will adhere to all applicable Federal, State, and local environmental regulations during construction and operation of this project.

The significance of the identified impacts has been evaluated relative to considerations of both context and intensity as defined by the Council on Environmental Quality, (Title 40 CFR 1508.27).

An Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, Sections 1501.3 and 1508.9. A "Finding of No Significant Impact" has been reached based upon the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, DC. Persons wishing to examine a copy of the document may do so at the following office: Susan Livingstone, Director, Office of Environmental Affairs (088B), Room 423, Veterans Administration, 811 Vermont Avenue, NW., Washington, DC 20420, (202) 389–3316. Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: July 17, 1986.

Thomas K. Turnage,

Administrator.

[FR Doc. 86–16956 Filed 7–28–86; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 145
Tuesday, July 29, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 1:35 p.m. on Thursday, July 24, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to:

(A)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in The First National Bank of Prairie City, Prairie City, Iowa, which was closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, July 24, 1986; (2) accept the bid for the transaction submitted by Security Bank, Marshalltown, Iowa, an insured State member bank; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction; and

(B)(1) receive bids for the purchase of certain assets of and the assumption the liability to pay deposits made in McCune State Bank, McCune, Kansas, which was closed by the State Bank Commissioner for the State of Kansas on Thursday, July 24, 1986; (2) accept the bid for the transaction submitted by City National Bank of Pittsburg, Pittsburg, Kansas; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to the subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in Room 6020 of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: July 25, 1986.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 86-17084 Filed 7-25-86; 2:51 pm]

BILLING CODE 6714-01-M

2

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 6-86

Notice of Meetings: Announcement in Regard to Commission Meetings and Hearings.

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time: Tues., August 12, 1986 at 10:30 a.m.

Subject Matter: Consideration of claims filed under the Ethiopian Claims Program.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111 20th Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 1111 20th Street, NW., Room 409, Washington, DC 20579. Telephone: (202) 653-6155.

Dated at Washington, DC on July 25, 1986.

Judith H. Lock,

Administrative Officer.

[FR Doc. 86-17119 Filed 7-25-86; 4:02 pm]

BILLING CODE 4410-01-M

3

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:00 a.m., Tuesday, August 5, 1986.

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: The first four items will be open to the public; the last items will be closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. *Railroad Accident Report:* Rear End Collision of Metro-Dade Transportation Administration Trains Nos. 172-171 and 141-142.
2. *Recommendations:* to the American Public Transit Association and the Urban Mass Transportation Administration on Alcohol and Drug Use on Rail Rapid Transit Systems.
3. *Petition for Reconsideration:* Capsizing of the Uninspected Vessel M/V SCITANIC on the Tennessee River near Huntsville, Alabama.
4. *Highway Accident Report:* Multiple Vehicle Collision and Fire, U.S. 13 near Snow Hill, North Carolina.
5. *Opinion and Order:* Administrator v. Chaffin Docket SE-6855; disposition of the Administrator's appeal.
6. *Opinion and Order:* Administrator v. Goei, Docket SE-6900; disposition of the Administrator's appeal.

FOR MORE INFORMATION CONTACT:

H. Ray Smith, (202) 382-6525.

H. Ray Smith,

Federal Register Liaison Officer.

June 27, 1986.

[FR Doc. 86-17061 Filed 7-25-86; 2:36 pm]

BILLING CODE 7533-01-M

4

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 28, August 4, 11, and 18, 1986.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of July 28

Wednesday, July 30

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Thursday, July 31

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Revision of 10 CFR Part 35 "Medical Use of Byproduct Material"
b. Emergency Planning—Medical Services (Tentative)
c. Aamodt Application for Reimbursement for Participation in the TMI-1 Restart Proceeding (Tentative)

Week of August 4

Tentative

Tuesday, August 5

10:00 a.m.
Quarterly Source Term Briefing and Programs Initiated by Other Countries Related to Meltdown and Radiological Releases (Public Meeting)

2:00 p.m.
Briefing on Engineering Research Program (Public Meeting)

Wednesday, August 6

11:00 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of August 11

Tentative

Thursday, August 14

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of August 18

Tentative
No Commission Meetings

ADDITIONAL INFORMATION: Affirmation of "Diablo Canyon Reracking and Court Injunction" (Public Meeting) was held on July 21.

Affirmation of "Certified Question in TMI-2 Leak Rate Falsification Hearing" and "Review of ALAB-836 (In the Matter of Philadelphia Electric Company)" (Public Meeting) was held on July 24.

To verify the status of meetings call (recording)—(202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634-1410.

Dated: July 24, 1986.

Robert B. McOsker,

Office of the Secretary.

[FR Doc. 86-17118 Filed 7-25-86; 3:58 pm]

BILLING CODE 7590-01-M

Federal Register

Tuesday
July 29, 1986

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 1, 3, 5, 6, 7, 9, 13, 14, 15, 19, 34, 43, 46, 52, and 53

Federal Acquisition Regulation; Final rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 3, 5, 6, 7, 9, 13, 14, 15, 19, 34, 43, 46, 52, and 53

[Federal Acquisition Circular 84-18]

Federal Acquisition Regulation

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: Federal Acquisition Circular (FAC) 84-18 amends the Federal Acquisition Regulation (FAR) with respect to the following: OFPP Policy Letter 85-1; Implementation of 18 U.S.C. 218 and E.O. 12448 regarding Voiding and Rescinding Contracts; Format for Electronic Transmission of CBD Announcement (Numbered Note 83); Prospective Construction Contractors; Threshold on Make-or-Buy Decisions; Access to Contractor's Records; Waiver of Subcontractor Cost or Pricing Data; Integrity of Unit Prices; Inspection Clause for R&D Contracts (Short Form); Correction of FAR 52.246-12, Inspection of Construction; Cancellation of SF 36, Continuation Sheet; and Editorial Corrections. The List of Basic Agreements Available for Use by Executive Agencies is included as an information item.

FAC 84-10 was published in the **Federal Register** on July 3, 1985 (50 FR 27560), as an interim rule. As a result of subsequent public comments received both in writing and orally at a public meeting held on September 10, 1985, the coverage on Item II of FAC 84-10, Integrity of Unit Prices, required by Pub. L. 98-525 and Pub. L. 98-577, was revised and is hereby published as a final rule. Item I of FAC 84-10, Planning for Future Competition, Item IV of FAC 84-10, Small Business Subcontracting Policy, and Item V of FAC 84-10, Definition of Major System, are hereby adopted as final rules without change.

FAC 84-11 was published in the **Federal Register** on August 30, 1985 (50 FR 35474), as an interim rule. Item I of FAC 84-11, Unreasonable Restrictions on Subcontractor Sales, is hereby adopted as a final rule without change.

EFFECTIVE DATE: July 30, 1986.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, Telephone (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Background

The Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council published as an interim rule several revisions to the Federal Acquisition Regulation (FAR) to implement the requirements of Pub. L. 98-525 and Pub. L. 98-577 with regard to integrity of unit prices. These revisions appeared in the **Federal Register** on July 3, 1985, as Item II of FAC 84-10. This notice requested public comments on the interim rule by August 2, 1985. All comments received were considered in the development of the final rule, including those received at a public meeting held on September 10, 1985.

B. Public Comments

FAC 84-18, Items I through XI (except Items II & VIII). Public comments have not been solicited with respect to the revisions in FAC 84-18 since such revisions either (a) do not alter the substantive meaning of any coverage in the FAR having a significant impact on contractors or offerors, or (b) do not have a significant effect beyond agency internal operating procedures.

FAC 84-18, Item II, Implementation of 18 U.S.C. 218 and E.O. 12448 regarding Voiding and Rescinding Contracts. On May 31, 1985, a notice of proposed rule was published in the **Federal Register** (50 FR 23157). The Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council have considered the public comments solicited.

FAC 84-18, Item VIII, Integrity of Unit Prices. Having considered all of the comments provided, the Councils have revised the coverage on integrity of unit prices, as follows:

1. Deleted the requirement to flow down paragraph (b) of the clause at 52.215-26.

2. Modified language in the first sentence at 52.215-26(a) to clarify how costs shall be distributed.

3. Added a last sentence at 52.215-26(a) that addresses the submission of cost or pricing data not otherwise required by law or regulation.

C. Paperwork Reduction Act

FAC 84-18, Items I through XI (except Item VIII). The Paperwork Reduction Act does not apply because these final rules do not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501, et seq.

FAC 84-18, Item VIII, Integrity of Unit Prices, was initially issued as an interim rule on July 31, 1985. The information collection requirements contained in this rule have been approved by the Office of Management and Budget as required by 44 U.S.C. 3501, et seq. and have been assigned clearance number 9000-0080.

D. Regulatory Flexibility Act

FAC 84-18, Items I through XI (except Items II and VIII). Analyses of these revisions indicate that they are not "significant revisions" as defined in FAR 1.501-1, i.e., they do not alter the substantive meaning of any coverage in the FAR having a signficant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the issuing agencies. Accordingly, and consistent with section 1212 of Pub. L. 98-525 and section 302 of Pub. L. 98-577 pertaining to publication of proposed regulations (as implemented in FAR Subpart 1.5, Agency and Public Participation), solicitation of agency and public views on these revisions is not required. Since such solicitation is not required, the Regulatory Flexibility Act (Pub. L. 96-354) does not apply.

FAC 84-18, Item II, Implementation of 18 U.S.C. 218 and E.O. 12448 Regarding Voiding and Rescinding Contracts. This revision appears not to have a significant economic impact on a substantial number of small entities because very few contracts are voided and rescinded by the Government.

FAC 84-18, Item VIII, Integrity of Unit Prices. This revision will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because (a) the coverage applies only with respect to contracts negotiated without full and open competition or without adequate competition, (b) the first requirement provides instructions regarding cost distribution within a contract to avoid unit price distortions and is not considered burdensome, and (c) the requirement to identify items of supply which the contractor will not manufacture involves data which small businesses must identify in connection with some small business set-asides and is therefore not unusual or difficult for them.

List of Subjects in 48 CFR Parts 1, 3, 5, 6, 7, 9, 13, 14, 15, 19, 34, 43, 46, 52, and 53

Government procurement.

Dated: July 11, 1986.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Federal Acquisition Circular

[Number 84–18]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84–18 is effective July 30, 1986.

John L. Kendig,

Acting Deputy Assistant Secretary of Defense for Procurement.

Terence C. Golden,

Administrator,

July 8, 1986.

S. J. Evans,

Assistant Administrator for Procurement.

Federal Acquisition Circular (FAC) 84–18 amends the Federal Acquisition Regulation (FAR) as specified below.

Item I—OFPP Policy Letter 85–1

FAR 1.101 and 1.102 are revised to state that the FAR system does not include internal agency guidance as described in 1.301(a)(2) and that the FAR system is in accordance with OFPP Policy Letter 85–1.

Item II—Implementation of 18 U.S.C. 218 and E.O. 12448 Regarding Voiding and Rescinding Contracts

Subpart 3.7, Voiding and Rescinding Contracts, has been added to Part 3, Improper Business Practices and Personal Conflicts of Interest, in order to implement the E.O. and 18 U.S.C. 218, and to prescribe policies and procedures pertaining to the voiding and rescinding of those contracts within the coverage of 18 U.S.C. 218.

Item III—Format for Electronic Transmission of CBD Announcement (Numbered Note 83)

FAR 5.101, 5.201, 5.207 and 5.302 are revised to prescribe the use of a new single standardized format development by the Department of Commerce for procurement synopses published in the Commerce Business Daily.

Item IV—Prospective Construction Contractors

FAR 9.104–1(g) and 9.105–1 are revised by an editorial change go give specific recognition to performance evaluation reports and complete the linkage to FAR 36.201.

Item V—Threshold on Make-or-Buy Decisions

FAR 15.704 is revised in the last sentence to include, in a make-or-buy program, items or work efforts estimated to cost less than 1 percent of the total estimated contract price or any minimum dollar set by the agency, whichever is less. This change is made to correct an inadvertent rewording during development of the FAR so that appropriate management surveillance of contractor decisionmaking which was in place over many years for defense systems will not be curtailed.

Item VI—Access to Contractor's Records

FAR 15.804–6(e), 15.805–5(d), (e), and (h) are revised to clarify internal procedures to be used when cost or pricing data is deficient or when the contractor denies access to cost or pricing data or records essential to the review of a proposal.

Item VII—Waiver of Subcontractor Cost or Pricing Data

FAR 15.806(b) is revised to add a cross-reference citation to 15.804–3(i) to clarify that subcontractor cost or pricing data may be waived by following the procedure at the latter citation.

Item VIII—Integrity of Unit Prices

The interim coverage relating to FAR 15.812, Unit prices, and the clause at 52.215–26, Integrity of Unit Prices, was revised in response to public comments and is published as a final rule

a. Deletion of the requirement to flow down paragraph (b) of the clause at 52.215–26.

b. Modification of the first sentence of 52.215–26(a) to clarify how costs shall distributed.

c. Addition of language to 52.215–26(a) that addresses the submission of cost or pricing data not otherwise required by law or regulation.

Item IX—Inspection Clause for R&D Contracts (Short Form)

FAR 46.309 is revised to require that the contract clause at 52.246–9, Inspection of Research and Development (Short Form), be used in research and development contracts when the longer inspection clauses are not used. In effect, the revision reinstates the clause usage requirements of the Defense Acquisition Regulation and the Federal Procurement Regulations. A related change is made with respect to the clause's preface in 52.246–9.

Item X—Correction of FAR 52.246–12, Inspection of Construction

FAR 52.246–12 is revised to clarify the meaning of paragraph (b) of the clause.

Item XI—Cancellation of SF 36, Continuation Sheet

FAR 13.107, 14.201–2, 43.301, 53.106, 53.110, 53.214, 53.215–1, and 53.301–36 are revised to change references from Standard Form 36 to Optional Form 336.

Item XII—List of Basic Agreements Available for Use by Executive Agencies

As specified in FAR 35.015(b)(2), agencies are encouraged to use basic agreements of other agencies to promote uniformity and consistency in dealing with educational institutions and nonprofit organizations in the acquisition of research and development (R&D). The attached list of institutions and organizations that have entered into basic agreements pertaining to R&D with executive agencies (Appendix A) is included as an information item to contracting officers. Each institution is listed alphabetically together with a code number that identifies the agency concerned. Agency contact points that may be used to obtain copies of and information concerning the current applicability of the various basic agreements (Appendix B) is also included as an information item.

XIII—Editorial Corrections

FAR 5.202(a)(2) and FAR 6.102(d)(2) are revised to make corrections to the FAR Competition in Contracting Act coverage.

Therefore, 48 CFR Part 1, 3, 5, 6, 7, 9, 13, 14, 15, 19, 34, 43, 46, 52, and 53 are amended as set forth below.

The interim rule (FAC 84–10) amending Parts 7, 19, and 34 and sections 52.215–26 and 52.219–8, which was published at 50 FR 27560, July 3, 1985, and the interim rule (FAC 84–11) amending Part 3 and section 52.203–6, which was published at 50 FR 35474, Aug. 30, 1985, are adopted as final rules without change.

1. The authority citation for 48 CFR Parts 1, 3, 5, 6, 7, 9, 13, 14, 15, 19, 34, 43, 46, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1.101 is amended by revising the last sentence to read as follows:

1.101 Purpose.

* * * The FAR System does not include internal agency guidance of the type described in 1.301(a)(2).

3. Section 1.102 is amended by revising paragraph (a) to read as follows:

1.102 Authority.

(a) The development of the FAR System is in accordance with the requirements of the Office of Federal Procurement Policy (OFPP) Act of 1974 (Pub. L. 93–400), as amended by Pub. L. 96–83, and OFPP Policy Letter 85–1, Federal Acquisition Regulations System, dated August 19, 1985.

* * * * *

4. Section 1.105 is amended by adding, in numerical order, FAR segments and corresponding OMB Control Numbers to read as follows:

1.105 OMB Approval under the Paperwork Reduction Act.

FAR Segment	OMB Control No.
* * * * *	
15.812–1(b)	9000–0080
* * * * *	
52.215–26	9000–0080
* * * * *	

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

5. Part 3 is amended by adding a new Subpart 3.7, consisting of sections 3.700 through 3.705, to read as follows:

Subpart 3.7—Voiding and Rescinding Contracts

Sec.

3.700 Scope of subpart.
3.701 Purpose.
3.702 Definition.
3.703 Authority.
3.704 Policy.
3.705 Procedures.

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

Subpart 3.7—Voiding and Rescinding Contracts

3.700 Scope of subpart.

(a) This subpart prescribes Governmentwide policies and procedures for exercising discretionary authority to declare void and rescind contracts in relation to which there has been a final conviction for bribery, conflict of interest, or similar misconduct, and to recover the amounts expended and property transferred therefor.

(b) This subpart does not prescribe policies or procedures for, or govern the exercise of, any other remedy available to the Government with respect to such contracts, including but not limited to, the common law right of avoidance, rescission, or cancellation.

3.701 Purpose.

This subpart provides a means to—

(a) Provide the Government with an administrative remedy with respect to contracts in relation to which there has been a final conviction for bribery, conflict of interest, or similar misconduct; and

(b) Deter similar misconduct in the future by those who are involved in the award, performance, and administration of Government contracts.

3.702 Definition.

"Final conviction" means a conviction, whether entered on a verdict or plea, including a plea of *nolo contendere*, for which sentence has been imposed.

3.703 Authority.

Section 1(e) of Pub. L. 87–849, 18 U.S.C. 218 ("the Act"), empowers the President or the heads of executive agencies acting under regulations prescribed by the President, to declare void and rescind contracts and other transactions enumerated in the Act, in relation to which there has been a final conviction for bribery, conflict of interest, or any other violation of Chapter 11 of Title 18 of the United States Code (18 U.S.C. 201–224). Executive Order 12448, November 4, 1983, delegates the President's authority under the Act to the heads of the executive agencies and military departments.

3.704 Policy.

(a) In cases in which there is a final conviction for any violation of 18 U.S.C. 201–224 involving or relating to contracts awarded by an agency, the agency head or designee shall consider the facts available and, if appropriate, may declare void and rescind contracts, and recover the amounts expended and property transferred by the agency in accordance with the policies and procedures of this subpart.

(b) Since a final conviction under 18 U.S.C. 201–224 relating to a contract also may justify the conclusion that the party involved is not presently responsible, the agency should consider initiating debarment proceedings in accordance with FAR Subpart 9.4, Debarment, Suspension, and Ineligibility, if debarment has not been initiated or is not in effect at the time the final conviction is entered.

3.705 Procedures.

(a) *Reporting.* The facts concerning any final conviction for any violation of 18 U.S.C. 201–224 involving or relating to agency contracts shall be reported promptly to the agency head or designee for that official's consideration. The agency head or designee shall promptly notify the Civil Division, Department of Justice, that an action is being considered under this subpart.

(b) *Decision.* Following an assessment of the facts, the agency head or designee may declare void and rescind contracts with respect to which a final conviction has been entered, and recover the amounts expended and the property transferred by the agency under the terms of the contracts involved.

(c) *Decision-making process.* Agency procedures governing the voiding and rescinding decision-making process shall be as informal as is practicable, consistent with the principles of fundamental fairness. As a minimum, however, agencies shall provide the following:

(1) A notice of the proposed action to declare void and rescind the contract shall be made in writing and sent by certified mail, return receipt requested.

(2) A thirty calendar day period after receipt of the notice, for the contractor to submit pertinent information before any final decision is made.

(3) Upon request made within the period for submission of pertinent information, an opportunity shall be afforded for a hearing at which witnesses may be presented, and any witness the agency presents may be confronted. However, no inquiry shall be made regarding the validity of the conviction.

(4) If the agency head or designee decides to declare void and rescind the contracts involved, that official shall issue a written decision which—

(i) States that determination;

(ii) Reflects consideration of the fair value of any tangible benefits received and retained by the agency; and

(iii) States the amount due, and the property to be returned, to the agency.

(d) *Notice of proposed action.* The notice of the proposed action, as a minimum shall—

(1) Advise that consideration is being given to declaring void and rescinding contracts awarded by the agency, and recovering the amounts expended and property transferred therefor, under the provisions of 18 U.S.C. 218;

(2) Specifically identify the contracts affected by the action;

(3) Specifically identify the final conviction upon which the action is based;

(4) State the amounts expended and property transferred under each of the contracts involved, and the money and the property demanded to be returned;

(5) Identify any tangible benefits received and retained by the agency under the contract, and the value of those benefits, as calculated by the agency;

(6) Advise that pertinent information may be submitted within 30 calendar days after receipt of the notice, and that, if requested within that time, a hearing shall be held at which witnesses may be presented and any witness the agency presents may be confronted; and

(7) Advise that action shall be taken only after the agency head or designee issues a final written decision on the proposed action.

(e) *Final agency decision.* The final agency decision shall be based on the information available to the agency head or designee, including any pertinent information submitted or, if a hearing was held, presented at the hearing. If the agency decision declares void and rescinds the contract, the final decision shall specify the amounts due and property to be returned to the agency, and reflect consideration of the fair value of any tangible benefits received and retained by the agency. Notice of the decision shall be sent promptly by certified mail, return receipt requested. Rescission of contracts under the authority of the Act and demand for recovery of the amounts expended and property transferred therefor, is not a claim within the meaning of the Contract Disputes Act of 1978 (CDA), 41 U.S.C. 601–613, or Part 33. Therefore, the procedures required by the CDA and the FAR for the issuance of a final contracting officer decision are not applicable to final agency decisions under this subpart, and shall not be followed.

PART 5—PUBLICIZING CONTRACT ACTIONS

6. Section 5.101 is amended by adding introductory text to read as follows:

5.101 Methods of disseminating information.

The Commerce Business Daily (CBD) is the public notification media by which U.S. Government agencies identify proposed contract actions and contract awards. The CBD is published in five or six daily editions weekly, as necessary.

* * * * *

7. Section 5.201 is amended by revising paragraph (d) to read as follows:

5.201 General.

* * * * *

(d) Subcriptions to the CBD must be placed with the Superintendent of Documents, Government Printing Office, Washington, DC 20402 (Tel. 202–783–3238).

5.202 [Amended]

8. Section 5.202 is amended by removing in paragraph (a)(2) the words "(a) (see also 5.203(b))".

9. Section 5.205 is amended by adding paragraph (b) to read as follows:

5.205 Special situations.

* * * * *

(b) *General notices and announcements.* General notices and announcements of such matters as business fairs, pre-bid/pre-proposal conferences, meetings, availability of draft solicitations or draft specifications for review, etc., which are to be published in the CBD shall be transmitted in accordance with 5.207(a). Contracting officers shall prepare general announcement in the following format:

(1) *General.* Use conventional typing, with upper and lower case letters, standard punctuation, and commonly used abbreviations.

(2) *Spacing.* Begin lines in the text, except paragraph beginnings, flush with the left margin. Use double-spaced lines. Begin paragraphs five spaces from the left margin.

(3) *Contracting office and address.* Begin the name, address, and telephone number of the contracting office on the first line of the text. Do not abbreviate except for names of states. The address shall include an attention phrase that identifies the person(s) to contact for further information.

(4) *Description of the matter being announced.* Include a clear, complete description of the matter to be published.

* * * * *

10. Section 5.207 is amended by revising paragraphs (a) and (b); by redesignating paragraphs (c), (d), and (e) as (d), (e), and (f); by adding a new paragraph (c); by redesignating paragraph (f) as (g) and revising the introductory text of new (g)(1) and (g)(2); and by adding in numerical order in paragraph (g)(2) the code "60" and the corresponding description "Fiber optics materials" as follows:

5.207 Preparation and transmittal of synopses.

(a) *Transmittal.* Contracting officers shall transmit synopses of actions identified under section 5.101 to the Commerce Business Daily by the most expeditious and reliable means available. Therefore, synopses should be transmitted by electronic means whenever feasible. Synopses telecommunicated via the AUTODIN network shall be addressed to RUCHODY. Synopses telecommunicated via a TTY (Teletypewriter) using commercial facilities and networks shall be addressed to 62875619. When electronic transmission is not feasible, then synopses should be sent to the CBD via mail or related physical delivery of hard copy and should be addressed to:

U.S. Department of Commerce,
Commerce Business Daily,
P.O. Box 5999,
Chicago, IL 60680

(b) *Style and format.* The contracting officer shall prepare the synopsis in the following style and format:

(1) *General.* Format for hard copy synopses shall employ conventional typing with upper and lower case letters, standard punctuation, and commonly used abbreviations. Hard copy and telecommunicated synopses should follow identical sequence and form although the typing style is different for telecommunicated synopses.

(2) *Spacing.* Begin each line flush left and use double-spaced lines. If more than one synopsis is to be sent at one time, separate each entry by four line spaces, then begin each new synopsis with the number 1.

(3) *Abbreviations.* Minimize abbreviations or acronyms to the extent possible except for the commonly recognized two letter State abbreviations.

(4) *Standard format.* Contracting officers shall prepare each synopsis in the following format. Precede each

format item with the number of the item followed by a period (e.g., 1.). Leave two spaces following the period after the item number before beginning the entry. Begin a new line of text for each format item. Each synopsis shall include all 17 format items. When a format item is inapplicable, specify "N/A" two spaces following the period after the item number. Do not include the format item title.

FORMAT ITEM and Explanation/ Description of Entry

1. ACTION CODE
(A single alphabetic letter denoting the specific action related in the synopsis. Choices are limited to the following: P=Presolicitation Notice/Procurement; A=Award announcement; M=Modification of a previously announced procurement action (a correction to a previous CBD announcement); R=Sources Sought (includes A-76 services and architect-engineer contracts); F=Foreign procurement announcement or tender.)
2. DATE
(Date on which the synopsis is transmitted to the CBD for publication. Use a four digit number indicating month in two digits and date in two digits (MMDD). All four spaces must be used with preceding 0 for months January thru September. Format: 0225 for February 25.)
3. YEAR
(Two numeric digits denoting the calendar year of the synopsis. Format 85 for 1985.)
4. FEDERAL INFORMATION PROCESSING STANDARD (FIPS) NUMBER
(Agency code number identifying the sending agency. Normally a four or five character field. Usually numeric, but may contain one or more alphabetic characters. Reference is FIPS 95 publication by the National Bureau of Standards which identifies Federal Agencies and related organizations.)
5. CONTRACTING OFFICE ZIP CODE
(The geographic zip code for the contracting office. Up to nine characters may be entered. When using a nine digit zip code, separate the first five digits and last four digits with a dash. Format: 00000-0000.)
6. CLASSIFICATION CODE
(Service or supply code number; see 5.207(g). Each synopsis should classify the services or supplies under one grouping. If the action is for a multiplicity of goods and/or services, the preparer should group the action under the category best defining the overall acquisition based upon value.)
7. CONTRACTING OFFICE ADDRESS
(The complete name and address of the contracting office. Field length is open, but generally not expected to exceed 90 alpha-numeric characters.)
8. SUBJECT
(Insert classification code for ITEM 6, and a brief title description of services, supplies, or project required by the agency. This will appear in the CBD as the bold faced title in the first line of the description.)
9. PROPOSED SOLICITATION NUMBER
(Agency number for control, tracking, identification. For solicitations; if not a solicitation, enter N/A.)
10. OPENING/CLOSING RESPONSE DATE
(For solicitations; if not a solicitation, enter N/A. Issuing agency deadline for receipt of bids, proposals or responses. Use a six digit date. Format: MMDDYY. Explanation may appear in text of synopsis in Item 17.)
11. CONTACT POINT/CONTRACTING OFFICER
(Include name and telephone number of contact. Also include name and telephone number of contracting officer if different. This will appear as the first item of information in the published entry. This entry may be alpha-numeric and up to 320 character blocks in length.)
12. CONTRACT AWARD AND SOLICITATION NUMBER
(For awards; if not an award, enter N/A. The award, solicitation or project reference number assigned by the agency to provide a reference for bidders/ subcontractors. Seventy-two blocks available for alpha-numeric entries plus slashes and dashes.)
13. CONTRACT AWARD DOLLAR AMOUNT
(For awards; if not an award, enter N/A. A ten digit numeric field. Enter whole dollars only. Output will be preceded by a dollar sign ($).)
14. CONTRACT LINE ITEM NUMBER
(For awards—as desired; if not an award, enter N/A. The alpha-numeric field with dashes and slashes may not exceed 32 spaces. If sufficient space is not available, enter N/A and insert the contract line item number(s) in format item 17.)
15. CONTRACT AWARD DATE
(For awards; if not an award, enter N/A. A six digit entry showing the date the award is made or the contract let. Format: MMDDYY.)
16. CONTRACTOR
(For awards; if not an award, enter N/A. Name and address of successful offeror. Ninety character spaces allowed for full identification.)
17. DESCRIPTION
(This block of space is open ended for entry of the substantive description of the contract action. Suggested sequence of content and items for inclusion in a solicitation synopsis are contained in 5.207(c) below. (See 5.302(b) for award entries, and 5.207(c) for solicitation entries.) The last entry(ies) should include reference(s) to any numbered notes or conditions which are applicable and which should appear in the printed text.)

(5) The following is an illustrative solicitation synopsis format:

U.S. Department of Commerce,
Commerce Business Daily,
Post Office Box 5999,
Chicago, IL 60680

1. P.
2. 0925
3. 85
4. 57936
5. 19111-5096
6. 95
7. Defense Industrial Supply Center, 700 Robbins Ave., Philadelphia, PA 19111-5096
8. 95—metal plate steel
9. DLA500-86-B-0090
10. BOD, 111585
11. Contact, Mary Drake, 215/697-XXXX/ Contracting Officer, Larry Bird, 215/697-XXXX
12. N/A
13. N/A
14. N/A
15. N/A
16. N/A
17. 95—Metal plate steel carbon.—NSN9515—00-237-5342.—Spec MIL-S-226988.—0.1875 in thk, 96 in w, 240 in lg.—Carbon steel.—45,000 lbs.—Del to NSY Philadelphia, PA, NSC Norfolk, VA.—Del by 1 Oct 86.—When calling, be prepared to state name, address and solicitation number. —See notes 4, 55.—All responsible sources may submit an offer which will be considered.

(c) *General format for Item 17, "Description."*

(1) Prepare the synopsis to ensure that it includes a clear description of the supplies or services to be contracted for, and is not unnecessarily restrictive of competition and will allow a prospective offeror to make an informed business judgment as to whether a copy of the solicitation should be requested.

(2) Include the following elements to the extent applicable, in sequence, with each element separated by two hyphens. Do not include the Roman numeral designator preceding each element.

(i) Supply/service classification code (see 5.207(g)) or if more than one classification is involved, that code which covers the largest dollar volume within the overall action.

(ii) Name of supply/service.

(iii) National Stock Number (NSN) if assigned.

(iv) Specification and whether an offeror, its product, or service must meet a qualification requirement in order to be eligible for award, and identification of the office from which additional information about the qualification requirement may be obtained (see Subpart 9.2).

(v) Manufacturer, including part number, drawing number, etc.

(vi) Size, dimensions, or other form, fit or functional description.

(vii) Predominant material of manufacture.

(viii) Quantity, including any options for additional quantities.

(ix) Unit of issue.

(x) Destination information.

(xi) Delivery schedule.

(xii) Duration of the contract period.

(xiii) For Architect-Engineer projects and other projects for which the supply or service codes are insufficient, provide brief details with respect to: location, scope of services required, cost range and limitations, type of contract, estimated starting and completion dates, and any significant evaluation factors.

(xiv) Numbered notes (see 5.207(e)), including instructions for set-asides for small businesses and labor surplus area concerns.

(xv) In the case of contract actions under Subpart 6.3, insert a statement of the reason justifying other than full and open competition, and identify the intended source(s) (see 5.207(e)(3)).

(xvi) Insert a statement that all responsible sources may submit a bid, proposal, or quotation which shall be considered by the agency.

* * * * *

(g) *Codes to be used in synopses to identify services or supplies.*

(1) Contracting officers shall use the following classification codes to categorize services:

* * * * *

(2) Contracting officers shall use the following classification codes to describe supplies:

* * * * *

11. Section 5.302 is amended by revising paragraph (b) to read as follows:

5.302 Preparation and transmittal of synopses of awards.

* * * * *

(b) Complete synopsis format items defined in section 5.207, as appropriate. Under format item 17, include as relevant the following:

(1) The following details of f.o.b. destination contracts, when total shipments from origin to destination will exceed 200,000 pounds, and destinations are firm:

(i) Origin point of shipment when different from the address of the contractor.

(ii) Continental United States destination of shipment.

(iii) Scheduled delivery period (beginning and ending dates).

(2) A statement of the industries, crafts, processes, or component items for which subcontractors are desired in a geographic area indicated by the contractor. This information shall be included when requested by the prime contractor.

PART 6—COMPETITION REQUIREMENTS

6.102 [Amended]

12. Section 6.102 is amended by removing in paragraph (d)(2) the words "(see Part 35 for procedures)".

PART 9—CONTRACTOR QUALIFICATIONS

9.104-1 [Amended]

13. Section 9.104–1 is amended by removing the last sentence in paragraph (g).

14. Section 9.105–1 is amended by removing paragraph (d) and adding paragraph (c)(6) to read as follows:

9.105-1 Obtaining information.

* * * * *

(c) * * *

(6) If the contract is for construction, the contracting officer may consider performance evaluation reports (see 36.201(c)(2)).

PART 13—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

13.107 [Amended]

15. Section 13.107 is amended by removing in paragraph (a)(3) the words "Standard Form 36" and inserting in their place the words "Optional Form 336".

PART 14—SEALED BIDDING

16. Section 14.201–2 is amended by revising the last sentence of paragraph (b) to read as follows:

14.201-2 Part I—Schedule.

* * * * *

(b) * * * The SF 33 may be supplemented as necessary by the Optional Form 336 (OF 336), Continuation Sheet (53.302–336).

PART 15—CONTRACTING BY NEGOTIATION

15.406-2 [Amended]

17. Section 15.406–2 is amended by removing in the last sentence of paragraph (b) the words "Standard Form 36, Continuation Sheet (53.301–36)" and inserting in their place the words "Optional Form 336, Continuation Sheet (53.302–336)".

18. Section 15.704 is amended by revising the last sentence to read as follows:

15.704 Items and work included.

* * * As a rule, make-or-buy programs should not include items or work efforts estimated to cost less than (a) 1 percent of the total estimated contract price or (b) any minimum dollar set by the agency, whichever is less.

19. Section 15.804–6 is amended by revising paragraph (e) to read as follows:

15.804-6 Procedural requirements.

* * * * *

(e) If cost or pricing data and information required to explain the estimating process are required and the offeror initially refuses to provide necessary data, or the contracting officer determines that the data provided is so deficient as to preclude adequate analysis and evaluation, the contracting officer shall again attempt to secure the data and/or elicit corrective action. If the offeror still persists in refusing to provide the needed data or to take corrective action, the contracting officer shall withhold the award or price adjustment and refer the contract action to higher authority, including details of the attempts made to resolve the matter and a statement of the practicability of obtaining the supplies or services from another source.

* * * * *

20. Section 15.805–5 is amended by revising paragraphs (d), (e)(5), and (h) to read as follows:

15.805-5 Field pricing support.

* * * * *

(d) Only the auditor shall have general access to the offeror's books and financial records. This limitation does not preclude the contracting officer, the ACO, or their representatives from requesting any data from or reviewing offeror records necessary to the discharge of their responsibilities. The duties of auditors and those of other specialists may require both to evaluate the same elements of estimated costs. They shall review the data jointly or concurrently when possible, the auditor rendering services within the audit area of responsibility and the other specialists rendering services within their own areas of responsibility. The ACO or auditor, as appropriate, shall orally notify the contracting officer immediately of data provided that is so deficient as to preclude review and any denial of access to records or to cost or pricing data considered essential to the performance of satisfactory review. The oral notification shall be promptly confirmed in writing to the contracting officer describing the deficient or denied data or records, with copies of the

deficient data if requested by the contracting officer, the need for the evidence, and the costs unsupported as a result of the denial. The contracting officer shall review the written notification and shall take immediate action to obtain the data needed. If the offeror persists in refusing to provide the data, and the contracting officer determines that the data is essential for a fair and reasonable price determination, then the contracting officer shall proceed with the action outlined in 15.804–6(e).

* * * * *

(e) * * *

(5) A list of any cost or pricing data submitted that are not accurate, complete and current and of any cost representations that are unsupported. When the result of deficiencies is so great that the auditor cannot perform an audit or considers the proposal unacceptable as a basis for negotiation, the contracting officer shall be orally notified so that prompt corrective action may be taken, as provided by 15.805–5(d). The auditor will immediately confirm the notification in writing, explaining the deficiencies and the cost impact on the proposal.

* * * * *

(h) If any information is disclosed after submission of a proposal that the contracting officer believes may significantly affect the audit findings, the contracting officer shall require the offeror to provide concurrent copies to the appropriate field pricing office (ACO and audit offices). In that case, the ACO or auditor, as appropriate, will be requested to immediately review the disclosed information and orally report the findings to the contracting officer, followed by a supplemental report when considered necessary by the contracting officer.

* * * * *

21. Section 15.806 is amended by adding at the end of paragraph (b), a sentence to read as follows:

15.806 Subcontract pricing considerations.

* * * * *

(b) * * * To waive subcontractor cost or pricing data, follow the procedures at 15.804–3(i).

* * * * *

22. Sections 15.812, 15.812–1, and 15.812–2 are revised to read as follows:

15.812 Unit prices.

15.812–1 General.

(a) Although direct and indirect costs are generally allocated to contracts in accordance with the Cost Accounting Standards of Part 30 (when applicable) and the Contract Cost Principles and Procedures of Part 31, for the purpose of pricing all items of supplies, distribution of those costs within contracts shall be on a basis that ensures that unit prices are in proportion to the item's base cost (e.g., manufacturing or acquisition costs). Any method of distributing costs to line items that distorts the unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost.

(b) When contracting by negotiation, without full and open competition, contracting officers shall require that offerors identify in their proposals those items of supply which they will not manufacture or to which they will not contribute significant value. The contracting officer shall require similar information when contracting by negotiation with full and open competition if adequate price competition is not expected (see 15.804–3(b)). The information need not be requested in connection with the award of contracts under the General Services Administration's competitive Multiple Award Schedule Program. Such information shall be used to determine whether the intrinsic value of an item has been distorted through application of overhead and whether such items should be considered for breakout. The contracting officer may require such information in any other negotiated contracts when appropriate.

15.812–2 Contract clause.

(a) The contracting officer shall insert the clause at 52.215–26, Integrity of Unit Prices, in all solicitations and contracts other than small purchases under Part 13 or involving construction or architect-engineer services under Part 36 or utility services under Subpart 8.3.

(b) The contracting officer shall insert the clause with its *Alternate I* when contracting without full and open competition or when prescribed by agency regulations.

PART 43—CONTRACT MODIFICATIONS

43.301 [Amended]

23. Section 43.301 is amended by removing in paragraph (b) the words "Standard Form 36 (SF 36)" and inserting in their place the words "Optional Form 336 (OF 336)".

PART 46—QUALITY ASSURANCE

24. Section 46.309 is revised to read as follows:

46.309 Research and development contracts (short form).

The contracting officer shall insert the clause at 52.246–9, Inspection of Research and Development (Short Form), in solicitations and contracts for research and development when the clause prescribed in 46.307 or the clause prescribed in 46.308 is not used.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

25. Section 52.215–26 is revised to read as follows:

52.215–26 Integrity of Unit Prices.

As prescribed in 15.812–2, insert the following clause:

INTEGRITY OF UNIT PRICES (JUL 1986)

(a) Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within this contract on a basis that ensures that unit prices are in proportion to the item's base cost (e.g., manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of cost or pricing data not otherwise required by law or regulation.

(b) The Offeror/Contractor shall also identify those supplies which it will not manufacture or to which it will not contribute significant value when requested by the Contracting Officer.

(c) The Contractor shall insert the substance of this clause, less paragraph (b), in all subcontracts.

(End of clause)

Alternate I (JUL 1986). As prescribed in 15.812–2, substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) The Offeror/Contractor shall also identify those supplies which it will not manufacture or to which it will not contribute significant value.

52.246–9 [Amended]

26. Section 52.246–9 is amended by inserting in the introductory text a colon following the word "clause" and removing the remainder of the sentence.

27. Section 52.246–12 is amended by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(JUL 1986)"; by revising the first sentence in paragraph (b) of the clause; and by removing all the derivation lines following "(End of clause)" as follows:

52.246–12 Inspection of Construction.

* * * * *

(b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. * * *

* * * * *

PART 53—FORMS

53.106 [Amended]

28. Section 53.106 is amended by removing in paragraph (b) the number "36".

53.110 [Amended]

29. Section 53.110 is amended by removing in paragraph (b) the form number "SF 36" and inserting in its place the form number "OF 336"; and by inserting a period in the last sentence following the words "page number" and removing the remainder of the sentence.

30. Section 53.214 is amended by revising the section title; by revising and redesignating paragraph (d) as (g); and by redesignating paragraphs (e), (f), and (g) as (d), (e), and (f), as follows:

53.214 Sealed bidding (SF's 26, 30, 33, 129, 1409, OF's 17, 336).

* * * * *

(g) OF 336 (REV. 3/86), *Continuation Sheet.* OF 336 may be used as a continuation sheet in solicitations, as specified in 14.201–2(b).

31. Section 53.215–1 is amended by revising the section title and revising paragraph (e) to read as follows:

53.215–1 Solicitation and receipt of proposals and quotations (SF's 18, 26, 30, 33, 129, OF 336).

* * * * *

(e) OF 336, *Continuation Sheet.* OF 336, prescribed in 53.214(g) may be used as a continuation sheet in solicitations, as specified in 15.406–2(b).

53.301–36 [Removed]

32. Section 53.301–36 (Standard Form 36) is removed.

53.302–336 [Added]

33. Section 53.302–336 (Optional Form 336) is added to read as follows:

BILLING CODE 6820–61–M

FAC 84-18 JULY 30, 1986

PART 53—FORMS

53.302-336

CONTINUATION SHEET	REFERENCE NO. OF DOCUMENT BEING CONTINUED	PAGE

NAME OF OFFEROR OR CONTRACTOR

ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT

Note.—The following appendices are included as information items and will not appear in the Code of Federal Regulations.

Appendix A—Basic Agreements with Educational Institutions and Nonprofit Organizations, Fiscal Year 1986

Note.—Appendix A—Not to be codified in the CFR.

FEDERAL ACQUISITION CIRCULAR—BASIC AGREEMENTS WITH EDUCATIONAL INSTITUTIONS AND NONPROFIT ORGANIZATIONS, FISCAL YEAR 1986

Contractor	Basic agreement No. and date	Code
Alabama A&M University, Normal, AL 35762	TV-64586A, Sept. 1, 1984	2
Alabama, University of, University, AL 35486	TV-50543A Supp. 8, Oct. 1, 1985	2
Alabama, University of, Director of Sponsored Programs, P.O. Box 2846, University, AL 35486	N00014-85-H-0003, Nov. 1, 1985	1
Alabama, University of, Office of Research, Administration, Huntsville, AL 35807	N00014-85-H-0002, Nov. 1, 1985	1
Alaska, University of, Director, Contract and Grant Services, Fairbanks, AK 99701	N00014-85-H-0004, Nov. 1, 1985	1
*American Institute of Biological Sciences, Office of Grants and Contracts, 1401 Wilson Boulevard, Arlington, VA 22209	N00014-85-H-0005, Nov. 1, 1985	1
Arizona Board of Regents, Arizona State University, Vice President for Research, Tempe, AZ 85281	N00014-85-H-0006, Nov. 1, 1985	1
Arizona Board of Regents, University of Arizona, Office of Sponsored Projects, Babcock Building, Tucson, AZ 85721	N00014-85-H-0007, Nov. 1, 1985	1
Arkansas, University of, Fayetteville, AR 72701	TV-64738A, Aug. 1, 1984	2
Auburn University, Auburn, AL 36849	TV-50607A, Supp. 7, Oct. 1, 1985	2
Auburn University, Auburn, AL 36849	TV-61453A, July 1, 1983	2
Auburn University, Auburn, AL 36849	TV-61725A, Sept. 1, 1983	2
Auburn University, Auburn, AL 36849	TV-66605A, May 16, 1985	2
Auburn University, Auburn, AL 36849	TV-67613A, Oct. 1, 1985	2
Auburn University, Vice President for Research, Auburn, AL 36830	N00014-85-H-0009, Nov. 1, 1985	1
Boston College, The Trustees of, Office of Research, Administration, 140 Commonwealth Avenue, Chestnut Hill, MA 02167	N00014-85-H-0010, Nov. 1, 1985	1
Boston University, Office of Sponsored Programs, 881 Commonwealth Avenue, Boston, MA 02215	N00014-85-H-0011, Nov. 1, 1985	1
Brandeis University, Office of Sponsored Programs, Waltham, MA 02154	N00014-85-H-0012, Nov. 1, 1985	1
California Institute of Technology, Director of Sponsored Research, 1201 East California Boulevard, Pasadena, CA 91109	N00014-85-H-0014, Nov. 1, 1985	1
California State University, Foundation, Northridge, Attn: Research and Sponsored Projects, 1811 Nordhoff Street, Northridge, CA 91330	N00014-85-H-0016, Nov. 1, 1985	1
California, the Regents of, the University of, Attn: David Mears, University Contracts and Grants Coordinator, 491 University Hall, 2200 University Avenue, Berkeley, CA 94720.	N00014-85-H-0017, Nov. 1, 1985	1
California, University of, Davis, CA 95616	TV-60797A, Jan. 27, 1983	2
Carnegie-Mellon University, Division of Research Contracts, 5000 Forbes Avenue, Pittsburgh, PA 15213	N00014-85-H-0018, Nov. 1, 1985	1
Case Western Reserve University, Office of Research Administration, 2040 Adelbert Road, Cleveland, OH 44106	N00014-85-H-0019, Nov. 1, 1985	1
Catholic University of America, Office of Sponsored Programs, 620 Michigan Avenue NE, Washington, DC 20017	N00014-85-H-0020, Nov. 1, 1985	1
Chicago, University of, Office of Sponsored Programs, 5801 South Ellis Avenue, Chicago, IL 60637	N00014-85-H-0021, Nov. 1, 1985	1
City of Hohenwald, Hohenwald, TN	TV-67242A, July 15, 1985	2
Colorado School of Mines, Office of Contracts and Grants, Golden, CO 80401	N00014-85-H-0025, Nov. 1, 1985	1
Colorado State University, Fort Collins, CO 80523	TV-62043A, Sept. 1, 1984	2
Colorado State University, Office of Contract Administration, Fort Collins, CO 80523	N00014-85-H-0026, Nov. 1, 1985	1
Colorado, The Regents of, the University of, Office of Contracts and Grants, 380 Willard Administrative Center, Boulder, CO 80309	N00014-85-H-0027, Nov. 1, 1985	1
Columbia University, The Trustees of in the City of New York, Office of Projects & Grants, Box 20, Low Memorial Library, New York, NY 10027.	N00014-85-H-0028, Nov. 1, 1985	1
Connecticut, University of, Office of Contracts and Grants, Storrs, CN 06268	N00014-85-H-0029, Nov. 1, 1985	1
Cornell University, Office of Sponsored Programs, Ithaca, NY 14850	N00014-85-H-0031, Nov. 1, 1985	1
Dayton, University of, Office of Sponsored Programs, 300 College Park Avenue, Dayton, OH 45409	N00014-85-H-0033, Nov. 1, 1985	1
Denver, University of, (Colorado Seminary), Office of Sponsored Agreements, University Park, Denver, CO 80208	N00014-85-H-0035, Nov. 1, 1985	1
Desert Research Institute, 7010 Dandini Boulevard, Reno, NV 89512	TV-67434A, Aug. 15, 1985	2
Duke University, Office of Contracts and Grants, Durham, NC 27706	N00014-85-H-0037, Nov. 1, 1985	1
Engineered Energy Concepts, Inc., Kingsport, TN 37660	TV-67213A, July 10, 1985	2
Engineered Energy Concepts, Inc., Kingsport, TN 37660	TV-67214A, July 10, 1985	2
*Environmental Research Institute of Michigan, Office of Contracts Administration, P.O. Box 618, Ann Arbor, MI 48107	N00014-85-H-0038, Nov. 1, 1985	1
Florida State University, Office of Graduate Studies and Research, 407 Westcott Building, Tallahassee, FL 32306	N00014-H-0040, Nov. 1, 1985	1
Florida, University of, Division of Sponsored Research, Gainesville, FL 32611	N00014-85-H-0041, Nov. 1, 1985	1
*Franklin Institute Research Laboratories, 20th Street and the Benjamin Franklin Parkway, Philadelphia, PA 19103	N00014-85-H-0042, Nov. 1, 1985	1
George Washington University, Office of Sponsored Research, 2121 I Street NW, Washington, DC 20006	N00014-85-H-0043, Nov. 1, 1985	1
Georgia Forestry Commission, Macon, GA 31298-4599	TV-64599A, Aug. 27, 1984	2
Georgia Tech Research Corporation, Office of Research Contracts, Atlanta, GA 30332	N00014-85-H-0044, Nov. 1, 1985	1
Georgia Tech Research Institute, Atlanta, GA 30332	TV-65463A, Nov. 16, 1984	2
Georgia, University of, Athens, GA 30602	TV-67622A, Sept. 1, 1985	2
Harvard College, President and Fellows of, Office of Sponsored Research, Holyoke Center 458, 1350 Massachusetts Avenue, Cambridge, MA 02138.	N00014-85-H-0046, Nov. 1, 1985	1
Hawaii, University of, Office of Sponsored Research, Spalding Hall, Room 357, 2540 Maile Way, Honolulu, HI 96822	N00014-85-H-0047, Nov. 1, 1985	1
Howard University, 2400 6th Street NW., Washington, DC 20059	N00014-85-H-0049, Nov. 1, 1985	1
Illinois, The Board of Trustees of the University of, Office of Grant and Contract Administration, Urbana, IL 61801	N00014-85-H-0050 Nov. 1, 1985	1
Illinois, University of, Urbana, IL 61801	TV-64591A, Sept. 1, 1984	2
Iowa State University of Science and Technology, Office of Contracts and Grants, Ames, IA 52242	N00014-85-H-0051, Nov. 1, 1985	1
Johns Hopkins University, 34th and Charles Streets, Baltimore, MD 21218	N00014-85-H-0052, Nov. 1, 1985	1
*Kentucky Forest Industries Association, Morehead, KY 40351	TV-66466A, Jan. 1, 1985	2
Kentucky, University of, Lexington, KY 40506	TV-67231A, July 15, 1985	2
Leland Stanford Junior University, The Board of, Trustees of Encino Hall, Stanford, CA	N00014-85-H-0106 Nov. 1, 1985	1
Louisiana State University and Agricultural and Mechanical College, Board of Supervisors of the Office of Sponsored Projects, Baton Rouge, LA.	N00014-85-H-0055 Nov. 1, 1985	1
Massachusetts Institute of Technology, Office of Sponsored Programs, Room E19-702, 77 Massachusetts Avenue, Cambridge, MA 02139.	N00014-85-H-0059, Nov. 1, 1985	1
Massachusetts, University of, Office of Grant and Contract Administration, Amherst, MA 01002	N00014-85-H-0060, Nov. 1, 1985	1
Memphis State University, Memphis, TN 38152	TV-65402A Supp. 1, Oct. 1, 1985	2
Meridian Corporation, Falls Church, VA 22041	TV-67207A, July 12, 1985	2
Miami, University of, P.O. Box 8007, Coral Gables, FL 33124	N00014-85-H-0061, Nov. 1, 1985	1
Michigan Technological University, Office of Research Coordination, Houghton, MI 49931	N00014-85-H-0062, Nov. 1, 1985	1
Michigan, The Regents of the University of, Office of Contract Administration, 124 Research Administration Building, Ann Arbor, MI 48105.	N00014-85-H-0063, Nov. 1, 1985	1
Minnesota, The Regents of the University of, Office of Research Administration, 1919 University Avenue, St. Paul, MN 55104	N00014-85-H-0064, Nov. 1, 1985	1
Minnesota, University of, Waseca, MN 56093	TV-67612A, Sept. 1, 1985	2
Mississippi Forest Products, Mississippi State, MS 39762	TV-63521A, Mar. 1, 1984	2
Mississippi Forestry Association, Jackson, MS 39201	TV-66465A, Jan. 1, 1985	2
Mississippi State University, Mississippi State, MS 39762	TV-53904A Supp. 7, Oct. 1, 1985	2
Mississippi State University, Mississippi State, MS 39762	TV-57963A, Jan. 1, 1982	2
Mississippi State University, Mississippi State, MS 39762	TV-61458A, July 1, 1983	2
Mississippi State University, Mississippi State, MS 39762	TV-62006A, Sept. 1, 1983	2
Mississippi State University, Mississippi State, MS 39762	TV-64321A, Aug. 1, 1984	2
Mississippi State University, Mississippi State, MS 39762	TV-65225A, Oct. 23, 1984	2
Missouri Department of Natural Resources, Jefferson City, MO 65102	TV-65232A, Dec. 1, 1984	2

FEDERAL ACQUISITION CIRCULAR—BASIC AGREEMENTS WITH EDUCATIONAL INSTITUTIONS AND NONPROFIT ORGANIZATIONS, FISCAL YEAR 1986—Continued

Contractor	Basic agreement No. and date	Code
Missouri, The Curators of the University of, Office of Sponsored Programs, University Hall, Columbia, MO 65201	N00014-85-H-0065, Nov. 1, 1985	1
Missouri, University of, Columbia, MO 65201	TV-64325A, Aug. 9, 1984	2
Murray State University, Murray, KY 42071	TV-62007A, Sept. 1, 1983	2
*National Academy of Sciences, Attn: Senior Contract Specialist, 2101 Constitution Avenue NW., Washington, DC 20418	N00014-85-H-0066, Nov. 1, 1985	1
Nevada System, University of, Attn: Assistant Controller, 405 Marsh Avenue, Reno, NV 89509	N00014-85-H-0067, Nov. 1, 1985	1
Nero and Associates, Portland, OR 97204	TV-67243A, July 15, 1985	2
New Hampshire, University of, Attn: Contracts & Grants Office, Durham, NH 03824	N00014-85-H-0068, Nov. 1, 1985	1
New Mexico Institute of Mining and Technology, Office of Administration and Finance, Socorro, New Mexico 87801	N00014-85-H-0069, Nov. 1, 1985	1
New Mexico State University, Physical Science Laboratory, Box 3548, Las Cruces, NM 88003	N00014-85-H-0070, Nov. 1, 1985	1
New Mexico University, Regents of the University Hill, Albuquerque, NM 87131	N00014-85-H-0071, Nov. 1, 1985	1
New York State University, Research Foundation of the Office of Contract and Grant Administration, P.O. Box 9, Albany, NY 12201	N00014-85-H-0075, Nov. 1, 1985	1
New York University Office of Contracts & Grants, 246 Green Street, New York, NY 10003	N00014-85-H-0072, Nov. 1, 1985	1
New York University, Medical Center, Office of Grant Administration, 550 First Avenue, New York, NY 10016	N00014-85-H-0073, Nov. 1, 1985	1
North Carolina at Wilmington, University of, 7205 Wrightsville Avenue, Wilmington, NC 28401	N00014-85-H-0133, Nov. 1, 1985	1
North Carolina State University, Raleigh, NC 27695-7602	TV-62003A, Sept. 1, 1983	2
North Carolina State University, Raleigh, NC 27695-7602	TV-64322A, July 11, 1984	2
North Carolina State University, Raleigh, NC 27695-7602	TV-67233A, June 1, 1985	2
North Carolina State University at Raleigh, Office of Vice Chancellor for Research Administration, Box 7003, Raleigh, NC 27695-7003	N00014-85-H-0076, Nov. 1, 1985	1
North Dakota State University, Fargo, ND 58105	TV-61158A, Apr. 1, 1983	2
Northeastern University, Office of Sponsored Programs, Boston, MA 02115	N00014-85-H-0079, Nov. 1, 1985	1
Notre Dame Du Lac, University of, Office of Advanced Studies and Research, Notre Dame, IN 46556	N00014-85-H-0078, Nov. 1, 1985	1
Nova University, Office of Sponsored Programs, 3301 College Avenue, Fort Lauderdale, Florida 33314	N00014-85-H-0080, Nov. 1, 1985	1
Ohio State University, Research Foundation, Office of Contract Administration, 1314 Kinnear Road, Columbus, OH 45701	N00014-85-H-0082, Nov. 1, 1985	1
Oklahoma State University, CEAT Research Administration, 110 Engineering North, Stillwater, OK 74078	N00014-85-H-0083, Nov. 1, 1985	1
Oklahoma, University of, Office of Research Administration, 1000 Asp Avenue, #314, Norman, OK 73069	N00014-85-H-0084, Nov. 1, 1985	1
Old Dominion University Research Foundation, Office of Research Administration, P.O. Box 6173, Norfolk, VA 23508	N00014-85-H-0085, Nov. 1, 1985	1
Oregon State University, Corvallis, OR 97331	TV-61455A, July 1, 1983	2
Oregon State University, The State of Oregon Acting by and through the State Board of Higher Education on Behalf of Office of Research Contracts Administration, P.O. Box 1086, Corvallis, OR 97330.	N00014-85-H-0086, Nov. 1, 1985	1
Paducah Community College, Allen Barkley Drive, P.O. Box 7380, Paducah, KY 42002-7380	TV-67475A, July 1, 1983	2
Pennsylvania State University, Office of Sponsored Programs, Old Main Building, Room 5, University Park, PA 16802	N00014-85-H-0088, Nov. 1, 1985	1
Pennsylvania, The Trustees of the University of, Office of Research Administration, Franklin Building, 3451 Walnut Street, Philadelphia, PA 19174.	N00014-85-H-0089, Nov. 1, 1985	1
Pittsburgh, University of, 207 Gardner Steel Building, Pittsburgh, PA 15260	N00014-85-H-0134, Nov. 1, 1985	1
Polytechnic Institute of New York, 333 Jay Street, Brooklyn, NY 11201	N00014-85-H-0130, Nov. 1, 1985	1
Princeton University, The Trustees of, Office of Research and Project Administration, Fifth Floor, New South Building, P.O. Box 36, Princeton, NJ 08540.	N00014-85-H-0090, Nov. 1, 1985	1
Purdue Research Foundation, Office of Contract and Grant Administration, Executive Building, West Lafayette, IN 47907	N00014-85-H-0091, Nov. 1, 1985	1
Rensselaer Polytechnic Institute, Office of Contracts and Grants, Troy, NY 12181	N00014-85-H-0092, Nov. 1, 1985	1
*Research Triangle Institute, P.O. Box 12194, Research Triangle Park, NC 27709	TV-65425A Supp. 1, Dec. 7, 1985	2
Rhode Island, University of, Office of Research Coordination, Kingston, RI 02881	N00014-85-H-0093, Nov. 1, 1985	1
Rice University (See William Marsh Rice University)		
*Riverside Research Institute, 330 West 42nd Street, New York, NY 10036	N00014-85-H-0095, Nov. 1, 1985	1
Rochester, University of, Office of Research and Project Administration, 30 Administration Building, Rochester, New York 14627	N00014-85-H-0096, Nov. 1, 1985	1
Rutgers, the State University, Office of Research Administration, New Brunswick, NJ 08903	N00014-85-H-0097, Nov. 1, 1985	1
Saint Louis University, Office of Research Administration, St. Louis, MO 63103	N00014-85-H-0098, Nov. 1, 1985	1
San Diego State University Foundation, Office of Grants and Contracts, 5402 College Avenue, San Diego, CA 92115	N00014-85-H-0099, Nov. 1, 1985	1
*Smithsonian Institution, Contracts Office, Arts and Industries Building, Room 2203, Washington, DC 20560	N00014-85-H-0101, Nov. 1, 1985	1
South Carolina Energy Office, Columbia, SC 29211	TV-68297A, Nov. 1, 1985	2
South Carolina Energy Research and Development Center, Clemson, SC 29631	TV-66123A, Feb. 1, 1985	2
*Southeastern Center for Electrical Engineering Education (SCEEE), Management Office Central Florida Facility, 11th and Massachusetts Avenue, St. Cloud, Florida 32769.	N00014-85-H-0104, Nov. 1, 1985	1
Southern California, University of, University Park, Los Angeles, California 90007	N00014-85-H-0132, Nov. 1, 1985	1
Stevens Institute of Technology, The Trustees of, Office of Contracts and Grants, Castle Point Station, Hoboken, NJ 07030	N00014-85-H-0108, Nov. 1, 1985	1
Syracuse University, Office of Sponsored Programs, Skytop Office Building, Skytop Road, Syracuse, NY 13210	N00014-85-H-0109, Nov. 1, 1985	1
*Tennessee Forestry Association, Nashville, TN 37203	TV-66110A-Jan. 1, 1985	2
Tennessee State University, 3500 Centennial Boulevard, Nashville, TN 37203	TV-57041A, Oct. 1, 1981	2
Tennessee State University, 3500 Centennial Boulevard, Nashville, TN 37203	TV-59021A Supp. 3, Oct. 1, 1985	2
Tennessee State University, 3500 Centennial Boulevard, Nashville, TN 37203	TV-62297A Supp. 3, Oct. 6, 1984	2
Tennessee Technological University, Cookeville, TN 38501	TV-65363A Supp. 2, Oct. 1, 1985	
Tennessee, University of, Chattanooga, TN 37403	TV-48192A Supp. 10, Oct. 1, 1985	2
Tennessee, University of, Chattanooga, TN 37403	TV-54645A Supp. 7, Oct. 1, 1985	2
Tennessee, University of, Knoxville, TN 37996	TV-49235A Supp. 10, Oct. 1, 1985	
Tennessee, University of, Knoxville, TN 37996	TV-62005A, Oct. 1, 1983	2
Tennessee State University, 3500 Centennial Boulevard, Nashville, TN 37996	TV-64566A, July 30, 1984	2
Texas A&M Research Foundation, FE Box 3578, College Station, TX 77843	N00014-85-H-0058, Nov. 1, 1985	1
Texas A&M University, Beaumont, TX 77643	TV-61176A, April 1, 1983	2
Texas System, University of, Office of Comptroller, 210 West Sixth Street, Austin, TX 78701	N00014-85-H-0112, Nov. 1, 1985	1
Texas Technological University, Office of Research Services, P.O. Box 4670, Lubbock, TX 79409	N00014-85-H-0111, Nov. 1, 1985	1
Tufts University, Director of Government Resources, Medford, MA 02155	N00014-85-H-0113, Nov. 1, 1985	1
USDA Forest Service, Auburn, AL 36849	TV-64564A, July 20, 1984	2
Utah State University, Office of Contacts and Grants, Logan, UT 84321	N00014-85-H-0114, Nov. 1, 1985	1
Vanderbilt University, Nashville, TN 37240	TV-65809A Supp. 1, Oct. 1, 1985	2
*Virginia Foresty, Association, Inc., Richmond, VA 23219	TV-66469A, Jan. 1, 1985	2
Virginia Polytechnic Institute, Blacksburg, VA 24061	TV-64329A, Sept. 1, 1984	2
Virginia Polytechnic Institute, Blacksburg, VA 24061	TV-67209A, July 1, 1985	2
Virginia Polytechnic Institute, Institute and State University, Office of Sponsored Programs, Blacksburg, VA 24061	N00014-85-H-0116, Nov. 1, 1985	1
Washington, The Board of Regents of the University of, Office of Grants and Contracts, Seattle, WA 98195	N00014-85-H-0120, Nov. 1, 1985	1
Wayne State University, Office of Research Sponsored Programs, Detroit, MI 48202	N00014-85-H-0121, Nov. 1, 1985	1
West Virginia Board of Regents on behalf of West Virginia University, Office of Sponsored Programs, Morgantown, WV 26506	N00014-85-H-0122, Nov. 1, 1985	1
West Virginia, State of, Division of Forestry, Morgantown, WV 26506-6125	TV-65623A, Jan. 24, 1985	2
William Marsh Rice University, Office of Research Administration, P.O. Box 2692, Houston, TX 77001	N00014-85-H-0094, Nov. 1, 1985	1
*Woods Hole Oceanographic Institution, Office of Controller, Woods Hole, MA 02543	N00014-85-H-0124, Nov. 1, 1985	1
Worchester Polytechnic Institute, Director of Research, Worcester, MA 01609	N00014-85-H-0125, Nov. 1, 1985	1
Wyoming, University of, Office of Vice President for Research, University Station, Box 3905, Laramie, WY 82070	N00014-85-H-0126, Nov. 1, 1985	1
Young's Furniture, Whitesburg, TN 37891	TV-67244A, July 15, 1985	2

*Nonprofit Organization.

Appendix B—Contact Points for Information on the Basic Agreements with Educational Institutions and Nonprofit Organizations.

Note.—Appendix B—Not to be codified in the CFR.

FEDERAL ACQUISITION CIRCULAR—CONTACT POINTS FOR INFORMATION ON THE BASIC AGREEMENTS WITH EDUCATIONAL INSTITUTIONS AND NONPROFIT ORGANIZATIONS

Contact points	Code
Jean Myers, Office of Naval Research (Code 1512), 800 North Quincy Street, Arlington, VA 22217-5000, (202) 696-4605	1
Richard C. Keaton, Tennessee Valley Authority, 400 W Summit Hill, E6D26, Knoxville, TN 37902, (615) 632-3274	2

[FR Doc. 86-16928 Filed 7-28-86; 8:45 am]

BILLING CODE 6820-61-M

federal register

Tuesday
July 29, 1986

Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 19 and 52

Federal Acquisition Regulation; Furnishing Foreign Items Under Small Business-Small Purchase Set-Asides; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 19 and 52

Federal Acquisition Regulation (FAR); Furnishing Foreign Items under Small Business-Small Purchase Set-Asides

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to Federal Acquisition Regulation (FAR) 19.508 and the provision at 52.219–4 concerning furnishing foreign items under small business-small purchase set-asides.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before September 29, 1986 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 86–24 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to FAR 52.219–4 to clarify in the Small Business Set-Aside notice that an acquisition is to be made only from a small business concern furnishing a product manufactured or produced in the United States, its territories or possessions, Puerto Rico or the Trust Territory of the Pacific Islands. In conjunction with this revision, the Councils are proposing a revision to FAR 19.508(a) to update the applicability of the notice. These proposed changes are considered to be nothing more than clarification of the policy stated at FAR 19.501(f)(2) and are not required to be publicized under Pub. L. 98–577. However, any comments received before the expiration of the public comment period will be considered in the formulation of the final rule.

B. Regulatory Flexibility Act.

The Regulatory Flexibility Act (Pub. L. 96–354) does not apply because the proposed revisions are not "significant revisions" as defined in FAR 1.501–1; i.e., they do not alter the substantive meaning of any coverage in the FAR having a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the issuing agencies. Accordingly, and consistent with section 1212 of Pub. L. 98–525 and section 302 of Pub. L. 98–577 pertaining to publication of proposed regulations (as implemented in FAR Subpart 1.5, Agency and Public Participation), solicitation of agency and public views on the proposed revisions is not required. Since such solicitation is not required, the Regulatory Flexibility Act does not apply. Although such solicitation is not required, comments are invited.

C. Paperwork Reduction Act.

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed changes to FAR 19.508 and 52–219–4 do not impose any additional reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 19 and 52

Government procurement.

Dated: July 21, 1986.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Parts 19 and 52 be amended as set forth below:

1. The authority citation for Parts 19 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

19.508 [Amended]

2. Section 19.508 is amended by removing in paragraph (a)(1) the words "or the District of Columbia,".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.219–4 [Amended]

3. Section 52.219–4 is amended by inserting in the introductory text a colon following the word "provision" and removing the remainder of the sentence; by removing in the title of the provision the date "(APR 1984)" and inserting in its place the date "(JUN 1986)"; by revising the provision; and by removing the derivation line following "(End of provision)" as follows: 52.219–4 Notice of Small Business-Small Purchase Set-Aside.

* * * * *

Quotations under this acquisition are solicited from small business concerns only. If this purchase is for supplies, it will be made only from a small business concern furnishing a product manufactured or produced in the United States, its territories or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands. Any acquisition will be from a small business concern. Quotations that are not from a small business shall not be considered and shall be rejected.

[FR Doc. 86–16927 Filed 7–28–86; 8:45 am]

BILLING CODE 6820–61–M

Federal Register

Tuesday
July 29, 1986

Part IV

Department of Energy

10 CFR Part 762

Uranium Enrichment Services Criteria; Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 762

Uranium Enrichment Services Criteria

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is announcing its decision to revise the uranium enrichment services criteria. In general, the revised criteria set forth the terms and conditions under which DOE will provide uranium enrichment services to civilian customers. In particular, the revised criteria set forth DOE's approach concerning prices and cost recovery. This approach is to negotiate individual enrichment services contracts in accordance with an overall strategy intended to maintain the long-term competitive position of the United States in the world market, while obtaining the recovery of the Government's costs for providing enrichment services over a reasonable period of time.

The revised criteria continue the existing policy of permitting the enrichment of uranium from foreign countries for domestic use, as well as the existing prohibition against discriminatory pricing. The revised criteria also set forth DOE's general approach concerning contract terms.

The revised criteria are responsive to the realities of today's marketplace and will enable DOE to carry out more effectively its statutory mandate under the Atomic Energy Act of 1954 (AEA) to encourage the development and utilization of atomic energy for peaceful purposes. They are consistent with and supportive of the Department's view that civilian nuclear energy has a key role to play in assuring the Nation's energy security and strength, and that continued prominence in providing enrichment services will further non-proliferation of nuclear weapon capabilities. The criteria also reinforce continuing efforts to conduct the Department's enrichment activities in a more businesslike, competitive manner and thus will allow the United States to employ its strengths and assets in the context of the highly competitive marketplace that exists today.

EFFECTIVE DATE: The revised criteria will become effective at the conclusion of the forty-five day period for Congressional review provided for in section 161(v) of the AEA.

FOR FURTHER INFORMATION CONTACT:

Ben McRae, Office of General Counsel, U.S. Department of Energy, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–6667

Lawrence Leiken, Office of General Counsel, U.S. Department of Energy, Room 6B–256, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–6975

John Thereault, Division of Technology Deployment and Strategic Planning, Office of Uranium Enrichment, Room A–172, Germantown, Maryland 20545, (301) 353–4610.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under the AEA, DOE is responsible for producing enriched uiranium. In this Notice, DOE is announcing its decision to revise the criteria which set forth the terms and conditions under which it provides enrichment services.

In reaching its decision, DOE has been mindful of the many objectives set forth in the AEA and the significant role uranium enrichment activities can play in achieving them. These objectives include the peaceful use of atomic energy throughout the world, the encouragement of scientific and industrial progress, and the development of a healthy atomic energy industry, including the mining and milling of uranium. By offering enrichment services to other countries, DOE can help to control the development and flow of nuclear material and guard against the proliferation of nuclear weapons. By offering reliable and reasonably priced enrichment services, DOE can enhance the utilization of atomic energy. And by engaging in the provision of enrichment services, DOE can support scientific and industrial progress. Of course, enrichment services first must serve the paramount AEA objective of ensuring the common defense and security. The attainment of the other goals must be consistent with, and not detrimental to, our national security.

Because of the potentially catastrophic consequences, DOE has been particularly mindful of the relationship between its actions and the non-proliferation of nuclear weapon capabilities throughout the world. Since 1954, when the AEA was adopted by the Congress as an outgrowth of President Eisenhower's "Atoms for Peace" proposal, it has been the policy of the United States to encourage the direction of the inevitable progress in nuclear capability among nations exclusively toward peaceful purposes. A principal purpose of the Private Ownership of Nuclear Materials Act, Pub. L. 88–489, ("1964 Act"), was to enhance further the ability of the United States to direct application of nuclear technology solely to peaceful purposes. It accomplished this objective, in part, by enhancing the ability of the United States to provide enrichment services for both foreign and domestic users. Consistent with the theme struck nearly 30 years before by President Eisenhower, President Reagan formally has enunciated a nuclear non-proliferation policy that reflects the same basic truism, that the ability of the United States to confine development and application of nuclear technology to peaceful ends is dependent on the world leadership of this nation, and in particular, that leadership is dependent upon the United States becoming and continuing to be "a predictable and reliable partner" with other nations in the peaceful application of nuclear energy.

DOE also has been mindful of the profound changes that have occurred in the marketplace for enrichment services in the last decade. As a result of these market changes, DOE's position shifted from possessing a near-monopoly to being relatively non-competitive with foreign suppliers of enrichment services. DOE's response has been to conduct its enrichment activities in a more businesslike, competitive manner and to develop strategies to employ its strengths and assets.[1]

In enacting the AEA, Congress recognized the nuclear industry was an evolving industry. Accordingly, DOE must carry out its responsibilities under the AEA in light of current conditions. In order to fulfill its statutory responsibility, DOE has revised the existing criteria to achieve the objectives of the AEA in the context of the highly competitive marketplace that exists today.

II. Background

On January 29, 1986, DOE proposed several revisions to the existing Uranium Enrichment Services Criteria (51 FR 3624). DOE requested written comments on this proposal by February 28, 1986, and provided for a public hearing which was held on March 18, 1986.

Some of the written comments requested additional analysis and information regarding two provisions of the proposed criteria. These provisions were (1) the "enrichment of foreign origin uranium" and (2) the "recovery of prior government costs." These comments also requested an opportunity to submit written comments on that

[1] For a fuller discussion of market conditions, statutory framework, history of the criteria, and the enrichment process, see the Notice of Proposed Rulemaking in this proceeding (51 FR 3624; (January 29, 1986).

information. On March 12, 1986, DOE indicated that it was considering these requests (51 FR 8509).

On April 25, 1986, DOE announced its decisions on these requests (51 FR 15632). After careful consideration, DOE determined that the analysis of the "enrichment of foreign origin uranium" provision in the preamble to the proposed criteria provided a clear and complete discussion of DOE's analysis and its initial position and that further analysis was unnecessary. However, DOE determined additional analysis and information on issues related to "recovery of prior government costs" would be helpful in developing the rulemaking record, and DOE published additional analysis of and information on these issues. DOE provided for an additional written comment period of thirty days.

DOE received 340 written comments in response to the Notice of Proposed Rulemaking and 16 written comments in response to the Notice of Additional Information. In addition, 12 individuals testified at the March 18 public hearing. Comments were submitted by members of Congress, representatives of state and local governments, those engaged in the mining and milling of uranium, consumers or enrichment services, and other interested persons and groups. The scope of these comments has provided DOE with a full and thorough rulemaking record, containing the points of view of all interested groups. DOE has considered all the comments carefuly in its deliberations concerning the revised criteria and has modified the proposed criteria where appropriate.

In the following sections, DOE describes the revisions it has decided to make to the existing uranium enrichment services criteria and the reasons for those changes. In addition, DOE discusses those comments which relate to particular revisions and responds to those comments where appropriate.

III. Revised Criteria

A. Section 762.1—"General."

Section 762.1 of the revised criteria contains the general features of the criteria. Paragraph (a) sets forth the statutory basis for the criteria. Paragraph (b) specifies those customers to which DOE can provide enrichment services. These customers are (1) licensees under sections 53, 63, 103, or 104 of the AEA and (2) persons covered by cooperative agreements. The paragraph restates the statutory requirement that persons covered by cooperative agreements can obtain enrichment services only while comparable services are available to licensees under sections 53, 63, 103, or 104 and can obtain such services at prices no less than the prices charged licensees. Paragraph (c) provides that DOE cannot enter into contracts in excess of its available capacity. Paragraph (d) provides that the criteria, unless specifically stated, do not affect DOE's ability to sell, lease, or barter special nuclear material. Paragraph (e) states that the criteria are subject to change and that any change shall be made pursuant to applicable administrative procedures and after submission to Congress.

Few comments explicitly discussed proposed § 762.1. No comment contained any persuasive argument to change the proposed provisions which merely continue provisions in the existing criteria and which, in the case of proposed paragraphs (a), (b), and (e) only repeat explicit statutory provisions. Accordingly, DOE has decided to adopt the proposed provisions of § 762.1.

While most comments did not address proposed § 762.1, many of the comments did question whether the criteria set forth in sufficient detail the general terms and conditions under which DOE would provide enrichment services. For example, the General Accounting Office (GAO) asserted the proposed criteria do not contain "a clear definition of what costs should be recovered, how prices will be determined, and the general approach to contract terms" and thus make "congressional oversight difficult."

DOE does not agree with the criticism contained in the comments of GAO and others as to the lack of sufficient detail concerning DOE's approach to providing enrichment services. As is discussed in extensive detail in subsequent sections, the criteria clearly set forth DOE's approach concerning the pricing of enrichment services and the recovery of the Government's costs over a reasonable period of time. These two items are the heart of how enrichment services are provided under section 161(v) of the AEA and, in the past, Congressional oversight has focused primarily on these two items. In addition, the criteria also deal explicitly with the other items specified in section 161(v)—that is, the enrichment of foreign origin uranium, non-discrimination, and the provision of enrichment services to persons covered by cooperative agreements.

Some of the comments suggest, in effect, that DOE turn the criteria into no more than a detailed contract. DOE does not believe such an approach is required by the AEA, would aid Congressional oversight, or would be practical in today's highly competitive market. If Congress had desired the submission of specific contract terms, section 161(v) would have used "contract" rather than "criteria." DOE believes section 161(v) contemplates Congressional review of DOE's general approach and philosophy to offering enrichment services and not of such details as delivery dates.

DOE believes that a flexible approach under which specific terms are negotiated with individual customers is not inconsistent with setting forth in the criteria DOE's general approach to contract terms. Indeed, the proposed criteria set forth DOE's general approach to amendments, terminations, variable tails assay options, use of preproduced inventory, and material specification. Moreover, in response to the comments, DOE has decided to expand § 762.1 to include its approach to other contractual terms.

Paragraph (e)[2] of the revised criteria makes clear DOE's view that a contract should set forth the extent to which a customer is committed to take service from DOE, and the change, if any, for not taking the full amount of committed services.

Paragraph (f) of the revised criteria sets forth DOE's preference for long-term contracts but indicates DOE will enter into short-term contracts if such action in its opinion would promote the objectives of the AEA.

B. Section 762.2—"Definitions."

Section 762.2 of the revised criteria sets forth the definition of several technical terms used in the criteria, such as "enrichment services" and "separative work unit (SWU)." The comments generally did not address the proposed definitions. DOE has decided to adopt this section as proposed.

C. Section 762.3—"Enrichment of Uranium of foreign origin."

Section 762.3 of the revised criteria continues the current policy[3] of not

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[2] Proposed paragraph (e) is redesignated in the revised criteria as paragraph (g).

[3] In 1974, DOE' predecessor agency, the AEC, through actions that were exhaustively reviewed by the Joint Committee on Atomic Energy ("JCAE"), adopted the policy that restrictions on enrichment of foreign uranium destined for domestic end use would be phased out over a specified time schedule that spanning the years 1977 to 1984. This considered decision to phase out these restrictions was made by the AEC and scrutinized by the JCAE under the very same statutory framework as this rulemaking. This framework provides that DOE is responsible, in the first instance, to determine the terms and conditions under which it will offer enrichment services, including the enrichment of foreign uranium, and that Congress then reviews these determinations. Congress adopted this system of shared responsibility because it recognized the close link between the enrichment program and

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imposing restrictions on enriching feed material of foreign origin destined for domestic use.[4] DOE has modified the proposed section by deleting the proposed new requirement that domestic customers certify the country of origin of feed material delivered to DOE. In the revised criteria, § 762.3 states explicitly DOE's interpretation of section 161(v) that restrictions should not be placed on the enrichment of foreign origin uranium unless DOE determines such restrictions are needed to, and in fact, will assure the maintenance of a viable domestic uranium industry.

In general, DOE's customers favored continuation of existing policy against restrictions, but objected to the proposed reporting requirement because it was duplicative of an existing reporting requirement of the Energy Information Administration. DOE agrees with their objections to the reporting requirement and has deleted that requirement.

On the other hand, the mining industry uniformly opposed continuation of the existing policy of permitting the enrichment of foreign uranium. These comments contained two main arguments. The first argument is that, as a matter of law, DOE must impose restrictions if it determines the domestic mining industry to be non-viable. The second argument is that restrictions will assure the viability of the domestic mining industry. DOE disagrees with both these arguments.

With respect to the legal argument, DOE believes the comments have simply misread the clear language of the AEA. Section 161(v) provides that DOE, "to the extent necessary to assure the maintenance of a viable domestic uranium industry, shall not offer . . . [enrichment] services for source or special nuclear material of foreign origin intended for use in a utilization facility within or under the jurisdiction of the U.S." This language does not state DOE shall impose restrictions on the enrichment of foreign origin uranium when it determines the domestic mining industry is not viable. Rather, it requires DOE to determine "the extent [to which restrictions are] necessary to assure the maintenance of a viable domestic uranium industry." DOE must answer the question whether restrictions are "necessary" to assure a viable domestic industry, not whether there will be a viable industry in the absence of restrictions. The plain language of the statute makes clear that restrictions are not to be imposed automatically if the domestic mining industry is non-viable, but only if they are needed to, and in fact, will assure the maintenance of a viable domestic uranium industry.[5]

When the legal theory of the miners is carried to its logical conclusion, the fallacy of its reasoning becomes unmistakable. Under the miners' theory, as long as the domestic mining industry is non-viable, DOE must impose and maintain restrictions on the enrichment of imported uranium regardless of their effect. If, in spite of the restrictions, the domestic mining industry did not become viable and was unable to meet the needs of domestic utilities, DOE could not offer enrichment services to these utilities, which would then be forced to seek enrichment services from another country. DOE does not believe Congress intended section 161(v) to operate in such a anomalous and counterproductive fashion which would not assure the viability of the domestic mining industry and which would, in fact, threaten the viability of the entire domestic uranium industry. Rather, the proper interpretation of section 161(v) is that Congress intended DOE to exercise its expertise and judgment to determine the effects of restrictions on the viability of the domestic uranium industry and then to decide whether to impose restrictions on the basis of that determination, subject to Congressional review. This interpretation of section 161(v) has guided DOE's actions concerning § 762.3 of the criteria throughout this rulemaking proceeding.

The legislative history of section 161(v) reveals that Congress "did not consider it appropriate to place an embargo or other statutory restriction on the importation of foreign uranium, [but] concluded that it would be reasonable to place restrictions upon the performance of [enrichment] services . . . *where the enrichment of foreign material would have an adverse effect on the domestic uranium industry.*" S. Rep. No. 1325, 88th Cong., 2d Sess., reprinted in 1964 U.S. Code Cong. & Ad. News 3105, 3121 (emphasis added). This clearly indicates that restrictions on the enrichment of imported uranium are to be based on whether there is a causal relationship between enrichment of imported uranium and the health of the domestic uranium industry. Moreover, the legislative history of section 161(v) stresses that the provision was meant to be "flexible" and that the agency's decision whether "to offer or refuse to offer its enrichment services" depends on "its opinion" of what is necessary to assure the maintenance of a viable domestic industry. S. Rep. No. 1325, *supra*, 1964 U.S. Code Cong. & Ad. News at 3120, 3135.

Recent Congressional action concerning restrictions on imported uranium confirm DOE's interpretation that Congress did not intend when it adopted section 161(v) of the AEA to prohibit DOE from exercising its expertise and judgment concerning restrictions on imported uranium and does not believe it wise to impose such an approach now. In 1982, Congress considered and specifically rejected legislation to require mandatory restrictions on importation of foreign origin uranium. A proposed amendment to the Nuclear Regulatory Commission Authorization Act would have required

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many very important governmental policies, including especially those related to national security and the non-proliferation of nuclear weapon capabilities throughout the world and because this system, in effect, guarantees that DOE's actions are consistent with Congressional intent concerning these policies.

[4] However, pending litigation may affect DOE's ability to provide enrichment services for source or special nuclear material of foreign origin that is intended for use in a facility within or under the jurisdiction of the United States. In *Western Nuclear, Inc., et al.* v. *F. Clark Huffman, et al.*, D. Colo. Civil Action No. 84-C-2315 (June 20, 1986), an order has been entered directing DOE to limit such services to twenty-five percent of the materials enriched over the time period June 6, 1986, to December 31, 1986, and, further, directing DOE, as of January 1, 1987, not to offer or provide any enrichment services for source or special nuclear materials of foreign origin intended for use in a utilization facility within or under the jurisdiction of the United States "until the viability of the domestic uranium industry is assured." In addition, DOE has been directed to commence an administrative rulemaking to establish criteria restricting the extent to which enrichment services may be made available for source or special nuclear material of foreign origin. DOE believes that the *Western Nuclear* judgment is erroneous. On June 24, 1986, a notice of appeal and a motion for stay was filed with the district court. On July 11, 1986, a motion for stay pending appeal was filed with the U.S. Court of Appeals for the Tenth Circuit. On July 21, 1986, the U.S. Court of Appeals for the Tenth Circuit stayed the district court order until further order of that court. *Western Nuclear, Inc. et al.* v. *F. Clark Huffman, et al.*, 10th Cir. Civil Action No. 86-1942 (July 21, 1986). In adopting section 762.3, DOE is mindful of the ongoing nature of the *Western Nuclear* litigation. Section 762.3 is being adopted at this time, notwithstanding the *Western Nuclear* litigation, in order to formally record DOE's interpretation of section 161(v), to state DOE's determination that restrictions on enrichment of foreign origin uranium continue to be inappropriate, to establish the criterion that will be applicable to the enrichment of foreign origin uranium, and to permit Congressional review of that criterion.

[5] The plain language of section 161(v) of the AEA clearly shows that the phrase "to the extent necessary" modifies the word "shall," and, therefore, whether to impose restrictions on enrichment of foreign-origin uranium is a determination to be made by the agency. In construing similar statutory language in section 346 of the Food, Drug, and Cosmetic Act, the Food and Drug Administration determined that it had the duty to promulgate regulations only to the extent it determined regulations to be necessary. The Supreme Court held that the agency's interpretation was rational and, therefore, entitled to deference. *Young* v. *Community Nutritional Institute*, ____ U.S. ____, 54 U.S. L.W. 4682 (June 17, 1986).

the Nuclear Regulatory Commission (NRC) to issue criteria restricting the importation of source material and special nuclear material.[6] 128 Cong. Rec. S. 2968–2970 (daily ed. Mar. 30, 1982). The conference committee rejected this amendment and reported a bill which contained a provision to require the Secretary, when foreign uranium imports reached a level of 37.5 percent, to revise DOE's enrichment criteria "so as to encourage the use of domestic origin uranium in domestic nuclear powerplants." 128 Cong. Rec. S. 13054 (daily ed. Oct. 1, 1982) (remarks of Senator Domenici); *see also,* 128 Cong. Rec. H. 8803 (daily ed. Dec. 2, 1982) (remarks of Rep. Udall and Rep. Lujan). This provision, however, was rejected by the House of Representatives, *Id.* at H. 8809, because it believed that tying DOE's hands in this way would be "bad policy." *Id.* at H8804 (remarks of Rep. Frenzel). Specifically, the House recognized that "[t]he domestic uranium industry's problem is not imports," and that restricting imports would only have counterproductive consequences. *Id.* at H8803 (remarks of Rep. Frenzel). See also *id.* at H8804 (reprinting letter from Secretary of State Shultz), H8806 (remarks of Rep. Markey) H8808 (remarks of Rep. Gore).

Accordingly, the provision was rewritten and a substitute provision was agreed to by both Houses. 128 Cong. Rec. S. 15316 (daily ed. Dec. 16, 1982). In the substitute measure, section 170B of the AEA (codified at 42 U.S.C. 2210(b)), Congress deleted all references to mandatory import restrictions and, instead, provided for, *inter alia,* (1) the annual viability determination by the Secretary, (2) the possibility of an investigation under section 201 of the Trade Act, and (3) the Secretary to request the Secretary of Commerce to initiate an investigation pursuant to 19 U.S.C. 1862 if uranium imports from executed contract or options are projected at a level of 37.5 percent for a consecutive two-year period.

Section 170B does not require the Secretary to impose restrictions on the enrichment of imported uranium if he determines the domestic mining industry to be non-viable. There is no suggestion in the legislative history of this provision that Congress intended to link the imposition of restrictions under section 161(v) with a determination of non-viability under section 170B. As enacted, section 170B "simply provides for the study of the viability of the domestic uranium mining and milling industry." 128 Cong. Rec. H10462 (daily ed. Dec. 20, 1982) (remarks of Rep. Frenzel). Moreover, the conclusions that DOE reaches in making this annual study were *not* intended to automatically trigger restrictions on imported uranium. See *id.* at H10463 (colloquy between Rep. Frenzel and Rep. Udall). Furthermore, section 170B provides an explicit course of action if imports of uranium increase. That course of action is an investigation pursuant to 19 U.S.C. 1862 and not restrictions under section 161(v).

With respect to the factual argument, the comments did not present any analysis or evidence to show that restrictions would assure the viability of the mining industry. The comments only contained unsupported statements that restrictions would or might assure the viability of the industry.

DOE cannot accept these statements since its analysis shows restrictions would not assure the viability of the domestic mining and milling industry. The difficulties currently facing the domestic mining industry appear to stem from various factors, including the disparity between the production cost of domestic and foreign uranium, shrinkage in the demand for nuclear power, excess uranium inventories, excess production capacity, and cancellation of powerplants due to cost overruns and licensing delays.

Structural weaknesses, not foreign competition, are the reasons for the depressed state of the domestic uranium industry. These weaknesses involve a number of factors, but "the prinicipal cause * * * is the failure of demand to materialize in the early 1980's as a number of nuclear power plants were delayed or cancelled." [7] This failure has had especially serious consequences for the domestic uranium industry because a uranium "boom" during the 1970s stimulated the development of uranium resources that often had marginal capacities for being profitable. As a result, the domestic uranium industry now finds itself in a situation where the market simply will not sustain a price for its product that enables the industry to recover its costs of production.

As a result of non-competitive prices for domestic uranium, foreign uranium has been able to capture an increasing share of the domestic market over the past few years. However, the increase in imports has been a symptom, rather than the cause, of the weaknesses of the U.S. uranium industry. Two facts strikingly demonstrate that imports have increased because the domestic industry is non-viable, rather than vice versa: First, the serious decline of the domestic uranium industry was evident as early as 1981. See *Status of the Domestic Uranium Mining and Milling Industry: The Effects of Imports, Hearing before the Subcommittee on Energy Research and Development of the Senate Committee on Energy and Natural Resource,* 97th Cong., 1st Sess. 1–11, 41–45, 120–123 (1981). In 1981, however, less than ten percent of the uranium delivered to DOE for enrichment was foreign. Second, over 37% of the foreign uranium under contract for delivery to the United States between 1985 and 1990 has been contracted for by domestic uranium producers—which have chosen to purchase uranium abroad for resale instead of producing it themselves. This development, and the increase in uranium imports generally, is attributable to the simple fact that higher grade ore and lower production costs make it possible to buy foreign uranium for less that what it costs to produce domestic uranium.

In these circumstances, restricting the extent to which DOE can provide enrichment services for foreign-origin uranium would do nothing to address the fundamental weaknesses of the domestic industry. Moreover, in today's competitive market, restricting the enrichment of imported uranium probably would not even give an artifical boost to the domestic uranium industry because the demand for DOE's enrichment services is too weak to sustain a "tie" between such services and domestic-uranium.[8]

While DOE is the only provider of uranium enrichment services in the United States, DOE nonetheless lacks "market power" because enrichment services are available, at comparable or lower costs, from foreign sources. Indeed, in recent years DOE has

[6] The AEA permits denial of a license for the importation of natural uranium only when, in the opinion of the NRC, the import would be inimical to the common defense and security or the health and safety of the public. 42 U.S.C. 2099, ed. Oct. 1.

[7] See December 26, 1985, letter from the U.S. Special Trade Representative to the Secretary of Energy.

[8] An attempt to increase the demand for domestic uranium by requiring the users of DOE's enrichment services to rely on domestic uranium would be a form of "tying" arrangement. Like any other "tie-in," the effectiveness of such an arrangement depends on whether "the seller has some special ability—usually called 'market power'—to force a purchaser to do something that he would not do in a competitive market." *Jefferson Parish Hospital Dist. No. 2* v. *Hyde,* 466 U.S. 2, 13–14 (1984). Thus, in the absence of a peculiar demand for the "tying" product—here, DOE's enrichment services—restrictions on the sale of that product "cannot conceivably have any . . . impact in the tied-product market"—here, domestic uranium—and, in fact, will only weaken the competitive position of the "tying" product. *Id.* at 37 (O'Connor, J., concurring in judgment).

suffered a substantial loss of market share and has been forced to change significantly its mode of managing enrichment activities because of competitive pressure from foreign enrichers. In today's market, the simple fact of the matter is that all suppliers involved in the nuclear fuel cycle—whether they are suppliers of ore or suppliers of the services that are needed to change ore into fuel—face a situation in which supply greatly exceeds demand. Therefore, it is unlikely that demand for DOE's enrichment services is sufficient to persuade consumers of such services to pay a premium for domestic uranium in order to obtain enrichment services from DOE.

In fact, restricting DOE's ability to enrich foreign uranium is likely to be counterproductive and to further damage the U.S. mining industry. The effect of imposing such restrictions would be to make DOE's enrichment services less competitive in the world market. Instead of increasing the consumption of domestic uranium, restricting the enrichment of foreign uranium therefore is likely to result in DOE losing a substantial amount of enrichment sales. Such a loss of enrichment sales by DOE will actually risk further damaging the U.S. mining industry and, indeed, could make its current nonviable condition irreversible because utilities that purchase enrichment services abroad almost certainly also will purchase foreign uranium.

Restrictions on the enrichment of foreign uranium would have no long term positive effect on the consumption of domestic uranium. In today's competitive marketplace, customers for enriched uranium will seek enrichment services from the cheapest source and use the cheapest uranium, foreign or domestic. As long as DOE's enrichment services costs are competitive with foreign services, customers will procure either domestic or foreign uranium for feed material based solely on the price of the uranium.[9]

In the short-term, a ban on enrichment of imported uranium might increase consumption of domestic uranium temporarily since existing DOE customers would weigh the costs of terminating their contracts against the comparative prices of domestic and foreign uranium. The cost of terminating contracts would, in effect, subsidize some higher priced domestic uranium. This effect, however, would be temporary and would not assure the long-term viability of the domestic industry. Depending on its terms, an existing enrichment contract can be terminated in five or ten years without cost to the customer, at which time the subsidy will disappear and customers will buy uranium supplies soley on the basis of cost. Moreover, it should not be assumed that the effects of the subsidy will continue unabated for five or ten years. Because termination charges decrease with the amount of notice given, the subsidy will be concentrated in the early years. In other words, with each succeeding year after a ban is imposed, there will be less incentive to purchase domestic uranium in order to avoid termination charges.[10]

A short-term increase in the consumption of domestic uranium would not make the domestic mining industry viable even in the short-term. As the comments of the Uranium Producers of America (UPA) point out, domestic mining and milling concerns have been going out of business at an increasing rate. The reason for these closings is clear. The price for uranium is not high enough to make continued operations profitable.[11] DOE believes it is unlikely that a ban on enrichment of imported uranium would make the domestic industry profitable even during the period of increased consumption at subsidized prices. As noted previously, domestic producers have contracted for over 37% of the foreign uranium that is to be delivered to the United States between 1985 and 1990. This decision by domestic producers to buy foreign uranium rather than produce domestic uranium highlights the fact that incremental domestic production is not competitive even if termination charges provide a temporary subsidy.[12] Thus, a ban will not reverse the exodus from the business. Moreover, the decision to stay in business is based at least as much on future profitability, as current profitability. And a ban clearly can have no positive effect in the future as the subsidy disappears.

UPA accused DOE of not imposing a ban because of the detrimental effects on DOE's enrichment activities. These comments, however, fail to acknowledge the direct link between the health of DOE's enrichment activities and that of the domestic mining industry.[13] DOE believes a ban on the enrichment of imported uranium actually would work against the viability of the domestic mining industry because it would encourage existing customers to seek enrichment services and uranium from other countries. Any resulting shrinkage in DOE's enrichment activities would mean a smaller market for domestic uranium since domestic uranium is purchased almost exclusively for enrichment in the U.S.

A ban likely would cause many of DOE's customers to reconsider their enrichment contracts with DOE.[14] Such

[9] If DOE's enrichment services were priced less than those of its foreign competitors, then restrictions on imported uranium could increase consumption of domestic uranium since customers would be willing to pay a premium for domestic uranium in order to obtain enrichment services from DOE. In today's competitive market, however, it is unlikely DOE will underprice its competitors sufficiently to make it economical to pay a premium for domestic uranium.

[10] It is arguable there would be no termination charges whatsoever if restrictions are imposed, and thus not even a temporary subsidy for domestic uranium. Some of DOE customers currently are considering whether DOE's refusal to enrich foreign uranium as a result of the *Western Nuclear* order could be characterized as a breach of existing contracts. These customers have asked DOE whether it will be able to honor its contractual obligations to provide enrichment services; have indicated they will probably obtain enrichment services from a foreign supplier if DOE is unable to perform; and have raised the spectre of DOE's being liable for any "damages" which arise because of DOE's failure to perform. Similar reactions can be anticipated if DOE imposes restrictions on its own volition through a rulemaking not mandated by a court.

[11] The comments of UPA and, in particular, the attachment "DOE" Enrichment Policy and The U.S Uranium Industry" make clear that what the mining industry desires is higher prices for uranium. The thrust of their comments is that DOE should operate its enrichment activities in a manner to subsidize higher prices for domestic uranium. Even if such a policy was consistent with the objectives of the AEA, DOE does not possess the monopoly power necessary to enforce such a policy.

[12] In 1984, the industry informed DOE that a "spot market price of $15.50 is less than one-half of the conventional U.S. producers' average costs of production" and that the demand by customers for market prices "is a condition domestic producers cannot accept in view of the reasonable probability of continuing depressed prices and rising production costs." Letter of December 28, 1984 from Bill Stevens, Chairman of the Uranium Policy Council of the American Mining Congress, to Donald Hodel, Secretary of Energy. The current spot market price is $17.00. DOE believes it unlikely restrictions will result in significantly higher prices for domestic uranium, and certainly not high enough to recover costs of production. Moreover, restrictions will tend to depress prices for foreign uranium. Thus, restrictions will work only to exaggerate the price disparity between domestic and foreign uranium, without making the production of domestic uranium profitable.

[13] DOE notes the mining industry is aware of this link and, indeed, has informed DOE of its belief "that a healthy and competitive DOE enrichment program is in the best interest of the domestic uranium industry" and that "purchases of enrichment [services] or enriched uranium from non-DOE sources will result in a further loss of market for the domestic uranium industry." Letter of January 10, 1984 from Bill Stevens, Chairman of the Uranium Policy Council of the American Mining Congress, to Donald Hodel, Secretary of Energy.

[14] In his letter of December 26, 1985, to the Secretary, the Special Trade Representative found "that a major consequence [of a ban] would be the shift of enrichment activities from U.S. government to foreign facilities, thereby eroding the position of U.S. enrichment enterprises."

a development would be detrimental to the U.S. mining and milling industry since, to a large extent, domestic DOE enrichment customers currently obtain their uranium requirements from domestic sources whereas the customers of DOE's competitors almost invariably use foreign ore. If DOE customers were to terminate their contracts in favor of overseas enrichers, they likely would obtain all of their natural uranium from foreign producers who offer attractively priced package deals. Thus, the loss of enrichment sales to domestic utilities by DOE would risk further damage to the U.S. mining industry. Moreover, such lossess would force DOE to further curtail operations at its enrichment plants, increasing the unit cost of production, and thus drive more of DOE's customers overseas beyond the traditional market of the domestic mining industry.

Notwithstanding the link between the health of the enrichment program and the use of domestic uranium, DOE has a responsibility to maintain a healthy enrichment program which transcends economic considerations. DOE Not only has a proprietary interest in the bottom line as reflected in financial statements, but also, and more importantly, a governmental interest in the effects of the enrichment program on governmental policies. The criteria necessarily must take into account DOE's dual role in running the enrichment program and consider the interaction of the enrichment program with governmental policies, especially those relating to the non-proliferation of nuclear weapon capabilities.

As the United States practices and policies governing enrichment services evolved, there was established a complex set of legal constraints designed to minimize the spread of nuclear weapon capabilities. These legal conditions and controls all were keyed to use by foreign customers of material enriched by the United States. This linkage of providing enriched uranium for foreign commercial use and imposing regulations on its use reflected the fundamental object of the Atoms for Peace Proposal, which was to blunt the need of other nations to develop wholly independent nuclear programs in order to share in the technological and economic benefits that were anticipated from the widespread application of civilian nuclear power and technology. These legal impediments stemming from use of nuclear material enriched by the United States were further formalized and strengthened with the adoption of the Nuclear Non-Proliferation Act in 1978.

The effectiveness of this system of legal constraints originally stemmed from the near-universal use of United States-enriched material throughout the noncommunist industrialized world. This near universal use, in turn, depended on the maintenance of a near world monopoly by the United States on the provision of commercial enrichment services. By the mid-1970's however, for a variety of reasons including apprehension among industrialized nations about the reliability of the United States, foreign consortia developed and began to apply the ability to provide commercial enrichment services entirely independent of the United States.

In today's competitive market, the United States can no longer enforce, by fiat restrictions on the uses of enriched material. Rather, it must be able to offer enrichment services on terms attractive enough to persuade customers to accept restrictions on uses. Thus, it is the world-wide market position of DOE's enrichment program on which depends the real-world significance of the complex set of legal restrictions, including required approvals by the United States government for uses of this material located in foreign nations, that is directed to furtherance of nuclear non-proliferation worldwide.[15]

Finally, the comments of the mining industry urge DOE to impose a ban on enrichment of imported uranium because of alleged unfair practices associated with the marketing of foreign uranium in this country. DOE does not believe this rulemaking is the proper forum to litigate those allegations or that imposition of a ban on enrichment is the appropriate remedy even if those allegations are ultimately proven to be true.[16] DOE notes, however, that the situation of the mining industry can not be viewed as isolated from other governmental interests, including relationships with our trading partners. In this regard, the U.S. Special Trade Representative has stated that restrictions would have "an adverse impact on our trade and other relationships with important trading partners without resolving the long-term problems of the industry." (December 26, 1986 letter to Secretary of Energy Herrington.)[17]

In sum, while the Secretary of Energy has determined the domestic mining and milling industry was not viable in 1984, this determination alone does not authorize or require restrictions on the enrichment of imported uranium. Restrictions can be imposed only to the extent they are needed to and, in fact,

[15] The U.S. Department of State has considered the effects of restrictions in connection in the *Western Nuclear* litigation and found that the imposition of restrictions on DOE's enriching foreign uranium would ".mpede United States non-proliferation policy. One likely effect would be a loss of enrichment business by DOE, either because of industry choices to enrich abroad, an increase in DOE prices to recover its costs, or because of international uncertainty over DOE's long term viability and availability as an enrichment supplier. To the extent nuclear material is enriched elsewhere, it would not become subject to U.S. legal controls designed to protect against nuclear proliferation by virtue of U.S. enrichment. In its place, the controls of foreign enrichers, none of whom follow as stringent non-proliferation conditions as those required by U.S. law, would apply. Furthermore, an important basis for the U.S. position as a leading advocate in bilateral and multilateral fora for strong non-proliferation conditions would be eroded. This too would encourage countries opposed to U.S. non-proliferation policy in their efforts to weaken the existing international regime. A decline in DOE's position in the enrichment market would also create an increased commercial incentive for the spread of enrichment technology, which has potential nuclear weapons application. United States policy calls for this technology to be restricted to countries where it would not pose a non-proliferation risk and where the nuclear program of the country justifies its acquisition." June 13, 1986, Declaration of James Devine, Deputy Assistant Secretary for Nuclear Energy and Energy Technology Affairs, Department of State. In addition, the Department of State found that imposition of restrictions "would undercut the effort of the United States to restore its credibility as a consistent, reliable partner in nuclear cooperation. The United States Government has for many years sought to establish a reputation for the United States as a reliable nuclear trading partner as a vital component of United States non-proliferation policy. Unless the 'rules of the game' for nuclear cooperation with the United States are consistent and clear, there is the risk that such cooperation will be diminished and that the credibility and influence of the United States on nuclear non-proliferation matters in both bilateral and multilateral contexts will be undermined." *Id.*

[16] While DOE has come to no conclusion on these allegations in this rulemaking, it is clear they involve strongly disputed issues of law and fact. Comments filed in behalf of Canadian producers present a vigorous challenge to the validity of the allegations contained in the comments of the mining industry. In analyzing appliable remedies under U.S. trade laws, the Special Trade Representative has considered similar allegations as a basis for the imposition of import duties and has stated in his letter of December 26, 1985, to the Secretary that, "even accepting the allegations at face value, the resulting duties would not be sufficient to offset the cost advantage of Canadian producers."

[17] The "adverse impact[s]" can be seen in the reactions of Canada and Australia to the *Western Nuclear* order. Canada stated that restrictions "will give rise to major trade irritants between the United States and its current suppliers of uranium" and are "completely at odds with the Quebec Declaration to promote free trade in energy products, and inconsistent with GATT obligations." (Diplomatic Note from the Embassy of Canada dated June 26, 1986). Australia stated that restrictions "will disrupt the world market for uranium, erode international confidence in the reliability and predictability of United States policies affecting international cooperation in the peaceful uses of nuclear energy, and give rise to a major problem in trade relations between Australia and the United States." (Diplomatic Note from the Embassy of Australia dated June 27, 1986.)

will assure the maintenance of a viable domestic mining industry. DOE's analysis indicates restrictions could not assist the industry in any meaningful way and certainly could not assure its viability. The difficulties currently facing the domestic mining and milling industry stem from a number of factors, none of which would be influenced by restrictions. Indeed, restrictions would have no long term positive effect on the consumption of domestic uranium. DOE cannot force enrichment customers to use domestic uranium when it is not in their economic self-interest to do so. To the extent domestic uranium is not competitive with foreign uranium, restrictions would cause enrichment customers to seek enrichment services abroad. At best, restrictions could result in a very short-term increase in consumption of domestic uranium and, most likely, would have a detrimental effect on the industry.[18] At the same time, restrictions would give rise to severe detrimental effects on two important governmental interests, namely—the non-proliferation of nuclear weapon capabilities and the relationship with our trading partners. On the basis of this analysis, and in the absence of any analysis or evidence to the contrary in the comments, DOE has decided to continue the existing policy of permitting the enrichment of foreign uranium.

D. Section 762.4—"Prices."

Section 762.4 of the revised criteria sets forth the approach DOE will follow in establishing prices for providing enrichment services. This section makes clear DOE's flexibility to respond to changing market conditions by permitting the negotiation of price in individual contracts.[19] DOE will establish prices in accordance with an overall approach intended to recover the Government's costs over a reasonable period of time and to maintain DOE's long-term competitive position. DOE believes pursuing a competitive market strategy is the best way to maximize revenues and the only practical way to recover the Government's costs over a reasonable period of time, as well as to fulfill its other responsibilities under the AEA.[20]

Many of the comments discussed this section. In general, DOE's customers strongly supported the adoption of a pricing section which clearly expresses DOE's commitment to negotiated contracts and a competitive market strategy.

On the other hand, many of the comments opposed flexible pricing. For the most part, these comments referenced the comments of GAO which stated that the AEA grants DOE little, if any, flexibility concerning pricing and mandates the full recovery of all costs.[21] DOE believes GAO's position neither correctly states the law nor describes pricing under the existing or prior criteria.

As originally adopted, the AEA provided that prices for enrichment services be established on a basis which would result in "reasonable compensation to the Government." The Report of the Joint Committee on Atomic Energy (JCAE) on the 1964 Act expressed the Committee's awareness that it might not always be practicable for enrichment services prices to recover costs fully. It concluded that, in establishing prices, "[DOE] will have to consider not only the Government's costs in providing enrichment services but also the national interest in the development and utilization of nuclear power." S. Rep. No. 1325, 88th Cong., 2nd Sess., reprinted in 1964 U.S. Code Cong. & Ad News, 3109, 3121–3122.

In response to a proposal of the Atomic Energy Commission (AEC), a predecessor of DOE, to establish prices on the basis of hypothetical prices in a non-existent domestic commercial enrichment industry, Congress adopted the current version of section 161(v) which provides that prices for enrichment services "shall be on a basis of recovery of the Government's costs over a reasonable period of time." Pub. L. 91–560, section 8, ("1970 Amendment"). The 1970 Amendment expressed Congressional misgivings over the establishment of enrichment prices which would recover significantly more than the Government's actual costs and which, at best, gave minimal consideration to the objectives of the AEA. The JCAE Report on the 1970 Amendment emphasizes the change was a reiteration of the original intent of Congress when it enacted the AEA and thus preserved DOE's considerable flexibility to determine the most effective means to recover the Government's costs and carry out its responsibilities under the AEA. (H. Rep. No. 91–1470, 91st Cong., 2nd Sess., reprinted in 1970 U.S. Code Cong. & Ad. News, 4981, 5002–5003, 5012.)

GAO believes the language on flexibility applies only to the situation covered by the Conway Formula which was developed to deal with the problem of unused capacity during the period from 1964 through the early 1970's when the emphasis of U.S. enrichment activities was shifting from military to civilian objectives.[22] GAO argues section 161(v), as amended, mandates the full recovery of all the Government's costs, except those covered by the Conway Formula. GAO does not cite language in section 161(v) which calls for "full cost recovery" or which creates an exception for the Conway Formula since there is no such statutory language. Rather, it relies entirely on the reference to a GAO legal interpretation in the report of the Joint Committee on Atomic Energy on the 1970 amendment and the inclusion in that interpretation of GAO's opinion that the 1964 Act granted flexibility only with respect to the situation covered by the Conway Formula.[23]

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[18] DOE's position is in accord with that of the United States Trade Representative. In his December 26, 1985, letter to the Secretary, the Trade Representative rejected import restrictions because any relief "would only be short term . . . without resolving the long-term problems of the industry."

[19] In order to make clear that § 762.4 is intended to express DOE's discretion to establish prices in the manner it believes appropriate to recover the Government's costs over a reasonable period of time and to fulfill its responsibilities under the AEA, the word "shall" has been replaced by "may."

[20] For example, as discussed in connection with § 762.3, United States non-proliferation policy is dependent on competitive prices for enrichment services provided by DOE.

[21] DOE notes GAO appears to agree that flexible pricing which permits a competitive market strategy is the appropriate pricing approach in today's market. GAO believes, however, DOE can pursue such an approach only if the AEA is amended.

[22] DOE notes GAO previously had taken the position that the "reasonable compensation" language made "clear that the Congress intended the application of judgmental factors in the final decision on price." At the same time, however, GAO was not so certain this discretion was intended solely, if at all, for the policy which became the Conway Formula. In fact, GAO stated "[i]t is not clear to us, however, that the Congress intended that costs attributable to excess capacity of plants during the early years of relatively low production would be excluded from consideration in the formulation of prices for separative work." *Report to JCAE: Review of Proposed Criteria and Contracts For Uranium Enrichment Services;* GAO (August 1966); p.9.

[23] The JCAE Report leaves no doubt that Congress adopted the 1970 amendment in reaction to a proposal by the AEC to set prices at a level which would be profitable for "a fancifully conceived, privately owned plant of the future." 1970 U.S. Code Cong. and Ad. News, 4981, 5004. With this in mind, it is clear why the JCAE Report made reference to the GAO interpretation. This interpretation undercut the AEC pricing proposal by concluding that "the statements concerning flexibility and national interest would indicate that they relate only the recovery of less-than-full costs" and that the 1964 Act and related legislative history "could be interpreted as reflecting an intent to preclude the setting of prices so as to recover more than the Government's full costs over a period of time." *Id.* at 5002–3. The GAO interpretation confirms the position of the JCAE Report that the 1970 amendment merely reaffirmed the intent of Congress when it enacted the 1964 Act to grant flexibility to recover less than, but not more than,

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DOE believes GAO has read the intent of Congress too narrowly. The JCAE Report made clear that the basis for establishing prices under section 161(v) "is flexible." S. Rep. No. 1325, 88th Cong., 2nd Sess., reprinted in 1964 U.S. Code Cong. & Ad. News, 3109, 3122. While the JCAE Report indicated this flexibility would permit the AEC to deal with the problems encountered in the shift from military to civilian operations, it did not indicate that the flexibility was intended for that problem alone. DOE believes that if Congress had intended to limit this flexibility as narrowly as GAO contends, it would have included specific language to that effect in section 161(v). By not limiting DOE's flexibility to specific situations, Congress granted DOE considerable discretion to determine, in the first instance, the best pricing approach and which costs are appropriate for recovery in an ever-changing environment.

DOE does not believe the reference to "recovery of the Government's costs over a reasonable period of time" mandates a pricing mechanism which explicitly calculates the price in each contract solely on the basis of certain specified costs. The accounting concept of allocating specific costs to particular prices is not synonymous with the statutory concept of recovery of costs over a reasonable period of time. Compliance with the statutory mandate can be judged only by looking at the overall performance of DOE's enrichment activities over a period of time, taking into account the many objectives of the AEA.

E. Section 762.5—"Costs."

Section 762.5 of the revised criteria lists the Government costs which DOE has determined to be appropriate for recovery. These costs include expenses incurred in providing enrichment services as follows: (1) Electric power and all other costs, direct and indirect, of operating the enrichment plants; (2) depreciation of enrichment plants; (3) costs of process development; (4) costs of DOE administration and other Government support functions; and (5) imputed interest on investment in plant, working capital, the natural uranium contained in those inventories at the DOE enrichment plants needed to provide enrichment services, and the separative work costs of preproduced inventories.[24]

The costs specified in the revised criteria essentially repeat the costs which appear in the existing criteria. These costs reflect DOE's belief that customers should pay a price which reflects only the actual costs of providing enrichment services. The costs of items which are not, and most likely will not, be used in providing enrichment services to current customers are not appropriate for consideration in determining the extent to which the Government's costs are recovered over a reasonable period of time. In this regard, DOE has determined that none of the capital costs of the Gas Centrifuge Enrichment Plant and only forty percent of the capital costs of the Gaseous Diffusion Plants are used to provide enrichment services to customers. Accordingly, only these latter costs are appropriate for determining the extent to which the Government's costs are recovered over a reasonable period of time.

Section 762.5 of the revised criteria sets forth DOE's general views on which costs are appropriate for recovery. Section 762.5 neither specifies a particular amount of costs as appropriate for recovery, nor establishes a formula which can be applied mechanically to calculate the "correct" amount. In the Notice of Additional Information, DOE illustrated the views embodied in section 762.5 by estimating the amount of prior Government investment appropriate for recovery under current conditions. This analysis resulted in an estimate of about $3.4 billion of prior investment appropriate for recovery.

Section 762.5 engendered the widest range of controversy. One group, including GAO and the National Taxpayers Union, asserted DOE's estimate was too low. On the other hand, another group, including most of DOE's customers, asserted just as forcefully DOE's estimate was too high.

Those comments which assert the $3.4 billion estimate is too low rely primarily on GAO's legal position that the AEA does not give DOE the discretion to determine which costs are appropriate and, in fact, requires DOE to recover all costs fully. This legal position is based on GAO's reading of the effect of the 1970 amendment of the AEA which changed the basis of pricing enrichment services from "reasonable compensation to the Government" to "recovery of the Government's costs over a reasonable period of time."

As discussed in connection with § 762.4, DOE does not agree with this legal position. And with respect to the recovery of costs, GAO's position is particularly untenable. According to GAO, DOE can determine which costs are appropriate for recovery in one case, but no others. If, as GAO argues, section 161(v) did mandate full cost recovery, then the reference to a GAO legal interpretation in a committee report could not create an exception to that requirement. In the absence of an explicit statutory exception, continuation of the Conway Formula was possible only because the 1970 amendment did not affect DOE's ability to determine which costs are appropriate for recovery.

An examination of why the 1970 amendment was adopted further undercuts the GAO position. The 1970 amendment was a congressional reaction to an attempt by the AEC to base prices on the operation of a hypothetical, private, commercial profit-making corporation rather than on the basis of its actual costs. The Joint Committee on Atomic Energy recommended that "the original legislative intent be reiterated and the wording of the statute buttressed in support of its intended purpose.[25] In the process, it chastised the AEC by stating that "[t]he Committee expects that this reiteration of congressional intent would preclude any further attempt to deviate from the purpose of the statute."[26] It is clear from this committee language that the 1970 amendment was intended to prohibit DOE from seeking to make a profit in total disregard of its actual costs and the objectives of the AEA. The 1970 Amendment did not alter the DOE to determine what costs were appropriate for recovery. Indeed, the

the Government's full costs, and thus to prohibit profit-oriented pricing [that is, the recovery of more than the Government's full costs]. GAO, however, reads the reference to its interpretation much more broadly. It stresses that portion of its interpretation which purports to limit flexibility and concern for the national interest under section 161(v) to the shift from military to civilian use of enrichment services, even though this issue was not the focus of the Congressional action in 1970. DOE believes that this portion of the GAO interpretation is wrong and that Congress did not focus on, and certainly did not intend to codify, this revisionist GAO position on flexibil ty.

[24] The criteria deal with the provision of enrichment services to civilian customers. Thus, § 762.5 includes costs attributable to the items listed in the section to the extent an item is used to provide enrichment services for civilian customers, but will not necessarily include the costs attributable to an item which are not property allocable to the Government's costs associated with providing enrichment services to civilian customers. However, in determining charges, DOE considers the costs of providing services to both civilian and government customers. These costs are allocated between civilian and government customers through the charges for enrichment services. Thus, when DOE estimated the amount of unrecovered cost appropriate for recovery to be about $3.4 billion, it was referring to all costs of providing enrichment services. Charges to civilian customers, however, will reflect only a portion of that amount.

[25] H.R. Rep. No. 1470, 91st Cong., 2d Sess. 2 (1970); S. Rep. No. 1247, 91st Cong., 2d Sess. 2 (1970).

[26] *Id.*, at 25. original discretion granted

Committee report repeatedly described DOE's proper function as establishing prices on the basis of those actual costs that are "appropriate for" recovery from customers.[27]

On the other hand, DOE's customers assert the $3.4 billion estimate is too high because (1) they already have paid for these costs and (2) the estimate includes costs not properly allocable to civilian customers. DOE's customers view the enrichment program as operating on a "pay as you go" or cash basis. The Edison Electric Institute has expressed this view as follows:

> Throughout the years, revenues paid by the civilian customers for enrichment services were passed from the Uranium Enrichment Activity to DOE (and its predecessors). Monies were then given back to the Activity through the appropriations process . . . . [I]n reality, civilian revenues paid for the research and development and the expansion of facilities.
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> Congress has reviewed and approved the Uranium Enrichment Activity budget on an annual basis, never directing that any debt instruments were to be issued. Without debt instruments, no debt can exist. On the contrary, the Government owned assets are equity; they can be sold in the market if the Government wants to convert them to cash for the Treasury.

DOE believes this view is premised on an incorrect interpretation of the budget and appropriation process and ignores the historical method DOE has followed in accounting for cost. The mere fact that Congress appropriates revenues from the enrichment program to pay for new facilities does not mean that the amount of revenue appropriated by Congress can automatically be equated with payments by DOE's customers for these new facilities. The appropriation of current revenues is a convenience to avoid the necessity of having enrichment revenues deposited in the general fund and then withdrawing money from the general fund to pay for current expenditures which Congress has decided to make. There is no justification for using this convenience to create a direct link between current customer charges and current expenditures for new facilities. In reality, when DOE's customers pay for enrichment services, they are paying for facilities for which expenditures have already been made. The existing and prior criteria make clear customer charges are based not on current expenditures for new facilities, but rather on the annual depreciation of existing facilities and the interest on the undepreciated cost of existing facilities.[28] This accrual method of recovering costs has always been reflected in DOE's annual financial statements for the enrichment program.[29]

DOE's customers also view the estimate as containing costs which are not properly allocable to civilian customers. Duke Power provided the most detailed list of items which should not be allocated to civilian customers. In particular, Duke Power disputes DOE's interpretation of how the Conway Formula operates and the allocation of costs related to (1) assets transferred at the origin of the enrichment program, (2) processing of high grade assays, (3) unused TVA power commitments, and (4) excess enriched and natural uranium inventories.

With respect to the Conway Formula, Duke Power correctly states that facility utilization exceeded 75% of capacity in 1976. Having established that termination of cost allocation under the Conway Formula was triggered in 1976, Duke Power then implies it was improper to include full charges for depreciation and interest in pricing for years subsequent to 1976 because utilization fell below 75% of capacity after 1976. This implication is wrong.[30] The Conway Formula itself was structured to terminate permanently when the 75% trigger was reached, regardless of what occurred in subsequent years. DOE and its predecessors, as well as the relevant Congressional committees and GAO, have consistently interpreted the Conway Formula in this manner.

With respect to the allocation of costs between commercial and government customers, DOE always has structured cost recovery computations so that the costs of providing enrichment services are allocated to commercial customers and to Government users on the same basis. In the annual financial statements and cost recovery calculations, all costs are recognized. These total costs are offset by revenues. Since unrecovered Government costs result when costs exceed revenues, equitable allocation requires all customers be treated as paying the same price for enrichment services. For commercial customers, revenues are determined from sale invoices. For Government deliveries, revenues are imputed at prices equal to those charged commercial customers.This practice has been consistently followed and reported in the annual financial statements since the beginning of the program. Therefore, the costs of providing enrichment services are allocated proportionally to all customers.

DOE does not agree with Duke Power's allegations of improper allocation of specific costs. For example, Duke Power argues that the assets transferred to DOE from military programs should have been valued at depreciated historic costs since these facilities were incurred for military purposes and no new costs were incurred when they were transferred to the enrichment program. In fact, DOE engaged in a comprehensive exercise to value the assets transferred to the enrichment program at its inception. This exercise took into account prior cost recognitions and the original military purposes of the transferred assets. This valuation was included in the first financial statement of the enrichment program and accepted by the JCAE. Moreover, the Conway Formula was adopted to ensure that excessive costs because of the non-utilization of these assets were not allocated to commercial customers.

Duke Power also argues that the higher cost of high assay enrichment production for military purposes has not been determined and properly allocated between commercial customers and Government users. In fact, a change was made in FY 1986 which should result in a more precise allocation. Beginning in FY 1986, the cost of high assay enrichment production was separated and separate prices were developed for high and low assay production. The FY 1986 Government revenue includes amounts to reflect the separate high and low assay prices. The high assay price is considerably higher than the low assay price because of the less efficient equipment used in producing high assay material, and the additional safeguards, security, and environmental protection costs associated with higher enrichments. Since the Government is the primary user of high assay production, this change has resulted in increased costs being transferred to the Government users. DOE has not made this high and low assay adjustment retroactively because of the lack of cost data to make a defined cost allocation in prior years, and because the estimated impact of this adjustment is small (only $10 to $15 million per year). This FY 1986

[27] 1970 U.S. Code Cong. And Ad. News, 4981, 5002 5003 (twice), 5004, 5005, and 5012.

[28] *See*, U.S. Pricing of Uranium Enrichment Services (DOE, 1980), especially pp. 4–5.

[29] Uranium Enrichment 1971 Annual Report, p.4.

[30] Indeed, the statement is not factually correct. The Conway formula was based on 75% of base capacity (17.2 million SWU) and not on expanded capacity (CIP and CUP) programs in the 1970's which increased capacity to the current 27.3 million SWU. Therefore, production levels actually exceeded 75% of base capacity in FY 1976, 1977 and 1979.

change will be reflected in the FY 1986 financial statements.

Duke Power notes that demand charges from TVA for contracted but unused power commitments have been included in the charge to commercial customers. Duke Power asserts this practice is inconsistent with DOE's policy of not including the costs of assets that are not used and useful. DOE does not agree. These demand charges are an essential and non-separable part of a contractual arrangement with TVA which has been an integral part of managing the operation of DOE's enrichment activities. DOE believes it simplistic to equate usefulness solely with the extent to which DOE actually takes power from a particular source. Proper management requires DOE to assure the availability of sufficient power for its long-term needs, while taking power for its current needs in a manner which minimizes its overall costs for power. DOE's decisions concerning power from TVA have been made as part of this management strategy. In the event DOE determines this arrangement is no longer useful, it will consider the appropriate treatment of the costs associated with the arrangement, including demand charges.

Duke Power also complains that DOE has maintained an excessively high inventory of uranium and enriched material and that, as a result, commercial customers have paid too much. In hind-sight, DOE may have built up inventories higher than experience proved necessary. However, DOE has a responsibility to operate its enrichment facilities in a prudent manner. Prior and existing inventory levels reflect prudent operational decisions. When these inventories were built up, DOE believed this mode of operation was a long-term cost efficient way to provide enrichment services to its customers. DOE does not think it unfair to ask its customers to pay their fair share of those operational decisions.

Passage of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) confirms DOE has not exceeded its authority under the AEA in determining the amount of costs appropriate for recovery. COBRA sets forth goals for the payment of enrichment program revenues to the U.S. Treasury in FY 1986, FY 1987, and FY 1988 and requires DOE to report to Congress the actual amounts of the payments, after notice and opportunity for public comment. As part of the report for FY 1986, DOE must include an estimate of the amount of prior government investment in enrichment activities that remains unrecovered and an analysis of how debt should be appropriated between government and commercial customers.

COBRA confirms DOE is to determine, in the first instance, the amount of cost appropriate for recovery since it directs DOE to include its estimate of unrecovered costs, but does not explicitly or implicitly specify how DOE should estimate those costs. At the same time, by directing DOE to report the amount of unrecovered costs on which payments to the U.S. Treasury should be based, COBRA refutes the contention Congress intended to preclude the recovery of these costs.

Nothing in the comments has convinced DOE that its judgments concerning the inclusion and allocation of costs, as discussed in the Notice of Additional Information, are inappropriate. DOE realizes, however, that it has an ongoing responsibility to determine the appropriate amount of costs on which to base charges to civilian customers and to take the views of Congress into account, such as it did when the Conway Formula was adopted. In particular, DOE will review costs in connection with preparation of the estimate of unrecovered government investment which COBRA requires as part of the report to Congress on the FY 1986 payment to the U.S. Treasury. This review of costs will be consistent with the general views expressed in § 762.5 and undertaken in the same manner as the analysis of unrecovered costs contained in the Notice of Additional Information.

F. Section 762.6—"Recovery of prior Unrecouped Government costs."

Section 762.6 of the revised criteria expresses DOE's commitment to the recovery of appropriate Government costs over a reasonable period of time through payments to the U.S. Treasury. Section 762.6 codifies this commitment by setting forth a mechanism for the recovery of prior Government costs. In response to concerns about the relationship of this section and COBRA, DOE is modifying § 762.6 to make clear the section does not interfere with the Congressionally prescribed system under which DOE will determine the amounts of the payments to the U.S. Treasury for FY 1986, FY 1987, and FY 1988. This modification is in no way intended to weaken DOE's commitment to recover prior Government costs.

As adopted, § 762.6 requires DOE to establish reserves sufficient to return to the U.S. Treasury, over a reasonable period of time, previously unrecouped and unrecovered costs associated with the provision of enrichment services to civilian customers.[31] In addition, the section requires DOE to determine the amount of the annual payment to the U.S. Treasury and lists several factors which DOE shall consider in making this determination. The listed factors reflect the considerations which the Conference Report on COBRA urged DOE to take into account in determining the amount of the annual payment.

Many of the comments objected to the proposed § 762.6. For the most part, these objections were tied to disagreements about DOE's estimate of the amount of unrecovered Government costs. As discussed in connection with § 762.5, DOE continues to believe it acted appropriately in estimating the amount of unrecovered costs to be about $3.4 billion. The analytical framework for deriving this amount is contained in the Notice of Additional Information.

Several members of the Senate Committee on Energy and Natural Resources objected to this section because they believed it was inconsistent with COBRA. These Senators specifically objected to the inclusion in the criteria of a plan to make annual payments to the U.S. Treasury and the description in the preamble to the proposed criteria of a specific formula for establishing annual payments.

DOE does not believe COBRA and § 762.6 are inconsistent. Both recognize that during this period of budget deficits, DOE has a responsibility to consider the extent to which the disposition of enrichment revenues should take the form of payments to the U.S. Treasury. COBRA, in fact, establishes payment goals of $110 million for FY 1986, $150 million for FY 1987, and $150 million for FY 1987.

The proposed schedule of payments in the Notice of Proposed Rulemaking was developed prior to the adoption of COBRA. This proposed schedule will be reviewed in accordance with the process prescribed by COBRA for DOE to estimate the amount of prior investment in the uranium enrichment service activities program that remains unrecovered and to determine the appropriate amounts of the payments to the U.S. Treasury in FY 1986, FY 1987 and FY 1988. In making these determinations, DOE will be mindful the Conference Report on COBRA found

[31] The reference to reserves is not intended to mandate the establishment of a separate account in which DOE shall deposit funds. Rather, it connotes DOE's commitment to operate the enrichment program in such a manner as to have revenues exceed outlays in a particular year by an amount sufficient to cover the amount which DOE determines to pay the U.S. Treasury that year

that "maximizing repayments in the next three years may impair the financial integrity of the program in the longer term" and indicated that any payment schedule must be consistent with the financial integrity of the program, as well as reliability of supplies at competitive prices. DOE also understands its responsibility in determining the proper amounts of the annual payments "to consider a variety of factors . . . , including the appropriate price and market share, the impact upon existing enrichment facilities and other program expenditures, the impact upon research and development of advanced technologies for additional capacity, and the deficit reduction goals."

G. Section 762.7—"Non-discrimination."

Section 762.7 of the revised criteria codifies the statutory requirement of section 161(v) that prices for enrichment services "be established on a non-discriminatory basis." The section achieves non-discrimination by making clear DOE must make available the same price, as well as other terms and conditions, to all similarly situated customers. DOE has adopted this approach because of its belief that, in today's competitive market, non-discrimination means giving all customers an opportunity to strike a bargain equal in attractiveness to those available to other customers.

While none of the comments opposed the inclusion of a non-discrimination provisions, some of the comments questioned whether the provision would have any meaning if price and other terms were determined through negotiations between DOE and individual parties. In particular, they expressed concern over the meaning of "similarly situated" and over the lack of information about the price and terms negotiated by other customers.

DOE believes a non-discrimination provision is relevant in the context of negotiated prices and terms. Nondiscrimination does not require the exact same price and terms for every customer, but rather requires each customer be given the chance to negotiate the best deal for itself on the same basis as other customers. Negotiations may result in different prices and terms for different customers, but this is not discriminatory if each customer negotiated for the price and terms it felt best suited its needs.

The use of the phrase "similarly situated" is intended to express the concept that the discriminatory nature of an act can be determined only in the context in which the act takes place. For example, it would not be discriminatory to demand a higher price from a customer which was demanding more favorable contractual terms than other customers, as long as the higher price reasonably related to the more favorable terms. Likewise, it would not be discriminatory to offer different terms to a customer whose size created a qualitative difference between it and other customers, as long as the different terms reasonably related to the qualitative difference.[32]

DOE does not believe public disclosure of information on the prices and terms negotiated by other customers is necessary to make the nondiscrimination provision effective. In the past, DOE always has extended to all customers the opportunity to receive the most favorable price treatment being offered by DOE. This policy will not change under the revised criteria. It is this commitment to give everyone the same opportunity, and not knowledge of the precise details of other contracts, which is the key to nondiscrimination.

H. Section 762.8—"Amendment of contract."

Section 762.8 of the revised criteria continues the policy of the existing criteria to permit contract amendment without penalty. This section also makes clear that contracts can provide for renegotiation at specified times or upon notice by either party. DOE believes the ability to amend and renegotiate contracts is a very important element of maintaining competitive viability. The comments agreed with the need for flexibility in the amendment of contracts.

I. Section 762.9—"Termination by DOE."

Section 762.9 of the revised criteria continues the policy of the existing criteria to permit DOE to terminate a contract without penalty if commercial enrichment services become available from another domestic source. This section also permits DOE to terminate a contract if a customer loses its right to possess uranium, defaults on its contractual obligations, or becomes involved in bankruptcy proceedings.

This section continues the existing approach to terminations by DOE. Several comments, however, raised questions. Most of these comments related to the fairness of permitting DOE, but not its customers, to terminate without penalty. DOE notes the criteria permit it to terminate in situations where an alternative domestic supplier becomes available or in situations where the customer is unable to perform its obligations under the contract. On the other hand, the customer is free to negotiate for the right to terminate for any reason.

DOE believes the right to terminate if an alternative domestic source becomes available is essential for the potential development of commercial enrichment services. Terminations for this reason will not affect any customer adversely since they will not be required to pay any termination charge and since DOE will continue to provide service if a customer is unable to obtain service from the commercial supplier. Accordingly, DOE is adopting paragraph (a) of § 762.9 as proposed.

Several of the comments pointed out that "involved in bankruptcy proceedings" is a broad term and that, in many instances, involvement in bankruptcy proceedings would not affect their ability to perform their obligations under the contract. DOE has never intended the reference to bankruptcy proceeding to be used as a means to terminating a contract arbitrarily. Accordingly, paragraph (b) of § 762.9 is changed to limit terminations because of bankruptcy proceedings to situations where the involvement interferes with the customer's ability to perform its obligations.

J. Section 762.10—"Termination by customer."

Section 762.10 of the revised criteria makes clear the charge to a customer for terminating a contract shall be the subject of negotiation beweeen DOE and the customer and, unlike the termination charges in existing contracts, need not be based exclusively on costs.

As discussed in connection with § 762.9, several of the comments questioned the different treatment of terminations by DOE and by its customers. Other comments argued termination charges should be set forth in the criteria or based exclusively on costs.

In general, DOE's approach to termination charges is that they should assist it in retaining customers. Termination charges should give

[32] In fact, the criteria specifically provide DOE can differentiate among customers on the basis of the differing costs of supplying enrichment services to different customers. This provision makes clear DOE need not make available the same price to customers for which the costs of supplying enrichment services are different. In order to eliminate any inference this provision mandates cost-based pricing in the sense of an utility-type ratemaking, language has been included to express explicitly DOE's discretion to exercise its judgment concerning cost differentials associated with supplying enrichment services to different classes of customers.

customers an incentive to continue or, at least, to renegotiate their existing contract, rather than seek a new contract with a new supplier.

DOE believes a schedule of termination charges or termination charges based exclusively on costs is not required by law and is too rigid a concept. The circumstances under which a customer can terminate and the costs of such action can be an important element in negotiating a contract. Flexibility concerning this element of a contract should not be limited by publishing a schedule of charges or requiring such charges to be based exclusively on costs. Accordingly, DOE is adopting § 762.10 as proposed.

K. Section 762.11—"Quantities and form of feed and product material."

Section 762.11 of the revised criteria continues the policy of the existing criteria that the criteria only relate to how DOE offers enrichment services and not to how it runs its plants. Specifically, it provides that the criteria do not affect DOE's ability to reduce its operating costs by pursuing a policy of split tails or of using preproduced inventory.

Several of the comments urged this section be modified to guarantee a variable tails assay option to all customers without charge and to limit the use of DOE's preproduced inventory. For the most part, these comments argued such action would assist the domestic mining industry by encouraging the use of more uranium and by raising the price for domestic uranium. DOE is sympathetic to the condition of the domestic mining industry and, indeed, already has taken action concerning the variable tail assay option. Section 762.11 gives DOE the flexibility to take additional such actions. DOE does not believe it appropriate to use the criteria to specify a particular mode of operation for its enrichment plants. DOE must maintain the discretion necessary to manage its plants in the best manner possible.

Other comments objected to the deletion of the reference to UF–6 as the form of feed material. They expressed concern over the effects of an unanticipated change in the form of feed material DOE would accept. DOE proposed the deletion of UF–6 in anticipation of the possible introduction of new enrichment techniques. DOE understands the concerns of its customers about an abrupt change in the form of feed material. Accordingly, DOE is changing § 762.11 to specify UF–6 as the form of feed and product material, except where DOE and the customer agree to another form.

L. Section 762.12—"Customers option to acquire tails material."

Section 762.12 of the revised criteria continues the policy in the existing criteria which permits customers to acquire tails material, but grants DOE the discretion to determine the U–235 assay of the tails. Several of the comments objected to DOE's discretion to determine the tails assay of tails taken by customers. As discussed in § 762.11, DOE does not believe the criteria should limit its ability to operate its enrichment plants. Permitting customers to specify the tails assay would limit severely DOE's discretion over plant operation. Accordingly, DOE is adopting § 762.12 as proposed.

However, in delivering tails material to customers, DOE will make a reasonable attempt to furnish material at the tails assay selected by a customer for the transaction. Where the requested tails assay is not being withdrawn from enrichment plants or is not readily available, DOE will attempt to furnish the customer with material from the next lowest U–235 assay available from DOE.

M. Section 762.13—"Responsibility for materials meeting specifications."

Section 762.13 of the revised criteria continues the policy in the existing criteria that materials which customers furnish DOE and which DOE furnishes customers must meet specifications established by DOE. Several comments referred to the lack of detail in the criteria as to what the specifications are or what constitutes final acceptance. In the past, such details have been part of the contract. DOE does not believe it would facilitate the furnishing of enrichment services to codify a particular set of specifications in the criteria. Accordingly, DOE is adopting § 762.13 without change.

N. Section 762.14—"Other terms."

Section 762.14 of the revised criteria makes clear that a contract can contain terms and conditions not specified in the criteria. No prohibition against a term or condition is intended by its non-inclusion in the revised criteria. For example, the existing criteria provide for advance payments, while the revised criteria do not mention advance payments. After the revised criteria become effective, DOE and its customers will be free to negotiate advance payments, even though the revised criteria do not address advance payments explicitly. The terms and conditions in a contract, however, cannot be inconsistent with the criteria.

Several of the comments objected to this section. In general, they asserted the section would give DOE too much discretion, would conflict with the statutory requirement that the criteria set forth the terms and conditions under which DOE will provide enrichment services, and would obstruct Congressional oversight. DOE does not accept these objections. DOE and its customers have always included terms and conditions in enrichment contracts which were not specified in the criteria. This section merely codifies the flexibility which DOE and its customers must possess to negotiate contracts and makes clear that such flexibility can not be use to include terms and conditions inconsistent with the approaches to providing enrichment services set forth in the criteria. As discussed in connection with § 762.1, DOE does not believe the criteria must or should contain every detail of enrichment contracts. The important thing is that the criteria clearly set forth DOE's approach to providing enrichment services so that Congress can exercise effective oversight. DOE believes the revised criteria provides Congress with a very thorough basis on which to review the manner in which DOE offers enrichment services and that permitting DOE and its customers the flexibility to negotiate specific details of their contracts does not undermine that review.

P. Section 762.15—"Prior contracts."

Section 762.15 of the revised criteria makes clear that the adoption of the revised criteria does not invalidate any prior contract. All contracts under which DOE has been providing enrichment services shall continue to be effective after the adoption of these criteria. However, prior contracts can be amended to conform to the new criteria without penalty, if both parties agree.

Several comments indicated this was an improper attempt to retroactively validate existing contracts, especially the Utility Services (US) contracts which are currently the subject of litigation. DOE disagrees with these comments. A change in the criteria should not invalidate existing contracts, and indeed, has not in the past. With respect to the US contracts, DOE believes those contracts conform to the existing criteria. However, even in the event there is a final judicial decision in the *Western Nuclear* litigation that the standard form on which those contracts are based conflicts with the existing criteria, adoption of the revised criteria would remove any arguable legal cloud on the operation of the US contracts. DOE believes the US contracts are valid

between DOE and its customers and conform to the revised criteria. Accordingly, DOE knows of no reason why the US contracts, which were negotiated in good faith between DOE and its customers, should not operate according to their agreed upon terms.

IV. Procedural Matters

A. Executive Order 12291

Executive Order 12291 (46 FR 13193, February 19, 1981), requires an agency to prepare a regulatory impact analysis for any major rule. DOE has determined that this rule does not constitute a "major rule," as defined in the Executive Order, because: (1) The revising of the criteria will not directly result in the level of impact necessary to meet the definition of a "major rule"; and (2) in keeping with the purpose and intent of the Executive Order, the revisions of the criteria will not increase the regulatory burdens on American society.

B. Atomic Energy Act

Under section 161(v) of the Atomic Energy Act, 42 U.S.C. 2201(v), DOE must submit criteria to the appropriate Congressional committees for a period of forty-five days prior to the time DOE actually establishes the criteria. Pursuant to this requirement, DOE will submit the criteria which it is adopting to the proper committees. The revised criteria will not become effective until the completion of the Congressional review process set forth in the AEA.

C. National Environmental Policy Act

In accordance with the regulations of the Council on Environmental Quality (40 CFR Parts 1500–1808) implementing the National Environmental Policy Act of 1969, as amended, 40 U.S.C. 4421 *et seq.*, DOE prepared an Environmental Assessment (EA) on the revisions to the criteria. Based upon this EA, DOE issued a Finding of No Significant Impact (FONSI) concluding that the revision to the criteria is not a major Federal action significantly affecting the quality of the human environment. This FONSI was published as an appendix to the Notice of Proposed Rulemaking in this proceeding.

D. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, DOE certifies that the revisions of the criteria will not have a significant economic impact on a substantial number of small entities because: (1) The revised criteria will not directly result in the level of impact required to meet the standard set forth in the Regulatory Flexibility Act; (2) to the extent the revised criteria may have any direct impact, such impact will not be adverse to small entities; and (3) the number of small entities that may be affected by the revised criteria is not large enough to meet the standard set forth in the Regulatory Flexibility Act.

E. Paperwork Reduction Act

The criteria do not directly provide for the collection of information. The contracts that will be based on the criteria will be used to collect certain information, and at the appropriate time DOE will submit the collection of information requests contained in the contracts to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501.1 *et seq.*, and the procedures implementing that Act, 5 CFR 1320.1 *et seq.*

List of Subjects in 10 CFR Part 762

Uranium.

For the reasons set out in the preamble, Chapter III of Title 10 of the Code of Federal Regulations is amended as follows.

Issued in Washington, DC, on July 22, 1986.

James W. Vaughan, Jr.,

Acting Assistant Secretary for Nuclear Energy.

1. Chapter III of Title 10 is amended by adding a new Part 762 to read as follows:

PART 762—URANIUM ENRICHMENT SERVICES CRITERIA

Sec.

762.1 General.
762.2 Definitions.
762.3 Enrichment of uranium of foreign origin.
762.4 Prices.
762.5 Costs.
762.6 Recovery of prior unrecouped Government costs.
762.7 Non-discrimination.
762.8 Amendment of contract.
762.9 Termination by DOE.
762.10 Termination by customer.
762.11 Quantities and form of feed and product material.
762.12 Customer's option to acquire tails material.
762.13 Responsibility for material meeting specifications.
762.14 Other terms.
762.15 Prior contracts.

Authority: Section 161(v) of the Atomic Energy Act of 1954, 68 Stat. 921 (42 U.S.C. 2201(v)).

§ 762.1 General.

(a) *Authority.* These criteria set forth the general terms and conditions applicable to the provision to civilian customers of uranium enrichment services in facilities owned by DOE, as authorized by the Atomic Energy Act of 1954, as amended (the Act). Specifically, these criteria are established pursuant to section 161(v) of the Act, which was added by Pub. L. 88–489, the "Private Ownership of Special Nuclear Materials Act."

(b) *Eligible customers.* DOE may enter into contracts for providing enrichment services with licensees and cooperative agreement customers. Enrichment services can be offered to cooperative agreement customers only while comparable services are available to licensees and cannot be offered for prices less than the prices for services to licensees.

(c) *Capacity limitations.* DOE will not enter into contracts in excess of the available capabilities of DOE. Available capability consists of inventories of material available or committed to DOE and the physical capability of existing and authorized enrichment plants, fully powered and operated without limitation as to mode of operation, but as reduced by potential commitments involving forecasts of Government needs.

(d) *Sale limitations.* Except as specifically provided, nothing in this notice shall be deemed to affect the sale or leasing of special nuclear material by DOE or the entering into "barter" arrangements whereby special nuclear material is distributed pursuant to section 54 of the Act and source material is accepted in part payment therefor.

(e) *Committed services.* Contracts for the provision of enrichment services shall specify the extent to which a customer is committed to take services from DOE and the charge, if any, for not taking committed services.

(f) *Duration.* Contracts for the provision of enrichment services shall be long-term, except that DOE may offer short-term contracts if, in its view, such contracts would promote the objectives of the AEA.

(g) *Revision of criteria.* The criteria contained in this notice are subject to change by DOE from time to time; however, any such changes shall be developed in conformance with applicable administrative guidelines and shall be submitted to the Committees of the Senate and House of Representatives which under the rules of the Senate and House have jurisdiction for review in accordance with the Act.

§ 762.2 Definitions.

(a) "Enrichment services" means the separative work necessary to enrich or

further enrich uranium in the isotope U–235.

(b) "Cooperative agreement customer" means a person receiving enrichment services pursuant to an agreement for cooperation arranged pursuant to section 123 of the AEA.

(c) "Licensee" means a person licensed under sections 53, 63, 103 or 104 of the AEA.

(d) "Separative work" means the measure of the effort required to separate a quantity of uranium feed material into (1) an enriched fraction containing a higher concentration of U–235 than the feed material and (2) a tails fraction containing a lower concentration of U–235.

§ 762.3 Enrichment of uranium of foreign origin.

DOE may not restrict the enrichment of uranium of foreign origin for domestic use except to the extent it determines such a restriction is necessary to assure the maintenance of a viable domestic uranium industry.

§ 762.4 Prices.

DOE may negotiate prices in individual enrichment services contracts in accordance with an overall approach intended to maintain the long-term competitive position of DOE while obtaining the recovery of the Government's costs over a reasonable period of time.

§ 762.5 Costs.

DOE will establish charges for enrichment services on a basis that recovers appropriate Government costs over a reasonable period of time. Such costs will be determined on a basis that includes the costs incurred in providing enrichment services as follows:

(a) Electric power and all other costs, direct and indirect, of operating the enrichment plants;

(b) Depreciation of enrichment plants;

(c) Costs of process development;

(d) Cost of DOE administration and other Government functions in support of the Enrichment Program; and

(e) Imputed interest on investment in plant, working capital, the natural uranium contained in those inventories at the DOE enrichment plants needed to provide enrichment services, and the separative work costs of preproduced inventories.

§ 762.6 Recovery of prior unrecouped Government costs.

In establishing prices for providing enrichment services for civilian customers, DOE will establish reserves sufficient to return to the Treasury of the United States, over a reasonable period of time, previously unrecouped and unrecovered costs associated with provision of enrichment services to civilian customers. The estimate of such costs will include costs attributable to plant capacity used to provide enrichment services for civilian customers, but will not necessarily include costs attributable to plant capacity or other investments not properly allocable to the Government's costs associated with providing enrichment services to civilian customers. DOE shall determine the amount to be returned to the U.S. Treasury each year. In determining this amount, DOE shall consider all relevant factors, including the following:

(a) Long-term financial integrity of the enrichment program;

(b) Reliability of service at competitive prices;

(c) Market share;

(d) Impact upon existing enrichment facilities and other program expenditures;

(e) Impact upon research and development; and

(f) Need to reduce the deficit.

§ 762.7 Non-discrimination.

The same prices, as well as other terms and conditions, shall be available to all similarly-situated customers on a non-discriminatory basis, reflecting DOE's judgment of cost differentials associated with supplying enrichment services to different customers.

§ 762.8 Amendment of contract.

At the request of either DOE or the customer, the parties will negotiate and, to the extent mutually agreed, amend the contract without additional consideration. A contract may provide for renegotiation of prices, as well as other terms and conditions, at specified times or upon request by either party.

§ 762.9 Termination by DOE.

(a) The contract may be terminated by DOE without cost to DOE upon reasonable notice at such time as commercial enrichment services are provided by another domestic source: Provided, however, that DOE will upon request by the customer rescind any notice of termination and will continue to furnish the services specified in the contract if the services of the domestic source are not available to the customer; (1) To the extent provided for in the DOE contract during the remainder of its terms; and (2) on terms and conditions, including charges, which are considered by the DOE to be reasonable and nondiscriminatory.

(b) DOE may terminate the contract without cost to DOE in the event the customer loses its right to possess enriched uranium, or defaults on its contractual obligations, or becomes involved in bankruptcy proceedings where such involvement interferes with the customer's ability to perform its obligations. In such instances, the customer will be required to pay a termination charge determined as if the customer had terminated the contract.

§ 762.10 Termination by customer.

The contract shall provide the circumstances under which the customer may terminate the contract in whole or in part. Reasonable and appropriate charges for termination as are negotiated shall be specified in the contract.

§ 762.11 Quantities and form of feed and product material.

The form of feed and product material shall be UF–6, except where DOE and the customer agree to another form. The quantity of material to be furnished by the customer in relationship to the quantity of enriched uranium to be delivered by DOE and the related amount of separative work to be performed by DOE normally will be determined in accordance with the then current standard table of enrichment services published by DOE. DOE may agree to perform such services in accordance with such other table as is within its capability. DOE will not necessarily use the specific feed material or quantity of material furnished by the customer in producing the enriched uranium delivered to the customer.

§ 762.12 Customer's option to acquire tails material.

The customer shall be granted an option to acquire tails material (depleted uranium) resulting from the performance of enrichment services. The option as to quantity (kg U) of tails material desired by the customer, within the maximum quantity subject to the option, must be exercised at the time of delivery of the related quantity of feed material. The U–235 assay of the tails material delivered to the customer will be within the sole discretion of DOE. The maximum quantity of depleted uranium subject to the option will be equal to the difference between the total uranium supplied by the customer as feed material and the total enriched uranium furnished to the customer, less processing losses as established from time to time by DOE. Delivery of tails material will normally be at the same time as delivery of enriched uranium.

§ 762.13 Responsibility for material meeting specifications.

The customer warrants that all feed material meets specifications and, with stated exceptions, agrees to hold DOE and its representatives harmless from all damages, liabilities, or costs arising out of a breach of the warranty where such damages, liabilities, or costs are incurred prior to final acceptance of the feed material by DOE. However, the customer is not deprived of any rights under indemnification agreements entered into pursuant to section 170 of the Act (Price-Anderson indemnification). DOE's obligation to furnish specification material to the customer terminates upon final acceptance of such material by the customer.

§ 762.14 Other terms.

A contract may contain terms and conditions not specified in these criteria, so long as the terms and conditions are not inconsistent with these criteria.

§ 762.15 Prior contracts.

All contracts under which DOE was providing enrichment services prior to the adoption of these criteria are valid. These prior contracts may be amended to conform to these criteria without penalty, if both parties agree.

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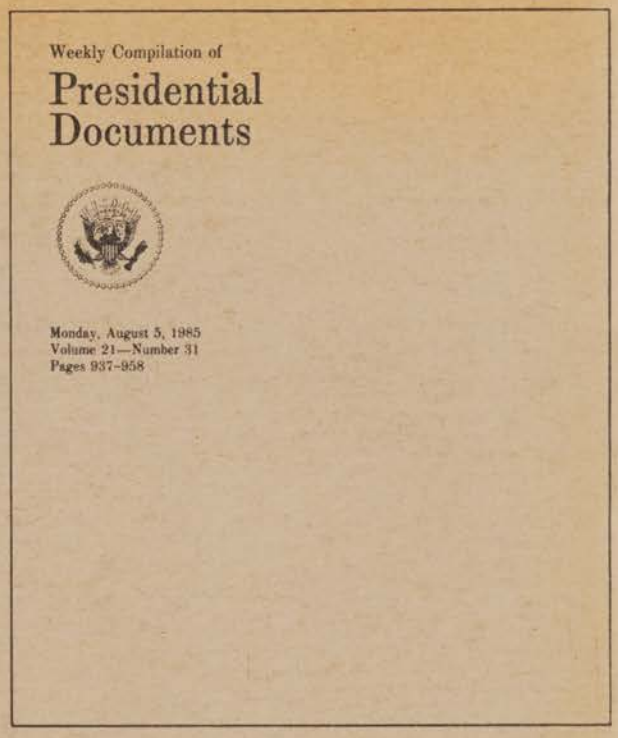

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