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Friday
March 27, 1987

Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

WASHINGTON, DC

WHEN: March 31; at 9 am.
WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC.
RESERVATIONS: Beverly Fayson; 202-523-3517

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Presidential Documents

Title 3—

The President

Proclamation 5623 of March 24, 1987

Greek Independence Day: A National Day of Celebration of Greek and American Democracy, 1987

By the President of the United States of America

A Proclamation

Among Greece's most cherished and revered contributions to mankind are the ideals of freedom and democracy. Because these ideals have played a central role in the history of our Nation, it is most fitting that we observe a day in celebration of Greek independence and of our shared love of democracy.

One hundred and sixty-six years ago, inspired by the legacy of liberty and democracy left them by their ancestors, the Greek people began a long struggle in which they regained freedom. The same legacy has inspired many peoples throughout history. Those who framed our Declaration of Independence, and the Constitution whose bicentennial we celebrate this year, drew upon the political and philosophical experience of the ancient Greeks and their followers through the centuries.

By joining in the independence celebration of the Greek people, we pay special tribute to the democratic values that we in the United States, together with our friends and allies such as Greece, are committed to defend.

The Congress, by Public Law 99–532, has designated March 25, 1987, as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy" and has authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim March 25, 1987, as Greek Independence Day: A National Day of Celebration of Greek and American Democracy, and I urge all Americans to join in appropriate ceremonies and activities to salute the Greek people and Greek independence.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of March, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 87-6899
Filed 3-25-87; 3:06 pm]
Billing code 3195-01-M

Presidential Documents

Presidential Determination No. 87–11

Determination to Authorize Continuation of Certain Assistance to Jamaica

Memorandum for the Secretary of State

Pursuant to section 536 of the Foreign Assistance and Related Programs Appropriations Act, 1987 as contained in section 101(f), Title V, of Public Laws 99–500 and 99–591, I hereby determine that the Government of Jamaica is sufficiently responsive to the United States Government concerns on drug control and that the added expenditure of funds for that country is in the national interest of the United States.

You are directed to report this determination to the Congress immediately.

This determination shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, March 12, 1987.

[FR Doc. 87–6949
Filed 3–25–87; 4:15 pm]
Billing code 3195–01–M

Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 653]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 653 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period March 27, 1987, through April 2, 1987. Such action is needed to balance the supply of fresh navel oranges with the demand for such period, due to the marketing situation confronting the orange industry.

DATE: Regulation 653 (§ 907.953) is effective for the period March 27, 1987, through April 2, 1987.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202-447-5697.

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

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

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

This rule is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1986-87 adopted by the Navel Orange Administrative Committee. The committee met publicly on March 24, 1987, in Lindsey, California, to consider the current and prospective conditions of supply and demand and recommended by an 8 to 5 vote a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that the market for navel oranges is slow.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. To effectuate the declared purposes of the act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (Navel).

PART 907—[AMENDED]

1. The authority citation for 7 CFR Part 907 continues to read:

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

2. Section 907.953 Navel Orange Regulation 653 is added to read as follows:

§ 907.953 Navel Orange Regulation 653.

The quantities of navel oranges grown in California and Arizona which may be handled during the period March 27, 1987, through April 2, 1987, are established as follows:

(a) District 1: 1,707,340 cartons;
(b) District 2: Unlimited cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons;

Dated: March 25, 1987.

Ronald L. Cioffi,
Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87-6942 Filed 3-26-87; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 910

[Lemon Reg. 554]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 554 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 330,000 cartons during the period March 29-April 4, 1987. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 554 (§ 910.854) is effective for the period March 29-April 4, 1987.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: (202) 447-5697.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant

economic impact on a substantial number of small entities.

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

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1986–87. The committee met publicly on March 24, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended by a 10 to 1 vote (with 1 abstention) a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market is good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

1. The authority citation for 7 CFR Part 910 continues to read as follows:

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

2. Section 910.854 is added to read as follows:

§ 910.854 Lemon Regulation 554.

The quantity of lemons grown in California and Arizona which may be handled during the period March 29 through April 4, 1987, is established at 330,000 cartons.

Dated: March 25, 1987.

Ronald L. Cioffi,

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

[FR Doc. 87–6941 Filed 3–26–87; 8:45 am]

BILLING CODE 3410–02–M

Economic Analysis Staff

7 CFR Parts 3900 and 3901

Organization, Functions, and Availability of Information to the Public

AGENCY: Economic Analysis Staff, USDA.

ACTION: Final rule.

SUMMARY: This rule explains the organization and functions of the Economic Analysis Staff (EAS) and the procedures for requesting records from EAS under the Freedom of Information Act (FOIA). It supplements the Department's regulations at 7 CFR Part 1, Subpart A.

EFFECTIVE DATE: March 27, 1987.

FOR FURTHER INFORMATION CONTACT: Laura B. Snow, Economics Agencies FOIA Officer, Economics Management Staff, USDA, Room 4310, South Building, 12th and Independence Avenue, SW., Washington, DC 20250. Telephone (202) 447–7590.

SUPPLEMENTARY INFORMATION: This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required and this rule may be made effective in less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Also, this action is not a rule as defined by Pub. L. 96–354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects

7 CFR Part 3900

Organization and functions (Government agencies).

7 CFR Part 3901

Freedom of information.

Accordingly, 7 CFR is amended by adding a new Chapter XXXIX and Parts 3900 and 3901 reading as follows:

CHAPTER XXXIX—ECONOMIC ANALYSIS STAFF

PART 3900—ORGANIZATION AND FUNCTIONS

Sec.

Authority: 5 U.S.C. 301 and 552, and 7 CFR 2.89.

§ 3900.1 General.

The Economic Analysis Staff (EAS) was established on June 15, 1982, by Secretary's Memorandum 1020–6, entitled "Establishment of Economic Analysis Staff." The primary responsibility of EAS is to advise and assist the Assistant Secretary for Economics in fulfilling his responsibility for economic policy review and analysis in the Department of Agriculture.

§ 3900.2 Organization.

The central and only office of EAS is located in Washington, DC, and consists of the Director and supporting staff.

§ 3900.3 Functions.

EAS provides staff assistance to the Assistant Secretary for Economics in the following areas:

(a) *Policy Development.* Developing, organizing, coordinating, and synthesizing economic and statistical analyses for use as a basis for planning short- and intermediate-range agricultural policy.

(c) *Policy Analysis.* Conducting economic and statistical analyses in order to evaluate domestic and foreign agricultural problems and issues crossing agency lines. Calling attention to effects of utilizing particular courses of action under varying situations and recommending alternative actions.

(c) *Policy Evaluation.* Reviewing and evaluating recommendations submitted to USDA agencies, task forces, and study groups for their policy implication and impact upon the agricultural economy.

(d) *Legislative Analysis.* Analyzing legislative proposals concerning domestic and foreign agricultural issues

for policy implications and developing amendments to legislative proposals to further short- and intermediate-range policy objectives.

(e) *Representation.* Representing the Assistant Secretary in meetings with agriculture, industry, and consumer groups to discuss the economic impact of existing and proposed Department policies.

§ 3900.4 Authority to act for the Director.

When the Director is absent or temporarily unavailable, the Staff Statistician is authorized to act for the Director.

PART 3901—AVAILABILITY OF INFORMATION TO THE PUBLIC

Sec.
3901.1 General.
3901.2 Public inspection, copying and indexing.
3901.3 Requests for records.
3901.4 Denials.
3901.5 Appeals.

Authority: 5. U.S.C. 301 and 552; 7 CFR 1.1–1.19 and Appendix A.

§ 3901.1 General

This part is issued in accordance with the regulations of the Secretary of Agriculture in §§ 1.1 through 1.19 of this title and Appendix A thereto, implementing the Freedom of Information Act (FOIA) (5 U.S.C. 552), and governs the availability of records of the Economic Analysis Staff (EAS) to the public.

§ 3901.2 Public inspection, copying, and indexing.

5 U.S.C. 52(a)(2) requires that certain materials be made available for public inspection and copying and that a current index of these materials be published quarterly or otherwise be made available. EAS does not maintain any materials within the scope of these requirements.

§ 3901.3 Request for records.

Requests for records of EAS shall be made in accordance with § 1.6 (a) and (b) of this title and addressed to: Economics Agencies FOIA Officer, Economics Management Staff, USDA, Room 4310, South Building, 12th and Independence Avenue, SW., Washington, DC 20250. This official in delegated authority to make determinations regarding such requests in accordance with § 1.3(b) of this title.

§ 3901.4 Denials.

If the Economics Agencies FOIA Officer determines that a requested record is exempt from mandatory disclosure and that discretionary release would be improper, the Economics Agencies FOIA Officer shall give written notice of denial in accordance with § 1.7(a) of this title.

§ 3901.5 Appeals.

Any person whose request is denied shall have the right to appeal such denial. Appeals shall be in accordance with § 1.6(e) of this title and addressed to the Director, Economic Analysis Staff, U.S. Department of Agriculture, Washington, DC 20250.

Done at Washington, DC, this 11th day of March 1987.

Keith J. Collins,

Director, Economic Analysis Staff.

[FR Doc. 87–6810 Filed 3–26–87; 8:45 am]

BILLING CODE 3410–19–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 546, 552, 563, 572a and 574

[No. 87-306]

Acquisitions of Control of Insured Institutions and Delegated Merger Approvals; Technical Corrections

Dated: March 18, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule; technical corrections.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is making technical and conforming corrections to its regulations governing acquisitions of control of insured institutions and delegated merger approvals adopted by the Board on November 8, 1985, Board Res. Nos. 85–1005, 85–1006; 50 FR 48685, 48725 (Nov. 26, 1985), and to other regulations governing consolidations and combinations of insured institutions.

EFFECTIVE DATE: March 27, 1987.

FOR FURTHER INFORMATION CONTACT: Kevin A. Corcoran, Staff Attorney, (202) 377–6203, Neil R. Crowley, Deputy Director for Corporate, (202) 377–6962, or Julie L. Williams, Deputy General Counsel (202) 377–6459; Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Board, as operating head of the FSLIC, is making technical and conforming corrections to its regulations governing acquisitions of control of insured institutions and consolidations and combinations of insured institutions. On November 8, 1985, the Board adopted extensive amendments to its regulations implementing the Change in Savings and Loan Control Act, 12 U.S.C. 1730(q) ("Control Act") and the acquisition provisions of the Savings and Loan Holding Company Amendments of 1967, 12 U.S.C. 1730a, ("Holding Company Act") in Resolution No. 85–1005. 50 FR 48685 (Nov. 26, 1985). Also on November 8, 1985, the Board adopted amendments to its regulations governing delegations of authority for processing applications involving interim institutions, mergers, consolidations, bulk transfers and other transfers of assets and liabilities in Resolution No. 85–1006. 50 FR 48725 (Nov. 26, 1985). Adoption of the two Resolutions resulted in complex amendments to numerous Board regulations.

The Board has become aware of several typographical errors, missing words, and potentially confusing punctuation in the regulations as published in the **Federal Register** on November 26, 1985. Some of these errors might confuse a reader into thinking that pertinent words or phrases have been inadvertently omitted. In addition, the Board is aware of several outdated regulatory citations in its regulations that should be corrected. Accordingly, the Board is taking this opportunity to make technical corrections in these respects.

In addition, the amendments adopted today at 12 CFR 546.2(d), 552.13(i)(3), 552.13(j)(3), and 563.22(d), regarding procedures for formation of interim institutions update the citations in those regulations from Part 584 to Part 574. These conforming amendments were unintentionally omitted from Board Resolution No. 85–1005, and are necessary because the regulations currently cite regulations that no longer exist. The effect of these amendments is to clarify the permissibility of certain procedures, previously available only in connection with mergers involving interim institutions created by companies, to be used in the context of mergers involving interim institutions created by other persons. The Board, in Board Resolution No. 85–1005, specifically mentioned the clarification, streamlining and expediting of various application procedures and the provision of a uniform type of public notice for holding company applications and change in control notices as being among its purposes in amending its regulations governing the acquisition of control of insured institutions. Accordingly, this correction regarding the procedures pertaining to interim institutions in the context of an

acquisition of control of an insured institution is entirely consistent with the Board's purposes in implementing Part 574.

The Board also is amending 12 CFR 574.7(g)(1)(iii), which, *inter alia*, sets forth a rebuttable presumption that an acquiror may fail to satisfy the managerial resources and future prospects tests of 12 CFR 574.7(c) or the integrity test of 12 CFR 574.7(d)(4) if a management official of the acquiror was a management official or director of a company or insured institution that was placed into receivership, conservatorship, or was placed in a management consignment program, or was liquidated during his tenure or within two years thereafter. The discussion of this presumptive disqualifier in Resolution No. 85-1005 clearly indicated that the presumptive disqualifier also was intended to be applicable to any management official of the acquiror who was a controlling shareholder of such an entity. The presumptive disqualifier as originally stated, however, inadvertently omitted mention of controlling shareholders, and this amendment corrects that oversight.

Because these changes are either nonsubstantive or relieve restrictions currently in effect, the Board finds that observance of the notice and comment procedure pursuant to 5 U.S.C. 553(b) and 12 CFR 508.11 and the 30-day delay of effective date pursuant to 5 U.S.C. 553(d) and 12 CFR 508.14 is unnecessary and contrary to the public interest.

List of Subjects in 12 CFR Parts 546, 552, 563, 572a and 574

Administrative practice and procedure, Bank deposit insurance, Holding companies, Investments, Reporting and recordkeeping requirements, Savings and loan associations, Securities.

Accordingly, the Board hereby amends Parts 546 and 552, Subchapter C, Parts 563, 572a and 574, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 546—MERGER, DISSOLUTION, REORGANIZATION, AND CONVERSION

1. The authority citation for Part 546 continues to read as follows:

Authority: Secs. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462, 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); Sec. 406, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Amend § 546.2 by revising paragraphs (d)(3) and (h)(1)(i) to read as follows:

§ 546.2 Procedure; effective date.

* * * * *

(d) * * *

(3) This paragraph (d) shall not apply to mergers involving an interim Federal association or an interim state institution if the resulting institution is immediately acquired pursuant to Part 574 of this chapter, in which case the procedures set forth in § 574.6 of this chapter shall apply.

* * * * *

(h)(1) * * *

(i) The resulting association requests the granting of supervisory forbearances;

* * * * *

PART 552—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL STOCK ASSOCIATIONS

3. The authority citation for Part 552 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); secs. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462, 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); sec. 406, 82 stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

4. Amend § 552.13 by revising paragraphs (i)(3) and the first sentence of paragraph (j)(3) to read as follows:

§ 552.13 Combinations involving Federal stock associations.

* * * * *

(i) *Notice.* * * *

(3) *Procedure.* Processing of an application under this section shall follow the procedures set forth in this paragraph (i) and in §§ 543.2 (e) and (f) of this subchapter, except for applications in which the resulting institution is immediately acquired pursuant to Part 574 of this Chapter, in which case the procedures set forth in § 574.6 of this Chapter shall apply.

* * * * *

(j) Approval by stockholders. * * *

(3) *Exceptions for certain combinations involving an interim institution.* Stockholders of a Federal stock association need not authorize by a two-thirds affirmative vote combinations involving an interim Federal association or interim state institution when the resulting Federal stock association is acquired pursuant to Part 574 of this Chapter. * * *

* * * * *

5. Amend § 552.14 by revising the last sentence of paragraph (b) to read as follows:

§ 552.14 Dissenter and appraisal rights.

* * * * *

(b) * * * "Qualified consideration" means cash, shares of stock of any association or corporation which at the effective date of the combination will be listed on a national securities exchange or quoted on NASDAQ, or any combination of such shares of stock and cash.

* * * * *

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

6. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

7. Amend § 563.22 by revising the first sentence of paragraph (b); and by revising paragraphs (d) and (e)(1)(i) to read as follows:

§ 563.22 Merger, consolidation, purchase or sale of assets, or assumption of liabilities.

* * * * *

(b) No insured institution may at any time make a transfer, as defined in § 571.5(a) of this Subchapter, of assets or savings account liabilities without application to and approval by the Corporation: *Provided,* that any insured institution that must receive approval for such transfer from the Federal Deposit Insurance Corporation pursuant to section 5(o)(2)(D) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(o)(2)(D), shall not be subject to approval by the Corporation under this paragraph. * * *

* * * * *

(d) The requirements of paragraph (c) of this section do not apply to any merger, consolidation, purchase of assets, or assumption of liabilities: (1) Authorized by the Corporation to be instituted for supervisory reasons, or (2) involving an interim Federal association or an interim state-chartered institution if the resulting institution is immediately acquired pursuant to Part 574 of this

chapter, in which case the procedures set forth in § 574.6 of this chapter shall apply.

(e)(1) * * *

(i) The resulting institution requests the granting of supervisory forbearances;

* * * * *

PART 572a—VOLUNTARY ASSISTED-MERGER PROGRAM

8. The authority citation for Part 572a is revised to read as follows:

Authority: Secs. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462, 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); Reorg. Plan No. 3 of 1947, 3 CFR, 1943–1948 Comp., p. 1071.

9. Amend § 572a.5 by revising the second sentence of paragraph (c)(5) to read as follows:

§ 572a.5 Actions by Principal Supervisory Agent.

* * * * *

(c) *Approvals.* * * *

(5) * * * In connection with a merger or acquisition so approved, a Principal Supervisory Agent may grant the resulting institution supervisory forbearances in accordance with supervisory procedures memoranda issued by ORPOS; and

* * * * *

PART 574—ACQUISITION OF CONTROL OF INSURED INSTITUTIONS

10. The authority citation for Part 574 continues to read as follows:

Authority: Sec. 407, 48 Stat. 1260, as amended (12 U.S.C. 1730); and Sec. 408; 82 Stat. 5, as amended (12 U.S.C. 1730a).

11. Amend § 574.2 by revising paragraph (a)(2) and by revising the parenthetical clause in paragraph (k)(2) to read as follows:

§ 574.2 Definitions.

(a) * * *

(2) The acquisition of stock by a group of persons and/or companies acting in concert which shall be deemed to occur upon formation of such group. *Provided,* that an investment advisor shall not be deemed to acquire the voting stock of its advisee if the advisor: (i) Votes the stock only upon instruction from the beneficial owner, and (ii) does not provide the beneficial owner with advice concerning the voting of such stock.

* * * * *

(k) * * *

(2) * * * (other than a pension, profit-sharing, stockholders', voting, or business trust) * * *

* * * * *

12. Amend § 574.3 by revising paragraph (c)(2)(iv)(A) to read as follows:

§ 574.3 Acquisition of control of insured institutions.

* * * * *

(c) *Exempt transactions.* * * *

(2) * * *

(iv) * * *

(A) Has held power to vote 25 percent or more of any class of voting stock in such institution continuously since March 9, 1979; or

* * * * *

13. Amend § 574.4 by revising paragraph (d)(5) to read as follows:

§ 574.4 Control.

* * * * *

(d) * * *

(5) Persons or companies will be presumed to be acting in concert where they constitute a group under the beneficial ownership reporting rules under section 13 or the proxy rules under section 14 of the Securities Exchange Act, promulgated by the Securities and Exchange Commission.

* * * * *

14. Amend § 574.5 by revising paragraph (a)(1) to read as follows:

§ 574.5 Certifications of ownership and other reports.

(a) *Acquisition of stock.* (1) Upon the acquisition of beneficial ownership which exceeds, in the aggregate, 10 percent of any class of stock of an insured institution or additional stock above 10 percent of the stock of an insured institution occurring after December 26, 1985, an acquiror shall file in accordance with § 574.6(b)(7) of this Part a certification with the Corporation as described in this section.

* * * * *

15. Amend § 574.6 by revising paragraph (a)(3); by revising the second sentence of paragraph (e); and by revising the last sentence of paragraph (f)(2) to read as follows:

§ 574.6 Procedural requirements.

(a) * * *

(3) *H–(e)3.* This application shall be used for all applications filed under § 574.3(a): (i) By a savings and loan holding company for approval of acquisitions by a merger, consolidation, or purchase of assets of an insured or uninsured institution or a savings and loan holding company, or (ii) by any company for approval of acquisitions by a merger, consolidation, or purchase of assets of two or more insured institutions and shall be used in lieu of an application that otherwise would be required for such merger under § 546.2, § 552.13, and § 563.22 of this Chapter.

* * * * *

(e) * * * Within 20 calendar days of the date of publication (or 40 calendar days after such date if an extension is requested in writing within the initial 20-day period), anyone may file comments in favor or in protest of the application or notice, and in so doing may submit such information as he deems relevant. * * *

* * * * *

(f) *Disclosure.* * * *

(2) * * * Any such request must be substantiated in accordance with paragraph (f)(5).

* * * * *

16. Amend § 574.7 by revising paragraphs (e); (f); the introductory text of paragraph (g)(1)(ii); and paragraph (g)(1)(iii) to read as follows:

§ 574.7 Determination by the Corporation.

* * * * *

(e) *Failure to disapprove a notice.* If, upon expiration of the 60-day review period of any notice deemed to be sufficient filed pursuant to § 574.6(c), or extension thereof, the Corporation has failed to disapprove such notice, the proposed acquisition may take place; *Provided,* that it is consummated within one year and in accordance with the terms and representations in the notice and that there is no material change in circumstances prior to the acquisition.

(f) *Disapproval of a notice.* Within three business days after its decision to disapprove a notice, the Corporation or its delegate shall notify the acquiror in writing of the grounds for disapproval. If the disapproval was issued by the Principal Supervisory Agent pursuant to delegated authority, such notification shall include a statement that the acquiror may request review of the disapproval by the Corporation within 20 days of the receipt of such notification pursuant to § 574.8(a)(4). If such review is denied by the Corporation or the disapproval was issued by the Corporation, the acquiror may request an administrative hearing under paragraph (4) of the Control Act within 10 days of receipt of the notification of disapproval or notification of the Corporation's decision not to review the denial.

(g) *Presumptive disqualifiers.*

(1) * * *

(ii) Denial, or withdrawal after receipt of formal or informal notice of an intent

to deny, by the acquiror or affiliates of the acquiror, of * * *

(iii) The acquiror or affiliates of the acquiror were placed in receivership or conservatorship during the preceding 10 years, or any management official of the acquiror was a management official, director or controlling shareholder of a company or insured institution that was placed into receivership, conservatorship, or a management consignment program, or was liquidated during his tenure or control or within two years thereafter;

* * * * *

17. Amend § 574.8 by revising paragraph (a)(3)(iv) to read as follows:

§ 574.8 Delegations of authority.

(a) *Actions by the Principal Supervisory Agent.* * * *

(3) *Other actions.* * * *

(iv) A grant or denial of a request for waiver of certified financial statements for an acquiror's proprietary interests required in connection with a notice filed under § 574.3(b) of this Part: Provided, that the acquiror provides the following substitute information: (A) A statement supporting the acquiror's contention that production of such certified financial statements is unduly burdensome; (B) Tables setting forth: (i) The acquiror's percent of interest in the insured institution to be acquired, the amount of investment in the insured institution and the investment as a percentage of the acquiror's regulatory capital; and (ii) the amount of each entry as a percentage of the acquiror's total assets, regulatory capital and gross income; (C) Available unaudited financial statements for each entity for which a waiver has been requested which include at least three years of statements for each entity of operations and interim statements within 90 days of the most recently filed amendment and 2 years of statements of condition and interim statements within 90 days of the most recently filed amendments; (D) A letter from an independent accountant indicating changes that would be required to reconcile the financial statements with ones prepared on a basis that would be consistent with generally accepted accounting principles; and (E) The latest available Federal income tax returns for each entity for the immediately preceding two taxable years; and

* * * * *

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 87-6726 Filed 3-26-87; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Excepted Stimulant and Depressant Compounds

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of interim rule and request for comments.

SUMMARY: This interim rule amends §§ 1308.31 and 1308.32 of the Code of Federal Regulations. Slight changes in the language of these sections have been made in order to incorporate amendments to the Controlled Substances Act of 1970 that were introduced by passage of the Dangerous Drug Diversion Control Act of 1984. These amendments change the term "excepted prescription drug" to "exempted prescription drug." In addition, the Table of Exempt Prescription Products (formerly the Table of Excepted Prescription Drugs) is amended by adding to the list those products that have been granted exempt status under the Controlled Substances Act since the last notice was published on November 29, 1982 (47 FR 53728), by removing from the list all products that have been discontinued and by rearranging the order of listing such that products will now be arranged alphabetically by name of manufacturer. This listing reflects a substantial change relative to the previous version of the Table of Exempted Prescription Products found in Part 1308.

DATES: Effective April 1, 1987. Comments must be submitted on or before April 27, 1987.

ADDRESS: Comments should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Office of Diversion Control, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION: The Controlled Substances Act, as amended by the Dangerous Drug Diversion Control Act of 1984, authorizes the Attorney General at 21 U.S.C. 811(g)(3)(A) to exempt from specific provisions of the Act a preparation or mixture, if that preparation or mixture contains a nonnarcotic controlled substance, is approved for prescription use, and meets certain criteria. An exemption (previously referred to as an exception) may be granted if the nonnarcotic controlled substance is combined with one or more active medicinal ingredients which are not listed in any schedule and whose presence vitiates the potential for abuse of the nonnarcotic controlled substance. Such exemptions apply only to a specific prescription product and are only granted following suitable application to Drug Enforcement Administration per 21 CFR 1308.31.

The current Table of Excepted Prescription Drugs (to be referred hereinafter as Table of Exempt Prescription Products) found in 21 CFR Part 1308, lists those products which have been granted exempt status as of November 29, 1982 (47 FR 53728). Since that time a number of applications for exemptions have been received and reviewed by the Drug Enforcement Administration. Moreover, it has been determined through direct contact with the manufacturers that a large number of prescription products previously granted exempt status are no longer being marketed. This notice adds those prescription products which have been granted exempt status since November 29, 1982 (pursuant to 21 CFR 1308.31) to the list and removes all discontinued products from the list.

It should be noted that a large number of products have been removed from the final list for one of the following reasons:

1. Information from the manufacturer indicates that the product is no longer being marketed.

2. The manufacturer could not be located by mailing address, telephone directory, listing in the 1986 edition of the American DRUG INDEX, listing in the 1986 edition of the REDBOOK, or through use of Report Number DLS-110 (Drug Manufacturer Address File) prepared by the Food and Drug Administration.

This rule also changes the terms which are used in describing both the process and the drugs involved. The statutory amendments changed the terminology from an "exception" to an "exemption." It also changed "stimulant and depressant," to "nonnarcotic." These nomenclature changes are reflected in this amendment.

This rule is being published as an interim rule with an effective date of April 1, 1987. Comments and objections will be considered, and a final rule will be published following the comment period.

The Deputy Assistant Administrator for the Office of Diversion Control hereby certifies that these matters will have no significant negative impact upon small businesses or other entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The addition of products to the list of exempt prescription products has the effect of exempting them from certain sections of the Controlled Substances Act of 1970 and regulations.

The Office of Management and Budget has previously determined that these changes are internal agency matters which do not require formal OMB review.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Therefore, pursuant to the authority vested in the Attorney General by 21 U.S.C. 811(g)(3)(A) as delegated to the Administrator of the Drug Enforcement Administration and redelegated to the Deputy Assistant Administrator of the Office of Diversion Control, by 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator of the Office of Diversion Control hereby amends 21 CFR Part 1308 as set forth below.

Dated: March 5, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

PART 1308—SCHEDULE OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. The centered heading prior to § 1301.31 is revised to read as follows:

Exempted Prescription Products

3. Section 1308.31 is amended by revising the section title and paragraph (a), the introductory text of paragraph (b), the first five sentences of paragraph (c), and paragraph (d) to read as follows:

§ 1308.31 Application for exemption of a nonnarcotic prescription product.

(a) Any person seeking to have any compound, mixture, or preparation containing any nonnarcotic controlled substance listed in § 1308.12(e), or in § 1308.13 (b) or (c), or in § 1308.14, or in § 1308.15, exempted from application of all or any part of the Act pursuant to section 201(g)(3)(A), of the Act (21 U.S.C. 811(g)(3)(A). may apply to the Administrator, Drug Enforcement Administration, Washington, DC 20537, for such exemption.

(b) An application for an exemption under this section shall contain the following information:

* * * * *

(c) Within a reasonable period of time after the receipt of an application for an exemption under this section, the Administrator shall notify the applicant of his acceptance or non-acceptance of the application, and if not accepted, the reason therefor. The Administrator need not accept an application for filing if any of the requirements prescribed in paragraph (b) of this section is lacking or is not set forth so as to be readily understood. If the applicant desires, he may amend the application to meet the requirements of paragraph (b) of this section. If accepted for filing, the Administrator shall publish in the **Federal Register** general notice of this proposed rulemaking in granting or denying the application. Such notice shall include a reference to the legal authority under which the rule is proposed, a statement of the proposed rule granting or denying an exemption, and, in the discretion of the Administrator, a summary of the subjects and issues involved. * * *

(d) The Administrator may any revoke any exemption granted pursuant to section 201(g)(3)(A) of the Act (21 U.S.C. 811(g)(3)(A)) by following the procedures set forth in paragraph (c) of this section for handling an application for an exemption which has been accepted for filing.

4. Section 1308.32 is amended to read as follows:

§ 1308.32 Exempted prescription products.

The following compounds, mixtures, or preparations which contain a nonnarcotic controlled substance listed is § 1308.12(e), or in § 1308.13 (b) or (c), or in § 1308.14 or in § 1308.15 listed in the Table of Exempted Prescription Products have been exempted by the Administrator from the application of sections 302 through 305, 307 through 309, 1002 through 1004 of the Act (21 U.S.C. 822–825, 827–829, and 952–954) and §§ 1301.24, 1301.31, 1301.32, and 1301.71 through 1301.76 of this chapter for administrative purposes only. Any deviation from the quantitative composition of any of the listed drugs shall require a petition for exemption in order for the product to be exempted.

Exempted Prescription Products

Explanation of Column Headings and Abbreviations

Company/Trade Name. Self explanatory.

NDC Code. Refers to the specific National Drug Code listing for the particular formulated product.

Form. Refers to the type of dosage formulation:

CA=capsule
DP=drops
EL=elixir
EC=enteric coated capsule
ET=enteric coated tablet
LQ=liquid
SS=suspension
SU=suppository
TB=tablet
WA=wafer
XC=sustained release capsule
XT=sustained release tablet

Controlled Substance (mg or mg/ml). Refers to the type and amount of controlled substance present in the mixture. If the dosage formulation is solid (CA, EC, ET, SU, TB, WA, XC, or XT), the amount shown is milligrams per dosage unit. If the dossge formulation is liquid (DP, EL, LQ, or SS), the amount shown is milligrams per milliliter.

BILLING CODE 4410-09-M

Table of Exempt Prescription Products

Company	Trade name	NDC Code	Form	Controlled Substance	(mg or mg/ml)
Adria Laboratories	Axotal	00013-1301	TB	Butalbital	50.00
Alpha Scriptics Inc	Butacet Capsules	53121-0133	CA	Butalbital	50.00
American Urologicals Inc	Butace	00539-0906	CA	Butalbital	50.00
Apotheca	Theophen	12634-0101	TB	Phenobarbital	8.00
Arco Pharmaceuticals	Arco-Lase Plus	00275-0045	TB	Phenobarbital	8.00
Arlo Interamerican	Espasmotex	11475-0835	TB	Phenobarbital	20.00
Ascher and Co	Anaspaz PB	00225-0300	TB	Phenobarbital	15.00
Ascot Pharmaceuticals	Antispasmodic Tablets	47679-0158	TB	Phenobarbital	16.20

Table of Exempt Prescription Products—Continued

Company	Trade name	NDC Code	Form	Controlled Substance	(mg or mg/ml)
Ascot Pharmaceuticals	Chlordiazepoxide Hydrochloride + Clidinium Bromide.	47679-0268	CA	Chlordiazepoxide HCl	5.00
Ayerst Laboratories	PMB-200	00046-0880	TB	Meprobamate	200.00
Ayerst Laboratories	PMB-400	00046-0881	TB	Meprobamate	400.00
Barre Drug Co	Barophen	00472-0981	EL	Phenobarbital	3.24
Barre Drug Co	Isolate Compound	00472-0929	EL	Phenobarbital	0.40
Beecham Laboratories	Hybephen	00029-2360	TB	Phenobarbital	15.00
Bioline Labs Inc	Chlordinium	00719-1208	CA	Chlordiazepoxide HCL	5.00
Blaine Co	Spaslin	00165-0029	TB	Phenobarbital	16.20
Blansett Pharm Co	Analor 300 Capsules	51674-0009	CA	Butalbital	50.00
Bock Pharmacal Co	Broncholate	00563-0277	CA	Phenobarbital	8.00
Bowman Pharmaceutical	Private Formula No 3095	00252-3095	TB	Phenobarbital Sodium	15.00
Breon Labs	Isuprel Compound	00057-0874	EL	Phenobarbital	0.40
Caldwell & Bloor Co	Hyosital White	00361-2131	TB	Phenobarbital	16.20
Carnrick Labs	Phrenilin New Formulation	00086-0050	TB	Butalbital	50.00
Chelsea Laboratories	Chlordiazepoxide with Clidinium Bromide.	46193-0948	CA	Chlordiazepoxide HCL	5.00
Columbia Drug Co	Isopap Capsules	11735-0400	CA	Butalbital	50.00
Consolidated Midland	Bellalphen	00223-0425	TB	Phenobarbital	16.20
Dorasol Laboratories	Donalixir	00471-0095	EL	Phenobarbital	3.24
Dunhall Pharmacal Inc	Triaprin	00217-2811	CA	Butalbital	50.00
Everett Laboratories Inc	Repan	00642-0162	TB	Butalbital	50.00
Forest Pharmacal Inc	Acetaminophen 325 mg/Butalbital 50 mg.	00456-0674	TB	Butalbital	50.00
Forest Pharmacal Inc	Acetaminophen 500mg/Butalbital 50mg	00456-0671	TB	Butalbital	50.00
Forest Pharmacal Inc	Bancap	00456-0546	CA	Butalbital	50.00
Forest Pharmacal Inc	Esgic Capsules	00456-0631	CA	Butalbital	50.00
Forest Pharmacal Inc	Esgic Forte Tablets	00456-0673	TB	Butalbital	50.00
Forest Pharmacal Inc	Esgic Tablets	00456-0630	TB	Butalbital	50.00
Forest Pharmacal Inc	G.B.S.	00456-0281	TB	Phenobarbital	8.00
Forest Pharmacal Inc	Soniphen	00456-0429	ET	Phenobarbital	16.00
Gen-King Products	Antispasmodic	03547-0777	TB	Phenobarbital	16.20
Geriatric Pharmacal Corp	Bilezyme Plus	00249-1112	TB	Phenobarbital	8.00
Geriatric Pharmacal Corp	Gustase Plus	00249-1121	TB	Phenobarbital	8.00
Glenlawn Laboratories	Chlordinium Sealets	00580-0084	CA	Chlordiazepoxide HCL	5.00
Halsey Drug Co	Clinoxide	00879-0501	CA	Chlordiazepoxide HCL	5.00
Halsey Drug Co	Susano	00879-0059	EL	Phenobarbital	3.24
Halsey Drug Co	Susano	00879-0058	TB	Phenobarbital	16.20
Hyrex Pharmaceutical	Panzyme	00314-0310	TB	Phenobarbital	8.10
Hyrex Pharmaceutical	Two-Dyne Revised	00314-2229	TB	Butalbital	50.00
Interstate Drug Exchange	Spastolate	00814-7088	TB	Phenobarbital	16.20
Intetlab	CON-TEN	11584-1029	CA	Butalbital	50.00
Kaiser Foundation Hosp	Belladonna Alkaloids with Phenobarbital	00179-0045	EL	Phenobarbital	3.24
Keene Pharmacal Inc	Endolar	00588-7777	CA	Butalbital	50.00
Knoll Pharmaceutical	Quadrinal Suspension	00044-4580	SS	Phenobarbital	2.40
Knoll Pharmaceutical	Quadrinal Tablets	00044-4520	TB	Phenobarbital	24.00
Kraft Pharmacal Co Inc	Digestokraft	00796-0237	TB	Butabarbital Sodium	8.00
Kremers Urban Co	Levsin with Phenobarbital Elixir	00091-4530	EL	Phenobarbital	3.00
Kremers Urban Co	Levsin with Phenobarbital Tablets	00091-3534	TB	Phenobarbital	15.00
Kremers Urban Co	Levsin-PB	00091-4536	DP	Phenobarbital	15.00
Kremers Urban Co	Levsinex with Phenobarbital	00091-3539	XC	Phenobarbital	45.00
Landry Pharmacal Inc	Febridyne Plain Capsules	05383-0001	CA	Butalbital	50.00
Lanpar Co	PB Phe-Bell	12908-7006	TB	Phenobarbital	16.20
Lasalle Laboratories	Pacaps Modified Formula	48534-0884	CA	Butalbital	50.00
Lederle Laboratories	Pathibamate-200	00005-5070	TB	Meprobamate	200.00
Lederle Laboratories	Pathibamate-400	00005-5071	TB	Meprobamate	400.00
Lemmon Pharmacal Co	Donphen	00093-0205	TB	Phenobarbital	15.00
Life Laboratories	Belladonna Alkaloids with Phenobarbital	00737-1283	EL	Phenobarbital	3.00
Mallard Inc	Anoquan Modified Formula	00166-0881	CA	Butalbital	50.00
Mallard Inc	Malatal	00166-0748	TB	Phenobarbital	16.20
Marlop Pharmacal Inc	Broncomar	12939-0128	EL	Butabarbital	1.00
Marlop Pharmacal Inc	Dolmar	12939-0812	CA	Butalbital	50.00
Marnel Pharmacal Inc	Margesic Capsules	00682-0804	CA	Butalbital	50.00
Mayrand Pharmacal Inc	B-A-C Tablets	00259-1256	TB	Butalbital	50.00
Mayrand Pharmacal Inc	Sedapap-10 Tablets	00259-1278	TB	Butalbital	50.00
Mead Johnson Pharmacal	Quibron Plus Capsules	00087-0518	CA	Butabarbital	20.00
Mead Johnson Pharmacal	Quibron Plus Elixir	00087-0511	EL	Butabarbital	1.33
Medco Supply Co	Phenobarbital & Hyoscyamine Sulfate	00764-2057	TB	Phenobarbital	16.20
Mikart Inc	Butalbital, Acetaminophen, Caffeine Capsules.	46672-0103	CA	Butalbital	50.00

Table of Exempt Prescription Products—Continued

Company	Trade name	NDC Code	Form	Controlled Substance	(mg or mg/ml)
Mikart Inc	Butalbital, Acetaminophen, and Caffeine - Tablets II.	46672-0059	TB	Butalbital	50.00
Moore Drug Exchange	Antispasmodic Tablets	00839-5055	TB	Phenobarbital	16.00
Moore Drug Exchange	Theophenyllin	00839-5111	TB	Phenobarbital	8.00
Nejo Pharmaceutical	Spasmalones	00653-0002	TB	Phenobarbital	16.00
Parke-Davis & Co	Dilantin with Phenobarbital 1/2	00071-0531	CA	Phenobarbital	32.00
Parke-Davis & Co	Dilantin with Phenobarbital 1/4	00071-0375	CA	Phenobarbital	16.00
Parke-Davis & Co	Tedral SA	00071-0231	XT	Phenobarbital	25.00
Parmed Pharmaceutical	Sedapar Elixir	00349-4100	EL	Phenobarbital	3.24
Parmed Pharmaceutical	Sedapar Tablets	00349-2355	TB	Phenobarbital	16.20
Pasadena Research	Seds	00418-4072	TB	Phenobarbital	16.20
Poythress & Co Inc	Antrocol	00095-0041	CA	Phenobarbital	16.00
Poythress & Co Inc	Antrocol Elixir	00095-0042	EL	Phenobarbital	3.00
Poythress & Co Inc	Antrocol Tablets	00095-0040	TB	Phenobarbital	16.00
Poythress & Co Inc	Mudrane	00095-0050	TB	Phenobarbital	8.00
Poythress & Co Inc	Mudrane GG Elixir	00095-0053	EL	Phenobarbital	0.50
Poythress & Co Inc	Mudrane GG Tablets	00095-0051	TB	Phenobarbital	8.00
Private Formula Inc	Sangesic	00511-1627	TB	Butalbital	30.00
Redi-Med	Butalbital Compound Capsules	53506-0103	CA	Butalbital	50.00
Richlyn Laboratories	Aminophylline & Phenobarbital	00115-2156	ET	Phenobarbital	15.00
Richlyn Laboratories	Aminophylline & Phenobarbital Tablets	00115-2154	TB	Phenobarbital	15.00
Richlyn Laboratories	Bellophen	00115-2400	TB	Phenobarbital	16.20
Richlyn Laboratories	Spasmolin	00115-4652	TB	Phenobarbital	15.00
Robins A H Co Inc	Donnatal Capsules	00031-4207	CA	Phenobarbital	16.20
Robins A H Co Inc	Donnatal Elixir	00031-4221	EL	Phenobarbital	3.24
Robins A H Co Inc	Donnatal Extentabs	00031-4235	XT	Phenobarbital	48.60
Robins A H Co Inc	Donnatal No 2	00031-4264	TB	Phenobarbital	32.40
Robins A H Co Inc	Donnatal Tablets	00031-4250	TB	Phenobarbital	16.20
Robins A H Co Inc	Donnazyme	00031-4649	ET	Phenobarbital	8.10
Roche Labs	Librax	00004-0007	CA	Chlordiazepoxide HCL	5.00
Roche Labs	Menrium 10-4	00004-0025	TB	Chlordiazepoxide	10.00
Roche Labs	Menrium 5-2	00004-0023	TB	Chlordiazepoxide	5.00
Roche Labs	Menrium 5-4	00004-0024	TB	Chlordiazepoxide	5.00
Rondex Laboratories	Antispasmodic	00367-4118	TB	Phenobarbital	16.20
Rotex Pharmacal Inc	Rogesic Capsules	31190-0008	CA	Butalbital	50.00
Ruckstuhl Co	Sedarex No 3	00144-1575	TB	Phenobarbital	16.20
Rugby Laboratories	Clindex	00536-3490	CA	Chlordiazepoxide HCL	5.00
Rugby Laboratories	Hexabamate ι1	00536-3900	TB	Meprobamate	200.00
Rugby Laboratories	Hexabamate ι2	00536-3901	TB	Meprobamate	400.00
Rugby Laboratories	Hyosophen Capsules	00536-3926	CA	Phenobarbital	16.00
Rugby Laboratories	Hyosophen Tablets	00536-3920	TB	Phenobarbital	16.20
Rugby Laboratories	Theodrine Tablets	00536-4648	TB	Phenobarbital	8.00
Russ Pharmacal Inc	Analor Capsules	50474-0701	CA	Butalbital	50.00
Sandoz Pharmacal Corp	Belladenal	00078-0028	TB	Phenobarbital	50.00
Sandoz Pharmacal Corp	Belladenal-S	00078-0027	XT	Phenobarbital	50.00
Sandoz Pharmacal Corp	Bellergal-S	00078-0031	XT	Phenobarbital	40.00
Sandoz Pharmacal Corp	Cafergot P-B Suppository	00078-0035	SU	Pentobarbital	60.00
Sandoz Pharmacal Corp	Cafergot P-B Tablets	00078-0036	TB	Pentobarbital Sodium	30.00
Sandoz Pharmacal Corp	Fioricet	000088-616	CA	Butalbital	50.00
Schein Henry Inc	Antispasmodic	00364-0020	TB	Phenobarbital	16.00
Schein Henry Inc	Antispasmodic Elixir	00364-7002	EL	Phenobarbital	3.20
Schein Henry Inc	Isolate Compound Elixir	00364-7029	EL	Phenobarbital	0.40
Schein Henry Inc	T-E-P	00364-0266	TB	Phenobarbital	8.10
Shoals Pharmacal Co	Tencet Capsules	47649-0560	CA	Butalbital	50.00
Shoals Pharmacal Co	Tencet	47649-0370	TB	Butalbital	50.00
Stewart-Jackson Pharmacal	Ezol	45985-0578	CA	Butalbital	50.00
Stuart Pharmaceutical	Kinesed	00038-0220	TB	Phenobarbital	16.00
Towne Paulsen & Co	T. E. P.	00157-0980	TB	Phenobarbital	8.00
Trimen Labs	Amaphen Capsules (reformulated)	11311-0954	CA	Butalbital	50.00
Truxton C O Inc	Atropine Sulfate with Phenobarbital	00463-6035	TB	Phenobarbital	15.00
Truxton C O Inc	Ephedrine with Phenobarbital	00463-6086	TB	Phenobarbital	15.00
Truxton C O Inc	Spastemms Elixir	00463-9023	EL	Phenobarbital	3.24
Truxton C O Inc	Spastemms Tablets	00463-6181	TB	Phenobarbital	15.00
UAD Laboratories Inc	Bucet Capsules	00785-2307	CA	Butalbital	50.00
UAD Laboratories Inc	Bucet Tablets	00785-2307	TB	Butalbital	50.00
UAD Laboratories Inc	Triad	00785-2306	TB	Butalbital	50.00
UAD Laboratories Inc	Triad Capsules	00785-2305	CA	Butalbital	50.00
UDL Laboratories	Belladonna Alkaloids with Phenobarbital	51079-0168	TB	Phenobarbital	16.20
University of Iowa	Bladder Mixture Plus Phenobarbital	11326-1624	LQ	Phenobarbital	2.92
Vale Chemical Co	Alkaloids of Belladonna and Phenobarbital.	00377-0527	TB	Phenobarbital	16.20

Table of Exempt Prescription Products—Continued

Company	Trade name	NDC Code	Form	Controlled Substance	(mg or mg/ml)
Vale Chemical Co	Antispas	00377-0622	TB	Phenobarbital	16.20
Vale Chemical Co	Barbeloid (Revised) Green	00377-0365	TB	Phenobarbital	16.20
Vale Chemical Co	Barbeloid Yellow	00377-0498	TB	Phenobarbital	16.20
Vale Chemical Co	Charspast	00377-0500	TB	Phenobarbital	16.20
Vale Chemical Co	Digestokraft	00377-0460	TB	Butabarbital Sodium	8.00
Vale Chemical Co	Ephedrine & Sodium Phenobarbital	00377-0109	TB	Phenobarbital Sodium	16.20
Vale Chemical Co	Panzyme	00377-0491	TB	Phenobarbital	8.10
Vale Chemical Co	Pulsaphen	00377-0652	TB	Phenobarbital	15.00
Vale Chemical Co	Truxaphen	00377-0541	TB	Phenobarbital	16.20
Vale Chemical Co	Wescophen S-II	00377-0628	TB	Phenobarbital	30.00
Vale Chemical Co	Wesmatic Forte	00377-0426	TB	Phenobarbital	8.10
Vortech Pharmacal Co	Donna-Sed	00298-5054	EL	Phenobarbital	3.24
Vortech Pharmacal Co	Hypnaldyne	00298-1778	TB	Phenobarbital	16.20
Vortech Pharmacal Co	Isophed	00298-5680	LQ	Phenobarbital	0.40
Vortech Pharmacal Co	Phedral C. T	00298-1173	TB	Phenobarbital	8.10
Wallace Laboratories	Barbidonna Elixir	00037-0305	EL	Phenobarbital	3.20
Wallace Laboratories	Barbidonna No 2	00037-0311	TB	Phenobarbital	32.00
Wallace Laboratories	Barbidonna Tablets	00037-0301	TB	Phenobarbital	16.00
Wallace Laboratories	Lufyllin-EPG Elixir	00037-0565	EL	Phenobarbital	1.60
Wallace Laboratories	Lufyllin-EPG Tablets	00037-0561	TB	Phenobarbital	16.00
Wallace Laboratories	Milpath-400	00037-5001	TB	Meprobamate	400.00
Wallace Laboratories	Milprem-200	00037-5501	TB	Meprobamate	200.00
Wallace Laboratories	Milprem-400	00037-5401	TB	Meprobamate	400.00
Wallace Laboratories	Miltrate-20	00037-5301	TB	Meprobamate	200.00
Wesley Pharmacal Co	Hytrophen	00917-0244	TB	Phenobarbital	16.20
Wesley Pharmacal Co	Pulsaphen Gray	00917-0113	TB	Phenobarbital	15.00
Wesley Pharmacal Co	Wescophen-S	00917-0135	TB	Phenobarbital	30.00
Wesley Pharmacal Co	Wesmatic Forte	00917-0845	TB	Phenobarbital	8.00
West-ward Inc	Belladonna Alkaloids & Phenobarbital	00143-1140	TB	Phenobarbital	16.20
West-ward Inc	Butalbital with Acetaminophen and Caffeine Tablets	00143-1787	TB	Butalbital	50.00
West-ward Inc	Theophylline Ephedrine & Phenobarbital	00143-1695	TB	Phenobarbital	8.00
Winthrop Labs	Isuprel	00024-0874	EL	Phenobarbital	0.40
Zenith Labs Inc	Azpan	00172-3747	TB	Phenobarbital	8.00

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BILLING CODE 4410-09-D

21 CFR Part 1308

Exempt Chemical Preparations

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of interim rule and request for comments.

SUMMARY: This interim rule amends § 1308.24, of Title 21, of the Code of Federal Regulations. The below listed chemical preparations and mixtures which contain controlled substances have replaced the list of exempt chemical preparations set forth in § 1308.24(i). This action is in response to the periodic review of the exempt chemical preparation list and of applications for exemptions filed with DEA. Those preparations included in the list are exempted from the application of various provisions of the Comprehensive Drug Abuse Prevention and Control Act of 1970, and from certain Drug Enforcement Administration regulations.

DATES: Effective April 1, 1987. Comments must be submitted on or before April 27, 1987.

ADDRESS: Comments should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, Attn: Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION: The Controlled Substances Act as amended by the Dangerous Drug Diversion Control Act of 1984 authorizes the Attorney General at 21 U.S.C. 811(g)(3)(B) to exempt from specific provisions of the Act, a compound, mixture, or preparation which contains any controlled substance; which is not for administration to a human being or animal; and which is packaged in such form or concentration, or with adulterants or denaturants, so that as packaged it does not present any significant potential for abuse.

The Administrator of the Drug Enforcement Administration has received applications pursuant to § 1308.23 of Title 21 of the Code of Federal Regulations requesting approval of exempt status provided for in 21 CFR 1308.24. These applications have been received by the Deputy Assistant Administrator, Office of Diversion Control. The Deputy Assistant Administrator hereby finds that each of the following preparations and mixtures is intended for laboratory, industry, educational, or special research purposes; is not intended for general administration to man or animal; and either: (a) Contains no narcotic controlled substances and is packaged in such a form or concentration that the packaged quantity does not present any significant potential for abuse, (b) contains either a narcotic or non-narcotic controlled substance and one or more adulterating or denaturing agents in such a manner, combination, quantity, proportion, or concentration, that the preparation or mixture does not present any potential for abuse, or (c) the formulation of such preparation or mixture incorporates methods of denaturing or other means so that the

controlled substance cannot in practice be removed, and therefore the preparation or mixture does not present any significant potential for abuse. The Deputy Assistant Administrator further finds that exemption of the following chemical preparations and mixtures is consistent with the public health and safety as well as the needs of the researchers, chemical analysts, and suppliers of these products.

This rule is being published as an interim rule with an effective date of April 1, 1987. Comments and objections will be considered and a final rule will be published following the comment period.

The Deputy Assistant Administrator for the Office of Diversion Control hereby certifies that these matters will have no significant negative impact upon small businesses or other entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The addition of preparations to the list of exempt chemical preparations has the effect of exempting them from certain sections of the Controlled Substances Act of 1970 and regulations.

The Office of Management and Budget has previously determined that these changes are internal agency matters which do not require formal OMB review.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by 21 U.S.C. 811(g)(3)(B) as delegated to the Administrator of the Drug Enforcement Administration and redelegated to the Deputy Assistant Administrator of the Drug Enforcement Administration, Office of Diversion Control by 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator of the Office of Diversion Control hereby amends 21 CFR Part 1308 as set forth below.

Dated: March 5, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. In § 1308.24(i) the table is revised to read as follows:

§ 1308.24 Exempt chemical preparations.

* * * * *

(i) * * *

BILLING CODE 4410-09-M

Exempt Chemical Preparations

Manufacturer or Supplier	Product Name/Description	Form of Product	Date of Publication
Abbott Laboratories	Digoxin I125 Imusay R Diagnostic Kit No.7649	Kit: 100 units	06/06/74
Abbott Laboratories	125I-Thyroxine Reagent Solution	Plastic Bottle: 25ml, 5ml	04/22/76
Abbott Laboratories	Barbital Buffer 0.05 Molar	Plastic Bottle: 25ml, 5ml	04/22/76
Abbott Laboratories	T 4 RIA (PEG) Diagnostic Kit	Kit: 500 tests, 100 tests, 50 tests	04/22/76
Abbott Laboratories	Thyroxine Antiserum (Sheep, Rabbit, or Goat)	Plastic Bottle: 200ml, 20ml	04/22/76
Abbott Laboratories	Thyroxine Binding Globulin, Thyroxine I 125	Glass Bottle: 13ml. Plastic Bottle: 250ml	04/22/76
Abbott Laboratories	Polyethylene Glycol 8000, 16% Solution in 0.09 M Barbital Buffer, No 7541.	Plastic Bottle: 300 ml, 150 ml.	09/21/77
Abbott Laboratories	125I Cholylglycyltyrosine Reagent Solution, No. 7816.	Plastic Bottle: 20ml	04/07/78
Abbott Laboratories	Barbital Buffer, 0.06 M Reagent Solution No. 7824.	Plastic Bottle: 2.5ml	04/07/78
Abbott Laboratories	CG RIA Diagnostic Kit No. 7815	Kit: 100 tests	04/07/78
Abbott Laboratories	Cholylglycine Antiserum (Rabbit) Reagent Solution No. 7817.	Plastic Bottle: 20ml	04/07/78
Abbott Laboratories	TDx Phenobarbital Calibrator-0.0, 5.0, 10.0, 20.0, 40.0, and 80.0 mcg/ml.	Kit ctg: 6 vials	08/31/81
Abbott Laboratories	TDx Phenobarbital Controls- 15.0, 30.0, 50.0 mcg/ml.	Kit ctg: 3 vials	08/31/81
Abbott Laboratories	Phenobarbital Stock Standard Solution	Bottle: 1 liter	08/12/82
Abbott Laboratories	Phenobarbital Enzyme Inhibitor Stock	Vial: 2ml	01/20/84
Abbott Laboratories	TDx Amphetamine/Methamphetamine Calibrator, No. 9668-01.	Bottles: 4ml	08/23/85
Abbott Laboratories	TDx Amphetamine/Methamphetamine Controls, No. 9668-10.	Bottles: 4ml	08/23/85
Abbott Laboratories	Amphetamine Stock Standard, No. 97072	Bottle: 125ml	09/30/85
Abbott Laboratories	TDx Cocaine Metabolite Calibrator, B-F No. 9670	Bottle: 4ml	10/02/85
Abbott Laboratories	TDx Cocaine Metabolite Control, L and H No. 9669.	Bottle: 4ml	10/02/85
Abbott Laboratories	TDx Cocaine Metabolite Reagent Pack	Reagent well: 5ml	10/02/85
Abbott Laboratories	Spectrum Phenobarbital Calibrator II-VI, Nos. 9755, 9757, 9759, 9761, 9763.	Bottle: 4ml	10/03/85
Abbott Laboratories	Spectrum Phenobarbital Control, Nos. 9876, 9878, 9880. (L,M,H).	Bottle: 4ml	10/03/85
Abbott Laboratories	TDx Barbiturates Calibrators, B-F No. 9669	Bottle: 4 ml	10/08/85
Abbott Laboratories	TDx Barbiturates Control, L and H No. 9669	Bottle: 4ml	10/08/85
Abbott Laboratories	Amphetamine Bulk Calibrators, B-F	Flask: 2 liter	10/09/85
Abbott Laboratories	TDx Phencyclidine Calibrators, B-F No. 9672	Bottle: 4ml	10/09/85
Abbott Laboratories	TDx Phencyclidine Controls, L and H No. 9672	Bottle: 4ml	10/09/85
Abbott Laboratories	Morphine Stock Standard, No. 97291	Vial: 125ml	10/16/85
Abbott Laboratories	Cocaine Metabolite Bulk Calibrator, B-F No. 9670	Flask: 2 liter	10/28/85

Exempt Chemical Preparations—Continued

Manufacturer or Supplier	Product Name Description	Form of Product	Date of Publication
Abbott Laboratories	Cocaine Metabolite Bulk Controls, L and H No. 9670.	Flask: 2 liter	10/28/85
Abbott Laboratories	Cocaine Metabolite Bulk Tracer, No. 9670	Flask: 4 liter	10/29/85
Abbott Laboratories	Cocaine Metabolite Stock Tracer, No. 9670	Vial: 5ml	10/29/85
Abbott Laboratories	Benzoylecgonine Stock Standard, No. 97182	Bottle: 125ml	11/21/85
Abbott Laboratories	Phencyclidine Stock Standard, No. 97158	Bottle: 125ml	11/21/85
Abbott Laboratories	Secobarbital Stock Standard, No. 97171	Bottle: 125ml	11/21/85
Abbott Laboratories	Amphetamine Bulk Controls, L and H	Flask: 2 liter	12/09/85
Abbott Laboratories	Phencyclidine Bulk Calibrator, B-F No. 9672	Flask: 2 liter	03/21/86
Abbott Laboratories	Phencyclidine Bulk Controls, L and H No. 9672	Flask: 2 liter	03/21/86
Abbott Laboratories	Secobarbital Bulk Calibrator, B-F No. 9669	Flask: 2 liter	03/21/86
Abbott Laboratories	Secobarbital Bulk Controls, L and H No. 9669	Flask: 2 liter	03/21/86
Abbott Laboratories	Benzodiazepines Bulk Calibrators, A-F No. 9674	Flasks: 2 liter	04/21/86
Abbott Laboratories	Benzodiazepines Bulk Controls, L and H No. 9674.	Flasks: 2 liter	04/21/86
Abbott Laboratories	Nordiazepam Stock Standard, No. 97757	Bottle: 125ml	04/21/86
Abbott Laboratories	TDx Benzodiazepines Calibrators, No. 9674-01	Bottles: 4ml	04/21/86
Abbott Laboratories	TDx Benzodiazepines Controls, No. 9674-10	Bottles: 4ml	04/21/86
Abbott Laboratories	Opiate Bulk Calibrators, B-F No. 9673	Flasks: 2 liter	05/07/86
Abbott Laboratories	Opiate Bulk Controls, L and H No. 9673	Flasks: 2 liter	05/07/86
Abbott Laboratories	Opiates Bulk Tracer, No. 97458	Flask: 4 liter	05/07/86
Abbott Laboratories	Opiates Stock Tracer, No. 98718	Bottle: 30ml	05/07/86
Abbott Laboratories	TDx Opiates Calibrators, B-F No. 9673	Vials: 4ml	05/07/86
Abbott Laboratories	TDx Opiates Controls, L and H No. 9673	Vials: 4ml	05/07/86
Abbott Laboratories	TDx Opiates Reagent, Pack No. 9673-20	Reagent Well: 5ml	05/07/86
Abbott Laboratories	TDx Phencyclidine Control M No. 9672	Bottle: 4ml	09/26/86
Abbott Laboratories	Phencyclidine Bulk Control M No. 9672	Flask: 2 Liters	09/26/86
Adri/Technam	3-Ortho-Carboxymethylmorphine	Screw Cap Vial	05/03/73
Adri/Technam	5-Ethyl-5-(1-Carboxy-n-propyl) Barbituric Acid	Screw Cap Vial	05/03/73
Adri/Technam	5-Ethyl-5-(1-Carboxy-n-propyl) Barbituric Acid-Bovine Serum Albumin.	Vaccine Vial: 10ml	05/03/73
Adri/Technam	5-Ethyl-5-(1-Carboxy-n-propyl) Barbituric Acid-Rabbit Serum Albumin.	Vaccine Vial: 10ml	05/03/73
Adri/Technam	Barbituric Acid Sensitized Red Blood Cells	Vaccine Vial: 50ml	05/03/73
Adri/Technam	Benzoyl Ecgonine Sensitized Red Blood Cells	Vaccine Vial: 50ml	05/03/73
Adri/Technam	CMM-BSA and CMM-RSA (Carboxymethylmorphine Bovine Serum Albumin or Carboxymethylmorphine Rabbit Serum Albumin).	Vaccine Vial: 10ml	05/03/73
Adri/Technam	Morphine Sensitized Red Blood Cells	Vaccine Vial: 50ml	05/03/73
Adri/Technam	Tropinecarboxylic Acid (ecgonine)	Screw-cap Bottle: 10ml	05/03/73
Adri/Technam	Benzoyl Ecgonine	Screw-cap vial: 10ml	04/18/74
Adri/Technam	Benzoyl Ecgonine-BSA	Vaccine Vial	07/21/75
Adri/Technam	Benzoyl Ecgonine-RSA	Vaccine Vial	07/21/75
Adri/Technam	Barbiturate Standard	Screw-cap vial: 10ml	07/17/76
Adri/Technam	Benzoyl Ecgonine Standard	Screw-cap vial: 10ml	07/17/76
Adri/Technam	Methadone Standard	Screw-cap vial: 10ml	07/17/76
Adri/Technam	Morphine Standard (in distilled water)	Screw-cap vial: 10ml	07/17/77
Adri/Technam	Cannabuse Delta 8 THC Carboxylic Acid Standard.	Vial: 6 ml	09/19/84
Adri/Technam	Cannabuse Delta 8 THC Carboxylic Acid Standard.	Disks: 25/package	09/19/84
Adri/Technam	Cannabuse Delta 9 THC Carboxylic Acid Standard.	Vial: 6 ml	09/19/84
Adri/Technam	Cannabuse Delta 9 THC Carboxylic Acid Standard.	Disks: 25/package	09/19/84
Adri/Technam	Cannabuse Delta 9 THC Standard	Disks: 25/package	09/19/84
Adri/Technam	Cannabuse Delta 9 THC Standard	Vial: 6 ml	09/19/84
Adri/Technam	Cannabuse Cannabidiol Standard	Disks: 25/package	05/03/85
Adri/Technam	Drug Standards, Acid/ Neutral Mixture A and B	Disks: 25/package	11/15/85
Adri/Technam	Drug Standards, Basic Mixture A and B	Disks: 25/package	11/15/85
American Monitor Corporation	Qualify I	Glass Vial: 10ml	10/09/75
American Monitor Corporation	Qualify II	Glass Vial: 10ml	10/09/75
Amersham Corporation	Codeine (N-methyl-C14) Hydrochloride	Custom Preparation	03/27/72
Amersham Corporation	Morphine (N-methyl-C14) Hydrocloride No. CFA-363.	Vial: 0.32 to 1.89mg	03/27/72
Amersham Corporation	[1(n)-3H] Codeine, No. TRK 448	Ampule: 0.002mg to 0.015mg	02/26/74
Amersham Corporation	[1(n)-3H] Morphine, No. TRK-447	Vial: 0.002 mg to 0.015 mg	02/26/74
Amersham Corporation	[1,7,8(n)-3H] Dihydromorphine, No. TRK-450	Vial: 0.0008 mg to 0.008 mg	02/26/74
Amersham Corporation	[2(n)-3H] Lysergic Acid Diethylamide, No. TRK-461.	Vial: 0.003mg to 0.04mg	05/22/74
Amersham Corporation	Pheno [2-14C] barbital Catalog No. CFA 537	Vial: 0.39 to 5.85mg	11/05/74

Exempt Chemical Preparations—Continued

Manufacturer or Supplier	Product Name Description	Form of Product	Date of Publication
Amersham Corporation	[15, 16(n)-3H] Etorphine, Catalog No. TRK 476	Vial:3.45 to 6.9 micrograms	11/19/74
Amersham Corporation	[15,16(n)-3H] Etorphine Catalog No. TRK 476	Vial:13.8 to 27.6 micrograms	02/17/75
Amersham Corporation	[2-14C] Diazepam Catalog No. CFA.591	Multidose Glass Vial: 56mm x 25mm	09/28/77
Amersham Corporation	[N-methyl-3H] Diazepam Catalog Code: TRK.572.	Multidose Glass Vial: 56mm x 25mm	09/28/77
Amersham Corporation	T-3 Uptake (MAA) Kit-IM 1020, IM 1021, IM 1024	Kit: 50 tests, 100 tests, 400 tests	02/05/79
Amersham Corporation	Amerlex T-4 RIA Kit, IM 2010, IM 2011, IM 2014	Kit: 50 tests, 100 tests, 400 tests	02/06/80
Amersham Corporation	Amerlex T-3 RIA Kit, IM 2000, IM 2001, IM 2004	Kit: 50 tests, 100 tests, 400 tests	02/18/80
Amersham Corporation	Prolactin RIA Kit, IM 1060, 1061	Kit: 50 tests, 100 tests	03/28/80
Amersham Corporation	Amerlex-M B-hCG Radioimmunoassay Kit IM 3091,IM 3094.	Kit: 100 tests, 400 tests	06/19/85
Amersham Corporation	Amerlex-M T4 RIA Kit, 1M.3011, 1M.3014	Kit:100 Tests 400 Tests	08/27/86
Amersham Corporation	Amerlex-M T3 RIA Kit, 1M.3001, 1M.3004	Kit:100 Tests 400 Tests	08/27/86
Analytical Systems, Div. Marion Laboratories, Inc..	Toxi-Disc A Series	Plastic Vial Containing 50 Standard Discs	05/06/75
Analytical Systems, Div. Marion Laboratories, Inc..	Toxi-Disc B Series	Plastic Vial Containing 50 Standard Discs	05/06/75
Analytical Systems, Div. Marion Laboratories, Inc..	Special Toxi-Discs	Plastic Vial or Bottle Containing 50 Standard Discs.	03/30/77
Analytical Systems, Div. Marion Laboratories, Inc..	Toxi-Control	Plastic Bottle Containing 50 ml	03/30/77
Analytical Systems, Div. Marion Laboratories, Inc..	Toxi-Grams	Glass Jar Containing 50 or 100 Chromatograms.	09/24/80
Analytical Systems, Div. Marion Laboratories, Inc..	Proficiency Sample	Plastic Bottle Containing 40 ml	06/22/82
Analytical Systems, Div. Marion Laboratories, Inc..	Toxi-Control THC	Plastic Bottle Containing 50 ml	10/05/83
Analytical Systems, Div. Marion Laboratories, Inc..	Toxi-Discs THC	Plastic Vial Containing 50 Standard Discs	10/05/83
Analytical Systems, Div. Marion Laboratories, Inc..	Toxi-Lab Cannabinoid (THC) Screen	Kit: 50 tests	10/05/83
Applied Sciences Laboratories	Barbiturates, Mixture 4	Vial: 10ml	10/04/72
Applied Sciences Laboratories	Depressants, Mixture 3	Vial: 10ml	10/04/72
Applied Sciences Laboratories	Mixture 1-Opiates	Vial: 1ml	10/04/72
Applied Sciences Laboratories	Mixture 2-Stimulants	Vial: 1ml	10/04/72
Applied Sciences Laboratories	Mixture 3-Depressants	Vial: 1ml	10/04/72
Applied Sciences Laboratories	Mixture 4-Barbiturates	Vial: 1ml	10/04/72
Applied Sciences Laboratories	Mixture 5-Kit of Representatives	Vial: 1ml	10/04/72
Applied Sciences Laboratories	Opiates, Mixture 1	Vial: 10ml	10/04/72
Applied Sciences Laboratories	Stimulants, Mixture 2	Vial: 10ml	10/04/72
Applied Sciences Laboratories	Allylisobutylbarbituric Acid	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Alphenal	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Amobarbital	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Amphetamine HCL	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Aprobarbital	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Mephobarbital	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Meprobamate	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Butabarbital	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Mescaline	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Cocaine	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Methadone HCL	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Diallybarbituric acid	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Methamphetamine HCL	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Ethinamate	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Methylphenidate	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Glutethimide	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Morphine	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Hydrocodone Bitartrate	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Nalorphine	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Barbital	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Pentobarbital	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Codeine	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Phenazocine HBr	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Ethylmorphine HCL	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Meperidine HCL	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Butethal	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Ethchlorvynol	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Hexobarbital	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Phencyclidine HCL	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Phenobarbital	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Secobarbital	Vial: 1ml	01/24/73

Exempt Chemical Preparations—Continued

Manufacturer or Supplier	Product Name Description	Form of Product	Date of Publication
Applied Sciences Laboratories	Thebaine	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Thiamylal	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Delta-9-Tetrahydrocannabinol	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Ecgonine HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Alphaprodine HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Fenfluramine HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Benzoylecgonine Tetrahydrate	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Fentanyl	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Chloral Hydrate	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Flurazepam HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Clonazepam	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Halazepam	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Dextropropoxyphene HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Hydromorphone HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Diazepam	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Levorphanol Tartrate	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Dihydrocodeine	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Lorazepam	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Alprazolam	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Lysergic Acid	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Chlordiazepoxide HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Lysergic Acid N-(methylpropyl) amide	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Diacetylmorphine HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Dimethyltryptamine	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Benzphetamine HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Clorazepate Dipotassium	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Diethylpropion HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Lysergic Acid diethylamide	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Methaqualone HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Methohexital	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Methyprylon	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Norcodeine HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Normorphine	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Phendimetrazine Bitartrate	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Phentermine	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Oxycodone HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Prazepam	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Paraldehyde	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Pentazocine	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Oxazepam	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Oxymorphone HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Pemoline	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Psilocybin	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Temazepam	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Triazolam	Vial: 1ml	04/16/85
Armed Forces Institute of Pathology.	11-nor-9-carboxy-delta 8-THC in Ethanol Ampules.	Glass Ampule: 1mg/ml, 1ml, 5ml, 10ml	01/25/82
Astral Medical Systems	Barbital Buffer	Plastic bag: 12.2g/bag	05/01/85
Astral Medical Systems	Barbital Lactate Buffer	Plastic bag: 18g/bag	05/01/85
Astral Medical Systems	Isoenzyme Buffer	Plastic bag: 14g/bag	05/01/85
Astral Medical Systems	Tris-Barbital Sodium Barbital Buffer	Plastic bag: 18g/bag	05/01/85
BHP Diagnostix	Kodak Ektachem-DT Calibrator	Bottle: 6ml	01/05/85
Beckman Instruments, Inc.	Beckman Buffer B-2	Packet: 18.16 g	04/24/71
Beckman Instruments, Inc.	Beckman B-1 Buffer	Plastic Vial: 15 g	05/22/79
Beckman Instruments, Inc.	Beckman ICS Drug Calibrators A, B, C, D, and E	Vials: 5ml	10/29/80
Beckman Instruments, Inc.	Beckman ICS Phenobarbital Conjugate	Vial: 5ml	10/29/80
Beckman Instruments, Inc.	Beckman ICS Drug Control Sera	Kit containing: 6-1ml bottles	11/11/80
Beckman Instruments, Inc.	Beckman LD Buffer	Bottle: 14.3 grams	07/31/86
Beckman Instruments, Inc.	Paragon Electrophoresis System: Immunofixation Electrophoresis (IFE) Kit.	Plastic Tray: 3.5ml	07/31/86
Beckman Instruments, Inc.	Paragon Electrophoresis System: Lactate Dehydrogenase Isoenzyme Electrophoresis (LD) Kit.	Plastic Tray: 3.5ml	07/31/86
Beckman Instruments, Inc.	Paragon Electrophoresis System: Protein Electrophoresis (SPE-II) Kit.	Plastic Tray: 3.5ml	07/31/86
Beckman Instruments, Inc.	Beckman LD Buffer	Bottle: 14.3 grams	07/31/86
Becton Dickinson & Company	Antibody Coated Tubes	Metallized Plastic Bag: 50 Tubes/Bag	02/13/78
Becton Dickinson & Company	T4 Tracer Solution Catalog No. 232611	White NALGENE Polypropylene Bottle: 125 ml.	02/13/78
Becton Dickinson & Company	Euthyroid Reference Standard, Catalog No. 237418.	Vial: 4ml	09/27/78
Becton Dickinson & Company	T3 Antibody Coated Tubes, Catalog No. 237213	Box containing 100 tubes	09/27/78

Exempt Chemical Preparations—Continued

Manufacturer or Supplier	Product Name Description	Form of Product	Date of Publication
Becton Dickinson & Company	T3 Tracer Solution Catalog No. 237728	Bottle: 125ml	09/27/78
Becton Dickinson & Company	Barbital Buffer Solution, Catalog No. 246514	Bottle: 1 ounce	08/01/84
Becton Dickinson & Company	Human Thyroid Stimulating Hormone (hTSH) Radioimmunoassay Kit (125I)Catalog No. 258423.	Kit: 250 tubes	08/01/84
Becton Dickinson & Company	Neonatal TSH Antiserum, Catalog No. 244716	Vial: 50 ml	08/01/84
Becton Dickinson & Company	Precipitating Antiserum, Catalog No. 247618	Vial: 50 ml	08/01/84
Becton Dickinson & Company	TSH (125I) Tracer, Catalog No. 243621	Vial: 50 ml	08/01/84
Becton Dickinson & Company	TSH Antiserum, Catalog No. 258431	Vial: 50 ml	08/01/84
Becton Dickinson & Company	Simul Trac Free T4/TSH Antiserum, No. 262641	Vial: 1 oz.	02/21/86
Becton Dickinson & Company	Simul Trac Free T4[57 Co]/TSH[125I] Radioimmunoassay Kit, No. 262625.	Kit: 200 tubes	02/21/86
Becton Dickinson & Company	Human Thyroid Stimulating Hormone (hTSH) Radioimmunoassay Kit [125I], Catalog No. 262994.	Kit: 200 tubes	09/04/86
Becton Dickinson & Company	TSH Antiserum Catalog No. 263001	Clear Vial: 10ml	09/04/86
Becton Dickinson & Company	TSH Standard A, Catalog No. 259829	Amber Vial: 10ml	09/04/86
Becton Dickinson & Company	TSH Standard B, Catalog No. 259837	Amber Vial: 10ml	09/04/86
Becton Dickinson & Company	TSH Standard C, Catalog No. 259845	Amber Vial: 10ml	09/04/86
Becton Dickinson & Company	TSH Standard D, Catalog No. 259853	Amber Vial: 10ml	09/04/86
Becton Dickinson & Company	TSH Standard E, Catalog No. 263052	Amber Vial: 10ml	09/04/86
Becton Dickinson & Company	TSH Standard F, Catalog No. 263061	Amber Vial: 10ml	09/04/86
Becton Dickinson & Company	TSH [125I] Tracer, Catalog No. 259624	Clear vial: 10ml	09/04/86
Behring Diagnostics	IEP Buffer, 793001 pH 8.2	Foil Pouch: 6.5 g	09/17/79
Behring Diagnostics	Immuno-tec II Agarose Plate, 839013, 850013	Foil Pouch: >5.35> x >5.25>	09/17/79
Bio-Rad Laboratories	Quantimune Radioimmunoassay T-4 Tracer, Iodine-125.	Vial: 10 ml	07/21/76
Bio-Rad Laboratories	T-4 Competitive Binding Reagent, Iodine-125	Bottle: 385 ml	07/21/76
Bio-Rad Laboratories	Quantimune T-4 RIA Kit	Kit: 500 tests	07/01/77
Bio-Rad Laboratories	Quantimune Thyroxine Radioimmunoassay Barbital Buffer.	Plastic Bottle with Screw cap: 1 liter	07/01/77
Bio-Rad Laboratories	Quantimune Thyroxine Radioimmunoassay T-4 125I Tracer/Dissociating Agent.	Glass Serum Vial: 10 ml	07/01/77
Bio-Rad Laboratories	Quantimune Barbital Buffer	Plastic Bottle: 1000ml, 250ml, 200ml	05/31/78
Bio-Rad Laboratories	Quantimune T-3 RIA Test Kit	Kit: 500 tests, 100 tests	05/31/78
Bio-Rad Laboratories	Quantimune T-4 RIA Test Kit	Kit: 5000 tests, 100 tests	05/31/78
Bio-Rad Laboratories	Urine Toxicology Control No. C-430-25	Amber Vial: 50ml	09/19/79
Bio-Rad Laboratories	Quantaphase Thyroxine RIA-125I Tracer/Dissociating Reagent.	Plastic bottle: 60ml, 260ml	05/06/81
Bio-Rad Laboratories	Quantaphase Thyroxine RIA-Thyroxine Immunobeads.	Plastic bottle: 60ml, 260ml	05/06/81
Bio-Rad Laboratories	Quantimune T-3 RIA Barbital Buffer	Bottle: 220ml	09/24/82
Bio-Rad Laboratories	Lyphochek Therapeutic Drug Monitoring Control (TDM), Levels I, II, III.	Vial: 10ml	08/20/84
Bio-Rad Laboratories, (Chemical Division).	Bio-Rad Electrophoresis Buffer	Bottle: 500ml	12/14/72
Bio-Rad Laboratories, (Chemical Division).	Electrophoresis Buffer, Dry-Pack	Package:;6.15 g.	12/14/72
Bio-Rad Laboratories, (Chemical Division).	Reagent No. 3	Bottle: 165 ml	12/14/72
Bio-Rad Laboratories, (Chemical Division).	Barbital Buffer-Dry Pack	Packages: 9.11 g., 18.21 g., 12.14 g	05/09/74
Bio-Rad Laboratories, (Chemical Division).	Immunoelectrophoresis Barbital Buffer I, pH 8.6	Dry-pack:;25.6 g.	08/06/75
Bio-Rad Laboratories, (Chemical Division).	Immunoelectrophoresis Barbital Buffer II, pH 8.6	Dry-pack:;15.61 g.	08/06/75
Bio-Rad Laboratories, (Chemical Division).	Immunoelectrophoresis Barbital Buffer III-a, pH 8.8.	Dry-pack:;15.07 g.	08/06/75
Bio-Rad Laboratories, (Chemical Division).	Immunoelectrophoresis Barbital Buffer III, pH 8.6	Dry-pack:;6.82 g.	01/22/76
Bio-Rad Laboratories, (Chemical Division).	Barbital Buffer	Vial: 10ml	07/21/76
Bio-Rad Laboratories, (Chemical Division).	Barbital Buffer Powder	Plastic bottle: 250ml	07/21/76
Bio-Rad Laboratories, (Chemical Division).	Barbital Buffer Powder	Plastic bottle: 250 ml	09/09/77
Biodiagnostic International	Liqui-Ura Toxic Control	Vial: 5ml	03/11/85
Biodiagnostic International	Urine - Tox Control	Vial: 5 ml	04/01/85
Bioscientific, Corporation	ECA Buffer, Catalog No. ECA 05805	Plastic Packet: 18.0 g., 10 packets per box.	07/14/77
California Bionuclear Corporation	Amobarbital-2-C-14, Catalog No. 72077	Screw Cap Vial: 50 microcuries, 0.1, 0.5, and 1.0 millicuries.	01/08/75

Exempt Chemical Preparations—Continued

Manufacturer or Supplier	Product Name Description	Form of Product	Date of Publication
California Bionuclear Corporation	Cocaine (methoxy-C-14) Catalog No. 72182	Screw Cap Vial: 50 microcuries, 0.1, 0.5, and 1.0 millicuries.	01/08/75
California Bionuclear Corporation	D-Amphetamine (propyl-1-C-14) Sulfate, Catalog No. 72078.	Screw Cap Vial: 50 microcuries , 0.1, 0.5, and 1.0 millicuries.	01/08/75
California Bionuclear Corporation	DL-Amphetamine (propyl-1-C-14) Sulfate, Catalog No. 72079.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, and 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Meperidine (N-methyl-C-14) Hydrochloride, Catalog No. 72508.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Mescaline (aminomethylene-C-14) Hydrochloride, Catalog No. 72512.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Methadone (heptanone-2-C-14) Hydrochloride, Catalog No. 72516.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Methamphetamine (propyl-1-C-14) Sulfate, Catalog No. 72517.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Methylphenidate (carbonyl-C-14) Hydrochloride, Catalog No. 72550.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Morphine (n-methyl-C-14) Hydrochloride, Catalog No. 72560.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Pentobarbital-2-C-14, Catalog No. 72618	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Secobarbital-2-C-14, Catalog No. 72675	Ampule: 50 microcuries, 0.1, 0.5, and 1.0 millicuries.	01/08/75
Cambridge Medical Diagnostics, Incorporated.	125I Human Parathyroid Hormone 44-68	Vial: 5ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	125I-Tetraiodothyronine	Vial: 11ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	125I-Triiodothyronine	Vial: 11ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	Donkey Anti Goat Gamma Globulin	Vial: 5ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	Parathyroid Hormone (Human 1-84) Standard	6 Vials: 5ml each	03/29/85
Cambridge Medical Diagnostics, Incorporated.	Parathyroid Hormone Assay Buffer	Vial: 10ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	T3 AntiSerum (Rabbit)	Vial: 11ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	T3 Standard	Vial: 1ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	T4 Antiserum (Rabbit)	Vial: 11ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	T4 Standard	Vial: 1ml	03/29/85
Ciba Corning Diagnostics Corp.	Reagent A- Alt 14	Vial: 15 ml	03/24/79
Ciba Corning Diagnostics Corp.	Reagent A- Alt 7	Vial:15 ml	03/24/79
Ciba Corning Diagnostics Corp.	Reagent A-Ammonia 10	Vial:10 ml	03/24/79
Ciba Corning Diagnostics Corp.	Gilford Urine Control II	Vial:30ml	05/22/85
Ciba Corning Diagnostics Corp.	Gilford Bi-Level Anticonvulsant/ Antiasthmatic Control.	Kit Contains: 5 Vials each level	10/22/85
Ciba Corning Diagnostics Corp.	Gilford Bi-Level Anticonvulsant/ Antiasthmatic Control, Level I & II.	Vials:10ml	10/22/85
Ciba Corning Diagnostics Corp.	Gilford TDM Control Levels I-III	Vial:6ml	10/22/85
Ciba Corning Diagnostics Corp.	Gilford Tri Level TDM Control	Kit Contains: 5 Vials each level	10/22/85
Ciba Corning Diagnostics Corp.	Gilford Bi-Level Toxicology Control	Kit: Contains: 5 Vials each level	12/16/85
Ciba Corning Diagnostics Corp.	Gilford Bi-Level Toxicology Control,Level I & II	Vials:10ml	12/16/85
Ciba Corning Diagnostics Corp.	Gilford Urine Toxicology Control	Vial:30ml	12/16/85
Ciba Corning Diagnostics Corp.	AACC Tox	Glass Vial: 30ml	01/20/86
Cone Biotech, Inc.	RIATRAC-Three Level Ligand Assay Controls	Vials: 8ml	02/27/84
Cone Biotech, Inc.	QCM-UTI	Vial: 20ml	03/07/85
CooperBiomedical, Inc.	Buffer No. 3017	Vial 250 ml	08/31/71
CooperBiomedical, Inc.	Diluting Fluid No. 3400	Vial: 10ml	08/31/71
CooperBiomedical, Inc.	Partial Thromboplastin (Dried), No.3491	Vial: 1ml and 5 ml	08/31/71
CooperBiomedical, Inc.	Agar Gel Plates No. 8794	Plate: 25ml	08/01/72
CooperBiomedical, Inc.	Buffer No. 8793	Vial: 250ml	08/01/72
CooperBiomedical, Inc.	Electrode Buffer, DR07172	Bulk	12/26/74
CooperBiomedical, Inc.	LD Electrode Buffer, DR07173	Bulk	02/12/79
CooperBiomedical, Inc.	Ligand Control I-No.4814, II-No.4824, and III-No.4834..	Vials: 5ml	02/24/81
CooperBiomedical, Inc.	Urine Control No. 0277	Vial:25ml	04/14/81
CooperBiomedical, Inc.	Toxicology Urine Control No. 0841	Vial: 10ml	06/11/82
CooperBiomedical, Inc.	Toxicology Urine Control No. 0842	Vial: 3ml	06/11/82
CooperBiomedical, Inc.	Therapeutic Monitor Level I No.4881	Vial:3ml	01/20/83

Exempt Chemical Preparations—Continued

Manufacturer or Supplier	Product Name Description	Form of Product	Date of Publication
CooperBiomedical, Inc.	Therapeutic Monitor Level II No.4882	Vial:3ml	01/20/83
CooperBiomedical, Inc.	Therapeutic Monitor Level III No.4883	Vial:3ml	01/20/83
Corning Medical	Special Barbital Buffer Set, Catalog No. 470182	Vial: 3 per kit	04/17/79
Corning Medical	Universal Electrophoresis Film Agarose, Catalog No. 470100.	Plates: 12 per kit	04/17/79
Corning Medical	Universal PHAB Buffer Set Catalog No. 470180	Kit: 3 vials per kit	09/26/79
Dade, Baxter Travenol Diagnostics, Inc..	Serum Reagent	Bottle: 5ml (Lyophilized Material)	08/16/71
Dade, Baxter Travenol Diagnostics, Inc..	Stratus TDM Control Level I-Low	Bottle: 9ml (Lyophilized Material)	01/21/82
Dade, Baxter Travenol Diagnostics, Inc..	Stratus TDM Control Level II-Intermediate	Bottle: 9ml (Lyophilized Material)	01/21/82
Dade, Baxter Travenol Diagnostics, Inc..	Stratus TDM Control Level III-High	Bottle: 9ml (Lyophilized Material)	01/21/82
Dade, Baxter Travenol Diagnostics, Inc..	Stratus Enzyme- Labeled Phenobarbital	Bottle: 6ml	01/25/82
Dade, Baxter Travenol Diagnostics, Inc..	Stratus Phenobarbital Calibrators B, C, D, E, & F	Bottles: 3ml	06/27/83
Dade, Baxter Travenol Diagnostics, Inc..	Moni-Trol Level I.X Special Order Request B5106-5X.	Bottle: 18ml (Lyophilized Material)	06/30/83
Dade, Baxter Travenol Diagnostics, Inc..	Moni-Trol Level II.X Special Order Request B5106-6X.	Bottle: 18ml (Lyophilized Material)	06/30/83
Dade, Baxter Travenol Diagnostics, Inc..	Moni-Trol. ES Level I Chemistry Control, Assayed..	Bottles: 9ml, 6.7ml (Lyophilized Material)	07/15/83
Dade, Baxter Travenol Diagnostics, Inc..	Moni-Trol. ES Level II Chemistry Control, Assayed.	Bottles:9ml, 6.7ml (Lyophilized Material)	07/15/83
Dade, Baxter Travenol Diagnostics, Inc..	Data-Fi Thrombin Reagent	Bottle:9 ml (Lyophilized Material)	07/20/83
Dade, Baxter Travenol Diagnostics, Inc..	Moni-Trol Level I Chemistry Control, Assayed, Special Order Request..	Bottle:9ml (Lyophilzed Material)	01/20/84
Dade, Baxter Travenol Diagnostics, Inc..	Moni-Trol Level II Chemistry Control, Assayed, Special Order Request.	Bottle: 9ml (Lyophilized Material)	01/20/84
Dade, Baxter Travenol Diagnostics, Inc..	Dade Tri-Rac R Tri Level Immunoassay Controls	Bottle: 9ml 6 bottles per kit (Lyophilized Material).	04/11/85
Dade, Baxter Travenol Diagnostics, Inc..	Tri Rac R Immunoassay Control Level II Intermediate.	Bottle: 9 ml (Lyophilized Material)	04/11/85
Dade, Baxter Travenol Diagnostics, Inc..	Tri Rac R Immunoassay Control Level III High	Bottle: 9 ml (Lyophilized Material)	04/11/85
Dade, Baxter Travenol Diagnostics, Inc..	Tri-Rac R Immunoassay Control, Level I-Low	Bottle: 9ml (Lyophilized Material)	04/11/85
Dade, Baxter Travenol Diagnostics, Inc..	Bovine Chemistry Control II.X Special Order Request B5107-65XX.	Bottle: 18 ml (Lyophilized Material)	01/29/86
Dade, Baxter Travenol Diagnostics, Inc..	Stratus Immunoassay Control, Level I-Low	Bottle: 9ml (Lyophilized Material)	04/25/86
Dade, Baxter Travenol Diagnostics, Inc..	Stratus Immunoassay Control, Level II-Intermediate.	Bottle: 9ml (Lyophilized Material)	04/25/86
Dade, Baxter Travenol Diagnostics, Inc..	Stratus Immunoassay Control, Level III-High	Bottle: 9ml (Lyophilized Material)	04/25/86
Dade, Baxter Travenol Diagnostics, Inc..	Moni-Trol. ES Level I.X Special Order Request Catalog No. B5106-75AAA Catalog No. B5106-1XAAA.	Bottles: 18ml, 9ml (Lyophilized Material)	06/27/86
Dade, Baxter Travenol Diagnostics, Inc..	Moni-Trol. ES Level II.X Special Order Request Catalog No. B5106-85AAA Catalog No. B5106-2XAAA.	Bottles: 18ml, 9ml (Lyophilized Material)	06/27/86
Dade, Baxter Travenol Dignostics, Inc..	Bovine Chemistry Control I.X Special Order Request B5107-55XX.	Bottle: 18ml (Lyophilized Material)	01/29/86
Dade, Travenol Laboratories, Inc.	Owren's Veronal Buffer	Bottle: 18ml	08/16/71
Dade, Travenol Laboratories, Inc.	Thrombin Reagent (Bovine)	Bottle: 5ml (Lyophilized Material)	08/16/71
Dade, Travenol Laboratories, Inc.	Data-Fi Thrombin Reagent	Bottle: 5ml (Lyophilized Material)	05/18/81
Dade, Travenol Laboratories, Inc.	Buffered Thrombin (Bovine) Catalog No. B4233-40.	Bottle: 5ml (Lyophilized Material)	01/24/86
Dade, Travenol Laboratories, Inc.	Fibrin Monomer Control Catalog Nos. B4233-30 & B4233-38.	Bottle: 5ml (Lyophilized Material)	01/24/86
Diamedix Corporation	Barbital-Acetate Buffer, Powder 709-317	Package: 20 envelopes-10.65 g. per envelope.	07/27/72
Diamedix Corporation	CEP Plate-Amebiasis Testing 40 Test No. 730-274.	Plate: 40mm x 80mm x 2.5mm	08/09/73
Diamedix Corporation	CEP VI No. 709-339	Plate: 40mm x 80mm x 2.5mm	08/09/73
Diamedix Corporation	EDTA (0.014M)-GVB Buffer, 753-034	Bottle: 5ml	08/09/73
Diamedix Corporation	EDTA (0.01M)-GVB Buffer, 753-031	Bottle: 5ml	08/09/73
Diamedix Corporation	GVB(3+) Buffer 753-037	Bottle: 50ml	08/09/73

Exempt Chemical Preparations—Continued

Manufacturer or Supplier	Product Name Description	Form of Product	Date of Publication
Diamedix Corporation	Glucose-GVB 1 Buffer, 753-036	Bottle: 50ml	08/09/73
Diamedix Corporation	Counterelectrophoresis (CEP) Plates for Trichinosis Testing.	Plastic plates: 40mm x 80mm x 2.5mm	06/16/75
Duo Research, Inc.	Drug Testing Assessment Program-Quality Control Sample:	Bottle: 65ml	02/27/86
Duo Research, Inc.	Drug Testing Assessment Program-Quality Control Sample Kit.	Kit: 5-65ml bottles	02/27/86
E.I. duPont de Nemours & Co., Incorporated.	aca PHNO Analytical Test Pack	Carton: 40 tests packs	08/25/77
E.I. duPont de Nemours & Co., Incorporated.	(1) PREP Sample Preparation and Analysis Kit	Kit containing following:	09/25/78
E.I. duPont de Nemours & Co., Incorporated.	(2) PREP Buffer/Internal Standard and Liquid Chromatography Verifier.	Box containing following:	09/25/78
E.I. duPont de Nemours & Co., Incorporated.	(2a) PREP Liquid Chromatography Verifier	Vial: 10ml (1 vial/box)	09/25/78
E.I. duPont de Nemours & Co., Incorporated.	(2b) PREP Buffer/Internal Standard	Vial: 100ml (3 vials/box)	09/25/78
E.I. duPont de Nemours & Co., Incorporated.	(3) PREP Calibrators	Box containing following:	09/25/78
E.I. duPont de Nemours & Co., Incorporated.	(3a) PREP Calibrator-Level 1	Vial: 10ml (1 vial/box)	09/25/78
E.I. duPont de Nemours & Co., Incorporated.	(3b) PREP Calibrator-Level 2	Vial: 10ml (1 vial/box)	09/25/78
E.I. duPont de Nemours & Co., Incorporated.	(3c) PREP Calibrator-Level 3	Vial: 10ml (1 vial/box)	09/25/78
E.I. duPont de Nemours & Co., Incorporated.	(3d) PREP Calibrator-Level 4	Vial: 10ml (1 vial/box)	09/25/78
E.I. duPont de Nemours & Co., Incorporated.	(4) PREP Controls	Box containing following:	09/25/78
E.I. duPont de Nemours & Co., Incorporated.	(4a) PREP Control-Low Level	Vial: 10ml (2 vials/box)	09/25/78
E.I. duPont de Nemours & Co., Incorporated.	(4b) PREP Control-High Level	Vial: 10ml (2 vials/box)	09/25/78
E.I. duPont de Nemours & Co., Incorporated.	aca Thryonine Uptake Analytical Test Pack	Plastic Pack: 1 test	08/25/83
E.I. duPont de Nemours & Co., Incorporated.	DuPont aca Barbiturate Screen/Benzodiazepine Screen Calibrator.	6 Vials: 3ml	02/23/84
E.I. duPont de Nemours & Co., Incorporated.	DuPont aca Benzodiazepine Screen Analytical Test Pack.	Plastic Packs: 25 tests	02/23/84
E.I. duPont de Nemours & Co., Incorporated.	DuPont aca Barbiturate Screen Analytical Test Pack.	Plastic Packs: 25 tests	12/23/84
E.I. duPont de Nemours & Co., Incorporated.	Phenobarbital Calibrator- Level 1	Vial: 6ml (1 vial/box)	04/02/86
E.I. duPont de Nemours & Co., Incorporated.	Phenobarbital Calibrator- Level 2	Vial: 6ml (1 vial/box)	04/02/86
E.I. duPont de Nemours & Co., Incorporated.	Phenobarbital Calibrator- Level 3	Vial: 6ml (1 vial/box)	04/02/86
E.I. duPont de Nemours & Co., Incorporated.	Phenobarbital Calibrator- Level 4	Vial: 6ml (1 vial/box)	04/02/86
E.I. duPont de Nemours & Co., Incorporated.	Phenobarbital Calibrator- Level 5	Vial: 6ml (1 vial/box)	04/02/86
E.I. duPont de Nemours & Co., Incorporated.	DuPont Drug Calibrators- Levels 1 through 5	Vial: 6ml (1 vial and 2 vials/box)	04/04/86
E.I. duPont de Nemours & Co., Incorporated.	Thyronine (TU) Uptake Flex(tm) Reagent Cartridge.	Plastic container: 2.3ml (20 tests)	04/28/86
E.I. duPont de Nemours & Co.,Inc., NEN Products.	5-Ethyl-5-Phenylbarbituric Acid (3H(G)), Catalog No. NET-401.	Combi-Vial: 250 microcuries, 5 millicuries	08/25/75
E.I. duPont de Nemours & Co.,Inc., NEN Products.	Ethyl-5-(1-Methylbutyl) Barbituric Acid 5-[ring-2-14C],Catalog No. NEC-389.	Combi-Vial: 0.100 millicuries, 0.500 millicuries.	08/25/75
E.I. duPont de Nemours & Co.,Inc., NEN Products.	Ethyl-5-Phenylbarbituric Acid 5-[ring-2-14C], Catalog No. NEC-337.	Combi-Vial: 0.050 millicuries, 0.250 millicuries.	08/25/75
E.I. duPont de Nemours & Co.,Inc., NEN Products.	Mescaline Hydrobromide, Catalog No. NEC-186	Combi-Vial: 0.050 millicuries, 0.250 millicuries.	08/25/75
E.I. duPont de Nemours & Co.,Inc., NEN Products.	Cyclohexenyl-3,5-Dimethyl Barbituric Acid,5-[2-14C], Catalog No. NEC-653.	Combi-Vial: 0.050 millicuries, 0.250 millicuries.	08/25/75
E.I. duPont de Nemours & Co.,Inc., NEN Products.	5-Cyclohexenyl-3,5,-Dimethyl barbituric Acid (3H(G)), Catalog No. NET-426.	Combi-Vial:250 microcuries , 1 millicurie, and 5 millicuries.	01/04/77
E.I. duPont de Nemours & Co.,Inc., NEN Products.	Dihydromorphine [7,8-3H(N)]	Combi-Vial: 250 microcuries, 1 millicurie	01/04/77
E.I. duPont de Nemours & Co.,Inc., NEN Products.	Glutethimide (3H(G)), Catalog No. NET-417	Combi-Vial:250 microcuries , 1 millicurie, and 5 millicuries.	01/04/77

Exempt Chemical Preparations—Continued

Manufacturer or Supplier	Product Name Description	Form of Product	Date of Publication
E.I. duPont de Nemours & Co.,Inc., NEN Products.	Lysergic Acid Diethylamide (2-3H (N)) Catalog No. NET-447.	Combi-Vial: 0.050 microcuries	01/04/77
E.I. duPont de Nemours & Co.,Inc., NEN Products.	Methadone Hydrobromide Dextro [1-3H] Catalog No. NET-488.	Combi-Vial: 1 millicurie	01/04/77
E.I. duPont de Nemours & Co.,Inc., NEN Products.	Methadone Hydrobromide levo-[2-14C] Catalog No. NEC-696.	Combi-Vial: 0.050 millicurie ,0.250 millicurie.	01/04/77
E.I. duPont de Nemours & Co.,Inc., NEN Products.	Methadone Hydrobromide, Levo[1-3H] Catalog No. NET-357.	Combi-Vial: 1 millicurie	01/04/77
E.I. duPont de Nemours & Co.,Inc., NEN Products.	Cocaine, Levo-[Benzoyl] [3.4-3H(N)] Catalog No. NET-510.	Combi-Vial: 100 microcuries, 250 microcuries.	01/04/77
E.I. duPont de Nemours & Co.,Inc., NEN Products.	d-Amphetamine Sulfate (3H(G)), Catalog No. NET-140.	Combi-Vial: 250 microcuries, 1 millicurie, and 5 millicuries.	01/04/77
E.I. duPont de Nemours & Co.,Inc., NEN Products.	Acetaldehyde (1,2-14C) as Paraldehyde, Catalog No. NEC-158.	Pyrex Glass Breakseal Tube: 250 microcuries, 1 millicurie.	01/04/77
E.I. duPont de Nemours & Co.,Inc., NEN Products.	Phencyclidine [Piperidyl-3,4-3H(N)], Catalog No.NET-630.	Combi-Vial: 0.250 millicurie, 1.0 millicurie	09/06/79
E.I. duPont de Nemours & Co.,Inc., NEN Products.	Diazepam [Methyl-3H] Catalog No. NET-564	Combi-Vial: 0.250 millicuries, 1.0 millicurie.	09/06/79
E.I. duPont de Nemours & Co.,Inc., NEN Products.	LSD [N-Methyl-3H] NET-638	Combi-Vial: 0.250 millicuries, 1.0 millicurie.	11/06/79
E.I. duPont de Nemours & Co.,Inc., NEN Products.	Dihydromorphine[N-Methyl-3H] NET-658	Combi-Vial: 0.250 millicuries, 1.0 millicurie.	02/29/80
E.I. duPont de Nemours & Co.,Inc., NEN Products.	Morphine [N-methyl-3H] NET-653	Combi-Vial: 0.250 millicuries, 1.0 millicurie.	02/29/80
E.I. duPont de Nemours & Co.,Inc., NEN Products.	Oxymorphone HCL [N-Methyl-3H] NET-666	Combi-Vial: 0.250 millicuries, 1.0 millicurie.	04/11/80
E.I. duPont de Nemours & Co.,Inc., NEN Products.	DMBB [Butyl-2,3,4-3H(N)] Catalog No. NET690	Combi-Vial:0.250 millicuries, 1.0 millicurie	02/04/81
E.I. duPont de Nemours & Co.,Inc., NEN Products.	(+)-DMBB NET 735	Combi-Vial: 0.250 millicuries, 1.0 millicurie.	10/16/81
E.I. duPont de Nemours & Co.,Inc., NEN Products.	Mazindol (4'-3H) Catalog No.NET-816	Combi-Vial: 0.250 millicuries, 1.0 millicurie.	05/17/84
E.I. duPont de Nemours & Co.,Inc., NEN Products.	Methylphenidate, +/- threo[methyl-3H]NET-857	Combi-Vial: 0.250 millicuries, 1.0 millicurie.	06/11/84
E.I. duPont de Nemours & Co.,Inc., NEN Products.	N-[1-(2-Thienyl) Cyclohexyl]-3,4-Piperidine (Piperidyl-3,4-3H)NET-886.	Combi-Vial: 0.250 millicuries, 1.0 millicurie.	06/11/84
E.I. duPont de Nemours & Co.,Inc., NEN Products.	Ethyl-5-Phenylbarbituric Acid,5-[3H(G)], Catalog No. NET401.	Combi Vial:0.250 millicuries, 1.0 millicurie	07/24/84
EM Diagnostic Systems,Inc.	EMDS Antiepileptic Drug Calibrator Item No. 67630/95.	Box: 3 Vials, 5 ml each	06/11/86
EM Diagnostic Systems,Inc.	Easytest Phenobarbital Assay Item No. 67534/93	Cuvette:1.8ml (40 cuvettes /carton)	06/11/86
EM Diagnostic Systems,Inc.	EMDS Test Packs, Phenobarbital (PHENO) Item No. 67677/95.	Carton:48 Test Packs	09/09/86
Eastman Kodak Company	Kodak Ektachem Specialty Calibrator	Vial:3ml	09/13/85
Eastman Kodak Company	Kodak Ektachem Specialty Control	Vial:3ml	09/13/85
Electro-Nucleonics Laboratories, Incorporated.	VIRGO IPA Immuno-Precipitation Assay for Phenobarbital.	Kit	11/30/82
Fisher Scientific	Electrophoretic Buffer No. 1 pH 8.60, Ionic Strength 0.05, Catalog No. E-1.	Packet: 12.14 g.	10/27/72
Fisher Scientific	Electrophoretic Buffer No. 2, pH 8.60, Ionic Strength 0.075, Catalog No. E-2.	Packet: 18.16 g.	10/27/72
Fisher Scientific	Urine Chemistry Control (Human) Level II, No. 2935-80.	Vial: 25ml	04/06/78
Fisher Scientific	Urine Toxicology Control No. 2950-61	Vial: 25ml	04/06/78
Fisher Scientific	SeraChem Abnormal Clinical Chemistry Control Serum (Human) Unassayed No. 2906.	Vial: 5ml, 10ml	04/16/82
Fisher Scientific	SeraChem Abnormal Clinical Chemistry Control Serum (Human), Assayed No. 2905.	Vial: 5ml	04/16/82
Fisher Scientific	SeraChem Clinical Chemistry Control Serum (Bovine), Unassayed Level I No. 3110.	Vial: 5ml, 10ml	04/16/82
Fisher Scientific	SeraChem Clinical Chemistry Control Serum (Bovine), Unassayed Level II No. 3111.	Vial: 5ml, 10ml	04/16/82
Fisher Scientific	SeraChem Normal Clinical Chemistry Control Serum (Human), Assayed No.2907.	Vial: 5ml	04/16/82
Fisher Scientific	Serachem Normal Clinical Chemistry Control Serum (Human), Unassayed No. 2908.	Vial: 5ml, 10ml	04/16/82
Fisher Scientific	Thera Chem TDC Therapeutic Drug Controls, Low and High Levels, 2840-58.	Kit: 6 vials	01/12/84
Fisher Scientific	Therapeutic Drug Control, High Level, 2842-31	Vial: 5ml	01/12/84
Fisher Scientific	Therapeutic Drug Control, Low Level, 2841-31	Vial: 5ml	01/12/84

Exempt Chemical Preparations—Continued

Manufacturer or Supplier	Product Name Description	Form of Product	Date of Publication
Fisher Scientific	TheraChem-Plus TDC Therapeutic Drug Controls, Tri-Level, No. 2845-94.	Kit: 9 vials	03/19/86
Fisher Scientific	Therapeutic Drug Control, High Level III, No. 2848-31.	Vial: 5ml	03/19/86
Fisher Scientific	Therapeutic Drug Control, Low Level I, No. 2846-31.	Vial: 5ml	03/19/86
Fisher Scientific	Therapeutic Drug Control, Mid-Range Level II, No. 2847-31.	Vial: 5ml	03/19/86
Fisher Scientific	Owren's Veronal Buffer, CS1094-38	Vial:25 ml	08/18/86
Fisher Scientific	Owren's Veronal Buffer, CS1094-34	Vial:10 ml	08/18/86
Flow Laboratories	DGV No. 28-010	Bottle: 125 ml	04/16/73
Flow Laboratories	Human >O> DGV (Dextrose Gelatin Veronal Buffer) No. 28-080.	Glass Vial: 100 ml	10/14/76
GIBCO Laboratories	Dextrose-Gelatin-Veronal Buffer Solution NDC No.815-0566-1 and No.815-0566-2.	Bottle: 100 and 500 ml	07/05/73
GIBCO Laboratories	Complement Fixation Buffer Solution, pH 7.3-7.4, NDC 0118115-0247-1.	Bottle: 1 liter	01/28/74
GIBCO Laboratories	Electrophoresis Buffer Solution, pH 8.6, NDC 011815-0245-1.	Bottle: 1 liter	01/28/74
GIBCO Laboratories	I.E.P. Buffer Solution pH 8.2 NDC 011815-0246-1	Bottle: 1 liter	01/28/74
GIBCO Laboratories	Complement Fixation Buffer Solution, pH 7.3-7.4, NDC 011815-0247-2.	Bottle:500 ml	04/05/77
Gelman Sciences, Inc.	High Resolution Buffer-Tris Barbital Buffer No 51104.	Vial: 10 dr	12/22/71
Gelman Sciences, Inc.	Drug Control Set No 51911	Set: 3 vials of 50 ml each	04/06/72
Gelman Sciences, Inc.	Drug Standard Set, No 51910	Set: 3 vials of 2 ml each	04/06/72
Gelman Sciences, Inc.	Hi-Phore Buffer	Glass Vial: 15 g	02/11/82
Gumm Chem. Co.	Niflow Initial Additive	Drums: 5 Gallons	09/30/85
Gumm Chem. Co.	Niflow Maintenace Additive	Drums:5 Gallons	09/30/85
Hach Chemical Co.	pH 8.3 Buffer Powder Pillows. No.898-98	Pillow: 1 g. each	11/30/71
Helena Laboratories	Electra B1 Buffer, Catalog No.5016	Packet:12.14 g. 10 packets/ box	12/28/73
Helena Laboratories	Electra B2 Buffer , Catalog No. 5017	Packet: 18.2 g. 10 packets/ box	12/28/73
Helena Laboratories	Electra HR Buffer, Catalog No. 5805	Packet: 18.1 g. 10 packets/ box	12/28/73
Helena Laboratories	Titan III Agar Catalog No. 5023	Packet:5 g. (5 Packets/box)	12/28/73
Helena Laboratories	Titan IV IE Plate (large)	Package: plates, 3 by 4 in.	12/28/73
Helena Laboratories	Titan IV IE Plate (small)	Package: plates, 1 by 3 in.	12/28/73
Helena Laboratories	Titan IV IE Plate Kit	Kit:10 large (3 by 4 in.) IE Plates, 1 box B1 Buffer.	12/28/73
Helena Laboratories	Titan IV IE Plate Kit	Kit: 12 small (1 by 3 in.) IE plates,1 box B1 Buffer.	12/28/73
Helena Laboratories	Titan Gel LDH Isoenzyme Buffer	Packet: 22.7 g.	03/07/83
Helena Laboratories	Titan Gel High Resolution Protein Buffer	Packet:25.9 g.	04/12/83
Helena Laboratories	Titan Gel Serum Protein Buffer	Packet:29.1 g.	04/12/83
Helena Laboratories	HDL Electrophoresis Buffer	Packet: 36 g.	12/18/85
Helena Laboratories	Isoamylase Cathode Buffer	Packet:9.7 g.	12/18/85
Helena Laboratories	Titan Gel IFE Buffer	Packet:25.9 g.	12/18/85
Helena Laboratories	Titan Gel Iso Dot LDH Isoenzyme Plate	Plate:(90mm X 75mm)	12/18/85
Helena Laboratories	Titan Gel LDH Isoenzyme Plate	Plate:(90mm X 75mm)	12/18/85
Helena Laboratories	Titan Gel Lipoprotein Buffer	Packet:17.3 g.	12/18/85
Helena Laboratories	Titan Gel Serum Protein Plate	Plate:(90mm X 75mm)	12/18/85
Helena Laboratories	Titan Gel Silver Stain Buffer	Packet:25.9g	12/18/85
Helena Laboratories	Titan Gel-PC LDH Isoenzyme Plate	Plate:(90mm X 75mm)	12/18/85
Helena Laboratories	Titan Gel Iso Dot LDH Buffer	Packet:19.6 g.	01/07/86
Helena Laboratories	Titan Gel LDH Isoenzyme Reagent	Vial:2ml, 10 vials/box	01/07/86
Helena Laboratories	Isoamylase Kit Catalog No. 5925	Kit: 2 Packets Cathode Buffer	01/24/86
Helena Laboratories	Super Z-12XHDL Cholesterol Supply Kit Catalog No. 5470).	Kit:3 Packages buffer 36 g.	01/24/86
Helena Laboratories	Titan Gel Immuno Fix Kit Catalog No.3046	Kit:10 Plates (90mm X 75mm), 2 Packets IFE Buffer.	01/24/86
Helena Laboratories	Titan Gel Iso Dot LDH Kit Catalog No.3062	Kit:10 Plates (90mm X 75mm),1 Packet Iso Dot LDH Buffer.	01/24/86
Helena Laboratories	Titan Gel Lipoprotein Kit Catalog No.3045	Kit:1 Packet Buffer	01/24/86
Helena Laboratories	Titan Gel Serum Protein Kit Catalog No. 3041	Kit:10 Plates (90mm X 75mm), 1 Packet Buffer.	01/24/86
Helena Laboratories	Titan Gel Silver Stain Kit Catalog No.3035	Kit:10 Plates (90mm X 75mm), 2 Packets Buffer.	01/24/86
Helena Laboratories	Titan Gel-PC LDH Isoenzyme Kit Catalog No. 3053.	Kit: 10 Plates (90mm X 75mm), 1 Packet LDH Buffer, 1 Box LDH Reagent.	01/24/86
Helena Laboratories	Titan Gel High Resolution Protein Kit Catalog No. 3040.	Kit:10 Plates (90mm X 75mm) , 2 Packages Buffer.	03/03/86
Helena Laboratories	Titan Gel High Resolution Protein Plate	Plate:(90mm X 75mm)	03/03/86

Exempt Chemical Preparations—Continued

Manufacturer or Supplier	Product Name Description	Form of Product	Date of Publication
Helena Laboratories	Titan Gel Silver Stain Plate	Plate:(90mm X 75mm)	03/03/86
Helena Laboratories	Titan Gel IFE Plate	Plate:(90mm X 75mm)	03/05/86
Helena Laboratories	CK-LD Buffer Catalog No. 5808	Packet:18.332 g. , 10 packets/box	03/26/86
Hoffman-LaRoche,Inc.	125I T3 (for T3 Uptake Radioassay)	Vial:15ml	07/22/81
Hoffman-LaRoche,Inc.	Anti-T3 Reagent 125I T3 (for T3 Radioimmunoassay).	Vial:15ml	07/22/81
Hoffman-LaRoche,Inc.	Anti-T4 Reagent 125I T4 (for T4 Radioimmunoassay).	Vial:15ml	07/22/81
Hoffman-LaRoche,Inc.	NSB Reagent	Vial:2ml	07/22/81
Hoffman-LaRoche,Inc.	Abuscreen 125I Tetrahydrocannabinol Reagent	Vial: 500ml, 30ml	08/14/81
Hoffman-LaRoche,Inc.	Abuscreen Radioimmunoassay for Cannabinoids (125I).	Kit: 100 Tests 2, 500 Tests	08/14/81
Hoffman-LaRoche,Inc.	Amerifluor Florescent Immunoassay -Phenobarbital.	Kit: 100 tests	04/30/82
Hoffman-LaRoche,Inc.	Immunizing Preparation No. 1, 2, 3, 4, 5, 6, 7, or 8..	Vial:10, 20, 50, & 100ml	01/25/83
Hoffman-LaRoche,Inc.	Abuscreen (125I) Amphetamine Reagent	Vial:30ml, 500ml	02/15/83
Hoffman-LaRoche,Inc.	Abuscreen 125I Benzoylecgonine Reagent	Vial: 30ml, 500ml	02/15/83
Hoffman-LaRoche,Inc.	Abuscreen 125I Methaqualone Reagent	Vial:30ml, 500ml	02/15/83
Hoffman-LaRoche,Inc.	Abuscreen 125I Morphine Reagent	Vial:30ml, 500ml	02/15/83
Hoffman-LaRoche,Inc.	Abuscreen 125I Phencyclidine Reagent	Vial:30ml, 500ml	02/15/83
Hoffman-LaRoche,Inc.	Abuscreen 125I Secobarbital Reagent	Vial:30ml, 500ml	02/15/83
Hoffman-LaRoche,Inc.	Abuscreen Positive Reference Standard (Amphetamine) 100, 500, 750, 1000, 1500,or 2000 ng/ml.	Vial:6.6ml, 2 oz	02/15/83
Hoffman-LaRoche,Inc.	Abuscreen Positive Reference Standard (Barbiturate) 50, 100, 200, 300, 400, 500, 750, 1000,or 2000 ng/ml.	Vial:6.6ml, 2 oz	02/15/83
Hoffman-LaRoche,Inc.	Abuscreen Positive Reference Standard (Benzoylecgonine) 100, 150, 200, 300, 400, 500, 750, 1000, or 2000 ng/ml.	Vial:6.6ml, 2 oz	02/15/83
Hoffman-LaRoche,Inc.	Abuscreen Positive Reference Standard (Methaqualone) 100, 300, 500, 750, 1000,or 2000 ng/ml.	Vial:6.6ml, 2 oz	02/15/83
Hoffman-LaRoche,Inc.	Abuscreen Positive Urine Reference Standard (Morphine) 40, 50, 100, 200, 300, 500, 600, or 1000 ng/ml.	Vial:6.6ml, 2 oz	02/15/83
Hoffman-LaRoche,Inc.	Abuscreen Positive Urine Reference Standard (Phencyclidine) 10, 12.5, 25, 50, 75, 100, 200,or 500 ng/ml.	Vial:6.6ml, 2 oz	02/15/83
Hoffman-LaRoche,Inc.	Abuscreen Positive Reference Standard (Phencyclidine) 10, 12.5, 25, 50, 75, 100, 200, or 500 ng/ml.	Vial:6.6ml, 2 oz	02/15/83
Hoffman-LaRoche,Inc.	Abuscreen Radioimmunoassay for Amphetamine (125I).	Kit: 100 tests, 2500 tests	02/15/83
Hoffman-LaRoche,Inc.	Abuscreen Positive Urine Reference Standard (Barbiturate) 50, 100, 200, 300, 400, 500, 750, 1000,or 2000 ng/ml.	Vial:6.6ml, 2 oz	02/15/83
Hoffman-LaRoche,Inc.	Abuscreen Positive Urine Reference Standard (Methaqualone) 100, 300, 500, 750, 1000,or 2000 ng/ml.	Vial:6.6ml, 2 oz	02/15/83
Hoffman-LaRoche,Inc.	Abuscreen Positive Reference Standard (Morphine) 40, 50, 100, 200, 300, 500, 600,or 1000 ng/ml..	Vial:6.6ml, 2 oz	02/15/83
Hoffman-LaRoche,Inc.	Abuscreen Positive Urine Reference Standard (Amphetamine) 100, 500, 750, 1000, 1500, or 2000 ng/ml.	Vial:6.6ml, 2 oz	02/15/83
Hoffman-LaRoche,Inc.	Abuscreen Positive Urine Reference Standard (Benzoylecgonine) 100, 150, 200, 300, 400, 500, 750, 1000, or 2000 ng/ml.	Vial: 6.6ml, 2 oz.	02/15/83
Hoffman-LaRoche,Inc.	Abuscreen Radioimmunoassay for Barbiturates (125I).	Kit: 100 tests, 2500 tests	02/15/83
Hoffman-LaRoche,Inc.	Abuscreen Radioimmunoassay for Cocaine Metabolite (125I).	Kit: 100 Tests, 2500 Tests	02/15/83
Hoffman-LaRoche,Inc.	Abuscreen Radioimmunoassay for Methaqualone (125I).	Kit: 100 tests, 2500 tests	02/15/83
Hoffman-LaRoche,Inc.	Abuscreen Radioimmunoassay for Morphine (125I).	Kit:100 tests, 2500 tests	02/15/83
Hoffman-LaRoche,Inc.	Agglutex Amphetamine Test Kit	Kit: 20 tests, 100 tests	02/15/83
Hoffman-LaRoche,Inc.	Abuscreen Radioimmunoassay for Phencyclidine (PCP)(125I).	Kit:100 tests, 2500 tests	06/27/83

Exempt Chemical Preparations—Continued

Manufacturer or Supplier	Product Name Description	Form of Product	Date of Publication
Hoffman-LaRoche,Inc.	Agglutex Methaqualone Positive Human Urine Control.	Vial: 5ml	06/27/83
Hoffman-LaRoche,Inc.	Agglutex Methaqualone Test Kit	Kit:20 tests, 100 tests	06/27/83
Hoffman-LaRoche,Inc.	Agglutex Amphetamine Positive Human Urine Control.	Vial:5ml	06/27/83
Hoffman-LaRoche,Inc.	Agglutex Morphine Latex Reagent	Vial:2ml	06/27/83
Hoffman-LaRoche,Inc.	Agglutex Barbiturate Positive Human Urine Control.	Vial:5ml	06/27/83
Hoffman-LaRoche,Inc.	Agglutex Methaqualone Latex Reagent	Vial:2ml	06/27/83
Hoffman-LaRoche,Inc.	Agglutex Amphetamine Latex Reagent	Vial:2ml	06/27/83
Hoffman-LaRoche,Inc.	Agglutex Barbiturate Latex Reagent	Vial:2ml	06/27/83
Hoffman-LaRoche,Inc.	Agglutex Barbiturate Test Kit	Kit:20 tests, 100 tests	06/27/83
Hoffman-LaRoche,Inc.	Agglutex Morphine Positive Human Urine Control	Vial: 5ml	06/27/83
Hoffman-LaRoche,Inc.	Agglutex Morphine Test Kit	Kit:20 tests, 100 tests	06/27/83
Hoffman-LaRoche,Inc.	Agglutex Phencyclidine (PCP) Test Kit	Kit:20 tests, 100 tests	06/27/83
Hoffman-LaRoche,Inc.	Agglutex Phencyclidine Latex Reagent	Vial:2ml	06/27/83
Hoffman-LaRoche,Inc.	Agglutex Phencyclidine Positive Human Urine Control.	Vial:5ml	06/27/83
Hoffman-LaRoche,Inc.	Immunizing Preparations No. 1A, 2A, 3A, 4A, 5A, 6A, 7A,& 8A..	Vial:10ml, 20ml, 50ml,or 100ml	07/12/83
Hoffman-LaRoche,Inc.	Abuscreen Positive Reference Standard Cannabinoid.	Vial:6.6ml, 2 oz	02/20/84
Hoffman-LaRoche,Inc.	Immunizing Preparation No. 9	Vial:10ml, 20ml, 50ml,or 100ml	07/24/84
Hoffman-LaRoche,Inc.	Immunizing Preparation No. 9A	Vial:10ml, 20ml, 50ml,or 100ml	07/24/84
Hoffman-LaRoche,Inc.	Abuscreen 125I Oxazepam Reagent	Vial:30ml, 500ml	08/15/84
Hoffman-LaRoche,Inc.	Abuscreen 125I-LSD Reagent	Vial:500ml, 30ml	08/15/84
Hoffman-LaRoche,Inc.	Abuscreen Radioimmunoassay for Benzodiazepine Metabolite.	Kit:100 tests, 2500 tests	08/15/84
Hoffman-LaRoche,Inc.	COBAS FP Phenobarbital Calibrators	Kit:6 Vials	11/13/84
Hoffman-LaRoche,Inc.	COBAS FP Reagents for Phenobarbital	Kit:100 tests	11/13/84
Hoffman-LaRoche,Inc.	COBAS FP TDM Controls	Kit:6 Vials	11/13/84
Hoffman-LaRoche,Inc.	Phenobarbital Calibrators B through F	Vials:5ml	11/13/84
Hoffman-LaRoche,Inc.	Phenobarbital Tracer Reagent	Vial:5ml	11/13/84
Hoffman-LaRoche,Inc.	TDM Controls, Levels I through III	Vials:5ml	11/13/84
Hoffman-LaRoche,Inc.	Abuscreen Radioimmunoassay for Amphetamine High Specificity.	Kit:100 tests, 2500 tests	09/13/85
Hoffman-LaRoche,Inc.	Abuscreen Positive Reference Std. (LSD) 0.1, 0.2, 0.25, 0.3, 0.4, 0.5, 0.6, 0.7, 0.75, 0.8, 0.9, 1.0, 1.25, 1.5, 1.75, 2.0, 2.5, 5.0 or 10.0 ng/ml.	Vial:5ml, 60ml, & 100ml	01/28/86
Hoffman-LaRoche,Inc.	Abuscreen Positive Urine Reference Std.(LSD) 0.1, 0.2, 0.25, 0.3, 0.4, 0.5, 0.6, 0.7, 0.75, 0.8, 0.9, 1.0, 1.25, 1.5, 1.75, 2.0, 2.5, 5, or 10 ng/ml.	Vial:5ml, 60ml, & 100ml	01/28/86
Hoffman-LaRoche,Inc.	Abuscreen Radioimmunoassay for LSD (Lysergic Acid Diethylamide).	Kit: 100 tests, 2500 tests	01/28/86
Hoffman-LaRoche,Inc.	Immunizing Preparation No.10	Vial:10ml, 20ml, 50ml,or 100ml	04/02/86
Hoffman-LaRoche,Inc.	Immunizing Preparation No.10A	Vial:10ml, 20ml, 50ml, or 100ml	04/02/86
Hoffman-LaRoche,Inc.	Cocaine Metabolite Roche EIA (Benzoylecgonine).	Kit:100 tests	05/28/86
Hoffman-LaRoche,Inc.	Cocaine Metabolite Roche EIA (Benzoylecgonine) Conjugate Reagent.	Vial:30ml	05/28/86
Hoffman-LaRoche,Inc.	Cocaine Metabolite Roche EIA (Benzoylecgonine) Positive Reference Standard 50-1200 (in increments of 50) ng/ml.	Vial:4ml	05/28/86
Hoffman-LaRoche,Inc.	Morphine Roche EIA	Kit:100 tests	05/28/86
Hoffman-LaRoche,Inc.	Morphine Roche EIA Conjugate Reagent	Vial:30ml	05/28/86
Hoffman-LaRoche,Inc.	Morphine Roche EIA Positive Reference Standard 50-1200 (in increments of 50) ng/ml.	Vial:4ml	05/28/86
Hoffman-LaRoche,Inc.	Abuscreen Positive Reference Standard (Oxazepam or Desmethyldiazepam) 25, 50, 75, 100 ng/ml or 150-1000 (in increments of 100) ng/ml.	Vial:5ml, 100ml	08/28/86
Hoffman-LaRoche,Inc.	Abuscreen Positive Urine Reference Std. (Oxazepam or Desmethyldiazepam) 25, 50, 75, 100 ng/ml or 150-1000 (in increments of 100) ng/ml.	Vial:5ml, 100ml	08/28/86
Hoffman-LaRoche,Inc.	THC Roche EIA	Kit: 100 Tests	08/28/86
Hoffman-LaRoche,Inc.	THC Roche EIA Conjugate Reagent	Vial: 30ml	08/28/86
Hoffman-LaRoche,Inc.	THC Roche EIA Positive Reference Standard 50-1200 (in increments of 50) ng of THC derivative/ml..	Vial: 4ml	08/28/86

Exempt Chemical Preparations—Continued

Manufacturer or Supplier	Product Name Description	Form of Product	Date of Publication
Hoffman-LaRoche,Inc.	THC Roche EIA Positive Reference Standard 50-1200 (in increments of 50) ng of THC derivative/ml..	Vial: 4ml	08/28/86
Hoffman-LaRoche,Inc.	Barbiturate Roche EIA	Kit:100 Tests	10/02/86
Hoffman-LaRoche,Inc.	Barbiturate Roche EIA Conjugate Reagent	Vial: 30 ml	10/02/86
Hoffman-LaRoche,Inc.	Barbiturate Roche EIA Positive Reference Standard 50-1200 (in increments of 50) ng/ml.	Vial: 4 ml	10/02/86
Hoffman-LaRoche,Inc.	Barbiturate Roche EIA Conjugate Reagent	Vial: 30 ml	10/02/86
Hoffman-LaRoche,Inc.	Barbiturate Roche EIA Positive Reference Standards 50-1200 (in increments of 50) ng Secobarbital/ml.	Vial: 4 ml	10/02/86
Hoffman-LaRoche,Inc.	Barbiturate Roche EIA	Kit: 100 Tests	10/02/86
ICL Scientific	Therapeutic Drug Control I ,TDC I (High Level)	Glass Vial: 10ml	08/14/85
ICL Scientific	Therapeutic Drug Control I, II, III, Tri-Level TDC Multipack..	Glass Vials (12): 10ml	08/14/85
ICL Scientific	Therapeutic Drug Control II, TDC II (Mid-Level)	Glass Vial: 10ml	08/14/85
ICL Scientific	Therapeutic Drug Control III, TDC III (Low Level)	Glass Vial: 10ml	08/14/85
Industrial Analytical Laboratory,Inc..	11-Nor-Carboxy-Delta-9-Tetrahydrocannabinol	Ampule:1ml	09/04/85
Industrial Optical	Opti-Kleen	Bottle:5 gallon	06/24/81
Janssen Pharmaceutica,Inc.	Alfentanil Radioimmunoassay Kit	Kit:200 tests	05/13/85
Janssen Pharmaceutica,Inc.	Fentanyl Radioimmunoassay Kit	Kit:200 tests	05/13/85
Janssen Pharmaceutica,Inc.	Sufentanil Radioimmunoassay Kit	Kit:500 tests	05/13/85
Kallestad Diagnostics	IEP Buffer No. 900	Vial:7 Dram	12/26/78
Kallestad Diagnostics	Immunoelectrofilm Kit Catalog No. 912	Kit:42 tests	12/26/78
Kallestad Diagnostics	Immunoelectrophoresis Profile Kit, Catalog No. 911.	Kit:42 tests	12/26/78
Kallestad Diagnostics	Immunoelectrofilm Catalog No.910	1 Film Sealed in Cardboard Container	03/11/80
Kallestad Diagnostics	Barbital Buffer 901	Vial	05/19/81
Kallestad Diagnostics	Quanticoat 125I-T3 Uptake Kit, Catalog No. 833	Kit:100 tests	06/24/81
Kallestad Diagnostics	Quanticoat 125I-T3 Uptake Reagent No.834	2 Glass Bottles: 110ml	06/24/81
Kallestad Diagnostics	Quanticoat 125I-T3 Uptake Kit Catalog No. 823	Kit:400 Determinations	12/16/85
Kallestad Diagnostics	Quanticoat 125I-T3 Uptake Reagent Catalog No. 785.	Bottle:500ml	12/16/85
LKB Instruments,Inc.	Tris-barbiturate Buffer pH 8.6	Packet: each 6.788 g. 20 packets/box	05/15/78
Lemmon Company	Etorphine Standard Solution	Plastic Carboy:1 Liter	10/31/83
MCI Biomedical	IEP Buffer, pH 8.2, 0.04 Ionic Strength	Package:6.510 grams	08/28/72
Mallinckrodt Inc.	Res-O-Mat ETR Solution	Vial:1.5 dram	02/17/72
Mallinckrodt Inc.	Res-O-Mat T4 Solution	Vial:1.5 dram	02/17/72
Mallinckrodt Inc.	(1) RIA-MAT Circulating T3 I125 Kit, Catalog No.501:.	KIT CONTAINS THE FOLLOWING 8 ENTRIES:-	01/28/74
Mallinckrodt Inc.	(2) RIA-MAT T3 Antiserum	Vial:2.5ml	01/28/74
Mallinckrodt Inc.	(3) RIA-MAT T3 Buffer	Bottle:100ml	01/28/74
Mallinckrodt Inc.	(4) RIA-MAT T3 Reaction Vial	Vial:1ml	01/28/74
Mallinckrodt Inc.	(5) RIA-MAT T3 Standard 0.5ng/ml	Vial:1.5ml	01/28/74
Mallinckrodt Inc.	(6) RIA-MAT T3 Standard 0ng/ml	Vial:1.5ml	01/28/74
Mallinckrodt Inc.	(7) RIA-MAT T3 Standard 1.0ng/ml	Vial:1.5ml	01/28/74
Mallinckrodt Inc.	(8) RIA-MAT T3 Standard 2.0ng/ml	Vial:1.5ml	01/28/74
Mallinckrodt Inc.	(9) RIA-MAT T3 Standard 6.0ng/ml	Vial:1.5ml	01/28/74
Mallinckrodt Inc.	Res-O-Mat ETR Solution	Bottle:16 oz and imperial gallon	08/28/74
Mallinckrodt Inc.	Res-O-Mat T4 Solution	Bottle:16 oz and imperial gallon	08/28/74
Mallinckrodt Inc.	RIA-MAT T4 I-125 Kit	Kit Containing: 100 Tests and 250 tests	04/03/75
Mallinckrodt Inc.	SPAC T4 RIA Kit	Kit:50 tests,100 tests	02/01/77
Mallinckrodt Inc.	T4 I125 Reaction Solution	Screwcap Bottle:2 ounce	02/01/77
Mallinckrodt Inc.	T4 Standard (10.0 ug pct)	Screwcap Vial: 5ml	02/01/77
Mallinckrodt Inc.	T4 Standard (2.0 ug pct)	Screwcap Vial: 5ml	02/01/77
Mallinckrodt Inc.	T4 Standard (20.0 ug pct)	Screwcap Vial: 5ml	02/01/77
Mallinckrodt Inc.	T4 Standard (40.0 ug pct)	Screwcap Vial: 5ml	02/01/77
Mallinckrodt Inc.	T4 Standard (5.0 ug pct)	Screwcap Vial: 5ml	02/01/77
Mallinckrodt Inc.	T4 Standard (5.0 ug%)	Screwcap Vial: 5ml	09/15/77
Mallinckrodt Inc.	SPAC T4 RIA Kit	Kit: 500 tests	09/15/77
Mallinckrodt Inc.	T4 Standard (10.0 ug%)	Screwcap Vial: 5ml	09/15/77
Mallinckrodt Inc.	T4 Standard (2.0 ug%)	Screwcap Vial: 5ml	09/15/77
Mallinckrodt Inc.	T4 Standard (20.0 ug%)	Screwcap Vial: 5ml	09/15/77
Mallinckrodt Inc.	T4 Standard (40.0 ug%)	Screwcap Vial: 5ml	09/15/77
Mallinckrodt Inc.	T4 I125 Reaction Solution	Screwcap Bottle: 8 ounce	09/15/77
Materials & Technology Systems	5-Ethyl-5-(1 -Carboxy-N-Propyl) Barbituric Acid	Screw Cap Vial:8ml	05/03/73
Materials & Technology Systems	5-Ethyl-5-(1 -Carboxy-N-Propyl)Barbituric Acid Bovine Serum Albumin or Rabbit Serum Albumin..	Vaccine Vial:8ml	05/03/73

Exempt Chemical Preparations—Continued

Manufacturer or Supplier	Product Name Description	Form of Product	Date of Publication
Materials & Technology Systems ..	5-Ethyl-5-(1 -Carboxy-N-Propyl)Barbituric Acid Sensitized RBC.	Vaccine Vial:8ml	05/03/73
Materials & Technology Systems ..	Carboxymethyl-Morphine	Screw Cap Vial:8ml	05/03/73
Materials & Technology Systems ..	Carboxymethyl-Morphine Bovine Serum Albumin or Rabbit Serum Albumin.	Vaccine Vial:8ml	05/03/73
Materials & Technology Systems ..	Carboxymethylmorphine Sensitized RBC	Vaccine Vial:50ml	05/03/73
Materials & Technology Systems ..	Ecgonine Bovine Serum Albumin or Rabbit Serum Albumin..	Vaccine Vial:8ml	05/03/73
Materials & Technology Systems ..	Ecgonine Sensitized RBC	Vaccine Vial:50ml	05/03/73
Materials & Technology Systems ..	Tropinecarboxylic Acid	Screw Cap Vial:8ml ,10ml	05/03/73
Materials & Technology Systems ..	Morphine Standard	Screw Cap Vial:10ml	07/17/73
Materials & Technology Systems ..	Benzoyl Ecgonine	Screw Cap Vial:25mg and 100 mg	04/18/74
Materials & Technology Systems ..	Barbiturate Standard	Screwcap Vial:10ml	09/17/76
Materials & Technology Systems ..	Benzoylecgonine Standard	Screwcap Vial:10ml	09/17/76
Materials & Technology Systems ..	Methadone Standard	Screwcap Vial:10ml	09/17/76
Medi-Chem,Inc.	Barbiturate Test Set (Sodium Secobarbital Standard 10mg % w/v) Catalog No.250.	Bottle: 120ml	02/22/74
Medical Analysis Systems, Inc.	ChemTrak Liquid Unassayed	Vial:15ml	04/30/85
Medical Analysis Systems, Inc.	Chemistry Control Assayed, Level 1, 2,& 3	Vial:15ml	04/30/85
Medical Analysis Systems, Inc.	Chemistry Control, Level 1, 2,& 3	Vial:15ml	04/30/85
Medical Analysis Systems, Inc.	ACE II Calibrator for the DuPont aca Level 1	Glass Vial: 22 X 38mm, 5ml	08/07/86
Medical Analysis Systems, Inc.	ACE II Calibrator for the DuPont aca Level 2	Glass Vial: 22 X 38mm, 5ml	08/07/86
Medical Analysis Systems, Inc.	ACE II Calibrator for the DuPont aca Level 3	Glass Vial: 22 X 38mm, 5ml	08/07/86
Medical Analysis Systems, Inc.	TD Control Level 2	Vial: 5ml	10/08/86
Medical Analysis Systems, Inc.	TD Control Level 1	Vial: 5ml	10/08/86
Medical Analysis Systems, Inc.	TD Control Level 3	Vial: 5ml	10/08/86
Meloy Labs,Inc.	Counterelectrophoresis Plates, G-301	Plates:10 determinations	09/05/73
Meloy Labs,Inc.	Immunoelectrophoresis Plates, G-201	Plates:6 / unit	09/05/73
Micromedic Systems	T3 RIA 125I Tracer Solution	Vial:30ml	12/14/76
Micromedic Systems	T3 RIA Buffer Solution	High Density Polyethylene Bottle:8 ounce	12/14/76
Micromedic Systems	T3 Uptake 125I Tracer Solution	Vial:30ml	12/14/76
Micromedic Systems	T3 Uptake Buffer Solution	High Density Polyethylene Bottle:8 ounce	12/14/76
Micromedic Systems	T4 RIA 125I Tracer Solution	Vial:30ml	12/14/76
Micromedic Systems	T4 RIA Buffer Solution	High Density Polyethylene Bottle:8 ounce	12/14/76
Micromedic Systems	Neonatal T4 125I Tracer Solution	Vial: 30ml	05/21/80
Micromedic Systems	Neonatal T4 Buffer Solution	Bottle: 8ounce	05/21/80
Miles Laboratories,Inc.	TEK-CHEK Special Urine Control (supplemental).	Vial: 25ml	05/01/70
Miles Laboratories,Inc.	Tetralute	Bottle:4.9 g.	07/29/70
Miles Laboratories,Inc.	Thyrolute I125, Reagent Kit, No.5250	Kit: 20 columns	12/02/74
Miles Laboratories,Inc.	Thyrolute I125, Reagent Kit, No.5252	Kit: 100 columns	12/02/74
Miles Laboratories,Inc.	Seralute Total T-4 (RIA) 125I Reagent Kit, No.3304, No.3305.	Kit: 20 columns, 100 columns	03/28/77
Miles Laboratories,Inc.	T-4 Buffer	Glass Screwtop Vial: 3/4 ounce	03/28/77
Miles Laboratories,Inc.	Cliniria T-3 Uptake Test,Kit Contains: (1)125I T-3 Uptake Reagent & (2) Separating Reagent.	200ml Bottles	11/10/78
Miles Laboratories,Inc.	Ames Phenobarbital Assay,Kit Contains: Phenobarbital Standards; 10, 20, 40,& 60mcg/ml.	6.1 ml Vials	03/01/79
Miles Laboratories,Inc.	Ames Phenobarbital Controls, 15mcg/ml, 30mcg/ml, 50mcg/ml.	Vial:6.1ml	05/21/80
Miles Laboratories,Inc.	Clinistat Calibrator Nos. 1 and 2	Vial:1ml	12/19/80
Miles Laboratories,Inc.	Clinistat Control B,C,D,and E	Vial:1ml	12/19/80
Miles Laboratories,Inc.	TDA Cross-Reactivity Cocktails	Glass Vial:1ml	02/01/83
Miles Laboratories,Inc.	Seralyzer ARIS Drug Assay Control	Vial:1ml	01/17/84
Miles Laboratories,Inc.	Seralyzer ARIS Drug Assay High Calibrator	Vial:0.5ml	01/17/84
Miles Laboratories,Inc.	Seralyzer ARIS Drug Assay Low Calibrator	Vial:0.5ml	01/17/84
Miles Laboratories,Inc.	Seralyzer ARIS Phenytoin Reagent Strips	Bottle Containing 25 and 50 Strips	05/28/86
Monobind,Inc.	Monobind T3 Antibody Reagent	Test Tube w/Cap:70ml	11/08/77
Monobind,Inc.	Monobind T3 Tracer Reagent	Wheaton Glass Container: 55ml	11/08/77
Monobind,Inc.	Monobind T4 Antibody Reagent	Test Tube w/Cap:70ml	11/08/77
Monobind,Inc.	Monobind T4 Tracer Reagent	Wheaton Glass Container 55ml	11/08/77
Monobind,Inc.	Monobind TSH Antibody Reagent	Test Tube w/Cap:10.5ml	11/08/77
Monobind,Inc.	Monobind TSH Non-Specific Buffer	Wheaton Glass:1.05ml	11/08/77
Monobind,Inc.	Monobind TSH Precipitating Reagent	Plastic Container w/Cap 105ml	11/08/77
Monobind,Inc.	Monobind TSH Tracer Reagent	Wheaton Glass Container 10.5ml	11/08/77
Monobind,Inc.	TSH Radioimmunoassay Test System	Kit:100 Tests	11/08/77
Monobind,Inc.	Thyroxine Radioimmunoassay Test System	Kit:100 Tests	11/08/77
Monobind,Inc.	Triiodothyronine Radioimmunoassay Test System	Kit:100 tests	11/08/77
Monobind,Inc.	T3 Adsorbent Reagent	Glass Bottle: 110ml, 50ml Plastic Bottle: 260ml.	05/15/78
Monobind,Inc.	T3 Uptake Tracer Reagent	Glass Bottle: 55ml, 30ml Plastic Bottle; 125ml.	05/15/78

Exempt Chemical Preparations—Continued

Manufacturer or Supplier	Product Name Description	Form of Product	Date of Publication
Nuclear Diagnostics,Inc.	TETRIA P.E.G. Reagent Catalog No. 16100	Polypropylene Bottle: 105ml	07/08/77
Nuclear Diagnostics,Inc.	SPINSEP-TBG Reagent Catalog No. 17100	Polypropylene bottle: 105ml	12/15/77
Nuclear Diagnostics,Inc.	TETRIA P.E.G. Antiserum Catalog No. 16100A	Polypropylene Bottle:55ml	03/10/78
Nuclear Diagnostics,Inc.	TETRIA P.E.G. Reagent Catalog No. 16100R	Polypropylene Bottle:55ml	03/10/78
Nuclear Diagnostics,Inc.	TRIA-P.E.G. Antiserum Catalog No. 12100A	Polypropylene Bottle:55ml	03/10/78
Nuclear Diagnostics,Inc.	TRIA-P.E.G. Reagent Catalog No.12100R	Polypropylene Bottle: 55ml	03/10/78
OMI International Corporation	Compound N Solution	Steel Drum:55 gallon	10/01/75
Organon Teknika Corp.	Platelin	Vial:7.3ml	03/13/72
Organon Teknika Corp.	Platelin Plus Activator	Vial:7.3ml	03/13/72
Organon Teknika Corp.	Simplastin	Vial:4.7ml, 7.3ml, and 16.5ml	03/13/72
Organon Teknika Corp.	Simplastin-A	Vial: 7.3ml	03/13/72
Organon Teknika Corp.	TGTR Set	Package:4 Tests per set	03/13/72
Organon Teknika Corp.	Russell's Viper Venom Reagent	Vial: 7.3ml containing 48 mg of powder	07/08/74
Organon Teknika Corp.	Liothyronine T3 125I	Boston Round Amber Bottle:16 ounce	01/20/76
Organon Teknika Corp.	T-4 125I Reagent	Boston Round Bottle: 2 ounce, amber bottle, 7 dr..	01/20/76
Organon Teknika Corp.	T-4 Antiserum (rabbit)	Boston Round Bottle: 4 ounce, clear bottle, 7 dr..	01/20/76
Organon Teknika Corp.	TETRA-TAB-RIA T4 Diagnostic Kit	Kit:40tests, 200tests	01/20/76
Organon Teknika Corp.	TRI-TAB T3 Uptake Diagnostic Kit	Kit: 200 Tests	01/20/76
Organon Teknika Corp.	Quality Assurance Serum Level I	Vial: 16.5 ml, 6 vials/ kit	08/17/78
Organon Teknika Corp.	Quality Assurance Serum Level II	Vial: 16.5 ml, 6 vials/ kit	08/17/78
Organon Teknika Corp.	Liothyronine T3 125I	Boston Round Amber Bottle: 4 ounce	02/18/79
Organon Teknika Corp.	TRI-TAB T3 Uptake Diagnostic Kit	Kit: 40 tests	02/18/79
Organon Teknika Corp.	PACP I & II	Kit: 36 vials/kit	03/07/80
Organon Teknika Corp.	Bovine QAS Clinical Study	6 Vials/Kit (10ml/vial)	04/28/80
Organon Teknika Corp.	Owren's Veronal Buffer for FIBRIQUIK	Bottle: 37 ml	05/07/80
Organon Teknika Corp.	ASSURE, Levels I & II	Vial: 10 ml	06/27/80
Organon Teknika Corp.	Unassayed Chemistry Serum Control, Levels I & II.	Vial: 25 ml	06/27/80
Organon Teknika Corp.	PROFILE Anticonvulsant Levels I & II	Vial: 10 ml	11/28/80
Organon Teknika Corp.	Midwest/ Illinois/ New Jersey Quality Control Program, Level I & II.	Vial: 10 ml, 10 vials / kit	04/16/81
Organon Teknika Corp.	Profile General Set	Kit Ctg: 6 vials	02/22/82
Organon Teknika Corp.	Profile General- Levels I & II	Vial:5 ml	02/22/82
Organon Teknika Corp.	TETRA-TUBE RIA T4 Diagnostic Kit	Kit:100 tests, 500 tests	06/03/83
Ortho Diagnostic Systems,Inc.	Activated ThromboFAX No.721000	Bottle: 3.2ml	09/21/71
Ortho Diagnostic Systems,Inc.	Ortho Abnormal Plasma Coagulation Control	Packet:96.5 mg	09/21/71
Ortho Diagnostic Systems,Inc.	Ortho Activated PTT Reagent	Glass Vial:30 determination size, 100	05/23/83
Ortho Diagnostic Systems,Inc.	Ortho Abnormal Coagulation Control Level I	Glass Vial: 5ml	10/25/83
Ortho Diagnostic Systems,Inc.	Ortho Abnormal Coagulation Control Level II	Glass Vial: 5ml	10/25/83
Pacific Hemostasis	Barbital Buffered Saline	Vial:100ml	05/24/84
Pacific Hemostasis	Barbital Buffered Saline with Heparin	Vial:90ml	05/24/84
Pacific Hemostasis	Diluting Fluid	Vial:20ml	05/24/84
Pantex	Immuno T3 Kit: (1)L-Triiodothyronine 125I (2)1st Antiserum (3)2nd Antiserum (4)Diluent (5)Standards.	Kit Containing Bottles: (1)10ml (2)10ml (3)50ml (4)5ml (5)3ml.	01/04/79
Pantex	Immuno-Digoxin Kit Containing: (1)Digoxin 125I (2)1st Antiserum (3) 2nd Antiserum (4)Diluent.	Kit Containing Bottles: (1)10ml (2)20ml (3)50ml (4)5ml.	01/04/79
Pantex	Immuno-Estriol 125I Kit:2nd Antiserum	Bottle:50ml	01/04/79
Pantex	Immuno-Estriol Kit: (1)Estriol 3H RIA (2)Estriol 3H Recovery (3)1st Antiserum (4)2nd Antiserum (5)Diluent (6)Buffer (7)Standards.	Kit Containing Bottles: (1)10ml (2)5ml (3)10ml (4)20ml (5)100ml (6)50ml (7)5ml.	01/04/79
Pantex	Immuno-T4 Kit: (1)Thyroxine 125I (2)1st Antiserum (3)2nd Antiserum (4)Diluent (5)Standards.	Kit Containing Bottles: (1)100ml,1000ml (2)50ml (3)100ml (4)5ml (5)3ml.	01/04/79
Pantex	Immuno-Testosterone 125I Kit: (1)Testosterone 125I (2)1st Antiserum (3)2nd Antiserum (4)Diluent (5)Standards.	Kit Containing Bottles: (1)10ml (2)10ml (3)50ml (4)100ml (5)5ml.	01/04/79
Pantex	T3 Uptake Kit: L-Triiodothyronine 125I	Bottle:100ml, 1000ml	01/04/79
Quantimetrix	Quantimetrix Anticonvulsant Serum Drug Control, Liquid Level II Control No. 17-0303-2.	Polyethylene Dropper Bottle: 15ml	04/16/86
Quantimetrix	Quantimetrix Antidepressant Serum Drug Control, Liquid Level I Control No. 17-0303-1.	Polyethylene Dropper Bottle: 15ml	04/16/86
Quantimetrix	Quantimetrix Antidepressant Serum Drug Control, Liquid Level I Control No. 17-0305-1.	Polyethylene Dropper Bottle: 15ml	04/16/86
Quantimetrix	Quantimetrix Antidepressant Serum Drug Control, Liquid Level II Control No. 17-0305-2.	Polyethylene Dropper Bottle: 15ml	04/16/86
Quin-Tec, Inc.	Quin-Tec Brightener 402	Plastic Pail: 5 gallons, Plastic Drum: 55 gallons.	10/13/81
Quin-Tec, Inc.	Quin-Tec Brightener-404	Plastic Pail: 5 gallons, Plastic Drum: 55 gallons.	10/13/81

Exempt Chemical Preparations—Continued

Manufacturer or Supplier	Product Name Description	Form of Product	Date of Publication
Research Triangle Institute	Tritium Kit for Radioimmunoassay of Delta-9 THC	Kit Containing: 20-1ml Ampules; 2- 20ml Vials; 2- 250ml Bottles.	06/27/80
Research Triangle Institute	Iodine Kit for Radioimmunoassay of Delta-9 THC	Kit Containing:20-1ml Ampules; 2-20ml Vials; 2-250ml Bottles.	10/20/80
Research Triangle Institute	Iodine Kit for Radioimmunoassay of Delta-9 THC in Blood.	Kit Containing: 22-1ml Ampules; 2-20ml Vials; 2-250ml Bottles.	07/10/81
Research Triangle Institute	11-Nor-9-carboxy-delta-9 THC Blood Standards Kit.	Kit Containing: 18-21ml Ampuls; 1-5ml Ampul.	10/26/81
Research Triangle Institute	11-Nor-9-carboxy-delta-9 THC Plasma Standards Kit.	Kit Containing: 18-21ml Ampuls; 1-5ml Ampul.	10/26/81
Research Triangle Institute	Delta-9 THC Blood Standards Kit	Kit Containing: 16-2ml Ampuls; 1-5ml Ampul.	10/26/81
Research Triangle Institute	Iodine Kit for Radioimmunoassay of 11-Nor-9-carboxy-delta-9 THC in Blood.	Kit Containing: 26-1ml Ampuls; 2-20ml Vials; 2-250ml Bottles.	10/26/81
Research Triangle Institute	Iodine Kit for Radioimmunoassay of 11-Nor-9-carboxy-delta-9 THC in Plasma.	Kit Containing:24-1ml Ampuls; 2-20ml Vials; 2-250ml Bottles.	10/26/81
Research Triangle Institute	Delta-9 THC Plasma Standards Kit	Kit Containing: 16-2ml Ampuls; 1-5ml Ampul.	11/02/81
Rowley Biochemical Institute,Inc.	Aldehyde Fuchsin Solution	Bottle: Pint, Quart, Gallon	02/02/84
Rowley Biochemical Institute,Inc.	Aldehyde Thionin Solution	Bottle:Pint, Quart, Gallon	02/02/84
Rowley Biochemical Institute,Inc.	Mayer's Hematoxylin Solution	Bottle:Pint, Quart, Gallon	02/02/84
Schering Corp.	Hepaquik	Vial:9 Dram and Plate	07/16/72
Serono Diagnostics,Inc.	rT3 Barbital Buffer	Glass Vial:120ml	10/26/84
Serono Diagnostics,Inc.	rT3-125I	Glass Vial:13ml	10/26/84
Serono Diagnostics,Inc.	rT3-Antiserum	Glass Vial:13ml	10/26/84
Sherwood Medical Company	Lancer Fibrinogen Determination,Reagent Kit Catalog No. 8889-007608.	Kit	04/17/75
Sigma Chemical Co.	LDH-P Reagent No. 125-10	Vial:30ml	05/29/73
Sigma Chemical Co.	LDH-P Reagent No. 125-100	Vial:100ml	05/29/73
Sigma Chemical Co.	SGOT 10 Assay Vial No. 55-10	Vial:30ml	05/29/73
Sigma Chemical Co.	SGOT Reagent No. 155-10	Vial:30ml	05/29/73
Sigma Chemical Co.	SGOT Reagent No. 155-100	Vial:100ml	05/29/73
Sigma Chemical Co.	SGOT Single Assay Vial No. 55-1	Vial:3ml	05/29/73
Sigma Chemical Co.	SGOT Single Assay Vial No. 55-5	Vial:15ml	05/29/73
Sigma Chemical Co.	SGPT 10 Assay Vial No. 55-10P	Vial:30ml	05/29/73
Sigma Chemical Co.	SGPT Assay Vial No. 55-5P	Vial:15ml	05/29/73
Sigma Chemical Co.	SGPT Reagent No. 155-100P	Vial:100ml	05/29/73
Sigma Chemical Co.	SGPT Reagent No. 155-10P	Vial:30ml	05/29/73
Sigma Chemical Co.	SGPT Single Assay Vial No. 55-1P	Vial:3ml	05/29/73
Sigma Chemical Co.	Acid Hematoxylin Solution, No.285-2	Bottle:25ml, 100ml	08/06/73
Sigma Chemical Co.	Mayer's Hematoxylin Solution, No. MHS-1	Bottle:25ml, 100ml	08/06/73
Sigma Chemical Co.	LDH Electrophoresis Buffer, Stock No. 705-1	Amber Jar:30ml	01/04/77
Sigma Chemical Co.	Trizma-Barbital Buffer,Stock No. 710-1	Amber Jar:30ml	01/04/77
Sigma Chemical Co.	Ammonia Reagent ,Stock No. 170-10	Vial:10ml	02/17/77
Sigma Chemical Co.	Ammonia Reagent Kit:Stock No. 170-10	Kit:10 Vials	02/17/77
Sigma Chemical Co.	Barbital Buffer ,Product No. B-6632	Polyethylene Vial:30ml	05/11/77
Sigma Chemical Co.	1-Tetrahydrocannabinol, Product No. T-4764	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co.	5,5-Diallylbarbituric Acid, Product No. D-6013	Sealed Ampule:1ml	06/30/77
Sigma Chemical Co.	Amobarbital ,Product No. A-5142	Sealed Ampule:1ml	06/30/77
Sigma Chemical Co.	Aprobarbital , Product No. A-7023	Sealed Ampule:1ml	06/30/77
Sigma Chemical Co.	Barbital,Product No. B-8632	Sealed Ampule:1ml	06/30/77
Sigma Chemical Co.	Bufotenine Monooxalate,Product No. B-8757	Sealed Ampule:1ml	06/30/77
Sigma Chemical Co.	Lysergic Acid , Product No. L-5881	Sealed Ampule:1ml	06/30/77
Sigma Chemical Co.	Mescaline HC1 , Product No. M-5153	Sealed Ampule:1ml	06/30/77
Sigma Chemical Co.	Chloral Hydrate , Product No. C-6516	Sealed Ampule:1ml	06/30/77
Sigma Chemical Co.	Methamphetamine HC1 , Product No. M-5260	Sealed Ampule:1ml	06/30/77
Sigma Chemical Co.	Glutethimide, Product No. G-3134	Sealed Ampule:1ml	06/30/77
Sigma Chemical Co.	Ibogaine HC1, Product No. I-4630	Sealed Ampule:1ml	06/30/77
Sigma Chemical Co.	Butabarbital ,Product No. B-8882	Sealed Ampule:1ml	06/30/77
Sigma Chemical Co.	DL-Amphetamine HCL , Product No. A-5017	Sealed Ampule:1ml	06/30/77
Sigma Chemical Co.	Hexobarbital, Product No. H-2007	Sealed Ampule:1ml	06/30/77
Sigma Chemical Co.	N,N-Dimethyltryptamine, Product No. D-6263	Sealed Ampule:1ml	06/30/77
Sigma Chemical Co.	Pemoline , Product No. P-3518	Sealed Ampule:1ml	06/30/77
Sigma Chemical Co.	Pentobarbital , Product No. P-3393	Sealed Ampule:1ml	06/30/77
Sigma Chemical Co.	Phenobarbital Prod. No.P-3643	Sealed Ampule:1ml	06/30/77
Sigma Chemical Co.	Secobarbital , Product No. S-4006	Sealed Ampule:1ml	06/30/77
Sigma Chemical Co.	Ammonia Reagent Stock No. 170-10	Vial:30ml	12/13/77
Sigma Chemical Co.	Ammonia in Plasma Kit	Kit: 100 tests, 30 tests	12/13/77
Sigma Chemical Co.	ALT Reagent A, Stock No.57-10	Vial: 30ml	06/27/79
Sigma Chemical Co.	ALT Reagent A, Stock No.57-2	Vial: 10ml	06/27/79
Sigma Chemical Co.	AST Reagent A, Stock No.56-10	Vial: 30ml	06/27/79

Exempt Chemical Preparations—Continued

Manufacturer or Supplier	Product Name Description	Form of Product	Date of Publication
Sigma Chemical Co.	AST Reagent A, Stock No.56-2	Vial: 10ml	06/27/79
Sigma Chemical Co.	Cannabidiol, Product No. C-6395	Sealed Ampule:1ml	08/29/79
Sigma Chemical Co.	Cannabinol, Product No. C-6520	Sealed Ampule:1ml	08/29/79
Sigma Chemical Co.	Barbital Buffer with Albumin Stock No. 880-3	Vial: 20ml	07/11/80
Sigma Chemical Co.	1-Tetrahydrocannabinol, Product No. T-4764	Vial: 1ml	05/11/81
Sigma Chemical Co.	6-Tetrahydrocannabinol, Product No. T-4889	Vial: 1ml	05/11/81
Sigma Chemical Co.	Cannabidiol, Product No. C-6395	Vial: 1ml	05/11/81
Sigma Chemical Co.	Cannabinol, Product No. C-6520	Vial: 1ml	05/11/81
Sigma Chemical Co.	D-Amphetamine Sulfate, Product No. A-3278	Vial: 1ml	05/11/81
Sigma Chemical Co.	Mephobarbital, Product No. M-3514	Vial: 1ml	05/11/81
Sigma Chemical Co.	N,N-Diethyltryptamine, Product No. D-0392	Vial: 1ml	05/11/81
Sigma Chemical Co.	Phendimetrazine, Product No. P-3524	Vial: 1ml	05/11/81
Sigma Chemical Co.	Phenylacetone, Product No. P-2024	Vial: 1ml	05/11/81
Sigma Chemical Co.	Tropacocaine, Product No. T-4516	Vial: 1ml	05/11/81
Sigma Chemical Co.	Morphine-3-B-D Glucuronide, Product No. M-4266.	Ampule: 1ml	10/21/82
Sigma Chemical Co.	Paraldehyde, Product No. D-3778	Ampule: 1ml	10/21/82
Sigma Chemical Co.	Adenosine Phosphate Substrate, Product No. 675-1.	Bottle:4 ounce	07/25/83
Sigma Chemical Co.	Glycerophosphate Substrate, Product No. 675-2	Bottle:4 ounce	07/25/83
Sigma Chemical Co.	Glycerophosphate Substrate, Product No. 704-1	Bottle:4 ounce	07/25/83
Sigma Chemical Co.	Butalbital, Product No. B-5514	Sealed Ampule:1ml	09/19/83
Sigma Chemical Co.	Cocaine Hydrochloride Product No. C-1528	Sealed Ampule:1ml	09/19/83
Sigma Chemical Co.	Codeine.Product No. C-1653	Sealed Ampule:1ml	09/19/83
Sigma Chemical Co.	Diethylpropion Hydrochloride, Product No. D-7274.	Sealed Ampule:1ml	09/19/83
Sigma Chemical Co.	Fenfluramine Hydrochloride, Product No. F-1884	Sealed Ampule:1ml	09/19/83
Sigma Chemical Co.	Methadone Hydrochloride, Product No. M-3268	Sealed Ampule:1ml	09/19/83
Sigma Chemical Co.	Methaqualone Hydrochloride, Product No. M-3393.	Sealed Ampule:1ml	09/19/83
Sigma Chemical Co.	Oxycodone Hydrochloride, Product No. O-2628	Sealed Ampule:1ml	09/19/83
Sigma Chemical Co.	Pentazocine Hydrochloride, Product No. P-7530	Sealed Ampule:1ml	09/19/83
Sigma Chemical Co.	Phentermine Hydrochloride, Product No. P-7655	Sealed Ampule:1ml	09/19/83
Sigma Chemical Co.	Thebaine, Product No. T-5270	Sealed Ampule:1ml	09/19/83
Sigma Chemical Co.	Benzphetamine Hydrochloride, Product No. B-8765.	Sealed Ampule:1ml	06/08/84
Sigma Chemical Co.	Clonazepam, Product No. C-4404	Sealed Ampule:1ml	06/08/84
Sigma Chemical Co.	Diazepam, Product No. D-9900	Sealed Ampule:1ml	06/08/84
Sigma Chemical Co.	Flurazepam Dihydrochloride, Product No. F-9134	Sealed Ampule:1ml	06/08/84
Sigma Chemical Co.	Methyprylon, Product No. M-1769	Sealed Ampule:1ml	06/08/84
Sigma Chemical Co.	Thiamylal Sodium , Product No. T-6896	Sealed Ampule:1ml	06/08/84
Sigma Chemical Co.	Alphaprodine Hydrochloride (A-1537)	Ampule:1ml	08/27/84
Sigma Chemical Co.	Meperidine Hydrochloride (M-1020)	Ampule:1ml	08/27/84
Sigma Chemical Co.	Nalorphine Hydrochloride	Ampule:1ml	08/27/84
Sigma Chemical Co.	Thiopental (T-1022)	Ampule:1ml	08/27/84
Sigma Chemical Co.	Dextropropoxyphene Hydrochloride (D-8901)	Ampule:1ml	09/27/84
Sigma Chemical Co.	Methylphenidate Hydrochloride (M-1145)	Ampule:1ml	10/31/84
Sigma Chemical Co.	Allylcyclopentylbarbituric Acid (A-7787)	Sealed Ampule:1ml	04/10/85
Sigma Chemical Co.	Allylisobutylbarbituric Acid (A-1038)	Sealed Ampule:1ml	04/10/85
Sigma Chemical Co.	Alphenal (A-1163)	Ampule:1ml	04/10/85
Sigma Chemical Co.	Ethinamate (E-8508)	Ampule:1ml	04/10/85
Sigma Chemical Co.	Chlorazepam Dipotassium Salt, (C-9531)	Ampule:1ml	05/24/85
Sigma Chemical Co.	Lorazepam (L-0140)	Ampule:1ml	05/24/85
Sigma Chemical Co.	Medazepam (M-7646)	Ampule:1ml	05/24/85
Sigma Chemical Co.	Meprobamate (M-0271)	Ampule:1ml	05/24/85
Sigma Chemical Co.	Butethal (B-7516)	Ampule:1ml	09/05/85
Sigma Chemical Co.	Chlordiazepoxide (C-4782)	Ampule:1ml	09/05/85
Sigma Chemical Co.	Diphenoxylate (D-0780)	Ampule:1ml	09/05/85
Sigma Chemical Co.	Mebutamate (M-3772)	Ampule:1ml	09/05/85
Sigma Chemical Co.	Antibody Sensitized Sheep Erythrocytes (EA7S)	Vials:2ml and 5X 2ml	04/02/86
Sigma Chemical Co.	Drug Standard Mix 1, D-3155	Ampule:2ml	04/18/86
Sigma Chemical Co.	Drug Standard Mix 2, D-3030	Ampule:2ml	04/18/86
Smart Chemical Company	Regal 180XL	Plastic Drum:55 gallon	06/12/86
Supelco,Inc.	Amobarbital, No.04-9170	Ampule: 1ml	12/22/72
Supelco,Inc.	Amphetamine No.04-9165	Ampule: 1ml	12/22/72
Supelco,Inc.	Aprobarbital No.04-9171	Ampule: 1ml	12/22/72
Supelco,Inc.	Codeine No.04-9161	Ampule: 1ml	12/22/72
Supelco,Inc.	Cyclobarbital No.04-9175	Ampule: 1ml	12/22/72
Supelco,Inc.	Glutethimide No.04-9173	Ampule: 1ml	12/22/72
Supelco,Inc.	Heroin No.04-9162	Ampule: 1ml	12/22/72
Supelco,Inc.	Hexobarbital No.04-9177	Ampule: 1ml	12/22/72

Exempt Chemical Preparations—Continued

Manufacturer or Supplier	Product Name Description	Form of Product	Date of Publication
Supelco,Inc.	Mephobarbital No.04-9178	Ampule: 1ml	12/22/72
Supelco,Inc.	Methadone No.04-9163	Ampule: 1ml	12/22/72
Supelco,Inc.	Methamphetamine No.04-9168	Ampule: 1ml	12/22/72
Supelco,Inc.	Alk Mix No. 04-9210	Vial:1ml	08/28/73
Supelco,Inc.	Cannabidiol, No.04-9221	Ampule:1ml	11/27/74
Supelco,Inc.	Cannabinol, No.04-9235	Ampule:1ml	11/27/74
Supelco,Inc.	Delta-1 THC, No.04-9237	Ampule:1ml	11/27/74
Supelco,Inc.	Delta-6 THC, No.04-9238	Ampule:1ml	11/27/74
Supelco,Inc.	Cocaine, No.04-9188	1000 mcg /Glass Ampule	06/05/75
Supelco,Inc.	Methaqualone, No.04-9183	1000 mcg /Glass Ampule	06/05/75
Supelco,Inc.	Psilocybin, No.04-9191	1000 mcg /Glass Ampule	06/05/75
Supelco,Inc.	Anticonvulsant Mixture No.1; No. 04-9202	Glass Serum Bottle:50ml	06/16/77
Supelco,Inc.	Morphine No. 04-9160	Glass Ampule:1000mcg	03/08/78
Supelco,Inc.	Pentobarbital No. 04-9179	Glass Ampule:1000mcg	03/08/78
Supelco,Inc.	Phenobarbital No. 04-9181	Glass Ampule:1000mcg	03/08/78
Supelco,Inc.	Secobarbital No. 04-9180	Glass Ampule:1000mcg	03/08/78
Supelco,Inc.	Antiepileptic Calibration Standard Kit, No.4-9259	Kit: 3 Ampules	05/21/80
Supelco,Inc.	Antiepileptic Calibration Standards, Nos.4-9256, 4-9257, 4-9258.	Glass Ampule:5ml	05/21/80
Supelco,Inc.	Dextroamphetamine, No.4-9185	Glass Ampule:1ml	05/21/80
Supelco,Inc.	Meprobamate, No.4-9184	Glass Ampule:1ml	05/21/80
Supelco,Inc.	Amph. Mix Catalog No. 4-9205	Glass Ampule:2ml	06/09/86
Supelco,Inc.	Barb. Mix 1,Catalog No. 4-9200	Glass Ampule:2ml	06/09/86
Supelco,Inc.	Barb. Mix 2,Catalog No. 4-9201	Glass Ampule:2ml	06/09/86
Supelco,Inc.	Barbital,Catalog No. 4-9279	Glass Ampule:10ml	06/09/86
Syva Co	Antiepileptic Drug Control	Vial:10ml , Lyophilized	08/27/74
Syva Co	Emit AED-No. 1 Calibrator	Vial:3ml , Lyophilized	08/27/74
Syva Co	Emit AED-No. 2 Calibrator	Vial:3ml , Lyophilized	08/27/74
Syva Co	Emit AED-No. 3 Calibrator	Vial:3ml , Lyophilized	08/27/74
Syva Co	Emit AED-No. 4 Calibrator	Vial:3ml , Lyophilized	08/27/74
Syva Co	Emit AED-No. 5 Calibrator	Vial:3ml , Lyophilized	08/27/74
Syva Co	Emit Phenobarbital Enzyme Reagent B	Vial:6 ml , Lyophilized	08/27/74
Syva Co	Emit Tox Serum Benzodiazepine Assay Kit Containing: Emit Enzyme Reagent B.	Bottle:3ml	02/01/79
Syva Co	Emit d.a.u. Phencyclidine Assay Kit Containing: (1)Emit Phencyclidine Enzyme Reagent B.	Bottle:6ml	02/01/79
Syva Co	Emit-Tox Serum Calibrators;Low and Medium	Bottle:3ml	02/01/79
Syva Co	Emit Serum Barbiturate-Enzyme Reagent B	Bottle: 3ml	05/22/79
Syva Co	Emit- Tox Serum Barbiturate Assay	Kit:50 tests	05/22/79
Syva Co	Emit d.a.u. Cannabinoid Urine Calibrator Set	Kit:3 Vials, 3ml Each	01/03/80
Syva Co	Emit-st Amphetamine Assay	Vial:3ml, 80 vials/kit	10/03/80
Syva Co	Emit-st Barbiturate Assay	Vial:3ml, 80 vials/kit	10/03/80
Syva Co	Emit-st Benzodiazepine Assay	Vial:3ml, 80 vials/kit	10/03/80
Syva Co	Emit-st Opiate Assay	Kit:3ml, 80 vials/kit	10/03/80
Syva Co	Emit-st Urine Calibrator A	Vial:1ml, 3 vials/kit	10/03/80
Syva Co	Emit-st Urine Controls A	Vial:1ml, 6 vials/kit	10/03/80
Syva Co	Emit-st Phencyclidine Assay	Vial:3ml, 80 vials/kit	01/07/81
Syva Co	Emit-st Serum Barbiturate Assay	Vial:3ml, 80 vials/kit	02/16/81
Syva Co	Emit-st Serum Benzodiazepine Assay	Vial:3ml, 80 vials/kit	02/16/81
Syva Co	Emit-st Serum Calibrator	Vial:3ml	02/16/81
Syva Co	Emit-st Serum Controls	Vial:3ml, 2 vials/kit	02/16/81
Syva Co	Emit-st Serum Phencyclidine Assay	Vial:3ml, 80 vials/kit	02/16/81
Syva Co	Emit-st Cannabinoid Calibrator	Vial:3ml, 2 vials/kit	07/10/81
Syva Co	Emit-st Cannabinoid Controls	Vial:3ml, 2 vials/kit	07/10/81
Syva Co	Emit-st Urine Cocaine Metabolite Assay	Vial:3 ml, 80 Vials/Kit	03/16/82
Syva Co	Emit-st Urine Methadone Assay	Vial:3ml ,80 vials/kit	03/22/82
Syva Co	Emit-d.a.u. Methaqualone Assay	Kit:100 tests	04/27/82
Syva Co	Emit-st Urine Methaqualone Assay	Kit:80 Vials	04/27/82
Syva Co	Emit-st Urine Methaqualone Calibrator	Vial:3ml	04/27/82
Syva Co	Emit-st Urine Methaqualone Controls	Vial:3ml	04/27/82
Syva Co	Advance T-3 Uptake Assay	Kit:100 tests	05/11/82
Syva Co	Advance Thyroxin Assay	Kit:100 tests	05/11/82
Syva Co	Emit-Qst Phenobarbital Assay, Catalog Number 6D819.	Kit:50 Vials	01/18/84
Syva Co	Emit d.a.u. Low Calibrator A	Bottle:5ml	07/20/84
Syva Co	Emit d.a.u.Medium Calibrator A	Bottle:5ml	07/20/84
Syva Co	Emit d.a.u. Medium Calibrator B	Bottle:5ml	08/03/84
Syva Co	Emit d.a.u.Low Calibrator B	Bottle:5ml	08/03/84
Syva Co	Emit d.a.u. Cannabinoid Assay Catalog No. 3M019.	Kit:100 tests	09/24/84

Exempt Chemical Preparations—Continued

Manufacturer or Supplier	Product Name Description	Form of Product	Date of Publication
Syva Co.	Emit d.a.u. Amphetamine Assay Catalog Nos. 3C019, 3C119.	Kit:100 tests, 1000 tests	09/27/84
Syva Co.	Emit d.a.u. Benzodiazepine Assay Catalog Nos. 3F019, 3F119.	Kit:100 tests, 1000 tests	09/27/84
Syva Co.	Emit d.a.u. Cocaine Metabolite Assay Catalog Nos. 3H019, 3H119.	Kit:100 tests, 1000 tests	09/27/84
Syva Co.	Emit d.a.u. Opiate Assay Catalog Nos. 3B019, 3B119.	Kit:100 tests, 1000 tests	09/27/84
Syva Co.	Emit d.a.u.Barbiturate Assay Catalog Nos. 3D019, 3D119.	Kit:100 tests, 1000 tests	09/27/84
Syva Co.	Emit-st Cannabinoid Assay Catalog No. 3M319	Vial:6ml, 80 Vials/Kit	09/27/84
Syva Co.	Emit 700 Calibrator A Catalog No. 3A919	Bottle:3ml	10/05/84
Syva Co.	Emit 700 Calibrator B Catalog No. 3A969	Bottle:3ml	10/05/84
Syva Co.	Emit d.a.u. Methadone Assay Catalog Nos. 3E019, 3E119.	Kit:100 tests, 1000 tests	10/05/84
Syva Co.	Emit 700 Cannabinoid (100) Calibrator Catalog No. 3M969.	Bottle:3ml	10/09/84
Syva Co.	Emit 700 Cannabinoid Control Set Catalog No. 3M989.	2 Bottles:3ml	10/09/84
Syva Co.	Emit 700 Control Set A Catalog No. 3A939	2 Bottles:3ml	10/09/84
Syva Co.	Emit 700 Control Set B Catalog No. 3A989	2 Bottles:3ml	10/09/84
Syva Co.	Emit 700 Amphetamine Assay Catalog No. 3C919.	Bottle:180ml	10/12/84
Syva Co.	Emit 700 Barbiturate Assay Catalog No.3D919	Bottle:180ml	10/12/84
Syva Co.	Emit 700 Cannabinoid (100) Assay Catalog No. 3M919.	Bottle:180ml	10/12/84
Syva Co.	Emit 700 Cocaine Metabolite Assay Catalog No. 3H919.	Bottle:180ml	10/12/84
Syva Co.	Emit 700 Opiate Assay Catalog No.3B919	Bottle:180ml	10/12/84
Syva Co.	Emit 700 Phencyclidine Assay Catalog No. 3J919	Bottle:180ml	10/12/84
Syva Co.	Emit 700 Methaqualone Assay Catalog No. 3Q919.	Bottle:180ml	10/19/84
Syva Co.	AccuLevel Phenobarbital Test Control Stock Solution.	Flask:50ml	10/31/85
Syva Co.	Emit Qst Primidone Assay Catalog No. 60819	Glass Vial: 6ml, 50 Vials/Kit	11/12/85
Syva Co.	AccuLevel Phenobarbital Test Kit (Catalog No.10C019) Contains: (1)AccuLevel Phenobarbital Control (2)AccuLevel Reagent I.	(1)Glass Vial:6ml; (2)Glass Vial:9ml, 12 Vials per test kit.	01/24/86
Syva Co.	Emit d.a.u. Cannabinoid 20ng Assay Catalog No. 3M619.	Kit:100 tests	02/10/86
Syva Co.	Emit d.a.u. Cannabinoid 20ng Enzyme Reagent B	Vial:10ml Lyophilized Powder	02/10/86
Syva Co.	Emit Qst Phenobarbital Bulk Powder Reagent	Steel Drum:7 gallon	06/05/86
Syva Co.	Emit 700 Cannabinoid (20) Assay, Catalog No. 3M959.	Plastic Bottle: 180ml	09/15/86
Technicon	Ammonium Sulfate Reagent No. T01-1139	Glass Bottle: 1 and 4 liters	01/31/80
Technicon	TQC T.D.M. Calibrator 1, No. T13-1150	Glass Vial:15ml	01/31/80
Technicon	TQC T.D.M. Control A ,No. T13-1115	Glass Vial:15ml	01/31/80
Technicon	Set Point RA-1000 Systems T4 Standards Product No. T03-1481-01.	Glass Bottles:5ml (Standard 1 Fill Volume=5ml) (Standards 2-6 Fill Volume=1.5ml).	08/02/85
Technicon	T4 Agglutinator Reagent No.T11-1484	Glass Bottle:10ml	08/02/85
Tempil Division. Big Three Industries, Inc..	Tempilaq Striped Mylar	Plastic Sheet: 6 by 12 in. 50 sheets per envelope.	09/22/76
The Theta Corp.	Allobarbital No.FP305	Vial: 2ml	04/10/73
The Theta Corp.	Amobarbital No. FP313	Vial:2ml	04/10/73
The Theta Corp.	Amphetamine No. FP604	Vial: 2ml	04/10/73
The Theta Corp.	Anileridine No. FP203	Vial:2ml	04/10/73
The Theta Corp.	Aprobarbital No. FP306	Vial: 2ml	04/10/73
The Theta Corp.	Barbital No.FP314	Vial: 2ml	04/10/73
The Theta Corp.	Butabarbital No. FP315	Vial:2ml	04/10/73
The Theta Corp.	Butalbital No. FP307	Vial:2ml	04/10/73
The Theta Corp.	Chloral Betaine No. FP502	Vial:2ml	04/10/73
The Theta Corp.	Chloral Hydrate No. FP501	Vial:2ml	04/10/73
The Theta Corp.	Cocaine No. FP601	Vial:2ml	04/10/73
The Theta Corp.	Codeine No. FP102	Vial:2ml	04/10/73
The Theta Corp.	Talbutal No. FP311	Vial:2ml	04/10/73
The Theta Corp.	Meprobamate No. FP402	Vial:2ml	04/10/73
The Theta Corp.	Thiamylal No. FP322	Vial:2ml	04/10/73
The Theta Corp.	Methamphetamine No. FP603	Vial:2ml	04/10/73
The Theta Corp.	Meperidine No.FP201	Vial:2ml	04/10/73
The Theta Corp.	Methohexital No. FP304	Vial:2ml	04/10/73

Exempt Chemical Preparations—Continued

Manufacturer or Supplier	Product Name Description	Form of Product	Date of Publication
The Theta Corp.	Vinbarbital No. FP312	Vial:2ml	04/10/73
The Theta Corp.	Monthly Urine Test No. FPM-103	Vial:2ml	04/10/73
The Theta Corp.	Weekly Urine Test (FDA) No. FPM-101	Vial:2ml	04/10/73
The Theta Corp.	Oxycodone No. FP109	Vial:2ml	04/10/73
The Theta Corp.	Weekly Urine Test (States) No. FPM-102	Vial:2ml	04/10/73
The Theta Corp.	Mephobarbital No. FP301	Vial:2ml	04/10/73
The Theta Corp.	Marker Mixture No. FPM-201	Vial:2ml	04/10/73
The Theta Corp.	Phenazocine No. FP213	Vial:2ml	04/10/73
The Theta Corp.	Marker Mixture No. FPM-104	Vial:2ml	04/10/73
The Theta Corp.	Phenobarbital No. FP320	Vial:2ml	04/10/73
The Theta Corp.	Levorphanol No. FP208	Vial:2ml	04/10/73
The Theta Corp.	Probarbital No. FP319	Vial:2ml	04/10/73
The Theta Corp.	Hydromorphone No. FP103	Vial:2ml	04/10/73
The Theta Corp.	Methadone No. FP206	Vial:2ml	04/10/73
The Theta Corp.	Hydrocodone No. FP107	Vial:2ml	04/10/73
The Theta Corp.	Methylphenidate No. FP605	Vial:2ml	04/10/73
The Theta Corp.	Hexabarbital No. FP303	Vial:2ml	04/10/73
The Theta Corp.	Oxymorphone No. FP104	Vial:2ml	04/10/73
The Theta Corp.	Heptabarbital No. FP309	Vial:2ml	04/10/73
The Theta Corp.	Phenmetrazine No. FP606	Vial:2ml	04/10/73
The Theta Corp.	Glutethimide No. FP404	Vial:2ml	04/10/73
The Theta Corp.	Secobarbital No. FP310	Vial:2ml	04/10/73
The Theta Corp.	Morphine No. FP101	Vial:2ml	04/10/73
The Theta Corp.	Pentobarbital No. FP318	Vial:2ml	04/10/73
The Theta Corp.	Piminodine No. FP202	Vial:2ml	04/10/73
The Theta Corp.	Metharbital No. FP302	Vial:2ml	04/10/73
The Theta Corp.	Fentanyl No. FP211	Vial:2ml	04/10/73
The Theta Corp.	Ethylmorphine No. FP106	Vial:2ml	04/10/73
The Theta Corp.	Ethchlorvynol No. FP508	Vial:2ml	04/10/73
The Theta Corp.	Diphenoxylate No. FP205	Vial:2ml	04/10/73
The Theta Corp.	Dihydrocodeine No. FP108	Vial: 2ml	04/10/73
The Theta Corp.	Paraldehyde No.FP506	Vial:2ml	04/10/73
The Theta Corp.	Thiopental No. FP321	Vial:2ml	04/10/73
The Theta Corp.	Cyclobarbital No. FP308	Vial:2ml	04/10/73
The Theta Corp.	Test Mixture TM No. 2	Vial:2ml	06/19/74
The Theta Corp.	Test Mixture TM No. 1	Vial:2ml	06/19/74
The Theta Corp.	Test Mixture SP No. 4	Vial:2ml	06/19/74
The Theta Corp.	Test Mixture SM No. 3	Vial:2ml	06/19/74
The Theta Corp.	Test Mixture SM No. 1	Vial:2ml	06/19/74
The Theta Corp.	Test Mixture SM No. 2	Vial:2ml	06/19/74
The Theta Corp.	Test Mixture SP No. 3	Vial:2ml	06/19/74
The Theta Corp.	Test Mixture SP No. 2	Vial:2ml	06/19/74
The Theta Corp.	Test Mixture SP No. 1	Vial:2ml	06/19/74
The Theta Corp.	Test Mixture SM No. 4	Vial:2ml	06/19/74
The Theta Corp.	FP512	Vial:2ml	03/08/79
The Theta Corp.	FP405	Vial:2ml	03/08/79
The Theta Corp.	FP513	Vial:2ml	03/08/79
The Theta Corp.	FP515	Vial:2ml	03/08/79
The Theta Corp.	FP207	Vial:2ml	09/04/80
The Theta Corp.	FP556	Vial:2ml	04/10/84
The Theta Corp.	FP214	Vial:2ml	04/10/84
The Theta Corp.	FP327	Vial:2ml	04/10/84
The Theta Corp.	FP601A	Vial:2ml	05/15/84
The Theta Corp.	FP607	Vial:2ml	05/15/84
The Theta Corp.	FP210	Vial:2ml	05/15/84
The Theta Corp.	FP609	Vial:2ml	05/15/84
The Theta Corp.	FP514	Vial:2ml	05/15/84
The Theta Corp.	FP416	Vial:2ml	05/15/84
The Theta Corp.	FP412	Vial:2ml	05/15/84
The Theta Corp.	FP411	Vial:2ml	05/15/84
Travenol Labs (Clinical Assays Division).	Assay buffer CA-742	Polypropylene Bottle: 150ml	03/14/77
Travenol Labs (Clinical Assays Division).	Rabbit Anti-Human TSH Serum	Glass vial: 20ml	11/16/77
Travenol Labs (Clinical Assays Division).	CA-420 Anticonvulsant Drug Control, Level II	Septem sealed glass vial: 2ml	11/16/77
Travenol Labs (Clinical Assays Division).	CA-384 Phenobarbital 1:101 dilution of 100 ug/ml.	Septem sealed glass vial: 2ml	11/16/77
Travenol Labs (Clinical Assays Division).	CA-419 Anticonvulsant Drug Control, Level I	Septem sealed glass vial: 2ml	11/16/77

Exempt Chemical Preparations—Continued

Manufacturer or Supplier	Product Name Description	Form of Product	Date of Publication
Travenol Labs (Clinical Assays Division).	CA-380 Phenobarbital Serum Standard 1:101 dilution of 1.0 ug/ml.	Septem sealed glass vial: 2ml	11/16/77
Travenol Labs (Clinical Assays Division).	CA-381 Phenobarbital Serum Standard 1:101 dilution of 3.0 ug/ml.	Septem sealed glass vial: 2ml	11/16/77
Travenol Labs (Clinical Assays Division).	Anticonvulsant Drug Controls	Kit: 500 determinations, 50 determinations.	11/16/77
Travenol Labs (Clinical Assays Division).	Human TSH standards, 2.0 ulU/ml, 5.0 ulU/ml, 10 ulU/ml, 20 ulU/ml, 50 ulU/ml.	Glass vials: 2ml	11/16/77
Travenol Labs (Clinical Assays Division).	(125I) Human TSH Radioimmunoassay kit	Kit: 125 determinations	11/16/77
Travenol Labs (Clinical Assays Division).	(125I) Human TSH Tracer	Glass Vial: 6ml	11/16/77
Travenol Labs (Clinical Assays Division).	CA-382 Phenobarbital Serum Standard 1:101 dilution of 10 ug/ml.	Septem sealed glass vial: 2ml	11/16/77
Travenol Labs (Clinical Assays Division).	CA-383 Phenobarbital Serum Standard 1:101 dilution of 30 ug/ml.	Septem sealed glass vial: 2ml	11/16/77
Utak Laboratories	Toxicology Urine Control-Dried Catalog Nos. 44650, 44651, 44652, 44653.	Bottle:1 oz.	05/24/76
Utak Laboratories	Toxicology Serum Control-Dried Catalog Nos. 44610, 44612, 44632, 44635, 44636, 44637, 44642, 44645, 44646, 44647, 44658..	In Bottles	05/24/76
Utak Laboratories	Toxicology Control-High Range Anticonvulsants No. 71910.	Bottle:10ml	04/14/80
Utak Laboratories	Toxicology Control-High Range Barbiturates No. 71916.	Bottle:10ml	04/14/80
Utak Laboratories	Toxicology Control-Mid Range Anticonvulsants No. 71911.	Bottle:10ml	04/14/80
Utak Laboratories	Toxicology Control-Mid Range Barbiturates No. 71917.	Bottle:10ml	04/14/80
Utak Laboratories	Toxicology Control-Mid Range Hypnotic Plus Salicylate, No. 71921.	Bottle:10ml	04/14/80
Utak Laboratories	Toxicology Control-Mid Range Hypnotic Plus Acetaminophem, No. 71919.	Bottle:10ml	04/14/80
Utak Laboratories	Toxicology Control-High Range Hypnotic Plus Salicylate, No. 71920.	Bottle:10ml	04/14/80
Utak Laboratories	Toxicology Control-High Range Hypnotic Plus Acetaminophem, No. 71918.	Bottle:10ml	04/14/80
Utak Laboratories	Toxicology Urine Control Dried ₵88100	Bottle:20ml	07/29/82
Utak Laboratories	Toxicology Serum Control Dried ₵88112	Bottle:10ml	07/29/82
Utak Laboratories	Toxicology Serum Control Dried ₵88113	Bottle:10ml	07/29/82
Utak Laboratories	Toxicology Serum Control Dried ₵88120	Bottle:10ml	07/29/82
Utak Laboratories	Toxicology Urine Control Dried ₵88121	Bottle:10ml	07/29/82
Wien Laboratories,Inc.	Coated Charcoal Suspension No. T-5077	Bottle:4oz.	12/22/72
Wien Laboratories,Inc.	Buffer Reagent pH 8.6 Catalog No. T-5065	Bottle:4oz.	12/22/72
Wien Laboratories,Inc.	ANS Buffer pH 8.6 Catalog No. T-5144	Plastic Bottle:100ml	05/14/75
Wien Laboratories,Inc.	T3 Buffer Reagent Catalog No. T-5156	Plastic Vial:20ml	09/13/78

[FR Doc. 87-5248 Filed 3-26-87; 8:45 am]
BILLING CODE 4410-09-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 200, 882, and 886

[Docket No. R-87-1287; FR 2223]

Lead-Based Paint Hazard Elimination in Certain FHA Single Family and Multifamily Housing Programs; Section 8 Housing Assistance Payments Program for Substantial Rehabilitation; and Section 8 Existing Housing Certificate and Moderate Rehabilitation Programs; Correction

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

ACTION: Final rule correction.

SUMMARY: This document corrects a final rule that appeared in the Federal Register on Thursday, January 15, 1987 (52 FR 1876) which dealt with the elimination of the hazard of lead-based paint in FHA single and multifamily mortgage insurance programs and in Section 8 housing assistance programs. There are eleven corrections made to the final rule text. Four of them (items 2, 5, 9 and 11 below) correct the date upon which requirements in the rule relating to lead-based paint testing on chewable surfaces will take effect. The corrections are necessary due to errors made at the time of publication in calculating implementation dates for certain provisions in the rule. Three corrections (items 1, 4 and 7) correct erroneous references. Four corrections (items 3, 6, 8 and 10) either correct cross references contained in the rule or make the regulatory text consistent with the Preamble rule description.

EFFECTIVE DATE: March 2, 1987.

FOR FURTHER INFORMATION CONTACT: Grant E. Mitchell, Assistant General Counsel for Fiscal Management and Energy Programs, Office of General Counsel, Room 10248, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-6550. (This is not a toll-free number.)

Accordingly, the Department is correcting FR Doc. 87–998 published on January 15, 1987, as follows:

PART 200—[CORRECTED]

1. On page 1892, in the first column, § 200.815(d) is amended by removing the words "or the purchaser".

2. On page 1892, in the second column, the last sentence of § 200.820(a) is amended by removing the words "March 16, 1987" and substituting the words "May 1, 1987".

3. On page 1893, in the first column, § 200.825(b) is amended by removing the "(1)" and "(2)" designations, and removing "paragraph (b)(1) of this section" and substituting "this paragraph".

4. On page 1893, in the second column, at lines 21 and 22, § 200.825(c)(2) is amended by removing the words "or the purchaser".

PART 882—[CORRECTED]

5. On page 1893, in the third column, § 882.109(i)(1) is amended by removing the words "is made on or after May 26, 1987" in the third sentence and substituting the words "or periodic inspection under § 882.211(b) is made on or after May 1, 1987".

6. On page 1894, in the first column, § 882.109(i)(4) is revised to read as follows:

(4) *Chewable surfaces.* In the case of a unit constructed prior to 1973, for a Family which includes a child under the age of seven years with an identified EBL condition, the initial inspection under § 882.209(h)(1), or a periodic inspection under § 882.211(b), shall include a test for lead-based paint on chewable surfaces. Testing shall be conducted by a State or local health or housing agency or by an inspector certified by a State or local health or housing agency. Lead content shall be tested by using an X-ray flourescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm^2 or higher using an XRF shall be considered positive for presence of lead-base paint. Where lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii) shall be required in accordance with § 882.209(h) or § 882.211 (b) and (c), as appropriate, and correction shall be completed within the time limits set forth in paragraph (i)(3) of this section.

7. On page 1894, in the second column, the second sentence in § 882.109(i)(7) is revised to read as follows:

If a unit requires testing or if the unit requires treatment of chewable surfaces based on the testing, the PHA shall keep indefinitely the test results and, if applicable, the owner certification of treatment.

8. On page 1894, in the second column, § 882.209, paragraph (c)(9) is correctly designated as paragraph (c)(10).

9. On page 1894, in the third column, at lines 12 and 13, the third sentence of § 882.404(c)(1) is amended by removing the words "is made on or after [March 16, 1987]" and substituting the words "or periodic inspection under § 882.516(b) is made on or after May 1, 1987".

10. On page 1895, in the first column, the last sentence of § 882.404(c)(4) is removed and the following is substituted:

"Where lead-based paint on chewable surfaces is identified at initital inspection, covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii) shall be included in the specific work items referred to in § 882.504(a). Where lead-based paint on chewable surfaces is discovered at periodic inspection, covering or removal of the paint surface in accordance with 24 CFR 35.24 (b)(2)(ii) shall be completed within the time limits set forth in paragraph (c)(3) of this section."

PART 886—[CORRECTED]

11. On page 1895, in the second column, the fourth sentence of § 886.113(i)(1) is amended by removing the words "March 16, 1987" and substituting the words "May 1, 1987".

Dated: March 23, 1987

Grady J. Morris,

Assistant General Counsel for Regulations.

[FR Doc. 87–6711 Filed 3–26–87; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[01 87 02]

Special Anchorage Area; Fore River, Portland Harbor, Portland, ME

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the description of the small-craft anchorage, located in Portland Harbor, Maine. This change will constitute a latitude and longitude coordinate description of the point marked by Anchorage Buoy "D". No other changes will be made to the anchorage. Anchorage buoy "D" serves as a point of reference in the description of the above mentioned anchorage. The buoy has recently been relocated (see Discussion below). Consequently, there is confusion as to the location of the anchorage.

The Coast Guard will remove Anchorage Buoy "D" and no longer use it as a point of reference in describing the special anchorage. This action will amend the description of the anchorage by replacing reference to Anchorage Buoy "D" with the actual geographic coordinates. This will clear up any confusion as to the location of the anchorage.

EFFECTIVE DATE: April 27, 1987.

FOR FURTHER INFORMATION CONTACT: QMC Thomas M. Hall, (617) 223–8337.

SUPPLEMENTARY INFORMATION: Notification of the proposed rule making was published by the First Coast Guard District in the **Federal Register** dated January 2, 1987, and the First Coast Guard District Local Notice to Mariners issues 3–87 and 5–87.

Drafting Information

The principal persons involved in this rule making are QMC Thomas Hall, Aids to Navigation Branch, First Coast Guard District; and LT. Dana J. St. James, Project Attorney First Coast Guard Legal Office.

Discussion of Comments

In the past, Anchorage Buoy "D" has marked the northernmost point of the small-craft anchorage described in Title 33 CFR, Navigation and Navigable Waters, Part 110-Anchorage Regulations, Subpart A, Special Anchorage. A floating dock has since been constructed which does not conflict with the boundaries of the anchorage, but it does conflict with the watch circle of Buoy "D". The Aids to Navigation Team stationed at USCG GROUP PORTLAND deemed it

necessary to move the buoy so as not to cause damage to the floating dock. The results of this relocation have caused confusion as to the proper boundary of the small-craft anchorage. The Coast Guard feels that by removing the buoy and changing the wording in the Code of Federal Regulations there will be no confusion as to the boundaries of the anchorage, nor will any damage be caused by the close proximity of a buoy to the floating dock. The new point of reference replacing Anchorage Buoy "D" will be described as position: 43 degrees, 39 minutes, 6 seconds of North latitude, and 70 degrees, 14 minutes, 43 seconds of West longitude. This is the same position of Buoy "D" as indicated in the Federal Register.

Economic Assessment and Certification

This proposed change is considered to be non-major under Executive Order 12291 of Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal has been found to be so minimal that a full regulatory evaluation is unnecessary. There should be no economic impact with the removal of Buoy "D", and making the appropriate change in the Code of Federal Regulations, to reflect the change in the boundary description of the described special anchorage.

Since the impact of this change in the description of the special anchorage is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorages.

PART 110—[AMENDED]

Final Regulations

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

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

Authority: 33 U.S.C. 471, 2030; 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.0501(g).

2. Section 110.6a is revised to read as follows:

§ 110.6a Fore River, Portland Harbor, Portland, Maine.

The water area beginning at a point on the shoreline near the Coast Guard Base in Position 43–38 43″N and 070–14 49″W; thence 319 to position 43–38 55″N, 070–15 03″W; thence 50 to position 43–39 06″N: 070– 14 43″W: thence 161 to mainland; and thence southwesterly along the shore to the point of beginning.

Dated: March 23, 1987.

R.L. Johnson,

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

[FR Doc. 87–6577 Filed 3–26–87; 8:45 am]

BILLING CODE 4910–14–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–47

[FPMR Amdt. H–161]

Disposals to Public Agencies

AGENCY: Federal Property Resources Service, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the regulations concerning disposals to public agencies to incorporate the provisions of Executive Order 12372. This Executive Order provided new procedures for intergovernmental consultation on Federal programs and activities and canceled the OMB Circular A–95 procedures which required the States to establish clearinghouses to review and comment upon certain proposed Federal actions.

EFFECTIVE DATE: The regulation is March 27, 1987.

FOR FURTHER INFORMATION CONTACT: James M. Kearns, Office of Real Estate Policy and Sales, (202) 535–7052.

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in cost to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 42 CFR Part 101–47

Surplus Government property, Government property management.

PART 101–47—UTILIZATION AND DISPOSAL OF REAL PROPERTY

1. The authority citation for 41 CFR Part 101–47 continues to read as follows:

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

2. The table of contents for Part 101–47 is amended by revising one entry as follows:

101–47.4906–2 Sample letter to a State single point of contact.

Subpart 101–47.3—Surplus Real Property Disposal

3. Section 101–47.303–2 is amended by revising the introductory paragraph, paragraphs (b), (d), (e), (e)(1), (f), and (g) to read as follows:

§ 101–47.303–2 Disposals to public agencies.

The disposal agency shall comply with the provisions of Executive Order 12372 and 41 CFR Subpart 101–6.21, which enables a State to establish the single point of contact process or other appropriate procedures to review and comment on the compatibility of a proposed disposal with State, regional and local development plans and programs. When a single point of contact transmits a State review process recommendation, the Federal agency receiving the recommendation must either accept the recommendation; reach a mutually agreeable solution with the party(s) preparing the recommendation; or provide the single point of contact with a written explanation for not accepting the recommendation or reaching a mutually agreeable solution. If there is nonaccommodation, the agency is generally required to wait 10 calendar days after receipt, by the single point of contact, of an explanation before taking final action. The single point of contact is presumed to have received written notification 5 calendar days after the date of mailing of such notification. The 10-day waiting period may be waived if the agency determines that because of unusual circumstances this delay is not feasible.

* * * * *

(b) Before public advertising, negotiation, or other disposal action, the disposal agency shall give notice to eligible public agencies that the property has been determined surplus. Surplus real property may be procured by public agencies under the statutes cited in § 101–47.4905. A notice to public agencies of surplus determination shall be prepared following the sample shown in § 101–47.4906. This notice shall be transmitted by a letter prepared following the sample shown in § 101–47.4906–1. A copy of this notice shall also be sent simultaneously to the State single point of contact, under a covering letter prepared following the sample

shown in § 101–47.4906–2. The point of contact shall be advised that no final disposal action will be taken for 60 calendar days from the date of notification to allow time for the point of contact to provide any desired comments. The disposal agency will wait the full 60 calendar days, even if the comments are received early, to allow time for the point of contact to send additional or revised comments.

(1) Notice for property located in a State shall be given to the Governor of the State, to the county clerk or other appropriate officials of the county in which the property is located, to the mayor or other appropriate officials of the city or town in which the property is located, to the head of any other local governmental body known to be interested in and eligible to acquire the property, and to the point of contact established by the State or under other appropriate procedures established by the State.

(2) Notice for property located in the District of Columbia shall be given to the Mayor of the District of Columbia and to the point of contact established by the District of Columbia or under other appropriate procedures established by the District of Columbia.

(3) Notice for property located in the Virgin Islands shall be given to the Governor of the Virgin Islands and to the point of contact established by the Virgin Islands or under other appropriate procedures established by the Virgin Islands.

(4) Notice for property located in the Commonwealth of Puerto Rico shall be given to the Governor of the Commonwealth of Puerto Rico and to the point of contact established by the Commonwealth of Puerto Rico or under other appropriate procedures established by the Commonwealth of Puerto Rico.

* * * * *

(d) A copy of the notice described in paragraph (b) of this section shall be furnished to the proper regional or field office of (1) the National Park Service (NPS) and the Fish and Wildlife Service of the Department of the Interior and (2) the Federal Aviation Administration and the Federal Highway Administration of the Department of Transportation concerned with the disposal of property to public agencies under the statues named in the notice.

(e) In the case of property which may be made available for assignment to the Secretary of Health and Human Services (HHS), the Secretary of Education (ED) or the Secretary of the Interior for disposal under sections 203(k)(1) or (k)(2) of the Act:

(1) The disposal agency shall inform the appropriate offices of HHS, ED or the NPS 3 workdays in advance of the date the notice will be given to public agencies, to permit similar notice to be given simultaneously by HHS, ED or NPS to additional interested public bodies. HHS and ED shall furnish notice to eligible nonprofit institutions.

* * * * *

(f) If the disposal agency is not informed within the 20 calendar-day period provided in the notice of the desire of a public agency to acquire the property under the provisions of the statutes listed in § 101–47.4905, or is not notified by ED or HHS of a potential educational or public health requirement, or is not notified by the Department of the Interior of a potential park or recreation requirement, or is not notified by the Department of Justice (DOJ) of a potential correctional facilities use; it shall be assumed that no public agency or nonprofit institution desires to procure the property.

(g) The disposal agency shall promptly review each response of a public agency to the notice given pursuant to paragraph (b) of this section. The disposal agency shall determine what constitutes a reasonable period of time to allow the public agency to develop and submit a formal application for the property or its comments as to the compatibility of the disposal with its development plans and programs. When making such determination, the disposal agency shall give consideration to the potential suitability of the property for the use proposed, the length of time the public agency has stated it will require for its action, the protection and maintenance costs to the Government during such length of time, and any other relevant facts and circumstances. The disposal agency shall coordinate such review and determination with the proper office of any interested Federal agencies listed below:

(1) National Park Service, Department of the Interior;

(2) Department of Health and Human Services;

(3) Department of Education;

(4) Federal Aviation Administration, Department of Transportation;

(5) Fish and Wildlife Service, Department of the Interior;

(6) Federal Highway Administration, Department of Transportation; and

(7) Office of Justice Programs, Department of Justice.

* * * * *

Subpart 101–47.49—Illustrations

4. Section 101–47.4906 is revised to read as follows:

§ 101–47.4906 Sample notice to public agencies of surplus determination.

Notice of Surplus Determination—Government Property

(Date)

(Name of property)

(Location)

Notice is hereby given that the

(Name of property),

(Location), has been determined to be surplus Government property. The property consists of _____ acres of fee land more or less and a _____ *easement, together with*

This property is surplus property available for disposal under the provisions of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 *et seq.)* and applicable regulations. The applicable regulations provide that public agencies (non-Federal) shall be allowed a reasonable period of time to submit a formal application for surplus real property in which they may be interested. Disposal of this property, or portions thereof, may be made to public agencies for the public uses stated below whenever the Government determines that the property is available for such uses and that disposal thereof is authorized by the statutes cited and applicable regulations: [1]

Statute	Type of disposal
23 U.S.C. 107 and 317.	Federal aid and certain other highways.
40 U.S.C. 484(e)(3)(H).	Negotiated sales to public bodies for use for public purposes generally.[1]
40 U.S.C. 484(k)(1)(A)	School, classroom, or other educational purposes.
40 U.S.C. 484(k)(1)(B)	Protection of public health, including research.
40 U.S.C. 484(k)(2)	Public park or recreation area.
40 U.S.C. 484(k)(3)	Historic monument.
50 U.S.C. app. 1622(g).	Public airport.

[1] List only for properties having an estimated value of $10,000 or more.

If any public agency desires to acquire the property under the cited statutes, notice thereof in writing must be filed with

[1] List only the statutes (showing type of disposal) applicable to disposal to public bodies of the property determined to be surplus.

(Name of disposal agency),

(Address, before)

(Date).[2]

Such notice shall:

(a) Disclose the contemplated use of the property;

(b) Contain a citation of the applicable statute or statutes under which the public agency desires to procure the property;

(c) Disclose the nature of the interest if an interest less than fee title to the property is contemplated;

(d) State the length of time required to develop and submit a formal application for the property (Where a payment to the Government is required under the statute, include a statement as to whether funds are available and, if not, the period required to obtain funds); and

(e) Give the reason for the time required to develop and submit a formal application.

Any planning for a public health use of property sought to be acquired subject to a public benefit allowance must be coordinated with the Department of Health and Human Services

(Address of appropriate office)

An application form to acquire property for a public health requirement and instructions for the preparation and submission of an application may be obtained from that office.[3]

Any planning for an educational use of property sought to be acquired subject to a public benefit allowance must be coordinated with the Department of Education.

(Address of appropriate office)

An application form to acquire property for an educational use and instructions for the preparation and submission of an application may be obtained from that office.[4]

Any planning for a public park or recreation area of property sought to be acquired subject to a public benefit allowance must be coordinated with the Department of the Interior.

(Address of appropriate office)

An application form to acquire property for a public park or recreation area requirement and instructions for the preparation and submission of an application may be obtained from that office.[5]

Application forms or instructions to acquire property for all other public use requirements may be obtained from

(Name of disposal agency),

(Address).

Upon receipt of such written notices, the public agency shall be promptly informed concerning the period of time that will be allowed for submission of a formal application. In the absence of such written notice, or in the event a public use proposal is not approved, the regulations issued pursuant to authority contained in the Federal Property and Administrative Services Act of 1949 provide for offering the property for sale.

5. Section 101–47.4906–2 is added as follows:

§ 101–47.4906–2 Sample letter to a state single point of contact.

(Date)

(Addressee)

Dear:

On July 14, 1982, the President issued Executive Order 12372, "Intergovernmental Review of Federal Programs." This Executive order provides for State and local government coordination and review of certain proposed Federal programs and activities, including real property disposal actions of the General Services Administration.

Enclosed is a notice of surplus determination that has been sent to appropriate public bodies advising them of the availability of the described real property for public purposes. Surplus Federal real property which is not acquired for State or local governmental public purposes is generally offered for sale to the general public by competitive bidding procedures.

No final disposal action will be taken for 60 calendar days from the date of this letter to allow for the receipt of any comments from your office.

[2]This date shall be 20 calendar days after the date of this notice.

[3]Delete this paragraph wherever property is not available for transfer for a public health use.

[4]Delete this paragraph wherever property is not available for transfer for an educational use.

[5]Delete this paragraph wherever property is not available for transfer for a public park or recreation area.

Dated: March 9, 1987.

T.C. Golden,

Administrator of General Services.

[FR Doc. 87–6814 Filed 3–26–87; 8:45 am]

BILLING CODE 6820–96–M

41 CFR Part 101–47

[FPMR Amdt. H–162]

Property for Correctional Facilities

AGENCY: Federal Property Resources Service, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the regulations concerning disposals to public agencies to implement the provisions of section 701 of Pub. L. 98–473. Pub. L. 98–473 amended section 203 of the Federal Property and Administrative Services Act of 1949, as amended, to authorize the conveyance to eligible State and local public bodies, without monetary consideration, of surplus real and related personal property for correctional facility use, provided the Attorney General has determined that the property is required and has approved an appropriate program for the care or rehabilitation of criminal offenders.

EFFECTIVE DATE: The regulation is effective March 27, 1987.

FOR FURTHER INFORMATION CONTACT: James M. Kearns, Jr., Office of Real Estate Policy and Sales, (202) 535–7052.

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in cost to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–47

Surplus Government property and Government property management.

PART 101–47—UTILIZATION AND DISPOSAL OF REAL PROPERTY

1. The authority citation for 41 CFR Part 101–47 continues to read as follows:

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

2. The table of contents for Part 101–47 is amended by adding one entry as follows:

101–47.308–9 Property for correctional facility use.

Subpart 101–47.2—Utilization of Excess Real Property

3. Section 101–47.203–5 is amended by revising paragraphs (b) and (c) to read as follows:

§ 101–47.203–5 Screening of excess real property.

* * * * *

(b) Notices of availability for information of the Secretary of Health and Human Services and the Secretary of Education in connection with the exercise of the authority vested in them under the provisions of section 203(k)(1) of the Act, and for information of the Secretary of the Interior in connection with the exercise of the authority vested in him under the provisions of section 203(k)(2) of the Act or a possible determination under the provisions of section 203(k)(3) of the Act, will be sent to the offices designated by the Secretaries to serve the areas in which the properties are located. A similar notice of availability for the information of the Attorney General in connection with a possible determination under the provisions of section 203(p)(1) of the Act will be sent to the Office of Justice Programs, Department of Justice.

(c) The Departments of Health and Human Services, Education, Interior, and Justice shall not attempt to interest a local applicant in a property until it is determined surplus, except with the prior consent of GSA on a case-by-case basis or as otherwise agreed upon. When such consent is obtained, the local applicant shall be informed that consideration of the application is conditional upon the property being determined surplus to Federal requirements and made available for the purposes of the application. However, these Departments are encouraged to advise the appropriate GSA regional office of those excess properties which are suitable for their programs.

* * * * *

4. Section 101–47.204–1 is amended by revising paragraphs (a) and (b) to read as follows:

§ 101–47.204–1 Reported Property.

* * * * *

(a) The holding agency, the Secretary of Health and Human Services, the Secretary of Education, the Secretary of the Interior, and the Attorney General will be notified of the date upon which determination as surplus becomes effective. Any Federal agency that has identified a property as being required for replacement housing for displaced persons under section 218 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 will also be notified of the date upon which determination as surplus becomes effective. The Secretary of the Department of Energy will be notified when real property is determined surplus and advised of any known interest in the property for its use or development for energy facilities. Appropriate steps will be taken to ensure that energy site needs are considered along with other competing needs in the disposal of surplus real property, since such property may become available for use under sections 203(e)(3) (G) and (H) of the Federal Property and Administrative Services Act of 1949, as amended.

(b) The notices to the Secretary of Health and Human Services, the Secretary of Education, the Secretary of the Interior, and the Secretary of Energy will be sent to the offices designated by them to serve the area in which the property is located. The notices to the Attorney General will be sent to the Office of Justice Programs, Department of Justice. The notices to the Federal agencies having a requirement pursuant to section 218 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 will be sent to the office making the request unless another office is designated.

* * * * *

Subpart 101–47.3—Surplus Real Property Disposal

5. Section 101–47.308–9 is added as follows:

§ 101–47.308–9 Property for correctional facility use.

(a) Under section 203(p)(1) of the Act, the head of the disposal agency or designee may, in his/her discretion, convey, without monetary consideration, to any State, or to those governmental bodies named therein, or to any political subdivision or instrumentality thereof, surplus real and related personal property for correctional facility use, provided the Attorney General has determined that the property is required for correctional facility use and has approved an appropriate program or project for the care or rehabilitation of criminal offenders.

(b) The disposal agency shall provide prompt notification to the Office of Justice Programs (OJP), Department of Justice (DOJ) of the availability of surplus properties. Included in the notification to OJP will be a copy of the holding agency's Standard Form 118, Report of Excess Real Property, with accompanying schedules.

(c) With respect to real property and related personal property which may be made available for disposal under section 203(p)(1) of the Act for correctional facility purposes, OJP shall convey notices of availability of properties to the appropriate State and local public agencies. Such notice shall state that any planning for correctional facility use involved in the development of a comprehensive and coordinated plan of use and procurement for the property must be coordinated and approved by the OJP and that an application form for such use of the property and instructions for the preparation and submission of an application may be obtained from OJP. The requirement for correctional facility use of the property by an eligible public agency will be contingent upon the disposal agency's approval under paragraph (g) of this section of a determination by DOJ that identifies surplus property required for correctional facility use under an appropriate program or project for the care of rehabilitation of criminal offenders.

(d) OJP shall notify the disposal agency within 20 calendar days after the date of the notice of determination of surplus if there is an eligible applicant interested in acquiring the property. Whenever OJP has notified the disposal agency within the said 20 calendar-day period of a potential correctional facility requirement for the property, OJP shall submit to the disposal agency within 25 calendar days after the expiration of the 20 calendar-day period, a determination indicating a requirement for the property and approving an appropriate program or project for the care or rehabilitation of criminal offenders, or shall inform the disposal agency, within the 25 calendar-day period, that the property will not be required for correctional facility use.

(e) Any determination submitted to the disposal agency by DOJ shall set forth complete information concerning the correctional facility use, including:

(1) Identification of the property,

(2) Certification that the property is required for correctional facility use,

(3) A copy of the approved application which defines the proposed plan of use, and

(4) The environmental impact of the proposed correctional facility.

(f) Both holding and disposal agencies shall cooperate to the fullest extent possible with Federal and State agency representatives in their inspection of such property and in furnishing information relating thereto.

(g) If, after considering other uses for the property, the disposal agency approves the determination by DOJ, it shall convey the property to the appropriate grantee. If the determination is disapproved, or in the absence of a determination from DOJ submitted pursuant to § 101–47.308–9(d), and received within the 25 calendar-day time limit specified therein, the disposal agency shall proceed with other disposal action. The disposal agency shall notify OJP 10 days prior to any announcement of a determination to either approve or disapprove an application for correctional purposes and shall furnish to OJP a copy of the conveyance documents.

(h) The deed of conveyance of any surplus real property transferred under the provisions of section 203(p)(1) of the Act shall provide that all such property be used and maintained for the purpose for which it was conveyed in perpetuity and that in the event such property ceases to be used or maintained for such purpose during such period, all or any portion of such property shall in its then existing condition, at the option of the United States, revert to the United States and may contain such additional terms, reservations, restrictions, and conditions as may be determined by the Administrator of General Services to be necessary to safeguard the interest of the United States.

(i) The Administrator of General Services has the responsibility for enforcing compliance with the terms and conditions of disposals; the reformation, correction, or amendment of any disposal instrument; the granting of releases; and any action necessary for recapturing such property in accordance with the provisions of section 203(p)(3) of the Act.

(j) The OJP will notify GSA upon discovery of any information indicating a change in use and, upon request, make a redetermination of continued appropriateness of the use of a transferred property.

(k) In each case of repossession under a reversion of title by reason of noncompliance with the terms of the conveyance documents, GSA will assume custody of and accountability for the property. However, the grantee shall be required to provide protection and maintenance for the property until such time as the title reverts to the Federal Government, including the period of any notice of intent to revert. Such protection and maintenance shall, at a minimum, conform to the standards prescribed in § 101–47.4913.

Dated: March 9, 1987.

T.C. Golden,

Administrator of General Services.

[FR Doc. 87–6813 Filed 3–26–87; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 413

[BERC–340–F]

Medicare and Medicaid Programs; Payment for the Cost of Malpractice Insurance

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Confirmation of final rule.

SUMMARY: In this document, we are addressing public comments received in response to the interim final rule on payment for the cost of malpractice insurance, published on April 1, 1986. (51 FR 11142.) In that interim final rule, we established a specific methodology for apportionment of hospital malpractice insurance cost (that is, the cost of premiums or self-insurance) under Medicare that relied on, in part, a "scaling factor formula." We also provided for apportionment of skilled nursing facility malpractice insurance cost on the basis of Medicare patient utilization. With respect to the Medicaid program and the Maternal and Child Health program, we deferred to the States instead of establishing payment methodologies for these programs. As a result of our consideration of timely comments on the interim final rule and reevaluation of appropriate data, we plan to specify the values of the factors used in the scaling factor formula for the hospital methodology separately for short-term acute care hospitals and other hospitals. Accordingly, we have recomputed the values of the factors in the formula and, in this document, we are establishing values for short-term acute care hospitals. The values are the same as those announced in the interim final rule for all hospitals. We will issue another **Federal Register** document as soon as possible in which, as noted above, we intend to establish the values to be used in applying the formula to other hospitals. In the interim, for these other hospitals, we will continue to use the same formula values that were established in the interim final rule. We are not changing any of the other policies established in the interim final rule.

EFFECTIVE DATE: The effective date of the rule that this document confirms was May 1, 1986.

FOR FURTHER INFORMATION CONTACT:

Timothy Greene, (301) 594–5931—HCRIS and Other Data Sources

Bernard Truffer, (301) 594–9286—Medicaid

Paul Trimble, (301) 594–8640—All Other Issues

John Eppinger, (301) 534–5354—All Other Issues.

SUPPLEMENTARY INFORMATION: To assist the reader in reviewing this document, we are providing the Table of Contents below.

V. List of Subjects

I. Background

A. The Pre-1979 Utilization Method of Apportioning Malpractice Insurance Cost

For cost reporting periods beginning before July 1, 1979, malpractice insurance costs (that is, the amount of money a provider pays to purchase malpractice insurance from an insurance company or contributes to a self-insurance fund) were apportioned to Medicare (title XVIII of the Social Security Act (the Act)) in accordance with a utilization formula applicable, at that time, to all overhead costs incurred by providers of health care services. Medicare utilization is measured by patient days for routine care areas and by departmental charges for ancillary service departments. The utilization formula, adopted at the outset of the Medicare program (31 FR 14808, November 23, 1966), treated provider overhead expenses as indirect costs, many of which were combined in the administrative and general pool of provider costs. (In the discussion below, we refer to general and administrative (G&A) costs to conform to the terminology commonly used in court opinions and employed in the interim final rule.)

Malpractice insurance costs were included in the G&A cost center, which in turn was allocated among various revenue-producing cost centers. The revenue-producing cost centers were then apportioned between Medicare and non-Medicare patients on a utilization basis in order to determine Medicare's share of the costs incurred. Thus, for example, if Medicare patients constituted 30 percent of the routine patient-days at a hospital for a given year, Medicare would reimburse the hospital for 30 percent of the portion of G&A costs, including malpractice insurance costs, that were allocated to the inpatient routine area.

B. March 15, 1979 Proposed Rule

On March 15, 1979, we proposed (44 FR 15744) to discontinue the utilization method of apportioning malpractice insurance costs because we believed that Medicare was paying a disproportionate amount of providers' malpractice insurance costs This proposal was based partially on a study by a Departmental consultant, Westat, Inc. (Westat Study), which found that malpractice losses paid to, or on behalf of, Medicare patients were significantly less frequent and significantly lower in amount than losses paid for other patient populations. In response to the extraordinary increase in malpractice insurance costs and the disproportionately small amount of paid malpractice claims attributable to Medicare patients, we proposed to remove malpractice insurance costs from the G&A pool and to apportion those costs directly, based on a provider's five-year malpractice claims-paid history. (This policy applied only to hospitals and skilled nursing facilities (SNFs).) For ease of reference, we use the term "providers" when we need to refer to both types of facilities. Rules for reimbursement of the costs of malpractice insurance for other providers under Medicare are described in applicable cost report instructions contained in the Provider Reimbursement Manual (HCFA Pub. 15 2).

In the March 15, 1979 document, we proposed that if a provider paid a malpractice claim during its current cost reporting period or during its preceding four cost reporting periods, Medicare would reimburse an amount equal to the ratio of the provider's malpractice insurance losses paid to Medicare patients compared to its total malpractice losses paid to all patients during that five-year period, times total premium cost. We also proposed that providers with no loss experience during the five-year period would be reimbursed in accordance with an actuarial estimate.

C. June 1, 1979 Final Rule

After consideration of public comments on the proposed rule, we published a final rule on June 1, 1979 (44 FR 31641). The final rule amended 42 CFR 405.452(b)(1) and was applicable to cost reporting periods beginning on or after July 1, 1979. Those regulations, recodified as 42 CFR 405.452(a)(1)(ii) (48 FR 39811, September l, 1983) ("the 1979 malpractice rule"), retained the claims-paid formula for providers with malpractice losses but established use of a national ratio for providers with no malpractice losses. If a provider had no malpractice loss experience during the five-year period, Medicare's share of the provider's malpractice insurance costs for the current reporting period was determined on the basis of the national ratio of malpractice losses paid to Medicare patients compared to malpractice losses paid to all patients. The final rule established the national ratio at 5.1 percent.

D. June 17, 1985 Proposed Rule

In response to criticism of the 1979 malpractice rule and newly available data on the subject, we decided to reconsider our malpractice insurance apportionment policy. We issued a notice of proposed rulemaking on June 17, 1985 (50 FR 25178) ("the 1985 NPRM" or "the 1985 proposed rule") in which we proposed to amend the 1979 malpractice rule, subject to our rules of administrative finality and reopening, effective for cost reporting periods beginning on or after July 1, 1979. We proposed to retain the claims-paid formula and to establish the national Medicare malpractice loss ratio at 11.6 percent for hospitals (based on data accumulated at that time in the Hospital Cost Report Information System (HCRIS) file).

Because we had no data to support an increase in the Medicare national ratio for SNFs, we proposed to retain the 5.1 percent figure for these providers. With respect to malpractice losses attributable to services furnished under the Medicaid program (title XIX of the Act) or the Maternal and Child Health program (title V of the Act), we indicated that we had preliminary data only and were unable to determine whether to propose a change in the national ratio of 7.5 percent applicable to those programs. Therefore, we did not propose a change in the 7.5 percent figure, but we stated that we were continuing to study the issue and invited specific comments and data concerning it.

Finally, we proposed to establish a procedural mechanism for periodically updating the national ratio on the basis of actual cost report data. We proposed to provide for public notice and comment on any proposed changes in the national ratio, in addition to publishing a subsequent notice to issue any new ratio and respond to comments received.

E. April 1, 1986 interim final rule

After consideration of timely public comments on the proposed rule, we published an interim final rule with comment period on April 1, 1986 (51 FR 11142) (the "interim final rule") that is effective for cost reporting periods beginning on or after July 1, 1979. In the interim final rule, we eliminated the 1979 malpractice rule and added a new malpractice insurance cost apportionment regulation at 42 CFR 405.457 or (the "1986 rule"). The 1986 rule was redesignated as 42 CFR 413.56 as part of a redesignation of reasonable cost regulations published in the **Federal Register** on September 30, 1986 (51 FR 34790, 34808–09) and corrected on October 22, 1986 (51 FR 37398).

Subject to the rules of administrative finality and reopening as set forth in 42 CFR Part 405, Subpart R, provider

malpractice insurance premiums and self-insurance fund contributions (referred to as "premiums" in 42 CFR 413.56) are apportioned under Medicare based on the different methodologies described below for hospitals and SNFs.

1. Hospitals (§ 413.56(b))

a. *Components of the premium.* The premium is divided into an administrative component and a risk component. (*See*, 51 FR 11144–45.) The administrative component consists of 8.5 percent of the total premium amount, and accounts for an insurer's fixed general overhead expenses plus a proportionate share of premium and payroll taxes and commissions paid to insurance agents. The risk component consists of 91.5 percent of the total premium amount, and accounts for an insurer's anticipated loss experience, expenses associated with losses such as defense costs (i.e., allocated loss adjustment expenses (ALAE)) and claims department overhead costs (i.e., unallocated loss adjustment expenses (ULAE)), and the remaining share of taxes and commissions paid to insurance agents that are not included in the administrative component.

b. *Apportionment of administrative component.* Because the administrative component of the premium is, at most, only slightly affected by the frequency and amount of malpractice claims, it is reported as a G&A cost and is apportioned on the basis of utilization in accordance with § 413.53(a)(1).

c. *Apportionment of risk component.* By contrast, the risk component is significantly affected by the number and size of malpractice claims. Thus, under § 413.56(b)(3), the risk component of the premium is apportioned based on a scaling factor derived from the scaling factor formula (described below), which accounts for the hospital's specific Medicare utilization rate and the extraordinary disproportionality between, *inter alia*, the national Medicare malpractice loss ratio and the national Medicare utilization rate. The scaling factor formula effectively discounts the hospital's specific Medicare utilization rate to account for these extraordinary disproportionalities. The resultant scaling factor is multiplied by 91.5 percent of the hospital's malpractice insurance premium to determine Medicare's share of the risk component of the premium.

As explained in the interim final rule (51 FR 11148), the scaling factor is derived from the following formula:

$$\frac{u\times(R/U_1)}{[u\times(R/U_1)]+[(1-u)\times(1-R)/(1-U_2)]}$$

U_1 = The national Medicare hospital patient utilization rate, as adjusted for the time lag between incident and claim closure for Medicare patients.

U_2 = The national Medicare hospital patient utilization rate, as adjusted for the time lag between incident and claim closure for non-Medicare patients.

R = The national Medicare malpractice loss ratio, as adjusted for associated claims handling expense.

u = The hospital's own Medicare utilization rate for the cost reporting period based on a ratio of the hospital's total Medicare-covered inpatient days of care to its total inpatient days of care.

R/U_1 = The national Medicare malpractice loss ratio compared to the national Medicare utilization rate.

$(1-R)/(1-U_2)$ = The national non-Medicare malpractice loss ratio compared to the national non-Medicare utilization rate.

The interim final rule established the following values for the main constants in the scaling factor formula:

R = 13.2 percent
U_1 = 38.8 percent
U_2 = 38.1 percent

d. *Example.* Apportionment of the malpractice insurance costs of a hospital that averages 75 percent Medicare utilization during the applicable cost reporting period is calculated as follows:

Step one—The administrative component of the premium (8.5 percent) is included in the G&A cost center of the hospital and is apportioned on a utilization basis. Thus, the hospital would be reimbursed approximately .085 times .75, or 6.38 percent of its premium for the administrative component. (This figure would vary slightly depending upon the specific Medicare utilization of the hospital's patient care departments.)

Step two—The risk component of the premium (91.5 percent) is apportioned in accordance with the scaling factor, which is derived from the scaling factor formula, as follows:

$$\frac{.75\times(.132/.388)}{[.75\times(.132/.388)]+[(1-.75)\times(1-.132)/(1-.381)]}=.421$$

Thus, the hospital would be reimbursed .915 times .421, or 38.54 percent of its total premium cost for the risk component. This means that Medicare reimbursement would account for 6.38 percent plus 38.54 percent, or 44.92 percent of this hospital s total malpractice insurance premium.

e. *Updating of factors used in determining apportionment.* Based on actual cost report data, HCFA will periodically calculate the national average rate of Medicare patient utilization and the national Medicare malpractice loss ratio for hospitals, as appropriate. As might be warranted by changes in these factors, HCFA will publish a notice in the **Federal Register** describing the proposed changes for public comment, and in a subsequent **Federal Register** notice, update the relevant factors and respond to comments. (*See*, 51 FR 11148.)

f. *Allowable uninsured malpractice losses and related direct costs incurred by a hospital.* If a hospital pays an allowable uninsured malpractice loss to or on behalf of a Medicare beneficiary in order to comply with a deductible or coinsurance provision of its malpractice insurance policy, or as a result of an award in excess of a reasonable coverage limit, or as a governmental provider, that loss and related direct costs must be directly assigned to Medicare for reimbursement. An uninsured malpractice loss paid to or on behalf of a non-Medicare patient is not an allowable cost. (*See*, 51 FR 11148.)

2. SNFs (§ 413.56(c))

As we explained in the interim final rule (51 FR 11148–49), we were unable to develop data sufficient for determining the most appropriate apportionment method for allowable malpractice insurance costs for SNFs under Medicare. Therefore, we decided to allow SNFs to include their total allowable malpractice insurance costs in their G&A cost centers. This means that these costs are now apportioned on the basis of SNF's Medicare utilization.

3. Medicaid

We also did not have adequate data to develop a methodology for Medicaid that would be comparable to that which we adopted for Medicare. Accordingly, we provided that States may, within the flexibility allowed under section 1902(a)(30) of the Act, use whatever methodology they find to be most appropriate to pay for the costs of malpractice insurance. (*See*, 51 FR 11149.)

4. The Maternal and Child Health Program

The Maternal and Child Health program generally uses the same method of apportionment as Medicaid. Because we did not have adequate data to develop a methodology for Medicaid, we were unable to determine the most appropriate apportionment method for the costs of malpractice insurance under this program. Therefore, we deferred to the States for appropriate action. (*See*, 51 FR 11149.)

II. Public Comments and Changes to the Interim Final Rule

In the preamble to the interim final rule, we presented a lengthy and detailed discussion in which we exhaustively examined and addressed comments received on the 1985 NPRM. We stated that because the interim final rule was a logical outgrowth of the 1985 NPRM, additional opportunity for public comment was not necessary before the 1986 rule became effective. (*See*, 51 FR 11194.) However, because the 1986 rule embodied certain changes from the 1985 proposed rule, which were made in response to comments on that proposed rule, we provided an additional opportunity for public comment. We stated that the comment period was for the purpose of providing the public with an opportunity to comment on the changes adopted in the 1986 rule and the factual information that we gathered during the process of addressing comments on the proposed rule and implementing the 1986 rule. We further stated that comments on the interim final rule that merely reiterated comments previously made on the 1985 proposed rule and dealt with in the interim final rule would not be considered.

During the public comment period on the interim final rule, we received 21 timely items of correspondence. We also received several requests for data and information under the Freedom of Information Act (5 U.S.C. 552) (FOIA). Several of the commenters used the information and data released under the FOIA to analyze the interim final rule further, and they submitted comments concerning information and data released under the FOIA. The 21 commenters included hospitals, associations of hospitals, law firms, an insurance company, and one individual. One commenter favored the 1986 rule as it applies to SNFs. The remaining commenters were critical of various aspects of the interim final rule.

A. Changes to the Interim Final Rule Made in Response to Public Comments

After carefully reviewing all timely comments, we plan to establish separate sets of scaling factor formula values for:

(1) The type of hospitals that furnish short-term acute care services and either are subject to the prospective payment system (PPS) or would be subject to PPS but for the location of the hospital, in the territories (see, 42 CFR 412.23(f) or in a State subject to State cost control systems (see, 42 CFR 412.23(g)) (referred to below as "short-stay hospitals") and cancer hospitals that would be subject to PPS but for their election to be reimbursed on a reasonable cost basis under 42 CFR 412.94; and

(2) Those types of specialty hospitals that are excluded from PPS under classification requirements of 42 CFR 412.23(a) through (e), that is, psychiatric, rehabilitation, alcohol/drug, children's, and long-term care hospitals (referred to below as "hospitals excluded from PPS").

This change is primarily the result of our consideration of two comments, together with our reevaluation of the data underlying the formula values established by the interim final rule. One commenter asserted that application of the 1986 rule to hospitals excluded from PPS was improper. Another commenter stated that the scaling factor formula improperly relied on data from different databases. As explained in detail below, we essentially disagree with both of these comments. However, in the course of considering these comments we reevaluated the data underlying the formula values established by the interim final rule, and we now believe that it would be more consistent and equitable to establish separate sets of formula values for short-stay hospitals and for hospitals excluded from PPS that are based exclusively on data for short-stay and excluded facilities, respectively.

The interim final rule established a formula value for the R factor (i.e., the national Medicare malpractice loss ratio, as adjusted for associated claims adjustment expense) that was based primarily on the HCRIS data regarding Medicare malpractice losses and total malpractice losses. (51 FR 11146–47.) As explained in detail below, the HCRIS data used to determine the R factor included HCRIS loss data for both short-stay hospitals and for hospitals excluded from PPS.

The formula values established in the interim final rule for the U_1 and U_2 factors (i.e., the national Medicare patient utilization rate, as adjusted for the "claims tail" applicable to Medicare patients and non-Medicare patients, respectively) were established on the basis of program data on Medicare utilization and data from the American Hospital Association on non-Medicare utilization. (51 FR 11147–48.) By contrast with the HCRIS data underlying the value for the R factor, the U_1 and U_2 factor values were based exclusively on data for short-stay hospitals.

Thus, we believe that it would be more consistent and equitable to establish separate sets of formula values that are based exclusively on data for the two kinds of hospitals in question. Accordingly, we have recomputed the value of the R factor applicable to short-stay hospitals on the basis of HCRIS data obtained exclusively from short-term acute care hospitals. However, there is no change in the value of the R factor from the one established in the interim final rule. That is, our analysis of HCRIS data solely for short-term acute care hospitals indicates that the R factor remains unchanged from the 11.8 percent value established in the interim final rule (before being adjusted for associated claims handling expense). Of course, the values of the U_1 and U_2 factors applicable to short-stay hospitals remain the same since the values established in the interim final rule were calculated exclusively from short-stay hospital data.

Furthermore, as stated earlier, we are undertaking to develop a separate set of formula values for the U_1, U_2, and R factors for hospitals excluded from PPS, and we plan to announce them as soon as possible in a subsequent **Federal Register** document. In the interim, for these hospitals, we will continue to use the values of U_1, U_2, and R established in the interim final rule, which, as explained above, are the same as those established in this document for short-stay hospitals. We are establishing the formula values for short-stay hospitals without waiting for subsequent action concerning excluded hospitals in order to expedite the final settlement of malpractice insurance cost report determinations under the 1986 rule and the issuance of revised notices of program reimbursement under that rule. When we establish formula values for hospitals excluded from PPS, we will adjust the cost reports for these hospitals for cost reporting periods beginning before the effective date of those formula values only if such adjustments would result in additional payment.

In what follows, we clarify certain issues raised by the above-described change to the interim final rule.

• *One set of values for all units of a health care complex.*

The set of formula values applicable to a health care complex will govern reimbursement for all of the units within that complex that are subject to the 1986 rule. Malpractice loss data for a distinct-part unit within a health care complex are not reported separately but are included in the loss data for the entire complex. Loss data for a health care complex consisting of a short-term acute care hospital with a distinct-part unit excluded from PPS under 42 CFR 412.25 were included in the data used to determine formula values for short-stay hospitals. Similarly, loss data reported for a health care complex consisting of a hospital excluded from PPS with a distinct-part short-term acute care unit will be represented in the formula values we are undertaking to develop for hospitals excluded from PPS. Thus, in view of the lack of separate loss data reported for different parts of a health care complex, there is no basis to apply different sets of formula values to different parts of the complex. Accordingly, a complex consisting of a short-term acute care hospital with a distinct-part excluded unit will be paid under the set of values for short-stay hospitals, while a complex consisting of an excluded hospital with a distinct-part short-term acute care unit will be paid under the set of values we are undertaking to develop for hospitals excluded from PPS.

• *Cost report determinations and notices of program reimbursement.*

For short-term acute care hospitals, final settlements will be made and revised notices of program reimbursement (NPRs) issued on the basis of the 1986 rule as soon as possible. Hospitals excluded from PPS and that have received interim settlements under the 1986 rule (i.e., based on the set of formula values established in the interim final rule that are the same as the values now applicable to short-term acute care hospitals) will also receive final settlement and revised NPRs under the 1986 rule as expeditiously as possible. Moreover, final cost report settlements made for hospitals excluded from PPS will be subject to further adjustment only if additional reimbursement would be available based on application of the set of formula values for those hospitals that is currently under development. Any such adjustment made subsequently under a new set of formula values will result in the issuance of a new NPR which, for jurisdictional purposes, will relate back to the NPR to be issued imminently on the basis of the values established in the interim final rule.

• *A beneficial exception to the rules of administrative finality and reopening for certain hospitals excluded from PPS.*

As explained above, the interim final rule applies, subject to the rules of administrative finality and reopening, to cost reporting periods beginning on or after July 1, 1979. A hospital excluded from PPS may have had cost report determinations that could have been reopened on April 1, 1986 (the publication date of the interim final rule) but were not because it would not have been advantageous to the hospital to do so. That is, the hospital may have elected to not request reopening of a closed malpractice insurance cost report determination because it would not have received additional reimbursement under the interim final rule. However, we recognize that when the new set of formula values that are planned for hospitals excluded from PPS is published, the time period for requesting reopening may have expired while the new set of values may provide for additional reimbursement to the hospital that elected to forego reopening under the interim final rule. In order not to disadvantage such hospitals as the result of the establishment of new formula values, we will upon request reopen the applicable cost report determination, settle under the 1986 rule, and issue a revised NPR if the following conditions are satisfied:

• The cost report determination was subject to reopening (*see*, 42 CFR 405.1885) on April 1, 1986, the publication date of the interim final rule;

• Reopening the cost report determination would not have been advantageous to the hospital excluded from PPS on the basis of the formula values established by the interim final rule; and

• Reopening the cost report determination would be beneficial to the hospital on the basis of the new set of formula values planned for hospitals excluded from PPS.

Circumstances require a May 1, 1986 effective date for, and retroactive application of, the 1986 rule.

In the event that this document is deemed to be a final rule subject to the delayed effective date requirement of the Administrative Procedure Act, 5 U.S.C. 553(d), we have determined that, pursuant to 5 U.S.C. 553(d)(3), good cause exists for a May 1, 1986 effective date for, and retroactive application of, the 1986 Rule; and we hereby incorporate by reference 51 FR 11194–95 (sections V and VI) and section III.D of this document as our basis for this determination.

B. Summary of issues raised in repetitive comments

We have carefully reviewed all timely comments and have determined that many of them merely reiterate previous comments on various factual and legal issues. Consistent with the Administrative Procedure Act (APA), 5 U.S.C. 553, and the terms of the limited opportunity for comment provided in the preamble to the interim final rule (51 FR 11194–95), we are not responding to those comments.

A summary of issues raised in the main repetitive comments is presented below. (However, where a commenter, in generally reiterating a comment that we previously addressed, raised questions from new points of view, we have provided responses.) After each of these repetitive comments, we have provided the **Federal Register** page number where the comment was addressed in the interim final rule.

—Whether there is a relationship between the frequency and amount of malpractice claims for Medicare patients (as compared to non-Medicare patients) and hospital premium costs that is related to Medicare utilization rates. (51 FR 11169–70.)

—Whether the shorter "claims tail" for Medicare patients versus non-Medicare patients reduces the insurer's investment income on Medicare claims, as compared to non-Medicare claims, and thereby raises premiums for Medicare patients. (51 FR 11174–75.)

—Whether the HCRIS-derived ratio of malpractice insurance costs to the total of G&A costs and malpractice insurance costs is significant. (51 FR 11165–66.)

—Whether removing hospital malpractice insurance costs from the G&A pool distorts that pool or reestablishes its balance. (51 FR 11158–68.)

—Whether including hospital malpractice premiums in the G&A pool results in Medicare's paying a disproportionate share of non-Medicare costs. (51 FR 11162, 11163, 11164, 11166, and 11167.)

—Whether HCFA has enough information to justify removal of hospital malpractice insurance costs from the G&A pool and the use of a methodology other than one based on utilization. (51 FR 11158–68.)

—Whether the methodology for reimbursement of hospital malpractice insurance costs for hospitals is

inconsistent with insurance industry practices and the requirements of title XVIII of the Act insofar as the national Medicare claims-paid ratio does not determine the hospital's premiums for a particular cost reporting year and includes claims paid from premiums for several preceding years. (51 FR 11169–71.)
-Whether hospitals should be allowed to purchase separate policies for Medicare patients. (51 FR 11191–92.)
-Whether the 1986 rule should be applied to cost reporting periods beginning July 1, 1979, without being subject to the rules of administrative finality and reopening as set forth in 42 CFR Part 405, Subpart R. (51 FR 11187.)
-Whether retroactive application of the rule to 1979 is unfair because the courts have held the 1979 malpractice rule to be invalid. (51 FR 11151.)
-Whether the Secretary has the authority to apply the 1986 rule retroactively. (51 FR 11184–87.)
-Whether retroactive application of the 1986 rule violates due process rights of providers. (51 FR 11187.)
-Whether HCFA has exceeded its statutory authority in establishing the methodology and policies described in the interim final rule. (51 FR 11180–83.)
-Whether hospitals should be paid on the basis of Medicare utilization because courts found that promulgation of the 1979 malpractice rule violated the APA. (51 FR 11150, 11187.)
-Whether the interim final rule is contrary to the Medicare statute and disrespectful of judicial authority. (51 FR 11187 and 11150.)
-Whether the interim final rule is an attempt to deny effective judicial process and is an abuse of administrative process. (51 FR 11150, 11186–87.)
-Whether the hospital policy established by the 1986 rule violates the Medicare statute's mandate that providers be reimbursed their reasonable costs incurred on behalf of Medicare patients. (51 FR 11180–83, 11186.)
-Whether retroactive application of the 1986 rule is barred by the factors typically considered by the courts in resolving similar cases. (51 FR 11184–86.)
-Whether HCFA's contention that it has no evidence that other G&A costs are underutilized by Medicare beneficiaries is meritorious without examining all the costs that constitute the G&A pool. (51 FR 11159.)
-Whether retroactive application of the 1986 rule is authorized by section 1861(v)(1)(A) of the Act. (51 FR 11184, 11187.)
—Whether HCFA has produced evidence that malpractice insurance costs are—
• A significantly large percentage of G&A;
• Escalating more rapidly than other components of G&A; or
• Disproportionately attributable to non-Medicare patients. (51 FR 11158–68.)
—Whether the interim final rule should use any factors other than Medicare utilization in calculating Medicare payment for malpractice insurance costs. (Addressed throughout the interim final rule.)
—Whether a "reanalyzed Westat Study" shows that Medicare pays for a disproportionate share of malpractice costs. (51 FR 11165.)
—Whether HCFA has improperly justified the interim final rule by comparisons with the reimbursement results of the 1979 malpractice rule. (51 FR 11186.)
—Whether there is a supportable legal basis for retroactive application. (51 FR 11184–87.)

III. Response to Public Comments on New Issues

In this document, we are responding to comments concerning:
• Changes in the interim final rule that were made in response to comments on the 1985 proposed rule.
• Factual information that was developed to implement those changes.

We have considered all the timely comments concerning these matters and have analyzed the data and arguments submitted by the commenters. This effort has reaffirmed our belief that the regulation and policies established in the interim final rule are consistent with the Act and all other relevant authorities, fair and equitable, and based on sound analysis of available sources of data. As explained above, the only change is to undertake to establish separate values for the main constants in the scaling factor formula for short-stay hospitals and for hospitals excluded from PPS. The comments on new issues and our responses follow.

A. Medicare Hospital Policy

1. HCRIS Data

Comment: It is improper for HCFA to use data developed after July 1, 1979 to support the 1986 rule. HCFA must base its regulation on data available before the effective date of the regulation.

Response: The 1986 rule became effective on May 1, 1986. (51 FR 11142.) While the 1986 rule applies to cost reporting periods beginning on or after July 1, 1979; section 1861(v)(1)(A)(ii) of the Act explicitly authorizes the Secretary to apply the new rule retroactively. Also, section 1861(v)(1)(A) of the Act affords the Secretary much discretion in determining the methods of calculating reasonable cost and does not limit the data the Secretary may consider in exercising his rulemaking authority. While some of the data may have become available subsequent to July 1, 1979, other data existed before then. In any event, all of the data underlying the 1986 rule existed before the effective date of the rule, and our reliance on that data comports fully with applicable statutory requirements.

Comment: One commenter, a chain provider representative, stated that HCFA made no effort to determine if providers actually incurred losses during the requisite period, but merely assumed that the absence of data reported in the cost reports meant that no losses were incurred. The commenter further stated that it cannot be assumed, as HCFA contends, that hospitals listed on the HCRIS printout as reporting no data or $0 in paid claims, had no actual paid claims. The commenter stated that it could not obtain the requisite paid claims data for its hospitals prior to May 1981. It also stated that, contrary to HCFA's assertion, its discussions with other chain provider representatives showed that most of the data for the 1975–1979 period were excluded from the cost reports because the data were unavailable from the insurers. The commenter concluded that the "R" term in the scaling factor formula is understated because the underlying HCRIS data are allegedly incomplete.

Response: As explained in the preamble to the interim final rule (51 FR 11152), we have no information that the availability of loss data has ever constituted a widespread problem. Previously established program policy requires that the provider have in its files written documentation to support its reported five-year malpractice loss experience (that is, for the current cost reporting period and the preceding four-year period). This documentation must include the following information:
• Name of the claimant.
• Period of services (including whether inpatient or outpatient) during which the malpractice incident occurred.
• Date the malpractice incident occurred.
• Description of the incident.
• Date the claim was paid.
• Amount of the claim.
• Coverage of claimant at the time the malpractice incident occurred (that is, whether the coverage is Medicare or non-Medicare).
• All pertinent legal documents.

• Other information that would further substantiate the provider's reported malpractice loss experience.

Because the loss data included in HCRIS were obtained from audited or settled cost reports only, as submitted by the provider's intermediary, a report of no losses is, absent specific information to the contrary, reliable. Each cost report was subjected to a Medicare intermediary's determination to settle the cost report on the basis of the loss data, including any adjustments to the data made by the intermediary. Thus, the absence of loss data or reports of $0 amounts in the HCRIS database represents factual data rather than assumptions, as alleged by the commenter.

Intermediaries are responsible for assuring the implementation of program policy, which, as explained above, requires providers to maintain necessary documentation to support the loss data submitted on the cost report. This documentation includes information specifying the coverage of the claimant at the time the malpractice incident occurred, which constitutes a basis for distinguishing Medicare losses from non-Medicare losses.

While we believe that this documentation provides adequate support for the loss data actually reported, we recognize that, to some extent, providers depend on malpractice insurers for loss data. Nevertheless, providers would certainly know if claims alleging malpractice incidents have been made, the coverage of the provider at the time, and any litigation pertaining to those incidents. Moreover, malpractice insurers would have no reason not to disclose fully and accurately upon request information on malpractice losses. The intermediaries, however, have no direct access to malpractice insurance carriers not related to providers and we have no authority to audit the records of malpractice insurance carriers.

The statements made by the commenter do not detract from the reliability of the loss data included in HCRIS. The documentation supplied by the commenter applies only to incident reports, not to paid claims. In any event, the documentation contains no specific information that would enable us to cross-check intermediary findings about losses. The commenter's statements about conversations with other chain representatives also do not undermine the reliability of HCRIS. Finally, even if there were good reason to doubt cost reports with no loss data or $0 in losses, the "R" term in the scaling factor formula would be understated only if there were numerous failures to report Medicare losses. Given the commenter s failure to document errors of this magnitude and type, the commenter's assertions do not undermine the validity of the "R" term.

Comment: HCFA furnished a table in the preamble to the interim final rule that illustrated "the completeness of the HCRIS data used to determine the revised ratio." (*See,* 51 FR 11154.) The table raised, according to the commenter, more questions than answers to criticisms raised previously. The table includes data, which presumably were used in developing the 1986 rule, that shows for 10 States both the number of hospitals with losses and the number of hospitals without losses. However, other data furnished in response to the commenter's request, made under the FOIA, for information about the 1985 NPRM, contain more hospitals for each State than the table shows. It appears that HCFA manipulated the data to reduce the national ratio.

Response: The commenter has mischaracterized the data included in the table in the preamble to the interim final rule (at 51 FR 11154). The table was based on HCRIS data as of April 16, 1985 and was used for the sole purpose of illustrating the completeness of the HCRIS data underlying the revised national ratio in the 1985 NPRM. (*See,* 51 FR 11152, 11154.) By contrast, the data underlying the revised national ratio in the 1986 rule are based on the HCRIS data file as of August 1985. (*See,* 51 FR 11152.)

State by State, the data in the table proved to be a subset of the data used in the 1986 rule. Thus, the table did not reflect the number of hospitals actually used in computing the national loss ratio in the 1986 rule. Below is a revised table that includes the number of hospitals and the corresponding malpractice loss information for each of the same 10 States, as taken from the HCRIS data used in the 1986 rule.

	Malpractice costs		Number of hospitals	
	Medicare	Total	With losses	Without losses
Maine	$110,934	$244,277	5	38
Maryland	396,776	8,538,725	29	41
Missouri	1,479,367	14,284,292	82	77
New Mexico	388,677	1,500,296	16	10
South Carolina	204,146	1,596,297	13	68
New York	5,818,077	41,026,708	107	152
Florida	6,356,301	46,550,024	102	82
Massachusetts	905,220	5,457,760	60	75
Tennessee	877,321	3,754,920	49	88
Oklahoma	779,093	3,505,911	37	91

In addition, we have included below a separate table that compares the actual number of HCRIS cost reports used in computing the national ratio for the 1986 rule and the number of hospitals from the Provider of Services (POS) file for the same 10 States.

	HCRIS data	POS file	Completion percentage
Maine	43	49	87.7
Maryland	70	73	95.8
Missouri	159	175	90.8
New Mexico	26	53	49.0
South Carolina	81	82	98.7
New York	259	334	77.5
Florida	184	254	72.4
Massachusetts	135	162	83.3
Tennessee	137	165	83.0
Oklahoma	128	143	89.5

The foregoing tables show that the allegation of data manipulation is groundless. HCFA used all available cost reports that were either audited or settled, and passed additional edits by the intermediaries.

Comment: The HCRIS data demonstrate that the cost of malpractice insurance premiums is a declining portion of the G&A pool The HCRIS data described in the 1985 NPRM indicate that 1979–1983 premiums were 6.14 percent of the total G&A cost center plus malpractice expense But the preamble to the interim final rule, which includes additional data, shows that the ratio declined to 6.10 percent.

Response: In part, the commenter apparently misunderstands the nature of the HCRIS data For many hospitals, the same cost report was used in developing both the 1985 NPRM and the interim final rule. For many other hospitals, the 1982 cost reports were replaced, upon completion of the audit process, by their 1983 cost reports. In any case, the change cited by the commenter is so small (0.04 percent) that it cannot be viewed as statistically significant.

Comment: In its prospective application, the 1986 rule will apply primarily to facilities excluded from the prospective payment system (PPS): Children's hospitals, alcohol/drug facilities, rehabilitation facilities, psychiatric facilities, and outpatient

services Yet the HCRIS data, on which the 1986 rule is based, pertain only to short term acute care facilities. Thus, HCFA's analysis of the HCRIS data cannot be statistically applicable to the facilities that will be primarily affected, on a prospective basis, by the 1986 rule.

Response: The HCRIS data used in the interim final rule did not pertain solely to short-term acute care facilities In our studies of the HCRIS data undertaken in this rulemaking, we consistently described our research underlying calculation of the national Medicare malpractice loss ratio as pertaining to "hospitals " Although some of our basic tables for the calculations underlying the national loss ratio in the interim final rule refer to "U.S. Medicare Certified Hospitals" or "hospitals" (e.g., R.R. 2535, Table 1; R.R. 2562, Table 1; and R.R. 2563, Table 3), other tables are incorrectly titled in ways that mistakenly suggest that they present data on only "short stay hospitals" (e.g., R.R. 2562, Table 2; and R.R. 2563, Table 4). As explained below, the HCRIS data used in the interim final rule also included data on hospitals excluded from PPS.

The HCRIS data file used to determine the national Medicare malpractice loss ratio included 5,882 hospitals. (*See*, 51 FR 11155.) We subsequently examined the provider numbers of these facilities and determined that 346 providers were in the classes of facilities excluded from PPS. The 346 hospital subset of the 5,882 hospitals in the HCRIS data set used to calculate the Medicare malpractice loss ratio in the interim final rule constitutes about six percent of that particular HCRIS file.

We further determined, based on Medicare provider numbers, that the POS file used for calculating the national Medicare malpractice loss ratio in the interim final rule, includes 605 hospitals excluded from PPS for areas comparable to the HCRIS file (*i.e.*, the U.S., excluding Puerto Rico, Guam, the Virgin Islands, and American Samoa). Furthermore, although it does not present a precise count of excluded hospitals, the American Hospital Association (AHA) reports 703 nonfederal hospitals other than the 5,843 "short-term general and other special" hospitals in 1983. (AHA, *Hospital Statistics*, 1984 ed., Chicago, IL: AHA, 1984, pp. xi, 22.) Thus, while the 346 excluded hospitals on the HCRIS file were only six percent of the total HCRIS data set used to calculate the national ratio, the 346 member subset represents 49 percent or 57 percent of the universe of hospitals that are excluded from PPS—depending on whether we estimate the universe of such hospitals based on AHA or HCFA data, respectively.

The comment raises an underlying issue of whether the scaling factor formula values established by the 1986 rule should apply to hospitals excluded from PPS. In order to address this issue, we reviewed all data sources used in the scaling factor formula. Although the HCRIS data underlying the R factor included data for excluded hospitals, the values of the U_1 and U_2 factors were derived from data for short-stay hospitals only. Further analysis is required to develop a set of formula values for the U_1, U_2, and R factors for hospitals excluded from PPS. Therefore, we are establishing values only for short-stay hospitals in this rule.

As explained in section II above, in order to ensure the consistency and equitableness of the results produced by the scaling factor formula, we intend to develop separate sets of formula values for the two types of hospitals. For short-stay hospitals, we identified all hospitals on the HCRIS and POS files of the type that would be subject to PPS, based on Medicare provider numbers. We then employed the same methodology used in the interim final rule to calculate the national Medicare malpractice loss ratio for all hospitals—this time based exclusively on HCRIS and POS data for short-stay hospitals. Our calculations indicate that the national Medicare malpractice loss ratio for hospitals subject to PPS is equal, after rounding, to the 11.8 percent figure established on the basis of data from all hospitals in the interim final rule. There is, therefore, no need to change the value of the national Medicare malpractice loss ratio for short-stay hospitals from that published in the interim final rule. As indicated, any changes that may be required for the value of the "R" term for hospitals excluded from PPS will be published in a subsequent **Federal Register** document.

2. Removing Malpractice Costs From the G&A Cost Center is Supported by the Evidence and Does Not Result in a Distortion of Apportionment of the Costs That Remain in the G&A Pool

Comment: The actuarial consultant retained by the Department did not support the decision to remove hospital malpractice insurance costs from the G&A pool.

Response: Contrary to the commenter's claim, the actuarial consultant did not even address the issue of removing malpractice costs from the G&A pool. The consultant stated:

> I have not commented on the legal or accounting issues (e.g., is it appropriate to remove medical malpractice costs from the G&A pool) raised [by the commenters] because these are beyond my scope of expertise. (R.R. at 2820.)

Comment: Malpractice expense represents less than one percent of total costs for hospitals excluded from the prospective payment system—the only hospitals significantly affected by the 1986 rule on a prospective basis. Rather than trying to remedy any imbalance in the G&A pool for these hospitals, HCFA is trying to salvage the unsuccessful cost saving technique of the 1979 malpractice rule.

Response: In addition to its prospective application, the 1986 rule applies retroactively to hospital cost reporting periods beginning on or after July 1, 1979. Upon reconsideration of the policy established by the 1979 malpractice rule, the Secretary determined that it was necessary to remove malpractice insurance costs from the G&A pool for these periods (and for future periods) in order to restore the balance of the G&A cost center. While the 1986 rule may result in "cost savings" (*i.e.*, decreased Medicare Trust Fund expenditures), the rule was adopted in order to ensure that providers are reimbursed in accordance with statutory requirements and to prevent windfall payments under the pre-1979 utilization method.

Comment: There are no data in the record from which the Secretary could conclude that the G&A pool, during the period in which it included malpractice insurance costs, inequitably shifted costs from non-Medicare patients to Medicare patients.

Response: The Secretary's determination to remove malpractice insurance costs from the G&A pool is based on four main factors. (*See*, 51 FR 11158–68.) The commenter clearly errs in stating that none of the data relied on in the preamble to the 1986 rule is for the period in which malpractice insurance costs were included in the G&A pool. The documented extraordinary increase in malpractice insurance costs includes data from the inception of the program through 1978, and compares malpractice costs with G&A costs (including malpractice costs) from 1971 through 1978. (*See*, 51 FR 11162, Table.) The NAIC data and the HCRIS data are relied on primarily with respect to the other three factors. (*See*, 51 FR 11162–68.) The NAIC data are for the 1975–78 period. (*See*, 51 FR 11163.) While the HCRIS paid claims data are

for 1978–83, we have compared malpractice insurance expense to the totality of the G&A pool *plus* malpractice expense for the same period. (*See*, 51 FR 11152, 11165.) A similar comparison was effected for the HAS/Monitrend data for the 1979–1984 period. (*See*, 51 FR 11166; R.R. at 3697–3703.)

Comment: In its prospective application, the 1986 rule will apply primarily to facilities and services excluded from the prospective payment system. HCFA has presented no evidence that malpractice insurance costs are a disproportionate share of G&A costs for these excluded facilities or that malpractice insurance costs have increased rapidly for them.

Response: As indicated above in our discussion of the HCRIS data, the data set relied on in developing the 1986 rule actually included information on facilities excluded from PPS. The HCRIS data file used to study the relative importance of malpractice expense as a share of the total of G&A and malpractice expenses included 5,180 hospitals. (*See*, 51 FR 11155; R.R 2530.) We examined the provider numbers of these facilities and identified 236 that were not short-stay hospitals of the sort that are subject to PPS and that incurred malpractice expenses. These 236 facilities are over 39 percent of the universe of such facilities on the POS file. We found no distinct part units. Since the 5,180 hospital HCRIS file used to analyze the ratio of malpractice expense to total G&A costs (plus malpractice expense) differed from the 5,882 hospital HCRIS file used to calculate the national Medicare malpractice loss ratio, it is not surprising that we obtained a different number of excluded hospitals for this analysis than the 346 obtained for our loss ratio analysis. However, the 39 percent representation of excluded facilities in our analysis of the ratio of malpractice expense to total G&A cost (plus malpractice expense) is substantial enough for us to conclude that the pertinent HCRIS file contained an adequate representation of the universe of all hospitals excluded from PPS.

We analyzed malpractice expense as a share of total G&A expense plus malpractice for all of the 236 excluded hospitals that were in the 5,180 hospital HCRIS file. We used the same methodology that we used in analyzing the entire HCRIS file. (*See*, R.R. 2558–2584.) We estimated national totals of malpractice expense and the sum of G&A and malpractice expenses by weighting average values per bed from the HCRIS file by the number of beds of excluded facilities from the POS file. This yielded a national estimate of malpractice expense as a share of G&A plus malpractice expenses of 4.6 percent for facilities excluded from PPS. This represented an estimated national total of $36,136,944 in malpractice expense for the excluded hospitals on the 1983 POS file. Although the total dollar amount is predictably less than the $847 million total for all United States hospitals (*See*, 51 FR 11165 (col. 3)), the 4.6 percent proportion is comparable to the 6.1 percent ratio of malpractice expense to total G&A expense plus malpractice expense for all hospitals.

While we do not have separate information on the rate of change of malpractice insurance costs for hospitals excluded from PPS, we do not have any reason to believe that changes in premium costs for excluded facilities differ from such changes for all hospitals. Notably, the commenter submitted no information in support of such a supposition. (As explained below, we disagree with the commenter's related assertion that certain Insurance Services Office (ISO) data show that "malpractice rates" are lower for excluded facilities than for hospitals subject to PPS.) Thus, since malpractice insurance premium costs are a significant portion of total G&A costs (plus malpractice expense) for excluded facilities (as for all hospitals) and because we have no reason to believe that the extraordinary increase in premiums for all hospitals (*see*, 51 FR 11160–62) differs for excluded facilities, we believe that it is entirely appropriate to eliminate premium costs from the G&A pool for hospitals excluded from PPS.

a. The Increase in Malpractice Insurance Premium Costs

Comment: The AHA's Hospital Administrative Service (HAS)/Monitrend data for 1979 through 1984 show only a slight increase in malpractice insurance costs per adjusted occupied bed. Adjusted for inflation, these increases would be, according to the commenter, non-existent.

Response: We have presented extensive evidence on the rate of increase in malpractice premiums in the preamble to the interim final rule. (*See*, 51 FR 11160–62.) For the 1979–84 period, we primarily relied on AHA-derived data, and ISO data on premium cost increases that were "used for purposes of establishing a market basket of cost inputs for calculating increases in hospital expenditures." (51 FR 11160.) These data indicate a cumulative rate of increase of 83.3 percent for the period 1979 through 1984, with an annual rate of increase of 12.9 percent for that period. (R.R. 3549.)

It is not possible to directly compare the HAS/Monitrend data relied on by the commenter, which describe malpractice expense growth by hospital bed class, with the above-described results derived from the AHA and ISO data that were "used in the hospital input price index" for all hospitals. (*See*, 51 FR 11160.) The specific HAS/Monitrend data relied on by the commenter calculates growth rates in malpractice costs for various classes of hospitals whereas the HCFA price index describes the cost of premiums for all hospitals. We have therefore calculated a weighted average rate of increase in malpractice insurance expense per bed for all U.S. community hospitals using the original HAS/Monitrend data. (The HAS/Monitrend data, published by AHA for "Professional Liability Insurance Expense/Bed" in 1979 (R.R. 3736) and 1984 (R.R. 3706), apparently present numbers identical to those that the commenter cites for cost per adjusted bed, with differences due to rounding. We assume the original AHA-published tables are correct.) We weighted insurance expense per bed for 1979 and 1984 from the HAS/Monitrend data for short-term general hospitals (R.R. 3706 and 3736) by the number of community hospital beds in the two years (AHA, *Hospital Statistics*, 1980 edition, p. 20, and 1985 edition, p. 22, respectively). These are appropriate weights since short-term general and other special hospitals, as defined by AHA, include community hospitals and a very small number of hospital units of institutions (e.g., infirmaries). In two cases we had to combine HAS/Monitrend bed size categories and calculate mean insurance expense values in order to have bed size categories compatible with those reported in *Hospital Statistics*. Our calculations indicate that the weighted average HAS/Monitrend data show a cumulative, increase of 4.1 percent in insurance expense per bed between 1979 and 1984, with a 0.8 percent annual rate of increase.

While the results produced by our analysis of the HAS/Monitrend data are less than those described in the interim final rule, we believe that the data relied on in that rule—principally the AHA-derived and ISO data ("the HCFA data")—are superior in this context. The principal difference between the HCFA data and the HAS/Monitrend data is that the former are a price *index* while the latter are a measure of premiums paid by hospitals surveyed. HAS/

Monitrend data pertain to "accrued monthly expenses for hospital and professional liability (malpractice) insurance policies." (American Hospital Association, *Guide for Uniform Reporting: Monitrend for Hospitals*, Chicago, Ill.; AHA, 1979, p.48, at R.R. 3703). The HCFA data are based on a price index developed from AHA and ISO data "to quantify the annual percent change in hospital professional liability insurance premiums over time." (Mark S. Freeland *et al.*, "National Hospital Input Price Index," *Health Care Financing Review*, Vol. 1, No. 1 (Summer, 1979), p. 57, at R.R. 2943).

A price index such as that developed by HCFA measures the cost of the same good at different times. Thus, a price index is, by definition, standardized. It is measured as a ratio of the current period index level to the base period index level, which is usually set equal to 1.0. It is not measured in dollars or any other monetary units. However, as explained in the interim final rule (51 FR 11160, col. 3), the HCFA index is not a pure price index since to some extent it reflects quantity as well as price change. (*See also* R. R. at 2927.)

By contrast with the HCFA index, the HAS/Monitrend survey data measure the actual dollar malpractice insurance premium expenses of reporting hospitals. Since the hospitals reporting to AHA's HAS/Monitrend service vary greatly by bed size and probably in level of coverage purchased per year and per incident, it is necessary and appropriate to standardize premiums paid by some measure of hospital scale. The AHA apparently chose number of beds as the best measure of scale and publishes Monitrend data on malpractice insurance expense per bed.

The HAS/Monitrend data has certain limitations in this context. It does not standardize for level of coverage and would reflect changes in quantity as well as price of insurance. In other words, changes in HAS/Monitrend results could reflect changes in the amount of insurance bought as well as price for any given level of coverage. In addition, the sample of reporting hospitals in the HAS/Monitrend data is not a random or scientifically designed sample. It is simply the group of hospitals that subscribe to AHA's HAS/Monitrend service. As a result there are unpredictable biases in the HAS/Monitrend data on malpractice premiums

There are three additional reasons why the HAS/Monitrend data do not detract from the Secretary's determination that hospital malpractice premiums increased extraordinarily during the relevant time period. First, data from the St. Paul Fire and Marine Insurance Company from the 1979–84 period show a 113.4 percent cumulative increase, with an annual rate of increase of 16.4 percent for that period (R.R. at 3485), which are much higher increases than are indicated by the HAS/Monitrend data.

Second, a recently released study by the General Accounting Office (GAO) based on a 1986 survey of community hospitals also shows accelerated growth in hospital malpractice insurance expense. The GAO survey used a stratified random sample drawn by the AHA of 1,782 hospitals, of which 70 percent (1,248 hospitals) responded. The GAO calculated national estimates based on this sample and estimated that hospital malpractice insurance costs (including premiums, contributions to self-insurance trust funds, and uninsured losses) increased 57 percent from 1983 to 1985 (25.4 percent per year). This represented an increase of 85 percent in malpractice cost per inpatient day (36.2 percent per year) and 78 percent in malpractice cost per bed adjusted for outpatient visits (33.6 percent per year). (GAO, *Medical Malpractice: Insurance Costs Increased But Varied Among Physicians and Hospitals*, Washington, DC: GAO, September, 1986, pp. 20–23, 38–48.) These increases partially reflect increases in coverage, while the increased cost per inpatient day reflects in part a 13 percent decline in days over the period. (*Id.*, p. 50.) Nonetheless, it is clear that the cost of hospital malpractice insurance increased greatly over the 1983–1985 period. This cost also increased greatly in contrast to total hospital expenses, which increased only 12 percent, and in contrast to average expense per inpatient day, which increased only 26 percent over the period. *Id.*

Third, a recent study by the AHA reported that data from the St. Paul Insurance Companies show that "[m]alpractice liability insurance costs for hospitals rose nationally more than 50 percent during the past 5 years." (AHA, *Medical Malpractice Task Force Report on Tort Reform and Compendium of Professional Liability Early Warning Systems for Health Care Providers (May 1986)*, n.p.: AHA, 1986, p. 11). The same AHA study cites a report prepared for the Michigan Hospital Association, which found that in Michigan premiums per hospital (including amounts set aside to cover pending claims) increased 95.3 percent from 1980 through 1984 (an 18.2 percent per year rate of increase) and then increased 87.8 percent in 1985 (calculated from data in AHA, *Ibid.*, p. 11).

Comment: The HAS/Monitrend data show that, for hospitals in the 100–149 bed size class, malpractice insurance cost per bed increased only eight percent from December 31, 1979 through December 31, 1984, whereas the other component cost centers increased as follows: general accounting, 79 percent; patient accounting and admitting, 108 percent; administrative, 101 percent; purchasing and stores, 136 percent; data processing, 101 percent. According to the commenter, since these are typical of increases in costs for all bed size groups from 1979 to 1984, HCFA cannot show that malpractice costs have increased at a greater rate than other G&A costs.

Response: The commenter has partially misstated the findings from the cited HAS/Monitrend data. In addition to making a calculation error and various minor rounding errors, the commenter presented the results for administrative costs as those for purchasing and stores and vice versa.

In any event, the commenter's criticisms do not detract from the Secretary's determination that increases in malpractice insurance costs far outstrip increases in the entire G&A pool. As explained above, we have reservations about the quality of the HAS/Monitrend data on malpractice insurance premium increases. We believe that the AHA-derived and ISO data used by HCFA in the hospital input price index are a better measure of malpractice insurance costs. The malpractice cost data used in the HCFA price index for the 1979–1984 period show an 83.3 percent cumulative increase for 1979 through 1984. This rate of increase is comparable to the rates of growth for the other component cost centers in the G&A pool cited by the commenter and exceeds that of the general accounting center. (The commenter stated that the HAS/Monitrend data for the 100–149 bed size class is typical of all hospitals, and thus we can compare these data directly with the premium cost increase data in the HCFA price index.)

In any event, the HAS/Monitrend data for 1983–85 show very significant premium increases—increases that are surpassed by the more reliable data in the HCFA price index and the GAO survey. We examined HAS/Monitrend data on professional liability insurance expense per bed in general short-term hospitals for the six month periods ending June 30, 1983 (R.R. 3715) and June, 1985 (AHA, *HAS/Monitrend Data Book for Period Ending June 30, 1985*,

Chicago, IL: AHA, 1985, p. 15). We compared the HAS/Monitrend data with data collected from the 1,248 responding community hospitals in the above-described GAO survey and with the premium cost data in the HCFA price index. The GAO survey presents data on average annual malpractice cost per bed using a measure of beds that adjusts for outpatient care. HAS/Monitrend presents six month medians of professional liability insurance expense per bed and appears to report statistics as expense per month. The HCFA measure is a price index calculated on a quarterly and annual basis. Despite definitional differences, we would expect that the rates of change of the three measures are comparable.

The HAS/Monitrend data show increases from June 1983 through June 1985 ranging from 13.4 percent to 62.4 percent, depending on the hospital bed size class considered. Most HAS/Monitrend bed size classes show increases of less than 40 percent over the period. The HCFA index shows a cumulative rate of increase of 46.7 percent for 1984 and 1985. This reflects a 16.0 percent increase in 1984 (R.R. 3549) and an increase of 26.5 percent in 1985. (While unpublished HCFA data showed an increase of 11.8 percent in 1985 (R.R. 3549), "recently updated industry data" showed a 26.5 percent increase in 1985. (*See*, 51 FR 31464 (col. 3).) The GAO reports an increase in average malpractice cost per bed of 78 percent between 1983 and 1985.

Finally, the most comprehensive study of the Medicare G&A cost center (including malpractice expense) found annual increases of 11.5 percent in cost per adjusted admission in the G&A cost center for 1971–1978, as compared with annual increases in malpractice premiums of 38.2 percent over the same period. (*See*, 51 FR 11161.)

Comment: Data from the St. Paul Fire and Marine Insurance Company, together with the HAS/Monitrend data, show that malpractice insurance cost increases since 1979 are not great enough to warrant direct apportionment of these costs.

Response: The commenter has misunderstood the full basis for the Secretary's determination to remove malpractice insurance costs from the G&A pool. The Secretary's decision to remove malpractice insurance costs from the G&A pool is based on four distinct factors—not on premium cost increases alone (51 FR 11158–68). Also, the commenter has misinterpreted the two data sources in question. As explained above, the AHA's HAS/Monitrend data present an implausible picture of the growth in hospital malpractice insurance costs.

The malpractice cost increase data relied on primarily by the Secretary were national data derived from the AHA itself and from ISO. (*See*, 51 FR 11160.) Contrary to the commenter's suggestion, the data showing malpractice cost increases from 1966 through 1979 figured in the Secretary's decision at least as much as the post-1979 data. While the St. Paul data come from the largest underwriter of malpractice insurance, they are not national data and they are limited in time to the 1977–85 period. (*See*, R.R. at 3483–3491.) Moreover, the commenter ignores the impact of the final year of St. Paul data on the cumulative increase indicated by that company. While St. Paul reported a 31 percent cumulative increase from 1977 to 1984, it "reported an additional 38 percent increase in premium rates for 1985, which brings the cumulative increase for the 1977–1985 period to 80.8 percent." (51 FR 11160.) Thus, the cumulative increase from the St. Paul data is similar to the comparable figure derived from the AHA data and the ISO data. (*See*, Table at 51 FR 11162.) Accordingly, the Secretary reasonably concluded that "the St. Paul data do not detract from the extraordinary increase in premium rates between 1977 and 1985, as shown by the national AHA-derived data and the ISO data." (*See*, 51 FR 11160.)

Comment: Comparison of 1985 malpractice costs to total hospital costs for 1980 indicates that malpractice costs are only 0.7 percent of total costs. At most, the interim final rule shows that providers were overreimbursed malpractice costs by 25.6 percent (*i.e.*, 38.8 percent Medicare utilization rate minus 13.2 percent Medicare paid claims rate). Thus, the 1986 rule addresses only 0.17 percent of total hospital costs, which clearly is not enough to distort the G&A pool.

Response: The commenter's statements rest on several methodological errors. First, the proper comparison is between total G&A costs (including malpractice expense) and malpractice costs for the same time periods—not total hospital costs and malpractice costs for different time periods. Second, the HCRIS data relied on in our determination to remove malpractice costs from the G&A pool show that the difference between Medicare utilization (*i.e.*, 42.9 percent) and the national Medicare loss ratio (*i.e.*, 11.8 percent) is 31.1 percent. (*See*, 51 FR 11167 (col. 3).) The commenter mistakenly compared values for two of the constants in the scaling factor formula (*i.e.*, U_1 and R), rather, than the HCRIS data actually relied on by the Secretary in this context. Contrary to the commenter's conclusion, the distortion in the G&A pool caused by malpractice insurance costs of approximately $266.0 million per annum clearly results in cost-shifting sufficient to warrant removal of those costs from the G&A pool. (*See*, 51 FR 11167.)

Comment: The Secretary's 1973 Commission on Medical Malpractice disputes the basis of the interim final rule (that is, that premiums have increased because of the high number of claims and large aggregate losses), and concluded instead that premiums had increased due to uncertainty as to either the number of claims that would be filed or the average loss per claim—factors that apply equally to Medicare and non-Medicare patients.

Response: While the preamble to the interim final rule fully documents the extraordinary increase in malpractice insurance costs during the relevant time periods (*see*, 51 FR 11160–62), the 1986 rule does not depend on whether these extraordinary increases are due to the high number of claims and large aggregate losses, as the commenter asserted, or other factors. Increases in losses, misestimations of prior premiums, and national trends in the frequency and severity of claims are some of the factors that cause premium increases. (*See*, 51 FR 11176 (column 2).) Regardless of the precise causes of increases in premium costs, we must apportion premium costs—at whatever levels—in accordance with applicable statutory requirements and in a manner that takes account of the evidence of disproportionately low Medicare utilization of the underlying services. The extraordinary increase in these costs, along with the other factors discussed in the preamble to the interim final rule, require removal of these costs from the G&A pool.

b. Number and Size of Claims Paid ro Medicare Beneficiaries.

Comment: HCFA's reliance on the lower claims costs attributable to Medicare patients is questionable because this factor ignores the difference between *claims* against hospitals by Medicare patients and the *premiums* hospitals pay to insure against malpractice claims. The problem is compounded, according to the commenter, by the fact that the 1986 rule primarily has retroactive application whereas insurers writing policies from 1979 to 1983 did not have the benefit of hindsight. Rates charged during this period were based primarily on an

"occupied bed" basis, and any adjustments stemming from the experience rating of specific providers. Finally, HCFA's reliance on the distinction between underwriting policies and fashioning an apportionment policy is to no avail because lower claim costs for the 1979–83 period were not reflected in lower premium costs, whereas the special apportionment policy established by the 1986 rule can only be justified on the basis of cost differences.

Response: Notably, the commenter does not question the plethora of data relied on by the Secretary in finding that Medicare patients account for a disproportionately low share of malpractice insurance costs. (*See,* 51 FR 11162–11165.) The commenter's criticisms of the relevance of these data are misconceived for two fundamental reasons. First, insurance industry premium-setting practices are partially based on a hospital's own experience, a fact which results in the premium taking into account Medicare's major underutilization of premium expense. In establishing hospital premiums (*see generally,* 51 FR 11168–11169), the insurance industry first determines an "overall state rate." Next, it uses nationally-derived loss ratios—similar to the loss ratios included in the HCRIS data— to establish "rate relativities" that divide the class of insureds into various subgroups (*e.g.,* for-profit and not-for-profit hospitals). Finally, each hospital receives its own "experience rating", which takes into account its particular malpractice loss experience. It is true that the insurance industry does not *directly* consider a hospital's Medicare utilization rate in the course of setting the premium. However, the experience rating stage of the premium-setting process automatically takes into account the disproportionately low number and amount of Medicare claims because lower premiums will eventuate for large and small hospitals with high Medicare utilization rates. (*See,* R.R. at 2869–2870.)

Second, the commenter also ignores the fact that a premium consists of numerous subcosts. Section 1861(v)(1)(A) of the Act directs the Secretary to apportion hospital costs in a manner that prevents cost-shifting between Medicare patients and non-Medicare patients. The 1986 rule meets this requirement by dividing hospital malpractice insurance cost into two components. The "administrative component," which accounts for 8.5 percent of total premium cost, is included in the G&A pool and is apportioned on the basis of the individual hospital's Medicare utilization rate. The Secretary determined that because the subcosts that constitute the administrative component are, at most, only slightly affected by the frequency and amount of malpractice claims, that portion of total premium cost is properly apportioned on a utilization basis. The "risk component," which comprises the remaining 91.5 percent of total premium cost, is apportioned on the basis of the scaling factor formula. The Secretary determined that because the subcosts that constitute the risk component are significantly affected by the frequency and amount of malpractice claims, that portion of total premium cost is properly apportioned on the special basis established by the 1986 rule. Thus, the 1986 rule rationally connects premium subcosts and apportionment policy by distinguishing subcosts that are significantly affected by Medicare's low utilization of the underlying service (i.e., the risk component) from subcosts that are largely unaffected by this low utilization (i.e., the administrative component). Similarly, the Secretary reasonably relied on information about the infrastructure of premium costs, together with the HCRIS data and the NAIC data, in finding that Medicare's disproportionately low utilization of claims-related costs, among other reasons, required the removal of malpractice insurance costs from the G&A pool.

Comment: Neither the HCRIS data nor the NAIC study support the Department's assertion that before 1979 Medicare was paying a "disproportionate" share of malpractice insurance costs.

Response: The largest subcosts in total premium cost are reserves for anticipated loss experience and loss adjustment expense (i.e., ALAE and ULAE). (*See,* R.R. at 2863.) The HCRIS data show that Medicare patients accounted for a disproportionately low share of total claims paid from 1978 through 1983. (*See,* 51 FR 11164) The NAIC closed claims data show that patients 65 years of age and older (principally Medicare beneficiaries) have lower average indemnities and lower ALAE than patients under 65 (generally non Medicare patients). (*See,* 51 FR 11163–11164.) The NAIC data also show that, relative to patient utilization, Medicare patients submit fewer claims than non-Medicare patients. (*See,* 51 FR 11163.) The NAIC data pertain to claims closed in the years 1975 through 1978. Thus, both the HCRIS and NAIC data provide evidence that, when Medicare reimbursed hospitals for premium expense using the pre-1979 utilization method, the program bore a disproportionate share of hospital malpractice insurance costs. Accordingly, it is rational, consistent with applicable statutory requirements, and consistent with evidence from both before and after 1979 to apportion subcosts that are significantly affected by the frequency and amount of malpractice claims on the special basis established by the 1986 rule.

Comment: One commenter, an insurance company, reported that its data from 1980 through 1985 do not support HCFA's claim that malpractice payments to Medicare patients are dramatically less than for other patients. The insurer reports that, in its experience, the average paid Medicare claim is 90 percent of the average paid non-Medicare claim. It concludes that there is not a significant difference in the average indemnity payments between the two classes of risk. According to the commenter, its data contradict the factual basis in the 1986 rule for using the scaling factor formula.

Response: Although the commenter presented a summary description of data from 1981 through 1985 concerning other issues, the commenter presented no specific information supporting its assertion that the average paid Medicare claim is 90 percent of the average paid non-Medicare claim. In addition, the information apparently stems from one State. The Secretary's decision to remove malpractice costs from the G&A pool is based, in part, on our analysis of the NAIC closed claims study data, which includes 23,386 claims from throughout the United States. (*See,* 51 FR 11144 (column 2).) The NAIC data indicate that, for claims greater than zero, the average indemnity paid to persons 65 years of age or older is 49.6 percent of that paid to persons under 65 years of age. (While the preamble to the interim final rule stated that elderly claims were 49.9 percent of awards for those under 65 (51 FR 11164, col. 1), the record shows that 49.6 percent is the proper percentage relationship. (*See,* R.R. at 2721, Table 5a and 2724.)) The disparity is even greater—41.9 percent—for total claims submitted by Medicare beneficiaries as compared to non-Medicare patients. (*See,* 51 FR 11164, col. 1.) It is clear that a large, nationally representative database such as the NAIC database is more credible with respect to this matter than the commenter's unsubstantiated assertions.

c. *The relative importance of malpractice premium costs in the G&A pool.*

Comment: The HAS/Monitrend data show that malpractice costs are a declining portion of the G&A pool insofar as they decreased from 5.8 percent of the total pool by December 31, 1979 to 3.0 percent by December 31, 1984 for hospitals with a 100–149 bed size.

Response: The results described by the commenter are predicated on the low growth rate of malpractice premium costs reported in the HAS/Monitrend data. As explained above, the premium cost data in the HCFA price index and the GAO survey are more reliable and show that malpractice expense increased greatly during the relevant time period. While a commenter stated that the HAS/Monitrend data showed an eight percent increase in malpractice expense during the 1979–84 period, the HCFA data showed an 83.3 percent cumulative increase for that period. The GAO survey showed a 78 percent increase between 1983 and 1985, with a 44.9 percent increase in 1984 alone.

As explained above, the HCFA measure of the 1979–84 increase in malpractice insurance expense is comparable to the increase in other component cost centers of the G&A pool, as measured by the HAS/Monitrend data for the 100–149 bed size class. Since the other component cost centers increased approximately 100 percent during the 1979–1984 period for the 100–149 bed size class, the HCFA and GAO survey measures of malpractice insurance expense would suggest, at most, a very slight decline in the overall share of malpractice in the G&A pool. Moreover, as explained in the preamble to the interim final rule, malpractice premiums for hospitals increased 38.2 percent per year from 1971 to 1978 while Medicare's own G&A pool (including malpractice expense) increased only 13.6 percent per year during that period. (*See,* table at 51 FR 11162.)

Comment: If malpractice expense is 6.10 percent of total G&A costs plus malpractice expense, then other G&A costs represent 93.90 percent of this total. At 40 percent utilization, HCFA proposes to pay 0.98 percent of total G&A costs plus malpractice expense (*i.e.,* 16.14 percent scaling factor formula times 6.10 percent malpractice costs.) According to the commenter, with all of the other G&A costs that Medicare patients incur disproportionately, even a conservative estimate of a one percent error in underpayment of the other G&A costs (*i.e.,* 93.90 percent of the total G&A costs plus malpractice expense) would be 0.94 percent of total G&A costs plus malpractice expense, which would offset any overreimbursement for malpractice insurance costs.

Response: Although the commenter refers to a one percent error in underpayment of the other G&A costs, we assume that he does not mean a one percentage point lower reimbursement of the costs of "other G&A costs." (The commenter apparently assumes that malpractice is part of the G&A pool, but this has not been true for the Medicare program since 1979.) Such an interpretation would be inconsistent with the calculation actually presented by the commenter. We explain below what the commenter apparently does mean by the assumed 1 percent error.

The commenter makes two basic errors in its calculations and omits the most relevant calculations and comparisons. First, while the comment is premised on the situation of a hospital with 40 percent Medicare utilization, the commenter mistakenly assumes that utilization-based reimbursement of total G&A costs (not including malpractice expense) would be 100 percent for such a hospital. As shown below (Step Three), a hospital with 40 percent Medicare utilization would be paid only 40 percent of these other G&A costs, which amounts to 38 percent of total G&A and malpractice costs. Second, we also explain below (Step Four) that the effect of an assumed one percent reimbursement error of other G&A costs plus malpractice expense would be 0.38 percent—not 0.94 percent as the commenter suggests. The following is a full presentation of the scenario suggested by the commenter, which, as we explain below, does not detract from our determination that inclusion of malpractice expense in the G&A pool imbalanced that pool.

More importantly, the commenter fails to calculate Medicare reimbursement under the pre-1979 utilization method and compare the results with the 1986 rule. As shown below (Steps Five and Six), under the scenario suggested by the commenter, the pre-1979 methodology yields a large, certain overpayment of 1.46 percent—amounting to $196 million per annum for all hospitals—for malpractice insurance costs, which far outstrips the 0.38 percent underpayment that is hypothesized by the commenter.

Step one—The commenter split total G&A costs (plus malpractice expense) between malpractice and "other G&A costs":

	Percent
Total G&A costs plus malpractice expense	100.0
Malpractice costs	−6.1
"Other G&A costs"	93.9

Step two—The commenter determined total Medicare reimbursement for all G&A costs plus malpractice costs for a hospital with 40 percent Medicare utilization:

Risk Component	12.74%	0.139 (scaling factor at 40 percent Medicare utilization) × 91.5 percent.
Administrative Component	+3.40%	40 percent Medicare utilization × 8.5 percent.
	16.14%	Medicare's total share of malpractice costs at 40 percent Medicare utilization.
	×6.10%	Malpractice costs as a percentage of total G&A costs plus malpractice expense.
	0.98%	Medicare payment for malpractice expense equals approximately one percent of total G&A costs plus malpractice expense for a hospital with 40 percent Medicare utilization.

Step three—Medicare reimburses 40 percent of "other G&A costs" for such a hospital, leading to the following percentage payment:

Description		Units of measurement
"Other G&A costs"	93.9%	Percentage of total G&A and malpractice costs.
Utilization Rate	×40%	Percent.
Reimbursement of "other G&A costs".	38%	Percentage of G&A and malpractice costs.

Step four—The commenter determined what the effect of a one percent error in Medicare reimbursement of total G&A costs—excluding malpractice costs—would be on total reimbursement for these "other G&A costs."

Description		Units of measurement
Reimbursement for "other G&A costs".	38%	Percent of total G&A and malpractice costs.
Assumed reimbursement error.	×1.0%	Percent.
Error in payment for "other G&A costs" implied by commenter's assumptions.	0.38%	Percent of total G&A and malpractice costs.

Since the effect of an assumed one percent error in Medicare reimbursement of total G&A costs—excluding malpractice expense—would be only 0.38 percent (not 0.94 percent as

the commenter asserted), such an assumed error would not "offset the perceived malpractice payment", which the commenter suggests is 0.98 percent. In fact, the hypothetical hospital described by the commenter would be overreimbursed 1.46 percent under the pre-1979 utilization method, which we calculate as follows:

Step five:

Description		Units of measurement
Malpractice expense	6.10%	Percentage of total of G&A and malpractice costs.
Utilization Rate used to determine Medicare reimbursement of malpractice expense under pre-1979 utilization method.	×40%	Percent.
Medicare reimbursement of malpractice expense under pre-1979 utilization method.	2.44%	Percentage of total of G&A and malpractice costs.

Step six:

Description		Units of measurement
Medicare reimbursement of malpractice expense under pre-1979 utilization method.	2.44%	Percentage of total of G&A and malpractice costs.
Medicare payment for malpractice expense under 1986 rule.	−0.98%	Percentage of total of G&A and malpractice costs.
Overpayment of malpractice expense under pre-1979 method.	1.46%	Percentage of total of G&A and malpractice costs.

Thus, a hospital with 40 percent Medicare utilization and an error of one percent in reimbursement of G&A costs other than malpractice costs would be underpaid .38 percent of total G&A costs plus malpractice expense. This amount is far less than the Medicare overpayment for malpractice costs of 1.46 percent that would have been made under the pre-1979 utilization method. Moreover, "a distortion in . . . [the G&A] cost center of 1.4 percent would equal $196.0 million per annum." (*See,* 51 FR 11167, col. 3.) In addition, overpayment of at least 1.4 percent—with its extraordinary fiscal impact—is certain to occur (*See id.*) whereas the .38 percent underpayment is merely hypothetical. We consider a large, certain overpayment a proper basis for corrective rulemaking.

Comment: The Department concedes that various component cost centers in the G&A pool are larger than malpractice insurance costs. The commenter states that HCFA's attempt to distinguish these component cost centers on the grounds that they are composed of discrete costs is unavailing. The Medicare hospital apportionment policy established by the 1986 rule shows that malpractice premium cost is made up of constituent costs, too.

Response: As explained in the preamble to the interim final rule, the exact costs included in each of Medicare's component cost centers varies among providers. (*See,* 51 FR 11159.) To complicate matters further, the precise costs included in the overall G&A pool vary among providers as does the exact definition of particular costs included in that cost center. By contrast, malpractice insurance costs are precisely defined for Medicare cost reporting purposes. *See,* Provider Reimbursement Manual, Part II, section 1907 (February 1986). Thus, while we know that various component cost centers are larger than malpractice expense, we are unsure about the precise identity of the costs in these component centers because of the flexibility in reporting requirements. More importantly, we have no evidence that these other costs are overutilized in a manner that favors the program. But even if we had such information on discrete G&A costs, it would be difficult to locate it in a component cost center. Similar problems do not exist with respect to malpractice insurance costs, which are disproportionately underutilized by Medicare beneficiaries and precisely defined for program cost reporting purposes.

d. *Changes in other costs in the G&A pool.*

Comment: If the G&A pool, excluding malpractice insurance costs, is imbalanced in favor of Medicare by as little as 1.4 percent, then the rationale for removing these costs from the G&A pool fails. The commenter reaches the 1.4 percent figure as follows: 38.8 percent (*i.e.,* the average apportionment based on utilization) minus 15.6 percent (*i.e.,* the average apportionment under the 1986 rule) times 6.1 percent (*i.e.,* the HCRIS-derived ratio of malpractice costs to total G&A costs) equals 1.4 percent. According to the commenter, there is no statistical evidence justifying HCFA's reliance on this confidence level in changing the methodology applicable to the $14 billion G&A pool.

Response: The commenter has miscalculated the distortion caused by the inclusion of malpractice insurance costs in the G&A pool. The difference between the HCRIS-derived national Medicare utilization rate (42.9 percent) and malpractice loss ratio (11.8 percent)—not, as the commenter states, the difference between the "apportionment averages" yielded by the pre-1979 utilization method and the 1986 rule—should be multiplied by the HCRIS-derived ratio of malpractice expense to total G&A cost (plus malpractice cost) (6.1 percent). (*See,* 51 FR 11167.) Each of these three HCRIS-derived parameters is statistically reliable. (*See,* R.R. at 2558–2561.) The result is a distortion factor of 1.9 percent or $266.0 million per annum. (51 FR 11167.) While a countervailing "imbalance in favor of Medicare" would suggest that it might not be necessary to remove premiums from the G&A cost center, no reliable evidence exists of any such offsetting costs. In light of the pervasive, reliable evidence that malpractice insurance costs have distorted the presumed balance of the G&A pool, the Secretary determined that removal of those costs was necessary in order to prevent statutorily-proscribed cost-shifting between Medicare and non-Medicare patients.

Comment: A significant increase in malpractice insurance premiums does not support this rule. Legal fees attributable to non-Medicare claims have also significantly increased and may have more than offset malpractice premiums.

Response: The commenter apparently is suggesting that legal fees, which are a category of G&A cost, attributable to non-Medicare patients have increased enough in the relevant time periods to counteract the effect of increasing malpractice insurance costs. As explained in the preamble to the interim final rule (51 FR 11166–68), there is no evidence that changes in other costs in the G&A cost center offset the imbalance caused by malpractice insurance costs. Moreover, the commenter included no quantitative evidence of the magnitude or relative importance of alleged increases in legal fees related to non-Medicare claims, how such costs compare to legal fees for Medicare related claims, and how legal fees compare generally to the G&A cost center.

Comment: HCFA refuses to acknowledge the numerous comments from the hospital industry that Medicare pays a disproportionately low share of other G&A costs. In addition to the G&A costs commented on previously by the industry, which, according to the commenter, included cost report preparation, appeal costs, billing-related costs, and statistical recordkeeping costs, the following costs, contrary to HCFA's "programmatic experience", are disproportionately borne by non-Medicare patients:

(1) *Administrative Costs:* The commenter stated that for the relevant time periods the Medicare program has issued thousands of program changes

that have increased administrative costs tremendously. The commenter provided a copy of a report to the Secretary that suggested that compliance costs could reach $300 million. The commenter also supplied an accounting firm's description of the costs of complying with the 1979 malpractice rule alone.

(2) *Uniform Billing:* The commenter asserted that only the Medicare program requires uniform billing, which has increased hospital administrative expenses greatly. Specific major expenses cited by the commenter included:

(a) HCFA allegedly forced hospitals to bear the full cost of using the UB-82/HCFA-1450 form; and then HCFA started requiring special billing.

(b) The hospitals must pay for the implementation of new programs and the problems associated with their implementation.

(c) The commenter presented various examples of how claims processing costs for Medicare patients were shifted to providers.

(3) *The Medicare Cost Report:* The commenter furnished various attachments to support its contention that the continual changes in cost reporting requirements have been unduly burdensome to providers, including a letter from HCFA recognizing these burdens.

(4) *Computer Costs:* The commenter asserted that the program has failed to bear its share of computer costs incurred in response to major programmatic changes resulting from the Tax Equity and Fiscal Responsibility Act of 1984 (Pub. L. 97-248) (TEFRA) and the prospective payment system.

(5) *HCFA's Statements in the Interim Final Rule About Specific G&A Costs:* The commenter disputed HCFA's specific statements about credit/collection costs and the periodic interim payment system (PIP) and stated that computer claims key punching costs were unduly burdensome.

The commenter concluded that despite all of these alleged disproportionalities in favor of the program, Medicare has refused to allow discrete-costing of these costs, among other G&A costs, in order to preserve the balance of the G&A pool. According to the commenter, these disproportionalities, together with the removal of malpractice expense from the G&A pool, will upset the balance of the G&A pool.

Response: Although the commenter asserted that specific G&A costs are incurred only for Medicare patients, the fact is that these costs are incurred for non-Medicare patients too. Furthermore, while the commenter alleged that certain G&A costs are incurred disproportionately for Medicare patients with the result that Medicare allegedly pays a disproportionately low share of total G&A costs, neither this commenter nor any other commenter presented any evidence in support of these assertions. Thus, there is no reason to believe that any of the costs referred to by the commenter distorted the presumed balance of the G&A pool in favor of the Medicare program or contributed to the shifting of G&A costs to non-Medicare patients. The following responds to the G&A costs discussed specifically by the commenter

(1) *Administrative Costs*—The commenter asserted that several items of costs are disproportionately borne by non-Medicare payors: program changes that have increased administrative costs; compliance costs to meet health and safety standards; and costs of complying with the 1979 malpractice rule. The commenter presented no evidence that these costs are uniquely borne by Medicare patients. Similarly, the commenter submitted no evidence that these costs would offset the imbalance of the G&A pool caused by malpractice costs much less that they distorted the G&A pool in favor of the program. The commenter has merely described certain costs incurred under the Medicare program and simply concluded—without any supporting evidence—that these costs caused an imbalance in the G&A pool in favor of Medicare or resulted in shifting G&A costs to non-Medicare patients. Absent the requisite supporting evidence, we have no basis to conclude that the "administrative costs" referred to by the commenter disrupt the presumed balance of the G&A pool.

The compliance costs referred to by the commenter were described in a 103-page Final Report of the Office of Health Regulation to the Secretary of Health and Human Services, entitled, "The Reform of Regulations in the Department of Health and Human Services: Proposals for Change" (January 9, 1981) ("1981 Report"). The 1981 Report states: "Compliance costs, for the number of hospitals assumed by HSQB (Health Standards and Quality Bureau) to be out of compliance with the proposed standards, may be as high as $300 million." (1981 Report at 81.) The $300 million refers to an undefined estimate of the cost of requiring compliance with health and safety standards included in an NPRM, dated June 20, 1980, published in the **Federal Register** (45 FR 41794). A new revised proposal was published as an NPRM dated January 4, 1983 (48 FR 299). The final rule related to that proposal was published June 17, 1986 (51 FR 22010). Because the $300 million estimate was based on the January 4, 1983 NPRM and the final rule contained less stringent health and safety standards than the NPRM, the commenter's reliance on the estimated amount is no longer valid. More importantly, the commenter presented no evidence that the compliance costs under the NPRM or the final rule distorted the balance of the G&A pool in favor of the program or resulted in the shifting of the costs of the G&A pool to non-Medicare patients. Since costs incurred by providers to comply with health and safety standards benefit, in the absence of evidence to the contrary, all patients equally, we have no reason to believe that these compliance costs distorted the balance of the G&A pool or required separate apportionment.

The accounting firm's description of the 1979 malpractice rule, which the commenter supplied, contains a description of the data required to be maintained by providers under that rule (e.g., name of patient, identification number of claim, date of payment, and amount of payment). Maintaining these data would have represented a normal expectation of any provider with malpractice losses, and therefore, certainly did not create an unnecessary burden for providers. Nevertheless, the commenter presented no evidence that Medicare patients incurred more than their fair share of these costs or that the costs distorted the balance of the G&A pool in the program's favor or resulted in the shifting of costs of the G&A pool to non-Medicare patients.

(2) *Uniform Billing*—The commenter asserted that HCFA incrementally strayed from the uniform billing concept to one that requires special billing for Medicare causing one claim form to be prepared only for Medicare and another for all other payors. Examples given by the commenter are (a) detailed billing for laboratory outpatient charges, and (b) HCFA allowing each intermediary discretion to completely remove professional component charges from hospital bills. The commenter concludes that providers are now paying for claim forms that provide no advantage to the hospitals any longer.

It is not true that providers have been burdened with the cost of a useless form. Contrary to the commenter's assertion, the uniform bill continues to be effectively used by providers with some additional information required. In no way does this additional information lessen the effectiveness of the uniform billing form.

The commenter also asserted that HCFA has caused a shifting of claims processing costs to hospitals by requiring them to prove that certain questions were asked Medicare beneficiaries for the purpose of coordinating benefits among various Federal programs, such as Black Lung Benefits and programs of the Veterans Administration. The commenter also gave other examples to attempt to show how the billing process has been used to gather information without regard to the cost or reasonableness to hospitals (i.e., the abstract to be sent with all cardiac pacemaker implants and the fact that hospitals must inform intermediaries that the beneficiary is a health maintenance organization (HMO) enrollee or a hospice patient receiving care for another illness not related to why they are a hospital patient).

None of the above-described examples furnished by the commenter supports the alleged shifting of claims processing costs to non-Medicare patients or show that the costs caused an imbalance in the G&A pool in favor of Medicare. Absent evidence to the contrary, we have no basis to conclude that the costs referred to by the commenter were borne inequitably as between Medicare and non-Medicare patients.

(3) *The Medicare Cost Report*—The commenter described much of the history of the development of the Medicare cost reports and concluded that the program has failed to pay its fair share of the costs incurred by providers that are associated with these cost reports.

Because there has been a number of changes in the Medicare cost report required by changes in legislation and regulations, HCFA has explored ways to reduce the reporting burden, as was explained in the letter dated March 25, 1985 from HCFA, which was cited by the commenter. However, the commenter failed to point out that each change in the Medicare cost report does not require the development of an entire new data base. Most changes in the Medicare cost report simply involve a change in the manner in which certain data are reported, or at most, require some additional data. More importantly, the commenter presented no evidence that the costs incurred by providers to comply with Medicare cost reporting requirements distorted the G&A pool in favor of Medicare or that G&A costs were shifted to non-Medicare patients.

(4) *Computer Costs*—The commenter asserted that hospitals had to completely reprogram their computers and develop new computer programs in response to program changes required by the TEFRA rate-of-increase limits established by Pub. L. 97-248 and PPS. The commenter concluded that Medicare has failed to pay its fair share of computer costs associated with these program changes.

The commenter did not explain that most of the data elements associated with the TEFRA rate-of-increase limits and PPS computer programs were already made part of the hospital's other computer programs prior to the rate-of-increase limits and PPS. For example, the coding system used under the rate-of-increase limits *and* PPS computer programs to identify the patient's diagnosis was already in use. Although some computer program changes were necessary to accommodate the rate-of-increase limits and PPS, the commenter has not shown that these changes caused an imbalance in the G&A pool in favor of the program or resulted in shifting G&A costs to non-Medicare patients. Absent evidence to the contrary, we have no basis to conclude that the costs referred to by the commenter were not borne equitably by Medicare and non-Medicare patients.

(5) *HCFA's Statements in the Interim Final Rule About Specific G&A Costs*—The commenter disputed HCFA's position in the preamble to the interim final rule that it overpays for credit/collection costs. The commenter asserted that HCFA has no basis for its position, because hospitals are required to use the same credit/collection efforts for Medicare patients as for all other patients.

The commenter has misunderstood this program requirement. The collection effort required for Medicare patients does not have to be the same as for all non-Medicare patients. Rather, the collection effort for Medicare patients must only be the same as the collection effort for non-Medicare patients with respect to a *like amount* of money owed. Thus, a provider is not prohibited from applying greater collection effort to non-Medicare patients if the amounts involved are greater than the amounts due from Medicare patients. Many non-Medicare amounts owed are greater than Medicare amounts "because the underlying services are not covered by Medicare." (*See*, 51 FR 11166, col. 2.) That is, amounts owed by non-Medicare patients without insurance coverage by a third-party payor or with only partial insurance coverage by a third-party payor would typically be greater than the relatively small deductible and coinsurance amounts owed by Medicare patients. Accordingly, providers would apply greater collection effort, and thereby incur greater collection costs for non-Medicare patients.

The commenter also asserted that HCFA stated wrongly that providers receiving payments under PIP are not required to submit bills immediately (*see*, 51 FR 11166 (col. 2)) because providers on PIP must submit bills timely.

We maintain that there is an important difference between a requirement for "immediate" submission (as a condition for payment) as opposed to one for "timely" submission of bills (after payment has been made). Our purpose in referring to PIP was to highlight a payment mechanism, available for many years, that has assisted providers in more efficiently managing their bill processing by establishing level interim payments without the need for immediate submission of bills prior to payment. The timely submission of bills requirement historically relates to the need for intermediaries to monitor, on a continuous basis, the accuracy of the interim payments for specific services.

In addition, the commenter asserted that HCFA, through its intermediaries, has been forcing hospitals to do its computer claims key punching by requiring hospitals to submit paperless claims with computer terminals installed in hospitals to process Medicare claims.

The commenter's assertions in no way detract from our statements in the interim final rule about credit and collection costs and PIP. Moreover, as explained above in detail, the commenter offered no evidence that any of the foregoing costs caused an imbalance in the G&A pool in favor of the Medicare program or resulted in shifting G&A costs to non-Medicare patients. Absent evidence to the contrary, we have no basis to conclude that the specific costs discussed by the commenter disrupt the presumed balance of the G&A pool and were not borne equitably by Medicare and non-Medicare patients.

3. The Medicare Hospital Apportionment Methodology

Comment: It is unfair to the hospital industry to develop an apportionment methodology based upon a hypothetical insurance industry rating system.

Response: We are obligated to apportion malpractice insurance costs accurately between Medicare and non-Medicare patients—not to establish premium rates or actual premiums. Section 1861(v)(1)(A) of the Act requires us to take insurance industry practice into account in the course of determining the appropriate apportionment methodology. The comments and information on the 1985

NPRM convinced us that a reasonable approach to apportioning malpractice costs was to divide total premium cost into two components that, as described above, reflect Medicare utilization of the underlying services by apportioning the risk component on a special basis and returning the administrative portion to the G&A pool for apportionment on a utilization basis.

In developing this methodology, we recognized that the insurance industry does not employ a single premium-setting methodology. Rather, hospital malpractice insurance premiums are established on a variety of different bases. Nonetheless, the hospital methodology established by the 1986 rule bears certain similarities to insurance industry premium-setting practices. For example, the use of the national Medicare malpractice loss ratio in the scaling factor formula is similar to the use of experience data in the three main stages of the industry's premium-setting process. (*See,* 51 FR at 11168, col. 3.) However, such similarities between insurance industry premium-setting practices and our apportionment methodology do not mean that our methodology is impermissibly based upon a hypothetical insurance industry rating system. Rather, as explained above, we have simply complied with the statutory requirements in considering industry practice in the course of designing an apportionment policy that precludes providers from realizing a windfall under the pre-1979 utilization method.

Comment: In its prospective application, the 1986 rule will apply primarily to facilities excluded from the prospective payment system: Children's hospitals; psychiatric hospitals, alcohol/drug facilities, long-term care hospitals, rehabilitation facilities, and outpatient services. According to the commenter, there is no rational basis for prospective application of the 1986 rule because: (1) The HCRIS data, upon which the scaling factor formula is partially based, applies only to short-term acute care facilities; and (2) malpractice premium rates are lower for facilities excluded from the prospective payment system than for short-term acute care hospitals, and the "relativity" of the former to the latter has been dropping.

Response: As discussed in our response to a related comment on the HCRIS data, the 5,882 hospital HCRIS file relied on in developing the national Medicare malpractice loss ratio included data on 346 identifiable hospitals excluded from PPS, which is approximately half of the universe of such hospital in the United States. However, as explained in section II above, in order to be more consistent and equitable, we plan to develop two sets of values for the three main terms in the scaling factor formula for short-stay hospitals and for hospitals excluded from PPS. Thus, the formula values applicable to short-stay hospitals is now based on data exclusively from short-term acute care hospitals. Until we develop the separate set of values, the formula values established in the interim final rule, on the basis of data from short-stay hospitals and excluded facilities, will be applied to hospitals excluded from PPS.

The commenter submitted a summary description of ISO data that allegedly showed a "relativity" of malpractice rates, such that rates for excluded hospitals were lower than for short-stay hospitals. Subsequently, we secured the underlying ISO data from the commenter.

Based on our analysis of the ISO data, we do not believe that these data show that malpractice insurance premium rates for hospitals excluded from PPS are lower than for hospitals subject to PPS or that the alleged "relativity" of the former to the latter is dropping. The commenter submitted data based on an ISO circular of March 9, 1984 titled "Hospital Professional Liability Rate Revision Status Report" and a circular of March 13, 1986 titled "Hospitals *[sic]* Professional Liability Class Relativity Information Released." The 1984 circular revises the rate relativities calculated by ISO as a guide to subscriber company premium-setting for specific classes of facilities. The 1986 circular publishes recent ISO data on hospital malpractice insurance. The commenter accurately represents the changes in several combinations of classes from the 1984 circular, although, for reasons discussed below, we are not persuaded by the commenter's use of data from the 1986 document. To the extent that insurance companies follow ISO recommendations in setting their premiums, these relativities would reflect relative prices between classes of providers and changes in the relativities may lead to relative price changes.

However, there are several reasons to doubt the relevance and accuracy of the submitted data to the comparison of malpractice insurance costs in hospitals subject to PPS and those excluded from PPS. First, although the commenter asserts that the classes of facilities examined are excluded hospitals, in fact one and possibly two of the three categories presented are based on ISO facility classes that do not include hospitals. Material prepared by a consultant to the commenter indicates that the commenter constructed its "Nursing Home and Long Term Care Beds" category from ISO classes for "Convalescent or Nursing Homes." The ISO definition of these classes are at best ambiguous as to whether they include hospitals. The commenter constructed its "Sanitarium and Rehabilitation Beds" category from ISO classes for "Sanitariums or Health Institutions." This appears to be an incorrect use of the data by the commenter since ISO explicitly states that institutions in these classes are "not hospitals". (ISO, "Commercial Lines Manual—Division Six—General Liability; Professional Liability Subdivision—Section II—Medical Professional," 5th ed., 1980, pp. GL-33, 34).

A second reason to doubt the relevance and accuracy of the commenter's data is the long term trend in rate relativities. The commenter derived the data from a comparison of prior year relativity data, new 1984 relativities recommended by ISO, and a seven year average relativity for the 1977–1983 period. (*See,* ISO, *Op Cit.,* 1984; Attachment III and ISO, *Op. Cit.,* 1986, Exhibit 1). However, examination of relativities for individual years shows an erratic pattern over the 1977–1983 period (*See,* ISO, *Op. Cit.,* 1986, Exhibit 2). To the extent that insurance companies set premiums based on shorter term or more current information than the ISO's long term recommendations, relative prices may not show the pattern of systematic decline suggested by the commenter.

Finally, we question the appropriateness of the commenter's comparison of ISO recommended relativities for the post–1984 period with allegedly "current" relativities calculated from the most recent ISO data. First, the ISO data underlying the "current" relativity figures in fact pertain to the 1977–1983 period and are not post–1984 data. Second, since ISO makes judgmental recommendations in setting its recommended relativities, it is inappropriate to compare the recommended values with the "indicated" values, which ISO calculates from its data. This gives a misleading impression of a statistical trend over time. In fact, when we replicated the commenter's "current" relativities for the same categories of facilities using 1977–1981 data (the data underlying the ISO 1984 recommendation) we found little difference from the "current" value, which the commenter calculated from 1977–1983 data. This suggests that,

contrary to the table submitted by the commenter, the relative price of malpractice insurance of excluded hospitals did not fall rapidly from 1984 to 1986. In fact, this comparison of indicated relativities based on data for 1977–1981 and 1977–1983, respectively, shows little change in the relative price of malpractice insurance between the categories of facilities under study and non-profit hospitals.

a. *The premium breakdown.*

Comment: The segregation of the "administrative" and "risk" components of the premium appears to be based on HCFA's study of one insurance carrier rather than an analysis of the entire industry. The single firm studied may not be representative of the industry, and the study was neither performed on a random basis nor is it statistically valid.

Response: The preamble to the interim final rule generally explains our separation of the administrative and risk components of total premium cost. (*See,* 51 FR 11144–45.) Our specific calculations are based on a study conducted by the actuarial consultant retained to aid the analysis of comments on the 1985 NPRM. (*See generally,* R.R. at 2859–65.) The consultant based his recommendations on a consideration of data from ISO, the St. Paul Fire and Marine Insurance Company (the largest writer of hospital malpractice insurance), and two hospital-owned insurers. Rather than gathering information on a random basis, the consultant secured data from companies that are nationally representative of insurance industry trends. While the consultant considered trying to secure additional data, he decided ultimately that doing so was unnecessary. (*See,* R.R. at 2862.) Because the database includes the largest hospital underwriter and two hospital-owned insurers, we believe that it is statistically valid and representative.

Comment: One commenter disagreed with the breakdown of the hospital premium in the 1986 rule on the grounds that certain unspecified costs were excluded and the segregation and payment methodologies applied to the two components have no relationship to insurance industry practice. The commenter suggested that if HCFA were truly interested in obtaining the actual administrative costs of insurance companies that issue malpractice insurance, then the agency should require the appropriate carriers to prepare cost reports.

Response: In determining the breakdown between the administrative and risk components, we took account of all of the specific insurer expenses necessary to account for total premium cost. (It is unnecessary to include an amount for profit because the return on the insurer's investment of the premium is adequate for purposes of generating the insurer's profit. *See,* 51 FR 11145 (col. 2).) While premiums ultimately are based on these subcosts, the insurance industry—unlike the Medicare program—has no need to segregate the premium explicitly into components because it does not have to establish a payment methodology that accurately apportions total cost between two classes of payors. As explained above, the breakdown established by the 1986 rule is based on reliable and representative industry data. Thus, there is no need for additional information from insurance carriers. Also, there is no basis in law or regulations that would permit HCFA to require hospital malpractice insurance carriers to prepare "cost reports" of their actual administrative costs.

b. *The scaling factor formula.*

Comment: The 1986 rule is highly complex and is based on a formula and assumptions that the hospitals do not understand.

Response: While we understand that the scaling factor formula for the risk component could be considered complex from a mathematical standpoint, any such complexity is unavoidable here, just as with any other policy or program based on actuarial concepts and statistical analyses. More importantly, the basic concepts underlying our hospital apportionment policy are straightforward. By dividing the premium into administrative and risk components, the 1986 rule distinguishes subcosts that are largely unaffected by the number and size of malpractice claims from those that are significantly affected by such factors. Because Medicare disproportionately under-utilizes the services underlying the subcosts affected by claims experience, it is appropriate to use the scaling factor formula to "discount" Medicare's share of those subcosts. Although the formula, taken as a whole, may seem complex, each of its terms was explained in detail in the preamble to the interim final rule. (*See,* 51 FR 11146–48.) Specific comments about the scaling factor formula and its terms are addressed in this document.

Comment: The "U" terms and the "u" term in the scaling factor formula are misstated because they include labor and delivery room days in total patient days, thus understating Medicare utilization. Two appellate courts have invalidated the program instruction that requires inclusion of labor and delivery room days in total patient days.

Response: Medicare program policy mandates the inclusion of labor and delivery room days in the count of inpatient days used in calculating program cost reimbursement. The "u" term of the scaling factor formula does include labor and delivery room days since the value of this term is based on a ratio of the specific hospital's total Medicare-covered inpatient days of care to its total inpatient days of care. (*See,* 51 FR 11146.)

The U_1 and U_2 terms are calculated from HCFA data on Medicare short-stay hospital days and AHA data on short-stay hospital inpatient days for all patients. (51 FR 11147–48 and R.R. at 3501, 3505.) AHA defines inpatient days as the "[n]umber of adult and pediatric days of care, excluding newborn days of care, rendered during the entire reporting period" (AHA, *Hospital Statistics,* 1981 ed., Chicago, IL: AHA, 1981, with equivalent definitions in prior and later years). Based on our understanding that hospitals do not report labor and delivery room days separately to the AHA for the AHA Annual Survey, we assume that inpatient days, as defined in the AHA Annual Survey, include labor and delivery room days. No evidence has been submitted by commenters to the contrary. Thus, the U_1, U_2, and u terms of the scaling factor formula include a consistent treatment of labor and delivery room days.

In addition, we believe that labor and delivery room days are properly included in the U_1, U_2, and "u" terms in the scaling factor formula. As numerous commenters recognized in the 1979 rulemaking and the 1985–86 rulemaking, malpractice insurance costs are incurred to protect against a hospital's overall risk of malpractice loss, and thus these costs benefit all patients. Indeed, the risk associated with the labor and delivery room days of the hospital's inpatients is particularly serious in comparison with many other departments.

Although the principle of including labor and delivery room days in the count of inpatient days used in calculating program cost reimbursement has been the subject of litigation, it still generally remains program policy. However, if a hospital has a final, nonappealable judgment that provides for the exclusion of labor and delivery room days from total routine inpatient days for a particular cost reporting period, we will also exclude labor and delivery room days from the "u" term in applying the 1986 rule to the hospital's cost reporting period.

Such an exclusion of labor and delivery room days from the "u" term would not affect the "U" terms that apply to all hospitals. Since we lack, at this time, a reliable basis to exclude labor and delivery room days from the U_1 and U_2 terms, we would have no basis for adjusting these terms for a hospital with a final, nonappealable judgment. In any event, any resulting increase in the "U" terms (albeit small) could only serve to disadvantage a hospital in the resulting application of the scaling factor formula because any reimbursement increase produced by the change in the "u" term would be diminished if "U_1" and "U_2" were increased too.

Comment: The scaling factor formula presumes a relationship between paid claims identified from the NAIC and HCRIS data, on the one hand, and Medicare utilization data, on the other hand. The commenter asserted that the relationship implicit between these data in the rule has several problems. First, the commenter stated that the record does not support a relationship between these data. Second, use of NAIC data from 1975–1978, HCRIS data from 1978–1983, and Medicare utilization data from 1976–1982 to develop parameters for a single formula inappropriately combines information on different patient populations. Third, possible changes in the claims tail for Medicare and non-Medicare patients subsequent to the compilation of the NAIC data make use of the NAIC data in the scaling factor formula, which is effective May 1, 1986, inappropriate especially since the claims tail is much longer than indicated by the NAIC data.

Response: As explained below, we believe that, in general, there is an adequate relationship between the data underlying the three main constants in the scaling factor formula. (*See generally,* 51 FR 11146–48.) However, for the reasons set forth in section II. above, we plan to develop separate sets of formula values for short-stay hospitals and for hospitals excluded from PPS, and to have each set of values based exclusively on data for the type of hospitals in question.

In the preamble to the interim final rule (51 FR 11164), we presented comparisons of the HCRIS-derived Medicare claims-paid ratio and the HCFA and AHA-derived Medicare utilization rate. These data show that the loss ratio is a stable fraction of the utilization rate for years in which comparable data are available. The loss ratio varies between 27 percent and 34 percent of the Medicare utilization rate with no apparent trend. When such a stable relationship exists, the combination of loss ratio data from HCRIS and utilization data from HCFA and AHA sources is appropriate. Since the NAIC data are the best information available on the claims tail and the ratio of average ALAE to average indemnity, and since those data pertain to a period overlapping the other data, it also is appropriate for use in the scaling factor formula.

The NAIC data are particularly valuable because they include reliable information on the different claims tails for Medicare and non-Medicare patients. The NAIC data show that the claims tail for claimants 65 years of age and over is 17 months, as compared to 31 months for claimants under 65. (*See,* 51 FR 11147.) The commenter suggests that changes in these values subsequent to the date of the NAIC data (1975–1978) make use of results from the NAIC data inappropriate in the 1986 rule. However, the commenter misunderstands the use we made of our analysis of the NAIC data. The claims tail findings, which are based on the NAIC data, were incorporated in the rule to ensure the accuracy of the U_1 and U_2 parameters of the scaling factor formula. As explained in the preamble to the interim final rule (51 FR 11147–48), the U_1 and U_2 terms are constants that represent the national Medicare patient utilization rate for years properly related to the periods underlying the HCRIS-derived adjusted national Medicare malpractice loss ratio (*i.e.,* 1978 through 1982 and 1979 through 1983). The U_1 term was adjusted for the claims tail for Medicare patients and the U_2 term was adjusted for the claims tail for non-Medicare patients. (*Id.*) Because the NAIC data are the best national evidence available on claims tails and are for a period that overlaps the 1976–1982 Medicare utilization data and HCRIS data, it is appropriate to use them. Furthermore, due to its national character the NAIC data are more representative and credible than the commenter's largely unsubstantiated claim that the claims tail is "much longer" than is indicated by the NAIC data. Finally, although the 1986 rule is effective May 1, 1986, it applies to cost reporting periods beginning on or after July 1, 1979.

Comment: The HCRIS data tapes show that malpractice losses, like premiums, vary significantly by State. The commenter submitted an exhibit describing the purportedly "significant differences by State between actual Medicare malpractice loss experience for the State's average Medicare utilization to the ratio developed by the scaling factor formula." The commenter concluded that the scaling factor formula, based on a national ratio of Medicare malpractice losses to total losses, fails to reimburse hospitals properly, even considering Medicare utilization.

Response: As explained in the preamble to the interim final rule (51 FR 11173, col. 2), the experience rating and rate relativity stages of the premium-setting process preclude a meaningful comparison of a State's overall Medicare utilization rate with its overall premium levels.

The exhibit submitted by the commenter presents the following information for each State: The State's alleged "average Medicare utilization;" a number that appears to be the ratio of Medicare malpractice losses to total malpractice losses "for the State's average Medicare utilization;" and a number which it calls "HCFA Nat'l Ratio". Sources and years for the data are not specified. The exhibit emphasizes the contrast between each State's alleged Medicare/total malpractice loss ratio and its "HCFA Nat'l Ratio" by subtracting the latter from the former and presenting the result as "Difference".

Upon examination of several States, it appears that the commenter has calculated the so-called "HCFA Nat'l Ratio" for each State by calculating the total Medicare reimbursement share of premiums (risk and administrative components) for the alleged Medicare utilization presented for the State by using Table 1 of the interim final rule (*See,* 51 FR 11189–90.) For example, the commenter asserts that Alabama has a 47 percent utilization rate and a 23 percent malpractice loss ratio. Medicare's share of total premium cost for a hospital with 47 percent utilization would be approximately 20 percent. (*See,* 51 FR 11189, Table 1.) According to the commenter, the "difference" between Alabama's alleged loss ratio (i.e., 23 percent) and its alleged "HCFA Nat'l Ratio" (i.e., 20 percent) is 3 percent.

We fail to see how the exhibit supports the commenter's claims that the 1986 rule yields inadequate Medicare reimbursement and that the pre-1979 utilization method is somehow preferable. First, the commenter did not substantiate the alleged average Medicare utilization rate and State loss ratio. Second, the commenter's contrasting of the alleged State loss ratio and the "HCFA Nat'l Ratio" suggests that the appropriate norm against which we should compare other apportionment statistics is the State-specific loss ratio. The commenter's suggestion that State-specific loss ratios

should figure in an apportionment policy is inconsistent with the commenter's apparent belief that the pre-1979 utilization method is the preferable policy.

c. *Reimbursement results and statutory authority.*

Comment: Excerpts from the table in the preamble to the interim final rule (51 FR 11189–90) call into question whether the methodology for reimbursement of hospital malpractice cost produces a consistent, logical relationship between premiums, Medicare utilization, and Medicare reimbursement. For example, under the 1986 rule, a hospital with a 40 percent Medicare utilization rate receives reimbursement for 16.14 percent of its premium cost while a provider with 90 percent Medicare utilization receives 70.41 percent. Another commenter stated that the 1986 rule produces absurd results because hospitals with average Medicare utilization receive much less than they would have been paid under the pre-1979 utilization method.

Response: The commenter apparently questions the reasonableness of the hospital methodology established by the 1986 rule because Medicare's share of the risk component does not increase at the same rate as increases in Medicare utilization. In other words, under the 1986 rule, a one percentage point increase in Medicare utilization is not associated with a constant increase in Medicare's share of the risk component. (Of course, there is a direct relationship between increases in Medicare utilization and Medicare's share of the administrative component).

We designed the scaling factor formula so that, for a hospital with a Medicare utilization rate equaling the national Medicare utilization rate, a proportion of the risk component of its total malpractice premium cost roughly equal to the adjusted national Medicare malpractice loss ratio would be apportioned to Medicare. (The proportion of the risk component *is* the scaling factor, which ranges from 0.00 percent of the risk component to 100 percent *of that component.* (*See,* 51 FR 11189–90, Table 1 (col. 2).) By contrast, Medicare reimbursement of the risk component ranges from 0.00 percent to 91.5 percent of *total premium cost* (*See,* 51 FR 11189–90, Table 1 (col. 3).) As a result, for a hospital with approximately a 38.5 percent Medicare utilization rate the formula apportions approximately 13.2 percent of the risk component to Medicare. (*See,* 51 FR 11189, Table 1 (col. 2).) Under the 1986 rule the program then reimburses 91.5 percent of this amount for the risk component, which equals approximately 12.1 percent of the total premium cost. (*See,* 51 FR 11189, Table 1 (col. 3).) Under the rule the program also reimburses, on a utilization basis, 38.5 percent of the administrative component (*i.e.,* 8.5 percent of total premium cost). This yields reimbursement equal to approximately 3.3 percent of the total premium cost (.085×.385), for a total reimbursement of approximately 15.4 percent of premium cost for such a hospital. (*See,* 51 FR 11189 (cols. 4, 5).)

The basic rationale for this apportionment methodology (explained above) implies three requirements. First, a hospital with a zero Medicare utilization rate should not be reimbursed for its premium. Second, a hospital with a 100 percent Medicare utilization rate should be reimbursed for its entire premium. Third, a hospital with approximately the national average Medicare utilization rate (adjusted for claims tails) should be reimbursed by Medicare a proportion of its premium risk component equal to the adjusted Medicare loss ratio. It is not mathematically possible to satisfy these three requirements and still have the scaling factor increase at a constant rate. If only the first and second requirements were satisfied with a constant rate of increase, the resultant methodology would be tantamount to reimbursement on a utilization basis. If only the first and third requirements were satisfied with a constant rate of increase, then the scaling factor for hospitals with 100 percent Medicare utilization would inappropriately be less than 1.00. If only the second and third requirements were satisfied with a constant rate of increase, the scaling factor would inappropriately be zero for some hospitals with Medicare utilization greater than zero. These results would be inappropriate and inequitable.

Given these threshold requirements, the scaling factor formula recognizes that Medicare's share of the risk component should increase at a rate less than the increase in Medicare utilization from zero percent Medicare utilization up to the national Medicare utilization rate adjusted for claims tails. That is, the scaling factor would increase from only 0.00 percent and 13.2 percent during the interval between 0.00 percent utilization and 38.5 percent utilization. (*See,* 51 FR 11189, Table 1 (cols. 1, 2).) Conversely, starting from the national Medicare utilization rate, Medicare's share of the risk component should increase more rapidly than the rate of increase in Medicare utilization, culminating in 100 percent reimbursement for a hospital with 100 percent Medicare utilization. That is, the scaling factor would increase from 13.2 percent to 100 percent during the interval between 38.5 percent utilization and 100 percent utilization. *(Id.)* In this way, the scaling factor formula accounts for the major disparity between the national Medicare utilization rate and the national Medicare malpractice loss ratio, among other extraordinary disproportionalities, in a manner that satisfies applicable statutory requirements and is equitable.

Finally, we rejected previously (51 FR 11180–81) the claim that the 1986 rule produces arbitrary reimbursement results simply because the results diverge from those yielded by the pre-1979 utilization method. The commenter did not explain why it disagreed with our position, and thus our analysis remains unchanged.

Comment: The Department cites no authority or data to support the split of the malpractice premium into an administrative component (8.5 percent) and a risk component (91.5 percent).

Response: We have already summarized the data relied on to support the premium split established by the 1986 rule. Ultimately, section 1861(v)(1)(A) of the Act authorizes this division of total premium cost. The statute requires that reimbursement be limited to Medicare's share of total premium cost. The 1986 rule satisfies the statutory mandate by segregating subcosts that vary with the frequency and amount of malpractice claims (that is, risk component) and those that are relatively fixed, regardless of claims filed or paid (that is, administrative component). Examples of the former cost elements are anticipated losses themselves and the expenses of defending and processing claims. Examples of the latter are overhead costs and costs of risk management programs. Because Medicare patients disproportionately under-utilize the services underlying the risk component, the statute authorizes apportioning those costs on the special basis established by the 1986 rule.

Comment: One commenter asserted that hospitals must build in malpractice insurance costs to their charges and that Medicare's alleged "manipulation" of malpractice reimbursement policy results in an unfair allocation of these costs among different payors. According to the commenter, the 1986 rule will result in overcharging and undercharging other payors for these costs, depending upon the amount yielded by specific application of the formula.

Response: Far from "manipulating" reimbursement policy, the 1986 rule responds to the need to remove

malpractice insurance from the G&A pool. (*See*, 51 FR 11158–68.) The 1986 rule rationally connects apportionment policy to premium subcosts in a way that accounts for differences between them with respect to the effect of the frequency and size of malpractice claims and associated loss adjustment expense. (*See*, 51 FR 11144–45, 11168–69.)

Our sole intent in issuing the rule is to ensure only that Medicare pays its fair share of a provider's malpractice costs. In the preamble to the interim final rule, we explained our determination that the 1986 rule satisfies applicable statutory requirements. (*See*, 51 FR 11180–83.)

d. *The actuarial consultant.*

Comment: The material produced by the actuarial consultant contains endless qualifications and limitations and its accuracy has been tested only by HCFA, which knew the results it wanted before hiring the actuarial consultant.

Response: The caution exhibited in the consultant's materials reflects the complexity of the issues, the fact that the insurance industry does not use one method to determine premiums, and the fact that industry premium-setting practices do not determine the proper apportionment policy. Our determination that it was necessary to remove hospital malpractice insurance costs from the G&A pool and apportion them in a manner that reflects Medicare's disproportionately low utilization of some of the underlying services was reached independently of any advice received from the actuarial consultant. As explained in the preamble to the interim final rule (51 FR 11144), the actuarial consultant only provided technical assistance in three areas.

Comment: One commenter quoted at length from a letter written by the actuarial consultant retained by HCFA in the development of the 1986 rule. In that letter, the consultant stated that the most important point made by commenters on the 1985 NPRM was that the insurance industry does not take a hospital's Medicare utilization rate into account in the course of setting the premium. The consultant stated that the HCRIS data strongly suggest that rates should take into account a hospital's specific Medicare utilization rate. The consultant then suggested that while the problem could be ameliorated by the experience rating of specific hospitals, experience rating might not suffice in each case. The consultant concluded that "the retroactive application of a formula such as I have suggested may not produce complete equity." After expressing his opinion that the insurance industry should be encouraged to alter its premium-setting practices to reflect specific providers' Medicare utilization rates, the consultant further noted that "the formula is mathematically equivalent to the assumption that such a rating system does exist."

The commenter asserted that the consultant's statements show that: (1) Retroactive application of the scaling factor formula yields reimbursement results based on criteria that are not related to insurance industry methods in setting the premium, and (2) instead of paying hospitals' actual costs, as the Medicare statute mandates, the 1986 rule retroactively suggests how insurers should have set premium costs. The commenter concluded that, in establishing the 1986 rule, HCFA effectively ignored the recommendation of its own consultant that retroactive application of the rule would not provide equity to hospitals because the reimbursement policy differs from industry practices.

Response: We disagree with the commenter's interpretation of an isolated comment in a single letter written by the consultant. The commenter failed to recognize that the consultant's comment pertained essentially to the premium-setting process instead of the apportionment problem at issue in the rulemaking. Thus, the consultant specifically noted that his remarks constituted a "comment that is somewhat out of context." (*See*, R.R. at 2851.)

Put in proper perspective, the consultant actually suggested that, viewed from the standpoint of insurance industry premium-setting practices, the use of a premium breakdown and scaling formula would presuppose a hypothetical rating system that explicitly accounted for a hospital's specific Medicare utilization rate. (*See*, R.R. at 2851–2852.) Contrary to the commenter's apparent belief, however, the consultant was well aware that the specific premium breakdown and scaling factor formula actually used in the 1986 rule were designed for the purpose of apportioning premium costs (at whatever level) rather than setting premium rates. (*See*, for example, R.R. at 2816, 2822–2829, 2833, 2837–2838, 2865–2868.)

Far from expressing any concern about whether the specific premium breakdown and scaling factor formula established by the 1986 rule would produce, when properly viewed from the standpoint of the apportionment problem, fully equitable results, the consultant stated that the scaling factor would redress precisely that apportionment problem. Thus, the consultant stated:

> There is a major disproportionality between Medicare losses and non-Medicare losses. *In order to determine Medicare's proper share of the part of premium cost that is related to losses, it is necessary to take account of this disproportionality. In addressing the problem, I considered what I would do if, for purposes of establishing hospital malpractice insurance premiums, I had to establish rates that reflect the different loss levels of Medicare and non-Medicare patients. Essentially, I considered how I would construct a rate relativity that distinguishes the different degree of risk posed by Medicare and non-Medicare patients. The formula recommended in my September 13, 1985 letter accomplishes this* by multiplying, in the numerator, the hospital's own Medicare utilization rate by the relative average Medicare risk level (i.e., the Medicare rate relativity); and by dividing that product by, in the denominator, the sum of the Medicare rate relativity plus the corresponding non Medicare rate relativity (i.e., the hospital's own non Medicare utilization rate multiplied by the average non-Medicare risk level). (*See*, R.R. at 2865–2866; emphasis added.)

Clearly, *the consultant used the premium-setting process as a model for addressing the apportionment problem.* While the 1986 rule bears certain similarities to the premium-setting process (51 FR 11168–69), it does not depend logically on that process. In particular, the Medicare hospital apportionment policy established by the 1986 rule does not depend on the existence of a hypothetical rating system that explicitly takes Medicare utilization into account. While the consultant *modelled* the scaling factor formula after a rating system that included a rate relativity for Medicare utilization, the consultant nowhere stated or implied that the validity of the new apportionment policy required the existence of such a rating system. Similarly, the consultant nowhere stated or implied that the equitableness of the reimbursement results produced by the new policy presupposed such a system.

4. Use of malpractice loss experience is a valid basis for partially determining Medicare's share of the predominant component of malpractice insurance premium cost.

Comment: One commenter, an insurance company, contended that its own premium setting process shows that malpractice insurers do not base premiums upon a hospital's projected patient mix between Medicare and non-Medicare patients nor upon past paid claims. The commenter asserted that its premiums reflect the estimated cost of potential claims that may be asserted during the policy period, expected expenses for all claims whether or not paid, claims payments, a margin to cover random deviations between

projected and actual claims, and a credit for investment income.

Response: As we explained in the preamble to the interim final rule (51 FR 11168–69), in contrast to the insurance industry, it is not our purpose to set malpractice insurance premiums. Rather, we must apportion premium costs between Medicare and non-Medicare patients in a manner that is fair and consistent with statutory requirements. While the insurance industry's premium setting practices do not address the apportionment problem, we have considered those practices in developing the 1986 rule. Although the insurance industry does not employ a single methodology, we have considered the main steps in setting the premium and the role of various provider characteristics. (*See*, 51 FR 11168, 11170.) We recognize that, at the present time, the industry does not specifically consider a hospital's projected patient mix between Medicare and non-Medicare patients in setting premiums. While a hospital's paid claims ordinarily are not considered either, its incurred losses usually are taken into account in the experience rating stage of the premium-setting process.

In establishing our apportionment policy, we must distinguish Medicare and non-Medicare costs in a way that accounts for the program's disproportionately infrequent and small claims. The experience rating stage of the premium setting process will usually result in lower premiums that reflect Medicare's under-utilization of the underlying services. (*See*, 51 FR 11170 (col. 1) and R.R. at 2869–2870). In any event, we must apportion malpractice insurance costs—at whatever dollar amount—equitably and in accordance with statutory requirements. As explained in the preamble to the interim final rule (51 FR 11172), the absence of a reliable database for incurred losses makes it reasonable to distinguish Medicare and non-Medicare patients in accordance with the HCRIS-derived national ratio, which determines part of the value of the "R" constant in the scaling factor formula.

Comment: Neither the HCRIS data nor the NAIC data support using a claims paid basis for apportioning malpractice insurance costs between Medicare and non-Medicare patients. This commenter stated that the Department's actuarial consultant acknowledged that incurred losses rather than paid claims are the basis upon which most premiums are set.

Response: The HCRIS data and the NAIC data, which partially determine the values of the three main constants in the scaling factor formula, are paid-claims data. We recognize that most experience rating is based on incurred losses rather than paid losses. (51 FR 11171.) One reason for this particular insurer practice is that the incurred losses approach yields more possible claims for experience rating purposes. However, while we have considered insurance industry premium setting practices in developing the 1986 rule, those practices do not necessarily determine the proper premium cost apportionment policy. The absence of incurred losses databases comparable in relevance, representativeness, and reliability to HCRIS and NAIC, make it reasonable to rely on the HCRIS and NAIC databases in adopting the 1986 rule. (*See*, 51 FR 11171 (cols. 2, 3), 11172–73.)

Comment: One commenter asserted that the Department's actuarial consultant stated that paid claims understate the full costs associated with insuring Medicare patients and that ALAE would be greater for Medicare than non-Medicare patients. According to the commenter, the consultant recommended incorporating a hospital's own Medicare utilization into the methodology in order to correct any inequities. The commenter stated further that, except for saving money, HCFA provided no explanation for ignoring costs actually incurred, particularly by underestimating ALAE expenses. The commenter also stated that the consultant and the Department assumed that since premiums include a factor for experience, hospitals with higher Medicare utilization rates would on the average have lower premiums. The commenter concluded that, under these circumstances, industry rate setting practices create the result that the Department purports to seek; that is, fair reimbursement for Medicare patients' share of malpractice premiums.

Response: In fact, the 1986 rule accounts fully for all aspects of malpractice insurance costs, and partially determines reimbursement on the basis of the hospital's specific utilization rate. (*See*, 51 FR 11144 45.) The actuarial consultant suggested that *the ratio of ALAE to paid losses (not ALAE itself)* would be greater for Medicare patients than for non-Medicare patients. (*See*, R.R. at 2822–2823, 2829, and 2856–2857.) Our analysis of the NAIC data revealed two relevant facts about ALAE. First, contrary to the commenter's assertion, average ALAE was, by itself, much lower for Medicare patients than for non-Medicare patients. (*See*, 51 FR 11163 (column 2).) This fact, among others, supports our decision to remove hospital malpractice costs from the G&A pool and apportion them separately.

Second, the NAIC data confirmed the consultant's suggestion that the ratio of ALAE to paid losses is greater for Medicare patients than non-Medicare patients. (*See*, 51 FR 11146.) As explained in the preamble to the interim final rule, we accounted for this fact by adjusting the national Medicare malpractice loss ratio. The HCRIS data showed that the ratio of Medicare paid claims to total paid claims was 11.8 percent. In order to account for the higher ratio of average ALAE to average indemnity for Medicare patients, we then raised the national ratio to 13.0 percent. (*See*, 51 FR 11146–47.) We next made a similar adjustment for ULAE, resulting in an adjusted national Medicare malpractice loss ratio (i.e., the "R" constant) of 13.2 percent. (*See*, 51 FR 11147.) Far from "saving money," as the commenter wrongly stated, these adjustments to the national ratio resulted in increased Medicare reimbursement. (*See*, 51 FR 11189, Table.)

Primarily due to the experience rating stage of the premium setting process, providers with higher Medicare utilization rates should have lower premiums. (*See*, 51 FR 11170 (col. 1) and R.R. at 2869–2870.) However, this consequence of the premium-setting process will not, by itself, result in a fair apportionment policy. The commenter's contrary assertion rests on a conflation of the level of premium cost with the apportionment of that cost (whatever its level). Although the experience rating of a specific provider would eventually affect the amount of premium for the institution, the resultant lowering of total premium cost could not serve to apportion that cost accurately between Medicare and non-Medicare patients. For example, if a provider with a high Medicare utilization rate received a premium reduction from $100,000 annually to $75,000 annually, the provider's lower premium cost would still have to be apportioned for Medicare reimbursement purposes. Contrary to the commenter's assertion, the $25,000 premium reduction would not, by itself, "result in a fair apportionment policy." Rather, the premium reduction would be an incidental feature of the provider's predominantly Medicare patient population.

As explained in the preamble to the interim final rule, no part of the premium-setting process is intended or equipped to apportion premium cost between Medicare and non-Medicare patients. While insurance industry

premium-setting practices do not address—much less mandate—a particular result as to the proper apportionment methodology, we carefully considered those practices in the course of devising the 1986 rule.

Comment: Hospitals purchase malpractice insurance to protect against the risk of future claims and random fluctuations in claims, regardless of whether the claims result in payment. Even as used in the scaling factor formula, malpractice loss experience is not a valid basis for determining Medicare's share of malpractice insurance costs. The 1986 rule ignores a substantial portion of premium costs, which are established on the basis of incurred losses and at least some of which are overutilized by Medicare patients.

Response: In the preamble to the interim final rule, we explained why the function or purpose of hospital malpractice insurance does not detract from our use in the 1986 rule of a claims-paid determinant of Medicare reimbursement. (*See*, 51 FR 11176–78.) Moreover, as explained above, we recognize that most insurers use incurred losses (i.e., pending or open claims) to calculate experience levels instead of using paid claims (i.e., closed claims). One reason for this particular insurer practice is that the incurred-losses approach results in more possible claims for experience rating purposes. In the absence of a reliable incurred losses data base of comparable relevance, representativeness, and reliability to HCRIS, we determined that it is acceptable to use paid losses for apportioning the risk component of total premium cost. (*See*, 51 FR 11171.)

Contrary to the commenter's assertion, our use of paid claims data does not mean that we have ignored significant parts of total premium cost that supposedly are overutilized by Medicare patients. Regardless of whether a claim is open or pending, ALAE is attributable to the claim and ULAE is incurred too. (*See*, R.R. at 2856, 2861, and 2864–2865.) Under the 1986 rule, both ALAE and ULAE are included in the risk component, which is apportioned on the basis of the scaling factor formula. The NAIC data show specifically that, contrary to the commenter's unsubstantiated assertion that Medicare patients overutilize other unspecified subcosts; the average ALAE for Medicare patients is much lower than for non-Medicare patients. (*See*, 51 FR 11163.) However, as explained above, because the ratio of average ALAE to average indemnity is higher for Medicare patients, we have adjusted the national Medicare malpractice loss ratio upward and thereby increased Medicare reimbursement accordingly. (*See*, 51 FR 11146–47.) Far from ignoring the loss adjustment expense (i.e., ALAE and ULAE) parts of premium cost, the 1986 rule takes these subcosts explicitly into account. Thus, the 1986 rule fully accounts for Medicare's share of premium subcosts related to both paid and pending claims.

Comment: The difference between the 1985 proposed rule and the 1986 rule is that the latter uses paid claims to calculate reimbursement to all providers, rather than using the provider's own paid claims ratio. There is no evidence in the record to establish that claims paid on a purported national basis are any more appropriate than claims paid on an individual basis as a means of apportioning premium costs between Medicare and non-Medicare patients.

Response: The commenter mischaracterizes the hospital apportionment methodology established by the 1986 rule, which reimburses premium costs in a manner that distinguishes subcosts on the basis of whether they are significantly affected by the frequency and amount of claims. The 1986 rule apportions the administrative component of total premium cost on a utilization basis. The risk component is apportioned in accordance with the scaling factor formula, which "discounts" the hospital's own Medicare utilization rate by relating the national Medicare utilization rate to the adjusted national Medicare malpractice loss ratio. As explained in the preamble to the interim final rule (51 FR 11182), section 1861(v)(1)(A) of the Act authorizes this use of the adjusted national ratio. Furthermore, the adjusted national ratio consists of the HCRIS-derived national ratio of Medicare losses as compared to total losses, as adjusted for ALAE and ULAE in accordance with the NAIC data. In view of the reliability of the HCRIS and NAIC data, we do not accept the commenter's unfounded assertion that the preamble to the interim final rule does not justify the 1986 rule's use of the national ratio.

Comment: One commenter disagreed with our determination that section 1861(v)(1)(A) of the Act requires the Secretary to consider—but not necessarily to follow—insurance industry practices in the course of developing reasonable cost reimbursement principles. According to the commenter, the Secretary must consider and follow reimbursement practices of Blue Cross and others which reimburse malpractice insurance costs on a utilization basis.

Response: Section 1861(v)(1)(A) states that "the Secretary shall consider, among other things, the principles generally applied by national organizations or established prepayment organizations (which have developed such principles) in computing the amount of payment . . . to providers of services." The statute affords the Secretary broad discretion as to whether to apply specific insurance industry practices or principles. While the Secretary must consider relevant practices or principles, the statute does not require the Secretary to follow specific practices or principles, as the commenter asserted. *See, e.g., Walter O. Boswell Memorial Hospital v. Heckler*, 749 F. 2d 788, 801 (D.C. Cir. 1984).

The Secretary has fully complied with the requirements of section 1861(v)(1)(A) of the Act in promulgating the 1986 rule. Historically, we have carefully considered industry practices in the course of formulating program policy for paying providers for services furnished to Medicare beneficiaries. Those policies largely followed industry practices. However, after experience was gained under the Medicare program, some policies were revised when it was determined that they no longer provided for program payment in accordance with applicable statutory requirements. Thus, while the pre-1979 utilization method of apportioning provider malpractice insurance costs was in effect for 13 years after the inception of the Medicare program, it became necessary to eliminate that methodology in 1979. We have explained why, on reconsideration of the issue, reinstitution of that methodology would result in cost shifting in contravention of section 1861(v)(1)(A) of the Act. In light of the record evidence supporting our determination, we cannot reinstitute the pre-1979 methodology simply because private insurance may have continued using that methodology after our initial action in 1979.

Moreover, the malpractice insurance apportionment policy is not the only policy that has varied in some way from industry practice. For example, beginning in 1969, Medicare regulations at 20 CFR 405.430 (redesignated as 42 CFR 405.430) provided for an inpatient routine nursing salary cost differential for hospitals and SNFs, which was based on a study that indicated that, on the average, elderly patients in an institutional setting required more general routine nursing services than other patients. (*See*, 36 FR 12606 (July 2,

1971).) This policy was in effect for over 10 years before being eliminated. (*See,* 47 FR 43618 (Oct. 1, 1982).) Also, as mentioned in the interim final rule (51 FR 11162), the Medicare program permitted hospitals for a period during 1967 to determine separately, apart from the normal apportionment process, clerical billing salaries attributable to Medicare billings. This divergence from industry practice was permitted to meet a need by hospitals and was discontinued when the need no longer existed. (*See,* Bureau of Health Insurance Intermediary Letter No. 218, April 19, 1967 and the Provider Reimbursement Manual (HCFA Pub. 15–1), section 2110.2.)

Comment: Each of the United States Circuit Courts of Appeals that has ruled on the validity of the claims paid methodology of the 1979 malpractice rule has held that the methodology is invalid. The commenter concluded that the use of a claims paid determinant of reimbursement in the 1986 rule, albeit on a "national" rather than "institutional" basis, is contrary to these court decisions.

Response: While the U.S. Court of Appeals for the District of Columbia Circuit did not conclusively decide the validity of the 1979 malpractice rule, the Court did hold that the 1979 rule satisfied the requirements imposed by the Medicare statute "by definition." *Walter O. Boswell Memorial Hospital* v. *Heckler,* 749 F.2d 788, 802 (D.C. Cir. 1984). While some courts held that the claims paid methodology of the 1979 malpractice rule violated applicable statutory requirements, those decisions were based on purportedly "bizarre" reimbursement results, which stemmed from the 1979 rule's reliance on the specific malpractice loss experience of individual providers. By contrast, the particular loss experience of a hospital has no significant bearing on its reimbursement under the 1986 rule. Instead, the HCRIS-derived national loss ratio is used in the scaling factor formula for the purpose of discounting the provider's Medicare utilization rate to reflect Medicare's under utilization of the services underlying the risk component of total premium cost. Moreover, unlike in the 1979 malpractice rule, the national loss ratio is adjusted to account for associated loss adjustment expense (i.e., ALAE and ULAE). The result is the adjusted national Medicare malpractice loss ratio (i.e., the "R" term), which is only one of the three main constants in the scaling factor formula. Since no court has adjudicated the merits of the 1986 rule, which differs significantly from the 1979 rule, we must reject the commenter's assertion that extant court decisions are inconsistent with the 1986 rule.

Comment: One commenter, an insurance company, suggested that the use of a claims paid reimbursement determinant in the 1986 rule is flawed because the Medicare paid claims ratio: (1) Does not determine in any way the premium for a particular cost reporting year; (2) includes claims paid from premiums paid over several preceding years; and (3) does not consider the significant costs incurred on behalf of both Medicare and non-Medicare patients for claims that are never paid.

Response: In general, we do not believe that industry premium-setting practices determine the proper apportionment methodology. As explained above and in various parts of the preamble to the interim final rule, insurance industry premium-setting practices do not address the apportionment problem. While we considered industry practices in developing the 1986 rule and we recognize similarities between those practices and the rule, in the final analysis the insurance industry must establish premium costs while we must apportion those costs—two very different enterprises.

Furthermore, we must reject the commenter's assertion that the use of a claims-paid reimbursement determinant in the 1986 rule is flawed, for the following specific reasons.

(1) The national Medicare claims-paid ratio is the ratio of Medicare malpractice losses to total losses for the current and four preceding cost reporting periods. We recognize that insurers do not directly take the national loss ratio into account in the course of setting the premium. However, our use of the national ratio, as adjusted for ALAE and ULAE (*i.e.,* the "R" constant), in the scaling factor formula is necessary to ensure that our apportionment of total premium cost will reflect the fact that Medicare patients are responsible for far fewer and smaller malpractice claims than non-Medicare patients. The fewer and smaller claims attributable to Medicare patients will eventually result in lower premiums for hospitals with high Medicare utilization rates. (*See,* 51 FR 11170 and R.R. at 2869–2870.) In any event, our use of the adjusted national loss ratio in the scaling factor formula enables us to apportion malpractice costs in a manner that accurately accounts for Medicare's underutilization of the risk component of these costs. (*See,* 51 FR 11180–83.)

(2) While insurance industry premium-setting practices do not dictate the proper apportionment policy, our use of five years of loss data in the national ratio is similar to the experience data used by the industry. (*See,* 51 FR 11169–70.) Specifically, in setting the provider's current premium, the industry uses between three and five years of loss data in setting the statewide rate and the various rate relativities, and it always uses five years of data for the experience rating of the specific provider. (*Id.*) While the industry usually uses incurred losses data (*i.e.,* open and closed claims) for these purposes, there is no incurred losses database available that compares in relevance, representativeness, and reliability to the HCRIS-derived claims-paid ratio. (*See,* 51 FR 11171.) Moreover, since the HCRIS data used in the derivation of the national loss ratio represent a statistically weighted sample of the loss experience of more than 5,000 hospitals over a five-year period, these data are more than adequate. (*See,* R.R. at 2872–2875.) Thus, there is no reason to believe that the multiple-year character of the paid-claims HCRIS data, which underlies the national ratio, detracts from the 1986 rule.

(3) While it is true that the HCRIS-derived national ratio *per se* does not account for costs incurred on claims that are never paid, the *adjusted* national Medicare malpractice loss ratio (*i.e.,* the "R" term in the scaling factor formula) accounts for ALAE and ULAE. As explained above, the HCRIS-derived national ratio of 11.8 percent was adjusted to 13.2 percent in order to account for associated loss adjustment expense (*i.e.,* ALAE and ULAE). Furthermore, ALAE and ULAE are both accounted for in the risk component of the premium. Since loss adjustment expense does not necessarily depend on whether a claim is paid (R.R. at 2856, 2861, and 2864–2865), it is clear that the 1986 rule accounts for those costs that are incurred even though no claim has been paid.

Comment: One commenter, an insurance company that issues policies on a claims-made basis, stated that the projected cost of unpaid claims is a significant component in rate-setting. The commenter supplied two exhibits for the purpose of supporting its belief that many more claims are initiated than are actually paid, whereas expenses are incurred in connection with both unpaid and paid claims. The commenter stated that the interim final rule included no data relating to asserted but unpaid claims even though such claims are an important component of rate setting.

According to the commenter, if actual experience were to be used, then HCFA would have to: (a) Identify all claims made; and (b) after a majority of these claims were paid (*i.e.*, within six or seven years), identify the costs of paid and unpaid claims attributable to Medicare and non-Medicare patients, make adjustments to reflect the different periods claims were pending, and reallocate the premium on the basis of all of these costs. The commenter further stated, however, that even this procedure would not suffice because the insurer does not make such an allocation when the premium is set. Because the premium-setting process does not take a hospital's Medicare utilization rate into account, the commenter concluded that only the pre-1979 utilization method is fair and consistent with the Act, especially since Blue Cross and other private insurers have already paid premium costs on this basis from the present back to 1979 and hospitals have no basis for changing payment rates during that period.

Response: As explained in item (3) of our response to the preceding comment, the 1986 rule fully accounts for costs incurred for patient malpractice claims that are never paid. It is simply untrue that the 1986 rule included no data relating to asserted but unpaid claims. In adjusting the national Medicare malpractice loss ratio from 11.8 percent to 13.2 percent to take account of associated loss adjustment expense, we relied primarily on data regarding ALAE that we secured from the NAIC study and the St. Paul Insurance Company. (*See*, 51 FR 11146–47.) Our premium breakdown—including the recognition of subcosts for ALAE and ULAE in the risk component—was based on rate filings by ISO, St. Paul, and two hospital-owned insurers. (*See*, R.R. at 2834.) While closed claim data were used to adjust the national loss ratio, the rate filings underlying the premium breakdown were not limited to closed-claim data. (*See*, R.R. at 2817–2820.)

Furthermore, we believe that the adjustments made to the national loss ratio obviate the necessity of pursuing the additional research suggested by the commenter. Our use of the NAIC and HCRIS data for determining the adjusted national Medicare malpractice loss ratio effectively involved the identification of all claims closed in the period beginning July 1975 and ending December 1978 for the NAIC data. It effectively involves identification of the value of all paid claims for cost reporting periods ending in 1978 through 1982 for some hospitals and from 1979 through 1983 for other hospitals for the HCRIS data. By accounting for the different claims tails for Medicare and non-Medicare patients, we made suitable adjustments for the different time periods during which these claims were closed. (*See*, 51 FR 11147–48.) In light of these sophisticated adjustments for ALAE and ULAE (which apply to both paid and unpaid claims (R.R. at 2856, 2861, and 2864–2865), we see no need to expend the time and resources on this additional research, especially since the results probably would not diverge significantly from the data underlying our adjustment to the national Medicare loss ratio. Indeed, if we were to take the time necessary to pursue an additional, essentially redundant study, one improper result would be the payment of windfall amounts to providers under the pre-1979 utilization method. In any event, the commenter states (albeit for different reasons than those described above) that the additional suggested research would be unavailing.

Finally, we reject the commenter's assertion that because the premium-setting process does not take a hospital's Medicare utilization into account, only the pre-1979 utilization method would be fair and consistent with the Act. While Medicare utilization will affect a provider's premium costs (51 FR 11170; R.R. at 2869–2870), we must apportion those costs—at whatever level. We have determined that the pre-1979 utilization method produces inequitable results in determining Medicare's share of malpractice insurance costs. The 1986 rule reflects the applicable statutory requirements, along with the necessity that malpractice apportionment policy be tailored to account for the fact that Medicare beneficiaries submit fewer malpractice claims and receive smaller awards than non-Medicare patients, among other extraordinary disproportionalities. While private insurers may have reimbursed malpractice insurance costs on a utilization basis during the 1979–86 period, the practices of private insurers cannot compel our use of that methodology in the face of the overwhelming record evidence that the methodology leads to cost-shifting in contravention of section 1861(v)(1)(A)(i) of the Act.

B. Alternative Methodologies

Comment: While some commenters reiterated their belief that hospitals should be allowed to purchase separate policies for Medicare and non-Medicare patients, they also agreed, in some cases, with our determination that the separate policies option is impracticable. One commenter suggested that the Medicare program should "self-insure" Medicare beneficiaries.

Response: The issue of hospitals purchasing separate policies from insurance companies was discussed at length in the interim final rule at 51 FR 11191–92.

The commenter did not describe the methodology under which the Medicare program would "self-insure" Medicare patients. One methodology that could have been envisioned by the commenter is simply for the Medicare program to pay a hospital's malpractice losses directly to the Medicare claimants or to the hospital. This methodology would offer no financial incentive for a provider to minimize its losses to, or maintain quality care for, Medicare patients because the Medicare program would bear the full cost of malpractice losses for Medicare patients, with no financial risk to the provider for excessive losses. Thus, we do not view this methodology as an acceptable means for Medicare apportionment of malpractice insurance costs.

On the other hand, the commenter may have envisioned a type of insurance that would be equivalent to a separate malpractice insurance policy written by the Medicare program that covers Medicare patients with the contributions made by providers being fully allowable under the Medicare program. In essence, this alternative is similar to the separate policies option, which we rejected in the interim final rule, except that Medicare would insure Medicare beneficiaries rather than commercial insurers. Such an insurance fund would presumably be subject to the normal requirements for a self-insurance fund; for example, an actuary would determine the amount necessary for each provider to pay into the fund.

We believe that separate insurance for Medicare patients and non-Medicare patients would result in a combined total cost that would be greater than the cost of a single insurance policy or self-insurance fund because of inevitably duplicative administrative activities. For example, there would be duplicative administrative costs involved in establishing and updating separate premium amounts. Once again, separate insurance for Medicare patients only would offer no financial incentive for a provider to minimize its losses to Medicare patients because the contributions made by providers to the insurance fund for Medicare beneficiaries would be fully allowable under the Medicare program, with no financial risk to the provider for excessive losses.

C. Medicaid

Comment: The Secretary's statements about the applicability of the Medicare apportionment methodology to Medicaid are inconsistent.

Response: In the preamble to the interim final rule, we stated that "we still do not have adequate data that would support a methodology for Medicaid that is comparable to that which we are adopting for Medicare under this final rule." (51 FR 11149.) Accordingly, we determined that "States should, within the flexibility allowed under section 1902(a)(13) of the Act, use whatever methodology they find to be most appropriate." (*Id.*) Furthermore, we observed: "Twelve States follow Medicare reimbursement principles for purposes of determining Medicaid payments to providers. Unless it acts to amend its State plan and adopt some other rules, each of these States will have to implement this rule; that is, pay SNFs for malpractice expense on a strict utilization basis, and pay hospitals based on the new Medicare methodology for hospitals based on the new Medicare methodology for hospitals (adjusted appropriately for Medicaid)." (51 FR 11191.)

There is no inconsistency between our decision to defer to the States to establish a Medicaid apportionment policy and our observation that States that follow Medicare reimbursement principles will have to amend their State plans in order to avoid following the 1986 rule retroactive to July 1, 1979. While we lack adequate data to develop a Medicaid policy similar to our hospital apportionment methodology under Medicare, a State that follows Medicare reimbursement principles may wish to develop such data (perhaps on a Statewide basis) in order to adjust the methodology for use in the Medicaid program.

Comment: HCFA's decision concerning Medicaid reimbursement of malpractice insurance costs is inconsistent with the provisions of the 1986 rule for SNFs under Medicare. The 1986 rule provides for the payment of malpractice costs for SNFs based on the pre-1979 utilization method because sufficient data do not exist to develop an alternative methodology. In the absence of adequate data for Medicaid, treatment of these costs must be consistent with the methodology applied to SNFs. Thus, payment under Medicaid for malpractice costs should be made on the basis of the utilization method.

Response: Under section 1902(a)(13)(A) of the Act, States generally have leeway in developing their own methodologies for payment of specific costs. Reimbursement of malpractice insurance costs is no exception. Furthermore, the Act does not require that State Medicaid programs follow Medicare principles of reimbursement. Thus, HCFA cannot mandate application of either the 1986 rule or the utilization method under Medicaid because we cannot require a State to follow a specific payment methodology. By contrast, we are required to establish an apportionment methodology for SNFs under Medicare. Therefore, there is no inconsistency between the provisions of the 1986 rule regarding SNFs under Medicare and our decision to not require a specific methodology under Medicaid.

Comment: HCFA's decision to defer to the States regarding Medicaid reimbursement of malpractice insurance costs makes no sense. Retroactive application of that rule without specific guidelines for a consistent payment methodology for Medicaid creates an administrative nightmare. Prior to the implementation of the prospective payment system under Medicare, State Medicaid programs generally reimbursed malpractice costs in accordance with Medicare regulations based on the utilization method. However, since that time many State Medicaid programs have changed.

Response: For States that follow Medicare principles of reimbursement for malpractice insurance costs, the 1986 rule became effective on May 1, 1986, retroactive to July 1, 1979. Any of these States that wishes to deviate from the 1986 Medicare rule may do so by submitting a State plan amendment specifying the methodology it wishes to follow.

In general, under section 1902(a)(13)(A) of the Act, the States have considerable flexibility in designing payment methods and standards for their Medicaid hospital and long-term care reimbursement systems. Federal review and approval of these State systems are not directed at the methods and standards *per se*, but rather to the assurances made by the State concerning the impact and effects of the ultimate payment rates produced under the methodology adopted by the States. Thus, if a State that follows Medicare wished to implement the 1986 Medicare rule retroactively to July 1, 1979, it is free to do so and there would be no need to amend the State plan. For the reasons explained above, we do not believe that it is appropriate to require the States to adopt any specific methodology.

D. Retroactivity

Comment: Retroactive application of the 1986 rule establishes a dangerous precedent in the rulemaking process because it undermines provider's certainty in the administrative process.

Response: "[I]ncluded in the concept of statutory entitlement to [Medicare] reimbursement is the possibility that the statute or implementing regulations may be changed." *Germantown Hospital & Medical Center* v. *Heckler*, 590 F. Supp. 24, 31 (E.D. Pa. 1983). *aff'd*, 738 F.2d 631 (3rd Cir. 1984), *cert. denied*, 105 S. Ct. 906 (1985). Malpractice insurance costs for the reporting periods governed by the 1986 rule are not excepted from this precept simply because we have determined that it is necessary to apply the new rule retroactively. Section 1861(v)(1)(A) of the Act precludes the Secretary from reimbursing providers for costs determined to be in excess of those actual and necessary in the efficient delivery of services to Medicare patients. The Secretary has determined that a wholesale reversion to the pre-1979 utilization method would produce a windfall to providers in contravention of section 1861(v)(1)(A) of the Act. In order to prevent such a result, the Secretary, acting consistently with sections 1861(v)(1)(A)(ii) and 1871 of the Act and the common law, determined that it is necessary to apply the 1986 rule retroactively. (*See* 51 FR 11184–87.) Since providers have known that retroactive rulemaking is possible in this highly regulated field, we do not believe that this policy threatens the certainty of the administrative process.

Comment: HCFA is barred from applying its own regulations to costs incurred prior to the stated effective date. The rule is "new policy" and cannot be applied retroactively. In fact, HCFA refers to the rule as "new policy."

Response: The commenter has confused the effective date of the 1986 rule (i.e., May 1, 1986) with the cost reporting periods to which the 1986 rule applies (i.e., those beginning on or after July 1, 1979). No provision of law prohibits us from applying the 1986 rule, effective May 1, 1986, to cost reporting periods beginning on or after July 1, 1979. The fact that the 1986 rule establishes a new apportionment policy does not mean that it cannot be applied retroactively. The changes in the 1986 rule were made in response to court criticism of the 1979 malpractice rule and public comment on the 1985 NPRM. (*See*, 51 FR 11149.) Our consideration of and response to these criticisms and comments do not undermine the determination that retroactive

application of the 1986 rule is consistent with the Act and the common law.

Comment: Retroactive application of the 1986 rule is inconsistent with the APA, 5 U.S.C. 551(4), which defines a "rule" as the ". . . whole or part of an agency statement of general or particular applicability and future effect . . ."

Response: We do not believe that the APA definition of "rule" precludes retroactive application of the 1986 rule. Rather the reference to "future effect" in 5 U.S.C. 551(4) was intended to distinguish rulemaking from adjudication, and "rulemaking may, consistent with legislative intent, operate retroactively." *Colyer* v. *Harris,* 519 F. Supp. 692, 698 n.2, (S.D. Ohio 1981). This account of 5 U.S.C. 551(4) is further supported by sections 1861(v)(1)(A) and 1871 of the Act, which authorize retroactive rulemaking, and by the common law on the issue. *See, e.g., S.E.C.* v. *Chenery Corp.,* 332 U.S. 194, 203 (1947).

Comment: HCFA is attempting to eliminate the Medicare appeal rights of hospitals by making the 1986 rule retroactive. If the rule is applied retroactively, providers will be denied full legal redress since any appeal issue that might be won by the industry would be potentially subject to retroactive rulemaking.

Response: Providers' appeal rights are fully protected under the 1986 rule. Once the 1986 rule is applied to a provider's malpractice insurance costs, a notice of program reimbursement (NPR) will be issued. (For cost reporting periods beginning before May 1, 1986, revised NPRs will be issued regardless of whether a hospital receives an additional payment under the 1986 rule.) If the provider is dissatisfied with the reimbursement results produced by the 1986 rule and it satisfies applicable statutory requirements, it may appeal in accordance with section 1878 of the Act. (*See,* HCFA Ruling 86–2 (July 2, 1986).)

The spectre of a provider "prevailing" in its appeal, only to be allegedly deprived of its "victory" by rulemaking does not argue against retroactive application of the 1986 rule. Ultimately, the application of the rule is subject to adjudication by the courts. Moreover, as explained in section II above, final settlements will be made under the 1986 rule and revised NPRs issued under that rule for all hospitals as soon as possible. In the event the planned separate set of formula values for hospitals excluded from PPS results in an adjustment in such a hospital's reimbursement, the NPR issued to reflect the adjustment will relate back to the NPR to be issued imminently on the basis of the values established in the interim final rule.

E. Application and Implementation of the 1986 Rule

Comment: Interest should be paid on any additional payment made under the 1986 rule from the date of issuance of the original NPR at issue. Another commenter stated that if additional payments made under the 1986 rule cannot be made within thirty days of the publication date, then interest should be paid pursuant to 42 CFR 405.376.

Response: There is no authority to pay interest, under the terms of the 1986 rule, on additional payments made under that rule. Section 1878(f)(2) of the Act limits interest payments to the prevailing party in a court action, as awarded by the reviewing court. (*See also,* 42 CFR 413.64(j).) Sections 1815(d) and 1833(j) of the Act provide for the payment of interest on overpayments and underpayments to providers. *See also* 42 CFR 405.376. Payment of an additional amount under the 1986 rule does not represent an underpayment under the 1979 malpractice rule. Until May 1, 1986, the 1979 rule governed Medicare reimbursement of malpractice insurance costs. Absent a final, non-appealable court judgment to the contrary, application of the 1979 rule prior to May 1, 1986 could not have resulted in an underpayment.

Furthermore, interest is not payable beginning 30 days after publication of the interim final rule because the issuance of a final rule is not a final determination. (*See,* 42 CFR 405.376(c).) However, the provisions of § 405.376 would apply once an NPR is issued under the 1986 rule.

Comment: HCFA stated in the preamble to the interim final rule that intermediaries will not make adjustments to cost reports for cost reporting periods beginning before May 1, 1986, if these adjustments would result in less reimbursement to the provider than was payable under the 1979 malpractice rule. However, the text of the 1986 rule does not include this provision, but instead contains the apparently contrary provision that malpractice insurance costs must be apportioned in accordance with the 1986 rule, subject to the Medicare rules of administrative finality and reopening. HCFA should revise the text of the regulation to state that no adjustment will be made under the above-described circumstances.

Response: There is no inconsistency between the preamble to the interim final rule and the text of the regulation itself. For cost reporting periods beginning before May 1, 1986, the 1986 rule will be applied to all cost reports for which the malpractice insurance cost determination is open (i.e., not closed) or reopenable and for which reopening is requested. (*See,* 51 FR 11149, 11187.) If, upon recalculation under the 1986 rule, the intermediary determines that the provider would have received more under the 1979 malpractice rule, then no adjustment will be made. However, consistently with the text of § 413.56(a), the 1986 rule will have been applied to the provider's costs since a revised NPR will be issued (even though no adjustment will have been made).

We are not revising the text of the regulations because our decision not to disadvantage any providers applies only to a limited time period and thus does not properly belong in the text of the regulations. However, we have already instructed our intermediaries to implement this policy (HCFA Program Memorandums A–86–8, issued May 1986 and A–86–25, issued November 1986) so that there will be no monetary adjustments for cost reporting periods beginning before May 1, 1986, if those adjustments would have resulted in less reimbursement to the provider. The same policy also is included in HCFA Ruling 86–2 (issued July 2, 1986), which is binding on the Provider Reimbursement Review Board.

Comment: To deny proprietary hospitals the additional equity capital resulting from the retroactive application of the 1986 rule is contrary to historical settlement practices of Medicare fiscal intermediaries and contrary to the instructions for the Medicare cost report. Another commenter stated that retroactive application of the 1986 rule means that HCFA intended that rule to apply as if the 1979 malpractice rule never existed. The commenter concluded that, under such a supposition, the Act and regulations require a full adjustment in equity capital for proprietary providers.

Response: Providers have no basis in law, regulations or program policy to claim additional equity capital from the retroactive application of the 1986 rule. Moreover, denial of the additional equity capital under the provisions of the rule is not contrary to historical settlement practices of Medicare fiscal intermediaries. Providers have no basis on which to assert that payments made under the rule subsequent to the retroactive periods could have resulted in increased equity capital used for the furnishing of patient care during those periods. If the providers during the retroactive period found that the amount of their equity capital was not sufficient, and, as a result, engaged in necessary

borrowing for a purpose related to patient care, the program would have fully paid its share of interest expense on that borrowing.

The denial of additional equity capital resulting from the retroactive application of the 1986 rule is not contrary to the instructions for the Medicare cost report or the fact that the 1986 rule replaces the 1979 malpractice rule. The cost report instructions recognize that where a current underpayment of Medicare reimbursement occurred as calculated on the Medicare cost report on the basis that Medicare's liability was less than interim payments made during the cost reporting period, the provider's Medicare receivable for the underpayment would have increased the current equity capital at the beginning of the next cost reporting period.

In addition, the retroactive application of the 1986 rule to the cost reporting periods governed formerly by the 1979 malpractice rule does not entitle proprietary providers to a full adjustment of equity capital. While the 1986 rule replaces, effective May 1, 1986, the 1979 malpractice rule, the 1979 rule indisputably governed malpractice insurance cost reimbursement between 1979 and 1986. Thus, there is no basis to recognize a Medicare receivable as of the time of a retroactive cost reporting period for an additional payment made under the 1986 rule. Any additional amount now paid under the 1986 rule was not a Medicare receivable at the time when the retroactive cost reporting period occurred because the 1979 malpractice rule governed at that time. Thus, the denial of additional equity capital for the cost reporting periods beginning before the effective date of the 1986 rule is consistent with historical settlement practices, the instructions for the Medicare cost report, and the replacement of the 1979 malpractice rule with the 1986 rule.

Comment: It is inconsistent to apply the 1986 rule retroactively but not retroactively adjust the hospital specific and Federal prospective payment rates. Another commenter stated that HCFA's retroactive application of the 1986 rule is indicative of its belief that that rule always applied and the 1979 malpractice rule never existed. According to the commenter, retroactive application of the 1986 rule means that the Federal rates must be adjusted to account for the additional reimbursement that should have been paid under the 1986 rule.

Response: The retroactive application of the 1986 rule is authorized by sections 1861(v)(1)(A)(ii) and 1871 of the Act for cost-based reimbursement. The Social Security Amendments of 1983 (Pub. L. 98–21) radically altered Medicare's reimbursement system by mandating payment in accordance with prospectively determined rates. The prospective payment rates consist of the Federal rate and the hospital-specific rate during the four-year transition from the cost-based system to the prospective payment system. (*See generally,* 42 CFR 412.70. *See also,* 51 FR 31526 (September 3, 1986) concerning the effect of the 1986 rule on the updating of the prospective payment rates for FY 1987.)

Unlike the retrospective cost-based reimbursement system, the Federal rate is not subject to retroactive change. (*See,* 42 CFR 412.62 and 412.63.) Although the 1986 rule replaces, effective May 1, 1986, the 1979 malpractice rule, the 1979 rule unquestionably existed from 1979 through 1986 and the Federal rate is based on data from cost reporting periods ending in 1981.

The hospital-specific rate is only subject to retroactive change in limited circumstances. (*See,* 42 CFR 412.72(a)(3).) Congress recognized that in order to begin the prospective payment system timely, the hospital-specific rate would have to be established rapidly, often using estimated costs and data. It was Congress' expectation that the hospital-specific rate would be based on the best data available at the time the rate is established. (H.R. Conf. Rep. No. 98–47, 98th Cong. 1st Sess. 182 (1983), *reprinted in* 1983 U.S. Code Cong. & Ad. News 404, 472.) Thus, the regulations generally limit revisions to the hospital-specific rate to cost reporting periods beginning on or after additional base-year costs are recognized. (*See,* 42 CFR 412.72(a)(3).) Revisions to the hospital-specific rate are to be given retroactive effect only if the intermediary's determination of a hospital's base-year costs was unreasonable and clearly erroneous in light of the best available data at the time the determination was made. (*See,* 42 CFR 412.72(b)(2).) Under the circumstances at the time, the 1979 malpractice rule yielded the best available data upon which to base the malpractice aspect of the hospital-specific rate. Thus, there is no inconsistency between making the 1986 rule retroactive and limiting revision of the hospital-specific rate to cost reporting periods beginning on or after May 1, 1986.

Comment: Even if the hospital-specific rate is not revised retrospectively, every provider should have its rate adjusted effective May 1, 1986, if its cost reporting period ordinarily would have commenced between October 1, 1985 and April 30, 1986. The commenter asserted that, due to the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272), those providers' rates will have to be adjusted on or after May 1, 1986 in any event. According to the commenter, the rationale for not making a retroactive adjustment to the hospital-specific rate is to avoid administrative burden. But this rationale would not apply to hospitals with cost reporting periods beginning between October 1, 1985 through April 30, 1986, since their payment rates will be adjusted on or after May 1, 1986. The commenter concluded that the hospital-specific rate for these hospitals should be adjusted because the "freeze" created by Congress, in essence, forestalled the annual adjustment of their rates.

Response: The commenter is mistaken in two fundamental respects. First, as explained above, the rationale for not revising the hospital-specific rate retrospectively is Congressional intent, not administrative convenience. The regulations reflect Congress' intent that the prospective payment system be implemented immediately and that the hospital-specific rate be determined on the basis of the best available data at that time. Thus, adjustments to the hospital-specific rate to take into account newly recognized base-year costs under the 1986 rule are prospective only because that part of the rate was based on the best available data at the time.

Second, the provisions of Pub. L. 99–272 referred to by the commenter do not affect our decision to limit revisions to the hospital-specific rate to cost reporting periods beginning on or after May 1, 1986. As a result of Pub. L. 99–272 and prior legislation (*see,* 51 FR 16722–23 (May 6, 1986)), prospective payment rates for discharges occurring in Federal fiscal year 1986 were frozen through April 30, 1986. Section 9101 of Pub. L. 99–272 requires that the hospital-specific rate for the remaining five months of Federal fiscal year 1986 be increased by one-half of one percent. However, this statutorily-mandated increase does not reflect a base-year cost adjustment (resulting in a revised hospital-specific rate). Similarly, the "freeze" created by Congress was not intended to prohibit prospective adjustments to the hospital-specific rate under 42 CFR 412.72(a)(3). Thus, a hospital with a cost reporting period beginning between October 1, 1985 and April 30, 1986, which was due an adjustment based on the recognition of additional base-year costs, would be entitled to a prospective adjustment to its hospital-specific rate effective with

the first day of its cost reporting period beginning during that period.

F. Other new issues

Comment: Publication of a final rule followed by a post-promulgation comment period is inconsistent with the APA, which requires notice and opportunity to comment before the effective date of a final rule. Other commenters asserted that the interim final rule violates the APA because it differs too much from the 1985 NPRM.

Response: As explained above, the 1986 rule, which became effective on May 1, 1986, was promulgated in response to comments and information received on the 1985 NPRM issued at 50 FR 25178 (June 17, 1985). Since the 1986 rule is a logical outgrowth of the 1985 NPRM, the limited opportunity to comment on the interim final rule does not constitute an impermissible post-promulgation comment period.

We reject the commenters' claims that the interim final rule is different enough from the 1985 NPRM to require that the policies adopted in the 1986 rule be published in a separate NPRM. The case law is clear that significant changes in a final rule from the predecessor NPRM are consistent with the requirements of the APA, 5 U.S.C. 553. Indeed, the courts have held that such changes indicate that the administrative process is working, not that the agency has acted improperly.

The courts require that a NPRM fairly apprise the public of the subjects and issues involved in the rulemaking rather than specifying every precise proposal that the agency may ultimately adopt. Unquestionably, the 1986 rule deals with the same subjects and issues that were included in the 1985 NPRM.

Furthermore, the courts have held that even substantial changes from the NPRM are permissible as long as the final rule is in character with the original scheme and a logical outgrowth of the notice and comment provided on the NPRM. The 1986 rule clearly is a logical outgrowth of the 1985 NPRM and the comments received on the proposed rule. (*See generally*, 51 FR 11194, 11149 (col. 2).) For example, the threshold feature of the 1985 NPRM has been retained in the 1986 rule. As proposed in 1985, the Secretary determined that it was necessary to remove hospital malpractice insurance costs from the G&A pool and apportion those costs directly between Medicare and non-Medicare patients: (*Compare*, 50 FR at 25181–82, *with*, 51 FR at 11158–68.)

Moreover, the new reimbursement methodologies adopted in the 1986 rule are clearly a logical outgrowth of the 1985 NPRM. In the 1985 NPRM, the Secretary considered the alternative of reinstating the pre–1979 utilization method. (*See*, 50 FR at 25187.) The Secretary adopted precisely that alternative in the 1986 rule for reimbursement of malpractice insurance costs incurred by SNFs. (*See*, 51 FR at 11148–49, 11195–96 (*adding* 42 CFR 405.457(c), *redesignated as* 42 CFR 413.56(c) (51 FR 34808–09)).)

The 1986 rule (51 FR at 11144–48, 11195 (*adding* 42 CFR 405.457(b), *redesignated as* 42 CFR 413.56(b) (51 FR 34808–09))) reimburses hospital malpractice insurance costs by dividing total premium cost into two parts. The administrative component is included in the G&A cost center and apportioned in accordance with the pre-1979 utilization method. Thus, as with the new methodology for SNF malpractice cost, the 1986 rule's apportionment formula for the administrative component of hospital malpractice premium cost is identical to one of the alternatives considered in the 1985 NPRM.

The risk component of hospital premium cost is reimbursed in accordance with the scaling factor formula. The main terms of the formula include: the hospital's particular Medicare patient utilization rate; the national Medicare utilization rate; and the national ratio of Medicare malpractice losses as compared to total losses. (*See*, 51 FR at 11146–48, 11195.) Each of these concepts figured centrally in the 1985 NPRM, and their use in the new rule reflects the fact that the new hospital reimbursement methodology is a hybrid of the pre-1979 utilization method and the 1979 malpractice rule. (*See*, 50 FR at 25180, 25183, and 25187 (discussing, respectively, the national Medicare utilization rate, the national ratio of Medicare losses as compared to total losses, and the pre-1979 utilization method which depends on specific provider utilization rates).) Thus, the 1986 rule clearly is in character with the original scheme of the 1985 NPRM.

Finally, the 1986 rule responds comprehensively to the criticisms of the 1979 malpractice rule and the 1985 NPRM. (*See generally*, 51 FR at 11149 (col. 2).) This fact demonstrates that the administrative process was working.

Comment: The 1986 rule violates the rulemaking requirements of the APA because it is based on data (*e.g.*, the analysis of the NAIC data, more current HCRIS data, and data from the St. Paul Insurance Company) that were not included in the 1985 NPRM.

Response: The 1985 NPRM made clear that we were seeking all available data pertinent to the apportionment problem addressed by the rulemaking. For example, we requested information from insurance companies, provider organizations, and providers regarding the frequency and size of malpractice claims, along with malpractice loss data, for Medicare and Medicaid patients. (50 FR 25183.) The NAIC data, which have been publicly available since 1980 and were referred to by various commenters on the 1985 NPRM, clearly fall within the scope of our inquiry. Data from the St. Paul Insurance Company and other insurers that were used in the 1986 rule also were publicly available and within the scope of our inquiry. A primary reason for using the data in connection with the interim final rule was to implement the changes adopted in response to the comments. The HCRIS data were relied on in the 1985 NPRM, and the description of those data makes clear that HCRIS is an evolving database. (*See*, 50 FR 25179–81.) We used a different data set from HCRIS in the 1986 rule because that data set was more current and larger than the one relied on in the 1985 NPRM. (*See*, 51 FR 11154–55.) Similarly, as explained in section II. above, we used a different HCRIS data set to establish the value of the R factor for short-stay hospitals in order to ensure that the formula values for short-stay hospitals are based exclusively on data for that type of hospital. In addition to being within the scope of the data inquiry made in the 1985 NPRM and necessary to implement the changes made in response to comments, the public has been given the opportunity to comment on all of the data relied on in the interim final rule.

Comment: HCFA's adoption of the 1986 rule as an "interim final" rule indicates the agency's own concern that the rule violates the APA requirements for notice-and-comment rulemaking. Interim final rules typically are reserved for instances in which legislative or public urgency requires faster action than notice and comment procedures would permit. According to the commenter, these exigent circumstances do not exist in this case.

Response: The interim final character of the April 1, 1986 regulation involves no impropriety. While interim final rules often are used when a final rule is not preceded by a notice of proposed rulemaking, there is no reason why an interim final rule cannot follow the NPRM. In this case, the 1986 rule was a logical outgrowth of the 1985 proposed rule and comments on that rule, and thus no further opportunity to comment was required under the APA. Therefore, by affording the public an opportunity to comment on new issues pertaining to the interim final rule, we exceeded the minimal requirements of the APA. Far

from involving any impropriety, the interim final character of the regulation enabled us to consider additional comments in the course of responding to the problems associated with court decisions invalidating the 1979 malpractice rule and the windfall payments that would have resulted from a wholesale reversion to the pre-1979 utilization method. (*See,* 51 FR 11194–95.)

Comment: Because the 1986 rule is so complex, more than 30 days should have been allowed for comment. According to the commenter, the public was deprived of a meaningful opportunity to comment on the interim final rule in violation of the APA.

Response: Thirty days is ample opportunity to comment on a rulemaking document, as demonstrated by the volume and depth of the comments received in this proceeding. Moreover, the public has been involved at numerous steps.

On June 17, 1985, we published the 1985 proposed rule in the **Federal Register** (50 FR 25178) and gave interested persons 45 days in which to comment on the 1985 NPRM. During the comment period on the 1985 NPRM, certain persons secured information under the FOIA that was relevant to the NPRM. In order to insure that these FOIA requesters could meaningfully comment on matter raised in the FOIA, we gave the requesters until August 16, 1985 to comment on these materials. (*See,* 51 FR 11151 (column 1).) In fact, four additional extensive and detailed comments were submitted by various of the FOIA requesters. (*See,* 51 FR 11144 (col.1).)

Four days before the interim final rule was published, *i.e.* March 28, 1986, we held a public briefing in which interested members of the health care industry and private bar were apprised of the terms and basis of the 1986 rule. On April 1, 1986, we published the interim final rule, which, in response to comments on the 1985 NPRM and criticisms of the 1979 malpractice rule, established the 1986 rule. As explained above, the 1986 rule is in character with the original scheme of the 1985 NPRM and is a logical outgrowth of the NPRM and comments on the proposed rule. Nonetheless, we decided to give the public an additional opportunity for public comment on the changes contained in the interim final rule. (*See,* 51 FR 11194.) Shortly after the interim final rule was published, the rulemaking record was made available through the FOIA process. Indeed, various comments received in response to the interim final rule reveal a sophisticated understanding of the issues and of the details of the record. As a result of our consideration of these additional comments, we plan to develop separate sets of formula values for short-stay hospitals and for hospitals excluded from PPS.

Comment: The Department has not identified the material it relied upon but withheld from its response to requests under the FOIA. The identity of the actuarial consultant and his report were not made public until April 25, 1986, although public comments were due May 1, 1986. This shows disregard for the public's right to review and comment.

Response: The material relied upon was made available, in one form or other, for release under the FOIA as quickly as possible following receipt of a request for material. Although we were able to provide copies of the rulemaking record for the 1986 rule in a most timely manner, we have not yet been able to respond to FOIA requesters on an item by-item basis. While these responses will be provided in turn, the delay in no way indicates that we have withheld any material relied upon in the rulemaking.

The identity of the actuarial consultant was made public at the March 28, 1986 briefing on the 1986 rule, which, as explained above, occurred four days before the interim final rule was published in the **Federal Register.**

Comment: A commenter that made an FOIA request for the rulemaking record underlying the interim final rule complained that the HCFA contractor that analyzed the NAIC data stated that the raw data underlying the NAIC Study was not available. The commenter concluded that HCFA's reliance on data that was not made available to the public violated the APA.

Response: Parties that requested the rulemaking record for the interim final rule under the FOIA received two responses from HCFA. First, the printed portion of the record was released by HCFA's Office of Public Affairs, which also informed the commenters that two magnetic tapes from HCRIS and the 11-volume record for the 1979 malpractice rule were available for release under the FOIA. Second, HCFA's Office of Reimbursement Policy informed these requesters that the data tape underlying the NAIC Study could be used on the premises of the contractor that analyzed the data tape for HCFA. Each requester was informed that while the NAIC data tape was part of the rulemaking record for the interim final rule, the tape was purchased from NAIC subject to various restrictions on HCFA's use of the tape. In order to discharge our obligations to the public and NAIC, we made the raw data underlying the NAIC Study available for use through our contractor rather than releasing the NAIC data tape under the FOIA. Since this alternative procedure enabled interested parties to manipulate the raw data on the NAIC data tape at will, there clearly was no violation of the APA.

Comment: The rulemaking record released under the FOIA is incomplete in that, contrary to both the APA and the *Boswell* decision, the record was selectively compiled and does not contain information that was reviewed by HCFA or before the Secretary during rulemaking. The Secretary's incomplete rulemaking record prevents meaningful judicial review because courts reviewing the 1986 rule must have the full record before them.

The specific matters raised by the commenters are as follows:

(1) One commenter asserted that the rulemaking record for the interim final rule was incomplete because only part of the *Report of the Secretary's Commission on Medical Malpractice* (1973) was included. According to the commenter, the Commission's findings, taken as a whole, are contrary to the assumptions underlying the 1986 rule. One commenter made similar assertions about the inclusion in the rulemaking record of parts of the *Report on Medical Insurance Feasibility Studies* by the California Medical Association and California Hospital Association (1977) and of part of the data in *Best's Aggregates and Averages, Property—Casualty* (1984 ed.)

(2) A commenter stated that we failed to include in the record a 1978 memorandum by a departmental employee on the balance of the G&A pool.

(3) A commenter stated that the record selectively includes only part of the unpublished HCFA data regarding 1979–80 increases in premium cost

Response: The rulemaking record for the interim final rule was not selectively compiled. Any omissions from that record were inadvertent and will be redressed in the course of compiling the record materials pertinent to the public comments on the interim final rule. Our responses to specific comments about the rulemaking record are as follows:

(1) We included the portions of the *Report of the Secretary's Commission on Medical Malpractice* that, in our opinion, pertained directly to the issues addressed in the rulemaking. Contrary to the commenter's assertion, we do not believe that the Commission's findings, taken as a whole, are contrary to the assumptions underlying the 1986 rule. However, in light of the commenter's

claim about the overall significance of the Report, the entire Report will be included in the record. Similarly, while we originally included only those parts of the California Medical Association and California Hospital Association Report and the A.M. Best data that pertained to the 1985 NPRM and to comments on the NPRM, the entirety of the Report and the Best publication will be included in the record in response to the commenters' assertions.

(2) The 1978 memorandum referred to by the commenter was part of the eleven-volume rulemaking record for the 1979 malpractice rule. Since one of the commenters on the 1985 NPRM submitted the whole record for the 1979 rule (51 FR 11143 (col. 3)), there was no need to include a second copy of the memorandum in the record.

(3) The unpublished HCFA data on premium cost increases for 1979–80 are derived from the AHA. These data are part of a sequence ranging from 1970 through 1980 (*see*, 51 FR 11160), all of which is included in the record. (R.R. at 2931, 3549.) The ISO-derived data for the 1981–85 period (51 FR 11160) also is in the record. (R.R. at 3549.)

Comment: In January 1983, HCFA Region IV issued a program validation audit report on malpractice insurance that was described as being part of a national program validation report. Although in the preamble to the interim final rule HCFA stated that no national report resulted from the Region IV report, HCFA has not denied that a national program validation report was being prepared and that the Region IV report would become a part of that national report. The commenter stated that HCFA has failed to release the material related to the national report.

IV Participation (1983) ("the Region IV report"), states on page three that the review was "performed in accord with national objectives established for the review of malpractice insurance cost" and the report contains a number of references to a national malpractice insurance review. In addition, a cover letter prepared by the Atlanta Regional Office states that its review was "performed as part of a national review effort," and that the Region IV report was "to be embodied in a national report."

The Region IV review was initiated as part of a national review effort. Although HCFA originally expected to evaluate the results of regional reviews and develop a national report, other priorities resulted in the termination of the planned project. As a result, no national report—either in draft form or final form—was ever prepared. Since there was no material related to a national report," there was nothing to release to the public.

IV. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any major rule. A major rule is any regulation that is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we prepare and publish a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that implementation of the regulation would not have a significant economic impact on a substantial number of small entities.

We published analyses under E.O. 12291 and the RFA in both the June 17, 1985 proposed rule (50 FR 25178, 25186–88) and the April 1, 1986 interim final rule with comment period (51 FR 11142, 11188–94). However, in this rule, we are not making any changes that would, in themselves, have economic effects that meet the criteria of either E.O. 12291 or the RFA.

We are not able at this time to assess the impact of the planned separate scaling factor formula values for hospitals excluded from the prospective payment system. When those separate values are published, we will determine whether additional impact analyses are required.

For these reasons, we have determined that a regulatory impact analysis under E.O. 12291 is not required. Furthermore, we have determined, and the Secretary certifies, that this final rule will not have a significant economic impact on a substantial number of small entities, and we have therefore not prepared a regulatory flexibility analysis.

V. List of Subjects in 42 CFR Part 413

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

TITLE 42—PUBLIC HEALTH

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

Accordingly, the regulation, 42 CFR 413.56, established by the interim final rule published at 51 FR 11142–11196 (April 1, 1986) is confirmed as a final rule.

Authority: Secs. 1102, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, 1886, and 1887 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395(g), 1395l(a), 1395x(v), 1395hh, 1395rr, 1395ww, and 1395xx.)

(Catalog of Federal Domestic Assistance Programs: No. 13.714, Medical Assistance Program No. 13.773, Medicare—Hospital Insurance; No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: January 22, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: February 28, 1987.

Don M. Newman,

Undersecretary.

[FR Doc. 87-6550 Filed 3-26-87; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1-216]

Organization and Delegation of Powers and Duties

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This amendment clarifies the delegation to the Assistant Secretary for Administration. The Secretary has determined that the existing delegations to the Assistant Secretary for Administration need to be updated to add an existing delegation that was inadvertently omitted when this part was published. The new provision delegates to the Assistant Secretary for Administration, subject to coordination with the General Counsel, interested administrations and other offices, authority to issue the Department's procurement regulations. These regulations govern the procurement of supplies and services (including construction and concessions) and the procurement of real property by lease.

DATE: The effective date of this amendment is March 27, 1987.

FOR FURTHER INFORMATION CONTACT: Samuel E. Whitehorn, Office of the General Counsel, Department of Transportation, Washington, DC, (202) 366-9307.

SUPPLEMENTARY INFORMATION: Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than thirty days after publication in the **Federal Register.**

List of Subjects in 49 CFR Part 1

Authority delegations (government agencies); Organization and functions (government agencies); Transportation Department; Procurement and Contracting.

PART 1—[AMENDED]

1. The authority of Part 1 continues to read as follows:

Authority: 49 U.S.C. 322.

2. In consideration of the foregoing, § 1.59 of Part 1 of Title 49, Code of Federal Regulations, is amended by adding paragraph (q) to read as follows:

§ 1.59 [Amended]

* * * * *

(q) *Regulations.* Issue Department of Transportation procurement regulations, subject to the following limitation:

(1) *Coordination.* The views of the General Counsel, the interested administrations and other offices will be solicited in the development of the procurement regulations. In commenting upon proposed provisions for the procurement regulations, the administrations will indicate the nature and purpose of any additional implementing or supplementing policy guidances which they propose to issue at the administration level.

Issued in Washington, DC, on March 12, 1987.

Elizabeth Hanford Dole,

Secretary of Transportation.

[FR Doc. 87-6830 Filed 3-26-87; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 60979-7044]

Snapper-Grouper Fishery of the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: The Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP) contains a management measure that provides for designating modified habitats or artificial reefs as special management zones (SMZs). This final regulatory amendment (1) designates specific artificial reefs off the coasts of South Carolina and Georgia as SMZs; (2) prohibits fishing in these areas except with hand-held hook-and-line gear (including manual, electric, or hydraulic rod and reel) and spearfishing gear (including powerheads and spear guns); and (3) prohibits the taking of jewfish within these areas. The intended effect is to establish the designated artificial reefs (ARs) as SMZs and to manage them to promote orderly use of the resource, to reduce user group conflicts, and to maintain the intended socioeconomic benefits of the ARs to the maximum extent practicable.

EFFECTIVE DATE: March 27, 1987.

FOR FURTHER INFORMATION CONTACT: Rodney C. Dalton, 813-893-3722.

SUPPLEMENTARY INFORMATION: Final regulations implementing the FMP were published August 31, 1983 (48 FR 39466) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP provides for the designation of specific modified habitats as special management zones (SMZs). This rule establishes 19 SMZs off the coasts of Georgia and South Carolina.

The proposed rule for this action (51 FR 43937, December 5, 1986) contained a discussion justifying the establishment of the SMZs. This discussion is not repeated here.

Comments and Responses

Comments on the proposed rule were received from eight sources. Commenters included the South Atlantic Fishery Management Council (Council), South Carolina Wildlife and Marine Resources Department (SC-W&MRD), United States Department of the Interior (DOI), a recreational fishing organization, and four fishermen. Comments received have been grouped into eight general categories.

Council Comments

The Council objected to the revision of the wording of objective 2 of the proposed rule and suggested that the original wording, as approved and submitted by the Council, be restored. NOAA concurs. The Council also recommended that NOAA clarify that one of the artificial reefs (Hilton Head Reef) was submitted for SMZ designation by both South Carolina and Georgia but under different names (Georgia refers to that reef as Artificial Reef T). A number of editorial corrections were also suggested. NOAA concurs with these recommendations and has modified the final rule accordingly.

Revision of Artificial Reef Coordinates

A representative of the SC-W&MRD provided corrections to five coordinates listed for the South Carolina reefs. NOAA has made the appropriate revisions in the final rule.

Extension of SMZs to Other Areas

One fisherman supported the SMZ concept, but suggested that SMZs also be established in other States. The scope of the proposed rule was limited to the specific requests submitted by South Carolina and Georgia. The FMP, which contains the provision for establishing SMZs, provides the opportunity for anyone holding an Army Corps of Engineers permit for an artificial reef to apply to the Council for an SMZ designation. Permittees with reefs in Federal waters off North Carolina, South Carolina, Georgia, and the east coast of Florida would be eligible to apply under this provision.

Objections to Allowing Powerheads or Spearguns

One fisherman objected to allowing divers to use powerheads or spearguns within the SMZs, because such gear was too efficient in removing fish. The Council considered prohibiting these types of gear but concluded that a general prohibition was unnecessary. Although divers comprise a small but significant user group on these reefs, no significant conflicts have occurred to date, and the principal target species for hook-and-line fishermen, black sea bass, is not targeted by divers. NOAA agrees with the Council's judgment and has made no change in the final rule based on this comment.

Alleged Violations of National Standards

One fisherman stated that the proposed rule would establish a precedent against commercial interests and in favor of recreational interests and would violate the national standards established in the Magnuson Act. NOAA has reviewed the proposed rule and determined that it is consistent with the national standards. The regulations restrict use of certain types of gear that are incompatible with the intended use of the artificial reefs. Commercial fishermen may fish within

the SMZs with allowable gear. Each request for an SMZ is reviewed independently and its impacts on all users are carefully evaluated. Further, the opportunity to establish SMZs is available to both the recreational and commercial sectors. NOAA does not believe there is any inherent bias associated with the SMZ concept.

Support for the SMZ Concept

Two fishermen submitted comments generally in support of the proposed rule. One of the fishermen also recommended adding SMZs around six additional artificial reefs. This recommendation is beyond the scope of the proposed rule, which was limited to the specific request by Georgia and South Carolina, but the permittee for these additional reefs could submit a request to the Council for future consideration.

Potential Impacts of SMZ Designation on Development of Other Natural Resources

A representative of DOI's Minerals Management Service expressed concern about potential impacts of SMZ designation on existing Federal natural resources programs such as mineral exploration. The Magnuson Act, which provides the ultimate authority for establishing these SMZs, regulates only fishing and fishing activities and would have no direct impact on other legitimate uses of the high seas. Further, requests for SMZ designation are considered only for artificial reefs that have been permitted by the U.S. Corps of Engineers (Corps). The Corps' permitting process includes public hearings and public comment periods where concerns could be identified and addressed. In addition, each SMZ request undergoes a structured review that requires a public comment period, which may include public hearings, prior to implementing and SMZ.

The commenter also asked for clarification of the need to establish SMZs that encompass areas substantially larger than the actual artificial reefs. The SMZs include the area permitted by the Corps plus a 500-meter buffer zone. Reef material is often placed in numerous locations within the permitted site. The 500-meter buffer was recommended to protect species throughout the range of their daily movements around the reefs. NOAA concludes that establishment of SMZs will not impact mineral exploration or related activities and that the SMZ boundaries are justified.

Changes from the Proposed Rule

Section 646.2

The definition of "Fishery conservation zone (FCZ)" has been deleted and replaced by a definition of "Exclusive economic zone (EEZ)"; "EEZ" has been substituted for "FCZ" throughout the regulations.

Section 646.24

Coordinates in paragraphs (a)(1), (3), (5), (7), and (12) were corrected as requested by SC–W&MRD.

The heading of paragraph (a)(12) was changed to read "Hilton Head Reef/Artificial Reef T" to reflect that this reef was constructed jointly by South Carolina and Georgia and is known by different names in these two States.

Classification

The Director, Southeast Region, NMFS, determined that this regulatory amendment is necessary for the conservation and management of the snapper-grouper fishery and that it is consistent with the Magnuson Act and other applicable law.

These measures are part of the Federal action for which an environmental impact statement (EIS) was prepared. The final EIS for the FMP was filed with the Environmental Protection Agency and the notice of availability was published on August 19, 1983 (48 FR 37702).

It was previously determined, on the basis of a regulatory impact review (RIR) and regulatory flexibility analysis (RFA) summarized in the final rule implementing the FMP (48 FR 39466, August 31, 1983) that the rule is not major under Executive Order 12291. A supplemental RIR was prepared for this proposed rule; it indicates that the anticipated benefits exceed the compliance cost to the public.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

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

The Assistant Administrator for Fisheries, NOAA, found that it would be contrary to the public interest in effective management of the artificial reefs and their fish resources to delay for 30 days the effective date of this rule. January through April is the peak period for trap fishing which would be prohibited once the rule goes into effect. To allow trap fishing to continue into late April instead of being prohibited in late March would have a detrimental effect on the fish populations associated with the SMZs for the remainder of the year.

The Council determined that this rule does not directly affect the coastal zone of any State with an approved coastal management program. Letters were sent to the appropriate States advising them of this determination.

List of Subjects in 50 CFR Part 646

Fisheries, Fishing.

Dated: March 24, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

PART 646—SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

For reasons set forth in the preamble, 50 CFR Part 646 is amended as follows:

1. The authority citation for Part 646 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In Part 646, in the Table of Contents under Subpart B, a new section title is added, to read as follows:

Sec.

* * * * *

646.24 Area limitations.

3. Section 646.2 is amended by removing the definition for *Fishery conservation zone (FCZ)* and inserting in alphabetical order the definition for *Exclusive economic zone (EEZ)* to read as follows:

§ 646.2 Definitions.

* * * * *

Exclusive economic zone (EEZ) means the zone established by Presidential Proclamation 5030, dated March 10, 1983, and is that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

* * * * *

4. Section 646.6 is amended by removing the word "or" at the end of paragraph (a)(17), changing the period at the end of paragraph (a)(18) to a semicolon, and adding new paragraphs (a)(19), (20), and (21), to read as follows:

§ 646.6 Prohibitions.

(a) * * *

(19) Fish with any type of fishing gear except hand-held hook-and-line gear or spearfishing gear as specified in § 646.24(b) (1) and (2);

(20) Possess or retain jewfish taken by any type of fishing gear or take any jewfish with spearfishing gear as specified in § 646.24(b) (3); or

(21) Fail to release immediately in the water any incidentally caught jewfish as specified in § 646.24(b)(3).

* * * * *

5. A new § 646.24 is added to Subpart B to read as follows:

§ 646.24 Area limitations.

(a) The following artificial reefs and surrounding areas are established as Special Management Zones (SMZs):

(1) *Little River Reef:* The area is bounded by straight lines connecting the following points:

A 33°49.60' N., 78°30.51' W.
B 33°48.95' N., 78°31.30' W.
C 33°48.92' N., 78°29.72' W.
D 33°48.40' N., 78°30.50' W.

(2) *Paradise Reef:* The area is bounded on the north by 33°31.59' N. latitude; on the south by 33°30.51' N. latitude; on the east by 78°57.55' W. longitude; and on the west by 78°58.85' W. longitude.

(3) *Ten Mile Reef:* The area is bounded on the north by 33°26.65' N. latitude; on the south by 33°24.80' N. latitude; on the east by 78°51.08' W. longitude; and on the west by 78°52.97' W. longitude.

(4) *Pauleys Island Reef:* The area is bounded on the north by 33°26.58' N. latitude; on the south by 33°25.76' N. latitude; on the east by 79°00.29' W. longitude; and on the west by 79°01.24' W. longitude.

(5) *Georgetown Reef:* The area is bounded on the north by 33°14.90' N. latitude; on the south by 33°13.85' N. latitude; on the east by 78°59.45' W. longitude; and on the west by 79°00.65' W. longitude.

(6) *Capers Reef:* The area is bounded on the north by 32°45.45' N. latitude; on the south by 32°43.91' N. latitude; on the east by 79°33.81' W. longitude; and on the west by 79°35.10' W. longitude.

(7) *Kiawah Reef:* The area is bounded on the north by 32°29.78' N. latitude; on the south by 32°28.25' N. latitude; on the east by 79°59.00' W. longitude; and on the west by 80°00.95' W. longitude.

(8) *Edisto Offshore Reef:* The area is bounded on the north by 32°15.30' N. latitude; on the south by 32°13.90' N. latitude; on the east by 79°50.25' W. longitude; and on the west by 79°51.45' W. longitude.

(9) *Hunting Island Reef:* The area is bounded on the north by 32°13.72' N. latitude; on the south by 32°12.30' N. latitude; on the east by 80°19.23' W. longitude; and on the west by 80°21.00' W. longitude.

(10) *Fripp Island Reef:* The area is bounded on the north by 32°15.92' N. latitude; on the south by 32°14.75' N. latitude; on the east by 80°21.62' W. longitude; and on the west by 80°22.90' W. longitude.

(11) *Betsy Ross Reef:* The area is bounded on the north by 32°03.60' N. latitude; on the south by 32°02.88' N. latitude; on the east by 80°24.57' W. longitude; and on the west by 80°25.50' W. longitude.

(12) *Hilton Head Reef/Artificial Reef—T:* The area is bounded on the north by 32°00.71' N. latitude; on the south by 31°59.42' N. latitude; on the east by 80°35.23' W. longitude; and on the west by 80°36.37' W. longitude.

(13) *Artificial Reef—A:* The area is bounded on the north by 30°56.4' N. latitude; on the south by 30°55.2' N. latitude; on the east by 81°15.4' W. longitude; and on the west by 81°16.5' W. longitude.

(14) *Artificial Reef—C:* The area is bounded on the north by 30°51.4' N. latitude; on the south by 30°50.1' N. latitude; on the east by 81°09.1' W. longitude; and on the west by 81°10.4' W. longitude.

(15) *Artificial Reef—G:* The area is bounded on the north by 30°59.1' N. latitude; on the south by 30°57.8' N. latitude; on the east by 80°57.7' W. longitude; and on the west by 80°59.2' W. longitude.

(16) *Artificial Reef—F:* The area is bounded on the north by 31°06.6' N. latitude; on the south by 31°05.6' N. latitude; on the east by 81°11.4' W. longitude; and on the west by 81°13.3' W. longitude.

(17) *Artificial Reef—J:* The area is bounded on the north by 31°36.7' N. latitude; on the south by 31°35.7' N. latitude; on the east by 80°47.0' W. longitude; and on the west by 80°48.1' W. longitude.

(18) *Artificial Reef—L:* The area is bounded on the north by 31°46.2' N. latitude; on the south by 31°45.1' N. latitude; on the east by 80°35.8' W. longitude; and on the west by 80°37.1' W. longitude.

(19) *Artificial Reef—KC:* The area is bounded on the north by 31°51.2' N. latitude; on the south by 31°50.3' N. latitude; on the east by 80°46.0' W. longitude; and on the west by 80°47.2' W. longitude.

(b) The following restrictions apply within the SMZs.

(1) Fishing may be conducted only with hand-held hook-and-line gear (including manual, electric, or hydraulic rod and reel) and spearfishing gear (including powerhead).

(2) The use of fish traps, bottom longlines, gill nets, and trawls is prohibited.

(3) Jewfish may not be harvested by any type of gear. Jewfish taken incidentally by hook-and-line gear must be released immediately by cutting the line without removing the fish from the water.

§§ 646.1, 646.2, 646.3, 646.5, 646.6, 646.21, and 646.22 [Amended]

6. In addition to the amendments set forth above, Part 646 is amended as follows:

A. In § 646.1(b), the words "fishery conservation zone (FCZ)" are removed and the initials "EEZ" are added in their place.

B. The initials "FCZ" are removed and the initials "EEZ" are added in their place in the following places:

Section 646.2, in the definition for *South Atlantic;*
Section 646.3(c);
Section 646.5 (a), (e), and (f);
Section 646.6(a), (4), (5), (6), (7), (9), (16), and (18);
Section 646.21 (a), (b), and (c); and
Section 646.22(b) (4) and (5).

[FR Doc. 87-6816 Filed 3-26-87; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 59
Friday, March 27, 1987

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 340 and 752

Other Than Full-Time Career Employment and Adverse Actions

AGENCY: Office of Personnel Management.

ACTION: Proposed regulation.

SUMMARY: The Office of Personnel Management (OPM) proposes to amend its regulations to reflect two decisions of the U.S. Court of Appeals for the Federal Circuit, which ruled that (1) performance-based actions may be taken under Part 752; and (2) terminating an employee's temporary promotion is not an adverse action. In addition, the regulations would define the terms "current continuous service" and "indefinite suspension" in regulation. They would provide part-time employees who experience an involuntary reduction in the number of hours in their regular schedule with advance notice and the right to contest the action, while clarifying that these actions are not reductions in pay for adverse action purposes. The regulations also would reflect recent case law that requires adverse action procedures for management actions that place employees on enforced leave for more than 14 days under certain circumstances. Also, the regulations would provide for the use of indefinite suspensions in some situations. Finally, they would make technical and clarifying changes.

DATE: Comments must be received on or before May 26, 1987.

ADDRESS: Written comments may be sent or delivered to the Chief, Appellate Policies Division; Office of Employee, Labor and Agency Relations; Office of Personnel Management; Room 7635; 1900 E Street, NW.; Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Cynthia Field (202) 653–8551.

SUPPLEMENTARY INFORMATION:

I. *Performance-based actions.* In *Lovshine* v. *Department of the Navy*, 767 F. 2d 834 (Fed. Cir. 1985), *cert. denied*, 106 S. Ct. 1623 (1986), the U.S. Court of Appeals for the Federal Circuit held that agencies may take actions, including disciplinary actions, based solely on inefficient performance under Part 752. Furthermore, the *Lovshin* decision makes clear that agencies may take actions involving both unacceptable performance and misconduct, "relying on Chapter 43 [of Title 5 of the United States Code] for 'unacceptable performance' in a critical element with an alternative, or additional charge, under Chapter 75 [of Title 5 of the U.S. Code] for 'such cause as will promote the efficiency of the service.' In such cases, the appropriate standard of review by MSPB should be applied according to the basis for each specific charge." OPM's current regulations reflect earlier opinion that actions for unacceptable performance could only be taken under 5 CFR Part 432 and that actions based on both performance and nonperformance reasons could only be taken under 5 CFR Part 752. OPM proposes to revise the adverse action coverage statement to reflect the court's holdings and the standards for action.

II. *Termination of temporary and term promotions.* In *Phipps* v. *Department of Health and Human Services*, 767 F.2d 895 (Fed. Cir. 1985), the U.S. Court of Appeals for the Federal Circuit held that if agencies had informed employees in advance that a promotion was only temporary, they are not required to follow adverse action procedures when terminating any temporary promotion that extends past 2 years. OPM proposes to amend 5 CFR 752.401(c)(7), and (8), which concerns termination of term promotions, to reflect this holding.

III. *Reduction in schedule of a less-than full-time employee.* There has been considerable confusion about whether the involuntary reduction in schedule of other than full-time employees is a reduction in pay covered by Chapter 75 of Title 5, U.S. Code. Until the passage of the Civil Service Reform Act (CSRA) of 1978, the permanent reduction in a part-time employee's schedule was considered a reduction in pay and was therefore covered by adverse action procedures. The CSRA definition of pay for adverse action purposes (the rate of *basic* pay set for a position) resulted in questions as to whether these actions were still subject to adverse action procedures. OPM has determined that such reduction is not a reduction in *basic* pay for adverse action purposes because the annual and hourly rate of pay for a General Schedule position would remain the same and because prevailing rate employees' pay is almost uniformly set at an hourly rate. Thus, reducing the schedule would not reduce the rate of basic pay as required by Chapter 75 of Title 5 of the U.S. Code. In addition, the legislative history of the CSRA supports the conclusion that to qualify as a "reduction in pay," the pay of the *position* must be reduced.

Notwithstanding the exclusion from Chapter 75 of Title 5 of the U.S. Code, there is no intent to deny due process and procedural protections for involuntary reduction in the schedules of part-time employees. In this regard, OPM is clarifying that such actions are properly included under 5 CFR Part 340, which specifically covers other than full-time employment. Coverage under this part will require the agency to provide employees with advance notification of its proposed action, an opportunity to answer, and an appeal right similar to that provided in 5 CFR Part 752.

Actions to reduce the schedule of part-time employees should be taken for reasons related to the agency's budget or workload and not for misconduct or performance reasons. If adverse or performance-based actions are necessary with respect to these employees, the proper course of action would be to take an appropriate disciplinary action such as removal, reduction in grade, or suspension under Part 752, or a reduction in grade or removal based on unacceptable performance under either Part 432 or Part 752.

IV. *Current continuous employment or service in the same or similar positions.* Agencies and employees have raised questions about the meaning of "current continuous employment" or "service" with respect to adverse action coverage under 5 U.S.C. Chapter 75. Because there is no current regulatory definition of "current continuous service," OPM proposes to define this term in regulation tied to the actual language of the law. Currently, FPM Chapter 752 states that the method by which service is credited for adverse action coverage purposes is the same as for completion of a probationary period. This approach

is not required and has produced confusion and different interpretations among agencies, employees, and third parties. The new definition is intended to simplify the determination of whether an employee has met the legal requirement for one year of current continuous service and is thereby covered under adverse action procedures. It will do this by establishing that the employee's service, prior to the adverse action, must be continuous for one year without a break.

Similarly, there is a need to define "the same or similar positions" to clarify what 5 U.S.C. 7511(a)(1)(B) means so as to make it clear what positions are the same as or similar to the one the employee currently holds.

V. *Suspension.* OPM has become aware of some confusion concerning the definition and use of "indefinite suspensions." Currently, the only mention of indefinite suspension occurs in FPM Chapter 752 as guidance. OPM is proposing to define indefinite suspension in regulation and to provide for its use under appropriate circumstances, reflecting the recent decision of the U.S. Court of Appeals for the Federal Circuit in *Wiemers* v. *Merit Systems Protection Board,* 792 F.2d 1113 (Fed. Cir. 1986), which upheld the use of indefinite suspensions under certain circumstances, pending the outcome of criminal proceedings. That court has also issued two decision, *Thomas* v. *General Services Administration,* 756 F.2d 86 (Fed. Cir. 1985) and *Mercer* v. *Department of Health and Human Services,* 772 F.2d 856 (Fed. Cir. 1985), which held that an indefinite suspension is proper pending inquiry or where retention on duty status would be in jurious to the employee, fellow workers, or the public (whether or not the employee was ready, willing, or able to work). These decisions also held that management actions to place employees on enforced leave for more than 14 days under the above circumstances are disciplinary in nature and equate to constructive adverse actions requiring proper procedures. The Merit Systems Protection Board, in *Passmore* v. *Department of Transportation,* MSPB Dkt. No. SL07528510177 (June 13, 1986), has affirmed the holdings of the U.S. Court of Appeals for the Federal Circuit in *Thomas* and *Mercer,* holding that it has jurisdiction over involuntary actions to place employees on enforced leave during inquiry or for safety concerns because these actions constitute appealable suspensions, regardless of whether the employee is ready, willing, and able to work.

VI. *Status during the 30-day notice period.* Because of the decisions in *Thomas, Mercer,* and *Passmore* (see above), it is necessary to revise the section that provides alternatives to keeping the employee in a duty status during the 30-day notice period, to delete the provision in 5 CFR 752.404(b)(3)(iii) for the use of involuntary leave when the agency has medical documentation demonstrating the employee's physical or metal incapacitation.

VII. *Exception to 30-day notice period.* Two changes are proposed for the "crime provision" exception to the 30-day advance notice period. The first would include indefinite suspensions in the exception. The second would remove the 10-day limit on the placement of an employee in a nonduty pay status pending the effectuation of the action, paralleling OPM's earlier change to the so-called "emergency procedures" in 5 CFR 752.404(b)(3). Agencies can best determine the length of time necessary for effecting such actions.

VIII. *Editorial changes.* In addition to these substantive changes, OPM proposes to make some editorial changes for greater ease of reference (including some statements of coverage now only in FPM Chapter 752) for consistency and to correct obsolete references. Finally, we are including under 5 CFR 751.401(b) (Employees Covered) certain employees of the Department of Medicine and Surgery of the Veterans Administration who were mistakenly shown as excluded from 5 CFR Part 752.

OPM solicits comments on other aspects of 5 CFR Part 752 that the public believes would make for a more effective regulation, as well as suggestions for updating the guidance in FPM Chapter 752.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Parts 340 and 752

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

PART 340—OTHER THAN FULL-TIME CAREER EMPLOYMENT (PART-TIME, SEASONAL, ON-CALL, AND INTERMITTENT)

Accordingly, OPM proposes to amend Parts 340 and 752 of Title 5 of the Code of Federal Regulations as follows:

1. The authority citation for Part 340 is revised to read as set forth below; and the authority citation for Subpart D of Part 340 is removed:

Authority: 5 U.S.C. 3401 et seq.; Subpart D also issued under 5 U.S.C. 3301 and 3302.

2. Subpart C is added to read as follows:

Subpart C—Reduction in Schedule of Part-time Employees

Sec.

Subpart C—Reduction in Schedule of Part-time Employees

§ 340.301 Coverage.

This subpart applies to involuntary reductions in schedule of part-time employees as covered in § 752.401(c) of this chapter.

§ 340.302 Standard for action and procedures.

(a) An agency may involuntarily reduce the scheduled hours of work of a part-time employee in tenure group I or II only for reasons directly related to workload or budget.

(b) The following procedures are required:

(1) The emloyee will be given at least 30 days' advance written notice stating the specific reasons for the proposed schedule.

(2) When the schedules of some but not all employees in a given competitive level are being reduced, the notice will state the basis for selecting a particular employee.

(3) The employee will be given a reasonable time, but not less than 5 days, to answer orally and in writing. The agency will designate an official to hear the employee's oral answer who has authority either to make or recommend a final decision on the proposed action.

(4) The employee has the right to be represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as representative would cause a conflict of

interest or position, or an employee of the agency whose release from his or her official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release.

(5) The agency will issue a written final decision with the specific reasons for it at the earliest practicable date, at or before the time the schedule reduction will be effective. The decision will advise the employee of appeal rights.

§ 340.303 Appeals.

An employee whose scheduled hours of work are involuntarily reduced may appeal to the Merit Systems protection Board. An employee covered by a collective bargaining agreement who elects to challenge the agency's action will utilize the procedures of the negotiated grievance procedure unless the action is specifically excluded from coverage as provided by 5 U.S.C. 7121(a).

PART 752—ADVERSE ACTIONS

3. The authority citation for Part 752 is revised as set forth below; and all other authority citations throughout Part 752 are removed:

Authority: 5 U.S.C. 7504 and 7514; 5 U.S.C. 1302, Pub. L. 96–494; Section 752.401 also issued under 5 U.S.C. 3301 and 3302, and E.O. 10577; Section 752.405 also issued under 5 U.S.C. 1302 and 7513; Subpart F also issued under 5 U.S.C. 7543.

4. In § 752.201, paragraphs (b)(3) and (b)(4) are added and paragraph (c) is revised to read as follows:

§ 752.201 Coverage.

* * * * *

(b) * * *

(3) An employee who was in the competitive service at the time his or her position was first listed under Schedule A, B, or C of the excepted service and still occupies that position.

(4) A certified respiratory therapy technician, registered respiratory therapist, licensed physical therapist, and licensed practical or vocational nurse employed under 38 U.S.C. 4104(3).

(c) *Definitions.* In this subpart—

(1) "Day" means a calendar day.

(2) "Current continuous employment" means a period of employment immediately preceding a suspension action in the same or similar positions without a break of a workday.

(3) "Same or similar positions" mean positions in which the duties performed require the same qualifications and would demonstrate the same degree of difficulty and responsibility.

(4) "Suspension" means the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay.

* * * * *

5. In § 752.203, paragraph (d) is revised to read as follows:

§ 752.203 Procedures.

* * * * *

(d) *Representation.* Section 7503(b)(3) of Title 5 of the United States Code provides that an employee covered by this part is entitled to be represented in a suspension action by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as a representative would cause a conflict of interest or position, or an employee of the agency whose release from his or her official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release.

* * * * *

6. Section 752.401 is revised to read as follows:

§ 752.401 Coverage.

(a) *Adverse actions covered.* This subpart applies to the following actions:

(1) Removals;

(2) Suspensions for more than 14 days, including indefinite suspensions.

(3) Reductions in grade;

(4) Reductions in basic pay; and

(5) Furloughs of 30 days or less.

(b) *Actions excluded.* This subpart does not apply to actions excluded by 5 U.S.C. 7512, or the following:

(1) Actions taken under provision of statute, other than one codified in title 5, United States Code, which excepts the action from Subchapter II of Chapter 75 of Title 5, United States Code.

(2) Action that entitles an employee to grade retention under Part 536 of this chapter, and an action to terminate this entitlement;

(3) Voluntary action initiated by the employee;

(4) Action taken or directed by the Office of Personnel Management under Part 731 or Part 754 of this chapter;

(5) Involuntary retirement because of disability under Part 831 of this chapter;

(6) Termination of appointment on the expiration date specified as a basic condition of employment at the time the appointment was made;

(7) Action that terminates a temporary or term promotion and returns the employee to the position from which temporarily promoted, or to a different position of equivalent grade and pay, in accordance with Part 335 of this chapter.

(8) Cancellation of a promotion to a position not classified prior to the promotion;

(9) Placement of an employee serving on an intermittent or seasonal basis in a temporary nonduty, nonpay status in accordance with conditions established at the time of appointment;

(10) Reduction of an employee's rate of basic pay from a rate that is contrary to law or regulation to a rate that is required or permitted by law or regulation; or

(11) Reduction in the scheduled hours of a part-time employee.

(c) *Employees covered.* This subpart covers the following employees:

(1) An employee covered by the definition in 5 U.S.C. 7511(a)(1)(A), including an employee of the Government Printing Office and an employee of the Administrative Office of the United States Courts;

(2) An employee covered by the definition in 5 U.S.C. 7511(a)(1)(B);

(3) An employee with competitive status who occupies a position in Schedule B of Part 213 of this chapter;

(4) An employee who occupies a professional and administrative career (PAC) position in Schedule B of Part 213 of this chapter, provided that the employee has completed a trial period of 1 year after initial appointment in such position;

(5) An employee who was in the competitive service at the time his or her position was first listed under Schedule A, B, or C of the excepted service and still occupies that position; or

(6) A certified respiratory therapy technician, registered respiratory therapist, licensed physical therapist, and licensed practical or vocational nurse employed under 38 U.S.C. 4104(3).

(d) *Employees excluded.* This subpart does not apply to employees excluded by 5 U.S.C. 7511(b), or the following:

(1) A reemployed annuitant;

(2) A National Guard technician; or

(3) A physician, dentist, nurse, or other employee in the Department of Medicine and Surgery, Veterans Administration, who is appointed under Chapter 73 of Title 38, United States Code.

7. Section 752.402 is revised to read as follows:

§ 752.402 Definitions.

In this subpart—

(a) "Day" means a calendar day.

(b) "Current continuous employment" or "service" means a period of employment or service immediately preceding an adverse action in the same or similar positions without a break of a workday.

(c) "Furlough" means the placing of an employee in a temporary status without duties and pay because of lack of work

or funds or other nondisciplinary reasons.

(d) "Grade" means a level of classification under a position classification system.

(e) "Indefinite suspension" means the placing of an employee in a temporary status without duties and pay pending investigation, inquiry, further agency action, or where retention in a duty status would likely be injurious to the employee, his or her fellow workers, or the public. Indefinite suspension under this subpart includes the involuntary placement of an employee in an indeterminate period of enforced sick leave, annual leave, or nonduty, nonpay status for the reasons set out above. The indefinite suspension continues for an indeterminate period of time and ends with the occurrence of the pending conditions set forth in the notice of action.

(f) "Pay" means the rate of basic pay fixed by law or administrative action for the position held by the employee, that is, the rate of pay before any deductions and exclusive of additional pay of any kind.

(g) "Same or similar" positions mean positions in which the duties performed require the same qualifications and would demonstrate the same degree of difficulty and responsibility.

(h) "Suspension" means the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay for more than 14 days. Pending inquiry, further agency action, or where retention in a duty status would likely be injurious to the employee, his or her fellow workers, or the public, the involuntary placement of an employee in a determinate period of enforced sick leave, annual leave, or in a nonduty, nonpay status for more than 14 days constitutes a suspension covered by this subpart.

8. In § 752.403, paragraph (a) is revised to read as follows:

§ 752.403 Standard for action.

(a) An agency may take an adverse action, including a performance-based adverse action, under this subpart only for such cause as will promote the efficiency of the service.

* * * * *

9. In § 752.404, the second sentence of paragraph (b)(1) is revised read as set forth below.

a. Paragraph (b)(3) is revised: paragraph (b)(3)(iii) is removed; paragraphs (b)(3)(iv) and (v) are revised and redesignated as paragraph (b)(3)(iii) and (iv) respectively; and a new paragraph (b)(3)(v) is added to read as set forth below.

b. Paragraph (d)(1) is revised to read as set forth below.

c. Paragraph (e) is revised to read as set forth below.

§ 752.404 Procedures.

* * * * *

(b) *Notice of proposed action.* (1) * * * The agency may not use material that cannot be disclosed to the employee or his or her representative or designated physician under § 297.204(c) of this chapter to support the reasons in the noticed.

* * * * *

(3) Under ordinary circumstances, an employee whose removal or indefinite suspension has been proposed shall remain in a duty status in his or her regular position during the advance notice period. In those rare circumstances where the agency determines that the employee's continued presence in the workplace during the notice period may pose a threat to the employee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, the agency shall consider whether any of the following alternatives is feasible:

* * * * *

(iii) Carrying the employee on appropriate leave (annual, sick, leave without pay, or absence without leave) if he or she is voluntarily absent for reasons not originating with the agency;

(iv) Curtailing the notice period when the agency can invoke the provisions of § 752.404(d)(1), the "crime provision." This provision may be invoked even in the absence of judicial action if the agency has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed; or

(v) Placing the employee in a paid, nonduty status during all or part of the advance notice period if none of the other alternatives is available.

* * * * *

(d) *Exceptions.* (1) Section 7513(b) of Title 5 of the United States Code authorizes an exception to the 30 days' advance written notice when the agency has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed, and is proposing a removal or indefinite suspension. The agency may require the employee to furnish any answer to the proposed action, and affidavits and other documentary evidence in support of the answer within such time as would be reasonable, but not less than 7 days. When the circumstances require that the employee be kept away from the worksite, the agency may place him or her in a nonduty status with pay for such time as is necessary to effect the action.

* * * * *

(e) *Representation.* Section 7513(b)(3) of Title 5 of the United States Code provides that an employee covered by this part is entitled to be represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as representative would cause a conflict of interest or position, or an employee of the agency whose release from his or her official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release.

* * * * *

[FR Doc. 87-6828 Filed 3-26-87; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 959 and 980

Onions Grown in South Texas; Extension of Time for Receipt of Written Comments on Proposed Amendment No. 5 To Handling Regulation; Vegetable Import Regulations for Onions; Proposed Amendment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice rule; extension of comment period.

SUMMARY: Notice is hereby given that the time period for filing written comments on a proposal to amend the handling regulation for onions grown in South Texas and to make conforming changes to the import regulation for onions is extended from March 26 to April 15. The comment period extension will give interested persons additional time to analyze the proposal and submit written comments on it.

DATE: Comments Due: April 15, 1987.

ADDRESSES: Comments should be sent to: Docket clerk, F&V, AMS, Room 2085-S, U.S. Department of Agriculture, Washington, DC 20250-1400. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief; Marketing Order Administration Branch,

F&V, AMS, USDA, Washington, DC 20250-1400 (202) 475-3914.

SUPPLEMENTARY INFORMATION: Pursuant to Agricultural Marketing Agreement Act of 1937, as amended (the Act, 7 U.S.C. 601-674) a notice of proposed rulemaking was published in the March 11, 1987, issue of the **Federal Register** (52 FR 7428), regarding a proposal to amend the handling regulation for onions grown in South Texas under Marketing Order No. 959 and the onion import regulation under § 980.117.

The Department received several telephone calls and written comments stating that more time was needed to analyze the proposal and submit written comments on it.

Extending the comment period is justified to ensure that all parties are provided with an adequate amount of time to review the proposed rule and submit comments. Accordingly, the comment period is being extended by 20 days to April 15, 1987, or a total of 35 days from the date of publication on March 11, 1987. The present provisions of the handling regulation are applicable until any changes are made effective based on the proposal.

List of Subjects 7

7 CFR Part 959

Marketing agreements and orders, Onions, Texas.

7 CFR Part 980

Marketing agreements and orders, Imports, Onions.

1. The authority citation for 7 CFR Parts 959 and 980 continue to read as follows:

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

Dated: March 24, 1987.

Ronald L. Cioffi,

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

[FR Doc. 87-6943 Filed 3-26-87; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 85-084]

Import Permits for Birds, Poultry, or Pigeons Transiting the Port of Anchorage, AK

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations concerning the importation of certain animals and birds into the United States, to provide that under certain circumstances importers can obtain and use a single import permit for more than one shipment of birds, poultry, or pigeons transiting the Port of Anchorage, Alaska. This action appears to be necessary to help reduce paperwork and resulting expenditures.

DATE: Written comments must be received on or before May 26, 1987.

ADDRESS: Written comments concerning this proposed rule should be submitted to Steven R. Poore, Acting Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in reference to Docket number 85-084. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Wade Ritchie, Import-Export Operations Staff, VS, APHIS, USDA, Room 766, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8172.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 92 (referred to below as the regulations) contain, among other things, provisions concerning the importation of certain animals, birds, poultry, and pigeons. Section 92.4 of these provisions requires that an importer of an importer's agent, with certain exceptions, must apply for and obtain an import permit from Veterinary Services prior to importing animals, birds, poultry, or pigeons into the United States. A separate import permit is required for each such shipment.

An analysis of shipments of birds, poultry, or pigeons in transit through the Port of Anchorage, Alaska, reveals that a large proportion of these shipments are made by a small proportion of the importers who use that port. Each of these importers sends numerous shipments of birds, poultry, or pigeons through the Port of Anchorage each year. Though these multiple shipments are similar and routine, each shipment requires a separate import permit. To obtain separate permits the importers must apply for each permit individually and Veterinary Services must process each application and issue each permit individually.

This system requires extensive paperwork, time, and effort by both Veterinary Services and the importers. It is also highly duplicative and repetitive for both the importers and Veterinary Services. It appears, however, that it would be possible to amend the regulations to reduce duplication, paperwork, and personnel requirements, without weakening the ability of Veterinary Services to prevent the introduction of disease into the United States by birds, poultry, or pigeons transiting the Port of Anchorage, Alaska. In addition, it appears that such amendments to the regulations would reduce costs for both importers and Veterinary Services, and could result in more efficient, less costly issuance of import permits.

It is therefore proposed to amend the regulations to allow importers of birds, poultry, or pigeons transiting the Port of Anchorage, Alaska, to obtain and use a single import permit for more than one shipment of birds, poultry, or pigeons through that port. An import permit issued for such multiple use would be valid only during the calendar year in which it was issued. In addition, off-loading of birds, poultry, or pigeons transiting the Port of Anchorage, Alaska, under such a permit would be prohibited.

Under the proposed amendments, the prospective importer would be required to apply for an import permit from Veterinary Service in the same basic manner as currently provided in the regulations. All general information, including the name and address of the importer, the purpose of the importation, and the port of entry into the United States, would be required to be provided at the time of application. However, information which would be different for different shipments, such as the exact number of birds, poultry, or pigeons, the port of embarkation in the foreign country, and the anticipated date of arrival, would not be required at the time of application. The importer would be required to supply this information at a later time, as explained below. After receipt and processing of the application, Veterinary Services would issue an import permit to the prospective importer. This import permit would be valid through the calender year in which it was issued, and would include only the general information provided by the importer on the permit application. Thereafter, whenever the importer had a shipment of birds, poultry, or pigeons which was to transit the Port of Anchorage, Alaska, the importer would make a copy of the import permit, complete it by inserting all information that pertained to the individual shipment but was missing from the permit, and forward one copy of the permit to the Port Veterinarian at Anchorage, Alaska, no less than two weeks prior to the anticipated date of arrival of the shipment at the port. The

importer would also be required to comply with all other applicable regulations. Finally, off-loading of birds, poultry, or pigeons transiting the Port of Anchorage, Alaska, under such a permit would be prohibited.

It is proposed that these provisions apply only to birds, poultry, or pigeons transiting the United States through the Port of Anchorage, Alaska. It is also proposed that off-loading of such birds, poultry, and pigeons at the Port of Anchorage, Alaska, be prohibited. These restrictions appear to be necessary to help minimize any risk of disease spread.

Import permits are never issued for diseased animals, regardless of the species. In addition, all animals subject to the regulations which are offered for entry into the United States must have a valid health certificate, or they are refused entry. However, beyond these basic requirements, importation requirements for different species of animals are different, and the circumstances under which import permits are issued for different species are also different. Import permits for undiseased animals in transit through the United States, other than avian species (birds, poultry, and pigeons), are issued only after ascertaining the species to be imported, the country from which it is coming, and the presence or absence in the country of specific diseases to which the particular species is susceptible or which it could transmit. In addition, other information concerning individual animals to be imported, such as sex, age, and prior medical treatment, may be needed. Depending upon these factors, an important permit may or may not be issued, and if a permit is issued, the conditions of importation may vary. Under these circumstances, it is not administratively practical or feasible to issue import permits for multiple shipments of non-avian species intended to transit the United States.

However, import permits for undiseased avian species transiting the United States are issued for all such birds, poultry, or pigeons, regardless of the country from which they are coming, the presence or absence of any particular diseases in that country, and any other factors. In addition, the conditions for importation of such birds, poultry, and pigeons do not vary. Therefore, it is administratively feasible and practical to issue permits for use for multiple shipments of birds, poultry, or pigeons intended to transit the United States.

For the above reasons it appears to be necessary to restrict use of such permits, as proposed in this document, to intransit importations through the United States of birds, poultry, and pigeons.

In addition, it appears to be necessary to limit application of the proposed provisions to the Port of Anchorage, Alaska, to help ensure that no significant disease threat is posed by birds, poultry, or pigeons transiting the United States under the proposed import permit system.

There are two reasons for this proposed restriction. First, the State of Alaska has no significant domestic commercial poultry industry, and second, most air traffic landing at Anchorage is through traffic, as opposed to terminal traffic; that is, it continues to other destinations without unloading.[1] Under these circumstances, it appears that the disease risk posed by birds, poultry, or pigeons transiting the Port of Anchorage is insignificant because there is little or no opportunity for exposure to birds, poultry, or pigeons either in the area of the port or arriving at the port for permanent entry into the United States. These circumstances do not pertain to other ports in the United States. At all other ports there is significant commerical poultry production in the area of the port, and/or the port handles significant terminal traffic in birds, poultry, or pigeons.

Therefore, for the above reasons, it appears to be necessary to limit use of the proposed import permit to birds, poultry, and pigeons transiting the port of Anchorage, Alaska.

In addition it appears to be necessary to prohibit off-loading of birds, poultry, or pigeons transiting the port of Anchorage, Alaska, under the proposed permit system. This requirement would be an additional safeguard to minimize any possible disease risk presented by such birds, poultry, or pigeons.

Finally, it appears to be necessary, for efficient management of the proposed permit system, to issue permits which are valid only through the calendar year in which they are issued. This will ensure that the baisc information on such certificates is relatively current, while greatly reducing paperwork and its resulting expense.

It appears that adoption of these proposed provisions would have no effect on the timely availability of information necessary for Veterinary Services to monitor and control intransit shipments of birds, poultry, or pigeons through the Port of Anchorage, Alaska, or on the effectiveness of existing monitoring and control programs for birds, poultry, and pigeons in transit through that port. It also appears that adoption of the proposed provisions would help to reduce paperwork and resulting expenditures, and possibly result in more efficient, less costly issuance of import permits.

[1] Though the Port of Anchorage, Alaska, is both an ocean port and an airport, birds, poultry, or pigeons are imported through that port only by air.

Miscellaneous

It is also proposed to make miscellaneous amendments to the regulations for the purposes of clarity.

Executive Order 12291 and Regulatory Flexibility Act Analysis

This proposed rule has been reviewed in conformance with Executive Order 12291 and has been determined to be not a major rule. The Department has determined that this action would not have a significant effect on the economy; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and should 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.

If the proposed regulations are adopted, it is anticipated that fewer than one percent of shipments of birds, poultry, or pigeons transiting the United States would be affected by the proposed amendments, as compared with the number of all shipments of birds, poultry, or pigeons transiting or entering the United States through all ports of entry.

Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 [44 U.S.C. Chapter 35], the information collection provisions that are included in this rule have been approved by the Office of Management and Budget and have been given OMB control numbers 0579–0040 and 0579–0060.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See CFR Part 92)

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, the regulations in 9 CFR Part 92 would be amended as follows:

1. The authority citation for Part 92 would continue to read as set forth below:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 92.4, in the first sentence "§§ 92.2 (b) and (c), 92.19, 92.27, and 92.31" would be revised to read "§§ 92.2 (b) and (c), 92.4(e) 92.19, 92.27, and 92.31".

3. In § 92.4, a new paragraph (e) would be added to read as follows:

§ 92.4 Import permits for ruminants, swine, horses from countries affected with CEM, poultry, poultry semen, animal semen, birds and for animal specimens for diagnostic purposes; and reservation fees for space at quarantine facilities maintained by Veterinary Services.

* * * * *

(e) Notwithstanding any other provisions in this part, importers are not required to obtain an import permit and provide the shipper with an original import permit for each individual shipment of birds, poultry, or pigeons transiting the port of Anchorage, Alaska, if the following conditions are met:

(1) The importer applies for and obtains an import permit for multiple shipments of birds, poultry, or pigeons transiting the port of Anchorage, Alaska, in accordance with the provisions of this section and related requirements concerning application therefore; *Provided that,* the following information shall not be required on such application:

(i) The species, breed, and number of birds, poultry, or pigeons to be imported;

(ii) The individual animal identification;

(iii) The country of origin;

(iv) The name and address of the exporter;

(v) The port of embarkation in the foreign country;

(vi) The mode of transportation and the route of travel;

(vii) The proposed date of arrival of the birds, poultry, or pigeons; and

(viii) The name and address of the person to whom the birds, poultry, or pigeons will be delivered.

(2) The importer completes a copy of the import permit obtained under paragraph (e)(1) above for each separate shipment of birds, poultry, or pigeons intended to transit the port of Anchorage, Alaska, by inserting the following information on a copy of the permit:

(i) The species, breed, and number of birds, poultry, or pigeons to be imported;

(ii) The individual animal identification (except poultry);

(iii) The country of origin;

(iv) The name and address of the exporter;

(v) The port of embarkation in the foreign country;

(vi) The mode of transportation and the route of travel;

(vii) The proposed date of arrival of the birds, poultry, or pigeons; and

(viii) The name and address of the person to whom the birds, poultry, or pigeons will be delivered.

(3) The importer, not less than 2 weeks prior to the anticipated date of arrival of each separate intransit shipment of birds, poultry, or pigeons at the port of Anchorage, Alaska, provides the Port Veterinarian with a copy of such completed import permit;

(4) A copy of such completed import permit accompanies each separate intransit shipment of birds, poultry, or pigeons to the port of Anchorage, alaska.

§ 92.2 [Amended]

4. In § 92.2, the first sentence in paragraph (d)(1)(ii) would be amended by changing "They are unloaded. . . " to read "Except for birds, poultry, or pigeons intransit through Anchorage, Alaska, ed under § 92.4(e) of this Part, which are not allowed to be unloaded, they are unloaded, ..."

Done at Washington, DC, this 24th day of March 1987.

B.G. Johnson,

Deputy Administrator, Veterinary Services.

[FR Doc. 87–6812 Filed 3–26–87; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 19, 197, 250, and 251

[Notice No. 625]

Credit Against Paid Tax; Implementation of Section Six of Public Law 96–598

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: ATF proposes to issue regulations to implement section 6 of Pub. L. 96–598 (94 Stat. 3488). This section allows a credit against the tax paid or determined on distilled spirits for alcohol derived from certain wine and flavors. This section also permits the transfer between the bonded premises of distilled spirits plants of distilled spirits bottled for industrial purposes.

DATES: Comments should be received on or before June 25, 1987.

ADDRESSES: Send written comments to Chief, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385, ATTN: Notice No. 625.

All written comments received on this notice may be inspected, during normal business hours, at the ATF Reading Room, Office of Public Affairs and Disclosure, Room 4407, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Richard C. Langford or Jackie White, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, Telephone: 202–566–7531.

SUPPLEMENTARY INFORMATION:

Background

In January of 1980, the Distilled Spirits Tax Revision Act of 1979 (Subtitle A of Title VIII of the Trade Agreements Act of 1979; Pub. L. 96–39 (93 Stat. 273)) instituted a new system for imposing and administering the excise tax on distilled spirits, referred to as the *all-in-bond* method. Under this method, the tax on distilled spirits is paid or determined on the basis of alcohol content, regardless of the source of the alcohol, after completion of all distilled spirits operations. A result of the change to the all-in-bond method is that the alcohol content of distilled spirits derived from wine and flavors is subject to the distilled spirits tax.

In December of 1980, Pub. L. 96–598 (94 Stat. 3485) was enacted. Section 6 of

the law added section 5010 to the Internal Revenue Code of 1954. This provision restored to wine and flavors the tax status they enjoyed prior to institition of the all-in-bond method of tax determination. It did this by authorizing a credit against the excise tax liability paid or determined under the all-in-bond method for the wine and flavors content of distilled spirits.

The credit authorized for wine equals the difference between the distilled spirits tax and the applicable wine tax on the quantity of wine contained in distilled spirits. The credit authorized for flavors equals the distilled spirits tax on the quantity of nonbeverage flavors contained in distilled spirits to the extent that the alcohol derived from these flavors does not exceed 2½ percent (on a proof gallon basis) of the finished product.

In addition to providing a credit for the wine and flavors content of distilled spirits, section 6 of Pub. L. 96–598 amended section 5212 of the Internal Revenue Code of 1954 to allow the transfer between the bonded premises of distilled spirits plants of alcohol bottled for industrial purposes.

Wine and Flavors Credit

The credit for the wine and flavors content of distilled spirits poses a number of problems. Among these are the calculation of credit for wine content, the application of credit rates to the taxable removal of finished goods, and the verification of credit rates by persons other than the processor who manufactured the product. In Industry Circular 81–8, dated March 27, 1981, ATF provided various guidelines and procedures to resolve these problems. However, in retrospect, ATF believes these guidelines and procedures are unduly cumbersome. The proposed regulations, therefore, provide somewhat simplified procedures.

Effective Tax Rates

Industry Circular 81–8 provided a formula for the computation of a tax credit rate for each batch of distilled spirits containing wine or flavors. Because of the necessity of having to covert wine tax rates based on volume and percentage of alcohol to credit rates based on volume and proof, this formula is unwieldy and awkward to use.

To rectify this, the proposed regulations provide for the use of a formula for the computation of an effective tax rate for distilled spirits containing wine and flavors. The effective tax rate is the tax rate after reduction for any credit allowable for the wine and flavors content at which the tax imposed on distilled spirits is paid or determined.

In addition, to ensure the availability of records for the determination of effective tax rates, the proposed regulations provide that distilled spirits containing wine or flavors may be subject to distilled spirits operations only in the processing account.

Application of Effective Tax Rates

Under the procedures in Industry Circular 81–8, the credit rate is established when distilled spirits are mixed with wine or flavors in the processing account; however, the credit rate is determined at the time of tax determination, i.e., at the time of removal from bond. The circular therefore suggested a procedure which necessitated the tracing of taxable removals back to the applicable batch records for each product containing wine or flavors. To alleviate the cumbersome paperwork of such tracing, three alternative procedures for application of effective tax rates to taxable removals are proposed in this notice. These procedures are:

1. Standard Effective Tax Rate.

A standard effective tax rate may be established for any eligible distilled spirits product by computing an effective tax rate based on the least quantity and the lowest alcohol content of wine and flavors used in the manufacture of the product. A distilled spirits plant proprietor who desires to use this procedure to tax determine distilled spirits shall submit a statement to the regional director (compliance) showing the basis on which the standard effective tax rate is computed, i.e., the least quantity and the lowest alcohol content of wine and flavors. ATF recognizes that many approved formulas on ATF F 5110.38 cover products in which the quantities, proof, and alcohol content of distilled spirits, wine, and flavors vary between specified limits in arriving at the specified proof. In such case, the basis used to establish a standard effective tax rate must be within the range shown on Form 5110.38, but it need not be the least quantity or the lowest alcohol content of wine and flavors permissible on the approved foumula. However, in no case may a standard effective tax rate be less than the highest tax rate applicable to the product. In the event a lesser quantity or a lower alcohol content of wine or flavors is used in the manufacture of the product, the standard effective tax rate must be recomputed and a new statement of basis submitted to the regional director (compliance).

2. Average Effective Tax Rate.

An average effective tax rate may be established for any eligible distilled spirits products by computing an effective tax rate based on the batches produced during the preceding 6-month period if at least three batches were produced during that period. If this procedure is used for tax determinatin, a proprietor must also maintain for each product a record showing the average effective tax rate computation. To accurately reflect the wine and flavor content in current inventory, the average effective tax rate computed for each product is adjusted each month so as to include only the immediately preceding 6-month period.

3. Inventory Reserve Account.

An inventory reserve account may be established for any eligible distilled spirits product. Under this procedure, each time the product is bottled or packaged, a deposit record is entered into the inventory reserve account of the product. As the product is subsequently removed from inventory, the records in the inventory reserve account are depleted, in chronological order from the earliest entry date. All removals from inventory, including breakage and inventory losses, are chargeable against the inventory reserve account of the product. The tax rate applied to any taxable removal is determined by the effective tax rate of the record from which the removal is depleted.

Eligible Wine and Flavors

Credit for the wine and flavor content of distilled spirits is allowable only if the wine or flavor contained in the distilled spirits is an eligible wine or an eligible flavor. An eligible wine is a still wine which has not been subject to distillation at a distilled spirits plant after receipts in bond. An eligible flavor is a flavor of a type for which drawback of the tax imposed on distilled spirits is allowable under 26 U.S.C. 5134 which is made at other than a distilled spirits plant.

To facilitate the manufacture of eligible flavors by a distilled spirits plant proprietor, the proposed regulations provide that the premises of a distilled spirits plant may be alternately curtailed and extended to permit the use of the distilled spirits plant facilities for flavor manufacturing or other authorized purposes.

Documentation of Wine and Flavor Content

1. Importers.

Any person who imports distilled spirits containing wine or flavors on which the tax is to be paid or determined at an effective tax rate must establish the eligibility of the wine and flavor components contained in the product and provide information for verification of the effective tax rate computation. This is accomplished by submitting to ATF a sample of each wine and flavor component to be used in the computation of the effective tax rate. In addition, each time the distilled spirits are imported, a certificate of effective tax rate computation must be filed with the district director of customs or, for distilled spirits transferred under the provisions of 26 U.S.C. 5232, furnished to the distilled spirits plant proprietor. In lieu of this procedure, the importer may have a standard effective tax rate established for the product or use a standard effective tax rate previously approved for the product.

2. Transfers in Bond.

Distilled spirits plant proprietors who transfer in bond distilled spirits containing wine or flavors are required to record on the transfer record the eligible wine and the eligible flavors content of the distilled spirits so that the consignee proprietor may properly document the effective tax rate.

3. Returns to Bond.

To establish the effective tax rate at which tax was paid or determined, claims on distilled spirits containing eligible wine or eligible flavors returned to bond must set out the effective tax rate of each product and identify the applicable record of tax determination. Otherwise, such claims must be based on the lowest effective tax rate applied to the product.

4. Distilled Spirits Brought Into the United States From Puerto Rico Without Payment of Tax.

So that distilled spirits plant proprietors in the United States may properly document the eligible wine and the eligible flavors contents of distilled spirits shipped from Peurto Rico to the United States without payment of tax for transfer from customs custody to ATF bond, the shipper shall provide the proprietor with a certificate of effective tax rate computation.

5. Distilled Spirits Brought Into the United States From the Virgin Islands.

Persons brining distilled spirits containing wine or flavors into the United States from the Virgin Islands shall show the eligible wine and the eligible flavors content of the distilled spirits on the certificate obtained from the manufacturer under current regulations.

Transfer of Bottled Distilled Spirits

The regulations governing the transfer of bulk distilled spirits between the bonded premises of distilled spirits plants would be amended to provide for similar transfers of alcohol bottled for industrial purposes.

Conforming Amendments

Additionally, the regulations governing nonbeverage drawback would be amended to reflect the wine and flavors tax credit.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory analysis (5 U.S.C. 603, 604) are not applicable to this notice because the proposal, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291 of February 17, 1981, ATF has determined that this proposal is not a major rule since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual Industries, Federal, State or local government agencies, or geographic regions; or

(c) 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 requirements to collect information proposed in this notice have been submitted to the Office of Management and Budget for review under 3504(h) of the Paperwork Reduction Act of 1980 (Pub. L. 95-511, 44 U.S.C. Chapter 35). Comments relating to ATF's compliance with 5 CFR Part 1320, Controlling Paperwork Burdens on the Public, should be submitted to: Office of Information, and Regulatory Affairs, attention: ATF Desk officer, Office of Management and Budget, Washington DC 20503.

Public Participation—Written Comments

Interested persons are invited to submit comments concerning this proposed rule. Comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as suggestions for future ATF action.

ATF will not recognize any material or comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or in inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit a written request to the Director within the comment period. The request should include reasons as to why a public hearing is necessary. The Director, however, reserves the right to determine, in the light of all circumstances, whether a public hearing should be held.

Drafting Information

The principal authors of this document are Richard C. Langford and J. R. Whitley, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Claims, Customs duties and inspection, Excise taxes, Exports, Imports, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Spices and flavorings, Virgin Islands, Wine

27 CFR Part 197

Administrative practices and procedure, Alcohol and alcoholic beverages, Claims, Excise taxes, Liquors, Reporting and recordkeeping requirements, Spices and flavorings, Wine.

27 CFR Part 250

Administrative practices and procedure, Alcohol and alcoholic beverages, Customs duties and inspection, Excise taxes, Liquors, Puerto Rico, Reporting and recordkeeping requirements, Spices and flavorings, Virgin Islands, Wine.

27 CFR Part 251

Administrative practice and procedure, Alcohol and alcoholic beverages, Customs duties and inspection, Excise taxes, Imports, Liquors, Spices and flavorings, Reporting and recordkeeping requirements, Wine.

For the reasons set out in the preamble, the Director proposes the amendment of Subchapter A, Chapter I, Title 27 of the Code of Federal Regulations.

Section A, Part 19 is amended as follows:

PART 19—DISTILLED SPIRITS PLANTS

Paragraph 1. The authority citation for Part 19 is revised to read as follows:

Authority: 19 U.S.C. 81c; 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5101, 5111–5113, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 2. The table of sections is amended by removing § 19.27; redesignating § 19.26 and the undesignated center heading which precedes it as § 19.27 with the undesignated center heading preceding it, §§ 19.31 and 19.32 with the undesignated center heading which precedes them as §§ 19.39 and 19.40 with the undesignated center heading them; § 19.36 and the undesignated center heading which precedes it as § 19.26 with the undesignated center heading preceding it; adding § 19.28 with the undesignated center heading preceding it, §§ 19.30 and 19.31 with the undesignated center heading preceding them, §§ 19.35 through 19.38 with the undesignated center heading preceding them, §§ 19.763, 19.764, and 19.780; and revising the headings of §§ 19.205 and 19.374. As amended, the table of sections reads as follows:

Par. 3. Section 19.11 is amended by removing the definition of *Alcoholic flavoring materials*, and by adding definitions of *Effective tax rate*, *Eligible flavor*, and *Eligible wine*, to read as follows:

§ 19.11 Meaning of terms.

* * * * * *

Effective tax rate. The net tax rate after reduction for any credit allowable under 26 U.S.C. 5010 for wine and flavor content at which the tax imposed on distilled spirits by 26 U.S.C. 5001 or 7652 is paid or determined.

* * * * * *

Eligible flavor. A flavor of a type for which drawback of the tax imposed on distilled spirits is allowable under 26 U.S.C. 5134 which is made at other than a distilled spirits plant.

Eligible wine. A wine containing not more than 0.392 gram of carbon dioxide per 100 milliliters of wine which has not been subject to distillation at a distilled spirits plant after receipt in bond.

* * * * * *

Par. 4. Sections 19.26 through 19.40 are revised to read as follows:

Wine

§ 19.26 Tax.

(a) *Imposition of tax.* A tax is imposed by 26 U.S.C. 5041 or 7652 on wine (including imitation, substandard, or artificial wine, and compounds sold as wine) produced in or imported or brought into the United States. Proprietors of distilled spirits plants may become liable for wine taxes under 26 U.S.C. 5262(b)(3) in connection with wine transferred in bond to a distilled spirits plant. Wine may not be removed from the bonded premises of a distilled spirits plan for consumption or sale as wine.

(b) *Liability for tax.* Except as otherwise provided by law, the liability for tax on wine transferred in bond from a bonded wine cellar to a distilled spirits plant, or transferred in bond between distilled spirits plants, will continue until the wine is used in a distilled spirits product.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1331, as amended, 1380, as amended (26 U.S.C. 5041, 5362))

Occupational Tax

§ 19.27 Liquor dealer.

A proprietor shall be subject to or exempt from occupational tax as a liquor dealer as provided in 27 CFR Part 194.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1340, as amended (26 U.S.C. 5111, 5113))

Credit Against Tax

§ 19.28 Credit for wine and flavor content of distilled spirits.

A credit against the tax imposed on distilled spirits by 26 U.S.C. 5001 or 7652 is allowable under 26 U.S.C. 5010 on each proof gallon of alcohol derived from eligible wine or eligible flavors. The credit is allowable at the time the tax is payable as if it constituted a reduction in the rate of tax.

(Sec. 6, Pub. L. 96–598, 94 Stat. 3488 (26 U.S.C. 5010))

Effective Tax Rates

§ 19.30 General.

The proprietor shall establish an effective tax rate for each batch of distilled spirits in the processing account on which credit against tax is desired for alcohol derived form eligible wine or eligible flavors. The effective tax rate will be computed in accordance with § 19.31 and applied to each removal or other disposition of the product. The effective tax rate will be shown on the batch record prescribed in § 19.748 and, along with the serial numbers of the cases removed at that rate, on the

record of tax determination prescribed in § 19.761.

(Sec. 807, Pub. L. 96-39, 93 Stat. 284 (26 U.S.C. 5207); sec. 201, Pub. L. 85-859, 72 Stat. 1356, as amended (26 U.S.C. 5201); sec. 6, Pub. L. 96-598, 94 Stat. 3488 (26 U.S.C. 5010))

§ 19.31 Computation of effective tax rate.

(a) The proprietor shall compute the effective tax rate for distilled spirits containing eligible wine or eligible flavors as the ratio of the numerator and denominator as follows:

(1) The numerator will be the sum of:

(i) The proof gallons of all distilled spirits used in the product (exclusive of distilled spirits derived from eligible flavors), multiplied by the tax rate prescribed by 26 U.S.C. 5001;

(ii) The wine gallons of each eligible wine used in the product, multiplied by the tax rate prescribed by 26 U.S.C. 5041(b) (1), (2), or (3), which would be imposed on the wine but for its removal to bonded premises; and

(iii) The proof gallons of all distilled spirits derived from eligible flavors used in the product, multiplied by the tax rate prescribed by 26 U.S.C. 5001, but only to the extent that such distilled spirits exceed 2½% of the denominator prescribed in paragraph (a)(2) of this section.

(2) The denominator will be the sum of:

(i) The proof gallons of all distilled spirits used in the product, including distilled spirits derived from eligible flavors; and

(ii) The wine gallons of each eligible wine used in the product, multiplied by twice the percentage of alcohol by volume of each, divided by 100.

(b) In determining the effective tax rate, quantities of distilled spirits, eligible wine, and eligible flavors will be expressed to the nearest tenth of a proof gallon. The effective tax rate will be expressed to the nearest whole cent. In such case, if the number is less than five it will be dropped; if it is five or over, a unit will be added.

(c) The following is an example of the use of the formula.

BATCH RECORD

Distilled spirits	2249.1 proof gallons.
Eligible wine (14% alcohol by volume).	2265.0. wine gallons.
Eligible wine (19% alcohol by volume).	1020.0 wine gallons.
Eligible flavors	100.9 proof gallons.

$$\frac{2249.1\ (\$12.50)+[2265.0\ (\$.17)+1020\ (\$.67)]+16.6^{1}\ (\$12.50)}{2249.1+100.9+[2265.0\ (.28)+1020.0\ (.38)]}=$$

$$\frac{\$28,113.75+[\$385.05+\$683.40]+\$207.50}{2,350.0+[634.2+387.6]}=$$

$$\frac{\$29,389.70}{3,371.8}=\$8.72,\text{ the effective tax rate.}$$

[1] Proof gallons by which distilled spirits derived from eligible flavors exceed 2½% of the total proof gallons in the batch (100.9−(2½% 3,371.8))

(Sec. 6, Pub. L. 96-598, 94 Stat. 3488 (26 U.S.C. 5010))

Alternate Procedures for Application of Effective Tax Rates

§ 19.35 General.

In lieu of establishing an effective tax rate for each batch of distilled spirits in the processing account, the proprietor may use the procedures prescribed in §§ 19.36, 19.37, or 19.38, for establishment of a standard effective tax rate, an average effective tax rate, or an inventory reserve account, respectively, to apply effective tax rates, computed in accordance with § 19.31, to taxable removals of distilled spirits containing eligible wine or eligible flavors.

(Sec. 807, Pub. L. 96-39, 93 Stat. 284 (26 U.S.C. 5207); sec. 201, Pub. L. 85-859, 72 Stat. 1356, as amended (26 U.S.C. 5201); sec. 6, Pub. L. 96-598, 94 Stat. 3488 (26 U.S.C. 5010))

§ 19.36 Standard effective tax rate.

(a) The proprietor may establish a standard effective tax rate for any eligible distilled spirits product based on the least quantity and the lowest alcohol content of eligible wine or eligible flavors used in the manufacture of the product. The standard effective tax rate must equal the highest tax rate applicable to the product. Whenever there is a decrease in the quantity or the alcohol content of eligible wine or eligible flavors used in the manufacture of the product, the standard effective tax rate will be recomputed. If the regional director (compliance) finds that the use of this procedure jeopardizes the revenue or causes administrative difficulty, the proprietor shall discontinue the use of this procedure.

(b) For each product to be tax determined in accordance with this procedure, the proprietor shall submit a statement of composition to the regional director (compliance) showing the—

(1) Name of the product;

(2) Number and approval date of the formula (ATF F 5110.38) under which the product is to be manufactured;

(3) Quantity, alcohol content (percentage of alcohol by volume), and the identity of the eligible wine or flavor by kind or producer's formula number;

(4) Standard effective tax rate established for the product;

(5) Effective date of the standard effective tax rate; and

(6) Serial number of the dump/batch record covering the first dump/batch of the product to which the rate will be applied.

(Sec. 807, Pub. L. 96-39, 93 Stat. 284 (26 U.S.C. 5207); sec. 201, Pub. L. 85-859, 72 Stat. 1356, as amended (26 U.S.C. 5201); sec. 6, Pub. L. 96-598, 94 Stat. 3488 (26 U.S.C. 5010))

§ 19.37 Average effective tax rate.

(a) The proprietor may establish an average effective tax rate for any eligible distilled spirits product based on the total proof gallons in all batches of the same composition produced during the preceding 6-month period if at least three batches were produced during that period. At the beginning of each month, the proprietor shall recompute the average effective tax rate so as to include only the immediately preceding 6-month period. The average effective tax rate established for a product will be shown in the record of average effective tax rates prescribed in § 19.763.

(b) For each product to be tax determined in accordance with this procedure, the proprietor shall submit a notice to the regional director (compliance) listing the name of the product, and the number and approval date of the formula under which the product will be manufactured. If the regional director (compliance) finds that the use of this procedure jeopardizes the revenue or causes administrative

difficulty, the proprietor shall discontinue the use of this procedure.

(Sec. 807, Pub. L. 96-39, 93 Stat. 284 (26 U.S.C. 5207); sec. 201, Pub. L. 85-859, 72 Stat. 1350, as amended (26 U.S.C. 5201); sec. 6, Pub. L. 96-598, 94 Stat. 3488 (26 U.S.C. 5010)).

§ 19.38 Inventory reserve account.

The proprietor may establish an inventory reserve account for any eligible distilled spirits product by maintaining an inventory reserve record as prescribed by § 19.764. The effective tax rate applied to each removal or other disposition will be the effective tax rate recorded on the inventory reserve record from which the removal or other disposition is depleted. If the regional director (compliance) finds that the use of this procedure jeopardizes the revenue or causes administrative difficulty, the proprietor shall discontinue the use of this procedure.

(Sec. 807, Pub. L. 96-39, 93 Stat. 284 (26 U.S.C. 5207); sec. 201, Pub. L. 85-859, 72 Stat. 1356, as amended (26 U.S.C. 5201); sec. 6, Pub. L. 96-598, 94 Stat. 3488 (26 U.S.C. 5010))

Assessments

§ 19.39 Production not accounted for.

Where the regional director (compliance) finds that all distilled spirits produced by a distiller have not been accounted for, assessment will be made for the tax on the difference between the quantity reported and the quantity found to have been actually produced.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1320, as amended (26 U.S.C. 5006))

§ 19.40 Assessment of tax on distilled spirits, denatured spirits, or wine in bond which are lost, destroyed or removed without authorization.

When distilled spirits, denatured spirits, or wines in bond are lost or destroyed (except distilled spirits, denatured spirits, or wine on which the tax is not collectible by reason of the provisions of 26 U.S.C. 5008 (a) or (d) or 26 U.S.C. 5370, as applicable) and the proprietor or other person liable for the tax on the distilled spirits, denatured spirits, or wine fails to file a claim for remission as provided in § 19.41(a) or when the claim is denied, the tax will be assessed. In any case where distilled spirits, denatured spirits, or wine in bond are removed from bonded premises other than as authorized by law, the tax will be assessed. In the case of losses under circumstances described in 26 U.S.C. 5006(b) with respect to packages of distilled spirits or denatured spirits on bonded premises, the tax will be assessed if the tax is not paid upon the demand of the regional director (compliance).

(Sec. 201, Pub. L. 85-859, 72 Stat. 1320, as amended, 1323, as amended, 1381, as amended (26 U.S.C. 5006, 5008, 5370))

Par. 5. Section 19.42 is amended by redesignating paragraph (c) as (d) and adding a new paragraph (c) to read as follows:

§ 19.42 Claims on spirits returned to bonded premises.

* * * * *

(c) Claims for credit or refund of tax on spirits containing eligible wine or eligible flavors must set forth the date and serial number of the record of tax determination and the effective tax rate at which the tax was paid or determined. If this information is not determinable, the amount of tax claimed will be based on the lowest effective tax rate applied to the product.

* * * * *

Par. 6. In § 19.92, paragraph (a) is revised to read as follows:

§ 19.92 When gauges are required.

(a) *Initial proof.* Except for a gauge required by § 19.383 or § 19.517 or in any case where the proof changes as a result of a storage or processing operation, the initial determination of proof for distilled spirits, wine, or eligible flavors may be used whenever a subsequent gauge is required by this part to be made at the same plant.

* * * * *

Par. 7. Section 19.205 is amended by revising paragraphs (a) and (c)(2) to read as follows:

§ 19.205 Curtailment and extension of bonded premises for other operations.

(a) *General.* The bonded premises of a distilled spirits plant may be alternately curtailed and extended, as provided in this section, to permit the use of the premises for other operations authorized under this part.

* * * * *

(c) * * *

(2) Taxpaid spirits on portions of premises to be included by extension of bonded premises need not be removed if the spirits are to be immediately dumped and returned to bond under the provisions of Subpart U of this part.

* * * * *

Par. 8. Section 19.374 is revised to read as follows:

§ 19.374 Manufacture of nonbeverage products, intermediate products, or eligible flavors.

Distilled spirits and wine may be used for the manufacture of flavors or flavoring extracts of a nonbeverage nature as intermediate products to be used exclusively in the manufacture of other distilled spirits products on bonded premises. Nonbeverage products on which drawback will be claimed, as provided in 26 U.S.C. 5131 through 5134, may not be manufactured on bonded premises. For purposes of computing an effective tax rate, flavors manufactured on the premises of a distilled spirits plant are not eligible flavors. Premises used for the manufacture of nonbeverage products on which drawback will be claimed must be separated from bonded premises.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

Par. 9. In § 19.505, paragraph (c) is added to read as follows:

§ 19.505 Authorized transfers.

* * * * *

(c) *Alcohol for industrial purposes.* Alcohol bottled for industrial purposes, as provided in § 19.398, may be transferred between the bonded premises of distilled spirits plants in accordance with the procedures prescribed in §§ 19.506 through 19.510 for bulk distilled spirits.

Par. 10. Section 19.682 is amended by revising paragraph (c) to read as follows:

§ 19.682 Receipt and gauge of returned taxpaid spirits.

* * * * *

(c) *Supporting documents.* (1) Proprietors must have on file at the plant where spirits are returned to bond such documentation as is necessary to establish the amount of tax for which a claim for credit or refund may be allowed. Proprietors shall maintain credit memoranda or comparable financial records evidencing the return of each lot of spirits.

(2) If the spirits contain eligible wine or eligible flavors, the proprietor shall also have on file a copy of the record of tax determination prescribed by § 19.761, or other documentation which establishes the amount of tax for which a claim for credit or refund may be allowed. Where the date of removal or the effective tax rate of the product is not determinable, such as when loose bottles are returned to bond, the amount of tax claimed will be based on the lowest effective tax rate applied to the product.

Par. 11. Section 19.748 is amended by revising paragraphs (a)(16), (a)(17), and adding (a)(18) to read as follows:

§ 19.748 Dump/batch records.

(a) * * *

(16) Total quantity in proof gallons of product transferred;

(17) Gain or loss; and

(18) For distilled spirits containing eligible wine or eligible flavors, the total tax liability of all alcoholic ingredients and the effective tax rate, unless the product is to be tax determined in accordance with § 19.36.

* * * * *

Par. 12. Under the undesignated center heading, **Tax Records** of Subpart W, §§ 19.761 and 19.762 are revised and §§ 19.763 and 19.764 are added to read as follows:

§ 19.761 Record of tax determination.

A serially numbered invoice or shipping document, signed or initialed by an agent or employee of the proprietor, will constitute the record of tax determination. Sufficient information will be shown on each invoice or shipping document to enable ATF officers to determine the total proof gallons and, if applicable, each effective tax rate and the proof gallons removed at each effective tax rate. The total proof gallons calculated from each invoice or shipping document constitutes a single withdrawal.

(Sec. 807, Pub. L. 96-39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.762 Daily summary record of tax determinations.

Each proprietor of a distilled spirits plant who withdraws distilled spirits on determination of tax, but before payment of tax, shall maintain a daily summary record of tax determinations. The summary record will show, for each day on which tax determinations occur, and for each effective tax rate applied:

(a) the serial number of each record of tax determination,

(b) The total proof gallons rounded to the nearest tenth proof gallon on which tax was determined, and

(c) The total tax.

(Sec. 807, Pub. L. 96-39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.763 Record of average effective tax rates.

(a) For each distilled spirits product to be tax determined in accordance with § 19.37, the proprietor shall prepare a daily summary record showing the—

(1) Serial number of the batch record;

(2) Proof gallons derived from distilled spirits, eligible wine, and eligible flavors; and

(3) Tax liabilities determined as follows:

(i) Proof gallons of all distilled spirits (exclusive of distilled spirits derived from eligible flavors), multiplied by the tax rate prescribed in 26 U.S.C. 5001;

(ii) Wine gallons of each eligible wine, multiplied by the tax rate which would be imposed on the wine under 26 U.S.C. 5041(b)(1), (2), or (3) but for its removal to bonded premises; and

(iii) Proof gallons of all distilled spirits derived from eligible flavors to the extent that such distilled spirits exceed 2½% of the proof gallons in the product, multiplied by the tax rate prescribed in 26 U.S.C. 5001.

(b) At the end of each month, during which the product is bottled or packaged, the proprietor shall determine the—

(1) Total proof gallons and total tax liabilities for all batches of the product bottled or packaged;

(2) Add the sums from paragraph (b)(1) of this section to the like sums determined for each of the preceding five months; and

(3) Divide the total tax liabilities by the total proof gallons bottled and packaged.

(Sec. 807, Pub. L. 96-39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.764 Inventory reserve records.

(a) *General.* The proprietor shall establish an inventory reserve account, as provided in this section, for each eligible distilled spirits product to be tax determined in accordance with § 19.38.

(b) *Deposit records.* For each batch of the product bottled or packaged, the proprietor shall enter into the inventory reserve account a deposit record, which may be combined with the bottling and packaging record required by § 19.749 showing the:

(1) Name of the product;

(2) Bottling and packaging record serial number;

(3) Date the bottling or packaging was completed;

(4) Total proof gallons bottled and packaged; and

(5) Effective tax rate of the product computed in accordance with § 19.31.

(c) *Depletions.* The deposit records for each product will be depleted in the same order in which they were entered into the inventory reserve account. A depletion will be recorded for each disposition (e.g., a taxable removal, an exportation, an inventory shortage or breakage) by entering on the deposit record the: Transaction date; transaction record serial number; proof gallons disposed of; and proof gallons remaining. If any depletion exceeds the quantity of product remaining on the deposit record, the remaining quantity will be depleted, the deposit record closed, and the remainder of the transaction depleted from the next deposit record.

(Sec. 807, Pub. L. 96-39, 93 Stat. 284 (26 U.S.C. 5207))

Par. 13. Section 19.770 is amended by revising paragraphs (a)(6)(iv), (a)(6)(vi), (a)(6)(vii), and adding (a)(6)(viii) to read as follows:

§ 19.770 Transfer record.

(a) * * *

(6) * * *

(iv) Number of packages or cases with their lot identification numbers or serial numbers and date of fill;

* * * * *

(vi) Proof gallons for distilled spirits, or wine gallons for denatured spirits or wine;

(vii) Conveyance identification; and

(viii) For distilled spirits products which contain eligible wine or eligible flavors, the elements necessary to compute the effective tax rate as follows:

(A) Proof gallons of distilled spirits (exclusive of distilled spirits derived from eligible flavors);

(B) Wine gallons of each eligible wine and the percentage of alcohol by volume of each;

(C) Proof gallons of distilled spirits derived from eligible flavors; and

(D) The producer and the number of the formula under which produced of each eligible flavor.

* * * * *

Par. 14. Section 19.780 is added immediately following § 19.779 to read as follows:

§ 19.780 Record of distilled spirits shipped to manufacturers of nonbeverage products.

(a) *General.* Where distilled spirits are shipped to a manufacturer of nonbeverage products, the proprietor shall prepare a record of shipment, forward the original to the consignee, and retain a copy.

(b) *Form of record.* If preprinted with the name, address, and registry number of the proprietor and sequentially numbered, the record of tax determination prescribed by § 19.761, or any other document issued by the proprietor, may be used as the record of shipment. However, any document used as the record of shipment must be consistently used for that purpose.

(c) *Required information.* In addition to any other information on the document, the document used as the record of shipment must contain the following information:

(1) Date of shipment;

(2) Name and address of the consignee;

(3) Kind, proof, and quantity of the distilled spirits;

(4) Number and size of containers;

(5) Package identification numbers or serial numbers of containers;

(6) Serial number of the applicable record of tax determination; and

(7) For distilled spirits containing eligible wine or eligible flavors, the effective tax rate.

(Sec. 807, Pub. L. 96-39, 93 Stat. 284 (26 U.S.C. 5207); sec. 201 Pub. L. 85-859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.1010 [Amended]

Par. 15. In § 19.1010, the table in paragraph (b) is amended by adding, in numerical order, the following:

Section shere identified	Current OMB control number
19.30	1512-_____
19.36	1512-_____
19.37	1512-_____
19.38	1512-_____
19.763	1512-_____
19.764	1512-_____
19.780	1512-_____

§§ 19.91, 19.92, 19.372, 19.373, 19.731, 19.732, 19.747, 19.748 [Amended]

Par. 16. In addition to the amendments set forth above, Part 19 is amended by removing the words "Alcoholic flavoring material(s)" and inserting, in their place, the words "eligible flavor(s)" in the following places:

(a) Center-heading immediately before § 19.91;

(b) § 19.91(b);

(c) § 19.92(b);

(d) Center-heading immediately before § 19.372;

(e) § 19.372(a)(4) and (b);

(f) § 19.373 and (a);

(g) § 19.731(b)(2)(iii)(A);

(h) § 19.732(e);

(i) § 19.747(a), (a)(6), (b), and (j);

(j) § 19.748(a)(6).

Section B. Part 197 is amended as follows:

PART 197—DRAWBACK ON DISTILLED SPIRITS USED IN MANUFACTURING NONBEVERAGE PRODUCTS

Paragraph 1. The authority citation for Part 197 is revised to read as follows:

Authority: 5 U.S.C. 552; 26 U.S.C. 5131-5134, 5143, 5146, 5206, 5273, 6065, 6091, 6109, 6402, 6511, 6676, 7213, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 197.5 [Amended]

Par. 2. Section 197.5 is amended by adding, in alphabetical order, the meaning of the following term:

* * * * *

Effective tax rate. The net tax rate after reduction for any credit allowable under 26 U.S.C. 5010 for wine and flavor content at which the tax imposed on distilled spirits by 26 U.S.C. 5001 is paid or determined.

* * * * *

Par. 3. Section 197.105 is revised to read as follows:

§ 197.105 Drawback.

(a) Upon the filing of a claim as provided in this subpart, drawback will be allowed to any person who meets the requirements of this part. Drawback will be allowed on each proof gallon of distilled spirits (1) on which the tax has been paid or determined, and (2) which have been used in the manufacture of a nonbeverage product.

(b) Drawback will be allowed at a rate of $1 less than the tax rate at which the distilled spirits tax was paid or determined. Special tax as a manufacturer of nonbeverage products must be paid before drawback is allowed.

(c) Drawback will be allowed only to the extent that the claimant can establish, by evidence satisfactory to the regional director (compliance), the actual quantity of distilled spirits used in the manufacture of a nonbeverage product and the tax paid or determined on such distilled spirits.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1345, as amended (26 U.S.C. 5132))

Par. 4. Section 197.109 is amended by revising paragraph (b) and by adding a parenthetical paragraph referencing the OMB control number to read as follows:

§ 197.109 Information to be shown by the claim.

* * * * *

(b) That the distilled spirits on which drawback is claimed are fully taxpaid or tax-determined at the distilled spirits rate applicable to the distilled spirits.

* * * * *

(Approved by the Office of Management of Budget under control number 1512-_____)

§ 197.115 [Amended]

Par. 5. In § 197.115, a sentence and a parenthetical paragraph referencing the OMB control number are added, immediately after the last sentence, reading as followings: * * * The statement accompanying each claim will separately identify distilled spirits taxpaid with an effective tax rate and show the effective tax rate of each.

(Approved by the Office of Management and Budget under control number 1512-)

Par. 6. Section 197.130 is amended by revising paragraph (e) to read as follows:

§ 197.130 Nature of records.

* * * * *

(e) Number of proof gallons and kind of distilled spirits used in the manufacture of each product, the date of use and, if the distilled spirits contain wine or flavors, the effective tax rate.

* * * * *

Par. 7. Section 197.130b is amended by revising paragraphs (a)(5) and (a)(6), adding (a)(7), and revising paragraph (b) to read as follows:

§ 197.130b Evidence of taxpayment of distilled spirits.

(a) * * *

(5) The serial or package identification number of the container;

(6) The kind of spirits, proof, and proof gallons in the container; and

(7) For distilled spirits which contain wine or flavors, the effective tax rate.

(b) *Imported distilled spirits.* Evidence of tax payment of imported distilled spirits (such as Customs Forms 7501 and 7505 receipted to indicate payment of tax and the certificate of effective tax rate computation (if applicable)) will be obtained from the importer and maintained by the manufacturer for inspection by ATF officers.

* * * * *

Section C. Part 250 is amended as follows:

PART 250—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

Paragraph 1. The authority citation for Part 250 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5146, 5207, 5232, 5301, 5314, 5555, 60001, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 2. The table of sections is amended by adding, in numerical order, §§ 250.50a, 250.77a, 250.79a, 250.199g, 250.204a, and 250.262, to read as follows:

Sec.

* * * * *

250.50a Verification of eligible flavors.

* * * * *

250.77a Credit against tax.

* * * * *

250.79a Computation of effective tax rate.

* * * * *

250.199g Certificate of effective tax rate computation.

* * * * *

250.204a Verification of eligible flavors.

* * * * *

250.262a Credit againt tax.

* * * * *

250.262b Computation of effective tax rate.

* * * * *

§ 250.11 [Amended]

Par. 3. Section 250.11 is amended by adding, in alphabetical order, the meaning of the following terms:

* * * * *

Effective tax rate. The net tax rate after reduction for any credit allowable under 26 U.S.C. 5010 for wine and flavor content at which the tax imposed on distilled spirits by 26 U.S.C. 7652 is paid or determined.

* * * * *

Eligible flavor. A flavor of a type for which drawback of the tax imposed on distilled spirits is allowable under 26 U.S.C. 5134 which is made at other than a distilled spirits plant.

Eligible wine. A wine containing not more than 0.392 gram of carbon dioxide per 100 milliliters of wine which has not been subject to distillation at a distilled spirits plant after receipt in bond.

* * * * *

Par. 4. Section 250.50a is added to read as follows:

§ 250.50a Verification of eligible flavors.

(a) Any person who ships to the United States any distilled spirits on which the tax has been or is to be paid or determined at an effective tax rate based in part on the alcohol content derived from eligible flavors shall, before the first tax determination at that rate, request and receive a statement of eligibility for each flavor to be used in the computation of the effective tax rate.

(b) To receive a statement of eligibility, the person shipping the distilled spirits shall submit to the ATF National Laboratory, 1401 Research Boulevard, Rockville, MD 20850, the following:

(1) An 8-ounce sample; and

(2) A statement of composition listing the—

(i) Name and percentage of alcohol by volume of the flavor; and

(ii) Name and quantity of each ingredient used in the manufacture of the flavor.

(Approved by Office of Management and Budget under control number 1512–)

(Act of August 16, 1954, Pub. L. 591, 68A Stat. 907, as amended (26 U.S.C. 7652); sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5001); sec. 6, Pub. L. 96–598, 94 Stat. 3488 (26 U.S.C. 5010))

Par. 5. Section 250.77 is revised and § 250.77a is added to read as follows:

§ 250.77 Subject to tax.

Distilled spirits of Puerto Rican manufacture, and any products containing such distilled spirits, brought into the United States and withdrawn for consumption or sale are subject to a tax equal to the tax imposed in the United States by 26 U.S.C. 5001.

(Act of August 16, 1954, Pub. L. 591, 68A Stat. 907, as amended (26 U.S.C. 7652); Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5001))

§ 250.77a Credit against tax.

(a) A credit against the tax imposed on distilled spirits by 26 U.S.C. 7652 is allowable under 26 U.S.C. 5010 on each proof gallon of alcohol derived from eligible wine or eligible flavors. The credit is allowable at the time the tax is payable as if it constituted a reduction in the rate of tax.

(b) Where credit against the tax is desired, the person liable for the tax shall establish an effective tax rate in accordance with § 250.79a. The effective tax rate established will be applied to each withdrawal or other disposition of the distilled spirits for consumption or sale within the United States.

(Sec. 6, Pub. L. 96–598, 94 Stat. 3488 (26 U.S.C. 5010))

Par. 6. Section 250.79a is added to read as follows:

§ 250.79a Computation of effective tax rate.

(a) The proprietor shall compute the effective tax rate for distilled spirits containing eligible wine or eligible flavors as the ratio of the numerator and denominator as follows:

(1) The numerator will be the sum of:

(i) The proof gallons of all distilled spirits used in the product (exclusive of distilled spirits derived from eligible flavors), multiplied by the tax rate prescribed by 26 U.S.C. 5001;

(ii) The wine gallons of each eligible wine used in the product, multiplied by the tax rate prescribed by 26 U.S.C. 5041(b) (1), (2), or (3), which would be imposed on the wine but for its removal to bonded premises; and

(iii) The proof gallons of all distilled spirits derived from eligible flavors used in the product, multiplied by the tax rate prescribed by 26 U.S.C. 5001, but only to the extent that such distilled spirits exceed 2½% of the denominator prescribed in paragraph (a)(2) of this section.

(2) The denominator will be the sum of:

(i) The proof gallons of all distilled spirits used in the product, including distilled spirits derived from eligible flavors; and

(ii) The wine gallons of each eligible wine used in the product, multiplied by twice the percentage of alcohol by volume of each, divided by 100.

(b) In determining the effective tax rate, quantities of distilled spirits, eligible wine, and eligible flavors will be expressed to the nearest tenth of a proof gallon. The effective tax rate will be expressed to the nearest whole cent. In such case, if the number is less than five, it will be dropped; if it is five or over, a unit will be added.

(c) The following is an example of the use of the formula.

BATCH RECORD

Distilled spirits	2249.1 proof gallons.
Eligible wine (14% alcohol by volume).	2265.0. wine gallons.
Eligible wine (19% alcohol by volume).	1020.0 wine gallons.
Eligible flavors	100.9 proof gallons.

$$\frac{2249.1\ (\$12.50)+[2265.0\ (\$.17)+1020\ (\$.67)]+16.6^{1}\ (\$12.50)}{2249.1+100.9+[2265.0\ (.28)+1020.0\ (.38)]}=$$

$$\frac{\$28,113.75+[\$385.05+\$683.40]+\$207.50}{2,350.0+[634.2+387.6]}=$$

$$\frac{\$29,389.70}{3,371.8}=\$8.72,\text{ the effective tax rate.}$$

[1] Proof gallons by which distilled spirits derived from eligible flavors exceed 2½% of the total proof gallons in the batch (100.9−(2½% 3,371.8))

(Sec. 6, Pub. L. 96-598, 94 Stat. 3488 (26 U.S.C. 5010))

§ 250.98 [Removed]

Par. 7. Section 250.98 is removed.

Par. 8. Section 250.199g is added to read as follows:

§ 250.199g Certificate of effective tax rate computation.

(a) Where distilled spirits of Puerto Rican manufacture which contain eligible wine or eligible flavors are to be shipped to the United States without payment of tax for transfer from customs custody to ATF bond, the consignor shall prepare a certificate of effective tax rate computation showing the:

(1) ATF Form 5110.31 serial number;

(2) Elements necessary to compute the effective tax rate in accordance with § 250.79a as follows—

(i) Proof gallons of distilled spirits (exclusive of distilled spirits derived from eligible flavors);

(ii) Wine gallons of each eligible wine and the percentage of alcohol by volume of each; and

(iii) Proof gallons of distilled spirits derived from each eligible flavor;

(3) Date of the statement of eligibility for each eligible flavor (see § 250.50a).

(4) Effective tax rate applied to the product.

(5) Signature and title of the consignor.

(b) The consignor shall forward the original to the consignee, provide one copy to the revenue agent, and file a copy.

(Approved by Office of Management and Budget under control number 1512-_____)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1366, as amended (26 U.S.C. 5232); Sec. 6, Pub. L. 96-598, 94 Stat. 3488 (26 U.S.C. 5010))

Par. 9. Section 250.204a is added to read as follows:

§ 250.204a Verification of eligible wines and eligible flavors.

(a) Any person who brings into the United States from the Virgin Islands any distilled spirits on which the tax is to be paid or determined at an effective tax rate based in part on the alcohol content derived from eligible flavors or eligible wines shall, before the first tax determination at that rate, request and receive a statement of eligibility for each wine or flavor to be used in the computation of the effective tax rate.

(b) To receive a statement of eligibility, the person bringing in the distilled spirits shall submit to the ATF National Laboratory, 1401 Research Boulevard, Rockville, MD 20850, the following:

(1) An 8-ounce sample of each distilled spirits, wine or flavor used in the product;

(2) A statement of composition of each flavor, listing—

(i) The name and percentage of alcohol by volume of the flavor; and

(ii) The name and quantity of each ingredient used in the manufacture of the flavor; and

(3) A statement of the kind and alcoholic content of each wine.

(Approved by Office of Management and Budget under control number 1512-_____)

(Act of August 16, 1954, Pub. L. 591, 68A Stat. 907, as amended (26 U.S.C. 7652); sec. 201, Pub. L. 85-859, 72 Stat. 1314, as amended (26 U.S.C. 5001); sec. 6, Pub. L. 96-598, 94 Stat. 3488 (26 U.S.C. 5010))

Par. 10. Section 250.205 is revised to read as follows:

§ 250.205 Certificate.

(a) Every person bringing liquors or articles under this part into the United States from the Virgin Islands, except tourists, shall obtain a certificate in the English language from the manufacturer for each shipment showing the following information:

(1) The name and address of the consignee.

(2) The kind and brand name.

(3) The quantity thereof as follows—

(i) If distilled spirits, the proof gallons or liters and degree of proof;

(ii) If wine, the taxable grade and wine gallons;

(iii) If beer, the gallons (liquid measure) and the percentage of alcohol by volume; and

(iv) If articles, the kind, quantity, and proof of the liquors used therein.

(4) For liquors manufactured under a formula—

(i) The number and date of the approved formula;

(ii) A declaration that the liquors have been manufactured in accordance with the approved formula; and

(iii) The name and address of the person filing the formula.

(5) The name and address of the producer.

(6) For liquors and articles containing liquors produced outside of the Virgin Islands, the country of origin for each such liquor.

(7) For distilled spirits, a certification by the insular gauger as to whether they were regauged when withdrawn from the insular bonded warehouse and, if regauged, whether they were at the time of withdrawal at the proof indicated on the attached record of gauge.

(8) For distilled spirits which contain eligible wine or eligible flavors, the effective tax rate applied to the product and the elements necessary to compute the effective tax rate in accordance with § 250.262b as follows—

(i) Proof gallons of distilled spirits (exclusive of distilled spirits derived from eligible flavors);

(ii) Wine gallons of each eligible wine and the percentage of alcohol by volume of each;

(iii) Proof gallons of distilled spirits derived from eligible flavors; and

(iv) Date of the statement of eligibility for each eligible flavor (see § 250.204a).

(b) The person bringing the liquors or articles into the United States shall file the certificate and record of gauge with the district director of customs at the port of entry as provided in §§ 250.260 and 250.302.

(Approved by the Office of Management and Budget under control number 1512-0352)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1366, as amended (26 U.S.C. 5232); sec. 6, Pub. L. 96-598, 94 Stat. 3488 (26 U.S.C. 5010))

Par. 11. Section 250.262 is revised, and §§ 250.262a and 250.262b are added to read as follows:

§ 250.262 Determination of tax on distilled spirits.

If the certificate required by § 250.205 covers distilled spirits, and the distilled spirits are not being transferred under Subpart 0 or 0a of this part, the tax imposed by 26 U.S.C. 7652 equal to the tax imposed by 26 U.S.C. 5001 will be collected on each proof gallon, and fractional part thereof, contained in the shipment.

(Act of August 16, 1954, Pub. L. 591, 68A Stat. 907, as amended (26 U.S.C. 7652))

§ 250.262a Credit against tax.

(a) A credit against the tax imposed on distilled spirits by 26 U.S.C. 7652 is allowable under 26 U.S.C. 5010 on each proof gallon of alcohol derived from

eligible wine or eligible flavors. The credit is allowable at the time the tax is payable as if it constituted a reduction in the rate of tax.

(b) Where credit against the tax is desired, the person liable for the tax shall establish an effective tax rate in accordance with § 250.262b. The effective tax rate established will be applied to each withdrawal or other disposition of the distilled spirits within the United States.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1356, as amended (26 U.S.C. 5201); sec. 6, Pub. L. 96-598, 94 Stat. 3488 (26 U.S.C. 5010))

§ 250.262b Computation of effective tax rate.

(a) The proprietor shall compute the effective tax rate for distilled spirits containing eligible wine or eligible flavors as the ratio of the numerator and denominator as follows:

(1) The numerator will be the sum of:

(i) The proof gallons of all distilled spirits used in the product (exclusive of distilled spirits derived from eligible flavors), multiplied by the tax rate prescribed by 26 U.S.C. 5001;

(ii) The wine gallons of each eligible wine used in the product, multiplied by the tax rate prescribed by 26 U.S.C. 5041(b) (1), (2), or (3), which would be imposed on the wine but for its removal to bonded premises; and

(iii) The proof gallons of all distilled spirits derived from eligible flavors used in the product, multiplied by the tax rate prescribed by 26 U.S.C. 5001, but only to the extent that such distilled spirits exceed 2½% of the denominator prescribed in paragraph (a)(2) of this section.

(2) The denominator will be the sum of:

(i) The proof gallons of all distilled spirits used in the product, including distilled spirits derived from eligible flavors; and

(ii) The wine gallons of each eligible wine used in the product, multiplied by twice the percentage of alcohol by volume of each, divided by 100.

(b) In determining the effective tax rate, quantities of distilled spirits, eligible wine, and eligible flavors will be expressed to the nearest tenth of a proof gallon. The effective tax rate will be expressed to the nearest whole cent. In such case, if the number is less than five it will be dropped; if it is five or over, a unit will be added.

(c) The following is an example of the use of the formula:

Batch Record	
Distilled spirits	2249.1 proof gallons.
Eligible wine (14% alcohol by volume).	2265.0. wine gallons.
Eligible wine (19% alcohol by volume).	1020.0 wine gallons.
Eligible flavors	100.9 proof gallons.

$$\frac{2249.1\ (\$12.50)+[2265.0\ (\$.17)+1020\ (\$.67)]+16.6\ ^{1}\ (\$12.50)}{2249.1+100.9+[2265.0\ (.28)+1020.0\ (.38)]} =$$

$$\frac{\$28,113.75+[\$385.05+\$683.40]+\$207.50}{2,350.0+[634.2+387.6]} =$$

$$\frac{\$29,389.70}{3,371.8} = \$8.72, \text{ the effective tax rate.}$$

[1] Proof gallons by which distilled spirits derived from eligible flavors exceed 2½% of the total proof gallons in the batch (100.9−(2½%) 3,371.8))

(Sec. Pub. L. 96-598, 94 Stat. 3488 (26 U.S.C. 5010))

Section D. Part 251 is amended as follows:

PART 251—IMPORTATION OF DISTILLED SPIRITS, WINE AND BEER

Paragraph 1. The authority citation for Part 251 is revised to read as follows:

Authority: 19 U.S.C. 1202; 26 U.S.C. 5001, 5010, 5041, 5051, 5054, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5201, 5207, 5232, 5273, 5301, 5313, 5365, 5555, 5662, 6302, 7805.

Par. 2. The table of sections is amended by adding, in numerical order, §§ 251.40a and 251.40b and §§ 251.76 and 251.77 with the undesignated center heading which precedes them, to read as follows:

Sec.

* * * * *

251.40a Credit against tax.
251.40b Computation of effective tax rate.

* * * * *

Wine and Flavors Content of Distilled Spirits

251.76 Approval and certification of wine and flavors content.
251.77 Standard effective tax rate.

* * * * *

§ 251.11 [Amended]

Par. 3. Section 251.11 is amended by adding, in alphabetical order, the meaning of the following terms:

* * * * *

Effective tax rate. The net tax rate after reduction for any credit allowable under 26 U.S.C. 5010 for wine and flavor content at which the tax imposed on distilled spirits by 26 U.S.C. 5001 is paid or determined.

* * * * *

Eligible flavor. A flavor of a type for which drawback of the tax imposed on distilled spirits is allowable under 26 U.S.C. 5134 which is made at other than a distilled spirits plant.

Eligible wine. A wine containing not more than 0.392 gram of carbon dioxide per 100 milliliters of wine which has not been subject to distillation at a distilled spirits plant after receipt in bond.

* * * * *

Par. 4. Section 251.40 is revised, and §§ 251.40a and 251.40b are added to read as follows:

§ 251.40 Distilled spirits.

A tax is imposed on all distilled spirits in customs bonded warehouses or imported into the United States at the rate prescribed by 26 U.S.C. 5001 on

each proof gallon and a proportionate tax at a like rate on all fractional parts of each proof gallon. All products of distillation, by whatever name known, which contain distilled spirits, are considered to be distilled spirits and are taxed as such. The tax will be determined at the time of importation, or, if entered into bond, at the time of withdrawal therefrom.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1314, as amended (26 U.S.C. 5001))

§ 251.40a Credit against tax.

(a) A credit against the tax imposed on distilled spirits by 26 U.S.C. 5001 is allowable under 26 U.S.C. 5010 on each proof gallon of alcohol derived from eligible wine or eligible flavors. The credit is allowable at the time the tax is payable as if it constituted a reduction in the rate of tax.

(b) Where credit against the tax is desired, the person liable for the tax shall establish an effective tax rate in accordance with § 251.40b. The effective tax rate established will be applied to each entry.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5201); sec 6, Pub. L. 96-598, 94 Stat. 3488 (26 U.S.C. 5010))

§ 251.40b Computation of effective tax rate.

(a) The proprietor shall compute the effective tax rate for distilled spirits containing eligible wine or eligible flavors as the ratio of the numerator and denominator as follows:

(1) The numerator will be the sum of:

(i) The proof gallons of all distilled spirits used in the product (exclusive of distilled spirits derived from eligible flavors), multiplied by the tax rate prescribed by 26 U.S.C. 5001;

(ii) The wine gallons of each eligible wine used in the product, multiplied by the tax rate prescribed by 26 U.S.C. 5041(b)(1), (2), or (3), which would be imposed on the wine but for its removal to bonded permises; and

(iii) The proof gallons of all distilled spirits derived from eligible flavors used in the product, multiplied by the tax rate prescribed by 26 U.S.C. 5001, but only to the extent that such distilled spirits exceed 2½% of the denominator prescribed in paragraph (a)(2) of this section.

(2) The denominator will be the sum of:

(i) The proof gallons of all distilled spirits used in the product, including distilled spirits derived from eligible flavors; and

(ii) The wine gallons of each eligible wine used in the product, multiplied by twice the percentage of alcohol by volume of each, divided by 100.

(b) In determining the effective tax rate, quantities of distilled spirits, eligible wine, and eligible flavors will be expressed to the nearest tenth of a proof gallon. The effective tax rate will be expressed to the nearest whole cent. In such case, if the number is less than five it will be dropped; if it is five or over, a unit will be added.

(c) The following is an example of the use of the formula.

BATCH RECORD

Distilled spirits	2249.1 proof gallons.
Eligible wine (14% alcohol by vol.).	2265.0 wine gallons.
Eligible wine (19% alcohol by vol.).	1020.0 wine gallons.
Eligible flavors	100.9 proof gallons.

$$\frac{2249.1(\$12.50)+[2265.0(\$.17)+1020(\$.67)]+16.6\ [1]\ (\$12.50)}{2249.1+100.9+[2265.0(.28)+1020.0(.38)]} =$$

$$\frac{\$28,113.75+[\$385.05+\$683.40]+\$207.50}{2,350.0+[634.2+387.6]} =$$

$$\frac{\$29,389.70}{3,371.8} = \$8.72, \text{ the effective tax rate.}$$

(Sec. Pub. L. 96-598, 94 Stat. 3488 (26 U.S.C. 5010))

Par. 5. Immediately after § 251.75, an undesignated center-heading and §§ 251.76 and 251.77 are added reading as follows:

Wine and Flavors Content of Distilled Spirits

§ 251.76 Approval and certification of wine and flavors content.

(a) Any person who imports into the United States distilled spirits on which the tax is to be paid or determined at an effective tax rate based in whole, or in part, on the alcohol content derived from eligible wine or eligible flavors shall, before the first tax determination at that rate, request and receive a statement of eligibility for each wine or flavor to be used in the computation of the effective tax rate.

(b) To receive a statement of eligibility, the importer shall cause to be submitted to the ATF National Laboratory, 1401 Research Boulevard, Rockville, MD 20850, the following:

(1) An 8-ounce sample of each distilled spirits, wine and flavor contained in the product; and

(2) A statement of composition listing—

(i) For wine, the kind (class and type) and percentage of alcohol by volume; and

(ii) For flavors, the name and percentage of alcohol by volume, and the name and quantity of each ingredient used in the manufacture of the flavor.

(c) Each time distilled spirits containing eligible wine or eligible flavors are imported into the United States, the importer shall prepare a certificate of effective tax rate computation showing the following:

(1) Name, address, and permit number (if any) of the importer;

(2) Kind (class and type) of product;

(3) Elements necessary to compute the effective tax rate in accordance with § 251.40b as follows—

(i) Proof gallons of distilled spirits (exclusive of distilled spirits derived from eligible flavors);

(ii) Wine gallons of each eligible wine and the percentage of alcohol by volume of each; and

(iii) Proof gallons of distilled spirits derived from eligible flavors;

(4) Date of the statement of eligibility of each eligible wine and of each eligible flavor;

(5) Effective tax rate applied to the product; and

(6) Signature of the importer or other duly authorized person under the following declaration:

I declare under the penalties of perjury that this certificate of effective tax rate computation has been examined by me and, to the best of my knowledge and belief, is true, correct, and complete.

[1] Proof gallons by which distilled spirits derived from eligible flavors exceed 2½% of the total proof gallons in the batch (100.9−(2½% 3,371.8)).

(d) The importer shall file the certificate of effective tax rate computation with the district director of customs at the port of entry or, for distilled spirits to be withdrawn from customs custody under the provisions of Subpart L of this part, furnish a copy to the proprietor of the distilled spirits plant to which the distilled spirits are transferred.

(Approved by the Office of Management and Budget under control number 1512-_____)

(Sec. 6, Pub. L. 96-598, 94 Stat. 3488 (26 U.S.C. 5010))

§ 251.77 Standard effective tax rate.

(a) In lieu of preparing a certificate of effective tax rate computation each time distilled spirits containing eligible wine or eligible flavors are imported as prescribed in § 251.76(c), an importer may have a standard effective tax rate established based on the least quantity and the lowest alcohol content of eligible wine or eligible flavors used in the manufacture of the product.

(b) To have a standard effective tax rate established, the importer shall cause to be submitted to the ATF National Laboratory, 1401 Research Boulevard, Rockville, MD 20850, the following:

(1) The samples prescribed in § 251.76(b)(1) and an 8-ounce sample of the finished product;

(2) The statement of composition prescribed in § 251.76(b)(2);

(3) A statement of composition for the finished product listing the—

(i) Name of the product;

(ii) Quantity, alcohol content (percentage of alcohol by volume), and the kind (class and type) of each eligible wine or the name of each eligible flavor used in the manufacture of the product; and

(iii) Standard effective tax rate for the product computed in accordance with § 251.40(b).

(c) Where a standard effective tax rate has been previously approved for a product, an importer, in lieu of having a standard effective tax rate established, may use that rate. An importer desiring to use a previously approved standard effective tax rate shall obtain a copy of the approval from the person to whom it was issued and, over the signature of the importer or other duly authorized person, place the following declaration:

I declare under the penalties of perjury that this approval has been examined by me and, to the best of my knowledge and belief, the standard effective tax rate established for this product is applicable to all like product contained in this shipment.

(d) A standard effective tax rate may not be employed until approved by the ATF National Laboratory. The importer shall file or furnish a copy of the standard effective tax rate approval in the manner prescribed in § 251.76(d). The use of a standard effective tax rate shall not relieve an importer from the payment of any tax found to be due. The Director may at any time require an importer to immediately discontinue the use of a standard effective tax rate.

(Approved by the Office of Management and Budget under control number 1512-_____)

(Sec. 6, Pub. L. 96-598, 94 Stat. 3488 (26 U.S.C. 5010))

Signed: January 9, 1987.

Stephen E. Higgins,

Director.

Approved: January 20, 1987.

Francis A. Keating II,

Assistant Secretary (Enforcement).

[FR Doc. 87-6476 Filed 3-26-87; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF JUSTICE

28 CFR Part 42

Enforcement of Nondiscrimination on the Basis of Handicap in Department of Justice Federally Assisted Programs or Activities

AGENCY: Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation would amend the regulation issued by the Department of Justice for enforcement of section 504 of the Rehabilitation Act of 1973, as amended, in federally assisted programs or activities to include a cross-reference to the Uniform Federal Accessibility Standards (UFAS). Because some facilities subject to new construction or alteration requirements under section 504 are also subject to the Architectural Barriers Act, government-wide reference to UFAS would diminish potential conflict between standards enforced by the responsible funding agencies under the two statutes. In addition, compliance with UFAS by Federal agencies and States will reduce potential conflicts when a building is subject to the section 504 regulations of more than one Federal agency and also when it is subject to State or local accessibility requirements as well.

DATES: To be assured of consideration, comments must be in writing and must be received on or before May 26, 1987.

ADDRESSES: Comments should be sent to Stewart B. Oneglia, Chief, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, Washington, DC 20530.

Comments received will be available for public inspection in Room 854 of the HOLC Building, 320 First Street NW., Washington, DC from 9:00 A.M. to 5:00 P.M., Monday through Friday except legal holidays. Copies of this notice are available on tape for persons with impaired vision. They may be obtained at the above address.

FOR FURTHER INFORMATION CONTACT: Irene Bowen, Supervisory Attorney, Community Services Unit, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, Washington, DC 20530; (202) 724-2245 [voice or TDD]; or Merrily Raffa, Attorney, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, Washington, DC 20530; (202) 724-2216 [voice] or 724-7678 [TDD]. These are not toll free numbers.

SUPPLEMENTARY INFORMATION: Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) provides that

> No otherwise qualified handicapped individual in the United States . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . .

The existing Department of Justice section 504 regulation for federally assisted programs requires that new construction be designed and built to be accessible and that alterations of facilities be made in an accessible manner. It states that new construction or alteration accomplished in accordance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc. (ANSI A 117.1-1961 (R1971)), meets the requirements of section 504. The proposed revision set forth in this document will reference the Uniform Federal Accessibility Standards (UFAS) in place of the current standard.

On August 7, 1984, UFAS was issued by the four agencies establishing standards under the Architectural Barriers Act (49 FR 31528) (see discussion *infra*). This Department, as the agency responsible under Executive Order 12250 for coordinating the enforcement of section 504, has recommended that agencies amend their section 504 regulations for federally assisted programs or activities to establish that, with respect to new construction and alterations, compliance with UFAS shall be deemed to be compliance with section 504. Because

some facilities subject to new construction or alteration requirements under section 504 are also subject to the Architectural Barriers Act, government-wide reference to UFAS would diminish potential conflict between standards enforced by the responsible funding agencies under the two statutes. In addition, compliance with UFAS by Federal agencies and States will reduce potential conflicts when a building is subject to the section 504 regulations of more than one Federal agency and also when it is subject to State or local accessibility requirements as well.

Background of Accessibility Standards

The Architectural Barriers Act of 1968, 42 U.S.C. 4151–4157, requires certain Federal and federally funded buildings to be designed, constructed, and altered in accordance with accessibility standards. It also designates four agencies (the General Services Administration, the Departments of Defense and of Housing and Urban Development, and the U.S. Postal Service) to prescribe the accessibility standards. Section 502 of the Rehabilitation Act of 1973 established the Architectural and Transportation Barriers Compliance Board (ATBCB). In 1978 the Rehabilitation Act was amended to require the ATBCB, *inter alia*, to issue minimum guidelines and requirements for the standards to be issued by the four standard-setting agencies. The minimum guidelines were published on August 4, 1982 (47 FR 33862), and are codified at 36 CFR Part 1190.[1]

On August 7, 1984, the four standard-setting agencies issued the Uniform Federal Accessibility Standards as an effort to minimize the differences among the four agencies' Barriers Act standards, and among those standards and accessibility standards used by the private sector. The General Services Administration (GSA) and Department of Housing and Urban Development (HUD) have incorporated UFAS into their Barriers Act regulations (*see* 41 CFR Subpart 101–19.6 (GSA) and 24 CFR Part 40 (HUD)). In order to ensure uniformity, UFAS was designed to be consistent with the scoping and technical provisions of the ATBCB's minimum guidelines and requirements, as well as with the technical provisions of ANSI A117.1–1980, published by the American National Standards Institute (ANSI). (The 1980 ANSI standard contains few scoping provisions.) ANSI is a private, national organization that publishes recommended standards on a wide variety of subjects. ANSI's original accessibility standard. ANSI A117.1. "Specifications for Making Buildings and Facilities Accessible to, and Usable by, Physically Handicapped People" was published in 1961 and reaffirmed in 1971. The current edition, issued in 1986, is ANSI A117.1–1986. The 1961, 1980, and 1986 ANSI standards are frequently used in private practice and by State and local governments.

This proposed amendment would amend the current regulation implementing section 504 in programs or activities receiving Federal financial assistance from the Department of Justice to refer to UFAS.

This Department has determined that it will not require the use of UFAS, or any other standard, as the sole means by which recipients can achieve compliance with the requirement that new construction and alterations be accessible. To do so would unnecessarily restrict recipients' ability to design for particular circumstances. In addition, it might create conflicts with State or local accessibility requirements that may also apply to recipients' buildings and that are intended to achieve ready access and use. It is expected that in some instances recipients will be able to satisfy the section 504 new construction and alteration requirements by following applicable State or local codes, and vice versa.

Effect of Amendment

The amendment could not affect the current section 504 requirement that new facilities be designed and constructed to be readily accessible and that alterations be accessible to the maximum extent feasible. It would merely provide that compliance with UFAS with respect to buildings shall be deemed compliance with these requirements with respect to those buildings. Thus, for example, an alteration is accessible "to the maximum extent feasible" if it is done in accordance with UFAS. It should be noted that UFAS contains special requirements for alterations where meeting the general standards would be impracticable or infeasible (*see, e.g.*, UFAS sections 4.1.6(1)(b), 4.1.6(3), 4.1.6(4), 4.1.7).

The amendment also includes language providing that departures from particular UFAS technical and scoping requirements are permitted so long as the alternative methods used will provide substantially equivalent or greater access to and utilization of the building. Allowing these departures from UFAS will provide recipients with necessary flexibility to design for special circumstances and will facilitate the application of new technologies that are not specified in UFAS. As explained under "Background of Accessibility Standards," it is anticipated that compliance with some provisions of applicable State and local accessibility requirements will provide "substantially equivalent" access. In some circumstances, recipients may choose to use methods specified in model building codes or other State or local codes that are not necessarily applicable to their buildings but that achieve substantially equivalent access.

The amendment requires that the alternative methods provide "substantially" equivalent or greater access, in order to clarify that the alternative access need not be precisely equivalent to that afforded by UFAS. Application of the "substantially equivalent access" language will depend on the nature, location, and intended use of a particular building. Generally, alternative methods will satisfy the requirement if in material respects the access is substantially equivalent to that which would be provided by UFAS in such respects as safety, convenience, and independence of movement. For example, it would be permissible to depart from the technical requirement of UFAS section 4.10.9 that the inside dimensions of an elevator car be at least 68 inches or 80 inches (depending on the location of the door) on the door opening side, by 54 inches, if the clear floor area and the configuration of the car permits wheelchair users to enter the car, make a 360° turn, maneuver within reach of controls, and exit from the car. This departure is permissible because it results in access that is safe, convenient, and independent, and therefore substantially equivalent to that provided by UFAS.

With respect to UFAS scoping requirements, it would be permissible in some circumstances to depart from the UFAS new construction requirement of one accessible principal entrance at each grade floor level of a building (see UFAS Section 4.1.2(8)), if safe, convenient, and independent access is provided to each level of the new facility by a wheelchair user from an accessible principal entrance. This departure would not be permissible if it required a handicapped person to travel an extremely long distance to reach the spaces served by the inaccessible

[1] The ATBCB Office of Technical Services is available to provide technical assistance to recipients upon request relating to the elimination of architectural barriers. Its address is: U.S. ATBCB, Office of Technical Services, 330 C Street SW., Washington, DC 20201. The telephone number is (202) 472–2700 [voice/TDD]. This is not a toll free number.

entrances or otherwise provided access that was substantially less convenient than that which would be provided by UFAS.

It would not be permissible for a recipient to depart from UFAS' requirement that, in new construction of a long-term care facility, at least 50% of all patient *bedrooms* be accessible (see Section 4.1.4(9)(b)), by using large accessible wards that make it possible for 50% of all *beds* in the facility to be accessible to handicapped persons. The result is that the population of handicapped persons in the facility will be concentrated in large wards, while able-bodied persons will be concentrated in smaller, more private rooms. Because convenience for handicapped persons is therefore compromised to such a great extent, the degree of accessibility provided to handicapped persons is not substantially equivalent to that intended to be afforded by UFAS.

For correctional facilities, including jails, prisons, reformatories, and other detention facilities, UFAS requires that five percent of all residential units, or at least one unit (whichever is greater), be accessible. However, all areas of common use, visitor use, and areas in which physically handicapped persons may be employed, must be accessible (see UFAS Section 4.1.4(9)(c)).

It should be noted that the amendment does not require that existing buildings leased by recipients meet the standards for new construction and alterations. Rather, it continues the current Federal practice under section 504 of treating newly leased buildings as subject to the program accessibility standard for existing facilities.

Buildings under design on the effective date of this amendment will be governed by the amendment if the date that bids were invited falls after the effective date. This interpretation is consistent with the General Services Administration's Architectural Barriers Act regulation incorporating UFAS, at 41 CFR subpart 101–19.6.

The proposed revision includes language modifying the effect of UFAS Section 4.1.6(1)(g), which provides an exception to UFAS Section 4.1.6, *Accessible buildings: alterations.* Section 4.1.6(1)(g) of UFAS states that "mechanical rooms and other spaces which normally are not frequented by the public or employees of the building or facility or which by nature of their use are not required by the Architectural Barriers Act to be accessible are excepted from the requirements of 4.1.6." Particularly after the development of specific UFAS provisions for housing alterations and additions, UFAS Section 4.1.6(1)(g) could be read to exempt alterations to privately owned residential housing, which is not covered by the Architectural Barriers Act unless leased by the Federal government for subsidized housing programs. This exception, however, is not appropriate under section 504, which protects beneficiaries of housing provided as part of a federally assisted program. Consequently, the proposed amendment provides that, for purposes of this section, Section 4.1.6(1)(g) of UFAS shall be intepreted to exempt from the requirements of UFAS only spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or handicapped residents or employees.

The proposed revision also provides that whether or not the recipient opts to follow UFAS in satisfaction of the ready access requirement, the recipient is not required to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member. This provision does not relieve recipients of their obligation under the current regulation to ensure program accessibility.

This document is an adaptation of a prototype prepared by this Department under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298.

The Architectural and Transportation Barriers Compliance Board has also been consulted in the development of this document in accordance with 28 CFR 41.7.

This regulation is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) because it imposes no new requirements. Therefore, a regulatory impact analysis has not been prepared.

This regulation does not have an impact on small entities and, therefore, is not subject to the Regulatory Flexibility Act (5 U.S.C. 601–612).

List of Subjects in 28 CFR Part 42

Administrative practice and procedure, Blind, Buildings, Civil rights, Employment, Equal educational opportunity, Equal employment opportunity, Government employees, Grant programs, Handicapped, Sex discrimination, Religious discrimination.

PART 42—[AMENDED]

For the reasons stated in the preamble, Part 42 of Title 28 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Subpart G of Part 42 is revised to read as follows:

Authority: 5 U.S.C. 301, 28 U.S.C. 509, 510; 29 U.S.C. 706, 794, EO 12250.

2. In § 42.522, paragraph (b) is revised to read as follows:

§ 42.522 New construction.

* * * * *

(b) *Conformance with Uniform Federal Accessibility Standard.* (1) Effective as of the effective date of this amendment, design, construction, or alteration of buildings in conformance with sections 3–8 of the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR 101–19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, § 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public of beneficiaries or result in the employment or residence therein of physically handicapped persons.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

Dated: March 18, 1987.

Edwin Meese III,

Attorney General.

[FR Doc. 87–6725 Filed 3–26–87; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Permanent State Regulatory Program of Colorado

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of two legal opinions submitted by Colorado to resolve two conditions which the Secretary of the Interior placed on his approval of the Colorado permanent regulatory program (hereinafter referred to as the Colorado

program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The conditions pertain to the permit renewal process and Colorado's authority to cease underground mining operations.

This notice sets forth the times and locations that the Colorado program and legal opinions are available for public inspection, the comment period during which interested persons may submit written comments on the opinions, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments relating to Colorado's proposed modification of its program not received on or before 4:00 p.m. on April 27, 1987 will not necessarily be considered in the Secretary's decision to remove, revise or retain the conditions of program approval. A public hearing on the adequacy of the opinions will be held upon request on April 21, 1987. Any person interested in making an oral or written presentation at the public hearing should contact Mr. Robert H. Hagen at the Albuquerque Field Office by the close of business on or before April 13, 1987. If no one has contacted Mr. Hagen to express an interest in participating in the hearing by the date, the hearing will not be held. If only one person has so contacted Mr. Hagen, a public meeting may be held in place of the hearing. If possible, a notice of the meeting will be posted in advance at the locations listed under "ADDRESSES".

ADDRESSES: Written comments should be mailed or hand-delivered to the Albuquerque Field Office of the Office of Surface Mining Reclamation and Enforcement, 219 Central Avenue, NW., Albuquerque, New Mexico 87102, Attention: Colorado Administrative Record.

Copies of the legal opinions, the Colorado program, the Administrative Record on the Colorado program and a listing of any scheduled public meetings and all written comments received in response to this notice will be available for review at the OSMRE offices and the office of Colorado Mined Land Reclamation Division listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays. Each requester may receive, free of charge, one copy of the legal opinions by contacting the OSMRE Albuquerque Field Office.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5315, 1100 "L" Street, N.W., Washington, DC 20240, Telephone: (202) 343-5492

Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 219 Central Avenue, NW., Albuquerque, New Mexico 87102, Telephone: (505) 766-1486

Colorado Department of Natural Resources, Mined Land Reclamation Division, Room 423, Centennial Building, 1313 Sherman Street, Denver, Colorado 80203, Telephone: (303) 866-3567

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 219 Central Avenue, NW., Albuquerque, New Mexico 87102; Telephone: (505) 766-1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program

Information regarding the general background on the Colorado program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Colorado program can be found in the December 15, 1980 **Federal Register** (45 FR 82173-82214). Subsequent decisions concerning the conditions of approval and program amendments are identified at 30 CFR 906.11, 906.15 and 906.16 and are discussed in detail in the **Federal Register** published on December 16, 1982 (47 FR 56350); May 1, 1984 (49 FR 18481); November 15, 1985 (50 FR 47216); December 6, 1984 (50 FR 49925); February 5, 1986 (51 FR 4496); May 30, 1986 (51 FR 19548); July 1, 1986 (51 FR 23752); and February 5, 1987 (52 FR 3632).

II. Discussion of the Legal Opinions

Condition "p"

As discussed in Finding 4(d)(xv) of the December 15, 1980 **Federal Register** (45 FR 82184), the Secretary found that the Colorado program failed to clearly provide that no holder of a valid permit could continue to mine after the term of his or her original permit expired if the State had determined that the permit should not be renewed. The State statute at CRS 34-33-109(7)(f) and the State regulations at 2.08.5(3)(f) provide that the holder of a valid permit may continue surface mining operations until a final administrative decision on renewal is rendered, provided he or she has submitted an application for renewal 180 days in advance of the permit expiration date. The conflict arises in those situations where the Division of Mined Land Reclamation ("Division") has found that the permit should not be renewed, and the operator has petitioned for administrative review of the decision. Since the final administrative decision would be made by the Mined Land Reclamation Board ("Board"), the entire process could take more than 180 days. The Federal rules applicable to such situations (30 CFR 775.11) allow continuation of mining only where the operator is granted temporary relief. Accordingly, the Secretary conditioned his approval of the Colorado program on the submission of further amendments to require that applications for renewal be submitted one year prior to expiration, or the submission of other program modifications to resolve this problem.

At a June 30, 1986 meeting attended by representatives of the Division, OSMRE's Albuquerque Field Office, and OSMRE's Division of State Program Assistance, Colorado pointed out that CRS 34-33-109(7)(a) allows only the Board to deny renewal applications; therefore, there is no administrative review process and the condition is moot. By letter dated August 14, 1986, OSMRE agreed that, if this strict interpretation of the statutory language was correct and affirmed by a legal opinion provided by the State, then the condition as such would cease to be relevant. However, the Federal regulations at 30 CFR 774.15(f) require that any person having an interest which is or may be adversely affected by the regulatory authority's decision have the right to both administrative and judicial review. The State rules at 2 C.C.R. 407-2, 2.08.5(3)(e) provide this right only for decisions rendered by the Division, not those made by the Board. Accordingly, the letter required that Colorado clarify how it would revise its program to be no less effective than the Federal rules.

In its response of December 22, 1986, Colorado submitted an opinion prepared by an assistant attorney general within the Office of the State Attorney General affirming that only the Board has the legal authority to deny permit renewal applications (Administrative Record No. CO-310). Since, under the Colorado program, the Board receives all applications for administrative review and conducts all administrative hearings, a decision of the Board constitutes final agency action from which there is no administrative appeal.

The opinion further states that the absence of any provisions for administrative review of a Board decision denying an application for permit renewal renders the State program more stringent than the Federal requirements since decisions approving permit renewal applications are still subject to administrative review and since the standards for judicial review of the decisions of Colorado

administrative agencies [CRS 24–4–106(7)] are stricter than these applicable to administrative reviews. The judicial hearing authority may reverse an administrative decision only where there is a clear error in the application of the laws to the facts established in the administrative record. By contrast, an administrative hearing authority is not so limited and may find facts *de novo*. The Federal regulations at 30 CFR 730.11(b) provide that any State law or regulation which provides for more stringent land use and environmental controls and regulations of coal exploration and surface coal mining and reclamation operations than do SMCRA and the Federal regulations shall not be construed to be inconsistent with Federal requirements.

Condition "oo"

This condition concerns the circumstances under which the Division has the authority to cease underground mining operations when they create an imminent danger to persons. Section 516(c) of SMCRA requires the regulatory authority to suspend underground coal mining under urbanized areas and adjacent to industrial or commercial buildings, major impoundments or permanent streams if an imminent danger to the inhabitants exists. The Colorado statute at CRS 34–33–121(3) requires that the Division order such closures after consultation with the operator and the Division of Mines, but only if the mining activities are in violation of CRS 34–29–125 (water control in steeply pitching veins), 34–29–128 (barrier pillars at property lines) or 34–48–102 (mining under buildings), or are adjacent to perennial streams. The Colorado regulations at 2 CCR 407–2, 4.20.4(4) contain provisions similar to the statutory language, but they also (1) extend protection to major impoundments, (2) do not require that the operator first be found in violation of one of the three provisions cited in the State statute, and (3) allow a waiver of the consultation requirement.

Previous discussions of this issue have centered on the "priority of right" exception provided by CRS 34–48–102. As discussed in Finding 4(i)(v) of the December 15, 1980 **Federal Register** notice approving the Colorado program (45 FR 82192), the Secretary conditioned his approval on the future submission of a proposed program amendment disallowing any exception to the requirement that underground mining be ceased where it creates an imminent danger to persons. In subsequent correspondence, Colorado maintained that (1) the priority of right exception provided by CRS 34–48–102 deals only with liability for surface property damage and does not prevent the State from prohibiting mining where an imminent danger to personal safety exists (letter of May 26, 1983, from David Shelton to Robert Hagen), and (2) CRS 34–48–102 applies only to noncoal mines (letter of May 20, 1986, from David Getches to Jed Christensen). In addition, as noted above, the Colorado regulations at 2 CCR 407–2, 4.20.4(4) do not require that the operator first be found in violation of CRS 34–48–102 before the Division can order closure of the mine.

Accordingly, by letter of August 14, 1986, OSMRE notified Colorado that, if it would clarify by legal certification that State rule 4.20.4(4) is not limited by CRS 34–33–121(3), i.e., that the Division does not have to first find an operator in violation of one of the three cited statutory provisions prior to issuing a cessation order, condition "oo" would be removed. In response, on January 26, 1987, Colorado submitted an opinion prepared by the Office of the State Attorney General (Administrative Record No. CO–316) concluding that Rule 4.20.4(4) was indeed not limited by CRS 34–33–121(3). As stated in the opinion, the Division is required, pursuant to CRS 34–33–123(1), to order cessation of mining where any operator is in violation of any requirement of Article 33 or any permit condition, which condition, practice or violation creates an imminent danger to the health and safety of the public. This statutory language provides adequate basis for Rule 4.20.4(4). The opinion further states that the language of CRS 34–33–121(3) merely adds or explains additional statutory requirements dealing with environmental protection and public safety beyond the comprehensive protection standards in the enforcement provisions of CRS 34–33–123(1), and that it would therefore be logically inconsistent to interpret CRS 34–33–121(3) as limiting Rule 4.20.4.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comment on whether the two legal opinions submitted by Colorado provide sufficient basis for the removal of the conditions placed on the approval of the Colorado program at 30 CFR 906.11 (p) and (oo). If the opinions are deemed adequate, they will become part of the Colorado program and the Secretary will remove the conditions.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than Albuquerque, New Mexico will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by the close of business on April 13, 1987. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. A summary of the meeting will be included in the Administrative Record.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the legal opinions may request a meeting at the OSMRE office listed under **"ADDRESSES"** by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."**

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

IV. Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and

Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of the Executive Order 12291 for actions directly related to approval of conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 906

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: March 23, 1987.

James W. Workman,

Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 87-6754 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 917

Public Comment and Opportunity for Public Hearing on a Modification to the Kentucky Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of certain program amendments submitted by the Commonwealth of Kentucky to modify the Kentucky permanent program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendments were submitted in response to requirements codified at 30 CFR 917.16(d) in an August 27, 1986 **Federal Register** notice (51 FR 30486). The amendments pertain to stream buffer zones and to backfilling and grading of underground mine face-up areas.

This notice sets forth the times and locations that the Kentucky program and the proposed amendments are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program elements, and the procedures that will be followed regarding the public hearing.

DATES: Written comments not received on or before April 27, 1987 will not necessarily be considered.

If requested, a public hearing on the proposed modifications will be held on April 21, 1987 beginning at 10:00 a.m. at the location shown below under **"ADDRESSES."**

ADDRESSES: Written comments should be mailed or hand delivered to: W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504; Telephone: (606) 233-7327.

If a public hearing is held, its location will be: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40504.

FOR FURTHER INFORMATION CONTACT: W. Hord Tipton, Director, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504; Telephone: (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Kentucky program, the proposed modifications to the program, a listing of any scheduled public meetings and all written comments received in response to this notice will be available for review at the OSMRE Offices and the Office of State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

Office of Surface Mining Reclamation and Enforcement, Room 5315, 1100 "L" Street, NW., Washington, DC 20240.

Bureau of Surface Mining Reclamation and Enforcement, Capitol Plaza Tower, Third Floor, Frankfort, Kentucky 40601.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Lexington, Kentucky Field Office, will not necessarily be considered and included in the Administrative Record for the final rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by the close of business ten working days before the date of the hearing. If no one requests to comment at the hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Submission of written statements at the time of the hearing is requested and will greatly assist the transcriber.

Submission of written statements in advance of the hearing will allow OSMRE officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment, have been heard.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the OSMRE office listed under **"ADDRESSES"** by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."**

All such meetings are open to the public and if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Background on the Kentucky State Program

On December 30, 1981, Kentucky resubmitted its proposed regulatory program to OSMRE. On April 13, 1982, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary conditionally approved the program. The approval was effective upon publication of the notice of conditional approval in the May 18, 1982 **Federal Register** (47 FR 21404-21435).

Information pertinent to the general background, revisions, modifications, and amendments to the proposed submission, as well as the Secretary's findings, the disposition of comments

and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1982 **Federal Register** notice. Subsequent actions concerning the conditions of approval and program amendments are identified in 30 CFR 917.11, 917.15, 917.16 and 917.17.

III. Submission of Program Amendments

On February 27, 1987, the Kentucky Natural Resources and Environmental Protection Cabinet (NREPC) submitted to OSMRE, pursuant to 30 CFR 732.17, certain revisions to the Kentucky regulatory program. The revisions are intended to address the required amendments at 30 CFR 917.16(d) that were codified in a **Federal Register** notice on August 27, 1986 (51 FR 30486). In that notice the Director required that, by February 27, 1987 Kentucky submit proposed amendments: "to provide that, in addition to the limitations imposed by 405 KAR 16:080 section 2(3) and 405 KAR 18:080 section 2(3), no exemptions to channel restoration requirements for intermittent and perennial streams shall be approved unless the NREPC finds that the environmental resources of the stream will not be adversely affected;" and to delete 405 KAR 18:190 section 2(8)(c) and 405 18:190 section 2(9). The proposed Kentucky amendments are listed briefly below.

1. Kentucky proposes to amend 405 KAR 16:060 and 18:969 section 11 subsection (1) to provide that the NREPC may authorize mining closer than 100 feet to, or through, intermittent or perennial streams only upon making certain specified findings concerning applicable water quality standards, significant long-term detrimental effects on water quality and quantity and other valuable environmental resources, and compliance of stream channel diversions with 405 KAR 16:080 or 18:080. Subsection (2) is amended to require that the area that is not to be disturbed shall be designated a buffer zone, shall be adequately shown in the permit application and shall be marked by the permittee. Subsection (3) specifies information to be included in the permit application. Subsection (4) covers applicability of the amended sections.

2. Kentucky proposes to amend 405 KAR 18:190 to address requirements for backfilling and grading of face-up areas and similar cut slopes created prior to the effective date of SMCRA, in underground mine areas.

Therefore, the Director, OSMRE, is seeking public comment on the adequacy of the proposed program amendments. Comments should specifically address whether the proposed amendments are in accordance with SMCRA and no less effective than its implementing regulations.

IV. Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: March 23, 1987.

James M. Workman,

Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 87-6755 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 944

Public Comment and Opportunity for Public Hearing on Proposed Modifications to the Utah Permanent Regulatory Program.

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: OSMRE is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of a progam amendment submitted by the State of Utah of modify the Utah Permanent Regulatory Program (hereinafter referred to as the Utah program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to civil penalty assessments.

This notice sets forth the times and locations that the Utah program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program elements, and the procedures that will be followed regarding the public hearing.

DATES: Written comments not received on or before 4:00 p.m., April 27, 1987, will not necessarily be considered.

If requested, a public hearing on the proposed modifications will be held on April 21, 1987, beginning at 10:00 a.m., at the location shown under **ADDRESSES.**

ADDRESSES: Written comments should be mailed or hand-delivered to: Mr. Robert H. Hagan, Field Office Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 219 Central Avenue NW., Suite 216, Albuquerque, NM 87102.

The hearing will be held at 355 West North Temple, 3 Triad Center, Suite 350, Salt Lake City, Utah.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hagen, Field Office Director, Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 219 Central Avenue NW., Suite 216, Albuquerque, NM 87102.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Utah program, the proposed amendment to the program a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for review at the OSMRE offices and office of the State Regulatory Authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting the OSMRE Albuquerque Field Office listed under **ADDRESSES.**

Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 219 Central Avenue NW., Suite 216, Albuquerque, NM 87102.

Office of Surface Mining Reclamation and Enforcement, Room 5212A, 1100 L Street NW., Washington, DC 20240.

Utah Division of Oil, Gas and Mining, 355 West North Temple, 3 Triad Center, Suite 350, Salt Lake City, Utah 84180-1203 Telephone: (810) 538-5340.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanation in support of the commenter's recommendations. Comments received after the time indicated under DATES or at locations other than the OSMRE Albuquerque, New Mexico Field Office will not ncessarily be considered and included in the Administrative Record for this proposed rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by the close of business April 21, 1987. If no one requests to comment, a public hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those persons scheduled. The hearing will end after all persons who wish to comment have been heard.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the OSMRE office listed in **ADDRESSES** by contacing the person listed under **FOR FURTHER INFORMATION CONTACT.**

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

III. Background on the Utah State Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program under SMCRA for the regulation of surface coal mining operations in the State (48 FR 5899-5915).

Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Utah program, can be found in the January 21, 1981, **Federal Register** (46 FR 5899-5915). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 944.10, 30 CFR 944.12, 30 CFR 944.15, and 30 CFR 944.16.

III. Discussion of the Proposed Amendment

On February 17, 1987, Utah submitted a proposed amendment to the Utah program for OSMRE's review and approval. The proposed amendment at SMC/UMC 845.15 provides that a penalty for failure to abate a violation will not be assessed for more than 30 days for each violation, after which time, if the violation remained unabated, the Utah Regulatory Authority would appeal such noncompliance to the Utah Board of Oil, Gas and Mining for resolution under 40-10-20(5), 40-10-10(6), 40-10-22(1)(d), 40-10-22(2) of the State Act or by "other appropriate means".

The above-referenced provisions of the State Act provide authority for criminal penalties against the permittee, civil and criminal penalties against individual officers or agents of a corporate permittee, injunctions or court orders, and permit suspension or revocation. The phrase "or by other appropriate means" as used under SMC/UMC 845.15(b)(2) is not defined.

The full text of the proposed program amendment submitted by Utah is available for public inspection at the locations listed under Availability of Copies, or a copy of the proposed amendment can be obtained as described under the same section.

The Director is seeking public comment on the adequacy of this proposed amendment. If OSMRE finds the amendment in accordance with SMCRA and no less effective than the Federal regulations, it will be approved and become part of the Utah program.

IV. Procedural Matters

1. Compliance with National Environmental Policy Act:

The Secretary has determined that, pursuant to section 702[d] of SMCRA, 30 U.S.C. 1292[d], no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act: On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act: This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 944

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: March 23, 1987.

James W. Workman.

Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 87-6756 Filed 3-26-87; 8:45 am]
BILLING CODE 4310-05-M

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30 CFR Part 946

Public Comment Period and Opportunity for Public Hearing on Proposed Amendments to Virginia Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of several proposed amendments to the Virginia permanent regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments include (1) provisions to allow alternate water quality standards for the remining of previously mined areas, (2) regulatory revisions to limit the information required of self-bond applicants to that

information authorized by statute, and (3) regulatory revisions to the pool bond regulations to allow consideration of partial bond release after a minimum of one rather than two growing seasons after reclamation.

This notice sets forth the times and locations that the Virginia program and proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments relating to Virginia's proposed modification of its program not received on or before 4:00 p.m. on April 27, 1987 will not necessarily be considered in the decision process. A public hearing on the Adequacy of the amendments will be held upon request on April 21, 1987. Any person interested in making an oral or written presentation at the public hearing should contact Mr. William R. Thomas at the Big Stone Gap Field Office by the close of business on or before April 13, 1987. If no one has contacted Mr. Thomas to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person has so contacted Mr. Thomas, a public meeting may be held in place of the hearng. If possible, a notice of the meeting will be posted in advance at the locations listed under **"ADDRESSES"**.

ADDRESSES: Written comments and requests for a hearing should be mailed or hand-delivered to: Office of Surface Mining Reclamation and Enforcement, Attention: Virginia Administrative Record, P.O. Box 626, Room 214, Powell Valley Square Shopping Center, Route 23, Big Stone Gap, Virginia 24219.

Copies of the proposed amendments, the Virginia program, the Administrative Record on the Virginia program and a listing of any scheduled public meetings and all written comments received in response to this notice will be available for review at the OSMRE office and the office of the Virginia Division of Mined Land Reclamation listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting the OSMRE Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5315, 1100 "L" Street, NW., Washington, DC 20240, Telephone: (202) 343-5492

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Box 626, Room 214, Powell Valley Square Shopping Center, Route 23, Big Stone Gap, Virginia 24219, Telephone: (703) 523-4303

Virginia Division of Mined Land Reclamation, 622 Powell Avenue, Big Stone Gap, Virginia 24219, Telephone: (703) 523-2925

FOR FURTHER INFORMATION CONTACT: Mr. William T. Thomas, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Room 214, Powell Valley Square Shopping Center, Route 23, Big Stone Gap, Virginia 24219; Telephone: (703) 523-4303.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval, can be found in the December 15, 1981 **Federal Register** (46 FR 61085-61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13 and 946.15.

II. Submission of Amendments

By letter dated January 16, 1987 (Administrative Record No. VA-591), Virginia submitted several proposed amendments to its Coal Surface Mining Reclamation Regulations (§ 480-03-19). These amendments include:

(1) Provisions allowing alternate National Pollutant Discharge Elimination System water quality standards to be set for operations proposing to remine previously mined areas with existing pollutional discharges. These provisions would also authorize release of bond if the remined area is reclaimed and water quality is improved, or if total pollutional loading is not increased and other environmental benefits are realized.

(2) Revisions to § 480-01-19.801.13 to limit the information required of applicants for underground mine permits proposing self-bonds under the Coal Surface Mining Reclamation Fund to only that information authorized by § 45.1-270.3(e) of the Code of Virginia, as set out in an opinion of the Virginia Attorney General dated October 18, 1984.

(3) Revisions to § 480-03-19.801.17(a) to allow requests for partial bond releases for operations participating in the Coal Surface Mining Reclamation Fund (Virginia's alternative pool bonding system) to be considered after a minimum of one growing season after reclamation instead of the two growing seasons now required.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comment on whether the amendment proposed by Virginia satisfy the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendments are deemed adequate, they will become part of the Virginia program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than Big Stone Gap, Virginia will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by the close of business on April 13, 1987. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. A summary of the meeting will be included in the Administrative Record.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under **"ADDRESSES"** by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from section 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 946

Coal mining intergovernmental relations Surface mining, Underground mining.

Dated: March 23, 1987.

James W. Workman,

Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 87-6757 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[OW-4-FRL-3175-6]

Ocean Dumping; Proposed Designation of Sites

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate all of the existing dredged material disposal site offshore Savannah, Georgia, and part of existing dredged material disposal sites offshore Charleston, South Carolina, and Wilmington, North Carolina, as EPA approved ocean dumping sites in the Atlantic Ocean for the dumping of dredged material from these three harbor areas, respectively. These site designations are being proposed for an indefinite period of time, but are subject to continued monitoring in order to insure that adverse environmental impacts do not occur. The decision to reduce the size of the existing Charleston and Wilmington sites is based on projected future dredged material disposal volumes and the facilitation of monitoring. In addition EPA proposes to approve, for a four-year period following final designation, the entire existing Charleston site for use only for dredged materials from the Charleston Harbor Deepening project. This action is necessary to provide acceptable ocean dumping sites for the current and future disposal of dredged material.

DATE: Comments must be received on or before May 11, 1987.

ADDRESSES: Send comments to: Sally S. Turner, Marine and Estuarine Branch, Water Management Division, EPA, 345 Courtland Street NE. Atlanta, GA 30365.

The file supporting these proposed site designations is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street SW., Washington, DC

EPA Region IV, 345 Courtland Street, NE., Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Chris Provost, 404/347-2126.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 et seq. ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. These proposed site designations are within Region IV and are being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by promulgation in this Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*) and was extended on August 19, 1985 (50 FR 33338). That list established the existing Savannah, Charleston, and Wilmington sites as interim sites and extended their period of use until July 31, 1988.

B. EIS Development

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into agency decision-making processes careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EIS's in connection with ocean dumping site designations such as this. [See 39 FR 16186 (May 7, 1974).]

EPA has prepared a draft and final EIS entitled "Environmental Impact Statement (EIS) for Savannah, GA, Charleston, SC and Wilmington, NC Ocean Dredged Material Disposal Sites Designation." On October 28, 1983, a notice of avialability of the final EIS for public review and comment was published in the **Federal Register** (48 FR 49918). The public comment period on the final EIS closed November 28, 1983. No comments were received on the Final EIS during the comment period. Anyone desiring a copy of the EIS may obtain one from the address given above.

The action discussed in the EIS is final designation for continuing use of the ocean dredged material disposal sites near Savannah, GA, Charleston, SC, and Wilmington, NC. The purpose of the proposed action is to provide environmentally acceptable locations for the disposal of materials dredged from the Savannah, Charleston, and Wilmington Channel Systems when ocean disposal is found to be necessary.

for some dredged material. The need for ocean disposal is determined on a case-by-case basis as part of the process of issuing permits for ocean disposal.

The EIS discusses the need for the action and examines ocean disposal site alternatives to the proposed action. The EIS presents the information needed to evaluate the suitability of ocean disposal areas for final designation and is based on one of a series of disposal site environmental studies. The environmental studies and final designation process are being conducted in accordance with the requirements of the Act, the Ocean Dumping Regulations, and other applicable Federal environmental legislation.

C. Coastal Zone Management and Endangered Species Coordination

The States of North Carolina and South Carolina have concurred with EPA's determination that these site designations are consistent with their approved State Coastal Zone Management Plans. The State of Georgia does not have such a plan. The National Marine Fisheries Service and the U.S. Fish and Wildlife Service have concurred with EPA's conclusion that the designation of these disposal sites will not affect the endangered species under their jurisdictions.

D. Proposed Site Designation

Savannah, Charleston, and Wilmington are the major ports of Georgia, South Carolina, and North Carolina, respectively, and support large shipping commerce (with volumes of 11, 9.5, and 7.4 million tons, respectively, in 1978). Consequently, maintenance of these ports for navigation is vital to the economy of the Southeastern United States.

Each year the entrance channels to Savannah, Charleston, and Wilmington Harbors must be dredged because natural processes cause them to shoal. Approximately one million cubic yards of sediments are dredged annually from the entrance channels to each harbor and dumped in ocean disposal sites adjacent to the respective dredging areas. Disposal at these sites shall be limited to dredged material from the three respective Harbors. However, these materials must be shown to meet the appropriate requirements of EPA's Ocean Dumping Regulations. The existing disposal sites were used for many years prior to their interim designation in 1977. Dredging may occur at any time of the year at the three harbors.

The proposed action is for the final designation of the existing Savannah sites and two sites of reduced area within the existing Charleston and Wilmington dredged material disposal sites. The entire existing Charleston site will receive materials from the proposed deepening project for a period of four years after final designation. The Savannah site and reduced Charleston and Wilmington sites will receive operation and maintenance dredged material from the respective harbors for an indefinite period. The decision to reduce the size of the Charleston site for indefinite designation (by approximately 75 percent of the existing site's area) and the Wilmington site (by approximately 90 percent of the existing site's area) is based on past and anticipated dredging activities in the respective areas. EPA believes that the proposed reduced size of each is sufficient for the expected disposal volumes, and reducing the designated area will facilitate monitoring activities. In addition, the proposed reduction in size of these sites increases their distances from shore which reduces the associated potential impact to beaches or amenity areas.

Boundary coordinates for the Savannah, Charleston and Wilmington sites for which indefinite designation is proposed are as follows:

Savannah

31° 55' 53" N., 80° 44' 20" W.;
31° 57' 55" N., 80° 46' 48" W.;
31° 57' 55" N., 80° 44' 20" W.;
31° 55' 53" N., 80° 46' 48" W.

Charleston

32° 40' 27" N., 79° 47' 22" W.;
32° 39' 04" N., 79° 44' 25" W.;
32° 38' 07" N., 79° 45' 03" W.;
32° 39' 30" N., 79° 48' 00" W.

Wilmington

33° 49' 30" N., 78° 03' 06" W.;
33° 48' 18" N., 78° 01' 39" W.;
33° 47' 19" N., 78° 02' 48" W.;
33° 48' 30" N., 78° 04' 18" W.

Boundary coordinates of the Charleston Harbor deepening site (i.e. the entire existing Charleston site which will be used only to receive dredged materials from the proposed Charleston Harbor deepening project) are:

32d 38' 06" N., 79d 41' 57" W.;
32d 40' 42" N., 79d 47' 30" W.;
32d 39' 04" N., 79d 49' 21" W.;
32d 36' 28" N., 79d 43' 48" W.

E. Regulatory requirements

Five general criteria are used in the selection and approval for continuing use of ocean disposal sites. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations due to the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, sites that have been historically used as well as locations off the Continental Shelf are preferred. If at any time disposal operations at a site cause unacceptable adverse impacts, further use of the site will be restricted or terminated. The proposed sites conform to the five general criteria. However, there are no existing historically used sites beyond the edged of the Continental Shelf in these areas. EPA has determined, based on the information presented in the EIS, that it is unlikely that any environmental benefit would be obtained by selecting a site off the Continental Shelf instead of those proposed in these actions.

The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations, and § 228.6 lists eleven specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

EPA established these 11 factors to constitute an environmental assessment of the impact of the site for disposal. The criteria are used to make comparisons between the alternative sites and are the bases for final site selection. The characteristics of the existing sites are reviewed below in terms of these eleven factors.

1. Geographical position, both of water, bottom topography, and distance from coast. [40 CFR 228.6(a)(1).]

The boundary coordinates of the sites are given above.

The existing Savannah site is approximately 3.7 nautical miles (nmi) offshore, has an average depth of 11.4 meters and an area of 4.26 square nmi. The sandy bottom slopes gently to the east; bottom topography is characterized by large naturals and ridges.

The reduced area Charleston site is approximately 5 nmi offshore, has an average depth of 11 meters and an area of 3 square nmi. The bottom slopes gently to the southeast, and bottom sediments are composed of fine- to coarse-grained sand with shell fragments. The reduced area Charleston site is a rectangle, about 2.7 by 1.1 nmi, centered in the existing Charleston site, with the longest side approximately parallel to the entrance channel.

The entire existing Charleston site includes an area of 11.8 square nmi and has an average depth of about 11 meters. It is about 3.7 nmi offshores.

The boundary coordinates listed in the Final EIS for the reduced area Wilmington site include an area with 3 nmi of shore. The Corps of Engineers has indicated that the area within the 3 nmi limit is not being used, is not needed for future projects and therefore

should not be concluded in the final designation. The coordinates for the Wilmington site listed above for final designation reflect this change. The area described is the same as the site in the Final EIS with the exception of the area within 3 nmi from shore. The reduced area Wilmington site then is 3 nmi from shore, has an average depth of 13 meters and an area of 2.3 square nmi. The predominantly smooth sandy bottom slopes to the south. The reduced area Wilmington site is approximately square within the center of the existing Wilmington site.

2. Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases. [40 CFR 228.6(a)(2).]

Breeding, spawning, nursery, and passage activities of commercially important finfish and shellfish occur on a seasonal basis in the vicinity of each of the existing and reduced area sites. However, the most extensive breeding, spawning, and nursery activities occur either in offshore waters or in adjacent estuarine waters that is offshore or inshore of the dredged material disposal sites. In addition, the total area of the disposal sites represents only a small portion of the total breeding, spawning, and nursery areas along the southeast Atlantic coast for these species. The disposal sites are within passage areas for anadromous adult fish and larval finfish and shellfish migrating from the ocean to the estuary. However, these passage areas are not confined or geographically limited to areas coinciding with the disposal sites. The intensity of passage activities varies seasonally with peaks in spring and early fall for most commercially important finfish and shellfish species.

The impact of previous dumping on breeding, spawning, nursery, and passage activities are likely to be minimal for the reasons stated above. In addition, due to the mobility of adult finfish, it is likely that dumping will not have a significant impact on either anadromous or pelagic species. In general, increases in suspended sediment concentrations following dumping are localized and are not expected to cause adverse long-term impacts. Consequently, interference of suspended sediments on the respiratory structures of fish are minimal. Some entrainment of larval fish within the disposal plume may occur, causing a minor detrimental effect within these disposal sites; however, the population will not be adversely affected.

The existing and reduced area sites are not close to hard-bottom areas; therefore, it is improbable the dredged material disposal would interfere with the habitats and breeding areas of any hard-bottom biota. Similarly, the disposal sites are three to five nautical miles offshore and prevailing currents move away from shore; therefore, dumping should have little effect on sediment accumulation on local beaches.

3. Location in relation to beaches and other amenity areas. [40 CFR 228.6(a)(3).]

All four sites are within 3–5 nmi of adjacent beaches and estuaries but are not close to known hard-bottom areas. Longshore, tidal, and storm-generated currents may disperse dredged materials dumped at these sites. Net sediment transport at Savannah and Charleston is southwestward, paralled to shore. Therefore, dredged material disposed of at the Savannah and Charleston sites would not be expected to move toward any beaches or amenity areas adjacent to the disposal sites.

Sediment transport at Wilmington is eastward and away from adjacent beaches. Therefore, it is unlikely that appreciable quantities of dredged material will be transported into beaches or hard-bottom areas. However, release of dredged sediments during the incoming tide may result in transport of a minimal amount of the sediments toward the mouth of the adjacent estuaries. The majority of materials released during the incoming tides would be expected to sink to the bottom before reaching any beaches or amenity areas adjacent to the disposal sites. Beaches adjacent to the Wilmington disposal sites are occasionally used as nesting areas by endangered loggerhead turtles. For the reasons stated above, the infrequent and localized disposal of dredged material is not expected to adversely impact the food source, passage or nesting areas of the loggerhead turtles.

In addition, no apparent adverse impacts to beaches have been associated with the previous dredged material disposal at these sites. Thus, use of the sites should not adversely affect recreation, coastal development, or other uses of the shoreline.

4. Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the waste, if any. [40 CFR 228.6(a)(4).]

Dredged material dumped in ocean disposal sites must satisfy the criteria for ocean dumping permits specified in EPA's Ocean Dumping Regulations (40 CFR Part 227).

Dredged sediments from entrance channels to the three respective harbors are the only materials historically dumped at the these sites. The dredged materials have been predominantly fine to very fine-grained sands, with some silt and shell fragments, and in some cases (such as the Charleston entrance channel) with signifiant quantities of silt and organic content. Additionally, materials from other portions of these harbors with potentially high silt, clay, and organic content may be placed in the site in the future if deemed suitable after application of ocean disposal criteria to the disposal action pursuant to EPA's Ocean Dumping Regulations. Dredged materials will be transported to each of the sites by hopper dredges equipped with a subsurface release mechanism and will not be packaged in any manner. Annual disposal volumes currently average one million cubic yards at each site.

Future dredged material volumes will exceed present volumes if navigational safety of the entrance channels necessitates expanded dredging operations. For example, the Charleston Corps of Engineers is currently considering a plan to expand and deepen navigation channels within Charleston Harbor. This plan has recently been updated in a memorandum to the record (November 27, 1985) by Steve Morrison of the Corps of Engineers, Charleston District. Some or all of the estimated 18.4 million cubic yards of dredged material from the expansion project could be dumped over several years at the existing Charleston site which is being proposed for designation for this purpose. Initially about 8.8 million cubic yards of material from the harbor entrance deepening would be disposed of at the existing site over a 12–18 month period. This operation may be followed by disposal of as much as 5.1 million cubic yards of inner harbor sediment from deepening turning basins for over as much as a three-year period. The dredged material from the inner harbor may be exposed to more sources of pollution than the sediments from the channel entrance currently disposed at the disposal site; however, initial bioassay of this material completed as part of the Supplement to the Project EIS in April 1980, indicate that the materials is not toxic to the marine organisms tested. Finally, an additional volume of approximately 4.5 million cubic yards of entrance harbor expansion material similar to sediments at the disposal site may be disposed when conditions warrant over a one-year period.

The dredged material from the inner harbor is also finer-grained than the sediments at the disposal site. This change in sediment characteristics is not expected to significantly modify the

benthic community beyond the disposal site. However, if the dredged material to be disposed is significantly different in grain size or organic content than material disposed of in the past, monitoring of potential impacts on fishery or other aminity areas would be necessary. As part of the permitting process, material to be disposed at the Charleston site will be evaluated on a case-by-case basis to determine acceptability for ocean disposal. All of these three components of harbor expansion activities are contingent upon Federal funding and may not occur in immediate succession of each other.

Previous disposal volumes of dredged material at the Charleston site have been limited to about one million cubic yards per year. The volumes associated with the deepening project will be significantly larger. The anticipated disposal management strategy is to limit the area to which dredged material is placed so that acute impacts would be similarly restricted in the site and sediment dispersion (or mounding) can be detected. Also, the limited dumping area within the site is more amenable to monitoring benthic community impacts and changes in substrate composition. The area of disposal within the designated site could be increased if significant mounding or other factors dictate.

The impact of the largest volume of dredged material associated with the harbor deepening phase of the project is not expected to cause significant impacts to the site. If this volume of material were spread evenly over the site, it would add a surficial layer about six inches deep.

5. Feasibility of surveillance and monitoring. (40 CFR 228.69(a)(5))

The U.S. Coast Guard is not currently performing surveillance at the three sites. However, due to the proximity of the sites to shore, surveillance using shipriders or aircraft overflights would not be difficult. Monitoring is not a problem because the sites are close to shore and in shallow water. During annual dredging the Corps of Engineers is monitoring and will continue to monitor the entrance channels and dumpsite bathymetry to identify shoaling or mounding areas. If movement of material appears likely to impact a known resource or amenity, appropriate monitoring of the specific resource or amenity will be undertaken. In addition, bioassays and bioaccumulation analyses of dredged materials to be disposed using representative marine organisms will ensure that the dredged material does not adversely affect the marine biota.

Bioassay and bioaccumulation analyses and appropriate monitoring of both the site sediment and dredged material will be determined on a case-by-case basis by EPA and the Corps of Engineers, and these requirements will be included as conditions of disposal. If evidence of significant adverse environmental effects is found, EPA will take appropriate steps to limit or terminate dumping at the sites.

6. Dispersal; horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any. (40 CFR 228.6(a)(6))

Surface and bottom current velocities are variable, depending on the strengths of the tidal current, wind and wave current, and river discharge components. Savannah and Charleston longshore currents flow southwestward across the respective disposal sites with average velocities of 13.5 centimeters per second. During dredged material disposal and shortly thereafter, the direction and magnitude of currents will likely have a major effect on sediment dispersal; however, long-term transport will typically be southwestward, away from the mouths of the respective channel entrances. In addition, wave action at Charleston has often been shown to reach the bottom, thereby allowing greater dispersal of the disposed material, into the southwesterly transport pattern. Despite the disposal of approximately one million cubic yards of dredged material annually for many years at the existing Charleston site, no shoaling has been detected. Surface currents at the existing Wilmington site usually flow westward across the mouth of the Cape Fear River, while net eastward-flowing bottom current adjacent to Cape Fear have been indicated. Therefore, while some finer-grained materials are transported westward across and possibly into the lower Cape Fear estuary, the majority of dredged sediment, which is sand-sized, will sink rapidly within the site. In addition, winter storms can be expected to disperse accumulated sediments and transport them in a southwesterly direction at Savannah and Charleston, and an easterly direction at Wilmington.

7. Existence and effects of current and previous discharges and dumping in the area (including cumulative effects). (40 CFR 228.6(a)(7))

Dredged material disposal at the three sites has occurred for many years and has produced only minor and reversible effects as evidenced by: Temporary increases above ambient suspended sediment concentrations, temporary localized mounding, smothering of some benthic organisms, and possible release of other trace constituents into the overlying waters.

Ambient concentrations of suspended particulates are high and seasonally variable due to river discharge and resuspension of nearshore bottom sediments. Because of high background levels, increases in turbidity from dredged material disposal are minimal. Consequently, adverse impacts on primary productivity or inhibitive effects on gills or feeding structures of marine organisms are expected to be minor. No persistent impacts of dumping on the concentrations of trace metals or organohalogens could be detected in waters overlying the respective disposal sites during site monitoring.

Discrete mounds of dumping sediments are dispersed during winter storms which precludes accumulation and eventual shoaling within the disposal sites. Persistent or cumulative effects of dumping on sediment texture or concentrations of trace metals or organics in sediments were not detected during site monitoring.

Smothering of benthic organisms is probably restricted to sediment dwellers such as tube-dwelling polychaete worms and many species of amphipod crustaceans. Specific recolonization rates by benthic organisms are unknown and may depend on sediment texture, larval recruitment, and burrowing capabilities of buried organisms.

The short-term impacts on the benthic community, the only community likely to be adversely affected due to the increased loading of dredged material from the Charleston Harbor deepending project, will be acute and severe within the existing site. However, the ability of these organisms to recolonize in similar sediments indicates that there will be no long-term impacts on the local marine food web within or beyond the site boundaries.

Motile finfish and shellfish generally are capable of escaping from released sediments. No evidence of any significant adverse impacts on macrofaunal or nekton abundances due to previous dredged material disposal was apparent during site surveys.

Results of bioassay and bioaccumulation tests using Charleston and Wilmington dredged sediments suggest that releases of trace constituents during dumping are neither directly toxic to marine organisms nor accumulated in tissues.

Bioassay tests were not conducted at the Savannah site. However, site water column analyses were performed and showed that the concentrations of

dissolved and particulate trace metals including arsenic, beryllium, chromium, copper, nickel, lead, selenium, and zinc were consistently low (below EPA marine water quality criteria) and that dissolved mercury and cadmium were comparable to levels reported from the southeast Continental Shelf waters. Analysis of Savannah site sediments revealed levels of these trace metals which were within the ranges reported for the general South Atlantic Bight. Elutriate tests conducted on this sediment showed no substantial transfer of metals from the sediment to the water column. Tissues obtained from one species of crab and two species of shrimp resident to the Savannah site showed low levels of trace metals (mercury, cadmium, lead) and persistent chlorinated organics (PCBs and DDE). Based on these findings, it is unlikely that Savannah dredged material is either directly toxic to marine organisms or contributes significant amounts of contaminants to the ecosystem.

8. Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean. [40 CFR 228.6(a)(8).]

Extensive commercial shipping, commercial and recreational fishing, and other recreational, cultural, and scientific activities occur in nearshore areas throughout the South Atlantic Bight. Commercial and recreational fishing activities are generally concentrated in estuaries, areas within three nautical miles of shore and in the immediate vicinity of live-bottom areas. With the exception of the existing Wilmington site, fisheries resources within the existing and alternative sites are sparse, and dredged material disposal will not significantly affect adjacent nearshore fisheries. Nearshore areas within and adjacent to the Wilmington site are used by commercial shrimp fisheries. The most extensive fishing occurs within three nautical miles of shore; however, the shrimp fishing grounds extend up to 20 nautical miles from shore. The reduced Wilmington site is three nautical miles offshore; thus, some interferences with commercial shrimping may occur. However, the disposal site represents only a small portion of the total fishing area.

These disposal sites are adjacent to major shipping channels; however, their intermittent use should not impede commercial shipping or aggravate congestion within the shipping channel. Comments received on the draft EIS from both the Office of the Secretary of the U.S. Department of Transportation and the U.S. Coast Guard concur with the conclusions reached regarding commercial shipping impacts. The hopper dredges used in maintaining the entrance channels to Savannah, Charleston, and Wilmington Harbors do not present the same potential navigational hazard as pipeline or bucket dredges because there is no need to anchor lines. Therefore, the increased use of dredges associated with the Charleston Harbor deepening project is not expected to significantly impede or aggravate navigation. Mineral extraction, desalination, and mariculture activities do not occur within or in close proximity to the disposal sites. Recreational and scientific resources are plentiful throughout the nearshore region and are not influenced by the physical location of these near-shore disposal sites. Consequently, dumping at the three sites does not significantly interfere with other beneficial uses of the ocean.

9. The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys. [40 CFR 228.6(a)(9)]

The existing water quality is primarily affected by discharges from coastal rivers and anthropogenic inputs into nearshore waters. River discharges contribute appreciable quantities of suspended particulates, and smaller quantities of nutrients and trace pollutants, to nearshore waters.

Phytoplankton near the Wilmington site consist primarily of diatoms, whose abundance and species diversity vary seasonally. High standing stocks and low species diversity occur in summer, whereas relatively low standing stocks and high diversity occur in winter. The phytoplankton at the Savannah and Charleston sites have not been investigated but, due to their oceangraphic similarity and physical proximity to the Wilmington site, they would be expected to support similar phytoplankton populations.

Copepods, larval crustaceans, and molluscs are the dominant zooplanktons at Wilmington. Dominant organisms are most abundant in summer and least abundant in fall and spring. Zooplankton at the Savannah and Charleston sites have not been previously sampled but for the same reason as above would be expected to be similar to the zooplankton of the Wilmington site.

Benthic communities near the three sites are characterized by low abundance of diverse organisms, particularly infaunal polychaete and amphipod and demersal fish such as drums, sea robins and flatfish. The diversity and biomass of benthic communities beyond this site boundaries exhibit considerable spatial and temporal variability; thus, seasonal patterns are typically unpredictable.

Site monitoring has not detected significant differences in water quality or biological characteristics between areas within or adjacent to the existing sites. Therefore, dreged material disposal at the existing sites does not appear to significantly alter existing water qualtiy or ecology. The proposed sites are either the existing historic use sites or smaller portions within the existing sites. Therefore, adverse impacts are not expected due to dredge material disposal at the proposed sites.

As discussed above, the benthic communityis the only community likely to be adversely affected in the short-term due to the increased sediment loading within the site associated with the Charleston Harbor deepening project. However, due to the natural recolonization of the benthos in similar sediments, these short-term impacts are not expected to significantly alter the ecology beyond the site boundary.

10. Potentiality for the development or recruitment of nuisance species in the disposal site. [40 CFR 228.6(a)(10)]

Monitoring near these disposal areas has not detected the development or recruitment of nuisance species, and the similarity of dredged material to existing sediment suggest that the development or recruitment of nuisance species at these dumpsites is unlikely. There will be significant increases in dredged material disposal volumes during the Charleston Harbor deepening project. Howerver, the majority of the material from all three stages of the project is projected to be of lower organic content due to the dredging of deeper unimpacted sediment; therefore, nuisance species are not likely to be developed or recruited at the site. Should the results of the sediment characteristics analyses of the channel deepening dredge material indicate otherwise, monitoring of potential impacts of fishery or other ammenity areas may be necessary.

11. Existence at or in close proximity to the site of any significant natural or cultural features of historical importance. [40 CFR 228.6(a)(11).]

A large number of 18th and 19th Century shipwrecks occur within shallow-water regions of the South Atlantic Bight. Numerous charted and uncharted wrecks occur shoreward of the proposed Charleston and Wilmington sites. Several of the Wilmington shipwrecks are being

considered for nomination to the National Register of Historic Places. Ocean dumping at the proposed sites will not affect these shipwercks.

F. Proposed Action

Dredged material disposal has occurred at the proposed sites for the past several years. Recent monitoring associated with the site designation process has not detected any persistent or cumulative changes in the water quality or ecology at the sites. Impacts from dumping have been found to be temporary and restricted to within the site boundary. The near-shore location of the proposed sites facilitates surveillance and monitoring and decreases the impact of sediment texture/chemistry changes resulting from disposal of dissimilar sediments.

The ESI evaluated mid-shelf and shelf-break alternative sites using the general criteria and specific factors contained in the Ocean Dumping Regulations. Dredged material disposal has not occurred previously at the mid-shelf or shelf-break alternative site locations. There are significant dissimilarities between the physical and chemical characteristics of the dredged material sediments and sediments covering the mid-shelf or shelf-break regions. Altering the sediment texture and composition through the addition of finer coastal sediments may have a potential long-term adverse impact on the benthic infauna at the mid-shelf and shelf-break sites. Fishery resources are localized over the mid-shelf and shelf-break regions, especially in the vicinity of hard-botton areas and shelf-break areas. These hard-bottom areas are unique habitats, support several species of commercially and recreationally important finfish, and are sensitive to the effects of dredged material disposal. Thus, use of mid-shelf or shelf-break sites could result in a greater potential for interference with fishing activities. Moreover, use of offshore sites would be restricted to periods of calm weather and sea conditions because the hopper dredges cannot operate in rough seas. In addition, several proposed or active Bureau of Land Management oil and gas lease sites exist in the mid-shelf and shelf-break regions.

In summary, although no site-specific surveys have been conducted at the shelf-break or mid-shelf alternative site areas, their use and geographic proximity to important commercial fishery and industrial use areas make them less suitable for disposal. In addition, the greater potential at these other sites for long-term benthic impact due to the difference in sediment texture and composition supports the destination of the sites that have been historically used.

The final EIS includes the Agency's asssessment of the ten comments received during the comment period on the draft EIS. Comments correcting facts presented in the draft EIS were incorporated in the text and the changes noted in the final EIS. Specific comments which could not be appropriately treated as text changes were responded to point by point in the final EIS, following the letters of comment.

The designation of these proposed dredged material disposal sites as EPA Approved Ocean Dumping Sites is being published as proposed rulemaking. Management authority of these sites will be delegated to the Regional Administrator of EPA Region IV. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the address given above.

It should be emphasized that, if an ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of actual disposal of materials at sea. Before ocean dumping of dredged material at the site may commence, the Corp of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. If a Federal project is involved, the Corps must also evaluate the proposed dumping in accordance with those criteria. In either case, EPA has the right to disapprove the actual dumping, if it determines that environmental concerns under the Act have not been met.

G. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this proposed action will not have a significant impact on small entities since the site designation will only have the effect of providing the site designation will only have the effect of providing a disposal option for dredged material. Consequently this proposal does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently this proposed rule does not necessitate preparation of a Regulatory Flexibility Analysis.

This proposed rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: March 18, 1987.

John T. Marlar,

Acting Regional Administrator.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is proposed to be amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Part 228 is proposed to be amended by removing and reserving paragraph (a)(1)(ii)(C) in § 228.12 and by adding paragraphs (b) (32), (33), (34), and (35) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b)* **

(32) Savannah, GA, Dredged Material Disposal Site—Region IV.

Location:

31°55'53" N., 80°44'20" W.
31°57'55" N., 80°46'48" W.
31°57'55" N., 80°44'20" W.
31°55'53" N., 80°46'48" W.

Size: 4.26 square nautical miles.
Depth: Averages 11.4 meters.
Primary Use: Dredged material.
Period of Use: Continuing use.
Restriction: Disposal shall be limited to dredged material from the Savannah Harbor area.

(33) Charleston, SC, Dredged Material Disposal Site—Region IV.

Location:

32°40'27" N., 79°47'22" W.
32°39'04" N., 79°44'25" W.
32°38'07" N., 79°45'03" W
32°39'30" N., 79°48'00" W.

Size: 3 square nautical miles.
Depth: Averages 11 meters.
Primary Use: Dredged material.
Period of Use: Continuing use.
Restriction: Disposal shall be limited to dredged material from the Charleston Harbor area.

(34) Charleston, SC, Harbor Deepening Project Dredged Material Disposal Site—Region IV.

Location:

32°38'06" N., 79°41'57" W.
32°40'42" N., 79°47'30" W.
32°39'04" N., 79°49'21" W.
32°36'28" N., 79°43'48" W.
Size: 11.8 square nautical miles.
Depth: Averages 11 meters.
Primary Use: Dredged material from the Charleston Harbor deepening project.
Period of Use: Not to exceed four years from the initiation of the Charleston Harbor deepening project.
Restriction: Disposal shall be limited to dredged material from the Charleston Harbor deepening project.

(35) Wilmington, NC, Dredged Material Disposal Site—Region IV.

Location:

33°49'30" N., 78°03'06" W.
33°48'18" N., 78°01'39" W.
33°47'19" N., 78°02'48" W.
33°48'30" N., 78°04'16" W.
Size: 2.3 square nautical miles.
Depth: Averages 13 meters.
Primary Use: Dredged material.
Period of Use: Continuing use.
Restriction: Disposal shall be limited to dredged material from Wilmington Harbor area.

[FR Doc. 87-6712 Filed 3-26-87; 8:45 am]
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GENERAL SERVICES ADMINISTRATION

41 CFR Part 201-38

Proposal To Amend the Federal Information Resources Management Regulation (FIRMR) To Clarify the Policy Regarding Authorized Use of Federal Telecommunications Systems

AGENCY: Information Resources Management Service, GSA.

ACTION: Proposed rule.

SUMMARY: This proposed regulation changes FIRMR provisions regarding permissible and impermissible long distance calls on Federal telecommunications systems by furnishing examples of permissible official business calls and by providing Governmentwide standards to be applied when collecting money from persons making unauthorized use of Federal telecommunications systems. Audits of telephone use have disclosed real abuse; however, narrow interpretations of what constitutes an official call have undermined efforts to eliminate abuse, and are not congruent with good management practice. The intent is to permit Federal workers to make reasonable use of Federal telecommunications systems and at the same time, to guard against abuse of telephone use.

DATE: Comments are due May 26, 1987.

ADDRESS: Comments should be submitted to the General Services Administration (KMPR) Attn: Project 87-14A, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: John J. Landers, Information Resources Management Service, telephone (202) 535-7425 or FTS, 535-7425.

SUPPLEMENTARY INFORMATION: (1) Section 201-38.007 is retitled and revised to furnish clearer policy regarding the use of Federal telecommunications systems. The changes being proposed by this issuance are explained in the following paragraphs.

(a) Section 201-38.007 is restated to clarify what constitutes an official business call.

(b) Section 201-38.007-1 furnishes examples of pemissible offical business calls.

(c) Section 201-38.007-2 cautions against abuse by employees.

(d) Section 201-38.007-3 furnishes guidance on prohibited calls.

(e) Section 201-38.007-4 states the policy regarding collecting money from persons making unauthorized long distance calls.

(f) Section 201-38.007-5 calls agencies attention to Office of Management and Budget (OMB) guidance on the Privacy Act as it relates to call detail records.

(g) Section 201-38.007-6 sets forth agency responsibilities.

(h) Section 201-38.007-7 authorizes delegations of authority within agencies.

(2) Comments are invited regarding the establishment of these proposed rules, particularly the examples of authorized use set forth in the chart appearing at the end of § 201-38.007-1.

(3) The General Services Administration has determined that this proposed rule is not a major rule for purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for and the consequences of the proposed rule. The proposed rule is written to ensure maximum benefits to Federal agencies. This Governmentwide management regulation will have little or no cost effect on society. Therefore, the proposed rule 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.).

List of Subjects in 41 CFR Part 201-38

Government property management, Government procurement, Telecommunications, Information resources activities, Federal Telecommunicatons System.

Dated: March 18, 1987.

Fred L. Sims,

Acting Deputy Commissioner for Federal Information Resources Management.

PART 201-38—MANAGEMENT OF TELECOMMUNICATIONS RESOURCES

1. The table of contents for Part 201-38 is amended by revising the entry for § 201-38.007, adding the entries for §§ 201-38.007-1 through 201-38.007-7, and revising the authority citation for the part to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and Sec. 101(f), 100 Stat. 2128; 40 U.S.C. 751(f).

2. Section 201-38.007 is revised to change the title, revise the text, and add seven subsections consisting of §§ 201-38.007-1 through 201-38.007-7, to read as follows:

§ 201-38.007 Policies on use of telecommunications services.

The Federal Telecommunications System (FTS) and other Government-provided long distance telephone services are to be used only to conduct official business; i.e., if the call is necessary in the interest of the Government. (Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 926, Title 31 U.S.C. 1348(b).) These networks are to be used for placement of calls instead of the commercial toll network to the maximum extent practicable. All Government telephone systems represent resources; accordingly, their use must be managed just as any other resource. Supervisors are responsible for the proper management of telephone usage within their jurisdiction.

§ 201-38.007-1 Authorized use of Federal telecommunications systems.

(a) The use of Federal telephone systems (including calls over commercial systems which will be billed to the Government) shall be limited to the conduct of official business. Such official business calls may include

emergency calls and other calls which the agency determines are necessary in the interest of the Government. No unofficial calls may be placed (except in circumstances identified in paragraphs (b) and (c) of this § 201–38.007–1), even if the employee's intention is to reimburse the Government for the cost of the call.

(b) Examples of the circumstances in which use of Federal telecommunicatons systems properly may be approved as being necessary in the interest of the Government are set forth in the chart entitled "Examples of Authorized Use of Federal Telecommunications Systems" appearing at the end of this § 201–38.007–1.

(c) Brief personal calls over the commerical long distance network may be made, if the calls are not charged to the Government; i.e., the call is—

(1) Charged to the employee's home phone number or other non-Government number (third number call),

(2) Made to an 800 toll free number,

(3) Charged to the called party if a non-Government number (collect call), or

(4) Charged to a personal telephone credit card.

Examples of Authorized Use of Federal Telecommunications Systems (Chart Referenced in § 201–38.007–1)

(1) An employee is injured on the job. A call to notify family or doctor is appropriate.

(2) An employee traveling on Government business is delayed due to official business or transportation delay and must reschedule a return time. A call to notify family of a schedule change is appropriate.

(3) An employee traveling overnight on Government business may make a brief call daily to his or her residence using an FTS telephone.

(4) An employee is required to work overtime without advance notice. A telephone call to advise the employee's family of the change in schedule or to make alternate transportation or child care arrangements is appropriate.

(5) An employee makes a brief daily call to locations within the local commuting area to speak to spouse, minor children (or those responsible for them, e.g., school or day-care center) to see how they are.

(6) An employee makes brief calls within the local commuting area to his or her residence, local government agency, or physician.

(7) Use of systems as provided by a collective bargaining agreement which is either executed after the effective date of these regulations and consistent with them or executed before the effective date of these regulations.

§ 201–38.007–2 Abuse by employees.

Employees should be particularly sensitive to the use of Government telephone facilities under the conditions outlined in § 201–38.007–1. If possible, such calls should be made during lunch, break, or other off-duty periods. Abuse of Government telephone systems, including abuse of the privileges in § 201–38.007–1, may result in disciplinary action in accordance with applicable agency guidelines.

§ 201–38.007–3 Prohibitions.

The practices set forth in this § 201–38.007–3 are prohibited. A violation may result in criminal, civil or administrative action, including suspension or dismissal.

(a) Use of the following services, equipment, or facilities for other than official business, except emergency calls, and calls which the agency determines are necessary in the interest of the Government as provided in § 201–38.007–1:

(1) FTS;

(2) Government-provided long distance telephone service, other than FTS; or

(3) A commercial network where the Government is billed for the call.

(b) Use of any Government-provided telephone service, equipment or facility under circumstances that interfere with the expeditious and orderly conduct of Government business.

(c) Making an unauthorized telephone call with the intent to later reimburse the Government.

(d) Listening-in or recording of telephone conversation except as authorized by Subpart 201–6.2.

(e) Use of telephone call detail data in other than an authorized fashion. (See § 201–38.007–5.)

§ 201–38.007–4 Collections.

(a) Agncies should collect for any unauthorized calls made by an employee or other person where it is cost-effective to do so. Each call will be valued and collection made in accordance with paragraph (b) of this § 201–38.007–4, as implemented by the agency. However, a call not otherwise authorized may not be authorized based on expected reimbursement.

(b) Agency collections shall be composed of two parts:

(1) The value of the call based on commercial long-distance rates rounded to the nearest dollar, and

(2) An amount rounded to the nearest dollar to cover the agencies' administrative costs, for example, to determine that the call was unauthorized and to process the collection.

(c) Agencies should determine the appropriate account for depositing the monies collected.

§ 201–38.007–5 Privacy Act considerations.

In implementing this rule agencies shall consider the Office of Management and Budget (OMB) "Guidance on the Privacy Act Implications of 'Call Detail' Programs to Manage Employees' Use of the Government's Telecommunications Systems" (FR cite to be included).

§ 201–38.007–6 Agency responsibilities.

Agencies shall issue directives consistent with this § 201–38.007 governing the use of their telephone facilities and services. Such directives specifically shall provide for the further definition of calls necessary in the interest of the Government as used in § 201–38.007–1 and shall include procedures for collections.

§ 201–38.007–7 Delegation of authority.

The head of each agency may designate subordinates to determine and certify what constitutes a call necessary in the interest of the Government.

[FR Doc. 87–6695 Filed 3–26–87; 8:45 am]
BILLING CODE 6820–25–M

ACTION

45 CFR Part 1204

Official Seal; Proposed Revision

AGENCY: ACTION.

ACTION: Proposed rule.

SUMMARY: The ACTION Agency proposes to revise its official seal. The Domestic Volunteer Service Act Amendments of 1986 changed the ACTION name from "The National Volunteer Agency" to the "Federal Domestic Volunteer Agency" and the seal must be changed accordingly. In addition, the current seal is outdated and the new one will promote greater name recognition. The proposed revision will replace the old seal with the new seal.

DATES: Comments must be submitted on or before April 27, 1987.

ADDRESS: Written comments should be sent to: Director of Public Affairs, Office of Legislative, Public, and Intergovernmental Affairs, ACTION, M–200, 806 Connecticut Avenue, NW.; Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Jim Moore, Acting Director of Public Affairs, (202) 634–9108.

SUPPLEMENTARY INFORMATION: ACTION has determined that this regulation is not a major rule as defined by Executive Order 12291. The regulation will not result in:

1. Any effect on the economy;
2. Any increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
3. Any 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 or export markets.

List of Subjects in 45 CFR Part 1204

Official seal.

For the reasons set out in the preamble, 45 CFR Part 1204 of the Code of Federal Regulations, is proposed to be amended as shown.

PART 1204—[AMENDED]

1. The authority citation for Part 1204 is revised to read as follows:

Authority: Sec. 402, Pub. L. 93–113, 87 Stat. 407 (42 U.S.C. 5042).

2. In Part 1204, §§ 1204.1 and 1204.2 are revised to read as follows:

§ 1204.1 Authority.

Pursuant to section 402(9) of Pub. L. 93–113 the ACTION official seal and design thereof which accompanies and is made part of this document, is hereby adopted and approved, and shall be judicially noticed.

§ 1204.2 Description.

The official seal of ACTION is described as follows:

(a) The words "The Federal Domestic Volunteer Agency USA" are in blue capital letters and form the outer circle of the seal.

(b) Within the circle of letters, on a field of white, appears the logo-type word "ACTION" in blue, capital letters and in Italic type.

(c) The logo-type word "ACTION" is split; ACT on a higher level and ION drops down to a slightly lower level.

(d) Two red bars, also split on two levels underline the logo-type word "ACTION."

The official seal of ACTION is modified when reproduced in black and white and when embossed, as it appears below.

Signed at Washington, DC, this 23rd day of March, 1987.

Donna M. Alvarado,

Director, ACTION.

[FR Doc. 87–6823 Filed 3–26–87; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217, 222 and 227

[Docket No. 70227–7027]

Sea Turtle Conservation; Shrimp Trawl Requirements; Correction.

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Public hearing time; Correction.

SUMMARY: On March 24, 1987, a notice of an additional public hearing in Biloxi, MS, on April 2, was published in the **Federal Register** (53 FR 9318). The published time was incorrect. The correct time of the public hearing is 7 p.m.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz (813/893–3366) or David Cottingham (202/377–5181).

Dated: March 24, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87–6734 Filed 3–26–87; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Part 653

Red Drum Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearing and request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold public hearings on the review of the draft amendment and proposed regulations for the fishery management plan for red drum in the Gulf of Mexico.

DATES: The hearings will begin at 7:00 p.m., and will adjourn at 10:00 p.m., on Thursday, April 9, 1987; Monday, April 13, 1987; Tuesday, April 14, 1987; Wednesday, April 15, 1987; and Thursday, April 16, 1987.

Written public comments will be accepted until April 20, 1987.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for locations of hearings.

Written comments may be sent to Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, 813–228–2815.

SUPPLEMENTARY INFORMATION: The hearings will take place as follows:

April 9th—Fort Myers Tourist Center, 2254 Edward Drive, Fort Myers, Florida;

April 13th—Texas A&M Research and Extension Center, Highway 44 (4 miles west of the airport), Corpus Christi, Texas;

April 13th—Ramada Inn, 5303 West Kennedy Boulevard, Tampa, Florida;

April 14th—Mobile Municipal Auditorium, 401 Auditorium Drive, Mobile, Alabama;

April 14th—Harris County Courthouse Annex, 16603 Buccanner, Clear Lake City, Texas;

April 15th—University of Southwestern Louisiana Conference Center, 2 Rex Street, USL Campus, La Fayette, Louisiana;

April 15th—Biloxi Cultural Center, Assembly Room, 217 Lameuse, Biloxi, Mississippi; and

April 16th—University of New Orleans (Auditorium BA–165), Lakefront, New Orleans, Louisiana.

(16 U.S.C. 1801 *et seq.*)

Dated: March 23, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87–6733 Filed 3–26–87; 8:45 am]

BILLING CODE 3510–33–M

Notices

Federal Register
Vol. 52, No. 59
Friday, March 27, 1987

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

Agricultural Stabilization and Conservation Service

List of Warehouses and Availability of List of Cancellations and/or Terminations

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of Publication of List of Warehouses Licensed Under the U.S. Warehouse Act and Availability of List of Cancellations and/or Terminations occurring During Calendar Year 1986.

Notice is hereby given that the Agricultural Stabilization and Conservation Service has published a list of warehouses licensed under the U.S. Warehouse Act (7 U.S.C. 241 *et seq.*) as of December 31, 1986, as required by section 26 of that Act (7 U.S.C. 266). Also available is a list of cancellations and/or terminations that occurred during calendar year 1986. A copy of the list of warehouses as of December 31, 1986, will be distributed to all licensed warehousemen. Other interested parties may obtain a copy of either list from: Mrs. Judy Fry, ASCS, Warehouse Division, Warehouse Licensing Branch, U.S. Department of Agriculture, P.O. Box 2415, Room 5968, South Agriculture Bldg., Washington, DC 20013, Telephone: 202–447–3822.

Signed at Washington, DC, March 24, 1987.

Milton J. Hertz,

Administrator, Agricultural Stabilization and Conservation Service (ASCS).

[FR Doc. 87–6811 Filed 3–26–87; 8:45 am]

BILLING CODE 3410–05–M

Foreign-Trade Zones Board

[Order No. 348]

Resolution and Order Approving the Application of the Port of Palm Beach District, for a Foreign-Trade Zone in Palm Beach County, FL

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Port of Palm Beach District, a Florida public corporation, filed with the Foreign-Trade Zones Board (the Board) on January 21, 1986, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Palm Beach County, Florida, within the West Palm Beach Customs port of entry, the Board, finding that the requirements of the Foreign Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant To Establish, Operate, and Maintain a Foreign-Trade Zone in Palm Beach County, Florida

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Port of Palm Beach District (the Grantee), a Florida public corporation, has made application (filed January 21, 1986, Docket No. 2–86, 51 FR 3639) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone at sites in Palm Beach County, Florida, within the West Palm Beach Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 135 at the locations mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued therunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone sites in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for

injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the Distict Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilites.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 16th day of March 1987, pursuant to Order of the Board.

Foreign-Trade Zones Board,
Malcolm Baldrige,
Chairman and Executive Officer.
[FR Doc. 87-6793 Filed 3-26-87; 8:45 am]
BILLING CODE 3510-DS-M

[Order No. 349]

Resolution and Order Approving the Application of the Canaveral Port Authority, for a Foreign-Trade Zone in Brevard County, FL

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Canaveral Port Authority, a Florida public corporation, filed with the Foreign-Trade Zones Board (the Board) on January 21, 1986, requesting a grant of authority for establishing, operating, and maintaining a general purpose foreign-trade zone in Brevard County, Florida, within the Port Canaveral Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, aproves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant To Establish, Operate and Maintain a Foreign-Trade Zone in Brevard County, Florida

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Canaveral Port Authority (the Grantee), a Florida public corporation, has made application (filed January 21, 1986, Docket No. 3–86, 51 FR 3638) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in Brevard County, Florida, within the Port Canaveral Customs port of entry;

Whereas, notice of said application has been given and published and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (16 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 136 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and througout the foreign-trade zone site in the performance of their official duties.

The grant does not incude authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installment of suitable facilities.

In Witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto its Chairman and Executive Officers at Washington, DC, this 16th day of March 1987, pursuant to Order of the Board.

Foreign-Trade Zones Board,
Malcolm Baldrige,
Chairman and Executive Officer.
[FR Doc. 87-6792 Filed 3-26-87; 8:45 am]
BILLING CODE 3510-DS-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-057]

Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests from Blaw Knox Construction Equipment Company, the petitioner, and from Fortress Allatt Ltd., a manufacturer/exporter, the Department of Commerce has conducted an administrative review of the antidumping duty finding on replacement parts for self-propelled bituminous paving equipment from Canada. The review covers three manufacturers/exporters of this merchandise to the United States and

the period from September 1, 1983 through August 31, 1986. The review indicates the existence of dumping margins for certain firms during the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 27, 1987.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–5289/5255.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 43230) the final results of its last administrative review of the antidumping finding on replacement parts for self-propelled bituminous paving equipment from Canada (42 FR 44811, September 7, 1977). We began this review of the finding under our old regulations. After promulgation of our new regulations, the petitioner and one manufacturer/exporter requested, in accordance with § 353.53a(a) of the Commerce Regulations, that we complete the administrative review. We published notices of initiation on July 9, 1986 (50 FR 48825) and October 24, 1986 (51 FR 37770). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of replacement parts for self-propelled bituminous paving equipment. The review covers three manufacturers/exporters of this merchandise to the United States and the period from September 1, 1983 through August 31, 1986.

Two firms, General Construction Equipment Manufacturing Co. and Parker Hannifin, did not respond to our questionnaire. For those non-responsive firms the Department used the best information available for assessment and estimated antidumping duties cash deposit purposes. The best information available is either the most recent rate for the firm or the highest rate for any responding firm with shipments in this review.

United States Price

In calculating United States price, the Department used purchase price as defined in section 772 of the Tariff Act. Purchase price was based on the packed, f.o.b. price to unrelated purchasers in the Untied States. We made adjustments, where applicable, for U.S. and foreign inland freight, U.S. duty, brokerage charges, and discounts. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price as defined in section 773 of the Tariff Act since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the packed, ex-factory or delivered price to unrelated customers. We made adjustments, where applicable, for discounts, inland freight, differences in credit costs, and differences in commissions to unrelated parties. We accounted for taxes imposed in Canada, but rebated or not collected by reason of exportation of the merchandise to the United States, by subtraction from home market price as best information available. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value we preliminarily determine that the following margins exist:

Manufacturer/exporter	Period	Margin (percent)
Fortress Allatt Ltd.	9/1/83–8/31/84	1.31
	9/1/84–8/31/85	0.91
	9/1/85–8/31/86	1.35
General Construction Equipment Manufacturing Co.	9/1/83–8/31/84	1.31
	9/1/84–8/31/85	0.91
	9/1/85–8/31/86	1.35
Parker Hannifin	9/1/83–8/31/86	20.12

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 5 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins will be required for these firms. For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after August 31, 1986 and who is unrelated to any reviewed firm, or any other previously reviewed firm, a cash deposit of 1.35 percent shall be required. These deposit requirements are effective for all shipments of Canadian replacement parts for self-propelled bituminous paving equipment entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: March 24, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87–6794 Filed 3–26–87; 8:45 am]

BILLING CODE 3510-DS-M

[A–588–604]

Tapered Roller Bearings and Parts Thereof, Finished or Unfinished From Japan; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that tapered roller bearings and parts thereof, finished or unfinished (tapered roller bearings), from Japan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in

an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by June 8, 1987.

EFFECTIVE DATE: March 27, 1987.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp (202-377-1769) or Marie G. Kissel (202-377-3798), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that tapered roller bearings and parts thereof, finished or unfinished, from Japan are being, or are likely to be, sold in the United States at less than fair value as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The margins of sales at less than fair value are shown in the "Suspension of Liquidation" section of this notice.

Case History

On August 25, 1986, we received a petition in proper form filed by the Timken Company, on behalf of the U.S. industry producing tapered roller bearings. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or threaten material injury, to a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated the investigation on September 15, 1986 (51 FR 33286, September 19, 1986), and notified the ITC of our action.

On October 2, 1986, the ITC determined that their is a reasonable indication that imports of tapered roller bearings from Japan are materially injuring a U.S. industry (U.S. ITC Pub. No. 1899, October 1986).

On November 19, 1986, questionnaires were presented to NTN Toyo Bearing Co., Ltd. (NTN) and Koyo Seiko Co., Ltd. (Koyo), which account for approximately 90 percent of the exports to the United States during the period of investigation. To both companies we granted an extension of time in which to respond.

On January 5, 1987 we received questionnaire responses from both companies. Additions to the responses were received on January 21, 1987 and January 28, 1987, from Koyo Seiko, and from NTN on January 20, 1987 and January 26, 1987. We found that the questionnaire responses were insufficient. We sent deficiency letters to both companies on February 9, 1987. Deficiency letter responses were received from NTN on February 20, 1987 and February 23, 1987, and from Koyo Seiko on February 24, 1987 and February 27, 1987.

On January 12, 1987, we determined this case to be extraordinarily complicated and, in accordance with section 733(c)(B) of the Act, we postponed the preliminary determination to March 23, 1987 (52 FR 2125).

Scope of Investigation

The products covered by this investigation are tapered roller bearings and parts thereof, currently classified under the *Tariff Schedules of the United States* (TSUS) under items 680.30 and 680.39; flange, take-up cartridge, and hanger units incorporating tapered roller bearings currently classified under TSUS item 681.10; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use, and currently classified under TSUS item 692.32 or elsewhere in the TSUS. Products subject to the outstanding dumping finding covering certain tapered roller bearings from Japan (T.D. 76-227, 41 FR 34974) are not included within the scope of this investigation. This investigation includes all tapered roller bearings and parts thereof, as described above, that are manufactured by NTN.

If during the course of this investigation the Department rescinds its revocation with respect to NTN and that rescission is affirmed by final judicial order, this antidumping investigation would be terminated with regard to any bearings manufactured by NTN that would be covered by the outstanding dumping finding.

Fair Value Comparisions

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price to the foreign market value as specified below. Because information received from Koyo relating to merchandise which was processed prior to sale was received too late to allow us to consider it for this preliminary determination, we have based this determination on comparisons of products which were sold in the condition in which imported. If verified, we will use the information on the sales of processed merchandise in making our final decision.

We made comparisons on approximately 90 percent of the sales of the product during the period of investigation, March, 1, 1986 through August 31, 1986.

United States Price

For Koyo Seiko and certain sales by NTN, we based United States price on exporter's sales price (ESP) since those sales were made after importation, in accordance with section 772(c) of the Act. For those sales by NTN to the United States which were made prior to importation, we determined that the merchandise had been purchased from the manufacturer or producer and, therefore, based the United States price on purchase price in accordance with section 772(b) of the Act.

For sales which were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we used purchase price as the basis for determining United States price. For these sales, the Department determined that purchase price was the more appropriate indicator of United States price based on the following elements:

1. The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent;
2. This was the customary commercial channel for sales of this merchandise between the parties involved; and
3. The related selling agent located in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Where all the above elements are met, we regard the routine selling functions of the exporter as having been merely relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions are done in the United States or abroad does not change the substance of the transactions or the functions themselves.

In instances where merchandise is ordinarily diverted into the related U.S. selling agent's inventory, we regard this factor as an important distinction because it is associated with a materially different type of selling activity than the mere facilitation of a transaction such as occurs on a direct shipment to an unrelated U.S. purchaser. In situations where the related party

places the merchandise into inventory, he commonly incurs substantial storage and financial carrying costs and has added flexibility in his marketing. We also use the inventory test because it can be readily understood and applied by respondents who must respond to Department questionnaires in a short period of time. It is objective in nature, as the final destination of the goods can be established from normal commercial documents associated with the sale and verified with certainty.

We calculated purchase price and ESP based on the packed, duty paid, f.o.b. or c.i.f., delivered prices to unrelated purchasers in the United States. We made deductions for foreign inland freight, ocean freight, marine insurance, U.S. duty, and U.S. inland freight, as appropriate. For ESP sales, we also deducted other expenses normally incurred in selling the merchandise in the United States. Consistent with the Court of International Trade remand decision (*The Timken Co.* v. *United States,* Slip Op. 86–17) concerning NTN's sales of tapered roller bearings subject to a previous antidumping duty order on tapered roller bearings four inches and under in outside diameter, we treated certain U.S. credit and technical service expenses as directly related to the sales under consideration.

Foreign Market Value

As noted in the "Case History" section of this notice, petitioner alleged that home market sales were made at less than the cost of production and that constructed value should be used to compute foreign market value.

Using the respondents' submissions, we compared the home market prices to the cost of production reflecting selling expenses incurred on sales to the same level of trade. We used constructed value as the basis for calculating foreign market value where there were no, or insufficient, sales of such or similar merchandise at prices above the cost of production, as defined in § 773(b) of the Act. Koyo had sufficient sales at prices above cost to form the basis for all comparisons.

NTN's general expenses exceeded the statutory minimum of ten percent of materials and fabrication. Therefore, actual general expenses were used in calculating the constructed value. Koyo's general expenses were less than the statutory minimum, therefore, we used the 10 percent minimum. The statutory eight percent for profit was included in the constructed value for both respondents because home market profit was less than eight percent. We added U.S. packing charges.

We made a circumstance of sale adjustment for differences in credit expenses and for comparisons to ESP, for an offset to indirect selling expenses on the U.S. sales, in accordance with § 353.15(c) of Commerce's regulations, except as noted below.

Where we found sufficient sales in the home market to form the basis of comparison, we used delivered home market prices. We made deductions for foreign inland freight and discounts. We deducted home market packing costs and added U.S. packing costs. For comparison to ESP sales, we offset selling expenses incurred on home market sales up to the amount of the indirect selling expenses incurred for sales to the U.S. market, in accordance with § 353.15(c) of our regulations. We made an adjustment for differences in credit terms in accordance with § 353.15 of our regulations. NTN claimed adjustments for differences in technical service expenses, sales commissions, advertising and warehousing expenses. We denied these claims pending the outcome of verification.

NTN submitted information relative to possible comparison models which appears to be based on its catalogue of bearings rather than models actually sold in the home market during the period of investigation. Due to the number of models involved and the number of sales transactions, we were unable to refine the data and create alternative comparison groups based on sales. Accordingly, where we could not find an appropriate home market comparison, we developed constructed value on the basis of the direct manufacturing costs of the model sold to the United States. In addition, the problems relating to the establishment of comparison groups made it impossible to determine the level of home market selling expenses which would be used in the ESP offset. Therefore, for purposes of this preliminary determination we did not offset the ESP expenses in determining the foreign market value. We are requesting additional information for purposes of the final determination.

We established such or similar merchandise comparison groups on the basis of the inside and outside diameter of the bearings and, where available, the dynamic load rating. Petitioner contends that the system life of the bearings is a more accurate measure of similarity than the dynamic load rating. We received detailed information on the methodology for determining system life too late to consider it for this determination. We will consider petitioner's contention for purposes of the final determination. We will request additional information and comments on the proposed methodology as appropriate.

Currency Conversion

For ESP comparisons, we used the official exchange rate for the date of sale since the use of that exchange rate is consistent with section 615 of the Trade and Tariff Act of 1984 (1984 Act). We followed section 615 of the 1984 Act rather than § 353.56(a)(2) of our regulations because the later law supersedes that section of the regulations.

For purchase price comparisons, we used the exchange rate described in § 353.56(a)(1) of our regulations. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Verification

As provided in section 776(a) of the Act, we will verify all information used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of tapered roller bearings and parts thereof, finished or unfinished, from Japan that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**.

The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated amount by which the foreign market value of the merchandise subject to this investigation exceeded the United States price. This suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin percentage
Koyo Seiko Co., Ltd	38.90
NTN Toyo Bearing Co., Ltd	17.62
All Others	18.09

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports are materially injuring, or are threatening material injury to, a U.S. industry before the later of 120 days after the date of our preliminary affirmative determination or 45 days after we make our final affirmative determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 9:30 a.m. on May 19, 1987, at the U.S. Department of Commerce, Room 3708, 14th and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by May 12, 1987. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, not less than 30 days before the final determination, or, if a hearing is held, within 7 days after the hearing transcript is available, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

March 23, 1987.

[FR Doc. 87-6795 Filed 3-26-87; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Requesting Public Comment on Bilateral Textile Consultations with the Government of the People's Republic of China Concerning Categories 359-D, 369-S, and 644

March 24, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 30, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, please call (202) 377-3715. For information on categories on which consultations have been requested call (202) 377-3740.

Background

On February 27, 1987, pursuant to the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China, the Government of the United States requested consultations concerning imports into the United States of cotton and man-made fiber textile products in Categories 359-D (cotton diapers in TSUSA number 384.5214), 369-S (cotton shop towels in TSUSA number 366.2840) and 644 (man-made fiber suits), produced or manufactured in China and exported to the United States.

Summary market statements concerning these categories follow this notice.

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), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Anyone wishing to comment or provide data or information regarding the treatment of Categories 359-D, 369-S and 644 under the agreement with the People's Republic of China, or in any other aspect thereof, or to comment on domestic production or availability of textile products included in the categories, is invited to submit such comments or information in ten copies to Mr. Ronald I. Levin, Acting Chairman, Committee for the Implementation of Textile Agreements, Internationl 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 Avenue NW., Washington, DC, and may be obtained upon request.

Further comment may be invited regarding particular comments of 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."

Pursuant to the terms of the bilateral agreement, the People's Republic of China is obligated under the consultation provision to limit its exports to the United States of cotton and man-made textile products in Categories 359-D, 369-S and 644 during the ninety-day period which began on February 27, 1987 and extends through May 27, 1987 to the following levels:

Category	Ninety-day consultation period (Feb. 27, 1987-May 27, 1987)
359-D	369,630 pounds.
369-S	457,275 pounds.
644	6,036 dozen.

The People's Republic of China is also obligated under the bilateral agreement, if no mutually satisfactory solution is reached during consultations, to limit its exports to the United States during the twelve-months following the ninety-day consultation period to the following levels:

Category	Twelve-month restraint period (May 28, 1987-May 27, 1988)
359-D	1,074,436 pounds.
369-S	1,248,355 pounds.

Category	Twelve-month restraint period (May 28, 1987–May 27, 1988)
644	14,191 dozen.

The United States Government had decided, pending a mutually satisfactory solution, to control imports of textile products in Categories 359–D, 369–S and 644 exported during the ninety-day period at the levels described above. The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultation with the Government of the People's Republic of China, further notice will be published in the **Federal Register.**

In the event the limits established for Categories 359–D, 369–S and 644 for the ninety-day period are exceeded, such excess amounts, if allowed to enter at the end of the restraint period, shall be charged to the levels defined in the agreement for the subsequent twelve-month periods. In the letter to the Commissioner of Customs which follows periods. In the letter to the Commissioner of Customs which follows this notice, ninety-day levels are established for these categories.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

China—Market Statement

Category 359 Pt.—Cotton Diapers

February 1987.

Summary and Conclusions

United States imports of cotton diapers—Category 359 Pt.—from China were 1,056 thousand pounds (894 thousand dozen) in 1986, 13 times the 82 thousand pounds (45 thousand dozen) imported a year earlier. China is the largest supplier of these diapers, accounting for 90 percent of the total imports.

The sharp and substantial increase of low-valued cotton diaper imports from China is disrupting the U.S. market.

Production and Market Share

U.S. production of cotton diapers fell from 1,306 thousand dozen in 1985 to 732 thousand in 1986, a 44 percent decline. The U.S. producers' share of the market for domestically produced and imported diapers dropped drastically, by more than half, from 96 percent in 1985 to 42 percent in 1986.

Imports and Import Penetration

U.S. imports of Category 359 Pt. diapers from all sources were 999 thousand dozens in 1986, more than 16 times the 61 thousand dozen imported in 1985. The ratio of imports to domestic production reached 137 percent in 1986, 27 times the 5 percent ratio recorded in 1985.

Import Values

Category 359 Pt. imports from China entered under TSUSA No. 384.5214, cotton diapers, not knit and not ornamented. The duty-paid landed values of these imports from China are well below the U.S. producers prices for comparable diapers.

China—Market Statement

Category 369 Part—Cotton Shop Towels

February 1987.

Summary and Conclusions

Imports of Category 369 part-cotton shop towels—from China totaled 1.3 million pounds (15.1 million units) in 1986. Although this was below the imports of a year earlier, imports for the fourth quarter of 1986 were up 49 percent from the previous quarter and double the amount imported during fourth quater of 1985. This is a sharp and substantial increase in imports. These imports from China are imported at duty-paid landed values substantially below the prices of domestically produced shop towels. The sharp and substantial increase of low-valued imports from China during the fouth quarter 1986 poses an imminent threat of market disruption in the U.S. China is the second largest supplier of cotton shop towels.

In September 1983, the U.S. International Trade Commission (USITC) determined that the U.S. shop towel industry was suffering "material injury". The USITC decision was based upon a comparison of 1980/1981 data with data from 1982/1983. The conditions that led to the finding of material injury continue to exist in 1986.

In spite of the successful antidumping action against imports of shop towels from China and successful countervailing duty actions against shop towel imports from other major suppyling countries, the "material injury" that the USITC found in 1983 has never been remedied. U.S. production remains well below 1980–1981 levels and imports are still far above the levels recorded in those years.

U.S. Production and Market Share

U.S. production of cotton shop towels dropped 18 percent in 1982–83 from its 1980–81 level. Although U.S. producers regained some of their 1982–83 production loss in the ensuing years, they continued to lose market share. Moreover, the 1986 production level remained 10 percent below the 1980–81 level. The U.S. producers' share of the market fell from an average 61 percent in 1980–81 to an average 58 percent in 1982–83 to 51 percent in 1986. The U.S. producers' share fell to 48 percent during the last half of 1986.

Imports and Import Penetration

U.S. imports of cotton shop towels increased 33 percent since 1980–81, reaching 138 million units in 1986. Imports in 1985 and 1986 remained relatively flat at 138 million units, reflecting the results of the first annual review of an antidumping order against shop towel imports from China. In its review, the U.S. Department of Commerce found dumping margins as high as 80 percent ad valorem. The Department's finding went into effect in late June, 1985. During the second half 1985 and the first half of 1986, imports from China were low and had a clear influence on the overall import levels. In the second half of 1986, China's exports of cotton shop towels began to surge again posing an imminent threat of market disruption.

The ratio of imports to domestic production increased from 64 percent in 1980–81 to 95 percent in 1986. During the second half of 1986, the ratio increased to 108 percent.

Import Values

Imports from China are entered under TSUSA No. 366.2840—cotton shop towels not ornamented and not jacquard-figured. The duty-paid landed value of these imports from China are below the U.S. producer price for comparable towels.

China—Market Statement

Category 644—Women's, Girls', and Infants' Man-Made Fiber Suits

February 1987.

Summary and Conclusions

U.S. imports of Category 644 from China were 17,247 dozen during 1986, more than two and one-half times the 6,489 dozen imported in 1985.

The U.S. market for Category 644 has been disrupted by imports. The sharp and substantial increase of imports from China has contributed to this disruption.

U.S. Production and Market Share

U.S. production of women's, girls', and infants' man-made fiber suits continues to decline. The 1984–85 average production level is 22 percent below the 1982–83 average level and 45 percent below the 1980–81 average production level. The U.S. market for domestically produced and imported women's, girls', and infants' man-made fiber suits has also been on the decline. The 1984–85 average market is 18 percent below the 1980–81 average market. Domestic manufacturers not only absorbed the contraction in the market but lost market share to imports. The domestic manufacturers' share of this market declined from an average 89 percent share during 1980–81 to an average 61 percent share during 1984–85. A further erosion of U.S. market share is anticipated in 1986.

U.S. Imports and Import Penetration

U.S. imports averaged 147 thousand dozen annually during 1980–81 with an average import-to-production ratio of 12 percent. Imports increased threefold to an average level of 442 thousand dozen during 1984–85. The import-to-production ratio increased to an average 65 percent during this period. Assuming that 1986 U.S. Category 644 production reaches the 1984–85 average level the import-to-production ratio will reach 79 percent.

Duty-Paid Value and U.S. Producer Price

Approximately 86 percent of Category 644 imports from China during 1986 entered under three TSUSA numbers: 384.9158—women's, girls', and infants' man-made fiber woven suits, of identical fabric, having a jacket with a single back panel, not ornamented; 384.9162—women's, girls', and infants' man-made fiber woven suits, of identical fabric, not ornamented; 384.9166—women's, girls', and infants' man-made fiber woven suits, not of identical fabric, not ornamented. TSUSA number 384.9162 alone represents 62 percent of Category 644 imports from China. These suits entered the U.S. at duty-paid landed

values below U.S. producers' prices for comparable suits.

March 24, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 30, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in the People's Republic of China and exported during the ninety-day period which began on February 27, 1987 and extends through May 27, 1987, in excess of the following levels of restraint:

Category	Ninety-day restraint limit [1]
359-D [2]	369,630 pounds.
369-S [3]	457,275 pounds.
644	6,036 dozen.

[1] The limits have not been adjusted to account for any imports exported after February 26, 1987.
[2] In Category 359, only TSUSA number 384.5214.
[3] In Category 369, only TSUSA number 366.2840.

Textile products in Categories 359-D, 369-S and 644 which have been exported to the United States prior to February 27, 1987 shall not be subject to this directive.

Textile products in Categories 359-D, 369-S and 644 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782) July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

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 these actions fall 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. 87-6751 Filed 3-26-87; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the numer of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Personal Security Questionnaire (Industrial-NAC); DD Form 48, and Personnel Security Questionnaire (Updating); DD Form 48-3. (0704-0005)

Forms used to obtain personal data from a U.S. citizen being considered for a DoD Confidential/Secret Personnel Security Clearance, or a OSE determination at the Confidential/Secret level; and to obtain current/updated personal data to process a clearance action when an individual with a security clearance is transferring employment from one contractor to another within a 12-month period and requires a security clearance in new employment. Also used in converting a User Agency Clearance to an Industrial Security Clearance.

Number of respondents: DD-48—102,000; DD-48-3—57,000
Number of responses per respondent—1
Number of hours per response: DD-48—40 minutes; DD-48—10 minutes

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302; telephone number (202) 746-0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Dale L. Hartig, DIS, Chief, Information and Public Affairs, 1900 Half Street, SW., Washington, DC 20324-1700, telephone (202) 475-1062.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 24, 1987.

[FR Doc. 87-6802 Filed 3-26-87; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group C (Mainly Opto Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Friday, May 1, 1987.

ADDRESS: The meeting will be held at Naval Research Laboratory, 4555 Overlook Ave., SW, Bldg. 210, Room 1212, Washington, DC 20375.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging devices, infrared detectors and lasers. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that

accordingly, this meeting will be closed to the public.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 24, 1987.

[FR Doc. 87-6803 Filed 3-26-87; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Friday, May 1, 1987.

ADDRESS: The meeting will be held at Naval Research Laboratory, 4555 Overlook Ave., SW., Bldg. 207, Room 155, Washington, DC 20375.

FOR FURTHER INFORMATION CONTACT: Becky Terry, AGED Secretariat, 2011 Crystal Drive Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The Microelectronics area includes such programs as integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 24, 1987.

[FR Doc. 87-6804 Filed 3-26-87; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Friday, May 1, 1987.

ADDRESS: The meeting will be held at Naval Research Laboratory, 4555 Overlook Ave., SW., Bldg. 226, Room 104, Washington, DC 20375.

FOR FURTHER INFORMATION CONTACT: Harold Summer, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The microwave device area includes programs on developments and research related to microwave, tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classifed program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. II § 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 24, 1987.

[FR Doc. 87-6805 Filed 3-26-87; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 1300, Friday, May 1, 1987.

ADDRESS: The meeting will be held at Palisades Institute for Research, Services, Inc., 2011 Crystal Drive, One Crystal Park, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: David Slater, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 24, 1987.

[FR Doc. 87-6806 Filed 3-26-87; 8:45 am]

BILLING CODE 3810-01-M

Graduate Medical Education Advisory Committee; Meeting

AGENCY: Department of Defense Graduate Medical Education Advisory Committee.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of Pub. L. 92-463. notice is hereby given that an open meeting of the Department of Defense Graduate Medical Education Advisory Committee has been scheduled as follows:

DATE: April 17, 1987, 8:00 a.m. to 5:00 p.m.

ADDRESS: Sheraton National Hotel, Columbia Pike and Washington Boulevard, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Michael Herndon, Executive Secretary, DoD Graduate Medical Education Advisory Committee, Office of the Assistant Secretary of Defense (Health Affairs), Room 3E349, the Pentagon, Washington, DC, 20301 (202) 694-5355.

SUPPLEMENTARY INFORMATION: This will be the ninth meeting of the Committee. Presentation of the services selection

results for AY 87 will be made. The Advisory Committee will review the results of the survey of academic medical institutions in January 1987. The Committee will also review the draft Committee report.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

March 24, 1987.

[FR Doc. 87-6707 Filed 3-26-87; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Computer Applications to Training and Wargaming; Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Computer Applications to Training and Wargaming will meet in closed session on April 23–24, May 21–22, and June 16–17, 1987 at the Pentagon, Arlington, Virginia; the National Defense University, Washington, DC; and the Institute for Defense Analyses, Alexandria, Virginia, respectively.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will study how to integrate anticipated advances in computer technology with ongoing simulation efforts, supporting training and wargaming for joint warfighting.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

March 24, 1987.

[FR Doc. 87-6709 Filed 3-26-87; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Special Systems Subgroup, Pacific Command Air Defense; Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Pacific Command Air Defense, Special Systems Subgroup will meet in closed session on April 7 and May 7, 1987 at the Center for Naval Analyses, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will examine systems related to defense capabilities for shore installations in the Pacific Command and assess relevant technology, equipment, and modernization plans.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

March 24, 1987.

[FR Doc. 87-6708 Filed 3-26-87; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Army Science Board (ASB).

Dates of Meeting: 9–10 April 1987.

Times of Meeting: 0830–1630, 9 April 1987; 0830–1330, 10 April 1987.

Place: Headquarters, US Army Communications and Electronics Command 9 April 1987, and Headquarters, Joint Tactical Command, Control and Communications Agency 10 April 1987. Both agencies are located at Fort Monmouth, New Jersey.

Agenda: The Army Science Board Ad-Hoc Panel on Army Information Mission Area (IMA) Concepts and Architecture will meet to gather facts for its study. On the first day the panel will conduct a discussion with PM ACCS and various system managers to determine the current status of developmental tactical communication and information management systems. On the second day of the meeting the panel will hear briefings on tactical Information Management programs at Theater and above from the JTC3A agency. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

FR Doc. 87-6959 Filed 3-26-87; 10:11 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent To Prepare a Supplement to the Draft Environmental Impact Statement, Second Lock at Locks and Dam 26 (Replacement); Mississippi River, Alton, IL and MO

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a supplement to a draft environmental impact statement.

SUMMARY:

1. *Proposed action.* The proposed action consists of constructing a 600-foot second lock at the Locks and Dam 26 (Replacement) project, on the Mississippi River near Alton, Illinois. The second lock was authorized by Congress with Pub. L. 99–88 on August 15, 1985.

2. *Background.* The St. Louis District distributed the document, Draft Environmental Impact Statement, Second Lock at Locks and Dam 26 (Replacement), Mississippi River, Alton, Illinois and Missouri, for public review in October 1986. This review, which included three public meetings, ended December 9, 1986. The majority of comments from all sources expressed the opinion that the Draft Environmental Impact Statement was deficient.

The comments identified a number of items for which additional discussion in the Draft Environmental Impact Statement is desired, including:

a. Revised Draft versus Final EIS;

b. Fish and wildlife mitigation;

c. Navigable tributaries;

d. Low probability/high impact events;

e. Actions to avoid or minimize impacts;

f. Secondary impacts;

g. Water quality impacts;

h. Cumulative impacts; and

i. Disposition of old Lock and Dam 26.

These issues have been carefully reviewed and the decision made to publish a Supplement to the Draft Environmental Impact Statement. This document will present additional information for those topics identified above.

With regard to item b., "Fish and Wildlife Mitigation", the St. Louis District will prepare a separate Mitigation Report. This Mitigation Report will evaluate various alternatives for mitigating impacts to significant resources due to the construction and operation of the Second Lock.

3. *Public involvement.* The St. Louis District will continue its coordination with involved Federal and state agencies; public interest groups, and the general public. At this time no public meetings are planned.

4. *Estimated completion date.* The Supplement to the Draft Environmental Impact Statement is scheduled for public review in September 1987. Questions about the proposed document should be addressed to: Mr. Owen D. Dutt, Chief, Environmental Analysis Branch, U.S. Army Engineer District, St. Louis, 210 Tucker Boulevard, North, St. Louis, Missouri 63101–1986, Commercial Phone: (314) 263–5711, FTS: 273–5711.

Dated: March 18, 1987.

Daniel M. Wilson,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 87–6669 Filed 3–26–87; 8:45 am]

BILLING CODE 3710–55–M

Intent To Prepare a Supplement to the Final Environmental Impact Statement (FEIS) for the Wilmington Harbor, Northeast (Cape Fear) River Project, New Hanover and Brunswick Counties, NC

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice of intent to prepare a supplement to the final environmental impact statement.

SUMMARY:

1. The proposed project was authorized by the Water Resources Development Act of 1986 (Pub. L. 99–662). The project contains the following components

a. Widening of the Fourth East Jetty Channel by 100 feet on the west side at a depth of 38 feet for a distance of about 8,000 feet.

b. Deepening of the navigation channel from 32 feet to 35 feet at a width of 400 feet between Castle Street and the N.C. 133 bridge.

c. Widening of the turning basin just upstream from the mouth of the Northeast Cape Fear River by 100 feet to a depth of 35 feet.

d. The acquisition in fee simple, or conservation easement if less costly, of 2,800 acres of wetlands, bluffs, and buffer strips for about 6 miles along the Northeast Cape Fear River, and provision for the management of acquired lands by an appropriate interest.

Authorized overdepth dredging provides for 2 feet of overdepth in areas of earth and 3 feet of overdepth in areas of rock. Partial deepening of the harbor to 35 feet between Castle Street and the N.C. 133 bridge was accomplished by local interests in 1977–78. Congressional authorization is to complete the deepening and to maintain this segment of the harbor at this new depth.

2. Althernatives to the proposed project include the retention, deletion, or modification of the project components outlined above. Also being considered is the no action alternative.

3a. All private interests and Federal, State, and local agencies having an interest in the project are hereby notified of project authorization and are invited to comment at this time. The scoping process for the project is being initiated and will involve all known interested parties.

3b. The significant issues to be analyzed in the Supplement to the FEIS are as follows: (1) The impacts of the harbor improvements on the economic development of the region; (2) impacts to commercially important fish species; (3) impacts to migratory waterfowl; (4) impacts to cultural resources; (5) impacts to endangered species; (6) project induced impacts on the large expanses of wetlands lying upstream of the proposed harbor improvements; and (7) alternative management plans and managing agencies for the environmental lands.

3c. The lead agency for this project is the U.S. Army Engineer District, Wilmington. Cooperating agency status has not been assigned to, or requested by, any other agency.

3d. The Supplement to the FEIS is being prepared in accordance with the requirements of the National Environmental Policy Act and will address the project's relationship to all other applicable Federal and State law and Executive Orders.

4. A scoping letter requesting input to the study will be sent to all known interested parties. No formal scoping meetings are currently planned; however, the identification of any significant issues relating to the project by others will result in coordination with appropriate interests as needed.

5. The Supplement to the Final Environmental Impact Statement for the project is currently scheduled for distribution to the public in January 1988.

ADDRESS: Questions about the proposed action and reports should be directed to Mr. William Adams, Environmental Resources Branch, U.S. Army Engineer District, Wilmington, Post Office Box 1890, Wilmington, North Carolina 28402–1890, telephone: (919) 343–4748 or FTS 671–4748.

Dated: March 13, 1987.

Paul W. Woodbury,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 87–6670 Filed 3–26–87; 8:45 am]

BILLING CODE 3710–GN–M

Department of the Navy

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Navy Advertising Effectiveness Study (NAES), 0703–0032.

Survey measures recruiting advertising effectiveness and provides data strategies to be used in advertising. Target market is male youth 16–21 years old.

Individuals

Responses 2,000

Burden hours 1,000

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson-David Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Dr. Charles Jamison, Associate Research Director, U.S. Navy Recruiting

Command, Arlington, Virginia, telephone (212) 869-3131.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 24, 1987.

[FR Doc. 87-6807 Filed 3-26-87; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meeting

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notice is provided:

A meeting of Subcommittee C of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on April 2 and 3, 1987, at the offices of Texaco, Inc., 2000 Westchester Avenue, White Plains, New York, beginning at 10:00 a.m. on April 2. The agenda for the meeting is as follows:

1. Opening remarks.
2. Review of draft of Second Plan of Action.
3. Future work program.

With respect to the draft plan of action referred to in the above agenda, it should be noted that section 252(d) of the Energy Policy and Conservation Act provides that before a plan of action can be made effective, it must be approved by the Attorney General, after consultation with the Federal Trade Commission, which is required to publish in the **Federal Register** its views as to whether the plan of action should be approved. Section 6(c)(1) of the existing "Voluntary Agreement and Plan of Action to Implement the International Energy Program" (2 CCH Federal Energy Guidelines, para. 15,845) further requires that the Secretary of Energy approve a plan of action, before it may be carried out.

As permitted by 10 CFR 209.32, the usual 7-day notice period has been shortened because unanticipated procedural delays prevented processing in sufficient time to provide such notice.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, this meeting is open only to representatives of members of Subcommittee C of the IAB, their counsel, representatives of the Departments of Energy, Justice, State, the Federal Trade Commission, and the General Accounting Office, representatives of committees of Congress, representatives of the IEA, representatives of the Commission of the European Communities, and invitees of the IAB or the IEA.

Issued in Washington, DC, March 24, 1987.

J. Michael Farrell,

General Counsel.

[FR Doc. 87-6818 Filed 3-26-87; 8:45 am]

BILL CODE 6450-01-M

[Docket Nos. CP87-235-000 et al.]

Natural Gas Certificate Filings; Southern Natural Gas Co. et al.

Take notice that the following filings have been made with the Commission:

1. Southern Natural Gas Co.

[Docket No. CP87-235-000]

March 20, 1987.

Take notice that on March 9, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP87-235-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing Southern to transport natural gas on behalf of Atlanta Gas Light Company (Atlanta), acting as agent for Fort Howard Paper Company (Fort Howard), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that gas purchased by Fort Howard from SNG Trading Inc., Entrade Corporation, and Consolidated Fuel Supply, Inc., would be delivered to Southern at various existing points of receipt on Southern's contiguous pipeline system. Southern proposes to transport on an interruptible basis up to 9.865 billion Btu equivalent of gas per day for Atlanta to Atlanta's Savannah No. 4 Meter Station in Effingham County, Georgia for ultimate delivery by Atlanta to Fort Howard's plant in Effingham County, Georgia.

Southern requests that the proposed transportation be authorized for a term expiring on October 31, 1988.

Southern states that its agreement with Atlanta provides that Atlanta shall pay Southern each month the following rates for performing the proposed transportation service:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to Atlanta under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to Atlanta do not exceed the daily contract demand of Atlanta, the transportation rate shall be 48.2 cents per million Btu; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to Atlanta under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to Atlanta exceed the daily contract demand of Atlanta, the transportation rate for the excess volumes shall be 77.6 cents per million Btu.

Additionally, Southern indicates that it would collect from Atlanta the GRI surcharge of 1.52 cents per Mcf, or such other GRI funding unit or surcharge as the Commission or other government authority may from time to time by order or specific applicability or otherwise prescribe or approve.

Southern states that the proposed transportation service would be conditioned upon the availability of capacity sufficient for Southern to perform the proposed services without detriment or disadvantage to Southern's obligations to its customers who are dependent on its general system supply.

Comment date: April 10, 1987, in accordance with Standard Paragraph F at the end of this notice.

2. Natural Gas Pipeline Co. of America

[Docket Nos. CP86-108-007 and CP86-133-008

March 20, 1987.

Take notice that on March 2, 1987, Natural Gas Pipeline Company of America (Petitioner), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket Nos. CP86-108-007 and CP86-133-008, a petition to amend the order issued May 1, 1986, in Docket Nos. CP86-133-000, and CP86-133-000, as amended pursuant to section 7 of the Natural Gas Act so as to authorize Petitioner to: (1)(a) Extend the term of its transportation for United States Steel Corporation, now known as USS, a unit of USX Corporation (USS), as authorized in Docket No. CP86-108, from April 30, 1987 until April 30, 1989; (b) increase the maximum daily volume of natural gas that may be transported under Docket No. CP86-108 to 110 billion Btu; (c) add three additional delivery points on Petitioner's Calumet line in Cook County, Illinois; and (2) extend the term of its transportation for USS, as authorized in Docket No. CP86-133, from April 30, 1987, until April 30, 1989, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In Docket No. CP86-108 Petitioner was previously authorized to transport up to a maximum of 60 billion Btu per day on an interruptible basis for USS for ultimate delivery to USS at its Gary and South Chicago Works plants, it is stated.

It is indicated that under Docket No. CP86-133 Petitioner was previously authorized to transport up to a maximum of 50 billion Btu per day on an interruptible basis for USS, which gas is ultimately delivered to USS at its Lorain and Haverhill, Ohio plants.

Comment date: April 10, 1987, in accordance with Standard Paragraph F at the end of this notice.

3. Alabama-Tennessee Natural Gas Co.

[Docket No. CP87-231-000

March 23, 1987.

Take notice that on March 5, 1987, Alabama-Tennessee Natural Gas Company (A-T), P.O. Box 918, Florence, Alabama 35631, filed in Docket No. CP87-231-000 an application in accordance with the provisions of section 7(c) of the Natural Gas Act, and the rules and regulations of the Federal Energy Regulatory Commission for a certificate of public convenience and necessity authorizing increased sales to existing customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

A-T requests a certificate of public convenience and necessity authorizing it to increase the maximum contract quantity presently authorized for delivery to one direct industrial customer and six resale customers who have indicated a current need for an additional peak day gas supply. A summary of the changes is attached as an appendix. A-T states that all of these customers have indicated their desire and willingness to execute agreements for these additional volumes of gas as soon as appropriate action is taken or authorized by each municipality's governing body. It is indicated that the gas to be made available for these increases in contract volume is gas which has previously been made under a long term contract for direct industrial sale. It is indicated that the direct industrial customer, Tennessee Valley Authority (TVA), desires to eliminate its firm sales obligation. A-T states that the total volume reduction is therefore being made available on a firm basis to those customers who have requested additional volumes of firm gas. It is stated that A-T's resale customers have long-time commitments to provide natural gas service in areas where alternate fuels are being used at additional expense to the consumer.

A-T states that there is no construction of facilities necessary in connection with this application.

A-T also indicates that it is concurrently filing an application to abandon the firm sales to TVA.

APPENDIX.—ALABAMA-TENNESSEE NATURAL GAS COMPANY TABULATION OF PRESENT CONTRACT VOLUMES AND PROPOSED MAXIMUM DAILY FIRM QUANTITIES

	Maximum daily quantities (MCF)		
	Present firm contract	Proposed change	Proposed contract volume
Wholesale customers:			
Selmer, Tennessee	1,764	735	2,499
Russellville, Alabama	3,682		3,682
Tuscumbia, Alabama	4,355		4,355
Sheffield, Alabama	5,940		5,940
Florence, Alabama	12,121		12,121
Decatur, Alabama	17,284		17,284
Huntsville, Alabama	37,558		37,558
Athens, Alabama	3,000	1,000	4,000
Hartselle, Alabama	1,559	940	2,499
North Alabama Gas District	8,726	723	9,449
Hardin County Gas Company	537		537
Iuka, Mississippi	1,400	400	1,800
Tishomingo, Mississippi	530	195	725
Cherokee, Alabama	350		350
Lawrence-Colbert Counties Gas District	1,499		1,499
Moulton, Alabama	1,239		1,239
North Mississippi Natural Gas Company	927	0	927
Total Wholesale Sales	102,471	3,993	106,464
Direct Customers:			
Amoco Chemicals Corporation	4,600		4,600
Reynolds Metals Company	17,550		17,550
Tennessee Valley Authority	5,000	(5,000)	0
Champion International Corporation	200		200
Tennessee River Pulp & Paper Company	0	330	330
Total Direct Sales	27,350	(4,670)	22,680
Company Use:	0	0	0
Total	129,821	(677)	129,144

Comment date: April 13, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Alabama-Tennessee Natural Gas Co.

[Docket No. CP87-232-000]

March 23, 1987.

Take notice that on March 5, 1987, Alabama-Tennessee Natural Gas Company (A-T), P.O. Box 918, Florence, Alabama 35631, filed in Docket No. CP87-232-000 an application pursuant to section 7(b) of the Natural Gas Act, as amended, and the rules and regulations of the Federal Energy Regulatory Commission for permission and approval to abandon certain natural gas sales, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

A-T indicates that under a service agreement dated December 30, 1985, A-T presently sells natural gas to the Tennessee Valley Authority (TVA) on a firm basis, with a contract demand of 5,000 Mcf per day, delivered to TVA's National Fertilizer Development Center at Muscle Shoals, Alabama. A-T states that the level of sales to TVA was certificated by the Commission in *Alabama-Tennessee Natural Gas Company*, 33 FPC 1 (January 4, 1965).

It is indicated that the service agreement under which A-T sells natural gas is presently scheduled to

expire on October 1, 1987. However, A–T states that TVA has requested an earlier termination of the service to be effective on the date the instant application is approved.

A–T indicates that the abandonment of the sales herein would not result in the abandonment of any facilities presently in use, since A–T intends to provide transportation and interruptible sales services to TVA as set forth in *Alabama-Tennessee Natural Gas Company*, Docket No. CP87–46–000, filed October 30, 1986.

A–T states that the firm capacity which would be made available by the instant partial abandonment has been offered to A–T's other customers and a proposal to reallocate that capacity is being filed concurrently with this abandonment application.

It is alleged that the proposed abandonment of sales to TVA would not result in the abandonment or diminution of natural gas service presently being rendered by A–T to any of its other customers.

Comment date: April 13, 1987, in accordance with Standard Paragraph F at the end of this notice.

5. Lone Star Gas Co., A Division of ENSERCH Corp.

[Docket No. CP87–230–000]

March 23, 1987.

Take notice that on March 5, 1987, Lone Star Gas Company, a Division of ENSERCH Corporation (Applicant), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP87–230–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain facilities for the transportation of natural gas in interstate commerce, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests permission and approval to abandon and retire from service the following pipeline facilities:

(1) All of Line FX–458–T, approximately 3,637 feet of 6-inch pipeline facilities in Carter County, Oklahoma;

(2) All of Line FX–576–T, approximately 3,600 feet of 2-inch pipeline facilities in Carter County, Oklahoma;

(3) All of Line FX–592–T, approximately 6 feet of 2-inch pipeline facilities in Jefferson County, Oklahoma;

(4) All of Line FX–610–T, approximately 8 feet of 2-inch pipeline facilities in Cotton County, Oklahoma;

(5) All of Line FX–616–T, approximately 9 feet of 2-inch pipeline facilities in Stephens County, Oklahoma;

(6) All of Line FX–617–T, approximately 10 feet of 2-inch pipeline facilities in Jefferson County, Oklahoma;

(7) All of Line FX–618–T, approximately 10 feet of 2-inch pipeline facilities in Carter County, Oklahoma;

(8) All of Line FX–638–T, approximately 1,335 feet of 3-inch pipeline facilities in Garvin County, Oklahoma;

(9) All of Line GN–109–T, approximately 10 feet of 3-inch pipeline facilities in Grayson County, Texas;

(10) All of Line GN–110–T, approximately 19 feet of 3-inch pipeline facilities in Grayson County, Texas;

(11) All of Line GN–117–T, approximately 18 feet of 2-inch pipeline facilities in Bryan County, Oklahoma;

(12) A portion of Line GDHB, approximately 7,103 feet of 6-inch pipeline facilities in Stephens County, Oklahoma;

(13) A portion of Line TDA, approximately 10,799 feet of 6-inch pipeline facilities in Stephens County, Oklahoma;

(14) A portion of Line GDHA, approximately 118 feet of 6-inch pipeline facilities in Stephens County, Oklahoma;

(15) A portion of Line A16, approximately 1,550 feet of 2-inch and 11,620 feet of 4-inch pipeline facilities in Wichita County, Texas;

(16) A portion of Line TF, approximately 20,307 feet of 10-inch pipeline facilities in Stephens County, Oklahoma;

(17) All of Line A28, approximately 1,145 feet of 2-inch pipeline facilities in Wilbarger County, Texas;

(18) All of Line A18, approximately 660 feet of 4-inch and 19,330 feet of 6-inch pipeline facilities in Wichita County, Texas;

(19) All of Line A18–5, approximately 878 feet of 2-inch and 2,939 feet of 3-inch pipeline facilities in Wichita County, Texas; and

(20) All of Line A18–6, approximately 56 feet of 2-inch and 5,235 feet of 4-inch pipeline facilities in Wichita County, Texas.

Applicant states that the pipeline facilities to be abandoned are no longer required due to depleted sources of supply, expired contracts, customer disconnection, or rearrangement of facilities. Also, Applicant states the abandonment and retirement from service of these lines would result in a reduction in Applicant's cost of service of its interstate facilities without reduction in service to any customer.

Comment date: April 13, 1987, in accordance with Standard Paragraph F at the end of this notice.

6. Natural Gas Pipeline Co. of America

[Docket No. CP86–134–007]

March 23, 1987.

Take notice that on March 3, 1987, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP86–134–007 a petition to amend the order issued May 1, 1986, in Docket No. CP86–134–000, as amended, pursuant to section 7 of the Natural Gas Act so as to authorize an increase in the maximum daily transportation volume and to extend the transportation term, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Natural states that the Commission's order of May 1, 1986, authorized Natural to transport up to a maximum of 25 billion Btu equivalent of natural gas per day for Bethlehem Steel Corporation (Bethlehem) for ultimate delivery to Bethlehem at its Burns Harbor, Indiana, plant. It is further stated that on November 7, 1986, the Commission issued an order amending the May 1, 1986, order authorizing an increase in the maximum daily volume to 45 billion Btu equivalent of gas and extending the term of the transportation service to April 30, 1987.

Natural proposes that the May 1, 1986, order be further amended to increase the maximum daily volume to 120 billion Btu equivalent of gas and to extend the term of the transportation service to December 31, 1988. Natural states the proposed increase in transportation volume would enable Bethlehem to continue to secure cheaper supplies of gas for use at the Burns Harbor plant.

Comment date: April 13, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

7. Northwest Pipeline Corp.

[Docket No. CP87–224–000]

March 23, 1987.

Take notice that on February 27, 1987, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP87–224–000 an application pursuant to section 7(b) of the Natural Gas Act for a certificate of public convenience and necessity granting permission and approval to partially abandon its currently authorized transportation and delivery of direct sales natural gas to Chevron Chemical Company (Chevron) by immediately reducing its authorized maximum delivery volumes to Chevron's Finley, Washington, ammonia plant from 16,000 dt equivalent of gas per day of firm and 4,000 dt equivalent

of gas per day of interruptible service to a total of 5,000 dt equivalent of gas per day, which would be available on a firm basis until February 28, 1988, and on an interruptible basis thereafter, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is said that the Commission granted certificates of public convenience and necessity in Docket No. G–8934 issued on November 25, 1955, and in Docket No. CP65–178 on May 4, 1965, to Northwest's predecessor authorizing the construction and operation of delivery facilities of natural gas for direct industrial sales to Phillips Pacific Chemical Company's (Phillips) Finley ammonia plant located in Benton County, Washington. Northwest, as a successor-in-interest to these certificates is authorized to transport and deliver on a firm basis up to 16,000 dt equivalent of gas per day (Maximum Daily Quantity) and 4,000 dt equivalent of gas per day on an interruptible basis of direct sales gas for the account of Phillips to the Finley plant pursuant to a direct industrial sales contract dated July 15, 1971, as amended, for a primary term expiring October 31, 1989, it is stated.

It is stated that effective December 29, 1986, Chevron acquired Phillips' Finley plant from CEPEX, Inc. (CEPEX), who had purchased the plant from Phillips on February 28, 1986. In conjunction with the ownership changes at the Finley plant, first CEPEX and then, Chevron became successor-in-interest to the direct sales industrial contract, it is stated.

It is further stated that on March 1, 1986, Northwest and CEPEX, successor to Phillips, entered into an amendatory agreement to the direct sales contract which, *inter alia*, revised the volumes of gas subject thereto to be more consistent with expected requirements for direct sales gas. Under the amendatory agreement, the Maximum Daily Quantity for firm deliveries was decreased from 16,000 dt equivalent of gas per day to 14,000 dt equivalent of gas per day for the period from March 1, 1986, through May 31, 1986; further reduced to zero dt equivalent of gas per day from March 1, 1988, through February 28, 1994, the termination date of the direct sales contract, it is stated. Upon termination of the firm deliveries on March 1, 1988, Northwest stated that it would be obligated to deliver the 5,000 dt equivalent of gas per day on an interruptible basis only. Northwest indicates that the amendatory agreement also extends the primary term of the direct sales contract through February 29, 1994.

Comment date: April 13, 1986, in accordance with the Standard Paragraph F at the end of this notice.

8. Southern Natural Gas Co.

[Docket No. CP70–7–033]

March 23, 1987.

Take notice that on February 17, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP70–7–033 a petition pursuant to section 7 of the Natural Gas Act to amend the Commission order issued in Docket No. CP70–7 on October 29, 1969, as amended, in order to decrease the total contract demand volume of Alabama Gas Corporation (Alagasco) by 10,927 Mcf per day at Alagasco's Birmingham Area Delivery Point and to distribute said decrease in contract demand to its eligible customers who have elected to participate in the reallocation, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Southern states that it is currently authorized to sell and deliver to Alagasco an aggregate contract demand of 425,918 Mcf per day and that by letter dated December 12, 1986, Alagasco formally notified Southern that it desires to reduce its contract demand to 414,991 Mcf per day as permitted by section 13 of the General Terms and Conditions contained in Southern's FERC Gas Tariff, Sixth Revised Volume No. 1 (Tariff). It is stated that section 13 provides that a customer may decrease its contract demand once during a 12 month period, provided that another customer or customers increase their contract demand in the total amount equal to such decrease without constructing new facilities (other than minor delivery facilities).

Southern states that in accordance with said Section 13, it notified all of its eligible Rate Schedule OCD and G customers that they may obtain the greater of their pro rata portion of the 10,927 Mcf that Alagasco has made available or 5 Mcf. It is indicated that this minimum volume of 5 Mcf was offered since the pro rata share of several of Southern's smaller municipal customers is only one or two Mcf. It is further indicated that after all of the customers had responded to its notice, Southern offered the remainder of the contract demand not accepted by some customers on a pro rata basis to those who had subscribed for their total allocations initially and thus the entire reduction in Alagasco's contract demand was reallocated pursuant to section 13 of the Tariff.[1]

Southern states that it can deliver the additional quantities of contract demand to all of the participating customers without the construction of additional facilities. It is stated that a customer with more than one point of delivery may specify the point or points of delivery at which it would desire to take its additional gas, provided that the additional gas can be delivered at said point or points without the construction of additional facilities.

[1] See Appendix for a list of those customers who wish to increase their contract demand.

APPENDIX.—CUSTOMERS ELECTING TO PARTICIPATE IN REALLOCATION DOCKET NO. CP70–7–033

Customer	Rate schedule	Contract Demand in Mcf		
		Present	Add'l	New
Washington Parish	G–1	1,237	297	1,534
Tchula	G–1	730	182	912
Trans Louisiana	G–1	130	40	170
Roxie	G–1	885	75	960
Fayette, Mississippi	G–1	1,818	429	2,247
Artesia	G–1	165	52	217
Columbiana	OCD–Z	1,778	72	1,850
Northwest, Alabama	G–2	6,819	1,568	8,387
Graysville	G–2	6,061	1,395	7,456
Marshall County	G–2	15,477	590	16,067
Cullman-Jefferson	G–2	8,284	318	8,602
Wilton	G–2	180	26	206
Oneonta	G–2	2,884	672	3,556

APPENDIX.—CUSTOMERS ELECTING TO PARTICIPATE IN REALLOCATION DOCKET NO. CP70-7-033—Continued

Customer	Rate schedule	Contract Demand in Mcf		
		Present	Add'l	New
Helena	G-2	360	97	457
Chilton County	G-2	950	232	1,182
Brookside	G-2	435	113	548
Alabaster	G-2	2,551	596	3,147
West Jefferson	G-2	601	152	753
Sumiton	G-2	1,035	250	1,285
Pickens County	G-2	1,525	362	1,887
Parrish	G-2	580	147	727
Oakman	G-2	330	89	419
Mulga	G-2	1,364	326	1,690
Lamar County	G-2	1,414	74	1,488
Gordo	G-2	760	188	948
Dora	G-2	1,102	26	1,128
Berry	G-2	385	103	488
Jasper	G-2	5,051	1,165	6,216
Fultondale	G-2	5,606	1,291	6,897
Total Reallocation			10,927	

Comment date: April 13, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

9. Southern Natural Gas Co.

[Docket No. CP87-226-000]

March 23, 1987.

Take notice that on March 3, 1987, Southern Natural Gas Company (Southern), filed in Docket No. CP87-226-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing transportation of natural gas for the City of Cartersville, Georgia (Cartersville), and Atlanta Gas Light Company (Atlanta), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern requests a limited-term certificate of public convenience and necessity authorizing it to transport gas on behalf of Cartersville and Atlanta, each acting as agent in arranging for the transportation of natural gas supplies for Atlantic Steel Company (Atlantic Steel) in accordance with the terms and conditions of a transportation agreement between Cartersville and Southern dated September 9, 1986, as amended November 10, 1986, and a transportation agreement between Atlanta and Southern dated July 7, 1986, as amended January 21, 1987.

Southern states that Atlantic Steel has entered into gas sales contracts to purchase natural gas from Exxon Company and SNG Trading Inc. to serve the natural gas requirements of Atlantic Steel's plants in Cartersville and Atlanta, Georgia. Southern also states that Atlantic Steel has entered into agreements with Cartersville (September 5, 1986) and Atlanta (April 2, 1986) wherein Cartersville and Atlanta have agreed to transport the gas purchased by Atlantic Steel through their facilities to Atlantic Steel's plants.

Southern proposes to transport on an interruptible basis up to 3.0 billion Btu equivalent of natural gas per day on behalf of Cartersville and up to 4.3 billion Btu equivalent of natural gas per day on behalf of Atlanta. Southern requests that the Commission issue limited-term certificates for terms expiring October 31, 1988.

The agreements provide that Cartersville and Atlanta would cause gas to be delivered to Southern for transportation at various existing points of delivery on Southern's contiguous pipeline system. Southern proposes to redeliver the gas to Cartersville at the Cartersville meter station located in Floyd County, Georgia, and to Atlanta at the Atlanta delivery point.

Southern states that the agreements with Cartersville and Atlanta provide that Cartersville and Atlanta shall pay Southern the following transportation rates each month:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to the shipper, under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to the shipper, do not exceed the daily contract demand of the shipper, the transportation rate would be 48.2 cents per million Btu of natural gas; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to the shipper, under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to the shipper, exceed the daily contract demand of the shipper, the transportation rate for the excess volumes would be 77.6 cents per million Btu of natural gas.

Southern would also collect from Cartersville and Atlanta the GRI surcharge of 1.52 cents per Mcf.

Southern states that the transportation arrangements would enable Atlantic Steel to diversify its natural gas supply sources and to obtain gas at competitive prices. In addition, Southern indicates that it would obtain take-or-pay relief on gas that Atlantic Steel may obtain from its suppliers.

Comment date: April 13, 1987, in accordance with Standard Paragraph F at the end of this notice.

10. Tennessee Gas Pipeline Co., a Division of Tenneco Inc.

[Docket No. CP87-233-000]

March 23, 1987.

Take notice that on March 6, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P. O. Box 2511, Houston, Texas 77001, filed an application in Docket No. CP87-233-000 pursuant to section 7(c) of the Natural Gas Act requesting authorization to render an interruptible transportation service for Texas Eastern Transmission Corporation (Texas Eastern) pursuant to the terms of a gas transportation agreement between Applicant and Texas Eastern dated January 13, 1987, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant indicates that pursuant to the provisions of the agreement, Applicant will accept and receive daily, on an interruptible basis, up to 7,000 dt equivalent of natural gas per day from Texas Eastern's producer in South Marsh Island Block 141, offshore Louisiana. Applicant states that it would transport and deliver thermally equivalent quantities to Sea Robin

Pipeline Company (Sea Robin) for the account of Texas Eastern at the existing sub-sea interconnection between Sea Robin and Applicant in South Marsh Island Block 127, offshore Louisiana. It is stated that Sea Robin and United Gas Pipe Line Company would provide further transportation for Texas Eastern for ultimate redeliveries in Gregg County, Texas, and Ouachita Parish, Louisiana. Applicant states that the service would enable Texas Eastern to receive quantities of gas that it purchased in South Marsh Island Block 141 for its system supply for resale.

Applicant proposes to charge Texas Eastern a quantity charge equal to the product of 3.66 cents multiplied by the total quantities of gas delivered by Tennessee on behalf of Texas Eastern. Applicant also indicates it would retain 0.52 percent of the quantities received for the account of Texas Eastern for system fuel and gas lost and unaccounted for.

Applicant states that no new facilities would be required to render the proposed transportation service.

Comment date: April 13, 1987, in accordance with Standard Paragraph F at the end of this notice.

11. Texas Gas Transmission Corp.

[Docket No. CP87-222-000]

March 23, 1987.

Take notice that on February 26, 1987, Texas Gas Transmission Corporation (Texas Gas), P. O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP87-222-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Texas Gas to transport natural gas on an interruptible basis for certain customers, all as more fully set forth in the application on file with the Commission and open to public inspection.

Texas Gas states that the customers (see Appendix) for whom authorization is requested are customers for whom Texas Gas is presently transporting gas under section 311 of the Natural Gas Policy Act (NGPA) and for which authority to transport such gas will terminate on May 1, 1987.

Texas Gas states that it would charge the appropriate rate for each transportation service involved as it may exist from time to time, as specified in Texas Gas' appropriate transportation rate schedule as filed with the Commission. For customers receiving service under Texas Gas' TSC program, the currently effective rates can be found on Third Revised Sheet No. 12 of its FERC Gas Tariff, Original Volume No. 1, and for those customers receiving service under Texas Gas' T Rate Schedule, the appropriate rates can be found on Third Revised Sheet No. 11 of that same tariff. Texas Gas states that it would also collect the applicable GRI funding unit where appropriate.

Texas Gas also requests automatic authorization to add and/or delete receipt points to the transportation agreements for which service is requested since all customers have indicated that they may be purchasing gas from a variety of sources during the term of the subject transportation service. Further, Texas Gas states that no new facilities are necessary to effectuate transportation service involving the receipt points presently contained in the transportation agreements described in the application. However, should new facilities be necessary for any receipt points added after certification of the initial service; Texas Gas requests flexible authority to add such points to the appropriate transportation agreement and states that related facilities would be constructed and reported pursuant to Texas Gas' blanket certificate issued in Docket No. CP82-407 and § 157.208 of the Commission's Regulations.

Texas Gas states that the term of the subject transportation is proposed to commence on the date of initial deliveries after certification pursuant to this docket and continue until 30 days after Texas Gas' acceptance of a blanket certificate issued pursuant to its Docket No. CP86-521-000 (Texas Gas' 436 application).

Comment date: April 13, 1986, in accordance with Standard Paragraph F at the end of this notice.

Tab. No.	Contract No.	Name	Contract Demand	Rate Schedule
1.	1368.01	Indiana Gas/DePauw U.	1,000	TSC
2.	1369.01	Indiana Gas/Kaiser Aluminum.	4,000	TSC
3.	1230.01	Louisville/GE	2,500	TSC
4.	1380.01	Louisville/Hershey Foods.	400	TSC
5.	1379.01	Louisville/Tube Turns	2,200	TSC
6.	1384.01	Terre Haute/Culbro Snack.	520	TSC
7.	1385.01	Terre Haute/Hercules	1,350	TSC
8.	1377.01	Louisville/Ford Motors.	13,200	TSC
9.	1398.01	Louisville/Louisville Forge.	1,100	TSC
10.	1396.01	Louisville/AnaMag	900	TSC
11.	1400.01	Indiana Gas/Rock-Tenn.	3,000	TSC
12.	1399.01	Illinois Gas/ Roadmaster.	700	TSC
13.	1414.01	TXG Pipeline	40,000	T
14.	1404.01	Lawrenceburg/ Seagram.	400	TSC
15.	1395.01	Quivira Gas Co	100,000	T
16.	1409.01	Indiana Gas/AnaMag	3,400	TSC
17.	1410.01	Indiana Gas/Arvin	1,000	TSC
18.	1407.01	Western/Harsco Corp.	450	TSC
19.	1408.01	Western/Owensboro Brick.	600	TSC
20.	1416.01	EnTrade	150,000	T
21.	1406.01	Western/E. R. Carpenter.	625	TSC
22.	1425.01	La. Intrastate Seg. Arkla Energy.	60,000	T
23.	1372.01	PeopleService/ Rochester Gas.	35,000	T
24.	1423.01	Murray, KY	6,851	TSC
25.	1330.01	Niagara Mohawk	60,000	T
26.	1427.01	Memphis/Harsco	220	TSC
27.	1426.01	Memphis/GNB, Inc.	200	TSC
28.	1429.01	Western/Donnelley	600	TSC
29.	1428.01	Western/Western State.	331	TSC
30.	1424.01	Carrollton/AnaMag	1,500	TSC
31.	1431.01	Indiana Gas/Golden Foundry.	1,200	TSC
32.	1371.01	ANR Gathering	40,000	T
33.	1378.01	Citizens Energy	180,000	T
34.	1441.01	Memphis/Cochran	400	TSC
35.	1443.01	Carrollton/M&T Chemicals.	1,000	TSC
36.	1444.01	Covington, TN	3,000	T
37.	1442.01	Illinois Gas	3,117	TSC
38.	1446.01	Western/Illinois Tool	250	TSC
39.	1448.01	Carrollton, KY	5,089	TSC
40.	1445.01	Indiana Gas/Mariah Packing.	740	TSC
41.	1447.01	Louisville/Harshaw/ Filtrol.	1,845	TSC
42.	1434.01	Citizens Energy	20,000	T
43.	1452.01	Ripley, TN	2,500	T
44.	1455.01	Covington/Charms	200	T
45.	1454.01	Covington/Lydall	800	T
46.	1440.01	Ohio River/Indiana Gas/Floyd Mem.	850	TSC
47.	1458.01	Indiana Gas/GE	1,400	TSC
48.	1456.01	Quivira Gas Co	10,000	T
49.	1460.01	Indiana Gas/ Hydraulic Press.	5,000	TSC
50.	1471.01	PeopleService/ Central Hudson.	15,000	T
51.	1472.01	Bells, TN	750	T
52.	1453.01	Brownsville/Cub Cadet.	400	TSC
53.	1451.01	Central Illinois/Union Carbide.	1,500	TSC
54.	1450.01	Elizabethtown, KY	1,037	TSC
55.	1464.01	Indiana Gas/Griffin Industries.	250	TSC
56.	1467.01	Louisville/Standard Gravure.	1,200	TSC
57.	1459.01	Ohio River/Indiana Gas/Wyandot.	300	TSC
58.	1449.01	Rochester Gas	50,000	T
59.	1470.01	Western/Dairymen	570	TSC
60.	1469.01	Western/Rockwell	450	TSC
61.	1474.01	Forest Oil/Union, SC	1,400	T
62.	1468.01	Indiana Gas/Roberts	1,000	TSC
63.	1430.01	Louisville/Borden	615	TSC
64.	1473.01	Eastex Gas Transmission.	42,000	T
65.	1197.01	Memphis/Kraft	6,000	TSC
66.	1477.01	UER Marketing/Gulf South.	40,000	T
67.	1478.01	Midwest Natural Gas	8,278	TSC
68.	1483.01	Peoples Gas & Power.	2,380	T
69.	1481.01	Western/GE	500	TSC
70.	1482.01	Western/Shelbyville Laundry.	150	TSC
71.	1484.01	Western/LWD Corp.	400	TSC
72.	1486.01	Halls, TN	1,898	T
73.	1489.01	Community Natural Gas.	3,021	T
74.	1485.01	Dyersburg, TN	13,116	TSC
75.	1487.01	Louisville/Interez	1,500	TSC
76.	1476.01	Memphis/Cargill	130	TSC
77.	1492.01	Western/Aluminum Master.	200	TSC
78.	1493.01	Western/Seagrams	1,025	TSC
79.	1499.01	TXG Gas Marketing/ LaFourche Gas Corp.	1,130	T
80.	1500.01	TXG Gas Marketing/ Evangeline Gas Co.	2,544	T
81.	1496.01	Elizabethtown/Flint Ink.	400	TSC
82.	1491.01	Ohio River/Pilot	350	TSC
83.	1490.01	Ohio River/Pillsbury	500	TSC

Tab. No.	Contract No.	Name	Contract Demand	Rate Schedule
84.	1503.01	TXG Gas Marketing/ Mountaineer.	30,000	T
85.	1457.01	Switzerland County	1,158	TSC
86.	1506.01	City of Hamilton, OH	39,205	TSC
87.	1507.01	Town of Mamou, LA	2,035	T
88.	1405.01	Cheney Energy Corp.	9,000	T
89.	1411.01	Tenngasco	3,000	T
90.	1413.01	Citizens Energy	180,000	T
91.	1415.01	Memphis/Cargill Buoy.	4,000	TSC
92.	1433.01	Rocky Mountain Energy Exchange.	7,500	T
93.	1439.01	ANR Gathering	45,000	T
94.	1461.01	PGC Pipeline	25,000	T
95.	1463.01	Delhi Gas Pipeline	50,000	T
96.	1465.01	Citizens Energy	180,000	T
97.	1466.01	Citizens Energy	180,000	T
98.	1475.01	Union Light, Heat & Power.	100,000	T
99.	1498.01	TXG Gas Marketing	20,000	T
100.	1494.01	Lawrenceburg Gas Co.	25,000	T
101.	1501.01	ARCO Oil and Gas	100,000	T
102.	1502.01	Citizens Energy	30,000	T
103.	1504.01	Indiana Gas/Stone Container.	250	TSC
104.	1505.01	Ohio River/Indiana Gas/Foam Fab.	300	TSC
105.	1508.01	Commonwealth Gas Services.	50,000	T
106.	1509.01	TXG Gas Marketing	2,000	T
107.	1510.01	Hoosier Gas Corp./ Essex.	1,127	TSC
108.	1511.01	Brownsville, TN	5,000	T
109.	1512.01	EnTrade	15,000	T
110.	1513.01	TXG Gas Marketing/ Humboldt.	6,000	T
111.	1479.01	Boonville Natural	5,000	T
112.	1480.01	Chandler Natural	1,883	T
113.	1488.01	Hope Gas	30,000	T
114.	1514.01	Memphis/Cargill-Nutrena Feeds.	100	TSC
115.	1515.01	Memphis/Stroh Brewery.	3,000	TSC
116.	1516.01	Western/Campbell Tobacco.	200	TSC
117.	1517.01	Western/Ken DEC	310	TSC
118.	1518.01	Morganfield, KY	5,089	T
119.	1519.01	Jena, LA	2,595	T
120.	1520.01	Olive Branch/ Guardian Fiberglass.	305	T
121.	1521.01	Indiana Gas/Cosco	1,500	TSC
122.	1522.01	Indiana Gas/Sheller-Ryobi.	1,200	TSC
123.	1523.01	Brownsville/Haywood	600	T
124.	1524.01	Brownsville/Cub Cadet.	400	T
125.	1525.01	Ohio Valley Gas, Inc	1,200	T
126.	1526.01	Dome Gas Co	1,100	T
127.	1527.01	Switzerland County	1,158	T
128.	1528.01	Western/SKF Tapered Bearings.	575	TSC
129.	1529.01	Indiana Gas/Gold Bond Bldg.	4,000	TSC
130.	1530.01	Panhandle Gas Co., Loving, TX-Oasis.	5,000	T
131.	1531.01	Hamilton/Hughes Memorial Hospital.	200	TSC
132.	1532.01	Eastex Gas Transmission.	40,000	T
133.	1533.01	Eastex Gas Transmission.	40,000	T
134.	1534.01	Eastex Gas Transmission.	40,000	T
135.	1535.01	Western/Thomas Industries.	550	TSC
136.	1536.01	Western/Thomas Industries.	200	TSC
137.	1537.01	CIPS/E.H. Baare	250	TSC
138.	1538.01	Entrade/Tennessee Gas.	150,000	T
139.	1539.01	Olive Branch	3,114	T
140.	1540.01	TXG Gas Mktg./S.E. Indiana Natural.	5,000	T
141.	1541.01	Lawrenceburg Gas/ CG&E.	15,571	TSC
142.	1542.01	Lawrenceburg Gas	15,571	TSC
143.	1543.01	Terre Haute Gas/ I.M.C. Corp.	3,600	TSC
144.	1544.01	Shell Gas Trading Co./ANR.	7,000	T
145.	1545.01	Eastex Gas Transmission.	17,000	T
146.	1546.01	Ohio River/IN Gas/ United Tech. Auto.	400	TSC
147.	1547.01	Citizens Energy Corp./Tennessee Gas.	250,000	T
148.	1548.01	Citizens Energy Crop./Offshore.	40,000	T
149.	1549.01	TXG Gas Mktg./Olive Branch.	3,500	T
150.	1550.01	Quivira/NGPL	5,000	T

Comment date: April 13, 1987, in accordance with Standard Paragraph F at the end of this notice.

12. Texas Gas Transmission Corp.

[Docket No. CP86-349-003]

March 23, 1987.

Take notice that on February 24, 1987, Texas Gas Transmission Corporation (Petitioner), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP86-349-003 a petition to amend the Commission's order issued September 11, 1986, as amended, pursuant to section 7(c) of the Natural Gas Act so as to extend the term of the transportation service and to authorize certain changes with respect to the transportation service to one customer, Cincinnati Gas & Electric Company (CG&E), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that by the order issued September 11, 1986, it was authorized to provide interruptible transportation service for ten customers, two for a period extending until June 13, 1988 (Columbia Gas Transmission Corporation and Consolidated Gas Transmission Corporation), and until June 13, 1987, for the remaining customers. Petitioner requests authorization to extend the term of the certificate, for the customers whose certificate expires June 13, 1987, until 30 days after Petitioner accepts a blanket certificate pursuant to Order No. 436.

Petitioner states that with respect to CG&E it requests authorization (1) to increase CG&E's contract demand from 190 billion Btu equivalent of natural gas per day to 225 billion Btu equivalent of natural gas per day; (2) to add three additional points of delivery and several additional points of receipt; and (3) to charge CG&E under its TSC Rate Schedule for those volumes transported within CG&E's sales contract demand.

Comment date: April 13, 1987, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraph

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 ntoice 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-6740 Filed 3-26-87; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9219-002]

Surrender of Preliminary Permit; Tehama Power Authority

March 23, 1987.

Take notice that Tehama Power Authority, permittee for the Dippingvate Project No. 9219, located on South Fork Cottonwood Creek and Red Bank Creek, Tehama County, California, has requested that its preliminary permit be terminated. The preliminary permit was issued on April 7, 1986, and would have

expired on March 31, 1989. The permittee states that analysis of the Dippingvat Project indicated that the time for conducting studies would be much longer than the 36 month period of the preliminary permit.

The permittee filed the request on February 24, 1987, and the preliminary permit for Project No. 9219 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-6741 Filed 3-26-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-312-000]

Application for Commission Certification of Qualifying Status of a Cogeneration Facility; County of Los Angeles Facilities Management Division

March 20, 1987.

On March 9, 1987, County of Los Angeles Facilities Management Division (Applicant), of 1100 N. Eastern Avenue, Los Angeles, California 90063, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Civic Center Heating and Refrigeration Plant in Los Angeles, California. The facility will consist of a combustion turbine generator, a heat recovery steam generator, and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility will be used by local government buildings for hot water, space heating and cooling. The primary energy source will be natural gas. The maximum net electric power production capacity of the facility will be 26,437 kW. Installation of the facility is scheduled for May 1988.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-6743 Filed 3-26-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-302-000]

Application for Commission Certification of Qualifying Status of a Small Power Production Facility; Gabriel Mills Energy Co.—Liberty Hill, TX.

March 20, 1987.

On March 5, 1987, Gabriel Mills Energy Company (Applicant), of 711 West 38th Street, Suite D-2, Austin, Texas 78705, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a completing filing.

The small power production facility will be located approximately two miles west of Andice, Williamson County, Texas. The facility will consist of several 200 kW to 1000 kW reciprocating engine-generator units. Applicant states that the primary energy source of the facility will be "waste" in the form of low quality natural gas produced from the Kirby Box Number 1 well located at the site. The electric power production capacity of the facility will be 2 megawatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-6742 Filed 3-26-87; 8:45 am]

BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

[Docket No. CI87-349-000]

Brooklyn Interstate Natural Gas Corp.; Application

March 20, 1987.

Take notice that on March 6, 1987, Brooklyn Interstate Natural Gas Corp. (BRING), 1331 Lamar, Suite 1065, Houston, Texas 77010, pursuant to sections 4 and 7 of the Natural Gas Act (NGA), and Part 157 of the Regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR Part 157, applied for a blanket certificate of public convenience and necessity (1) authorizing sales for resale of natural gas in interstate commerce by *Bring*, and certain sales of natural gas to *Bring* for resale in interstate commerce; (2) authorizing sales for resale of natural gas in interstate commerce by others through *Bring* acting as their agent; and (3) authorizing pregranted abandonment of such sales.

In general, *Bring* seeks sale for resale authority with respect to any and all domestic and imported natural gas economically available for sale into the spot gas market. In this regard, *Bring* specifically seeks sales certificate authority involving two separate and distinct categories of NGA gas: (1) Natural gas that was previously certificated and was contractually committed to purchasers, and for which an abandonment of the previous sale has been obtained, and (2) natural gas that was never previously dedicated by contract to the interstate market and for which certificate authority still is required under the NGA.

Bring states that such authorizations, if granted, will enable *Bring* to expand its activities as a marketer of natural gas at competitive prices. Such authority will also enable *Bring* to act as agent for producers in the sale for resale of their gas in the spot market.

Any person desiring to be heard or to make any protest with reference to said

application should on or before April 6, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-6744 Filed 3-26-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL87-20-000]

North Carolina Electric Membership Corp.; Filing

March 23, 1987.

Take notice that on March 13, 1987, North Carolina Electric Membership Corporation (NCEMC) tendered for filing a complaint and motion for summary judgment concerning violation of a filed rate schedule and motion for consolidation against Duke Power Company.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 22, 1987. 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 petition are on file with the commission and are available for public inspection. Duke's answer shall also be due on or before April 22, 1987.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-6745 Filed 3-26-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI87-358-000 and CI87-359-000]

Pennzoil Co. and Pennzoil Gas Marketing Co.; Applications for Permanent Abandonment and Permanent Blanket Certificates With Pregranted Abandonment

March 23, 1987.

Take notice that on March 10, 1987, Pennzoil Company and Pennzoil Gas Marketing Company together referred to as Applicants, P.O. Box 2967, Houston, Texas 77252-2967, filed pursuant to section 7 of the Natural Gas Act, and the Commission's regulations thereunder, 18 CFR Parts 154 and 157; §§ 2.76, 2.77(a) and 2.77(b), an application of Pennzoil Company for permanent abandonment authorization and permanent blanket certificate of public convenience and necessity with pregranted abandonment authorization, and an Application of Pennzoil Gas Marketing Company for permanent blanket certificate of public convenience and necessity with pregranted abandonment authorization, all as more fully set forth in the applications on file with the Federal Energy Regulatory Commission and open to public inspection.

Applicants state that approval would authorize Applicants to make sales of natural gas released from contract by United Gas Pipe Line Company (United). All released gas will be subject to the provisions of the Natural Gas Act, and will qualify under the maximum lawful wellhead pricing provisions of the Natural Gas Policy Act.

Applicants state that Pennzoil and United executed a settlement agreement on December 8, 1986, under which Pennzoil agreed to waive all take-or-pay claims accruing against United in 1985 and 1986, which Pennzoil asserts totaled approximately $219,000,000.00. Applicants states that the 1985 take-or-pay obligations were settled in the same settlement agreement as the 1986 and subsequent take-or-pay obligations. The settlement of the 1985 take-or-pay obligations is final, but the settlement of the 1986 and subsequent take-or-pay obligations is contingent upon the approval of the Commission of these applications. Applicants further state that Pennzoil and United also agreed that, if certain conditions are fulfilled, all existing gas sales contracts executed between them prior to December 8, 1986, will terminate, so United will incur no take-or-pay obligations whatsoever in the future under any of those contracts. As to those contracts, Applicants state that Pennzoil likewise agreed to waive all monthly minimum-take claims against United. Applicants assert that in many cases, Pennzoil has the legal right under its monthly minimum-take contractual clauses to secure mandatory injunctive relief from courts of competent jurisdiction requiring United not only to pay Pennzoil for contractually specified volumes of natural gas, but also to take actual deliveries of the natural gas. The settlement agreement thus will release United from substantial take-or-pay exposure and the threat of monthly minimum-take injunctions. The settlement agreement is, however, contingent upon the granting of the applications expeditiously, and by the express terms of such agreement, the take-or-pay and minimum-take buyout will be of no force or effect if these applications are not granted expeditiously. Applicants state that all contracts would remain in effect, and Pennzoil then would be free to pursue its take-or-pay claims for 1986 and subsequent years and monthly minimum-take claims against United as if no settlement agreement had ever been executed.

Applicants state that, as stated by the Commission in Order No. 436, expeditious consideration will be appropriate in cases where the producer is subject to substantially reduced takes without payment or where the producer and pipeline have engaged in a 'buyout' as contemplated by § 2.76 of the Commission's General Policies, and that the precise situation is presented by the instant applications. Applicants state that Pennzoil is subject to substantially reduced takes without payment and has likewise engaged in a take-or-pay buyout as contemplated by § 2.76 of the Commission's General Policies.

Applicants state that the historical relationship between Pennzoil and United is unique. Pennzoil acquired United in 1968 as a wholly owned subsidiary, and as such United became the principal market for sales of natural gas produced by Pennzoil; in fact, Pennzoil committed virtually all of its natural gas produced from fields and blocks in United's purchase area to United during the years the companies were affiliated. In 1974, Pennzoil spun-off United, and proceedings were thereafter initiated before the Federal Power Commission regarding the spun-off,[1] which resulted in a settlement approved by the Commission under which, among other things, (1) Pennzoil entered into a Gas Availability Agreement with United giving it, in effect, a right of first refusal to purchase

[1] *Order Affirming Initial Decision*, 54 F.P.C. 2511 (1975).

all natural gas reserves developed by Pennzoil from leases acquired before 1980 and (2) Pennzoil agreed to spend $120,000,000.00 over a five year period to add reserves to be committed to United. Applicants state that Pennzoil expended the $120,000,000.00 over a five year period to add reserves that were committed to United, and that the Gas Availability Agreement executed between Pennzoil and United remains in effect today. Applicants state that United and Pennzoil shall file a joint motion to terminate the Gas Availability Agreement in Docket No. RP74–87. As such, Applicants state that Pennzoil's concentration on United as a market, which began with the affiliation and continued as a result of the affiliation, was thus reinforced upon disaffiliation by the settlement.

Applicants state that due to United's declining sales, Pennzoil's natural gas was largely shut-in, and United's take-or-pay obligations to Pennzoil steadily increased. Just prior to the execution of the take-or-pay/monthly minimum-take settlement agreement between United and Pennzoil, United was voluntarily taking an average of only 48 MMcf/day of natural gas from Pennzoil's total delivery capacity of 391 MMcf/day of NGA and non-NGA natural gas contracted to United. For 1986, Applicants state that United's take-or-pay obligations are estimated by Pennzoil to be $140,000,000.00. In the absence of a mutual agreement between Pennzoil and United to realign totally their relationship as seller and buyer and to allow Pennzoil to diversify its market, Applicants state that Pennzoil's natural gas would remain largely shut-in and United's take-or-pay obligations would substantially increase each year. Applicants state that upon Commission approval the settlement agreement executed between Pennzoil and United will constitute a complete take-or-pay buyout and a complete monthly minimum-take buyout. In this event, Pennzoil agreed to waive all take-or-pay claims through December 31, 1986, totaling approximately $219,000,000.00 for $15,000,000.00 in cash and certain other consideration. Applicants state that Pennzoil and United further agreed to realign their producer/pipeline relationship to correspond more closely to their future needs by terminating all of their gas sales contracts executed before the effective date of the settlement agreement. Thus, in the event the applications are granted, Applicants state that United will never again incur take-or-pay obligations under any contract executed with Pennzoil before December 8, 1986; nor will United ever incur monthly minimum-take obligations under any of those contracts. Applicants state that United and Pennzoil will have a more limited and more market responsive business arrangement.

Applicants further state that under this new arrangement, United agreed to purchase or cause to be purchased, if tendered by Pennzoil, 50 MMcf/day of natural gas at $2.00 MMBtu (subject to market-sensitive escalation) from January 1, 1987, to December 31, 1988. Moreover, the settlement agreement contemplates the possible sales of additional volumes of natural gas by Pennzoil into spot market programs. United also agreed to provide limited transportation credits and convey certain gathering facilities to Pennzoil.

Applicants also request that the Commission approve the collection of any rate that Pennzoil has established its right to collect pursuant to Parts 273, 274, or 275 of the Commission's Regulations and that the Commission approve automatic collection of the appropriate monthly adjustments from the date the Commission issues its order granting the applications. Applicants also request that the Commission waive the requirement of filing a blanket affidavit to cover such sales in accordance with § 154.94(h) of the Commission's Regulations, and, to the extent that qualification exists for collection of any applicable allowance under section 110 of the NGPA, waive the requirements of § 154.94(k) and Part 271 of the Commission's Regulations. Applicants further state that they will file any rate schedules with the Commission that may be required by the order granting the applications, but request the Commission to waive the requirement of establishment and maintenance of rate schedules under Part 154 of the Commission's Regulations.

Finally, Applicants state that a total of 255,392 MMcf of natural gas reserves are subject to the request for abandonment, and that United has executed a statement, appended to the applications, that it does not need nor will it need the natural gas to meet its market demands. Applicants state that the following depicts the total net reserve of NGA natural gas, subject to its applications:

NGPA Category	Total MMcf
102(d)	64,028
104	175,478
107(c)(5)	3,405
108	7,855
Unclassified	4,626
Total	255,392

Applicants state that the foregoing figures are based on Pennzoil's best estimates of proven reserves.

The circumstances presented in the applications meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436–A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85–1–000, all as more fully described in the applications which are on file with the Commission and open to public inspection.

Accordingly, persons desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–6746 Filed 3–26–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL87–18–000]

Piedmont Municipal Power Agency; Notice of Filing

March 23, 1987.

Take notice that on March 4, 1987, Piedmont Municipal Power Agency (PMPA) tendered for filing a complaint and motion for summary judgment concerning violation of filed Rate Schedule and motion for Consolidation submitted by Duke Power Company (Duke).

PMPA states that it seeks an order directing Duke to refund, with interest, the charges already collected and to cease the assessment of charges that are not authorized under the filed rate schedule.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825

North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 22, 1987. 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 petition are on file with the commission and are available for public inspection. Duke's answer shall also be due on or before April 22, 1987.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-6747 Filed 3-26-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-221-000]

Southwest Gas Corp. Complainant vs. Northwest Pipeline Corp. Respondent; Complaint

March 18, 1987.

Take notice that on February 24, 1987, Southwest Gas Corporation (Southwest), P.O. Box 15015, Las Vegas, Nevada 89114, filed in Docket No. CP87-221-000 pursuant to Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206), a complaint against Northwest Pipeline Corporation (Northwest) alleging that Northwest has violated certain terms and conditions related to the sale and transportation of natural gas under Northwest's Rate Schedule X-46 and the certificate which authorized such rate schedule,[1] all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.

Specifically, Southwest alleges that Northwest has refused to provide requested service to which Southwest is entitled under Rate Schedule X-46. Southwest states that the Commission authorized Northwest to sell and transport up to 50 billion Btu per day of excess Canadian natural gas on a best efforts basis to Southwest under Rate Schedule X-46. Southwest claims that excess Canadian gas has been available to Northwest but that Northwest has refused requested service on the grounds that X-46 service is the lowest priority on its system.

Southwest states that section 12.1(d) of Northwest's Tariff (Original Volume No. 1-A) provides that interruptible services involving the sale, exchange and/or transportation of gas south to Ignacio, Colorado, under the contracts executed after December 31, 1977, are ranked for priority purposes according to contract date. Southwest further states that Rate Schedule X-46 consists of a contract dated April 28, 1978. In particular, Southwest alleges that Northwest has allocated capacity to interruptible transportation services under agreements executed subsequent to the X-46 agreement.

Additionally, Southwest states it has been informed by Northwest that it places the X-46 service on the same priority level as a similar service (*i.e.*, off-system sale and delivery of excess Canadian gas at Ignacio) that it performs for Pacific Interstate Transmission Company (Pacific) under Northwest's Rate Schedule X-36.

Southwest alleges that there is a critical difference in the priority provisions of the two rate schedules. It is explained that, in pertinent part, section 1.01 of Rate Schedule X-36 provides:

> Except as Seller may otherwise provide, this Agreement shall not be deemed to have priority over any present *or future obligation of Seller.* (Emphasis supplied)

Southwest states that in contrast, section 1.01 of Rate Schedule X-46 provides, in pertinent part:

> Seller and Buyer represent that there is no intent to inhibit or erode full satisfaction of any obligations of Seller or Buyer *existing as of the date hereof,* which obligations shall have priority over any rights under the Agreement. (Emphasis supplied)

Southwest argues that the priority language in the X-46 Rate Schedule/contract was specifically negotiated by Southwest and that Northwest's refusal to provide such priority service when excess gas and necessary capacity have been available violates sections 4, 5, and 7 of the Natural Gas Act.

Southwest therefore requests that the Commission require Northwest to (1) comply with its tariff and certificate by providing X-46 interruptible service by a priority date of April 28, 1978, for capacity allocation purposes; (2) provide Southwest with the difference, plus interest, between (a) the price of the replacement gas Southwest purchased from El Paso Natural Gas Company (El Paso) under El Paso's Rate Schedule A-1-X as a result of Northwest's failure to provide X-46 service, and (b) the price of Northwest's X-46 gas; and (3) provide such other monetary relief as the Commission may deem proper.

Any person desiring to be heard or to make any protest with reference to said complaint should on or before April 17, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). 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. Northwest's answer to the complaint shall also be due on or before April 17, 1987.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-6748 Filed 3-26-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-200-000 et al.]

Jack P. Speed et al.; Application for Abandonment

March 20, 1987.

Take notice that the Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to abandon service as described herein.

The circumstances presented in the application meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the application which is on file with the Commission and open to public inspection.

Accordingly, Any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the Federal Register, file with the Federal Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to

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[1] Best-efforts sales and transportation service to Southwest under Rate Schedule X-46 was authorized by Commission order issued October 27, 1978 (5 FERC ¶ 61,087), as amended December 4, 1985 (33 FERC ¶ 61,323) in Docket No. CP78-415.

be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price Per Mcf	Pressure base
CI87-220-000 B 1/5/87 [1].	Jack P. Speed, c/o Petro Engineering, Inc., 5101 N. Classen, Suite 502, Oklahoma City, Okla. 73118.	Arkla Energy Resources, a division of Arkla, Inc., Southwest Lacey Field, Kingfisher County, Oklahoma.	[1]	
CI87-305-000 B 2/11/87.	Jim Rutta, P.O. Box 644, Columbus, Texas 78934.	United Gas Pipe Line Company, Paul Bethke No. 1 Well, Karen Beauchamp Field, Golidad County, Texas.	[3]	

[1] Additional information filed January 20, 1987.

[2] Applicant, a small producer certificate holder in Docket No. CS84-43-000, requests authorization to abandon sales to Arkla from 8 wells located in the Southwest Lacey Field. In support of its application, Applicant states Arkla has purchased only 60% of the gas from the subject wells for the past year, that the wells have been shut in since December 17, 1986, and that there is no take-or-pay provision in the subject contract. The wells are capable of producing 900 to 1000 Mcf per day and qualify as NGPA section 106(a) interstate rollover gas. Application proposes to sell the subject gas to Hadson Gas Systems, Inc.

[3] Applicant requests authorization to abandon sales to United from the Paul Bethke No. 1 Well located in the Karen Beauchamp Field. In support of its application, Applicant states that the sale to United was previously made by Hendrik's Holding USA Ltd., that the subject well has been shut in since May of 1985, that the subject lease terminated and Applicant subsequently entered into a new oil and gas lease with the mineral owners. Applicant indicates that at such time as Hendrik's abandoned the lease and their rights thereunder terminated, United considered that such prior gas contract terminated, and that they had no further rights, duties or obligations thereunder. Applicant states that United refuses to purchase any volume of gas under the terms of such prior contract and refuses to enter into any new contract and that Applicant is subject to substantially reduced takes without payment. The subject well was producing 24 Mcf per day of section 108 stripper well gas at the time it was shut in. Applicant notes that United states it will not oppose the requested abandonment, and has agreed to transport the gas from this lease. Applicant proposes to sell the subject gas to an intrastate buyer under the terms of a new gas contract.

Filing Code: A—Initial Service, B—Abandonment, C—Amendment to add acreage, D—Amendment to delete acreage, E—Total Succession, F—Partial Succession.

[FR Doc. 87-6749 Filed 3-26-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-340-000]

Zapata Exploration Co.; Application of Zapata Exploration Co. for Limited-Term, Blanket Certificate of Public Convenience and Necessity and Pre-Granted Abandonment

March 23, 1987.

Take notice that on March 3, 1987, Zapata Exploration Company (Zapata) pursuant to sections 4 and 7 of the Natural Gas Act, 15 U.S.C. 717(c) & 717(f) (1982) ("NGA"), Parts 157 and 284 of the Regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR Parts 157 and 284 (1986), and § 2.77 of the Commission's Regulations, 18 CFR 2.77 (1986) applied for a Certificate of Public Convenience and Necessity (1) authorizing sales for resale in interstate commerce by Zapata of NGA natural gas with a maximum lawful price equal to or higher than the section 109 ceiling price as provided in the Natural Gas Policy Act of 1978, from the its interests in the East Breaks Area, Offshore Texas, Blocks 109, 110 and 154; and (2) authorizing partial abandonment and pre-granted abandonment of such sales as described therein. The gas covered by the application is not currently dedicated to any interstate pipeline purchaser. The authority is requested to be effective no later than July 1, 1987 for a three (3) year period.

Zapata states that the grant of authority applied for will further the policies and objectives of the Commission set forth in its Final Rule issued in *Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol,* Docket No. RM85-1-000 (October 9, 1985) (Order No. 436), the Commission's decision in *Felmont Oil Corporation and Essex Offshore, Inc.,* 33 F.E.R.C. (CCH) ¶ 61,333 (1985), in *Pennzoil Producing Co. et al.;* Docket No. CI86-54-000 (March 5, 1986) and *ANR Pipeline Company, et al.,* Docket No. CI86-637-000 *et al.* (issued January 21, 1987).

Any persons desiring to be heard or to make any protest with reference to said application should on or before April 7, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-6750 Filed 3-26-87; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals Cases Filed; Week of January 30 Through February 6, 1987

During the week of January 30 through February 6, 1987, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice; as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 19, 1987.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of January 30 through February 6, 1987]

Date	Name and location of applicant	Case No.	Type of submission
Feb. 2, 1987	Button Oil Co., Inc., Mountaintop, PA	KEE-0117	Exception to the reporting requirement. If granted: Button Oil Co., Inc. would be required to file Form EIA-782B, "Resellers'/Retailers' Monthly Petroleum Products Sales Report."
Feb. 3, 1987	David R. Soler, Cranbury, NJ	KFA-0073	Appeal of an information request denial. If granted: David R. Soler would receive access to the Personnel Audit Report for FY 1985 and all documents maintained on David R. Soler.
Feb. 3, 1987	Tri-City Herald, Tri-Cities, WA	KFA-0072	Appeal of an information request denial. If granted: The January 21, 1987 and January 27, 1987 Freedom of Information Request Denials issued by the Richland Operations Office would be rescinded, and Tri-City Herald would examine the journal proposals submitted by the Westinghouse Boeing and Kaiser Engineers.
Feb. 5, 1987	Government Accountability Project, Washington, DC	KFA-0075	Appeal of an information request denial. If granted: Government Accountability Project would receive all relevant records in connection with Case No. 86-ERA-15 (July 8, 1986) concerning Roger Wensil's work performance and termination.
Feb. 5, 1987	OKC Corp., Washington, DC	KFX-0029	Supplemental order. If granted: The Office of Hearings and Appeals would implement Special Refund procedures to distribute crude oil monies obtained from OKC Corporation pursuant to Consent Order No. 6D0S00003.
Feb. 5, 1987	Stone & Webster Engineering Corporation, Boston, MA	KFA-0074	Appeal of an information request denial. If granted: The December 22, 1986 Freedom of Information Request Denial issued by the Richland Operations Office would be rescinded, and Stone & Webster Engineering Corporation would receive documents relating to DOE's selection of REP No. DE-RP06-86 RL10900.
Feb. 6, 1987	Exxon Corp., Washington, DC	KEF-0087	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the October 8, 1986 Consent Order entered into with Exxon Corporation.
Feb. 6, 1987	Harlon Oil Company, Inc., Green Bay, WI	KEE-0120	Exception to the reporting requirements. If granted: Harlon Oil Company, Inc. would not be required to file Form EIA-821, "Annual Fuel Oil and Kerosene Sales Report."

Refund Applications Received

Week of January 30 to February 6, 1987

Date received	Name of refund proceeding/ name of refund applicant	Case No.
01/30/87 through 02/06/87	Getty Refund Applications	RF265-297 through RF265-368
02/03/87	J. Louis Rodriguez	RF285-14
02/03/87	Worcester Housing Authority	RF284-6
02/03/87	Jasco Trucking Co., Inc.	RF272-358
02/03/87	Racetrac Petroleum, Inc.	RF263-29
02/03/87	Robert M. Eigell	RF259-28
02/03/87	Barge Transport Co., Inc.	RF250-2702
02/03/87	Garlick Enterprises, Inc.	RF250-2701
02/03/87	Barge Transport, Inc.	RF225-10578
02/03/87	Barge Transport, Inc.	RF7-169
02/03/87	Kemp's Service	RF225-10575
02/03/87	Jim & Jack's Service	RF225-10576
02/03/87	Meyers Mobil Service	RF225-10577
02/03/87	Barge Transport, Inc.	RF40-3646
02/04/87	Metro. Transportation Auth.	RF272-359
02/05/87	Leggett & Platt, Inc.	RF272-360
02/04/87	George T. Marshall	RF285-15
02/05/87	MacMilliam Bloedel, Inc.	RF225-10589
02/05/87	Gates Automotive	RF225-10579
02/05/87	Gary's Mobil	RF225-10580
02/05/87	Gallese's Mobil Service	RF225-10581
02/05/87	Hoover's Mobil	RF225-10582
02/05/87	M-59 Mobil	RF225-10583
02/05/87	Shreve Mobil Service	RF225-10584
02/05/87	Tom's Service	RF225-10585
02/05/87	Romie's Mobil	RF225-10586
02/05/87	Carl's Mobil Service	RF225-10587

Refund Applications Received—Continued

Week of January 30 to February 6, 1987

Date received	Name of refund proceeding/ name of refund applicant	Case No.
02/05/87	J.L. Sowell Dist.	RF40-3647
02/05/87	Jeane's Gulf Service	RF40-3648
02/05/87	Centerburg Marathon	RF250-2704
02/05/87	Dosetts Marathon	RF250-2705
02/05/87	Golden Gate Petroleum Co.	RF258-15
02/04/87	Randolph Electric Membership.	RF272-361
02/03/87	Farmers Cooperative Oil Association.	RF272-362
02/05/87	Smith Oil Co.	RF161-100
02/05/87	Bowden Oil Co.	RF204-13
01/30/87	Kerr McGee Corp.	RF288-1
01/30/87	Mobil Oil Corp.	RF288-2
02/04/87	Consolidated Edison Co. of NY.	RF286-01

[FR Doc. 87-6819 Filed 3-26-87: 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of February 6 Through February 13, 1987

During the Week of February 6 through February 13, 1987, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

March 19, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

[Week of Feb. 6 through Feb. 13, 1987]

Date	Name and location of applicant	Case No.	Type of submission
Feb. 9, 1987	Gulf/Venta, Inc., Washington, DC	RR40-3	Request for modification/rescission in the Gulf Oil Corporation refund proceeding. *If Granted:* The December 31, 1986 Decision and Order (Case No. RF40-1668) issued to Venta, Inc. would be modified regarding the firm's Application for Refund submitted in the Gulf Oil Corp. refund proceeding.
Feb. 9, 1987	R.E. Hinkley Co., Inc., Claremont, NH	KEE-0119	Exception to the reporting requirements. *If Granted:* R.E. Hinkley Co., Inc. would not be required to file Form EIA-782B, "Resellers'/Retailers' Monthly Petroleum Products Sales Report."
Feb. 11, 1987	Morrison Petroleum Co., Washington, DC	KRD-0350	Motion for discovery. *If Granted:* Discovery would be granted to Morrison Petroleum Company in connection with the Statement of Objections which the firm filed in response to a Proposed Remedial Order.
Feb. 12, 1987	Institute for Policy Studies, Washington, DC	KFA-0076	Appeal of an information request denial. *If Granted:* The January 7, 1987 Freedom of Information Request Denial issued by the Office of Military Application would be rescinded, and the Institute for Policy Studies would receive access to information on British and French nuclear testing, nuclear weapons and personnel assigned to DOE facilities.
Feb. 13, 1987	Belcher Oil Co., Inc., Murray, KY	KEE-0122	Exception to the reporting requirements. *If Granted:* Belcher Oil Company would not be required to file Form EIA-782B, "Resellers'/Retailers' Monthly Petroleum Products Sales Report."
Feb. 13, 1987	David Rodriquez Soler, Cranbury, NJ	KFA-0078	Appeal of information request denial. *If Granted:* The January 27, 1987 Freedom of Information Request Denial issued by the Chicago Operations Office would be rescinded and David Rodriquez Soler would receive access to complete Personnel/Human Resource Management Audit Reports for FY 1983 and 1984.
Feb. 13, 1987	Imhoff & Lynch, Boise, ID	KFA-0079	Appeal of an information request denial. *If Granted:* The January 6, 1987 Freedom of Information Request Denial issued by the Idaho Operations Office would be rescinded and Imhoff & Lynch would receive access to documents relating to the September 26, 1984 shooting incident at the Inel facility resulting in the death of T. Brent Landon.
Feb. 13, 1987	Richard D. Patton, Ansted, WV	KEE-0121	Exception to the reporting requirements. *If Granted:* Richard D. Patton would not be required to file certain EIA reporting forms.

Refund Applications Received

[Week of Feb. 6 to Feb. 13, 1987]

Date received	Name of refund proceeding/name of refund applicant	Case No.
02/12/86	National Helium, Amoco & Charter/Louisiana.	RQ3-357, RQ21-358, RQ23-359
02/06/87 through 02/13/87	Getty Refund Applications	RF265-369 through RF265-436
12/15/86	Wynn-Fowler Trading Co	RF239-18
02/09/87	Waccamaw Transport, Inc	RF270-2471
02/09/87	Federated Transport, Inc	RF270-2472
02/09/87	A. E. Schultz Corp	RF272-363
09/26/86	Kirtland Heights Conoco	RF220-412
12/15/86	Wynn-Fowler Trading Co	RF220-481
12/15/86	Griffin Petroleum, Inc	RF220-483
11/18/86	Mellon Enterprises, Inc	RF26-56
05/23/86	Rutland Oil Co	RF225-10590
05/23/86	Rutland Oil Co	RF225-10591
08/01/86	George Wm. Frueh, Sons	RF225-10592
08/01/86	Lambert Oil Co., Inc	RF225-10593
08/01/86	Lambert Oil Co., Inc	RF225-10594
08/01/86	Lambert Oil Co., Inc	RF225-10595
08/01/86	Federico Brothers, Inc	RF225-10596
08/01/86	Federico Brothers, Inc	RF225-10597
07/29/86	Croax Oil Co	RF225-10598
07/29/86	Todd & Ross, Inc	RF225-10599

Refund Applications Received—Continued

[Week of Feb. 6 to Feb. 13, 1987]

Date received	Name of refund proceeding/name of refund applicant	Case No.
07/29/86	Trimble Oil Co	RF225-10600
07/29/86	George H. Blouch Fuel Service	RF225-10601
06/16/86	Bartkus Oil Co	RF225-10602
05/02/86	Johnson's Service Station	RF225-10603
02/03/87	Bruce O. Hastings	RF270-2473
02/10/87	Fedco Automotive Co	RF272-364
02/09/87	Greater Attleboro Taunton	RF272-365
06/23/87	Zora, Inc	RF225-10604
02/09/87	Johnson Mobil	RF225-10605
02/09/87	Johnson Mobil	RF225-10606
02/10/87	Moorestown Service	RF225-10607
02/10/87	Honeymead Products Co	RF272-366
02/09/87	Chevron U.S.A., Inc	RF286-07
02/09/87	General Motors Corp	RF286-06
02/05/87	Bayside Fuel Oil Depot Corp	RF286-05
02/05/87	Mobil Oil Corp	RF286-04
02/06/87	Orange & Rockland	RF286-03
01/05/87	Defense Logistics Agency	RF286-02
02/09/87	Taylor's Talinauge Marathon	RF250-2703
12/15/86	Wynn-Fowler Trading Co., Inc	RF225-10588
02/12/87	Blue Star Line Ltd	RF272-372
02/02/87	Moore's Fuel Service	RF40-3649
02/11/87	J.C. March Oil Co., Inc	RF40-3650

[FR Doc. 87-6820 Filed 3-26-87 8:45 am]
BILLING CODE 6450-01-M

Issuance of Proposed Decisions and Orders; Week of February 9 Through February 13, 1987

During the week of February 9 through February 13, 1987, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any

further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 19, 1987.

Atlantic Oil and Heating Co.; Macungie, PA; KEE-0107; reporting requirements

Atlantic Oil and Heating Company filed for relief from the requirement to submit Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." Atlantic argued that it should be relieved of the reporting requirement because of its small clerical staff; and the fact that its bookkeeping month ends after the Form is due. The OHA found that although the reporting requirement imposes a burden on Atlantic, that burden is no greater than the burden to the average reporting firm. The OHA also found that Atlantic could reduce the reporting burden substantially by devising a sound method of estimating the data required by the Form. Consequently, on February 12, 1987, the OHA issued a Proposed Decision and Order tentatively denying Atlantic's request for exception relief.

TOMCO; Big Spring, TX; KEE-0099; reporting, requirements

TOMCO filed for relief from the requirement to submit Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product sales Report." After reviewing TOMCO's application, the OHA issued a Proposed Decision and Order tentatively denying TOMCO's request for exception relief.

[FR Doc. 87-6821 Filed 3-26-87; 8:45 pm]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of February 16 Through February 20, 1987

During the week of February 16 through February 20, 1987, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Remedial Order

Questor Petroleum Corp., 2/18/87; HRO-0269

Questor Petroleum Corporation (Questor) and its President, Kyle S. McAlister objected to a Proposed Remedial Order alleging that they engaged in layering amounting to $8,171,742.33 in overcharges. In 87 of the 91 audited transactions the DOE rejected the firm's contention that it had performed traditional and historical services. The DOE dismissed the alleged overcharges relating to the four remaining audited transactions based upon a finding that Questor was responsible for storing the crude oil prior to resale. The DOE also found that McAlister should be held personally liable for Questor's violations since he was the firm's President and controlling shareholder and, in many cases, Questor's principal trader. Accordingly, the PRO was issued as a final Remedial Order directing Questor and Mr. McAlister to remit $7,939,631.10 plus interest to the DOE.

Request for Exception

Louisiana Crude Oil & Gas Co., 2/20/87; DEE-2130

Louisiana Crude Oil & Gas Company filed an Application for Exception from the provisions of 6 CFR 150.354 and 10 CFR 212.73 in which the firm sought to be excused from its obligation to refund overcharges of $305,849, plus interest. In considering Louisiana Crude's request, the DOE found that the firm had not shown that it would suffer severe and irreparable injury in the absence of exception relief.

Refund Applications

C.K. Smith & Co., Inc./Parker Fuel Corp., et al., 12/19/87; RF284-3, et al.

The DOE issued a Decision and Order concerning Applications for Refund, filed by Paker Fuel Corporation, the Commonwealth of Massachusetts and the Town of Westborough, from a consent order fund made available by C.K. Smith & Company, Inc. The DOE found that Parker was a reseller of No. 2 heating oil purchased from Smith during the consent order period. Since Parker elected to limit its refund to the $5,000 small claims amount provided for in the Smith special refund proceeding, the claimant was not required to submit a detailed proof of injury. As governmental entities and end users of Smith product during the consent order period, neither the Commonwealth of Massachusetts nor the Town of Westborough was required to submit proof it was injured as a result of its purchases from Smith. The total refund granted in this proceeding was $10,325, including $5,634 in principal and $4,691 in interest.

C.K. Smith & Co., Inc./Worcester Housing Authority, 2/20/87; RF284-6

The DOE issued a Decision and Order concerning Applications for Refund, filed by Worcester Housing Authority, from a consent order fund made available by C.K. Smith & Company, Inc. The DOE found that Worcester was a governmental entity that was an end user of Smith No. 2 heating oil during the consent order period. Worcester was therefore not required to submit proof it was injured as a result of its purchases from Smith. Accordingly, Worcester was granted a refund representing its full volumetric share, $16,903, plus $14,171 in accrued interest.

Circle City Cab Co., RF270-1120; The Island Cab Co., Inc., RF270-1128; Metropolitan Taxi & Limousine, RF270-1148; LaSalle Limousine Service, Inc., RF270-1153; Mon Valley Taxi, Inc., 2/20/87; RF270-1172

The Department of Energy (DOE) issued a Decision and Order approving five taxicab and limousine companies for refunds from the Surface Transportation Escrow, established as the result of the Stripper Well Settlement Agreement. Each company applied for a refund based on its purchases of gasoline and/or motor oil between August 19, 1973 and January 27, 1981. The DOE's Decision approved four of the companies' purchase volumes and approved the fifth's volumes after adjusting for a mathematical error in its claim. The DOE will determine a per gallon refund amount and establish the amount of each company's refund after it completes its analysis of all Surface Transporter claims.

Gulf Oil Corp./Candor Petroleum, 2/20/87; RF40-2744

The DOE issued a Decision and Order concerning the Application for Refund filed by Candor Petroleum (Candor) in the Gulf Oil Corporation refund proceeding. Candor was a retailer of Gulf products during the Gulf consent order period. Following the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), Candor demonstrated that it purchased a total of 5,438,015 gallons of Gulf middle distillates, motor gasoline, and lubes and that it would not have been required to reduce its selling prices to pass through the amount of the refund claimed. Accordingly, Candor will receive $6,634 in principal and $1,577 in interest.

Gulf Oil Corp./Schaub Oil, Wald Oil Company, 2/17/87; RF40-0990, RF40-2094

The DOE issued a Decision and Order concerning the Applications for Refund filed on behalf of Schaub Oil (Schaub) and Wald Oil Company (Wald) in connection with the Gulf Oil Corporation refund proceeding. Each firm was a retailer and a consignee of Gulf motor gasoline and middle distillates during the consent order period. Following the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), Schaub and Wald demonstrated that they indirectly purchased certain volumes of covered product from Gulf through one of Gulf's direct customers. Each firm also certified that it would not have been required to reduce selling prices to pass through the amount of the refund claimed. Neither Schaub nor Wald, however, demonstrated that it had been injured in its role as a consignee of Gulf products. The DOE determined that the fact that each firm ceased receiving Gulf consignments as a result of its business decision to switch from marketing consigned Gulf products to purchasing and reselling those products did not demonstrate injury. Accordingly, refunds totaling $2,431 in principal and $578 in interest were approved for purchased gallons.

Gulf Oil Corp./Surfside Gulf et al., 2/17/87; RF40-3329 et al.

The DOE issued a Decision concerning 34 Applications for Refund filed by retailers of Gulf Oil Corporation petroleum products. Each firm applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), governing the disbursement of settlement funds received from Gulf pursuant to a 1978 consent order. In accordance with those procedures, each applicant has demonstrated that it would not have been required to pass through to customers a cost reduction equal to the amount of the refund claimed. After examining the applications and supporting documentation submitted by the applicants, the DOE concluded that each applicant should receive a refund. The total amount of refunds approved in this Decision is $36,221, representing $29,263 in principal and $6,958 in interest.

Joni Auto Rental, Inc., 2/18/87; RF270-1160

The Department of Energy (DOE) issued a Decision and Order concerning an auto rental company's application for a Surface Transporters Refund. The DOE determined that the company's application should be denied because car rental companies are ineligible for Surface Transporters refunds under the terms of the Order Establishing Surface Transporters Escrow.

Loomis Armored, Inc., 2/17/87; RF270-1107

The Department of Energy (DOE) issued a Decision and Order approving an armored car company for a refund from the Surface Transporters Escrow. The company's claim for gasoline and diesel fuel was approved. The company's claim for heating oil was denied. The DOE determined that Surface Transporter refunds shall be granted for vehicle use only.

Marathon Petroleum Company/Ace Oil Co., Inc., et al, 2/20/87; RF250-2578 et al.

The DOE issued a Decision and Order concerning 31 Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $27,567 in principal and $2,097 in interest.

Marathon Petroleum Company/Arlington Marathon, et al., 2/20/87; RF250-2193 et al.

The DOE issued a Decision and Order concerning 21 Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $15,350 in principal and $1,167 in interest.

Marathon Petroleum Company/Blue Grass Oils, Inc. et al., 2/20/87; RF250-2423 et al.

The DOE issued a Decision and Order concerning 12 Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decisions is $15,464 in principal and $1,179 in interest.

Marathon Petroleum Company/McLaughlin Oil Sales, Inc., 2/19/87; RR250-1932, RF250-1933

The DOE issued a Decision and Order concerning two Applications for Refund filed by McLaughlin Oil Sales, Inc. (McLaughlin), a reseller of Marathon covered products. Although the firm's purchase of middle distillates and motor gasoline from Marathon during the consent order period exceeded the threshold refund level established in *Marathon Petroleum Co.*, McLaughlin elected to file its refund applications in accordance with procedures for filing claims based upon the 35 percent presumption of injury outlined in the Marathon decision. After examining the evidence and supporting data submitted by the firm, the DOE concluded that McLaughlin should receive a refund of $9,921.39 in principal and $623.52 in accrued interest for a total refund of $10,544.91.

Marathon Petroleum Company/Paul Davidson. 2/20/87; RF250-2081, RF250-2082

The DOE issued a Decision and Order concerning Applications for refund filed on behalf of Paul Davidson, an indirect purchaser of products covered by a consent order that the agency entered into with Marathon Petroleum Company. The applicant demonstrated the volume of its indirect purchases, and that the product originated with Marathon. The applicant was granted a refund of $837 in principal and $66 in interest, under the small claims presumption of injury.

Marathon Petroleum Company/Settle Service; 2/20/87; RF250-1414, RF250-2090

The DOE issued a Decision and Order concerning two Applications for Refund filed on behalf of Settle Service, a gasoline retailer which purchased products covered by a consent order that the agency entered into with Marathon Petroleum Company. The application filed by Walker Oil Services was denied in favor of the application filed by the owner of Settle Service during the consent order period, Mr. Green A. Settle, Jr. Mr. Settle was granted a refund of $2,257, representing $2,093 in principal and $164 in interest, under the small claims presumption of injury.

Marathon Petroleum Company/Systems Fuels, Inc. 2/17/87; RF250-2596, RF250-2597

The DOE issued a Decision and Order concerning Applications for Refund filed on behalf of Systems Fuels, Inc., a purchaser of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Systems Fuels is a subsidiary of four public utility corporations, and resold the Marathon product only to those companies. Systems Fuels was granted a full refund on the basis of a demonstration that the benefits of any refund would inure to the four public utilities according to their purchases, and that the public utilities would pass through the refund to their customers. The refund approved in this Decision is $11,973, representing $11,125 in principal and $848 in interest.

Marathon Petroleum Company/W.H. Pugh Oil Company, 2/19/87; RF250-1899, RF250-1900

The DOE issued a Decision and Order concerning two Applications for Refund filed by W.H. Pugh Oil Company (Pugh), a reseller of Marathon covered products. Although the firms's purchase of middle distillates and motor gasoline from Marathon during the consent order period exceeded the threshold refund level established in *Marathon Petroleum Co.*, Pugh elected to file its refund applications in accordance with procedures for filing claims based upon the 35 percent presumption of injury outlined in the Marathon decision. After examining the evidence and supporting data submitted by the firm, the DOE concluded that Pugh should receive a refund of $18,133.25 in principal and $1,138.48 in accrued interest for a total refund of $19,271.73.

Mobil Oil Corporation/Adelphi Mobil et al., 2/20/87; RF225-4907 et al.

The DOE issued a Decision granting 49 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $52,331 ($43,104 principal plus $9,227 interest).

Reese Trucking, Inc., Best Trucking Company, Inc., Reitzel Trucking Company, Inc., Crowel Trucking, Inc., Moran Trucking Company, Inc., 2/17/87; RF270-1103, RF270-1108, RF270-1109, RF270-1115, and RF270-1116

The Department of Energy (DOE) issued a Decision and Order approving five Applications for Refund from the Surface Transporters Escrow, established as the result of the Stripper Well Settlement Agreement. The applicants, five "for hire" trucking companies, applied for refunds based on purchases of diesel fuel, gasoline, and lubricating oils between August 19, 1973 and January 27, 1981. The DOE's Decision approved each company's purchase volumes. The DOE will determine a per gallon refund amount and establish the amount of each company's refund after it completes its analysis of all Surface Transporter claims.

Resources Extraction & Processing Co./Mobil Oil Corp., 2/19/87; RR228-1

Mobil Oil Corporation filed a Motion for Reconsideration of a Decision and Order denying its Application for Refund from a consent order fund made available by Resources Extraction & Processing Company (REAPCO). In considering the Motion, the DOE found that it had correctly determined in its original Order that Mobil's purchases of NGLPs from REAPCO were indirect, that the direct purchaser of the REAPCO product had absorbed all the overcharges associated with

the sale of the REAPCO NGLPs and that Mobil had not shown it experienced any injury as a result of the REAPCO purchases. Accordingly, Mobil's Motion for Reconsideration was denied.

Standard Oil Co. (Indiana)/Turtle Mountain Band of Chippewa Indians Belridge Oil Co./Turtle Mountain Band of Chippewa, 2/20/87; RQ21-333, RQ8-334

The Turtle Mountain Band of Chippewa Indians filed proposed second-stage refund plans with the Office of Hearings and Appeals, pursuant to consent orders entered into with Standard Oil Co. (Indiana) and Belridge Oil Co. The Tribe proposed to implement snow removal services for its tribal members. Accordingly, the refund application was granted.

Protective Orders

The following firms filed Applications for Protective Orders. The applications, if granted, would result in the issuance by the DOE of the proposed Protective Order submitted by the firm. The DOE granted the following applications and issued the requested Protective Order as an Order of the Department of Energy:

Name	Case No.
Cities Service Oil & Gas Corp	KRJ-0073
ERA Lobel, Novins, Lamont & Flug	KRJ-0064

Dismissals

The following submissions were dismissed:

Name	Case No.
Anderson Meat & Provisions, Inc.	RF225-10240
Button Oil Co., Inc.	KEE-0117
Capitol Gulf Service	RF40-3531
Costello Brothers Lithographers	RF225-6458
Eufaula Gulf	RF40-3530
Garden State Paper Co.	RF225-9397
Gear Company of America, Inc.	RF225-6521
Groth Equipment Corp.	RF225-10136, RF225-10137
Honeywell Inc.	RF225-6654
Jeane's Gulf Service	RF40-3648
Joe's Gulf	RF40-3523
John E. Jones Oil Co., Inc.	RF40-3525
Ledeen Flow Control Systems, Inc.	RF225-6835
Lee's Auto Service	RF40-3524
Menasha Corp.	RF225-6844
Monsanto Co.	RF225-9894
National Gypsum Co.—Cement Division	RF225-9915
Park Gulf	RF40-3518
Power Systems	RF225-2644
Precision Specialties	RF225-8207
Rex Oil Co., Inc.	RF225-8622, RF225-8623
Road Machinery Co.	RF225-6419
Ron's Gulf Service	RF40-3529
Sanders Oil Co., Inc.	RF225-9529
Schulze & Burch Biscuit Co.	RF225-6418
Scroggins Gulf Service	RF40-3522
Southern Towing Co.	RF225-6425
Sparkle Quick Auto Wash, Inc.	RF225-9939, RF225-9940
The Sico Company	RF225-9520
Tri-Con, Inc.	RF225-8865
Village of Scarsdale	RF225-6473
Wallace A. Morris	RF225-9510, RF225-9511
William E. Flud	KEG-0003
Zero-Max	RF225-6841

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 19, 1970.

[FR Doc. 87-6822 Filed 3-26-87; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3176-2]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed March 16, 1987 Through March 20, 1987 Pursuant to 40 CFR 1506.9.

EIS No. 870096, FSuppl, IBR, UT, Bonneville Unit, Central Utah Project, Municipal and Industrial Water System, Construction and Modifications, Updated Information, Due: April 27, 1987, Contact: Jay Henrie (801) 379-1172

EIS No. 870097, Final, Adoption, CGD, FL, Blount Island Channel Coal Conveyor Bridge, Construction, Bridge Permit, St. Johns River, Duval County, Due: April 27, 1987, Contact: Gary Pruitt (305) 536-4103

EIS No. 870098, Draft, BLM, NM, Taos Resource Area, Resource Management Plan, Due: July 1, 1987, Contact: Dan Wood (505) 758-8851

EIS No. 870099, Final, BLM, MT, Dillon Resource Area, Wilderness Recommendations, Designation, Beaverhead and Madison Counties, Due: April 27, 1987, Contact: James Moorhouse (406) 494-5059

EIS No. 870100, FSuppl, BLM, WA, OR, MT, WY, Northwest Area Noxious Weed Control Program, Additional Information, Due: April 27, 1987, Contact: Lynne Hamilton (503) 231-6268

EIS No. 870101, Final, BLM, AZ, NM, Arizona Interconnection Project, El Paso 345kV Transmission Line, Construction, Right-of-Way Grants, Permits and Approval, Due: May 4, 1987, Contact: J.W. Whitney (505) 988-6565

EIS No. 870102, Final, FHW, MN, New US-10 Construction and Reconstruction, Egret Boulevard in Coon Rapids to I-35W in Mounds View, Anoka and Ramsey Counties, Due: April 27, 1987, Contact: Stephen Bahler (612) 349-5230

EIS No. 870103, Draft, BPA, OR, WA, ID, MT, New Energy Efficient Homes Program, Accessing Indoor Quality Options, Construction, Due: May 19, 1987, Contact: Anthony Morrell (503) 230-5136.

Amended Notice:

EIS No. 870088, Final, BLM, CA, NV, Benton-Owens Valley and Bodie Coleville Study Areas, Wilderness Recommendations, Walker, Bishop and Caliente Resource Areas, Due: April 27, 1987, Published FR 3-20-87—Review period reestablished

Dated: March 24, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87-6796 Filed 3-26-87; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3176-3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 9, 1987 through March 13, 1987 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated February 7, 1986 (51 FR 4804).

Draft EISs

ERP No. D-FHW-E40703-GA, Rating EC2, GA-371/I-85 Highway Connector, Construction, GA-371 to I-85, 404 Permit, USCG Permit, GA. Summary: EPA's concerns included predicated wetland losses and air quality and noise impacts. EPA requested a Hydrocarbon Pollutant Burden Analysis, an intersection (queuing) analysis, and additional no-build and alternative analysis. A more holistic review of the proposed action, if it is a segment of a larger proposed beltway, was also requested.

Final EISs

ERP No. F-COE-G28010-TX, Stacy Reservoir, Dam and Pump Station, Municipal and Industrial Water Supply Development, Colorado River Basin; Permit, 404 and 10 Permits, TX. Summary: The final EIS adequately responded to EPA comments issued on the draft EIS. EPA has no objections to the proposed project with proper implementation of the mitigation measures specified in Appendix G and Appendix H of the final EIS.

ERP No. F-COE-K34005-CA, Pamo Dam and Reservoir Emergency Water Supply Project, Construction, Santa Ysabel Creek, CA. Summary: EPA recommended that the Army Corps of Engineers deny a Clean Water Act (CWA) Section 404 permit for the project as proposed in the final EIS. EPA's recommendation was based on: 1) The adequacy of the alternatives analaysis in the final EIS; 2) the adequacy of mitigation measures proposed in the final EIS; and 3) the proposed project's failure to comply with CWA Section 404 Guidelines. EPA also noted that it was still evaluating information provided by the project applicant on alternative emergency water supply designs.

ERP F-FHW-F40189-MN, CSAH-18 Completion, I-494 to MN-13 and MN-101, MN. Summary: EPA is concerned about the loss of wetlands, but will not object to the proposed project provided mitigation is developed to ensure no net loss of wetland functional values. As the final EIS did not discuss specific wetland mitigation, EPA requested to be included in the coordination for its development.

ERP No. F-SCS-D36104-PA, W. Branch Brandywine Creek Watershed, Protection and Flood Prevention, PA. Summary: EPA does not object to the development and implementation of the project.

ERP No. F-UAF-L10003-AK, Alaskan Radar System, Over-the-Horizon Backscatter Radar System, Construction and Operation, Elmendorf AFB, AK. Summary: EPA is concerned that certain specifics regarding the process the Air Force will follow in conducting the next level of detailed, site-specific analysis have not been resolved. The final EIS does not establish that no practicable alternative receiving site exists; but eliminates study areas based on desirability. EPA urges the Air Force to include an alternative study area for the receiving site and believes that the next tier of site-specific analysis can be reasonably and appropriately undertaken, provided that the Air Force considers the impacts of a reasonable range of alternatives.

Dated: March 24, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87-6797 Filed 3-26-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3176-4]

Science Advisory Board Executive Committee; Open Meeting; Amended Notice; Correction to Earlier Notice of 2-day Meeting

Under Pub. L. 92-463, notice is hereby given of a meeting of the Executive Committee of the Science Advisory Board on April 9, 1987. The meeting will be held at the U.S. Environmental Protection Agency, 401 M Street SW., in the Administrator's Conference Room, 1103. The meeting will begin on 9:00 a.m. and will adjourn at approximately 5:00 p.m. on April 9th only. The information suspersedes an earlier notice in the Federal Register of March 20 (52 FR 8959) announcing a two day meeting of the Executive Committee.

Issues to be discussed at the meeting include: A briefing on EPA's comparative risk study; discussion of a SAB exposure assessment concept paper; establishment of an EPA initiative for strategic research planning and the SAB's role in such an initiative; reports of committees and subcommittees; and other issues of member interest.

The meeting is open to the public. Any member of the public wishing to attend, obtain information, or submit written comments should contact Dr. Terry F. Yosie, Director, Science Advisory Board or Mrs. Joanna Foellmer located at 401 M Street SW., Washington, DC 20460 or call (202) 382-4126 by close of business April 2, 1987.

Dated: March 20, 1987.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 87-6717 Filed 3-26-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59241; FRL-3176-7]

Certain Test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of two applications for exemption, provides a summary, and requests comments on the appropriateness of granting each exemption.

DATE: Written comments by: April 13, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS-59241]" and the specific TME number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, 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-confidential version of the TME application received by EPA. The complete non-confidential application 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.

T 87-12

Close of Review Period. April 29, 1987.
Manufacturer. Confidential.
Chemical. (G) Ester of alkenyl succinic anhydride.
Use/Production. (G) Akaline sizing agent in paper processing. Prod. range: Confidential.

T 87-13

Close of Review Period. May 2, 1987.
Importer. Confidential.
Chemical. (G) Alkenylamide polymer with methylheteromonoacyclic alkene.
Use/Import. (S) Industrial paper polymer. Import range: Confidential.

Dated: March 23, 1987.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 87-6715 Filed 3-26-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51668; FRL-3176-6]

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 the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of fifty such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 87-795, 87-796, 87-797, 87-798, 87-799, 87-800, 87-801, 87-802, 87-803, 87-804, 87-805, 87-806, 87-807, 87-808, 87-809, 87-810, 87-811, 87-812, 87-813, 87-814, 87-815, 87-816, 87-817, and 87-818—June 10, 1987.

P 87-819, 87-820, 87-821, 87-822, 87-823, 87-824, 87-825, 87-826, 87-827, 87-828, and 87-830—June 13, 1987

P 87-831, 87-832, 87-833, 87-834, 87-835, 87-836, and 87-837—June 14, 1987.

P 87-838, 87-839, 87-840, 87-841, 87-842, 87-843, 87-844, and 87-845—June 15, 1987.

Written comments by:

P 87-795, 87-796, 87-797, 87-798, 87-799, 87-800, 87-801, 87-802, 87-803, 87-804, 87-805, 87-806, 87-807, 87-808, 87-809, 87-810, 87-811, 87-812, 87-813, 87-814, 87-815, 87-816, 87-817, and 87-818—May 11, 1987.

P 87-819, 87-820, 87-821, 87-822, 87-823, 87-824, 87-825, 87-826, 87-827, 87-828, and 87-830—May 14, 1987.

P 87-831, 87-832, 87-833, 87-834, 87-835, 87-836, and 87-837—May 15, 1987.

P 87-838, 87-839, 87-840, 87-841, 87-842, 87-843, 87-844, and 87-845—May 16, 1987.

ADDRESS: Written comments, identified by the document control numer "[OPTS-51668]" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, 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-confidential 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 87-795

Importer. Shin-Etsu Silicones of America, Incorporated.

Chemical. (G) Amino functional organopolysiloxane.

Use/Import. (S) Industrial textile finishing agent and ingredient for carwax. Import range: 5,000 to 10,000 kg/yr.

P 87-796

Manufacturer. Confidential.

Chemical. (G) Substituted benzothiazolesulfonic acid.

Use/Production. (G) Dye. Prod. Range: Confidential.

Toxicity Data. Acute oral: >5 g/kg; Irritation: Skin—Irritant, Eye—Corrosive.

P 87-797

Manufacturer. Dow Corning Corporation.

Chemical. (G) Alkoxy functional silicon hydride silyl hydrocarbon.

Use/Production. (S) Chemical intermediate. Prod. Range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Slight; Ames test: Negative.

P 87-798

Manufacturer. Dow Corning Corporation.

Chemical. (G) Alkoxy functional silicon hydride silyl hydrocarbon.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Irritant, Eye—Slight; Ames test: Negative.

P 87-799

Importer. Confidential.

Chemical. (G) Phenolic resin.

Use/Import. (S) Resin is used in making inks and MK varnishes. Import range: Confidential

P 87-800

Importer. Confidential.

Chemical. (G) Alkyd resin.

Use/Import. (G) Resin converted to paint. Import range: Confidential.

P 87-801

Importer. Confidential.

Chemical. (G) Polyester resin.

Use/Import. (G) Resin converted to paint. Import range: Confidential.

P 87-802

Importer. Confidential.

Chemical. (G) Modified phenolic resin.

Use/Import. (G) Resin converted to ink and varnish. Import range: Confidential.

P 87-803

Importer. Confidential.

Chemical. (G) Modified alkyd resin.

Use/Import. (G) Resin converted to paint. Import range: Confidential.

P 87-804

Importer. Confidential.

Chemical. (G) Alkyd resin.

Use/Import. (G) Resin converted to paint. Import range: Confidential.

P 87-805

Importer. Confidential.

Chemical. (G) Polyester resin.

Use/Import. (G) Resin used in paints. Import range: Confidential.

P 87-806

Importer. Confidential.

Chemical. (G) Modified alkyd resin.

Use/Import. (G) Resin converted to paint. Import range: Confidential.

P 87-807

Importer. Confidential.

Chemical. (G) Polyester resin.

Use/Import. (G) Paint converted to resin. Import range: Confidential.

P 87-808

Importer. Confidential.

Chemical. (G) Modified short oil alkyd resin.

Use/Import. (G) Resin converted to paint. Import range: Confidential.

P 87-809

Importer. Confidential.

Chemical. (G) Acrylic modified.

Use/Import. (G) Resin converted to paint. Import range: Confidential.

P 87-810

Importer. Confidential.

Chemical. (G) Alkyd resin.

Use/Import. (G) Resin converted to paint. Import range: Confidential.

P 87-811

Importer. Confidential.

Chemical. (G) Alkyd resin.

Use/Import. (G) Resin converted to paint. Import range: Confidential.

P 87-812

Importer. Confidential.
Chemical. (G) Alkyd resin.
Use/Import. (G) Resin converted to paint. Import range: Confidential.

P 87-813

Importer. Confidential.
Chemical. (G) Polyurethane resin.
Use/Import. (G) Resin converted to paint. Import range: Confidential.

P 87-814

Importer. Confidential.
Chemical. (G) Medium oil alkyd resin.
Use/Import. (G) Resin converted to paint. Import range: Confidential.

P 87-815

Importer. Confidential.
Chemical. (G) Acrylic modified alkyd resin.
Use/Import. (G) Resin converted to paint. Import range: Confidential.

P 87-816

Importer. Disgrin Industries Corporation.
Chemical. (S) Polymer of poly(oxy-1,4-butanediyl), alpha-[[(3-isocyanatomethylphenyl]amino]carbonyl]-omega-[[[(3-isocyanatomethyl-phenyl)Amino]carbonyl]owy]-, pigment stanone brown; and mixture of 3,5-dimethyl thio-2,4-toluenediamine and 3,5-dimethyl-2,6-toluenediamine.
Use/Import. (S) Site-limited molded on site into wheels, rollers and mechanical parts for use in general industrial applications. Import range: 7,980 to 12,000 kg/yr.

P 87-817

Manufacturer. Confidential.
Chemical. (G) Terephthalate polyol esters.
Use/Production. (S) Industrial intermediate for component for urethane foam insulating product. Prod. range: 1,800,000 to 4,100,000 kg/yr.

P 87-818

Manufacturer. Confidential.
Chemical. (G) Oxyalkylated terephthalate polyol ester.
Use/Production. (S) Industrial components for urethane foam insulating products. Prod. range: 1,800,000 to 4,900,000 kg/yr.

P 87-819

Manufacturer. Confidential.
Chemical. (G) Aminofunctional polysiloxane.
Use/Production. (S) Site-limited and industrial intermediate radiation cured coating additive, site-limited and consumer polymer for hair shampoo and conditioner. Prod. range: Confidential.

P 87-820

Importer. Confidential.
Chemical. (G) Organo-platinum complex.
Use/Import. (S) Industrial catalyst for curing silicone polymers. Import range: Confidential.

P 87-821

Manufacturer. The Dow Chemical Company.
Chemical. (G) Aliphatic thermoplastic urethane.
Use/Production. (S) Industrial manufacture of plastic articles for use in: industrial; medical and transportation. Prod. range: Confidential.

P 87-822

Manufacturer. The Dow Chemical Company.
Chemical. (G) Modified isocyanate prepolymer.
Use/Production. (S) Site-limited and industrial intermediate. Prod. range: Confidential.

P 87-823

Manufacturer. Reichold Chemicals, Incorporated.
Chemical. (G) Tall oil fatty acid/tall oil rosin modified hydrocarbon resin.
Use/Production. (S) Industrial resin component in production of ink vehicle varnishes. Prod. range: Confidential.

P 87-824

Manufacturer. Reichold Chemicals, Incorporated.
Chemical. (G) Terpene-styrene resin.
Use/Production. (S) Industrial tackifier for hot melt adhesive. Prod. range: Confidential.

P 87-825

Manufacturer. Occidential Chemical Corporation.
Chemical. (G) Carboxylic acid salt.
Use/Production. (G) Intermediate. Prod. Range: Confidential.

P 87-826

Importer. Biddle Sawyer Corporation.
Chemical. (G) Carbamido-methyl-[[chloro-[[[sulfooxyethylsulfonyl] amino]-s-triazinyl]amino]substituted] azo]-hydroxy-ethyl-pyridinone, sodium salt.
Use/Import. (S) Reactive dye for textiles. Import range: 40,000 kg/yr.

P 87-827

Importer. Confidential.
Chemical. (G) Silicone phenolic alkyd resin.
Use/Import. (S) Industrial component of electrical coating industrial. Import range: 500 to 1,100 kg/yr.

P 87-828

Importer. Biddle Sawyer Corporation.
Chemical. (G) 2,2'-Stilbenedisulfonic acid, 4,4'-bis[[3-chloro-[[(hydroxy-[substituted]azo]-sulfonaphthalenyl]-s-triazinyl]amino]-, potassium salt.
Use/Import. (S) Reactive dye for textiles. Import range: 20,000 kg/yr.

P 87-830

Importer. CIBA-GEIGY Corporation.
Chemical. (G) Copper disalicylidine complex.
Use/Import. (G) Textile chemical. Import range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Negative; Skin Sensitization: Non-sensitizer; EC_{50}: >1,000 mg/1 (Daphnia Magna) LC_0: Zebra fish: >8.3 ppm, IC_{50}: (Inhibitory Concentration) >100 mg/1; COD=1606 mg/g O_2.

P 87-831

Manufacturer. Confidential.
Chemical. (G) Polyamino polyamide.
Use/Production. (G) Additive in specialty formulation with open use. Prod. range: 500 to 2,100 kg/yr.

P 87-832

Manufacturer. Lonza, Incorporated.
Chemical. (G) Aromatic polyol, alkoxylated, fatty acid esters of.
Use/Production. (G) Additive for use in textile or industrial lubricant formulations. Prod. range: Confidential.

P 87-833

Manufacturer. Confidential.
Chemical. (G) High solids soybean oil urethane polymer.
Use/Production. (S) Clear and pigmented high solids architectural coatings. Prod. range: Confidential.

P 87-834

Manufacturer. Confidential.
Chemical. (G) Amino rich polyamide.
Use/Production. (G) Additive in specialty formulation with open use. Prod. range: 500 to 2,300 kg/yr.

P 87-835

Manufacturer. E. I. du Pont de Nemours and Company, Inc.
Chemical. (S) Benzeneacetonitrile, alpha-hydroxy-3-phenoxy-, (S)-.
Use/Production. (S) Industrial intermediate for use in pesticide manufacture. Prod. range: Confidential.

P 87-836

Manufacturer. Confidential.
Chemical. (G) Inert perfluorocarbon liquid.

Use/Production. (G) A fluid for use in heat transfer applications having in general, an open non-dispersive degree of containment. Prod. range: Confidential.

P 87-837

Manufacturer. Confidential.
Chemical. (S) Isophthalic acid, adipic acid, trimethylolpropane, silicone polymer.
Use/Production. (S) Industrial and commercial polyester vehicle for use in pigmented synthetic coating. Prod. range: 96,000 to 175,000 kg/yr.

P 87-838

Manufacturer. Confidential.
Chemical. (G) NCO terminated urethane.
Use/Production. (G) Tackifier—open, non-dispersive use in adhesives. Prod. range: Confidential.

P 87-839

Importer. Sherex Chemical Company, Incorporated.
Chemical. (G) Sulfonium borate.
Use/Import. (S) Polymerization inhibitor. Import range: Confidential.

P 87-840

Manufacturer. Confidential.
Chemical. (G) Isocyanate—terminated polycaprolactone polyol.
Use/Production. (G) Coating resin. Prod. range: Confidential.

P 87-841

Importer. Confidential.
Chemical. (S) Pyrazolo[5,1-b]quinazoline, 3-[(4-chloro-2-nitrophenyl)azo]-2-methyl.
Use/Import. (G) Colorant. Import range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Slight; Ames test: Negative.

P 87-842

Manufacturer. Confidential.
Chemical. (G) Polyether polyamino polyol.
Use/Production. (G) Open use; industrial paint product. Prod. range: 200,000 to 3,000,000 kg/yr.

P 87-843

Manufacturer. Cavedon Chemical Company, Inc.
Chemical. (G) Carboxyfunctional zircoaluminate chloride hydroxide polymer.
Use/Production. (S) Industrial adhesion promoter: epoxy, rubber; acrylic industrial adhesives; adhesion promoter/pigment dispersant in industrial coatings, i.e., polyester, epoxy, urethane, alkyd, waterborne, etc; pigment dispersant, coupling agent in pigmented PE, PP and other thermoplastics. Prod. range: Confidential.

P 87-844

Importer. Protan Laboratories, Incorporated.
Chemical. (G) Chitosan, substituted hydroxyalkanoate salt.
Use/Import. (G) Selective absorbent in materials, fabrics and filtration membranes. Import range: Confidential.

P 87-845

Manufacturer. Mona Industries Inc.
Chemical. (S) Reaction Product of: Epichlorohydrin and sodium phosphate.
Use/Production. (S) Site-limited intermediate for cosmetic and household raw material production. Prod. range: 9,000 to 20,000 kg/yr.
Toxicity Data. Irritation: Skin—Non-irritant, Eye—Non-irritant.

Dated: March 23, 1987.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 87-6714 Filed 3-26-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51667; FRL-3175-8]

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 the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of forty-two such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 87-752, 87-753, 87-754, 87-755, 87-756, 87-757, and 87-758, June 3, 1987.
P 87-759, 87-760, 87-761, 87-762, 87-763, 87-764, 87-765, 87-766, 87-767, 87-768, 87-769, and 87-770, June 7, 1987.
P 87-771, 87-772, 87-774, 87-775, 87-776, 87-777, 87-778, 87-779, 87-780, 87-781, 87-782, 87-783, 87-784, 87-785, 87-786, and 87-787, June 8, 1987.
P 87-788, 87-789, and 87-790, June 9, 1987.
P 87-791, 87-792, 87-793, and 87-794, June 10, 1987.

Written comments by:

P 87-752, 87-753, 87-754, 87-755, 87-756, 87-757, and 87-758, May 4, 1987.
P 87-759, 87-760, 87-761, 87-762, 87-763, 87-764, 87-765, 87-766, 87-767, 87-768, 87-769, and 87-770, May 8, 1987.
P 87-771, 87-772, 87-774, 87-775, 87-776, 87-777, 87-778, 87-779, 87-780, 87-781, 87-782, 87-783, 87-784, 87-785, 87-786, and 87-787, May 9, 1987.
P 87-788, 87-789, and 87-790, 87-791, 87-792, 87-793, and 87-794, May 10, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS-51667]" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, 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-confidential version of the PMNs received by EPA. The complete non-confidential PMNs are 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 87-752

Importer. Toyo Soda USA, Inc.
Chemical. (G) Hexane-1,6-diisocyanate oligomers with polyol modification.
Use/Import. (S) Industrial and commercial reactive polyurethane coating. Import range: 50,000 to 150,000 kg/yr.

P 87-753

Manufacturer. Mazer Chemicals, Inc.
Chemical. (G) Amide of polycarboxylic acid.
Use/Production. (G) Emulsifier for an explosive mixture. Prod. range: Confidential.

P 87-754

Manufacturer. Rohm and Haas Company.
Chemical. (G) Modified polyacrylate polymer.
Use/Production. (G) Polymeric dispersant. Prod. range: Confidential.

Toxicity Data. Acute oral: 5 g/kg; Acute dermal: 5 g/kg; Irritation: Skin—Slight, Eye—Severe; LC_{50} 96 hr (Rainbow trout): 750 mg/L, LC_{50} 48 hr (Daphnia magna): 1,000 mg/L. EC_{50}: 16.9 mg/L.

P 87-755

Manufacturer. Confidential.
Chemical. (G) Acrylate functional organopolysiloxane.
Use/Production. (S) Industrial radiation cured coating additive. Prod. range: Confidential.

P 87-756

Manufacturer. Confidential.
Chemical. (G) Amines, dialkyl methyl.
Use/Production. (G) Site-limited and industrial intermediate for cationic production. Prod. range: Confidential.

P 87-757

Manufacturer. Confidential.
Chemical. (G) Copolyester urethane terpolymer.
Use/Production. (G) Polymer for injection molding and extrusion. Prod. range: Confidential.

P 87-758

Manufacturer. Confidential.
Chemical. (G) Polyoxyethylene fatty ester.
Use/Production. (G) Industrial surfactant. Prod. range: Confidential.

P 87-759

Importer. Confidential.
Chemical. (G) Fluorinated co-telomer.
Use/Import. (G) Soil release and soil repellent agent highly protective product. Import range: Confidential.
Toxicity Data. Acute oral: 5 ml/kg; Irritation: Skin—Non-irritant, Eye—Irritant.

P 87-760

Manufacturer. Confidential.
Chemical. (G) Acrylated polyurethane.
Use/Production. (G) Industrial polymer for specialty coatings. Prod. range: 38,000 to 76,000 kg/yr.

P 87-761

Manufacturer. Confidential.
Chemical. (G) Phenoxy modified epoxy ester resin.
Use/Production. (G) Industrial open, non-dispersive use. Prod. range: 2,272 to 9,100 kg/yr.

P 87-762

Importer. Fritzsche Dodge & Olcott.
Chemical. (S) 2-Butenal, 3-methyl-.
Use/Import. (S) Industrial and commercial sold to other chemical houses as such. Import range: 25 to 180 kg/yr.

Toxicity Data. Acute oral: 690 mg/kg; Acute dermal: 400 mg/kg; Irritation: Skin—Irritant; Inhalation: Irritation; Ames test: Non-mutagenic.

P 87-763

Manufacturer. H.B. Fuller Company.
Chemical. (G) Diphenylmethane diisocyanate 1,4-cyclohexanedimethanol, dimer acid copolymer.
Use/Production. (S) Industrial adhesive. Prod. range: 18,000 to 70,000 kg/yr.

P 87-764

Importer. Confidential.
Chemical. (G) Aliphatic diol.
Use/Import. (S) Industrial crosslinker for the production of polyurethane elastomers. Import range: Confidential.

P 87-765

Manufacturer. Confidential.
Chemical. (G) Barium salt of Joncryl 678.
Use/Import. (G) Extender. Import range: Confidential.

P 87-766

Manufacturer. Confidential.
Chemical. (G) Substituted-aryl-substituted-amino-alkyl phosphonic acid, salt.
Use/Production. (G) Destructive use. Prod. range: Confidential.

P 87-767

Manufacturer. Confidential.
Chemical. (G) Substituted alkyl phosphonic acid, salt.
Use/Production. (G) Destructive use. Prod. range: Confidential.

P 87-768

Manufacturer. Arizona Chemical Company.
Chemical. (G) Substituted tall oil polymer.
Use/Production. (G) Industrial coating resin. Prod. range: Confidential.

P 87-769

Manufacturer. Confidential.
Chemical. (G) Modified, maleated metal resinate.
Use/Production. (S) Industrial publication gravure printing inks. Prod. range: Confidential.

P 87-770

Importer. Fallek Chemical Company, Incorporated.
Chemical. (S) Acryloyl mopholine.
Use/Import. (S) Site-limited, industrial and commercial radiation cure vinyl pyrolidone co-polymers; industrial, commercial and consumer adhesives acrylate/methacrylate copolymers, specialty urethane/epoxy copolymers and misc. Import range: 20,000 to 100,000 kg/yr.
Toxicity Data. Acute oral: 588 mg/kg; Acute dermal: 2.0 g/kg; Irritation: Skin—Mild, Eye—Non-irritant.

P 87-771

Importer. Confidential.
Chemical. (G) Mixed methacrylate polymer.
Use/Import. (S) Industrial emulsifier/dispersant. Import range: Confidential.

P 87-772

Importer. Biddle Sawyer Corporation.
Chemical. (G) Hydroxy-[[disubstituted]phenyl]azo]-[chloro[[(sulfooxyethylsulfonyl)phenyl]amino]-s-triazinylamino]naphthalenedisulfonic acid, sodium salt.
Use/Import. (S) Reactive dye for textiles. Import range: 40,000 kg/yr.

P 87-774

Manufacturer. Monsanto Company.
Chemical. (S) Polymer of melamine; formaldehyde; methanol; and 2-ethylhexanol.
Use/Production. (G) Component of thermosetting paint formulations.
Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >5,000 mg/kg; Irritation: Skin—Slight, Eye—Mild; Ames test: Non-mutagenic.

P 87-775

Manufacturer. Confidential.
Chemical. (G) Copolymer of acrylic and methacrylic esters.
Use/Production. (S) Industrial, commercial and consumer modifier for wood coatings, general purpose coating. Prod. range: Confidential.

P 87-776

Manufacturer: Pennwalt Corporation.
Chemical. (S) 1,3-Benzenedicarboxylic acid, disodium salt.
Use/Production. (S) Industrial lubricant for metal deformation. Prod. range: 11,270 to 23,575 Kg/yr.
Toxicity Data. Acute oral: 5,000 mg/kg; Acute dermal: 2,000 mg/kg; Irritation: Skin—Slight, Eye—Mild; Ames test: Non-mutagenic.

P 87-777

Importer. MC Reprotechs, Incorporated.
Chemical. (G) 4,4'-Bis(substituted)stilbene.
Use/Import. (G) Colorant of copying material. Import range: Confidential.
Toxicity data. Acute oral: >5.0 g/kg; Ames test: Non-mutagenic.

P 87-778

Importer. MC Reprotechs, Incorporated.
Chemical. (G) 2,5-Bis(substituted)-1,3,4-oxadiazole.
Use/Import. (G) Colorant of copying material. Import range: Confidential.
Toxicity Data. Acute oral: >5.0 g/kg; Ames test: Non-mutagenic.

P 87-779

Importer. MC Reprotechs, Incorporated.
Chemical. (G) Pyrene derivative.
Use/Import. (G) Copying material. Import range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg; Ames test: Non-mutagenic.

P 87-780

Importer. MC Reprotechs, Incorporated.
Chemical. (G) Phthalocyanine colorant.
Use/Import. (G) Colorant of printing material. Import range: Confidential.

P 87-781

Importer. MC Reprotechs, Incorporated.
Chemical. (G) Carbozole derivative.
Use Import. (G) Copying material. Import range: Confidential.
Toxicity Data. Acute oral: >15.0 g/kg; Ames test: Non-mutagenic.

P 87-782

Importer. MC Reprotechs, Incorporated.
Chemical. (G) Benzoic acid derivative.
Use/Import. (G) Copying material. Import range: Confidential.
Toxicity Data. Acute oral: 11,602 mg/kg; Ames test: Non-mutagenic.

P 87-783

Importer. MC Reprotechs, Incorporated.
Chemical. (G) 1,1-Bis(substituted)-3-substituted-1-propen.
Use/Import. (G) Copying material. Import range: Confidential.
Toxicity Data. Acute oral: >5.0 g/kg; Ames test: Non-mutagenic.

P 87-784

Importer. MC Reprotechs, Incorporated.
Chemical. (G) 2,5-Bis(substituted)-1,3,4-oxadiazole.
Use/Import. (G) Colorant of copying material. Import range: Confidential.
Toxicity Data. Acute oral: >5.0 g/kg; Ames test: Non-mutagenic.

P 87-785

Importer. MC Reprotechs, Incorporated.
Chemical. (G) Carbazole derivative.
Use/Import. (G) Copying material. Import range: Confidential.
Toxicity Data. Acute oral: >5.0 g/kg; Ames test: Non-mutagenic.

P 87-786

Importer. Confidential.
Chemical. (G) Polyester acrylate.
Use/Import. (S) Industrial radiation-curable coatings.
Toxicit Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Slight, Eye—Slight; Inhalation: Negative.

P 87-787

Importer. Confidential.
Chemical. (G) Polyester acrylate.
Use/Import. (S) Industrial radiation-curable coatings.
Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Slight, Eye—Slight; Inhalation: Negative.

P 87-788

Manufacturer. Confidential.
Chemical. (S) Polymer of 1,3-benzenedicarboxylic acid; 1,3-isobenzenefuranolione; trans butenedioic acid; hexanedioic acid; 1,2-propanediol; and 2,2-dimethyl-1,3-propanediol.
Use/Production. (S) Industrial and commercial polymer for metal coating. Prod. range: Confidential.

P 87-789

Manufacturer. Confidential.
Chemical. (G) Reaction mixture of carbomonocyclic acid, sulfonated carbomonocyclic ester, alkylene glycol and dialkylene glycol.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 87-790

Importer. Lonza, Incorporated.
Chemical. (G) Methylene-bis-substituted aniline derivative.
Use/Import. (G) Resin intermediate. Import range: Confidential.

P 87-791

Importer. Biddle Sawyer Corporation.
Chemical. (G) Hydroxy-[[disubstituted]naphthylazo]-[chloro-[[(sulfooxyethylsulfonyl)phenyl]amino] substituted naphthalenesulfonic acid, sodium salt.
Use/Import. (S) Reactive dye for textiles. Import range: 40,000 kg/yr.

P 87-792

Manufacturer. Quaker Chemical Corporation.
Chemical. (G) Mixed tall oil esters.
Use/Production. (S) Industrial hot mill lubricant. Prod. range: Confidential.

P 87-793

Manufacturer. Confidential.
Chemical. (G) Functional aluminum soaps.
Use/Production. (G) Cosmetic/Emollient.
Toxicity Data. Acute oral: 5 g/mg; Irritation: Skin—Mild, Eye—Mild.

P 87-794

Importer. Stockhausen, Incorporated.
Chemical. (G) Water soluble cationic polymer.
Use/Import. (G) Flocculant for retention aid. Prod. range: 250,000 to 1,000,000 kg/yr.
Toxicity Data. Acute oral >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Skin Sensitization: Non-sensitizer; LC_{50} 24 hr (Daphnia magna): 225 mg/l, EC_{50} 48 hr (Tetrahymena pyriformis): 95 mg/l, LC_{50} 96 hr (Zebra fish): 8 mg/l, EC_{50} (Pseudomonas putida): >5,000 mg/l, LC_{50} 96 hr (Golden orfs): 1.5 mg/l.

Dated: March 17, 1987.

Denise Devoe,
Acting Division Director, Information Management Division.

[FR Doc. 87-6555 Filed 3-26-87; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-59809; FRL-3174-2]

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. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of three such polymer exemption submissions and provides a summary of each.

DATES: Close of Review Period:
Y 87-122 and 87-123, March 30, 1987.
Y 87-124, March 31, 1987.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, 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-confidential version of the exemption received by EPA. The complete non-confidential documents are 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 87-122

Manufacturer. Confidential.
Chemical. (G) Alkyd resin.
Use/Production. (S) Coatings. Prod. range, Confidential.

Y 87-123

Manufacturer. Confidential.
Chemical. (G) Unsaturated polyester resin.
Use/Production. (G) Pionite. Prod. range, Confidential.

Y 87-124

Manufacturer. Spencer Kellogg Products.
Chemical. (G) Alkyd resin.
Use/Production. (G) Open, non-dispersive use. Prod. range, Confidential.

Dated: March 17, 1987.

Denise Devoe,

Acting Division Director,Information Management Division.

[FR Doc. 87-6461 Filed 3-26-87; 8:45 am]

BILLING CODE 6560-50-M

[OPP-66135; FRL 3177-4]

Pesticide Programs; New Voluntary Cancellation Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has streamlined the way it processes requests for voluntary cancellation of registered pesticide products. Instead of issuing a Notice of Voluntary Cancellation to the registrant, which notifies the registrant of the official cancellation of the affected registrations 30 days after receipt of the letter, EPA will now, upon receipt of a request for voluntary cancellation of pesticide registrations, send a cancellation order to the registrant acknowledging receipt of that request, informing the registrant that cancellation was effective immediately upon receipt of the request. This change will significantly decrease the processing time from receipt of a voluntary cancellation request to final cancellation.

FOR FURTHER INFORMATION CONTACT: By mail:

Arthur Donner, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2126).

SUPPLEMENTARY INFORMATION: This discussion of the voluntary cancellation process is published for informational purposes only, since these procedures are not subject to rulemaking.

A voluntary cancellation is initiated by the registrant of a pesticide product. Previously, this request resulted in EPA issuing a Notice of Intent to Cancel to the registrant, which stated that the EPA had agreed to the cancellation of the product(s), effective 30 days after the registrant's receipt of the Notice, unless within the 30-day period the registrant, or an interested person with the concurrence of the registrant, requested that the registration be continued in effect. If no request for continuation of registration had been submitted at the end of the 30-day period, the product was then cancelled.

The current voluntary cancellation process is initiated upon receipt of a written request from a registrant of a product. The Agency prepares a cancellation order acknowledging receipt of the voluntary cancellation request and sends it to the registrant of the affected product(s). This notice automatically becomes a final order of cancellation. Unless there are extenuating circumstances, a notice ordinarily contains a provision permitting the registrant to sell or distribute existing stocks of the product(s) until his supply is exhausted, or for 1 year from the effective date of cancellation, whichever comes first.

To provide current information on those product(s) voluntarily cancelled, EPA intends to prepare computer reports of product cancellations on a regular basis. These reports will indicate each product's EPA registration number, product name, registrant's name, and the date on which cancellation became effective. The Agency will routinely distribute updated reports to EPA Regional Offices and the Office of Pesticide Programs Freedom of Information Office, from which these reports can be requested.

Dated: March 23, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

FR Doc. 87-6983 Filed 3-26-87; 11:57 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1648]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

March 18, 1987.

Petitions for reconsideration and clarification have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these petitions must be filed April 13, 1987. *See* § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Parts 2, 22 and 25 of the Commission's Rules to Allocate Spectrum for, and to Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services. (Gen. Docket No. 84-1234, RM-4247). Number of petitions received: 2

Subject: Amendment of § 73.202(b) Table of Allotments, FM Broadcast Stations. (Eagle and Lincoln, Nebraska) (MM Docket No. 86-59, RM-5082). Number of petitions received: 1

Subject: Amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Anniston, Alabama) (MM Docket No. 86-101, RM-5455). Number of petitions received: 1

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Vero Beach, Florida) (RM-5359). Number of petitions received: 1

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-6570 Filed 3-26-87; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; James L. Gardner et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city, and State	File No.	MM Docket No.
A. James L. Gardner, Sparta, Missouri.	BPH-851112MA.....	87-61
B. Sledge Communications, Sparta, Missouri.	BPH-851115MK.....	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Comparative, A, B
2. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87-6571 Filed 3-26-87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Training and Fire Programs Directorate, Board of Visitors for the National Fire Academy; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

NAME: Board of Visitors (BOV) for the National Fire Academy (NFA)

DATES OF MEETING: April 23-24, 1987

PLACE: Holiday Inn, 1711 North University Blvd., Plantation, Florida

TIME: April 23—8:30 a.m. to 5:00 p.m.; April 24—8:30 a.m. to Agenda Completion; 4:00 p.m. to 5:00 p.m.—Field Survey Meeting

PROPOSED AGENDA: Old Business; New Business; Annual Report; Volunteer Fire Service/NFA Interface; FEMA Training Reorganization; Chamber of Commerce Award

The meeting will be open to the public with seating available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, National Fire Academy, Training and Fire Programs Directorate, 16825 South Seton Avenue, Emmitsburg, Maryland 21727 (telephone number, 301-447-1123) on or before April 13, 1987.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Associate Director's Office, Training and Fire Programs Directorate, Federal Emergency Management Agency, Building N, National Emergency Training Center, Emmitsburg, MD 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: March 19, 1987.

Caesar A. Roy,

Deputy Associate Director, Training and Fire Programs.

[FR Doc. 87-6710 Filed 3-26-87; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL HOME LOAN BANK BOARD

First Federal of Maryland, FSA; Hagerstown, MD; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in 5(d)(6)(A) of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for First Federal of Maryland, FSA, Hagerstown, Maryland on March 20, 1987.

Dated: March 23, 1987.

Jeff Sconyers,

Secretary.

[FR Doc. 87-6728 Filed 3-26-87; 8:45 am]

BILLING CODE 6720-01-M

Vernon Savings and Loan Association; Vernon, TX; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Vernon Savings and Loan Association, Vernon, Texas, on March 20, 1987.

Dated: March 23, 1987.

Jeff Sconyers,

Secretary.

[FR Doc. 87-6729 Filed 3-26-87; 8:45 am]

BILLING CODE 6720-01-M

[No. 87-305]

Applications for Unlisted Trading Privileges and Opportunity for Hearing; Midwest Stock Exchange

Dated: March 18, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Midwest Stock Exchange has filed on January 2, 1987 and January 27, 1987, respectively, pursuant to section 12 (f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1, applications ("Applications") with the Federal Home Loan Bank Board ("Board") for unlisted trading privileges in the following securities:

Coast Savings and Loan Association, Los Angeles, California (FHLBB No. 7046), Common Stock, No Par Value

Standard Federal Bank, Troy, Michigan (FHLBB No. 0161), Common Stock, $1.00 Par Value

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Comments: Any interested person may inspect the Applications at the Board, and, within 15 days of publication of this notice in the **Federal Register**, submit to the Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552, written data, views and arguments bearing upon whether 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. Following this opportunity for hearing, the Board will approve the Applications after the date mentioned above 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 FURTHER INFORMATION CONTACT: John P. Harootunian, Assistant General Counsel for Securities Policy, Corporate and Securities Division, Office of General Counsel, at (202-377-6415) at the above address.

By the Federal Home Loan Bank Board

Jeff Sconyers,

Secretary.

[FR Doc. 87-6730 Filed 3-26-87; 8:45 am]

BILLING CODE 6720-01-M

[No: 87-304]

Application for Unlisted Trading Privileges and Opportunity for Hearing; Philadelphia Stock Exchange

Dated: March 18, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Philadelphia Stock Exchange has filed, pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1, an application with the Federal Home Loan Bank Board ("Board") for unlisted trading privileges in the following securities: Columbia Savings and Loan Association, Beverly Hills, California (FHLBB No. 6325) Common Stock, $1.00 Par Value.

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Comments: Any interested person may inspect the application at the Board, and, within 15 days of publication of this notice in the **Federal Register**, submit to the Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, written data, views and arguments bearing upon whether the extensions of unlisted trading privileges pursuant to such application are consistent with the maintenance of fair and orderly markets and the protection of investors. Following this opportunity for hearing, the Board will approve the application after the date mentioned above if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application are consistent with the maintenance of fair and orderly markets and the protection of investors.

FOR FURTHER INFORMATION CONTACT: John P. Harootunian, Assistant General Counsel for Securities Policy, Corporate and Securities Division, Office of General Counsel, at (202-377-6415) at the above address.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 87-6731 Filed 3-26-87; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Algemene Bank Nederland N.V.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 15, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Algemene Bank Nederland N.V.*, Amsterdam, The Netherlands; to acquire Lease Plan U.S.A., Atlanta, Georgia, and thereby engage in the leasing of personal or real property pursuant to § 225.25(b)(5) and commercial financing of equipment and inventory pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 23, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-6698 Filed 3-26-87; 8:45 am]

BILLING CODE 6210-01-M

First Citizens Banc Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) 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 this application must be received not later than April 17, 1987.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First Citizens Banc Corp.*, Sandusky, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens Banking Company, Sandusky, Ohio.

Board of Governors of the Federal Reserve System, March 23, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-6699 Filed 3-26-87; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and section 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 10, 1987.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *James O. Myers*, Emporia, Kansas; to acquire 52 percent of the voting shares of Admire Bancshares, Inc., Emporia, Kansas, and thereby indirectly acquire Admire Bank in Emporia, Emporia, Kansas.

Board of Governors of the Federal Reserve System, March 23, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-6700 Filed 3-26-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on March 20, 1987.

Public Health Service (PHS)

(Call Reports Clearance Officer on 202-245-2100 for copies of Package)

Food and Drug Administration

Subject: Use of Impact-Resistant Lenses in Eyeglasses and Sunglasses—Revision—(0910-0182)
Respondents: Businesses or other for-profit; Small businesses or organizations

Health Resources Services Administration

Subject: Financial Assistance for Disadvantaged Health Professions Students Program—Application Form—NEW
Respondents: Non-profit institutions
Subject: Annual Space Utilization and Enrollment Report for Nursing and Health Professions—Extension—(0915-0056)
Respondents: State or local governments; Non-profit institutions

Centers for Disease Control

Subject: Fluoridation Census, 1985—NEW
Respondents: State or local governments
OMB Desk Officer: Shannah Koss

Family Support Administration (FSA)

(Call Reports Clearance Officer on 202-245-0652 for copies of package)
Subject: Refugee State-of-Origin Report—Extension—(0960-0336)
Respondents: State or local governments
Subject: Refugee Assistance-by-Nationality Report—Extension—(0960-0339)
Respondents: State or local governments
Subject: State Agency Statement of Financial Plan for Aid to Families With Dependent Children—Reinstatement—(0960-0225)
Respondents: State or local governments
Subject: Annual Statistical Report on Requests for Hearings—Reinstatement—(0960-0251)
Respondents: State or local governments
OMB Desk Officer: Judy Egan

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers: PHS/FDA: 202-245-2100; FSA: 202-245-0652.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, Attn: (name of OMB Desk Officer).

Dated: March 19, 1987.

James F. Trickett,

Director, Office of Administrative and Management Services.

[FR Doc. 87-6722 Filed 3-26-87; 8:45 am]

BILLING CODE 4150-04-M

Alcohol, Drug Abuse, and Mental Health Administration

Research Grants for Biological Markers of Alcohol Consumption

AGENCY: National Institute on Alcohol Abuse and Alcoholism, HHS.

ACTION: Issuance of a special program announcement for research grants on biological markers of alcohol consumption.

SUMMARY: The National Institute on Alcohol Abuse and Alcoholism (NIAAA) announces the availability of a special program announcement for Research Grants on Biological Markers of Alcohol Consumption. These awards will support research grants for the development and application of biological markers for the objective assessment of long-term drinking. As distinct from a solely qualitative indicator of alcohol consumption, the most desirable measures would provide a quantitative estimate of alcohol use during a period of days or weeks. The influence of such factors as age and gender should be addressed in the validation of markers. Support may be requested for up to 5 years. It is estimated that up to $500,000 will be available in 1987 and future years, subject to final congressional action, to support research grants under this announcement.

Receipt Dates for Applications: February 1, June 1, and October 1 of

each year as provided by the regular research grant application schedule.

For a Copy of the Announcement Contact: The National Clearinghouse for Alcohol Information (NCALI), Box 2345, Rockville, Maryland 20852, Telphone (301) 468–2600.

Donald Ian Macdonald,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

FR Doc. 87–6704 Filed 3–26–87; 8:45 am]

BILLING CODE 4160–20–M

Centers for Disease Control

Cooperative Agreement To Assist Local Health Officials To Determine the Overall Performance of Local Health Departments In Carrying Out Their Increasingly Broad and Complex Responsibilities

The Center for Disease Control announces the availability of funds in Fiscal Year 1987 for a cooperative agreement with the National Association of County Health Officials (NACHO) under the stipulation that there be substantial participation in the project by the United States Conference of Local Health Officials (USCLHO), to enable local health departments to determine whether they are meeting the needs of the communities they serve, identify areas in which performance can be improved, and initiate a systematic process to improve performance. The Catalog of Federal Domestic Assistance number is 13.283.

Authority

This program is authorized under section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)), as amended.

Single Source Justification

Assistance will be provided only to the National Association of County Health Officials (NACHO) for this project. NACHO is a professional organization of individuals and institutions that have a professional and legal interest in preventive health care in the community. The membership of this organization is composed of the leaders of local health agencies with the decision making authority for the direction of prevention strategies in the community. The organization is in a unique position to assist individual health departments in assessing how well the health needs of the community are being met and in what direction future resources should be allocated in order to develop a comprehensive approach contributing toward national disease prevention/health promotion efforts. This organization, as representative of the nation's local health agencies, is best suited to develop a generic self-assessment tool that can be implemented uniformly.

Availability of Funds

During Fiscal Year 1987, $100,000 to $175,000 will be available to support this project. The cooperative agreement will be funded initially for a 12-month budget period. Continuation awards within the 5-year project period will be made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. The funding estimate is subject to change.

Reviews

Application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Information

Information may be obtained from: Luther DeWeese, Grant Management Specialist, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, Atlanta, Georgia 30333, Telephone—(404) 262–6575.

Technical assistance may be obtained from: Charles J. Webb, Training and Laboratory Program Office, Centers for Disease Control, Atlanta, Georgia 30333, Telephone (404) 329–1945.

Dated: March 23, 1987.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 87–6664 Filed 3–26–87; 8:45 am]

BILLING CODE 4160–18–M

Cooperative Agreement for Adult Immunizations in Health Maintenance Organizations Program Announcement and Availability of Funds for Fiscal Year 1987

Introduction

The Centers for disease Control (CDC) announces the availability of funds for Fiscal Year 1987 for competitive applications for a cooperative agreement with an organization which will work effectively with the Health Maintenance Organization (HMO) industry to improve the delivery of adult immunization services to their 21 million subscribed members.

Authority

This project is authorized by section 301(a) of the Public Health Service (PHS) Act (42 U.S.C. 241(a)), as amended. The Catalog of Federal Domestic Assistance is 13.283.

Eligible Applicants

Eligible applicants are public or private organizations, associations, institutions, and others, with (1) demonstrated capability in performing activities and achieving goals and objectives similar in scope to those of the proposed project and (2) recent experience in working with the HMO industry.

Program Background

HMOs are a growing and significant component of the health care industry in the United States. Presently there are nearly 500 federally qualified HMOs providing prepaid health services to approximately 21 million members.

HMOs are constantly striving to reduce costs to maintain a competitive edge in the market place. The industry recognizes that multiple strategies must be used to continue to show decreases in costs associated with physician encounters and hospitalizations. One of these major strategies is emphasis on preventive medicine, including immunizations.

However, recent studies have shown that vaccine coverage for influenza and tetanus-diphtheria in HMO populations is only about 20–40 percent. These levels indicate that in spite of access to medical care in HMOs, including immunizations at no out-of-pocket expense, desired levels of immunization are not being reached.

The HMO industry has expressed interest in improving immunization coverage of adults thereby reducing costs associated with morbidity and mortality, improving the health of their members, and promoting enrollment by offering higher quality services.

The interest of the HMO industry in prevention programs is highly consistent with current CDC programs. CDC's adult immunization activites focus on the achievement of goals by 1990 which include: 70 percent immunization levels against influenza among high risk groups; 60 percent in levels against pneumococcal disease; 50 percent immunization against hepatitis B; a 75 percent immunization level in adults against tetanus and diphtheria; zero reported cases of congenital rubella syndrome; and zero indigenous cases of measles.

Inclusion of preventive immunization services by HMOs and health insurance companies is consistent with the CDC strategy to improve the immunization status of adults.

Purpose

The purpose of this cooperative agreement is to assist HMOs to develop

policies, procedures, and practices of adult immunizations which will result in the reduction and prevention of unnecessary morbidity and mortality and their consequences to influenza, pneumococcal disease, hepatitis B, tetanus, diphtheria, measles, and rubella in adult populations (>15 years) served by HMOs.

Cooperative Activities

1. Recipient Activities

a. Identify three to five HMOs representing Group, Staff, and Individual Practice Association (IPA) models with appropriate resources and interests for collaboration related to adult vaccine preventable diseases to determine vaccine coverage in selected HMO models.

b. In each HMO model type, determine current policies with regard to the seven adult antigens.

c. In each HMO model type, determine the vaccine/toxoid coverage levels for members in the target population.

d. In each HMO model type, assess the impact of morbidity/mortality of the target diseases on the utilization of HMO services, including frequency and costs.

e. Implement at least one or more intervention strategies to measure and increase vaccine coverage levels.

f. Evaluate the effectiveness and efficiency of the intervention strategy(s) in increasing vaccine coverage, reducing morbidity/mortality, and reducing utilization and costs of HMO services.

g. Establish a mechanism for sharing information which fosters the benefits of adult immunization in the HMO industry, its members, and the general public.

2. Centers for Disease Control Activities

a. Collaborate in determining whether HMO policies and practices on adult immunizations are current.

b. Provide technical assistance in the design of the protocols for the collection and analysis of data to determine vaccine/toxoid coverage.

c. Provide technical assistance in the design of protocols for the collection and analysis of data to determine the impact of morbidity and mortality.

d. Participate in the development, implementation, and evaluation of intervention strategies including statistical analyses.

e. Provide training consultation as required to ensure successful technology transfer to the HMO industry.

f. Assist in replacing successful experiences gained in this collaboration throughout the pre-paid health care industry.

Availability of Funds

Approximately $83,000 is available in Fiscal Year 1987 to fund one cooperative agreement. Depending on the availability of funds, the cooperative agreement will be funded in 12 month budget periods within a 1- to 3-year project period. Continuation awards within the project period will be made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. Funding estimates outlined above may vary and are subject to change.

Reporting Requirements

Progress reports are required on a quarterly basis and are due 30 days after the end of each quarter. Financial status reports are required no later than 90 days after the end of each budget period. Final financial status and progress reports are required 90 days after the end of a project period.

Application Content

1. *Initial Application*—The initial application for a new project period must include a narrative which details the following:

a. The background and need for support, including information that relates to factors by which the applications will be evaluated;

b. The objectives of the proposed project which are consistent with the purpose of the project and which are specific, measurable and time-phased;

c. The methods which will be used to achieve the objectives;

d. The methods which will be used to evaluate the success of the project;

e. A budget, including narrative justification, consistent with the purpose and objectives of the project; and

f. Any other pertinent information that will support the request for assistance.

2. *Continued Funding*—An application for continued funding of this activity within an approved project period should contain the following:

a. A progress report on activities performed and results achieved during the prior budget period;

b. Short-term objective for the new budget period (consistent with availability of funds);

c. A description of any change in the need for support, long-term objectives, methods of operation, and evaluation procedures compared to information provided in previous applications; and

d. A budget, including narrative justification, consistent with the availability of funds and the purpose and objectives of the project.

Application Review and Evaluation Criteria

1. *Initial Application*—The initial application for a new project period will be reviewed and evaluated according to the following criteria:

a. The need for support as demonstrated in the background and need section of the application narrative;

b. The adequacy of the description of the appropriate study populations;

c. The degree to which the applicant provides evidence of their commitment to carry out their part of the proposed collaboration;

d. The extent to which the applicant documents demonstrated capability in achieving functional objectives and activities similar to those of this project and provides evidence of recent experience in working with the HMO industry;

e. The degree to which objectives are stated clearly, are consistent with the purpose of this cooperative agreement, and are specific, measurable, and time-phased;

f. The degree to which the proposed methods of achieving the stated objectives are likely to be successful;

g. The adequacy of plans to evaluate program activities;

h. The extent to which professional personnel to be assigned to this project are qualified, including evidence of their commitment to this effort;

i. Adequacy of the plan for project administration; and

j. The extent to which the budget is clearly explained, reasonable, and consistent with the intended use of the cooperative agreement funds.

2. Continuation awards within the project period will be made on the basis of the following criteria:

a. The degree to which accomplishments in the prior budget period show that the applicant is meeting its objectives;

b. The extent to which objectives for the new budget period are consistent with the purpose of the cooperative agreement and are specific, measurable, and time-phased;

c. The degree to which the proposed methods of achieving the stated objectives are likely to be successful;

d. The adequacy of plans to evaluate program activities;

e. The extent to which the budget is clearly explained, reasonable, and consistent with the intended use of the cooperative agreement funds.

Application Submission and Deadline

The original and two copies of the application must be submitted to Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia, 30305, on or before May 15, 1987.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of a timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in either 1. a or b above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Review Requirements

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Where to Obtain Additional Information

Information on application procedures, copies of application forms, and other material may be obtained from Marsha D. Driggans, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, telephone (404) 262-6575 or FTS 236-6575. Technical assistance may be obtained from Conrad P. Ferrara, Project Officer, Division of Immunization, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404) 329-1836 of FTS 236-1836.

Dated: March 23, 1987.

Robert L. Foster,

Acting Director, Office of Program Support Centers for Disease Control.

[FR Doc. 87-6663 Filed 3-26-87; 8:45 am]

BILLING CODE 4160-18-M

Project Grants for the Prevention and Control of Sexually Transmitted Diseases; Availability of Funds for Fiscal Year 1987

Introduction

The Centers for Disease Control announces the availability of funds for Fiscal Year 1987 for Project Grants for the Prevention and Control of Sexually Transmitted Diseases (STD). (Reference STD Control Program Announcement published in the **Federal Register** on June 27, 1985 (50 FR 26624).)

Authority

This grant program is authorized by section 318 of the Public Health Service Act (42 U.S.C. 247c), as amended. Regulations governing programs for preventive health services are codified at 42 CFR Part 51b, Subparts A and D. The Catalog of Federal Domestic Assistance Number is 13.977.

Eligible Applicants

Eligible applicants for this program are the official public health agencies of State and local governments, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

Program Objectives/Purpose

The objective of this grant program is to reduce morbidity and mortality from sexually transmitted diseases (STD) by preventing cases and complications.

Availability of funds

Approximately $45,780,000 will be available in Fiscal Year 1987 to award up to 66 grants with the average award expected to be $693,600, ranging from $20,000 to $2,800,000. Depending upon the availability of funds, grants are usually funded for 12 months in a 3- to 5-year project period. Continuation awards within the project period are made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. No new grants are expected to be made in 1987 since current grantees are coordinating activities in all political jurisdictions in the United States. Grants may be awarded to the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau in lieu of the Trust Territory of the Pacific Islands. Funding estimates outlined above may vary and are subject to change.

Application Information

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs (30-day review for continuation applications). Application forms, information on review procedures, deadlines and the consequences of late submission, copies of the program announcement and regulations may be obtained from the appropriate Department of Health and Human Services Regional Office as set forth below.

Dated: March 20, 1987.

Robert L. Foster,

Acting Director, Office of Program Support Centers for Disease Control.

Department of Health and Human Services (HHS) Regional Offices

Regional Health Administrator, PHS, HHS Region I, John Fitzgerald Kennedy Building, Boston, Massachusetts 02203, (617) 223-6827

Regional Health Administrator, PHS, HHS Region II, Federal Building, 26 Federal Plaza, Room 3337, New York, New York 10278, (212) 264-2561

Regional Health Administrator, PHS, HHS Region III, Gateway Building #1, 3521-35 Market Street, Mailing Address: P.O. Box 13716, Philadelphia, Pennsylvania 19101, (215) 596-6637

Regional Health Administrator, PHS, HHS Region IV, 101 Marietta Tower, Suite 1007, Atlanta, Georgia 30323, (404) 221-2316

Regional Health Administrator, PHS, HHS Region V, 300 South Wacker Drive, 33rd Floor, Chicago, Illinois 60606, (312) 353-1385

Regional Health Administrator, PHS, HHS Region VI, 1200 Main Tower Building, Room 1835, Dallas, Texas 75202, (214) 767-3879

Regional Health Administrator, PHS, HHS Region VII, 601 East 12th Street, Kansas City, Missouri 64106, (816) 374-3291

Regional Health Administrator, PHS, HHS Region VIII, 1185 Federal Building, 1961 Stout Street, Denver, Colorado 80294, (303) 844-6163

Regional Health Administrator, PHS, HHS Region IX, 50 United Nations Plaza, San Francisco, California 94102, (415) 556-5810

Regional Health Administrator, PHS, HHS Region X, 2901 Third Avenue, M.S. 402, Seattle, Washington 98121, (206) 442-0430

[FR Doc. 87-6665 Filed 3-26-87; 8:45 am]

BILLING CODE 4160-18-M

Immunization Conference; Meeting

ACTION: Notice of Meeting—21st National Immunization Conference. Federal, State, and local public health officials as well as representatives from the private sector who are involved in the organization and implementation of immunization activity will participate.

Time and Date: Registration—Monday, June 8, 1987. The Program is scheduled for 8:30 a.m.–5 p.m., Tuesday, June 9, through Thursday, June 11.

Place: Fairmont Hotel, New Orleans, Louisiana, 800/527–4727.

Status: Open to public, limited only by the space available.

Matters to be Discussed: Current status of the epidemiology, prevention, and control of vaccine-preventable diseases.

CONTACT PERSON FOR MORE INFORMATION: Mr. Conrad P. Ferrara, Program Support Section, Division of Immunization, Center for Prevention Services, Centers for Disease Control, Atlanta, GA 30333, Telephones: FTS 236–1836, Commercial: 404/329–1836.

Dated: March 20, 1987.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 87–6667 Filed 3–26–87; 8:45 am]

BILLING CODE 4160–18–M

Project Grants for Sexually Transmitted Diseases Research, Demonstrations, and Public and Professional Education Program Announcement and Notice of Availability of Funds for Fiscal Year 1987

Introduction

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1987 for project grants for Sexually Transmitted Diseases (STD) Research, Demonstrations, and Public Information and Education, and Professional Education, Training, and Clinical Skills Improvement Activities (formerly Venereal Disease Research, Demonstrations, and Public Information and Education). Note that public and professional education activities funded under this announcement are those which are to be national in scope and developmental in nature, and which can be carried out by a variety of agencies. Applications related to public and professional education aspects of basic STD control programs will not be considered under this announcement. These activities are included in a separate announcement for STD control grants to State and local health agencies (Reference **Federal Register** on June 27, 1985 (50 FR 26624)). Applications related to Acquired Immunodeficiency Syndrome will not be considered under this announcement.

Authority

This grant program is authorized by section 318(b) of the Public Health Service Act (42 U.S.C. 247c(b)) as amended. Regulations governing programs for preventive health services are codified at 42 CFR Part 51b, Subparts A and F. The Catalog of Federal Domestic Assistance Number is 13.978.

Eligible Applicants

Eligible applicants are the official public health agencies of States, political subdivisions of any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, the Northern Mariana Islands, and American Samoa, and any other public or nonprofit private entity.

Program Objectives

The objectives of this grant program are to develop, improve, and evaluate methods for the prevention and control of STD through applied research and demonstrations; to develop, improve, apply, and evaluate methods and strategies for public information and education about STD; and to develop, improve, apply, and evaluate methods and strategies for improving professional (including allied health personnel) education, training, and clinical skills for the prevention and control of STD.

Areas of Interest—New Applications

Applications addressing any of the areas listed below will receive priority consideration for funding in Fiscal Year 1987:

A. *Evaluation of disease intervention strategies for resistant gonorrhea control*—Develop, implement, and evaluate innovative and cost-effective disease intervention strategies for the control of resistant gonorrhea that include consideration of the prime targets for counseling and sex partner referral, private health care provider counseling, and prediagnosis referral of sex partners.

B. *Evaulation of sexual behaviors and attitudes and STD acquisition among adolescents*—Evaluate sexual behaviors and attitudes and STD acquisition among adolescents by (1) comparing the prevalence of STD, the diagnostic methods most applicable, and compliance with standard treatment regimens in adolescents in different socioeconomic groups; (2) determining factors that lead toward health care seeking behavior and treatment compliance; and (3) developing and evaluating innovative techniques to increase preventive methods.

C. *Evaluation of human papilloma virus (HPV) infection, cervical neoplasia, and other STDs*—Assess HPV infection and its relationship with cervical dysplasia, neoplasia, cervical cancer, and other STDs, such as herpes simplex virus, to determine the most effective prevention factors associated with the acquisition of HPV by the "at risk" population.

D. *Development of a national program to advance Pelvic Inflammatory Disease (PID) control efforts in the hospital setting*—Design, develop, implement, and evaluate a professional education effort to ensure: (1) The ongoing orientation of medical staff in the nation's hospitals to comply with CDC protocols on the diagnosis, treatment, post treatment follow-up, and initial sex partner referral counseling of patients seen with PID; (2) the enhanced awareness of hospital medical staff of the need to refer PID patients to local health department STD programs for substantive disease intervention services; and (3) the establishment of a system to monitor hospital medical staff compliance with protocols and referral requirements.

E. *Evaluation of syphilis treatment in pregnancy and infancy*—Evaluate current recommended maternal and infant treatment regimens for syphilis in the following areas: (1) Propose and evaluate an alternative treatment regimen to erythromycin for the treatment of syphilis in penicillin-allergic pregnant women; (2) propose and evaluate alternative treatment regimens for the treatment of secondary syphilis in pregnant women and for the treatment of syphilis in third-trimester pregnant women; and (3) define and evaluate the risks in infants associated with the decrease in the use of single dose benzathine penicillin G treatment compared to 10-day daily penicillin therapy.

Availability of Funds

A. *New Applications*—Approximately $1,000,000 will be available in Fiscal Year 1987 to award approximately 5 new grants ranging from $100,000 to $300,000 with an average aware of $200,000. Depending upon the availability of funds, grants are usually

funded in 12-month budget periods within a 1 to 5-year project period.

B. *Continuation Applications*—Approximately $2,720,000 will be available in Fiscal Year 1987 to award 16 continuation grants ranging from $33,000 to $320,000 with an average award of $170,000. Ten of these grants are STD Prevention/Training (P/T) Center projects under the professional education component of this program. Continuation awards within the project period are made on the basis of satisfactory progress in meeting project objectives and on the availability of funds.

Use of Grant Funds

A. Grant funds may be used for the costs associated with organizing and conducting applied research, demonstrations, professional education and special public information and education programs.

B. Grant funds may be used to reimburse individuals asked to be participants in applied research. Such reimbursement, however, must be justified as necessary and reasonable. Furthermore, a schedule of reimbursements must be submitted for specific approval by the Grants Management Officer.

C. Requests for direct assistance (i.e., "in lieu of cash") for personnel and other forms of direct assistance will be considered.

D. Grant funds may not be used to supplant funds supporting existing sexually transmitted disease control services.

Reporting Requirements

A. Quarterly narrative reports may be required 30 days after the end of the each quarter subject to approval by the Office of Management and Budget (OMB). Narratives should address progress being made in achieving project objectives, problems which have been encountered (and methods used or changes being made to resolve problems) and other appropriate information.

B. Financial status reports must be submitted no later than 90 days after the end of each budget period.

C. Final financial status and progress reports are required no later than 90 days after the end of the project period.

D. Reports are to be submitted to the Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 324, Atlanta, Georgia 30305.

Recipient Financial Participation Requirements

There are no matching or cost participation requirements for this program. However, the application narrative should include information on the applicant's contribution to the overall program costs, if any.

Application Content

A. *Competing Applications*—Competing applications, including the initial application for a new project period, must include a narrative which details the following:

1. The background and need for project support, including information that relates to factors by which the application will be evaluated;
2. Long- and short-term objectives of the proposed project which are consistent with the purpose of the grant program and which are specific, measurable, realistic, and time-phased;
3. The methods and activities which will be undertaken to accomplish the objectives;
4. An evaluation plan to monitor the effectiveness of the project activities and the progress made toward meeting the objectives;
5. Evidence that qualified and experienced personnel are available, based upon successful outcomes from previous involvement with projects related to STD prevention and control or professional education.
6. Evidence of close collaboration with local or State STD control programs, hospitals, medical schools, laboratories, and any other agencies where joint liaison efforts would enhance the success of the project.
7. A budget and narrative justification consistent with the purpose and objectives of the project.
8. Any other information that will support the request for assistance.

B. *Continuation Funding*—An application for continued funding of these activities within an approved project period should contain the following:

1. A progress report on activities performed during the prior budget period, including a discussion of progress or lack of progress in accomplishing the objectives of the prior budget period;
2. Short-term objectives, methods of operation, and evaluation procedures for the new budget period;
3. An explanation for any changes in the need for grant support, long-term objectives, methods of operation, and evaluation procedures compared to information provided in previous applications;
4. A budget and accompanying justification consistent with the purpose and objectives of the project and the availability of funds.
5. For STD Prevention/Training Centers, evidence of compliance with the provisions of both the *Quality Assurance Guidelines for STD Clinics, 1986 and the STD Prevention/Training Center Curriculum Guidelines and Performance Standards for STD Clinical Training.*
6. Any other information that will support the request for assistance.

Review and Evaluation Criteria

A. *Competing Applications*—Competing applications, including the initial application for a new project period, will be reviewed and evaluated according to the following criteria.

1. The applicant's understanding of the purpose of the program including assessment of the timing and potential for positive impact of the project on the control of sexually transmitted diseases in the United States and on the national program of STD control.
2. The degree to which long- and short-range objectives are consistent with the National program goals and priorities, and are specific, measurable, and time-phased.
3. The quality of the plan of operation for conducting and monitoring activities designed to meet project objectives.
4. The extent to which the proposed project includes methods that are substantially different from, or are applied differently than, those included in standard STD control program operations and does not replicate prior or currently ongoing research.
5. The quality of the evaluation plan which specifies the methods and instruments of measurements to be used.
6. The extent to which qualified and experienced personnel are available, based upon successful outcomes from previous involvement with projects related to STD prevention and control or professional education.
7. The potential effectiveness of the applicant's collaboration with local or State STD control programs, hospitals, medical schools, laboratories, and any other agencies where joint liaison efforts would enhance the success of the project.
8. The potential appropriateness and feasibility of the project and the extent to which results may be transferred to other areas.

9. The extent to which the budget request is reasonable and consistent with the intended use of grant funds.

B. *Continuation Applications*—An application for continued funding will be reviewed and evaluated according to the following criteria:

1. Documented progress toward the achievement of established short- and long-range objectives.

2. The extent to which objectives for the new budget period are consistent with the purposes for which the grant was originally approved, and are realistic, specific, measurable, and time-phased.

3. The quality of the plan of operation for conducting and monitoring activities designed to meet project objectives.

4. The quality of the evaluation plan which specifies the methods and instruments to be used.

5. The extent to which the budget request is reasonable and consistent with the intended use of grant funds.

6. For STD Prevention/Training Centers, the extent to which the applicant has complied with the provisions of both the *Quality Assurance Guidelines for STD Clinics, 1986 and the STD Prevention/Training Center Curriculum Guidelines and Performance Standards for STD Clinical Training.*

Application Submission and Deadline

The original and two copies of the application must be submitted to Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, on or before May 15, 1987.

1. *Deadline*—Applications shall be considered as meeting the deadline if they are either:

a. Received at the above address on or before the deadline date; or,

b. Sent on or before the deadline date, and received in time for submission to the independent review group. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier of U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications*—Applications which do not meet the criteria in 1. a. or b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Other Submission and Review Requirements

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs (new applications—60-day review period).

Where To Obtain Additional Information

Information on application procedures, copies of application forms, and other material may be obtained from Nealean Austin, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, or by calling (404) 262-6575 or FTS 236-6575. Technical assistance may be obtained from Pamela Chin, Division of Sexually Transmitted Diseases, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404) 329-2550 or FTS 236-2550.

Dated: March 20, 1987.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 87-6666 Filed 3-26-87; 8:45 am]

BILLING CODE 4160-18-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Pueblo of Santa Ana, NM; The Regents of the University of New Mexico Exchange of Lands Within Sandoval County, NM; Corrections

March 10, 1987.

In FR Doc. 86-28083 appearing on page 45062, in the issue for Tuesday, December 16, 1986, the following corrections are hereby made: Appearing on column three, under the heading Tract No. 1, the word "common" is to be inserted after "corner" in the eleventh line. In the sixteenth line, the letter "a" needs to be inserted after "to." In the eighteenth line, the letter "s" needs to be inserted on the word "section." In line twenty, the word "also" should be deleted and replaced with "along." Under the heading, "Tract No. 2," in the third line, the abbreviation "No." should be corrected to read as "N."

Ross O. Swimmer,

Assistant Secretary, Indian Affairs.

[FR Doc. 87-6671 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[AZ-940-4212-24; A-22640]

Airport Patent Application, Mohave County, AZ

Dated: March 18, 1987.

ACTION: Notice of Airport Patent Application A-22640.

FOR FURTHER INFORMATION CONTACT: Marsha Luke, Bureau of Land Management, Arizona State Office (602) 241-5534.

SUMMARY: Notice is hereby given that pursuant to Section 516 of the Airport and Airway Improvement Act of September 3, 1982 (49 U.S.C. 2215), Lake Havasu City has applied for an airport patent for the following described public land:

Gila and Salt River Meridian, Arizona

A tract of land in sections 4, 9 and 10 all in Township 14 North, Range 20 West, Mohave County, Arizona, containing approximately 559.9 acres more particularly described as:

Beginning at the Northwest corner of said section 4; thence in a southerly direction along the west line of said section 4, 150 feet to the true point of beginning, thence in a southeasterly direction to a point on the south line of said section 10 said point being 1470 feet east of the southwest corner of said section 10; thence in a westerly direction along the south line of said sections 10 and 9 to a point 2500 feet west of the southeast corner of said section 9; thence in a northwesterly direction to a point on the west line of said section 4 said point being 1700 feet south of the northwest corner of said section 4; thence in a northerly direction along the west line of said section 4, 1550 feet to the true point of beginning.

The Federal Aviation Administration has determined that the land is necessary for airport purposes and has requested that the Bureau of Land Management convey title to the requested land to Lake Havasu City.

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws, for a period of one year from the date of publication.

For a period of 45 days from the date of publication in the **Federal Register**, interested parties may submit written comments to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, Arizona State

Office, P.O. Box 16563, Phoenix, Arizona 85011.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-6672 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-32-M

[MT-070-07-4352-12]

Emergency Area Closure; Montana

AGENCY: Butte District, Bureau of Land Management, Interior.

ACTION: Emergency area closure which restricts all public entry (vehicles and foot travel) from March 1 to July 15.

SUMMARY: This notice closes a 600-acre tract of public land to all public entry, including foot travel, from March 1 to July 15 to protect an active bald eagle breeding territory. The tract is located in T. 14 S., R. 5 W., Section 27 SW¼SW¼ and Section 34, N½, E½SW¼, SE¼.

The limited access designation will allow administrative access during the closure period only for crucial management actions, such as eagle production monitoring or authorized livestock grazing.

The area closure will remain in effect until the 1987 Interagency Travel Plan map for Southwest Montana is revised.

This action is being pursued in accordance with 43 CFR 8364.1, 43 CFR 8341.2, and to meet the requirements of the Endangered Species Act of 1973 as amended.

FOR FURTHER INFORMATION CONTACT: Jimmy D. Lewis, Area Manager, Dillon Resource Area, P.O. Box 1048, Dillon, Montana 59725.

James A. Moorhouse,

District Manager.

March 20, 1987.

[FR Doc. 87-6673 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-DN-M

[CA-930-07-4332-13; FES 87-9]

Availability of Final Environmental Impact Statement; Bishop and Caliente Resource Areas Wilderness, Bakersfield District, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of final environmental impact statement (EIS) for the Benton-Owens Valley Bodie-Coleville Wilderness proposals.

SUMMARY: This EIS assesses the environmental consequences of managing 19 Wilderness Study Areas (WSAs) as wilderness or non-wilderness. The alternatives assessed include: (1) A "no wilderness/no action" alternative for each WSA, (2) an "all wilderness" alternative for each WSA, and (3) "partial wilderness" alternatives for all of the WSAs.

The names of the 19 WSAs analyzed in the EIS; their total acreage, and the proposed actions for each are as follows:

Sacatar Meadows—18,175 acres; 11,447 acres suitable, 6,728 acres nonsuitable.

Cerro Gordo—16,102 acres; 16,102 acres nonsuitable.

Southern Inyo—36,600 acres; 27,420 acres suitable, 9,180 acres nonsuitable.

Independence Creek—6,250 acres; 6,250 acres nonsuitable.

Crater Mountain—7,260 acres; 7,260 acres nonsuitable.

Symmes Creek—8,130 acres; 8,130 acres nonsuitable.

Chicago Canyon—20,246 acres; 20,246 acres nonsuitable.

Fish Slough—14,450 acres; 14,450 acres nonsuitable.

Volcanic Tableland—11,840 acres; 11,840 acres nonsuitable.

Casa Diable—9,167 acres; 9,167 acres nonsuitable.

Excelsior—9,100 acres; 9,100 acres nonsuitable.

Granite Mountains—54,941 acres; 54,941 acres nonsuitable.

Walford Springs—12,250 acres, 12,250 acres nonsuitable.

Mormon Meadows—7,280 acres; 7,280 acres nonsuitable.

Mt. Biedeman—12,420 acres; 12,420 acres nonsuitable.

Bodie Mountains—23,360 acres; 23,360 acres nonsuitable.

Bodie—15,455 acres; 15,455 acres nonsuitable.

Masonic Mountains—6,600 acres; 6,600 acres nonsuitable.

Slinkard—6,760 acres; 6,760 acres nonsuitable.

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior to the President and from the President to Congress. The final decision on wilderness designation rests with Congress.

In any case, no final decision on these proposals can be made by the Secretary during the 30 days following the filing of this EIS. This complies with the Council on Environmental Quality Regulations, 40 CFR 1506.10b(2).

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the EIS may be obtained from the Area Managers, Bishop Resource Area, 873 North Main Street, Bishop, CA 93514, and Caliente Resource Area, 520 Butte Street, Bakersfield, CA 93305. Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, 18th and C Streets, NW., Washington, DC 20420

or

Bureau of Land Management, California State Office, 2800 Cottage Way, Room 2841, Sacramento, CA 95825

or

Bureau of Land Management, Bakersfield District Office, Federal Building, Room 302, 800 Truxtun Avenue, Bakersfield, CA 93301.

FOR FURTHER INFORMATION CONTACT: Jim Jennings, Outdoor, Recreation Planner, Bakersfield District Office, Federal Building, Room 302, 800 Truxtun Avenue, Bakersfield, CA 93301, (805) 861-4287.

Dated: March 19, 1987.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 87-6425 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-40-M

[NM-018-07-4410-08]

Availability of Draft Taos Resource Area Resource Management Plan/ Environmental Impact Statement (RMP/EIS)

AGENCY: Bureau of Land Management, Albuquerque District Taos Resource Area, New Mexico, Interior.

ACTION: Notice of Availability and Public Hearings.

SUMMARY: The Bureau of Land Management announces the availability of the Draft Taos RMP/EIS for public review and comment. This document analyzes land use planning options for approximately 564,000 acres of public land in northeast New Mexico. The BLM also recommends designation of 8 new Areas of Critical Environmental Concern (ACEC).

DATE: Comments on the Draft RMP/EIS will be accepted if they are submitted or post-marked no later than July 1, 1987. All comments must be sent to: Bureau of Land Management; Dan Wood, Taos Area Manager; P.O. Box 1045; Taos, New Mexico 87571-1045. There will be public hearings on the adequacy of the draft document at the following locations:

Date and time	Meeting location
May 11, 1987—1:30 and 7:00 pm.	Taos, NM, Ramada Inn; South Santa Fe Road.
May 12, 1987—7:00 pm.	Las Vegas, NM, PMN Conference Room, 420 Railroad.

Date and time	Meeting location
May 13, 1987—1:30 and 7:00 pm. May 14, 1987—1:30 and 7:00 pm.	Espanola, Chamisa Inn, 920 North Riverside Drive. Santa Fe, High Mesa Inn, 3347 Cerrillos Road.

Oral testimony at these meetings will be limited to ten minutes per person. A copy of the Draft RMP/EIS will be sent to all individuals, Government agencies, and groups who have expressed interest in the Taos planning process.

SUPPLEMENTARY INFORMATION: Four alternatives for managing the public lands in the Taos Resource Area are proposed in the Draft RMP/EIS. Each alternative discusses the following issues:

1. Special Management Areas.
2. Transportation.
3. Vegetative Uses.
4. Land Ownership Adjustments.
5. Right-of-Way Exclusion Areas.

The first alternative discusses a level of management similar to the current situation. This alternative corresponds to the No-Action alternative required by NEPA. Alternative B emphasizes the protection and enhancement of natural and cultural resource values. Alternative C emphasizes the use and development of public land and resources. The Preferred Alternative provides for a combination of resource uses that would protect important environmental values and sensitive resources while at the same time allow development of certain resources which provide commercial goods and services.

Areas of Critical Environmental Concern

The potential ACECs which are evaluated in the Draft RMP/EIS are described below. Following the description of the values for which the area was nominated is an alphabetical listing which corresponds to major use restrictions which are summarized at the end of the ACEC discussion.

Potential ACECs Proposed for Designation in the Preferred Alternative of the Draft RMP/EIS

1. San Antonio/Pot Mountain (40,120 acres); nominated for its crucial winter range for elk, deer, and antelope. Major land use restriction: B, D, and E.
2. Guadalupe Mountain (4,440 acres); nominated for diverse wildlife species, varied recreational opportunities, and cultural resource sites. Major land use restrictions: B and E.
3. Ojo Caliente (13,200 acres); nominated for extensive cultural resource sites. Major land use restrictions: A, B, C, E, and F.
4. Agua Caliente (580 acres); nominated because the area has the potential for reintroduction of cutthroat trout. Major land use restrictions: B, C, F, and H.
5. Racecourse (1,080 acres); nominated because the area is an intensively used recreation area. Major land use restrictions: B, C, E, F, and H.
6. Embudo Canyon (1,840 acres); nominated for outstanding scenic, recreational, and wildlife habitat. Major land use restrictions: B, E, F, G, and H.
7. Black Mesa (6,500 acres); nominated for rare and endemic plant habitat. Major land use restrictions: B and F.
8. Sombrillo (4,480 acres); nominated for extensive paleontological resources. Major land use restrictions: B.

Potential ACECs Evaluated but Not Proposed for Designation in the Draft RMP/EIS

1. Rio Grande Recreation Area (7,230 acres); nominated as an intensive recreation area. Major land use restrictions: A, C, E, F, G, and H.
2. Rio Chama (4,260 acres); nominated for scenic values and intensive recreation use. Major land use restrictions: B, C, E, F, and H.
3. Sahiu Pueblo (2 acres); nominated for cultural values. Major land use restrictions: A and E.
4. Ku Pueblo (65 acres); nominated for cultural values. Major land use restrictions: A, C, E, and F.
5. Ojo del Zorro Pueblo (24 acres); nominated for cultural values. Major land use restrictions: B and C.
6. Pueblo Quemado (119 acres); nominated for cultural values. Major land use restrictions: B, C, E, and F.
7. Santa Cruz Lake (640 acres); nominated for recreational values. Major land use restrictions: B, F, and H.
8. La Caja Pueblo (85 acres); nominated for cultural resource values. Major land use restrictions: A, C, E, and F.
9. Pueblo Sarco (10 acres); nominated for cultural resource values. Major land use restrictions: A, C, E, and F.
10. La Cienega Mesa (416 acres); nominated for cultural resource values. Major land use restrictions: A, C, E, and F.
11. San Lazaro (77 acres); nominated for cultural resource values. Major land use restrictions: A, C, E, and F.
12. Fun Valley (25,500 acres); nominated for intensive recreational use area. No Major land use restrictions.
13. Sabinoso (15,760 acres); nominated for unique ecological resources and varied wildlife habitat. Major land use restrictions: B.
14. Rio Medio (560 acres); nominated because the area has important winter range for deer and elk. Major land use restrictions: C, E, F, and H.
15. Warm Springs (8,000 acres); nominated because the area has key winter range for elk and mule deer. Major land use restrictions: B, E and G.
16. Riparian areas. Nominated for important riparian and wildlife habitat. Major land use restrictions: C and F.
17. Windmill (9,450 acres); nominated for the area's grassland ecosystem. Major land use restrictions: B and E.
18. Lower Embudo (482 acres); nominated for riparian habitat and cultural resource sites. Major land use restrictions: A, C, E, and F.

Symbols for Major Use Restrictions

A Roads and trails limited to authorized users.
B Off-road vehicle use would be limited to existing roads and trails.
C Mineral withdrawal.
D Limit mineral sales.
E Apply special stipulations for oil and gas exploration and development.
F Restrict livestock grazing.
G Close to fuelwood gathering.
H Right-of-way exclusion area.

FOR FURTHER INFORMATION OR COPIES OF THE DRAFT RMP/EIS, CONTACT: Mary Zuschlag, RMP Team Leader, Taos Resource Area, P.O. Box 1045, Taos, New Mexico, 87571-1045. Telephone: (505) 758-8851.

Dated: March 20, 1987.

Larry L. Woodard,

State Director.

[FR Doc. 87-6689 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-FB

[MT-930-07-4410-08; FES 87-10]

Environmental Impact Statement Availability; Dillon Resource Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the final environmental impact statement for the Dillon Resource Area Wilderness planning amendment.

SUMMARY: The Final Dillon Resource Area Wilderness Planning Amendment and Environmental Impact Statement assesses the environmental consequences of managing eight wilderness study areas as wilderness or nonwilderness. The alternatives assessed include: (1) A "No Wilderness Alternative" for each wilderness study area, (2) an "All Wilderness Alternative" for each wilderness study areas, and (3) a "Partial Wilderness Alternative" for four of the wilderness study areas.

The names of the wilderness study areas, their total acreages, and the

proposed actions for each are as follows:

Ruby Mountains—26,611 acres (15,615 acres suitable; 10,996 nonsuitable)
Blacktail Mountains—17,479 acres (10,586 acres suitable; 6,893 nonsuitable)
East Fork Blacktail Deer Creek—6,230 acres (all nonsuitable)
Hidden Pasture—15,509 acres (all nonsuitable)
Bell-Limekiln Canyons—9,650 acres (all nonsuitable)
Henneberry Ridge—9,806 acres (all nonsuitable)
Axolotl Lakes—7,804 acres (all nonsuitable)
Farlin Creek—1,139 acres (610 acres suitable; 529 nonsuitable)

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior and the President to Congress. The final decision on wilderness designation rests with Congress.

FOR FURTHER INFORMATION CONTACT: James Moorhouse, District Manager, Butte District Office, BLM, P.O. Box 3388, Butte, Montana 59702, Telephone (406) 494–5059.

SUPPLEMENTARY INFORMATION: Copies of the environmental impact statement may be obtained from the District Manager, Butte District, Bureau of Land Management, P.O. Box 3388, Butte, Montana 59702. Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, 18th and C Streets NW., Washington, DC 20240
Dillon Resource Area, Bureau of Land Management, Post Office Box 1048, Dillon, Montana 59725
Montana State Office, Bureau of Land Management, 222 North 32nd Street, Post Office Box 36800, Billings, Montana 59107.

Dated: March 19, 1987.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 87–6426 Filed 3–26–87; 8:45 am]

BILLING CODE 4310–DN–M

[U–025770, U–0115811, U–0146348, U–42924]

Utah; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that all or portions of four separate land withdrawals made for the Weber Basin Project continue for an additional 80 years. The lands would remain closed to surface entry and mining but has been and would remain open to mineral leasing.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, 324 South State, Suite 301, Salt Lake City, UT 84111.

FOR FURTHER INFORMATION CONTACT: Lillie Hikida, Utah State Office, (801) 524–3074.

The Bureau of Reclamation proposes that the following land withdrawals be continued for a period of 80 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The following described lands are involved:

1. U–025770, Commissioner's Order of June 12, 1957, 117.21 acres. Located in Box Elder County. T. 8 N., R. 2 W., SLM, Sec. 28.

2. U–0115811, Public Land Order 3676 dated June 10, 1965, 80 acres. Located in Morgan County. T. 2 N., R. 3 E., SLM, Sec. 10.

3. U–0146348, Public Land Order 4067 dated July 29, 1966, 643.90 acres. Located in Morgan County. T. 5 N., R. 5 E., SLM, Secs. 4 and 8., T. 6 N., R. 5 E., SLM, Sec. 34.

4. U–42924, Commissioner's Order of August 22, 1952: 93.81 acres. Located in Box Elder and Morgan Counties, T. 5 N., R. 1 E., SLM, Secs. 28 and 30., T. 2 N., R. 3 E., SLM, Sec. 14, and T. 8 N., R. 2 W., SLM, Secs. 22 and 27.

The withdrawals currently segregate the lands from operation of the public land laws generally, including the mining laws but not the mineral leasing laws. The Bureau of Reclamation requests no changes in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources.

A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: March 23, 1987.

Orval L. Hadley,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87–6668 Filed 3–26–87; 8:45 am]

BILLING CODE 4310–DQ–M

[UT–050–4332–10]

Advisory Council Meeting and Tour

AGENCY: Bureau of Land Management, Richfield, Utah.

ACTION: Advisory Council Meeting and Tour.

SUMMARY: Notice is hereby given that an Advisory Council Meeting will be held in the Richfield District Office in Richfield, Utah on May 7, 1987 at 10:00 A.M. The tour is scheduled for the following day.

Agenda items include: The election of officers; the annual use fee for the Little Sahara Recreation Area; the Henry Mountain Coordinated Resource Management Plan; an update on the weed program; the Warm Springs Draft ROD/RPS; the District's Wild Horse Adoption Plan; the "Take Pride in America" program; a review of the District's environmental assessment program; the proposed Garkane powerline in Wayne County; a discussion on the Burr Trail; and a presentation on riparian management.

The tour will be along a portion of the Burr Trail and a portion of the Garkane proposed powerline route. The tour is open to the public; however, they must provide their own transportation.

The business meeting (May 7) is also open to the public. Interested persons may make oral statements to the Council from 2:00 P.M. to 3:00 P.M. Anyone wishing to make an oral statement should notify the Richfield District Manager by May 4, 1987. Records of the meeting will be available in the Richfield District Office for public inspection or copying within 30 days after the meeting.

For further information contact Bert Hart, Public Affairs Specialist, BLM, 150 East 900 North, Richfield, Utah 84701, (801)896–8221.

Donald L. Pendleton,

District Manager.

March 18, 1987.

[FR Doc. 87–6675 Filed 3–26–87; 8:45 am]

BILLING CODE 4310–DQ–M

[AZ-040-07-4212-02]

Safford District (Arizona) Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94–579 and 43 CFR Part 1780, that a meeting of the Safford District Advisory Council will be held.

DATE: Friday, May 1, 1987, at 10:00 a.m.

ADDRESS: BLM Safford District Office, 425 E. 4th Street, Safford, Arizona.

FOR FURTHER INFORMATION CONTACT: Pete Zwaneveld, Public Affairs Specialist, Safford District Office, 425 E. 4th Street, Safford, Arizona 85546. Telephone (602) 428–4040.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes the following items: Election of new officers; San Pedro Management Plan; Aravaipa Canyon Wilderness Management Plan; Districtwide planning update; District Wilderness EIS update; Management update; and Business from the floor.

The meeting is open to the public. Interested persons may make oral statements to the Council between 1:30 and 2:30 p.m. or may file written statements for the Council's consideration. Anyone wishing to make an oral statement must contact the Safford District Manager by April 30, 1987. Depending upon the number of people wishing to make oral statements, a per person time limit may be considered.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: March 20, 1987.

Ray A. Brady,

District Manager.

[FR Doc. 87–6676 Filed 3–26–87; 8:45 am]

BILLING CODE 4310-32-M

[ID-050-07-4322-14]

Shoshone District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management (BLM), Interior.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Shoshone District Grazing Advisory Board.

DATE: Thursday, April 23, 1987, at 9:00 a.m.

ADDRESS: BLM District Office, 400 West F. Street, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: Jon Idso, DM, Shoshone District Office, P.O. Box 2B, Shoshone, Idaho 83352. Telephone (208)886–2206 or FTS 554–6110.

SUPPLEMENTARY INFORMATION: The proposed agenda for the meeting is a field tour of proposed and completed range improvement projects.

Operation and administration of the Board will be in accord with the Federal Advisory Committee Act of 1972 (Pub. L. 92–463; 5 U.S.C. Appendix 1) and Department of Interior regulations, including 43 CFR Part 1984.

The tour will be open to the public. Records of the meeting will be available in the Shoshone District Office for public inspection or copying within 30 days after the meeting.

Jon H. Idso,

District Manager.

[FR Doc. 87–6677 Filed 3–26–87; 8:45 am]

BILLING CODE 4310-GG-M

[AZ-940-07-4212-13; A-21969]

Realty Action, Exchange of Federal Mineral Estate; Arizona

March 16, 1987.

Notification is hereby given of the consummation of an exchange between the United States and Magma Copper Company, a Delaware Corporation. The Bureau of Land Management transferred the mineral estate in the following described land on March 16, 1987, by Patent No. 02–87–0018, pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976:

Gila and Salt River Meridian, Arizona

T. 8 S., R. 17 E.,
Sec. 7, SE¼SE¼;
Sec. 8, SW¼SW¼, S½N½SW¼;
Containing 120 acres in Pinal County, Arizona.

In exchange the surface and mineral estates in the following described land were reconveyed to the United States:

Gila and Salt River Meridian, Arizona

T. 9 S., R. 18 E.,
Sec. 31, N½SE¼, SE¼SE¼;
Except a right-of-way 100 feet wide as conveyed to Phoenix and Eastern Railroad Co., by Deed dated January 4, 1905, recorded in Book 21 of Deeds, page 307, records of Pinal County, Arizona.
T. 10 S., R. 18 E.,
Sec. 5, SW¼NW¼;
Containing 160 acres more or less in Pinal County, Arizona.

The land acquired by the Federal government in this exchange will be open to entry under the public land laws, United States Mining and Mineral Leasing laws subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law, at 9:00 a.m. thirty days from publication of this notice.

All applications received prior to 9:00 a.m., thirty days from publication will be considered as simultaneously filed as of that time and date, and a drawing will be held in accordance with 43 CFR 1821.2–3, if necessary. Applications and offers received thereafter shall be considered in the order of filing.

Inquires concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87–6680 Filed 3–26–87; 8:45 am]

BILLING CODE 4310-32-M

[AZ-020-07-4212-12; A 20346-A&B]

Realty Action: Exchange of Public Lands, Pinal, Maricopa, and Yavapai Counties, AZ

BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership.

Portions or all of. public lands within the following townships, ranges and sections are being considered for disposal by exchange pursuant to Section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian, Arizona

Pinal County

T. 3 S., R. 7 E.,
Secs. 4, 5, 8, 14, 17, 22, 23, and 24 containing 1220 acres, more or less.

Maricopa County

T. 4 N., R. 1 E.,
Secs. 6, 7.
T. 7 N., R. 2 E.,
Secs. 4, 5, 8, 9, 15, 16, 17, 20, 21, 26, 27, 29, 34.
T. 8 N., R. 2 E.,
Secs. 1, 10, 11 12, 14, 22, 23, 26, 27, 28, 29, 32, 33, 34.

Maricopa and Yavapai Counties

T. 7 N., R. 1 E.,
Secs. 3, 4, 12.

Yavapai County

T. 16 N., R. 1 W.,
Sec. 1.

T. 14 N., R. 1 W.,
Secs. 28, 31, 33.
T. 16 N., R. 1 E.,
Secs. 6, 21.
T. 13 N., R. 1 E.,
Secs. 8, 13, 15, 18, 23, 26.
T. 12 N., R 1 E.,
Secs. 11, 24.
T. 9 N., R. 1 E.,
Secs. 14, 17, 18, 19, 20, 21, 28, 36.
T. 8 N., R. 1 E.,
Sec. 31.
T. 14 N., R. 2 E.,
Sec. 31.
T. 13 N., R. 2 E.,
Secs. 6, 7, 17, 18, 19, 20, 29, 30, 32.
T. 12 N., R. 2 E.,
Secs. 3, 4, 5, 8, 9, 10, 15, 18, 21, 28, 33.
T. 11 N., R. 2 E.,

Secs. 4, 5, 7, 8, 14, 17, 20, 21, 22, 23, 26, 27, 28, 29, 33, 34, 35, 36.
T. 10 N., R. 2 E.,
Secs. 1, 2, 3, 4, 9, 10, 11, 14, 15, 16, 17, 23, 26, 33, 35.
T. 9½ N., R. 2 E.,
Secs. 20, 23, 26, 34.
T. 9 N., R. 2 E.,
Secs. 3, 9, 10, 15, 22, 27, 29, 30, 31.
T. 11 N., R. 3 E.,
Secs. 1, 2, 3, 10, 11, 13, 14, 15, 19, 23, 24, 26, 27, 28, 29, 30, 31.
T. 9½ N., R. 3 E.,
Secs. 20, 21, 30.
T. 9 N., R. 3 E.,
Sec. 9, 18, 31.

Pinal County

T. 10 S., R. 11 E.,
Secs. 21, 28.
T. 10 S., R. 12 E.,
Sec. 22, 27, 30, 34, 35.

Aggregating 59,600 acres, more or less.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the public lands, as described in this Notice, from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: March 20, 1987.

James E. May,

Acting District Manager.

[FR Doc. 87-6681 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-32-M

[AZ-020-07-4212-12; A-22448]

Realty Action; Public Lands; Arizona

This Notice of Realty Action amends the Notice of Realty Action published November 18, 1986 and amended December 11, 1986 and December 29, 1986 to include the following additional 3,114.90 acres of state lands that will be received by the United States in exchange for public lands under State Exchange A-22448.

Gila and Salt River Meridian, Arizona

T. 17 N., R. 12 W.,
Sec. 32, All.
T. 20 S., R. 21 E.,
Sec. 4, Lots 1-4;
Sec. 8, All;
Sec. 9, Lots 1-4, W½W½;
Sec. 17, All.
T. 21 S., R. 21 E.,
Sec. 12, S½SE¼;
Sec. 13, N½NE¼.
T. 21 S., R. 22 E.,
Sec. 7, Lots 3, & 4;
Sec. 19, N½NE¼;
Sec. 20, Lots 1-3, N½NW¼, N½SE¼;
Sec. 29, Lots 1-3.
T. 22 S., R. 21 E.,
Sec. 12, Lots 2-4, SW½SE¼.

Detailed information concerning this exchange can be obtained from Phoenix District Office. For a period of forty-five (45) days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: March 20, 1987.

James E. May,

Acting District Manager.

[FR Doc. 87-6682 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-32-M

[AZ-010-07-4131-11; A-22594]

Realty Action; Arizona

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: Recision of Notice of Realty Action Segregating lands in a proposed community mineral materials pit from appropriation under the mining and mineral leasing laws.

This notice hereby rescinds and cancels the Notice of Realty Action published February 23, 1987 in the **Federal Register**, Vol. 52, No. 35, page 5505. The land involved is 40 acres described as:

Gila & Salt River Meridian, Mohave County, Arizona

T. 40. N., R. 15 W.,
Sec. 9, NW¼SW¼.

G. William Lamb,

Arizona Strip District Manager.

March 18, 1987.

[FR Doc. 87-6683 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-32-M

[AZ-020-07-4212-18; A-22627]

Realty Action; Lease or Conveyance of Public Lands for Public Purposes; Arizona

SUMMARY: The following described federal lands, located near St. Johns, Arizona, have been found suitable for disposal, via lease, to Apache County Board of Supervisors under the Recreation and Public Purposes Act of June 14, 1926, as amended (44 Stat. 741; U.S.C. 869 seq.) The subject lands are also suitable for disposal, via conveyance of title, to Apache County under Pub. L. 98-408.

Gila and Salt River Meridian, Apache County, Arizona

T. 11 N., R. 28 E.,
Sec. 18, N½SE¼.

Comprising 80 acres.

Apache County proposes to construct and operate a shelter care facility on the subject parcel. The lease of the lands would be subject to the following conditions:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.
2. Road right-of-way A-18955.
3. Powerline right-of-way A-10117.
4. Telephone line right-of-way A-10023.

Conveyance of the lands under Pub. L. 98-408 would be subject only to the above listed rights-of-way.

Upon publication of this Notice in the **Federal Register**, this parcel of land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except as provided for in this order of classification. This Notice shall also serve to terminate, in part, classifications A-20346-D and A-22271 as to that part of the previous listed classifications which affect the N½SE¼ of section 18, T. 11 N., R. 28 E., G&SRM.

For a period of forty-five (45) days, from the date of publication of this Notice, interested parties may submit comments to the District Manager,

Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Further information concerning this realty action may be obtained from the Phoenix Resource Area Manager (602–863–4464).

Dated: March 18, 1987.

Henri R. Bisson,

Acting District Manager.

[FR Doc. 87–6684 Filed 3–26–87; 8:45 am]

BILLING CODE 4310–32–M

[AZ–020–07–4212–14; A 21343]

Realty Action; Sale of Public Land, Yavapai County, AZ

AGENCY: Bureau of Land Management (BLM), Interior.

SUMMARY: The Phoenix District proposes to sell by direct noncompetitive means to Bullwhacker Associates the following described .52 acre of public land for the appraised market value of $850.00. Minerals except oil and gas will be conveyed for an administrative fee of $50.00.

Gila & Salt River Meridian, AZ

T. 14 N., R. 1 W.,
Sec. 31, Lot 24.

Lot 24 is separated from other public land by a highway right-of-way. Its small size and location make management by BLM difficult and uneconomic. The only other adjacent landowner, the Prescott National Forest, is not interested in acquiring the subject land.

Disposal meets the criteria of the Federal Land Policy and Management Act of 1976: Surface disposal will be according to section 203 (90 Stat. 2750, 43 U.S.C. 1713) and minerals will be conveyed per section 209 (90 Stat. 2757, 43 U.S.C. 1719).

A patent will be issued subject to the following rights:

Highway right-of-way AR 033153 granted to Yavapai County Highway Department.

Telephone line right-of-way A 13912 granted to Mountain States Telephone and Telegraph Company.

A right-of-way is reserved for ditches and canals constructed by authority of the United States.

In accordance with the regulations of 43 CFR 2711.1–2(d), publication of this Notice will segregate the public lands described from appropriation under the public land laws, including the mining laws, but not from the mineral leasing laws.

The segregation of the above described lands shall terminate upon issuance of a document conveying such lands, upon publication in the Federal Register of a notice of termination of the segregation, or 270 days from the date of publication, whichever occurs first.

Detailed information concerning this public sale is available for review at the Phoenix District Office, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

For a period of 45 days interested parties may submit comments to the Phoenix District Manager at the district address given above. Any 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 the final determination of the Department of the Interior.

Dated: March 17, 1987.

Henri R. Bisson,

Acting District Manager.

[FR Doc. 87–6685 Filed 3–26–87; 8:45 am]

BILLING CODE 4310–32–M

[CO–070–06–4212–14; C–43105]

Realty Actions; Noncompetitive Sale of Public Lands in Pitkin County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of noncompetitive sale.

SUMMARY: Pursuant to section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713), the Bureau of Land Management, Glenwood Springs Resource Area has identified a parcel of public land as suitable for disposal by noncompetitive sale.

DATE: Comments must be submitted on or before May 26, 1987.

ADDRESS: Additional information concerning this sale offering, including the planning documents and environmental assessment, is available for review in the Glenwood Springs Resource Area Office at 50629 Highway 6 & 24, P.O. Box 1009, Glenwood Springs, Colorado 81602.

Comments should be submitted to the District Manager, Grand Junction District, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this Notice of Realty Action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Area Manager, 50629 Highway 6 & 24, P.O. Box 1009, Glenwood Springs, Colorado 81602, or at telephone (303) 945–2341.

SUPPLEMENTARY INFORMATION: The following described land has been examined and identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) at the fair market value of $3,250.00.

Sixth Principal Meridian

T. 10 S., R. 84 W.,
Sec. 7.

Lot 35 containing 0.04 acres in Pitkin County, Colorado.

This land has not been used for and is not required for any federal purpose. The location and physical characteristics of the parcel make it difficult and uneconomical to manage as public land. Disposal would best serve the public interest. The disposal would be consistent with the Bureau's planning recommendations as approved in the Glenwood Springs Resource Management Plan, January 1984.

This land is being offered to the Smuggler Mobile Home Owners Association, Inc., by direct noncompetitive sale at the appraised fair market value.

Minerals beneath the parcel will also be offered for conveyance. The mineral interests being offered have no known mineral value. A bid on the parcel will also constitute application for conveyance of those mineral interests offered under the authority of section 209(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719(b)). On the sale date, the bidder will be required to deposit an additional $50.00 nonrefundable filing fee and application for the conveyance of offered minerals pursuant to 43 CFR 2720.1–2(c).

The patent issued as the result of the sale will be subject to all valid existing rights and reservations of record and will contain a reservation to the United States for a right-of-way for ditches and canals under the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

Sale Procedures

The designated bidder, Smuggler Mobile Home Owners Association, Inc., will be required to submit payment of at least 30 percent of the appraised fair market value by cash, certified or cashier check, or money order to the Bureau of Land Management at 50629 Highway 6 & 24, Glenwood Springs, Colorado, on the 29th day of May 1987. The balance of the appraised fair market value will be due within 180 days, together with all advertising costs associated with the sale offering, payable in the same form at the same location. Failure to submit the remainder

of the payment within 180 days of receipt of the decision notice accepting the bid deposit will result in cancellation of the sale offering and forfeiture of the deposit.

Richard T. Hunter,

Acting District Manager, Grand Junction District.

March 12, 1987.

[FR Doc. 87-6679 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-JB-M

[NM-940-07-4220-11; NM NM 46844]

Proposed Continuation of Withdrawal, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture proposes that a 600.00-acre withdrawal for the Magdalena Ranger Station Administrative Site and Pasture (formerly Magdalena Ranger Station Pasture) continue for an additional 19 years. The land would remain closed to location and entry under the mining laws but would be opened to surface entry and has been and would remain open to leasing under the mineral leasing laws.

DATE: Comments should be received by June 25, 1987.

ADDRESS: Comments should be sent to: New Mexico State Director, P.O. Box 1449, Santa Fe, NM 87504-1449.

FOR FURTHER INFORMATION CONTACT: Kay Thomas, BLM, New Mexico State Office, 505-988-6589.

The Forest Service, U.S. Department of Agriculture proposes that the existing land withdrawal made by Public Land Order No. 725 dated June 4, 1951, be continued for a period of 19 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

Cibola National Forest

Magdalena Ranger Station Administrative Site and Pasture (formerly Magdalena Ranger Station Pasture)

T. 2 S., R. 4 W.,
Sec. 33, NE¼, N½SE¼;
Sec. 34, W½NE¼, NW¼, N½SW¼, NW¼SE¼.

The area described contains 600.00 acres in Socorro County.

The withdrawal is essential for protection of substantial improvements on the site described above located within the Magdalena Ranger District, Cibola National Forest. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal, except to open the land to such forms of disposition that may by law be made of National Forest lands other than under the mining laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources.

A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: March 19, 1987.

Robert L. Schultz,

Acting State Director.

[FR Doc. 87-6692 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-FB-M

[NM-940-07-4220-11; NM NM 070229]

Proposed Continuation of Withdrawal, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture proposes that a 107.00-acre withdrawal for the Gila Center Administrative Site (formerly T J Administrative Site) continue for an additional 20 years. The land would remain closed to location and entry under the mining laws and has been and would remain open to leasing under the mineral leasing laws.

DATE: Comments should be received by June 25, 1987.

ADDRESS: Comments should be sent to: New Mexico State Director, P.O. Box 1449, Santa Fe, NM 87504-1449.

FOR FURTHER INFORMATION CONTACT: Kay Thomas, BLM, New Mexico State Office, 505-988-6589.

The Forest Service, U.S. Department of Agriculture proposes that the existing land withdrawal made by Public Land Order No. 2655 dated April 9, 1962, be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

Gila National Forest

Gila Center Administrative Site (Formerly T J Administrative Site)

T. 12 S., R. 14 W.,
Sec. 25, N½SW¼NE¼, N½S½SW¼NE¼, N½SE¼NW¼, SW¼SE¼NW¼, N½SE¼SE¼NW¼, SW¼SE¼SE¼NW¼, W½NE¼NE¼SW¼, W½W½SE¼NE¼NE¼SW¼, W½NE¼SW¼, W½NE¼SE¼NE¼SW¼, W½SE¼NE¼SW¼, SE¼SE¼NE¼SW¼, S½S½S½NW¼SE¼.

The area described contains 107.00 acres in Catron County.

The withdrawal is essential for protection of substantial capital improvements on the Wilderness Ranger District, Gila National Forest. The withdrawal closed the land to mining but not mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: March 19, 1987.

Robert L. Schultz,

Acting State Director.

[FR Doc. 87-6693 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-FB-M

[NM-940-07-4220-11; NM NM 12600]

Proposed Continuation of Withdrawal, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture proposes that a 1,629.96-acre withdrawal for the Canjilon Lakes and Canjilon Creek Campground and Trout Lakes Recreation Area continue for an additional 20 years. The land would remain closed to location and entry under the mining laws but has been and would remain open to leasing under the mineral leasing laws.

DATE: Comments should be received by June 25, 1987.

ADDRESS: Comments should be sent to: New Mexico State Director, P.O. Box 1449, Santa Fe, NM 87504–1449.

FOR FURTHER INFORMATION CONTACT: Kay Thomas, BLM, New Mexico State Office, 505–988–6589.

The Forest Service, U.S. Department of Agriculture proposes that the existing land withdrawal made by Public Land Order No. 5370 of July 25, 1973, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

Carson National Forest

Trout Lakes Recreation Area

T. 27 N., R. 5 E.,
Sec. 1; S½SW¼NW¼;
Sec. 2, SW¼ of lot 2, lots 3, 4, N½SW¼NE¼, S½N½SE¼NE¼, S½SE¼NE¼, N½N½SW¼NW¼, NE¼SE¼NW¼, N½NW¼SE¼NW¼;
Sec. 3, E½ of lot 1, N½NE¼SE¼NE¼.
T. 28 N., R. 5 E.,
Sec. 26, lot 4;
Sec. 34, lot 1, S½ lot 2, E½ lot 3, lot 4, NW¼SE¼, S½NE¼SE¼, N½SE¼SE¼, SE¼SE¼SE¼;
Sec. 35, lot 1, NW¼SW¼NW¼, NW¼SW¼SW¼, S½SW¼SW¼, SW¼SE¼SW¼.

Canjilon Lakes and Canjilon Creek Campground

T. 27 N., R. 6 E. (unsurveyed),
Sec. 19, E½NE¼, SW¼NE¼, E½SW¼, SE¼;
Sec. 20, NW¼, N½SW¼, N½SW¼SW¼, SE¼SW¼, W½W½SE¼;
Sec. 29, W½E½, W½SE¼SE¼;
Sec. 30, NW¼NE¼, N½NW¼, N½S½NW¼;
Sec. 32, NW¼NE¼, W½SW¼NE½, E½NE¼NW¼.

The areas described aggregate 1,629.96 acres in Rio Arriba County.

The withdrawal is essential for protection of substantial improvements on the sites described above located within the Canjilon Ranger District, Carson National Forest. The withdrawal closed the lands to mining but not to mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: March 19, 1987.

Robert L. Schultz,

Acting State Director.

[FR Doc. 87–6694 Filed 3–26–87; 8:45 am]

BILLING CODE 4310–FB–M

[CO–070–07–4341–10]

Colorado Off-Road Vehicle Designations

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of off-road vehicle designation decisions.

SUMMARY: Notice is hereby given relating to the use of off-road vehicles on public lands in accordance with the authority and requirements of Executive Orders 11644 and 11989, and regulations contained in 43 CFR Part 8340.

DATE: This plan will become effective June 1, 1987.

FOR FURTHER INFORMATION CONTACT: Richard Freel, District Manager, Grand Junction District Office, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506.

SUPPLEMENTARY INFORMATION: The following described lands under administration of the Grand Junction District of the Bureau of Land Management are designated as closed, limited, or open to off-road motorized vehicle use.

The 1,280,060 acres of public land affected by the designations are within the Grand Junction Resource Area, which includes public land in portions of Garfield, Mesa, Delta, and Montrose Counties, Colorado, and Grand County, Utah. The designations are a result of resource management decisions made in the 1986 Grand Junction Resource Area Management Plan. Comments received from public meetings in 1984 and 1985, coordination with other federal, state, and local agencies, and comments received during a 90-day public comment period in 1986 influenced these designation decisions. These designations for public land located within the area listed below become effective immediately and will remain in effect until modified or rescinded by the Authorized Officer. This designation supesedes previous emergency off-road vehicle decisions in the Black Ridge Wilderness Study Area.

A. Closed Designation

All motorized vehicle use is prohibited.

1. Mount Garfield—1,280 acres located 6 miles northeast of Grand Junction, Colorado.
2. Badger Wash Area of Critical Environmental Concern—1,520 acres located 8 miles northwest of Mack, Colorado.
3. Town of Palisade Municipal Watershed—3,840 acres located 3 miles east of Palisade, Colorado.
4. *Cryptantha elata* Sensitive Plant Study Site—60 acres located 7 miles southeast of Grand Junction, Colorado.
5. Fruita Paleontological Site—280 acres located 2 miles southwest of Fruita, Colorado.
6. Unaweep Seep Research Natural Area—37 acres located 8 miles northeast of Gateway, Colorado.
7. McDonald Creek Cultural Area—160 acres located 10 miles west of Mack, Colorado.
8. Black Ridge Canyons and Black Ridge Canyons West Wilderness Study Area—73,937 acres located 11 miles west of Grand Junction, Colorado.
9. Dominquez Canyon Wilderness Study Area—73,568 acres located 18 miles south of Grand Junction, Colorado.
10. Sewemup Mesa Wilderness Study Area—18,835 acres located 9 miles south of Gateway, Colorado.
11. The Palisade—1,920 acres located 2 miles north of Gateway, Colorado (within the Palisade Outstanding Natural Area).
12. Sinbad Valley Cliffs—1,920 acres located 9 miles south of Gateway, Colorado.
13. Gunnison Gravels Research Natural Area—5 acres located 13 miles south of Grand Junction, Colorado.

B. Limited Designations

1. Limited to Designated Roads and Trails. Motorized vehicle use is

permitted only on routes signed as open for use. Cross-country vehicle travel is prohibited.

a. Pyramid Rock Research Natural Area—470 acres located 2 miles west of De Beque, Colorado.

b. South Shale Ridge—22,500 acres located 5 miles west of De Beque, Colorado.

c. Baxter/Douglas Soil Slump Areas—18,000 acres located 25 miles north of Fruita, Colorado.

d. Rabbit Valley Paleontological Area of Critial Environmental Concern—280 acres located 8 miles west of Mack, Colorado.

e. Little Book Cliffs Wild Horse Area (except that portion in Coal Canyon)—23,761 acres located 8 miles northeast of Grand Junction, Colorado.

f. The Palisade Outstanding Natural Area—17,258 acres located 2 miles north of Gateway, Colorado (does not include 1,920 acres closed to ORV).

2. Seasonal Limitations. The restrictions listed below are in effect for a specific period of the year.

a. Coal Canyon portion of the Little Book Cliffs Wild Horse Area—6,500 acres located 8 miles northeast of Grand Junction, Colorado. Between December 1 and June 30, motorized vehicle use is prohibited. Between July 1 and November 30, vehicle use is limited to designated roads and trails.

b. Dominguez Campground Road—1,280 acres located 22 miles south of Grand Junction, Colorado. Between November 15 and May 15, motorized vehicle use is prohibited. Between May 16 and November 14, vehicle use is limited to existing roads.

c. Beehive—3,200 acres located 2 miles east of Mesa, Colorado. Between December 1 and May 1, motorized vehicle use is prohibited. Between May 2 and November 30, vehicle use is limited to existing roads and trails.

d. Lands End—6,400 acres located 7 miles east of Whitewater, Colorado. Between December 1 and May 1, motorized vehicle use is prohibited. Between May 2 and November 30, vehicle use is limited to existing roads and trails.

e. Chalk Mountain—6,400 acres located 3 miles west of Mesa, Colorado. Between December 1 and May 1, motorized vehicle use is prohibited. Between May 2 and November 30, vehicle use is limited to existing roads and trails.

f. Sunnyside—4,820 acres located 4 miles north of Mesa, Colorado. Between December 1 and May 1, motorized vehicle use is prohibited. Between May 2 and November 30, vehicle use is limited to existing roads and trails.

g. Big Salt Wash, Coal Gulch—13,440 acres located 15 miles north of Fruita, Colorado. Between December 1 and May 1, motorized vehicle use is prohibited. Between May 2 and November 30, vehicle use is limited to existing roads and trails.

h. Blue Mesa—3,200 acres located 12 miles south of Gateway, Colorado. Between December 1 and May 1, motorized vehicle use is prohibited. Between May 2 and November 30, vehicle use is limited to existing roads and trails.

i. Demaree—21,050 acres located 12 miles north of Mack, Colorado. Between December 1 and May 1, motorized vehicle use is prohibited. Between May 2 and November 30, vehicle use is limited to existing roads and trails.

j. Big Game Winter Range in Harsh Winters—121,600 acres located throughout the Grand Junction Resource Area. Motorized vehicle use may be prohibited or restricted in these areas on an emergency basis during harsh winters.

3. Limited to Existing Roads and Trails Year Round. Motorized vehicle use is permitted only on existing roads and trails. Cross-country vehicle travel is prohibited.

a. Transect No. 7 Cultural Site—5,760 acres located 6 miles northeast of Palisade, Colorado.

b. Sinbad Valley and Dolores River Corridor—15,000 acres located 10 miles south of Gateway, Colorado.

c. Rabbit Valley—9,320 acres located 8 miles west of Mack, Colorado.

d. Hunter/Garvey Canyons—19,000 acres located 13 miles north of Fruita, Colorado.

e. South Slope Battlement Mesa—14,700 acres located 2 miles north of Collbran, Colorado.

f. Ruby Canyon—10,000 acres located 3 miles west of Loma, Colorado.

g. Bangs Canyon—40,000 acres located 4 miles south of Grand Junction, Colorado.

h. Cactus Park—1,000 acres located 13 miles south of Grand Junction, Colorado.

i. Granite Creek—15,000 acres located 10 miles north of Gateway, Colorado.

j. Grand Valley—150,000 acres located in the Grand Valley adjacent to Grand Junction, Colorado.

k. Timber Ridge—10,880 acres located 12 miles south of Fruita, Colorado.

C. Open Designations

1. Open for intensive public use. Vehicles may use roads and trails, and travel cross country in these areas, year round, subject to the operating regulations and vehicle standards set forth in the Code of Federal Regulations (43 CFR Part 8340).

a. 29 Road Area—10,240 acres located 2 miles northwest of Clifton, Colorado.

b. 25 Road Area—600 acres located 5 miles north of Grand Junction, Colorado.

c. 18 Road Area—400 acres located 6 miles north of Fruita, Colorado.

2. The remaining public land in the Grand Junction Resource Area is designated open to general motorized vehicle use, subject to the operating regulations and vehicle standards set forth in the Code of Federal Regulations (43 CFR Part 8340).

The Environmental Impact Statement for the Grand Junction Resource Area Resource Management Plan describes and analyzes the impacts of these designations. This Environmental Impact Statement and maps of the off-road vehicle designations are available at the office listed above.

Richard Freel,

District Manager.

March 13, 1987.

[FR Doc. 87-6678 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-JB-M

[CO-050-4212-13; C-42319]

Realty Action; Exchange of Public Lands in Park County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public and private land in Park County, Colorado, C-42319; segregation from all forms of appropriation under the public land laws.

SUMMARY: The exchange proposal described below would acquire non-Federal lands which have siginficant public values for wildlife habitat, recreation, and livestock grazing. The subject lands are located in South Park, Colorado.

DATE: Comments must be received within 45 days of publication of this notice.

ADDRESS: Submit comments to: District Manager, Bureau of Land Management, Canon City District Office, 3080 E. Main, P.O. Box 311, Canon City, CO 81212.

SUPPLEMENTARY INFORMATION: The following described public land has been determined to be suitable for exchange under the provisions of section 206 of the "Federal Land Policy and Management Act of 1976", 43 U.S.C. 1715, 1716.

Sixth Principal Meridian

T. 12 S., R. 73 W.
Sec. 5: lot 3
Sec. 17: NW¼
Sec. 18: lot 5
Sec. 19: lots 1–4

Sec. 36: N½NE¼NW¼NW¼, SW¼NE¼ NW¼NW¼, NW¼NW¼†NW¼, N½†SW¼†NW¼NW¼
T. 13 S., R. 73 W.
Sec. 1: lots 1–4, S½NE¼, SE¼NW¼, NE¼SE¼, S½SE¼
Sec. 6: lots 6, 7, E½SW¼, W½SE¼
Sec. 8: N½NE¼, SE¼NW¼, S½SE¼
Sec. 15: SE¼SE¼
Sec. 16: W½NW¼
Sec. 17: NE¼, SW¼SW¼
Sec. 18: lots 2, 3, S½NE¼, SE¼NW¼, N½SE¼, SE¼SE¼
Sec. 19: E½NE¼
Sec. 20: W½NW¼
Sec. 22: NE¼NE¼
Sec. 25: N½SW¼, SE¼SW¼
Sec. 26: S½NE¼, SW¼NW¼
Sec. 27: NE¼
Sec. 30: E½NE¼
T.12 S., R. 74 W.
Sec. 4: lot 3, SE¼SE¼
Sec. 11: SE¼SE¼
Sec. 29: N½N½
Sec. 33: NE¼SW¼, SW¼SE¼
Sec. 35: W½SW¼
T. 13 S., R. 74 W.
Sec. 1: SW¼NW¼, N½SW¼
Sec. 2: lot 4, SE¼NE¼; SE¼
Sec. 10: NW¼NE¼, SE¼
Sec. 11: S½SW¼, NW¼SE¼
Sec. 15: NW¼NW¼, NE¼SW¼
T. 12 S., R. 75 W.
Sec. 13: SW¼SW¼
Total 3,628.57 acres.

In exchange for these lands, the United States would acquire the following described private lands in Park County:

Sixth Principal Meridian

T. 13 S., R. 73 W.
Sec. 30: lots 3, 4, E½SW¼
Sec. 31: lots 1, 2, 3, 4, NE¼ North of Park County Rd. 116, E½W½
T. 12 S., R. 74 W.
Sec. 31: lots 1, 2, 3, NE¼, E½NW¼, NE¼SW¼, N½SE¼, SE¼SE¼
Sec. 32: W½W½, SE¼SW¼
T. 13 S., R. 74 W.
Sec. 4: lot 3, SE¼NW¼
Sec. 13: S½SW¼, NE¼SW¼
Sec. 14: S½SE¼
Sec. 22: NE¼
Sec. 23: N½, N½S½, SE¼SE¼
Sec. 24: All
Sec. 25: All
Sec. 35: E½E½, SW¼NE¼, NW¼SE¼
Total 3,899.70 acres.

The following additional private lands will be included only if needed to equalize values:

T. 12 S., R. 74 W.
Sec. 31: lot 4, SE¼SW¼, SW¼SE¼
T. 13 S., R. 74 W.
Sec. 6: lots 2, 3, 4, 5, SW¼NE¼, SE¼NW¼
Total 360.12 acres.

The purpose of the exchange is to acquire non-Federal lands which have significant public values for wildlife habitat, recreation, and livestock grazing. Acquisition of these lands would create a more manageable public land unit in the area.

The lands to be obtained by the United States have good legal access and access to adjoining public lands will improve.

The public lands to be transferred are small, scattered parcels with limited access.

The exchange is consistent with the Bureau's planning for the lands involved. The action has been discussed with Park County officials and the governor's office.

The value of the lands to be exchanged is approximately equal; the acreage will be adjusted or money will be used to equalize the values upon completion of the final appraisal of the lands.

All Federal mineral rights will be retained by the U.S. Government.

All existing access rights will continue to be recognized and reserved.

Publication of this notice segregates the public lands from the operation of all non-discretionary appropriations, including the mining laws, for a period of two (2) years from the date of publication.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning the exchange, including the planning amendment and the environmental assessment is available for review at the Royal Gorge Resource Area, 831 Royal Gorge Blvd., P.O. Box 1470, Canon City, CO 81212, Phone: (303) 275–7578. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue his final determination. In the absence of any action by the District Manager, this realty action will become a final determination of the Department of the Interior.

Donnie R. Sparks,

District Manager.

[FR Doc. 87–6686 Filed 3–26–87; 8:45 am]

BILLING CODE 4310–JB–M

[NV–030–07–4212–11; N–46061]

Realty Action; Lease or Sale of Public Lands for Recreation and Public Purposes; Washoe County, NV

The following described public land has been identified as suitable and will be classified for lease or sale under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, *et seq.*):

Mount Diablo Meridian, Nevada

T. 18 N., R. 19 E.,
Sec. 26, W½SW¼SE¼SE¼SE¼, W½E½SW¼SE¼SE¼SE¼.

The land contains 1.875 acres. The State of Nevada proposes to use the land for a wildland fire protection station.

The land is not required for federal purposes. Disposal is consistent with the Bureau's planning for this area and would be in the public's interest.

The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. All mineral deposits in the land so patented, and to it, or persons authorized by it, the right to prospect, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

Detailed information concerning this action is available for review at the Bureau of Land Management Carson City District Office.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws and the general mining laws, but not the Recreation and Public Purposes Act and the mineral leasing laws.

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, 1535 Hot Springs Road, Suite 300, Carson City, NV 89701.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this notice will become effective 60 days from the date of publication in the **Federal Register.**

Dated: March 20, 1987.

Norman L. Murray,

Acting District Manager.

[FR Doc. 87–6687 Filed 3–26–87; 8:45 am]

BILLING CODE 4310–HC–M

[NV–930–07–4212–11; N–44983]

Battle Mountain District; Tonopah Resource Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty action, lease or sale of public lands for recreation and public purposes in Nye County, NV.

SUMMARY: The following described public lands have been determined to be suitable and will be classified for lease or sale under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, *et seq.*):

Mount Diablo Meridian, Nevada

T. 2 N., R. 42 E.,

Section 1, SW¼NE¼, E½SE¼NW¼.

The areas described aggregate 60 acres.

The lands are not required for any Federal purpose. Disposal is consistent with the Bureau's planning for this area and would be in the public's interest. The land will be used for the construction of a high school and vocational school complex.

The lands described in this notice will not be offered for lease or sale until the classification becomes effective, all required environmental, archaeological, and mineral clearances are completed and all application requirements are met.

Patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. All mineral deposits in the lands together with the right to prospect for, mine, and remove such deposits under applicable laws.

And will be subject to:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official land records at the time of patent issuance.

3. Any other reservations the Authorized Officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Upon publication of this Notice in the **Federal Register** the above described public lands will be segregated from all forms of appropriation under the public land laws, including locations under the mining laws, except as to applications under the mineral leasing laws and application under the Recreation and Public Purposes Act.

Comments

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, P.O. Box 1420, Battle Mountain, Nevada 89820. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

Terry L. Plummer,

District Manager, Battle Mountain, Nevada.

March 4, 1987.

[FR Doc. 87-6688 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-HC-M

[AZ-942-07-4520-12]

Arizona; Notice of Filing of Plats of Survey

March 20, 1987.

1. The plats of survey of the following described lands were officially filed in the Arizona State Office, Phoenix, Arizona, on the dates indicated:

A supplmental plat showing subdivisions of lots A and C, section 27, Township 7 North, Range 2 East, Gila and Salt River Meridian, Arizona, was accepted January 13, 1987, and was officially filed January 16, 1987.

A supplemental plat showing a subdivision of original lot 5, section 33, Township 12 South, Range 11 East, Gila and Salt River Meridian, Arizona, was accepted January 5, 1987, and was officially filed January 8, 1987.

These plats were prepared at the request of Bureau of Land Management, Phoenix District Office.

A plat representing the corrective survey of a portion of the subdivision lines in section 26, Township 6 North, Range 10 East, Gila and Salt River Meridian, Arizona, was accepted January 14, 1987, and was officially filed January 20, 1987.

This plat was prepared for the U.S. Forest Service Regional Office, Albuquerque, New Mexico.

A plat (in 3 sheets) representing a dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines, and a survey of subdivisions in sections 21 and 28, Township 13 North, Range 2 East, Gila and Salt River Meridian, Arizona, was accepted February 5, 1987, and was officially filed February 13, 1987.

A plat representing a dependent resurvey of a portion of the west boundary and a portion of the subdivisional lines, and a survey of subdivisions in section 19, Fractional Township 15½ North, Range 4 West, Gila and Salt River Meridian, Arizona, was accepted January 14, 1987, and was officially filed January 20, 1987.

A plat representing a dependent resurvey of a portion of the south and west boundaries and a portion of the subdivisional lines, and a survey of subdivisions in section 31, Township 16 North, Range 4 West Gila and Salt River Meridian, Arizona, was accepted January 14, 1987, and was officially filed January 20, 1987.

These plats were prepared at the request of the U.S. Forest Service, Prescott National Forest.

2. These plats will immediately become the basic records for 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.

3. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

James P. Kelley,

Chief, Branch of Cadastral Survey.

[FR Doc. 87; 6690 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-32-M

[MT-920-07-4520-11]

Land Resource Management; Filing of Plat Survey; Montana

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: Plats of survey of the lands described below accepted February 10, 1987, and February 17, 1987, were officially filed in the Montana State Office effective 10 a.m. on March 16, 1987.

Principal Meridian, Montana

T. 13 N., R. 26 E.

The plat, in three sheets, representing the dependent resurvey of portions of the Third Standard Parallel North through Range 26 East, the Coulson Guide Meridian through Township 13 North, the east boundary, the north boundary, and the subdivisional lines; and the survey of the subdivision of sections 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 15, 18, 20, 21, 23, 28, 29, 30, 31, 32, and 33, Township 13 North, Range 26 East, was accepted February 10, 1987. The area described is in Petroleum County.

This survey was executed at the request of the Lewistown District Office for the administrative needs of the Bureau.

Principal Meridian, Montana

T. 12 N., R. 6 W.

The plat representing the dependent resurvey of line 8-9, Mineral Survey No. 1002, Placer; and the survey of Tract 42 in section 36, Township 12 North, Range 6 West, was accepted February 17, 1987. The area described is in Lewis and Clark County.

Principal Meridian, Montana

T. 16 N., R. 3 W.

The plat representing the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines, and the adjusted original meanders of the left bank of the Missouri River downstream thourgh section 24; and the survey of the subdivision of section 24, Township 16

North, Range 3 West, was accepted February 17, 1987. The area described is in Lewis and Clark County.

These surveys were executed at the request of the Butte District Office for the administrative needs of the Bureau.

EFFECTIVE DATE: March 16, 1987.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Dated: March 20, 1987.

Dean Stepanek,

State Director.

[FR Doc. 87-6691 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-DN-M

Minerals Management Service

Availability of a Draft Environmental Impact Statement (EIS) on the Proposed Marine Mineral Lease Sale in the Hawaiian Archipelago and Johnston Island Exclusive Economic Zone (EEZ)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice.

SUMMARY: The Minerals Management Service (MMS) and the State of Hawaii have prepared a draft EIS relating to the proposed lease sale for minerals other than oil, gas, and sulphur (minerals) of available blocks in the Hawaiian and Johnston Island EEZ for cobalt-rich manganese crusts. The proposed lease sale, authorized to be held under section 8 of the Outer Continental Shelf Lands Act (43 U.S.C. 1337), will offer for lease approximately 26,900 square kilometers. This Notice announces the availability of the draft EIS, a schedule of public hearings on the draft EIS, provides a list of locations where the draft EIS is available for inspection, and solicits comments concerning the draft EIS from interested parties.

DATES: Interested individuals, representatives of organizations, and public officials who wish to testify at the hearings are requested to contact the Program Director, Office of Strategic and International Minerals; or Robert G. Paul, telephone (213) 514-6140 or (FTS) 795-6140; or Dr. Charles L. Morgan, State of Hawaii EIS Coordinator, telephone (808) 942-9556, by May 22, 1987.

Written testimony from the hearings and comments on the draft EIS must be hand-delivered or postmarked by June 25, 1987.

The hearings will be held on the following dates and times indicated:

a. Wednesday, May 27, 1987, State Capitol Auditorium, State Capitol, Honolulu, HI, (corner of Punchbowl and Beretania Streets), 10:00 a.m., and 7:00 p.m.

b. Thursday, May 28, 1987, University of Hawaii at Hilo, Campus Center, Room 306, Hilo, HI, 10:00 a.m. and 7:00 p.m.

c. Friday, May 29, 1987, Kona Hilton, Resolution Room, 75-5822 Alii Drive, Kailua-Kona, HI, 7:00 p.m.

ADDRESS: Copies of the draft EIS may be obtained by written request or by telephone from the following:

Dr. Charles L. Morgan, State EIS Coordinator, Manganese Crust EIS Project, 1110 University Avenue, Room 411, Honolulu, Hawaii 96826, (808) 942-9556

Mr. Robert G. Paul, Federal EIS Coordinator, Office of Strategic and International Minerals, Minerals Management Service, 11 Golden Shore, Suite 260, Long Beach, California 90802, (213) 514-6140 or (FTS) 795-6140

Written testimony and comments on the draft EIS should be addressed to the Program Director, Office of Strategic and International Minerals; Minerals Management Service; 11 Golden Shore, Suite 260; Long Beach, California 90802.

FOR FURTHER INFORMATION CONTACT: Robert G. Paul, Office of Strategic and International Minerals; Minerals Management Service, telephone (213) 514-6140 or (FTS) 795-6140; or Dr. Charles L. Morgan, State of Hawaii EIS Coordinator, telephone (808) 942-9556.

SUPPLEMENTARY INFORMATION:

Background

The Department of the Interior, pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, in conjunction with the State of Hawaii, is considering the potential economic and environmental impacts resulting from the recovery of cobalt-rich manganese crusts found in the EEZ surrounding the Hawaiian Archipelago. The MMS announced its intent to prepare an EIS on exploration for and possible recovery of cobalt-rich manganese crusts in the **Federal Register** on March 5, 1984 (49 FR 8089). Public hearings were held in Honolulu and Hilo, Hawaii, on April 30 and May 1, 1984, respectively, to assist in determining the scope of the EIS. To further delineate the areas of interest for recovery of cobalt-rich manganese crusts, a Call for Information was published in the **Federal Register** on August 28, 1984 (49 FR 34099), and amended on November 26, 1984 (49 FR 46509), to extend the comment period.

The **Federal Register** Notices dated March 5 and August 28, 1984, were amended by two other Notices on April 5, 1985 (50 FR 13673 and 50 FR 13674), to reopen the comment period and expand the applicable area to include portions of the EEZ Adjacent to Johnston Island.

Copies of the draft EIS are available for inspection at the following public libraries:

California

Scripps Library, University of California—San Diego, Scripps Institution of Oceanography, La Jolla, CA

Long Beach Main Library, 101 Pacific Avenue, Long Beach, CA

West Los Angeles Regional Library, 11360 Santa Monica Boulevard, Los Angeles, CA

San Francisco Public Library, Government Documents Department, Civic Center, San Francisco, CA

Hawaii

Aiea Library, 99-143 Moanalua Road, Aiea, HI

Ewa Beach Community School Library, 91-950 North Road, Ewa Beach, HI

Hilo Community College Library, UH-Hilo Main Library, 1400 Kapiolani Street, Hilo, HI

UH-Hilo Main Library, 1400 Kapiolani Street, Hilo, HI

HI Hilo Public Library, 300 Waianuenue Avenue, Hilo, HI

Aina Haina Library, 5246 Kalanianaole Highway, Honolulu, HI

DPED Library, 335 Merchant Street, Honolulu, HI

Hamilton Library, University of Hawaii Manoa Campus, Honolulu, HI

Hawaii Kai Library, 249 Lunalilo Home Road, Honolulu, HI

Hawaii State Library, 478 South King Street, Honolulu, HI

Honolulu Community College Library, 874 Dillingham Boulevard, Honolulu, HI

Kaimuki Regional Library, 1041 Koko Head Avenue, Honolulu, HI

Kalihi-Palama Library, 135 Kalihi Street, Honolulu, HI

Kapiolani Community College Library, 4303 Diamond Head Road, Honolulu, HI

Kapiolani Community College Library, 620 Pensacola Street, Honolulu, HI

Library for the Blind & Physically Handicapped, 402 Kapahulu Avenue Honolulu, HI

Liliha Library, 1515 Liliha Street, Honolulu, HI

Manoa Library, 2716 Woodlawn Drive, Honolulu, HI

McCully-Moiliili Library, 2211 South King Street, Honolulu, HI

Salt-Lake/Moanalua Library, 848 Ala Lilikoi Street, Honolulu, HI
Waikiki-Kapahulu Library, 400 Kapahulu Avenue, Honolulu, HI
Kahuku Community-School Library, 56-490 Kamehameha Highway, Kahuku, HI
Maui Community College Library, 310 Kaahumanu Avenue, Kahului, Maui, HI
Kailua-Kona Library, 75-138 Haalala Road, Kailua-Kona, HI
Kailua Library, 239 Kuulei Road, Kailua, HI
Mountain View Community School Library, Highway 11, Kamuela, HI
Thelma Parker Memorial Community School Library, Mamalahoa Highway, Kamuela, HI
Kaneohe Regional Library, 45-829 Kamehameha Highway, Kaneohe, HI
Windward Community College Library, 25-720 Keaahala Road, Kaneohe, HI
Bond Memorial Library, Akoni Pule Highway, Kapaau, HI
Molokai Library, Kaunakakai, HI
Keaau Community School Library, Pahoa Highway, Keaau, HI
Lanai Community School Library, Fraser Avenue, Lanai City, HI
Kauai Community College Library, 3-1901 Kaumualii Highway, Lihue, Kauai, HI
Kauai Regional Library, 4344 Hardy Street, Lihue, HI
Mililani Library, 25-1240 Meheula Parkway, Mililani, HI
Leeward Community College Library, 96-045 Ala Ike Street, Pearl City, HI
Pearl City Regional Library, 1138 Waimano Home Road, Pearl City, HI
Wahiawa Library, 820 California Avenue, Wahiawa, HI
Waialua Library, 67-068 Kealohanui Street, Waialua, HI
Waianae Library, 85-625 Farrington Highway, Waianae, HI
Maui-Wailuku Regional Library, 51 High Street, Wailuku, HI
Waimanalo Community-School Library, 41-1320 Kalanianaole Highway, Waimanalo, HI
Waipahu Library, 94-521 Farrington Highway, Waipahu, HI

In accordance with 30 CFR 256.26, MMS and the State of Hawaii will hold public hearings to receive comments and suggestions relating to the draft EIS. The hearings will provide the Secretary of the Interior with information from Government Agencies and the public which will help to evaluate the potential effects of marine cobalt-rich manganese crust mining.

At the public hearings, time limitations may make it necessary to limit the oral presentations to 10 minutes. Therefore, an oral statement may be supplemented by a more complete written statement and may be submitted to a hearing official at the time of oral presentation or by mail to the Program Director, Office of Strategic and International Minerals, at the address listed above no later than June 25, 1987. This will allow those unable to testify at a public hearing an opportunity to make their views known and for those presenting oral testimony to submit supplemental information and comments.

Dated: March 23, 1987.

David W. Crow,

Acting Director, Minerals Management Service.

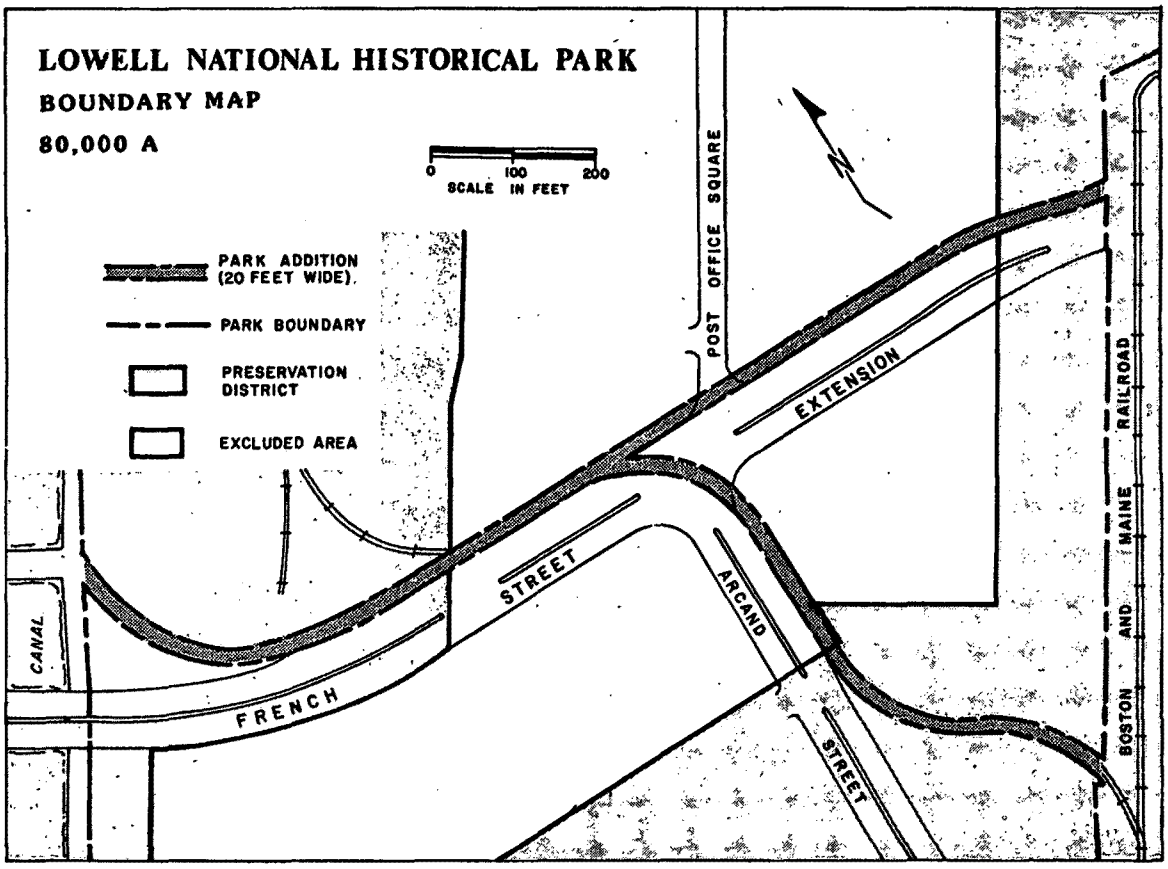
[FR Doc. 87-6705 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Lowell National Historical Park, MA; Boundary Change, Publication of Revised Boundary Map

Notice is given, pursuant to subsection 101(b) of the Act of June 5, 1978 (Pub. L. 95-290, 92 Stat. 290) that the boundary of the Lowell National Historical Park is hereby revised to include an additional 48,000 square feet consisting of 2,400 linear feet of rail right-of-way in the vicinity of the U.S. Post Office on French Street in Lowell, Massachusetts, as depicted on the accompanying revised boundary map. As further required by the aforementioned Act, prior notice of



this action has been given to the Congress of the United States, and consent to the revision has been obtained from the City Manager of Lowell, the City Council of the City of Lowell, and the Lowell Historic Preservation Commission.

L. J. Hovig,

Acting Regional Director, North Atlantic Region.

[FR Doc. 87-6752 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-70-M

Intention to Negotiate Concession Contract; Smoky Mountain Riding Stables, Inc.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession permit with Smoky Mountain Riding Stables, Inc., authorizing it to continue to provide saddle horse livery and guide services for the public at Great Smoky Mountains National Park, Tennessee for a period of five (5) years from January 1, 1987, through December 31, 1991.

This permit renewal has been determined to be categorically excluded from the procedural provisons of the National Environmental Policy Act and no environmental doucment will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expires by limitation of time on December 31, 1986, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the permit as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Southeast Region, Atlanta, Georgia, for information as to the requirements of the proposed permit.

Dated: December 10, 1986.

Robert M. Baker,

Regional Director, Southeast Region.

[FR Doc. 87-6753 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

North Chickamauga Creek Watershed, TN, Lands Unsuitable for Surface Mining and Reclamation Operations; Availability of Draft Petition Evaluation Document and Draft Environmental Impact Statement; Request for Comment and Hearing

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Notice of availability of the draft combined petition evaluation document/environmental impact statement (PED/EIS) for the North Chickamauga Creek watershed in Hamilton and Sequatchie Counties, Tennessee, land unsuitable for surface coal mining and reclamation operations petition. Notice of public hearing to receive comments on the North Chickamauga Creek draft PED/EIS.

SUMMARY: OSMRE has prepared a draft combined PED/EIS addressing the petition to designate lands within the North Chickamauga Creek watershed as unsuitable for surface coal mining and reclamation operations. The document evaluates the allegations raised in the petition, and considers the impacts of alternative unsuitability decisions for the North Chickamauga Creek watershed on the human environment, the economy, and the supply of coal. Copies of the PED/EIS are being made available today. Public comments on the PED/EIS is solicited and a public hearing will be held as described below.

DATES: Written comments on the PED/EIS must be received at the address given below under **"ADDRESSES"** on or before May 29, 1987, at 5:00 p.m. local time. Comments may also be presented at a public hearing starting at 7:00 p.m. on April 30, 1987, at the address given below.

ADDRESSES: Public hearing on the draft PED/EIS will be held at the Hixson Utility District, public meeting room, at 5005 Austin Road in Hixson, Tennessee, on Thursday, April 30, 1987, beginning at 7:00 p.m. local time.

Written comments on the draft PED/EIS must be mailed or hand delivered to Office of Surface Mining Reclamation and Enforcement, 530 Gay Street SW., Suite 500, Knoxville, Tennessee 37902, to the attention of Willis L. Gainer. All comments will be on file and available for inspection at the same address.

FOR FURTHER INFORMATION CONTACT: Willis L. Gainer, Office of Surface Mining Reclamation and Enforcement (telephone: 615/673-4348 or FTS 854-4348) at the address listed above.

PED/EIS Availability: Copies of the draft PED/EIS are available for inspection at the Sequatchie and Hamilton County Courthouses and at the OSMRE office listed above. In addition, copies of the document may be obtained, while supplies last, at the above listed office.

SUPPLEMENTARY INFORMATION: The public hearing on the draft PED/EIS has been scheduled for the date and address listed above. Anyone who wishes to comment will be given the opportunity to do so, but initial comments will be limited to 15 minutes of oral testimony. Time limits may be extended at the discretion of the presiding officials. Persons wishing to present testimony are encouraged to contact OSMRE at the address given below. OSMRE would appreciate receiving a written copy of the testimony four days prior to the public hearing.

The hearing will be transcribed. Filing of a written statement at the time of giving oral testimony is encouraged as this will facilitate the job of the court reporter. The public hearing will commence at the times identified above and will continue until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak and who wish to do so will be heard at the end of the scheduled speakers.

OSMRE encourages the public to comment on the content of the draft PED/EIS. In particular, OSMRE solicits comments which identify errors, omissions, or alternatives not yet considered. Whenever possible, public comments should be supported by technical data or other source material. All comments from the public on the draft PED/EIS will be considered during preparation of the final document.

Dated: March 24, 1987.

Anetta L. Cheek,

Acting Chief, Division of Permit and Environmental Analysis.

[FR Doc. 87-6706 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[332-245]

Foreign Protection of Intellectual Property Rights and the Effect on U.S. Industry and Trade

AGENCY: International Trade Commission.

ACTION: Notice of change in date of public hearing.

EFFECTIVE DATE: March 23, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Mark D. Estes, General Manufactures Division, Office of Industries, U.S. International Trade Commission, Washington, DC 20436 (telephone 202-724-0977).

Public hearing: Notice is hereby given that the date of the public hearing in connection with investigation No. 332-245 has been changed from April 21, 1987 to May 5 and 6, 1987. The hearing will be held at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, DC, beginning at 9:30 a.m. Persons wishing to appear at the public hearing should file requests to appear and should file prehearing briefs (original and 14 copies) with the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436, not later than noon, April 24, 1987. Notice of the institution of the investigation was published in the **Federal Register** of March 19, 1987 (52 FR 8656).

Issued: March 24, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-6732 Filed 3-26-87; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage In Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporation intended to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A.1. Parent corporation and address of principal office: T.J. Blackburn Syrup Works, Inc., Post Office Drawer G, Highway 49 West, Jefferson, Texas 75657, Texas is the State of Incorporation.

2. Wholly owned subsidiary which will praticipate in the operations, and state of incorporation: (i) BB&F Tuucking Company, Inc., Post Office Drawer G, Highway 49 West, Jefferson, Texas 75657, Texas is the State of Incorporation.

B.1. Parent corporation and address of principal office: Murphy Enterprises, Inc. State of incorporation: Nebraska Principal office: Murphy Enterprises, Inc., 5810 East Skelly Drive, Suite 1700, Tulsa, Oklahoma 74135

2. Wholly owned subsidiaries which will participate in the operations, and state(s) of incorporation: (i) MBE Transportation & Leasing, Inc., an Oklahoma corporation.

C.1. Parent corporation and address of principal office: Premark International, Inc., 2211 Sanders Road, Northbrook, IL 60062.

2. Wholly-owned subsidiaries which will participate in the operations and state(s) of incorporation:

A. Dart Industries Inc., Delaware.

(i) Ralph Wilson Plastics, Inc., Texas.

(ii) Tupperware Home Parties Corp., Delaware.

(iii) Dartco Manufacturing Inc., Delaware.

(iv) The West Bend Company, Inc., Wisconsin.

(v) Precor Incorporated, Delaware.

B. Hobart Corporation, Delaware.

(i) Stero Company, Delaware.

(ii) Vulcan-Hart Corporation, Delaware.

D.1. Parent corporation and address of principal office: Rohm and Haas Company, Independence Mall West, Philadelphia, Pennsylvania 19105.

2. Wholly-owned subsidiaries which will participate in the operations, and States of incorporation:

Name and State of Incorporation

(i) Rohm and Haas Connecticut, Inc., Old Brickyard Land, Kensignton, Connecticut 06037, Connecticut.

(ii) Rohm and Haas Canada, Inc., 2 Manse Road, West Hill, Ontario MIE 3T9, Canada.

E.1. Parent corporation and address of principal office: Savage Coal Service Corporation, 5295 S. 300 West, Suite 455, Salt Lake City, UT 84107.

2. Wholly-owned subsidiaries which will participate in the operations, and State of Incorporation: Lucky Deal Trucking, Inc., Incorporated—Oklahoma.

F.1. Parent corporation and address of principal office: Texas Industries, Inc., 8100 Carpenter Freeway, Dallas, Texas 75247.

2. Wholly-owned subsidiaries which will participate in the operations, and state(s) of incorporation:

Texas Industries, Inc., Delaware
Aggregates Railway Corporation, Louisiana
Athens Brick Company, Delaware
Brookhollow Corporation, Delaware
Chaparral Steel Company, Delaware
Creole Corporation, Delaware
Dolphin Construction Company, Louisiana
East Louisiana Railway Company, Louisiana
Fort Worth Sand & Gravel Company, Inc. (Inactive), Texas
L I Precast Company, Louisiana
Louisiana Industries, Inc., Louisiana
Louisiana Industries Prestressed Corp., Delaware
Mississippi Industries, Inc., (Inactive), Mississippi
National Concrete Industries, Inc. (Inactive), Delaware
Poway Development Corporation, Delaware
The George Rackle & Sons Company (Inactive), Ohio
TXI Transportation Company, Texas
Southern States Mining Company, Tennessee
Southwestern Financial Corporation, Delaware
Texas Industries Foundation, Texas (Non-Profit)
Texas Lightweight Aggregate Company (Inactive), Texas
Thurber Coal Company, Texas
Tri-State Industries, Inc., Tennessee
TXI Aviation, Inc., Texas
TXI Cement Company, Delaware
TXI Structural Products, Inc., Delaware
United Cement Company, Mississippi
Brookhollow of Alexandria, Inc., Louisiana
Brookhollow/Arlington, Inc., Texas
Brookhollow Hotel Corporation, (formerly The 8100 Corporation), Texas
Brookhollow of Houston, Inc., Texas
Brook Hollow Properties, Inc., Texas
Empire Central Investment Corporation, Texas
Brookhollow of North Carolina, Inc., North Carolina
Brookhollow of Virginia, Inc., Virginia
Brookhollow/Arlington Properties, Inc., Texas
Brookhollow/Arlington P.O.D. I, Inc., Texas
Brookhollow/Riverside, Inc., Texas
Brookhollow Two Restaurant Corporation, Texas
Brookhollow of Florida, Inc., Florida
Brookhollow/Greensboro Properties, Inc., North Carolina
Brookhollow/Lewisville, Inc., Texas
Ferrco Dallas, Inc., Texas
TA Joist, Inc., Delaware
Brookhollow Plaza, Inc., Texas

Noreta R. McGee,

Secretary.

[FR Doc. 87-6824 Filed 3-26-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31002]

Maine Central Railroad Co.; Lease and Trackage Rights Exemption; Springfield Terminal Railway Co.; Exemption

Maine Central Railroad Company (MC) and Springfield Terminal Railway Company (ST) filed a notice of exemption for MC to lease to ST the Rumford Branch, a rail line between Rumford, ME, and a connection with MC's freight main line at Leeds Jct., ME, a distance of approximately 43.4 miles. To facilitate ST's operations, MC will grant ST overhead trackage rights to operate over MC's freight main line between Leeds Jct. and South Portland, ME.

MC and ST are wholly owned subsidiaries of Guilford Transporation Industries, Inc. (GTI). GTI also owns Boston and Maine Corporation (B&M) and Delaware and Hudson Railway Company (D&H). As a result of the proposed transactions, it is anticipated that ST will provide MC's rail customers with more responsive and efficient service. MC will improve its financial viability by eliminating costly operations relative to the revenues earned. With its lower cost structure, ST should be able to perform these operations on a more profitable basis.

Since MC and ST are members of the same corporate family, both the lease and the grant of trackage rights fall within the class of transactions that are exempt from the prior review requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(s)(3). The transactions will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.[1]

Any employees affected by the lease transaction will be protected by the labor conditions set forth in *Mendocino Coast Ry., Inc.—Lease and Operate*, 354 I.C.C. 732 (1978), and 360 I.C.C 653 (1980). Any employees affected by the trackage rights transaction will be protected by the labor conditions set forth in *Norfolk and Westeran Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino, surpa*, 360 I.C.C. 653 (1980). These conditions satisfy the statutory requirements of 49 U.S.C. 10505(g)(2) for the respective transactions.[2]

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of petitions to revoke will not stay the transactions.

Decided: March 12, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-6825 Filed 3-26-87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-281X]

Texas North Western Railway Co.; Abandonment and Discontinuance of Service Exemption; Hansford and Hutchinson Counties, TX; Texas County, OK, and Seward County, KS

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Texas North Western Railroad Company (TNW) has filed a petition seeking an exemption under 49 U.S.C. 10505 from the requirements of 49 U.S.C. 10903, *et seq.*: (1) To abandon 56-miles of its line of railroad between milepost 34 near Morse, TX and milepost 79 near Hardesty, OK, and between milepost 7 south near Pringle, TX and milepost 18 near Stinnett, TX; and (2) to discontinue service provided pursuant to trackage rights over 37 miles of rail line between milepost 79 near Hardesty, OK, and milepost 116 near Liberal, KS. The Commission has determined that there should be notice and comment because the impact of the proposed abandonment and discontinuance on shippers using these line segments cannot be ascertained from the present record. It appears that the designated agencies of Oklahoma and Kansas have not been served with a notice of environmental and energy impacts or a copy of the petition as required by 49 CFR 1105.11. TNW must serve these designated agencies within 5 days of service of our decision in this proceeding.

We are also requiring TNW to serve a copy or our decision in this proceeding on all shippers on the line within 5 days of service of our decision in this proceeding.

DATES: Comments must be filed with the Commission and served on petitioner's representative by April 16, 1987. Replies to the comments must be filed by April 27, 1987.

ADDRESSES: Send an original and 10 copies of comments and replies referring to Docket No. AB-281X to:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

Send one copy to petitioner's representative:

John P. Legendre, 5831 Caladium, Dallas, TX 75230

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to the Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423, or call (202) 275-7428.

The notice is issued pursuant to 5 U.S.C. 553 and 559 and 49 U.S.C. 10505.

Decided: March 17, 1987.

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

Noreta R. McGee,

Secretary.

[FR Doc. 87-6826 Filed 3-26-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 86-41]

Gordon M. Acker, D.M.D., Revocation of Registrations and Denial of Applications

On May 6, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) directed an Order to show Cause to Gordon M. Acker, D.M.D., (Respondent) of 117 Cayuga Place, Jericho, New York, seeking to revoke DEA Certificate of Registration AA2055362 previously issued to Respondent. On May 13, 1986, the Deputy Assistant Administrator directed an Order to Show Cause to Respondent at 2412 Route 71—Apartment 5H, Spring Lake Heights, New Jersey, seeking to revoke DEA Certificate of Registration AA1793822 previously issued to

[1] The grant of trackage rights also falls within another category of exempt transactions. *See* 49 CFR 1180.2(d)(7).

[2] In three other notice of exemption proceedings: (Finance Docket NO. 30965, involving a trackage rights and lease between D&H and ST; Finance Docket No. 30967, involving a lease between MC and ST; and Finance Docket NO. 30972, involving a lease between D&H and ST) the Railway Labor Executives' Association petitioned for the imposition of the labor protective conditions developed by the Commission in *New York Dock Ry.—Control—Brooklyn Eastern District*, 360 I.C.C. 60 (1979), in lieu of the *Mendocino* conditions. The Brotherhood of Locomotive Engineers has petitoned for similar relief in Finance Docket No. 30981, involving a lease between B&M and ST. A Commission decision will follow to consider these petitions.

Respondent at that address. Both Orders to Show Cause sought also to deny any pending applications for registration with DEA.

The statutory predicate under 21 U.S.C. 824(a)(2) was Respondent's conviction on March 12, 1986, in the United States District Court for the Eastern District of Pennsylvania, of conspiracy to possess with intent to distribute and to distribute cocaine, in violation of 21 U.S.C. 846. This is a felony relating to controlled substances.

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Francis L. Young. Following prehearing proceedings, a hearing was held before Judge Young in Washington, DC., on October 15, 1986. Judge Young issued his opinion and recommended ruling, findings of fact, conclusions of law and decision on January 27, 1987. Respondent, through counsel, filed exceptions to the recommended decision of the Administrative Law Judge on February 9, 1987. The Administrative Law Judge transmitted the record to the Administrator on February 26, 1987. Having examined the record in its entirety, including the exceptions filed by Respondent, the Administrator hereby enters his final order pursuant to 21 CFR 1316.67.

Judge Young found that Respondent came to the attention of the Federal Bureau of Investigation (FBI) in Philadelphia in September, 1984, during the investigation of a major cocaine trafficking ring. Respondent had been a dental student at the University of Pennsylvania Dental School with three other dentists in the late 1970's and early 1980's. These three other dentists were also convicted for their part in the organization and have received substantial prison sentences.

Judge Young found that this cocaine ring netted, at its zenith in 1981, millions of dollars a month. It was the largest cocaine organization to be detected and prosecuted in Philadelphia history. Respondent was a social acquaintance of the day-to-day operator of the ring. Respondent's role was to purchase cocaine from the ringleaders and redistribute it to the ring's smaller customers, freeing the ringleaders to spend more time with their large customers. During 1979 and 1980, Respondent agreed to carry cocaine to customers of the organization, and made three trips to Ohio, California and Illinois for this purpose. On another occasion he accompanied an individual sent to Florida to buy cocaine.

The Administrative Law Judge further found the Respondent was taught to "break" the cocaine into individual customer's orders by mixing certain proportions of rock cocaine, powdered cocaine and a cutting agent. The proportions were expressed in a formula that Respondent learned.

The Administrative Law Judge further found that Respondent was involved in changing small bills which the ring received into large bills at the casinos in Atlantic City, New Jersey. Respondent also stored cocaine in his apartment. For his services, Respondent was paid in cash and cocaine.

Judge Young found that Respondent used cocaine in 1979 and 1980 and by early 1981 his appearance from cocaine use had become a concern to the ringleaders. Respondent's last involvement with the organization was in late 1980 or early 1981, when he terminated his relationship with the ring by mutual consent. Respondent was indicted in June, 1985, and he cooperated with the FBI in its investigation. Judge Young found that Respondent's cooperation was not indispensable to the investigation. Judge Young also found that while other participants in the organization received lengthy prison terms, Respondent was sentenced to a split sentence of six months in a work-release setting and four and one-half years probation, modified by the sentencing Judge to five years probation, the first five months to be served in a work release program. At the time of the hearing Respondent was working for his father's electrical contracting firm in New York City.

The Administrator adopts the findings of the Administrative Law Judge in their entirety.

The Administrative Law Judge recommended that the registrations previously issued to Dr. Acker be revoked. Judge Young noted the Respondent's willing participation in the multikilogram cocaine organization, his traveling to various parts of the United states to deliver the cocaine, his activities in "breaking" the cociane for distribution and his journeys to Atlantic City to trade small bills for large. The administrative Law Judge concluded, as must the Administrator, that the record is wholly barren of evidence tending to show developent of an appropriate sense of responsibility since Respondent terminated his involvement with the conspiracy and became a dentist.

The Administrator has considered the exceptions filed by counsel for Respondent and is unpersuaded by them. The exceptions correctly point out that the events took place six years ago and that the United States Attorney's Office agreed to bring the cooperation of Respondent to the attention of any Judge or licensing agency. This cooperation was brought to the attention of the Administrative Law Judge and the Administrator, who have considered it. The Administrator is struck by the absence of evidence concerning Respondent's practice of dentistry beyond respondent's assertion that he still owes $30,000 on his student loans. Surely, this cannot be a substantial enough reason to register a dentist who so clearly demonstrated that he is not to be trusted with DEA registration.

The facts in this case clearly demonstrate that Respondent's DEA registration should be revoked, even though he participated in the cocaine organization while he was a dental student and did not use a DEA registration in the commission of his felonies. In cases brought under 21 U.S.C. 823(a)(2), the Administrators of DEA have consistently held that the underlying controlled substance-related felony need not involve the DEA registration to justify revocation or denial of application. See *Paul Stepak, M.D.*, 51 FR 17556 (1986) (physician distributing LSD); *William H. Carranza, M.D.*, Dk. No. 84-23, 51 FR 2771 (1986) (physician smuggling heroin); *Coleman Preston McCown D.D.S.*, Dk. No. 82-28, 49 FR 45818 (1984) (dentist selling street cocaine to undercover Agent); *Aaron Moss, D.D.S.*, Dk. No. 80-2, 45 FR 72850 (1980) (dentist smuggling cocaine). The actions of Respondent merit the same sanction.

Having examined the record, the Administrator concludes that the registrations should be revoked and any pending applications denied, for reason that Respondent was convicted of a felony relating to controlled substances. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificates of Registration AA2055362 and AA1793822 be, and they hereby are, revoked, and that any pending applications for registration be, and they hereby are, denied.

This order is effective April 27, 1987.

John C. Lawn,

Administrator.

[FR Doc. 87-6736 Filed 3-26-87; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration; Janssen, Inc.

By Notice dated February 12, 1987, and published in the **Federal Register** on February 19, 1987 (52 FR 5205), Janssen, Inc., HC 02 Box 19250, Gurabo, Puerto Rico 00658–9629, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

	Schedule
Drug:	
Alfentanil (9737)	II
Sufentanil (9740)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: March 23, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 87–6737 Filed 3–26–87; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances Registration; Johnson Matthey, Inc.

By Notice dated February 2, 1987, and published in the **Federal Register** on February 19, 1987 (52 FR 5205), Johnson Matthey, Inc., 1401 King Road, West Chester, Pennsylvania 19380, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

	Schedule
Drug:	
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

No comments or objections have been received. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: March 23, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 87–6738 Filed 3–26–87; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 86–21]

John H. Mulvany, M.D.; Revocation of Registration

On March 4, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to John H. Mulvany, M.D. (Respondent) of 255 Main Street, Pawtucket, Rhode Island 02860, proposing to revoke his DEA Certificate of Registration AM3274278 and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that the continued registration of Respondent would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

By letter dated March 25, 1986, Respondent's counsel requested a hearing on the issues raised by the Order to Show Cause. The matter was placed on the docket of Administrative Law Judge Francis L. Young. The hearing was held in Boston, Massachusetts on August 12, 13 and 14, 1986.

On January 5, 1987, the Administrative Law Judge issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. Respondent filed exceptions to Judge Young's recommended ruling pursuant to 21 CFR 1316.66, and the Government responded to such exceptions. On February 5, 1987, the Administrative Law Judge transmitted the record in these proceedings, including Respondent's exceptions and the Government's response to the exceptions, to the Administrator. The Administrator has considered this record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that in January 1966, the Rhode Island Division of Drug Control initiated an investigation into Respondent's controlled substance handling practices. This investigation was initiated as a result of information received that indicated Respondent was ordering large quantities of controlled substances from drug wholesalers. In addition, the Rhode Island Division of Drug Control had received complaints regarding Respondent's medical practice. During the course of the investigation, a State narcotics inspector went to Respondent's medical office to conduct a compliance investigation. While at Respondent's office, the inspector recognized known drug abusers in the waiting room. The inspector noted several violations of Rhode Island law relating to controlled substances, including: Failure to maintain dispensing records, failure to maintain a complete and accurate inventory of controlled substances and failure to report thefts of controlled substances to the Rhode Island Division of Drug Control.

In January 1969, the Pawtucket Police Department initiated an undercover investigation of Respondent's medical practice. This investigation was initiated as a result of information received from the Rhode Island Division of Drug Control as well as numerous complaints which the Department had received regarding Respondent's medical practice. Undercover officers of the Pawtucket Police Department went to Respondent's office on seven occasions, between January 11 and February 21, 1969, to attempt to purchase prescriptions for controlled substances from Respondent. When the officers went to Respondent's office, the waiting room was always full of people waiting to see the doctor and on more than one occasion, the undercover officers had to wait out in the hallway. On five of the seven occasions, Respondent wrote the officers prescriptions for Seconal (secobarbital), then a regulated drug under the Drug Abuse Control Amendments to the Food, Drug, and Cosmetic Act. On only one occasion did Respondent perform any sort of physical examination before prescribing the Seconal for the officers, and that was a cursory examination. Each visit lasted three to five minutes. It was evident that these drugs were not being prescribed for any legitimate medical purpose. On one occasion, as Respondent was writing a prescription for 50 dosage units of Seconal, he warned the undercover officer that he could become addicted to the Seconal. The officer told Respondent not to worry since he was not using all of the dosage units prescribed, but rather selling some of them or giving them away. Respondent then decided to give the officer more Seconal, so he changed the number five of the 50 to a six and wrote in parentheses "sixty."

In 1974, Special Agents of the Drug Enforcement Administration went to

Respondent's office to conduct an undercover investigation of Respondent's prescribing practices. One undercover agent went to Respondent's office on two occasions, May 13 and June 13, 1974. On each occasion, there were six to eight individuals in Respondent's waiting room when the agent arrived. Each individual preceded the agent into Respondent's office and each spent five to ten minutes with Respondent. During the first visit, Respondent performed a very cursory physical examination of the agent. He weighed the agent and took his blood pressure by placing the blood pressure cuff over the agent's corduroy sport coat. Respondent stated that the agent did not have to lose any weight. The agent asked Respondent for a prescription for Quaaludes (methaqualone), a Schedule II controlled substance, and a prescription for diet pills. Respondent refused to write any Schedule II prescriptions saying that, "prescriptions are watched very closely for that sort of thing." Respondent did however, issue to the agent a single prescription for Pondimin (fenfluramine), an amphetamine-like drug which had been placed in Schedule IV only a year earlier, and Noludar (methyprylon), a Schedule III controlled substance. In 1974, it was a violation of Rhode Island law to prescribe two different substances on one prescription blank.

When the undercover agent returned to Respondent's office on June 13, 1974, Respondent wrote him one prescription for Dexedrine (dextroamphetamine sulfate), a Schedule II controlled substance, and Noludar. Respondent wrote this pescription after weighing the agent. Respondent stated that the agent had lost weight since his last visit when in fact the agent had not lost any weight. The undercover agent had never told Respondent that he wished to lose weight, nor did he give any other legitimate medical need for the drugs prescribed.

In April 1985, the Drug Enforcement Administration initiated another investigation into Respondent's controlled substance prescribing and dispensing practices. This investigation was initiated as a result of information received that Respondent was ordering large quantities of Tylenol with codeine and to further update information from the earlier investigations conducted by the Drug Enforcement Administration, Rhode Island Division of Drug Control and Pawtucket Police Department. On April 30, 1985, a DEA agent went to Respondent's office in an undercover role. Two individuals preceded the agent into the examining room. Each was with Respondent for five to ten minutes. The agent told Respondent that she wanted some Tylenol with codeine. Respondent asked the agent if she were in any pain, to which she replied that she was not. Respondent then stated that Tylenol with codeine is for pain and again asked her if she were in any pain. The agent stated that she had injured her back in a motorcycle accident a year earlier, however she was not in any real pain. Respondent performed a very cursory physical examination which included taking the agent's blood pressure by placing the blood pressure cuff over her long-sleeved shirt. Respondent then wrote the agent a prescription for Tylenol with codeine. In addition, the agent told Respondent that she wanted some sleeping pills for her boyfriend and asked for Doriden (glutethimide), a Schedule III controlled substance, which is in Schedule II under Rhode Island law. Respondent refused to prescribe Doriden, writing a prescription for Dalmane, a Schedule IV controlled substance, instead. The agent was with Respondent in his office for ten to fifteen minutes.

The undercover agent returned to Respondent's office on May 21, 1985. In response to the agent's request for "something stronger than Tylenol with codeine", Respondent stated, "do you mean Percodan?" when the agent stated that she did want Percodan, Respondent refused explaining that prescriptions for Percodan were being watched very closely. Respondent further stated that he could not prescribe Percodan for her since the drugs were not really for her but were for her boyfriend. Respondent then wrote the agent a prescription for 24 dosage units of glutethimide and dispensed directly to the agent 51 dosage units of Tylenol with codeine. It is well known that drug abusers combine glutethimide with preparations of codeine to form a highly addictive and often deadly mixture.

On June 18, 1985, the undercover agent's next visit to Respondent's office, the agent again asked for something stronger than the Tylenol with codeine. Respondent stated that he felt that he should't even be prescribing what he had been prescribing, since there was no justification for what he had already given her. Nonetheless, Respondent wrote the agent a prescription for 30 dosage units of glutethimide and dispensed 50 dosage units of Tylenol with codeine directly to her. Respondent did not perform any sort of physical examination of the agent during either the May 21 visit or the June 18 visit.

On July 2, 1985 the agent returned to Respondent's office acompanied by another DEA agent, posing as her "boyfriend." While waiting to see Respondent, the agents overheard a man in the waiting room discussing with other individuals which of his many excuses he would use with the doctor on this occasion to obtain drugs. The agents observed this man go into Respondent's examining room and emerge about five minutes later carrying a package like the ones in which Respondent dispensed controlled substances. When the agents asked Respondent for some drugs, Respondent replied that he would not prescribe for either of them. Respondent stated that, "I just gave you twice as much as I should have the last time," which was only two weeks earlier. Respondent told the agents to return in a week and he would give them a prescription for controlled substances then.

On September 13, 1985, DEA investigators went to Respondent's office to serve an Administrative Inspection Warrant. The purpose of this inspection was to determine if required controlled substance records were being properly maintained and to conduct an accountability audit of Respondent's controlled substances. The investigators discovered that during the preceding nine months, Respondent had ordered large quantities of Schedule III, IV and V controlled substances. In addition, the investigators noted numerous violations of Federal regulations relating to controlled substances.

The investigators found that Respondent's controlled substances were stored in various and sundry locations around the examining room. Some were stored in mislabled containers and none were locked away or secured as required by 21 CFR 1301.75(b). The investigators also found that Respondent had not taken an initial or biennial inventory of controlled substances on hand in his office as required by 21 CFR 1304.12 and 1304.13. During the hearing in this matter, Respondent admitted that he had never taken such an inventory. Respondent failed to report thefts of controlled substances to the Drug Enforcement Administration as required by 21 CFR 1301.76(b). Finally, the investigators determined that Respondent's records of dispensing of controlled substances were not maintained in a readily retrievable fashion as required by 21 U.S.C. 827(b) and 21 CFR 1304.03. Respondent contends that by looking at his 5,000 to 6,000 patient cards, one could determine the controlled substances that he had dispensed. In

fact however, it would be impossible to determine how many dosage units of controlled substances Respondent had dispensed by looking at his patient cards because Respondent does not differentiate between controlled substances he prescribes for a patient and those he dispenses directly from his office stock.

The Administrative Law Judge concluded that Respondent's DEA Certificate of Registration must be revoked. Although Respondent does have legitimate patients and does dispense controlled substances to those patients in a *bona fide* therapeutic manner, it is very evident that Respondent also dispenses and prescribes controlled substances to individuals without any legitimate medical purpose. He wrote prescriptions for controlled substances or dispensed such substances directly to undercover law enforcement personnel after performing at best, a very cursory physical examination or no examination at all. On several occasions, Respondent wrote prescriptions for an undercover DEA agent after being told that the drugs were not really for the agent, but for her "boyfriend." Respondent wrote prescriptions for Seconal for an undercover policy officer after being told that he was selling some of the drugs or giving them away. Such activity is not to be taken lightly. Respondent prescribed substances for these individuals knowing that the drugs were being used for legitimate purposes.

For over twenty years, Respondent has not only prescribed and dispensed highly abused controlled substances illegitimately, but he has also consistently disregarded the recordkeeping regulations imposed to safeguard the public from the diversion of such substances. An inspection conducted in 1966, revealed a number of violations of Rhode Island controlled substance regulations then in effect, while a subsequent inspection conducted in 1985, revealed numerous violations of both state and Federal regulations. The most serious recordkeeping deficiency noted is that Respondent orders large quantities of controlled substances but then cannot account for what subsequently happens to the drugs.

The Administrative Law Judge recommended that Respondent's DEA registration be revoked, noting that for twenty years, Respondent has demonstrated a continuing determination to disregard controlled substance laws and regulations. Judge Young concluded that Respondent cannot be entrusted with a DEA registration.

The Administrator adopts the recommended ruling and decision of the Administrative Law Judge in its entirety. The Administrator concludes that Respondent's continued registration is inconsistent with the public interest and that his DEA Certificate of Registration must be revoked. It is evident that Respondent cannot fully appreciate the heavy public responsibility which accompanies DEA registration.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AM3274278, previously issued to John H. Mulvany, M.D., be, and it hereby is revoked. Any pending applications for renewal of such registration are hereby denied. This order is effective April 27, 1987.

Date: March 23, 1987.

John C. Lawn,

Administrator.

[FR Doc. 87-6739 Filed 3-26-87; 8:45 am]

BILLING CODE 4410-09-M

Office of Juvenile Justice and Delinquency Prevention

Coordinating Council; Meeting

The second quarterly meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention will be held in Washington, DC, on April 23, 1987. The meeting will take place in Room 703A at the Department of Health and Human Services, Hubert Humphrey Building, 200 Independence Avenue SW., from 9:30 a.m. to 12:00 noon. The public is welcome to attend.

The agenda will include matters related to the coordination of the Federal effort with regard to the implementation of the Anti-Drug Abuse Act as its provisions apply to children and youth and the prevention of delinquency.

For further information, please contact Roberta Dorn, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Washington, DC 20531, (202) 724-7655.

Dated: March 24, 1987.

Approved:

Verne L. Speirs,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 87-6809 Filed 3-26-87; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is

received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Alabama:
- AL87-23 (Jan. 2, 1987) ..... p. 51.
- AL87-24 (Jan. 2, 1987) ..... p. 55.
- AL87-25 (Jan. 2, 1987) ..... p. 60.
- AL87-28 (Jan. 2, 1987) ..... p. 68b.

New York: NY87-1 (Jan. 2, 1987). p. 682.

Pennsylania:
- PA87-1 (Jan. 2, 1987) ..... p. 844.
- PA87-2 (Jan. 2, 1987) ..... pp. 856-857.
- PA87-4 (Jan. 2, 1987) ..... p. 874.
- PA87-5 (Jan. 2, 1987) ..... p. 884.
- PA87-7 (Jan. 2, 1987) ..... p. 906.
- PA87-8 (Jan. 2, 1987) ..... pp. 916-917, p. 921.
- PA87-9 (Jan. 2, 1987) ..... pp. 926-927.
- PA87-11 (Jan. 2, 1987) ..... p. 940.
- PA87-13 (Jan. 2, 1987) ..... p. 946.

Tennessee: TN87-3 (Jan. 2, 1987). p. 1088.

Listing by location (index)..... p. xxii.

Volume II

Illinois: IL87-14 (Jan. 2, 1987)... pp. 187-188.

Indiana: IN87-2 (Jan. 2, 1987)... p. 251.

Michigan: MI87-7 (Jan. 2, 1987). pp. 485-486.

Oklahoma:
- OK87-13 (Jan. 2, 1987)..... p. 894.
- OK87-14 (Jan. 2, 1987)..... p. 903.

Texas:
- TX87-18 (Jan. 2, 1987)..... pp. 966-968.
- TX87-21 (Jan. 2, 1987)..... p. 975.

Wisconsin:
- WI87-8 (Jan. 2, 1987)..... p. 1111.
- WI87-10 (Jan. 2, 1987)..... p. 1132.

Volume III

Oregon: OR87-1 (Jan. 2, 1987).. p. 284.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington DC, this 20th day of March 1987.

Alan L. Moss,

Director, Division of, Wage Determinations.

[FR Doc. 87-6499 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging; Charges for Meals

AGENCY: U.S. Employment Service, Employment and Training Administration, Labor.

ACTION: Notice of annual adjustments in meal charges.

SUMMARY: The Director, U.S. Employment Service, announces the annual adjustment for 1987 in the allowable meal charges for furnishing three daily meals to U.S. and alien workers employed by covered agricultural and logging employers who provide such meals to their U.S. and alien workers. The adjustments are based upon Consumer Price Index (CPI) data.

EFFECTIVE DATE: March 27, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Bruening, Chief, Division of Foreign Labor Certifications, Telephone: (202) 535-0163.

SUPPLEMENTARY INFORMATION: On August 26, 1986, the Employment and Training Administration (ETA) of the Department of Labor (DOL) published in the **Federal Register** at 51 FR 30348 a final rule amending the temporary alien agricultural labor certification regulations at 20 CFR 655.202(b)(4) and 655.211(a) regarding the amount covered agricultural and logging employers may charge their U.S. and alien workers each day for meals. The final rule, which became effective September 25, 1986, provides for annual adjustments of allowable charges based upon Consumer Price Index (CPI) data. Each year the charge allowed by § 655.202(b)(4) is changed by the same percentage as the 12-month percent change for the Consumer Price Index for All Urban Consumers for Food (CPI-U for Food) between December of the year just concluded and December of the year prior to that.

Sections 655.202(b)(4) and 655.211(a) provide that the appropriate Regional Administrator (RA) may permit an employer to charge workers up to a higher maximum amount for providing them with three meals per day. Section 655.211(a) further provides that each year the maximum charge allowed by paragraph (a) will be changed by the same percentage as the 12-month percent change in the CPI-U for Food between December of the year just concluded and December of the year prior to that.

The regulation requires the Director, United States Employment Service (USES), to make the annual adjustments and to cause a notice to be published in the **Federal Register** each calendar year, announcing annual adjustments in allowable charges that may be made by covered agricultural or logging employers for providing three meals to their U.S. and alien agricultural or

logging workers. The last notice was published at 51 FR 39597 (October 29, 1986).

1987 Annual Adjustment of Allowable Charges

The 12-month percent change for the CPI–U for Food between December 1985 and December 1986 was an increase of 3.8 percent. Accordingly, the adjusted charge allowed by 20 CFR 655.202(b)(4) is now $5.26, an increase of 3.8 percent over the previously allowed charge of $5.07. The adjusted maximum charge the RA, pursuant to 20 CFR 655.211(a), may permit an employer to charge workers for providing them with three meals per day is now $6.58, an increase of 3.8 percent over the previously allowed maximum charge of $6.34.

Signed at Washington, DC, this 20th day of March 1987.

Robert A. Schaenfl,

Director, U.S. Employment Service.

[FR Doc. 87-6759 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,678]

Bass Enterprises Production Co.; Fort Worth, TX; Negative Determination Regarding Application for Reconsideration

By an application dated February 21, 1987, the petitioners requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance for workers at Bass Enterprises Production Company, Fort Worth, Texas. The denial notice was signed on February 2, 1987 and will soon be published in the **Federal Register.**

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petitioners assert that they filed only for the geologists, geophysicists and landmen and not all workers as stated in the Department's negative determination. It is claimed that the decline in oil prices due to imported crude oil has adversely affected their employment at Bass Enterprises. The petitioners also claim that Bass Enterprises met the decreased sales and production criterion of the Trade Act, especially in value and question the credibility of the production and sales data furnished to the Department.

Geologists, geophysicists and landmen at Bass Enterprises perform services for the subject firm. The Department has consistently determined that the performance of services does not constitute the production of an article, as required by the Trade Act of 1974; and this determination has been upheld in the U.S. Court of Appeals. Service workers, however, may become eligible for benefits if their reduction in demand for their services is determined to have originated at a production facility related to the workers' firm by ownership, whose workers independently meet the statutory criteria for certification. The reduction in demand for services must relate directly to the products adversely affected by increased imports. Accordingly, the Department instituted the petition by the geologists and others on behalf of all workers at Bass Enterprises to determine whether they qualify for adjustment assistance.

Bass Enterprises produces and sells mainly crude oil. Some natural gas is produced and sold; however, the workers are not separately identifiable by products. The Department's denial notice is based on the fact none of the group eligibility requirements set in section 222 of the Trade Act were met. Findings in the Department's investigation show that average total employment at Bass Enterprises increased in 1985 compared with 1984 and in 1986 compared with 1985. Further, Bass Enterprises' total sales and production increased, though marginally in quantity, in 1985 compared with 1984 and in 1986 compared with 1985. According to company officials, Bass Enterprises is selling all the crude oil it can produce. Lastly, U.S. imports of crude oil decreased absolutely and relative to domestic shipments in 1985 compared to 1984 and customers accounting for a substantial portion of sales and production at Bass Enterprises decreased purchases of imported crude oil in the first half of 1986 compared with the first half of 1985.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 18th day of March, 1987.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 87-6760 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,133, et al.]

Cliffwood Energy Co.; Pasadena, CA; et al.; Dismissals of Applications for Reconsideration

Pursuant to 29 CFR 90.18 applications for administrative reconsideration were filed with the Director of the Office of Trade Adjustment Assistance for workers at the Cliffwood Energy Company, Pasadena, California; Cyclops Corporation's Cytemp Division, Mount Lebanon, Pennsylvania; American Bag Corporation, Pine Knot, Kentucky; ASARCO's Amarillo Copper Refinery, Amarillo, Texas; J. I. Case Company, Racine, Wisconsin indicated that the applications contained no new substantial information which would bear importantly on the Department's determinations. Therefore dismissals of the applications were issued.

TA–W–18,133; Cliffwood Energy Company, Pasadena, California (February 11, 1987)

TA–W–17,357; Cyclops Corporation, Cytemp Division, Mount Lebanon (December 16, 1986)

TA–W–17,879; American Bag Corporation, Pine Knot, Kentucky (February 18, 1987)

TA–W–17,886; ASARCO'S Amarillo Copper Refinery, Amarillo, Texas (December 30, 1986)

TA–W–17,887; J. I. Case Company, Racine, Wisconsin (December 31, 1986)

Signed at Washington, DC, this 19th day of March 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-6761 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-17,723, et al.]

The Lee Co., et al; Dismissals of Applications for Reconsideration

Pursuant to 29 CFR 90.18 applications for administrative reconsideration were filed with the Director of the Office of Trade Adjustment Assistance for workers at the The Lee Company, Madison, Alabama; Eastman Kodak Company, Colorado Division, Windsor, Colorado; AT&T Information Systems'

Service Center, Milwaukee, Wisconsin; Ridge Tool Company, Elyria, Ohio; Sam's Well Service, Guymon, Oklahoma. The reviews indicated that the applications contained no new substantial information which would bear importantly on the Department's determinations. Therefore dismissals of the applications were issued.

TA-W-17,723; The Lee Company, Madison, Alabama (March 6, 1987)
TA-W-18,729; Eastman Kodak Company, Colorado Division, Windsor, Colorado (March 9, 1987)
TA-W-18,435; AT&T Information System's Service Center, Milwaukee, Wisconsin (March 13, 1987)
TA-W-18,555; Ridge Tool Company, Elyria, Ohio (February 26, 1987)
TA-W-18,669; Sam's Well Service, Guymon, Oklahoma (March 3, 1987)

Signed at Washington, DC, this 19th day of March 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-6762 Filed 3-26-8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,481, et al.]

Lloyd Schoenheit Truck and Tractor Service, Inc.; Grayville, IL; Dismissals of Applications for Reconsideration

Pursuant to 29 CFR 90.18 applications for administrative reconsideration were filed with the Director of the Office of Trade Adjustment Assistance for workers at the Lloyd Schoenheit Truck and Tractor Service, Inc., Grayville, Illinois; NATCO, Electra, Texas; Ekco Housewares, Incorporated, Canton, Ohio indicated that the applications contained no new substantial information which would bear importantly on the Department's determinations. Therefore dismissals of the applications were issued.

TA-W-18,481; Lloyd Schoenheit Truck and Tractor Service, Inc., Grayville, Illinois (December 22, 1986)
TA-W-18,960; NATCO, Electra, Texas (March 4, 1987)
TA-W-17,441A & TA-W-16,654; Ekco Housewares, Incorporated, Canton, Ohio (March 12, 1987)

Signed at Washington, DC, this 19th day of March 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-6763 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19,313]

Parker Drilling Co.; Tulsa, OK; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 9, 1987 in response to a worker petition received on March 9, 1987; and filed by the workers on behalf of employees at Parks Drilling Company, Tulsa, Oklahoma.

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA-W-18,312). Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 19th day of March 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-6764 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-17,061]

Tractech, Inc., Mercury Products Division; Canton, OH; Amended Revised Determination

In accordance with 29 CFR 90.18(g) and the criteria set forth in section 222 of the Trade Act, the Department issued a Revised Determination of Eligibility to Apply for Worker Adjustment Assistance on October 27, 1986 applicable to all workers in the Turret Lathe Department and Machine Shop engaged in employment related to the production of the machined clutch castings and to brake turning operations at Tractech, Incorporated, Mercury Products Division, Canton, Ohio. The revised determination notice was published in the **Federal Register** on November 25, 1986 (51 FR 42661).

Subsequent to the revised determination on reconsideration, the International Association of Machinists requested that the Department amend its revised determination for workers at the Canton facility to include all workers engaged in employment related to the production of clutches since the completed clutch is being imported by the company.

Workers producing components for the completed clutch assembly were first laid off in October, 1985 when their production was transferred to another company plant in Europe. New findings show that the completed clutch assemblies began to arrive at Canton, Ohio from Europe in November and December of 1986. All production workers at Tractech, Inc., Mercury Products Division, Canton, Ohio were laid off on March 13, 1987.

The intent of the certification is to cover all workers of Tractech Inc., Mercury Products Division, Canton, Ohio engaged in employment related to the production of machined clutch castings, brake turning operations and finished clutch assemblies. The amended revised notice applicable to TA-W-17,061 is hereby issued as follows:

All workers Tractech, Inc., Mercury Products Division, Canton, Ohio, engaged in employment related to the production of machined clutch castings, brake turning operations and clutch assemblies who became totally or partially separated from employment on or after October 1, 1985 and before May 1, 1987 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 19th day of March 1987.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87-6765 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-87-31-C]

B. and B. Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

B. and B. Coal Company, 225 Main Street, Joliett-Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting requipment; general) to its Rock Ridge Slope (I.D. No. 36-07175) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed they would be activated on knuckles and curves when no

emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device. The hoisting ropes would have a fact of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 27, 1987. Copies of the petition are available for inspection at that address.

Dated: March 20, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-6766 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-46-C]

Brush Creek Coal Co., Petition for Modification of Application of Mandatory Safety Standard

Brush Creek Coal Company, Artemus, Kentucky 40903 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 1 (I.D. No. 15-14483) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 35% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of continuous methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous miner will be available to assure that all coal hauling tractors will be equipped with a continous miner;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed altlernate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 27, 1987. Copies of the petition are available for inspection at that address.

Dated: March 20, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-6767 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-53-C]

Calvary Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Calvary Coal Company, H.C. 81 Box 1532, Hinkle, Kentucky 40953 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Ridge Mine No. 1 (I.D. No. 15-10274) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirements that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of continuous machine mounted methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous miner will be available to assure that all coal hauling tractors will be equipped with a continuous miner;

(e) Each monitor will be removed from the mine at the end of the shift, and will

be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 27, 1987. Copies of the petition are available for inspection at that address.

Dated: March 30, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-6768 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-45-C]

Castle Gate Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Castle Gate Coal Company, P.O. Box 449, Helper, Utah 84526 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Castle Gate Portal No. 3 Mine (I.D. No. 42-00165), and its Castle Gate Portal No. 5 Mine (I.D. No. 42-01202), both located in Carbon County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requiement that intake and return aircourses be separated from belt haulage entries and that belt haulage entries not be used to ventilate active working places.

2. Petitioner states that all of the natural conditions conducive to mountain humps are present in the Castle Gate coal reserves, i.e. mountainous terrain, thick overburden, massive sandstone members above and below the seams, stressed coal beds as a result of previous multiple seam mining, the strength of rock and coal properties, and the ability of coal pillars to store tremendous energy which result in violent pillar, roof and failure in developed entries.

3. As an alternate method, petitioner proposes to develop a two-entry system. The belt entry will be used as a return aircourse during longwall development, and as an intake during longwall extraction to insure adequate ventilation quantity to dilute and render harmless any methane or other noxious gases that may otherwise accumulate.

4. Petitioner further states that the use of a two-entry system would reduce bumps, improve roof and rib conditions, keep escapeways open, maintain airways, and improve ventilation.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 27, 1987. Copies of the petition are available for inspection at that address.

Dated: March 20, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-6769 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-29-C]

Chapperal Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Chapperal Coal Corporation, 441 Marion Branch Road, Pikeville, Kentucky 41501 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 3 Mine (I.D. No. 15-08257) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine is in the Elkhorn No. 3 seam, ranging from 55 to 72 inches in height with undulation.

3. Petitioner states that the use of a cab or canopy on the mine's equipment would result in a diminution of safety to the miners affected because the cab or canopy would limit the equipment operator's visibility and limit the operator's mobility. The cab or canopy would dislodge the 30" conventional type roof bolts used to support the immediate sandstone roof, thus creating a constant hazard of spot bolting and the removal of partially dislodged roof bolts.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 27, 1987. Copies of the petition are available for inspection at that address.

Dated: March 19, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-6770 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-30-C]

Clinchfield Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Clinchfield Coal Company, P.O. Box 4000, Lebanon, Virginia 24266 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Moss No. 3A-2 Portal Mine (I.D. No. 44-01642) located in Dickenson County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine is in the Jawbone coalbed ranging from 24 to 96 inches in height, with undulations.

3. Petitioner states that the use of cabs or canopies on the mine's electric face equipment would result in a diminution of safety for the miners affected because the cabs or canopies would decrease the equipment operator's visibility, create discomfort to the operator and could dislodge roof supports.

4. For these reasons, petitioner requests a modification of the standard in mining heights of 60 inches or less.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 27, 1987. Copies of the petition are available for inspection at that address.

Dated: March 19, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-6771 Filed 3-26-87; 8:45 am]

BILLING CODE 4501-43-M

[Docket No. M-87-42-C]

Eastern Mingo Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Eastern Mingo Coal Company, P.O. Box 119, Naugatuck, West Virginia 25685 has filed a petition to modify the application of 30 CFR 75.900 (low- and medium-voltage circuits serving three-phase alternating current equipment; circuit breakers) to its Mine No. 1 (I.D. No. 46-05978) located in Mingo County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that low- and medium-voltage power circuits serving three-phase alternating current equipment be protected by suitable circuit breakers of adequate interrupting capacity which are properly tested and maintained. Such breakers shall be equipped with devices to provide protection against undervoltage, grounded phase, short circuit, and overcurrent.

2. Petitioner states that an unusually high number of momentary power losses have been experienced. When the power blinks or an outage occurs and service is restored, a lot of people rush about to get the U.V.R. breakers put back in at the belt drives. Many times, although they are qualified, people are performing a task that is not a part of their normal routine, and a sense of urgency often contributes to a set of circumstances which places the safety of not only themselves but those around them in jeopardy.

3. As an alternate method, petitioner proposes to use contactors in lieu of circuit breakers to obtain undervoltage protection. This would reduce the sense of urgency that jeopardizes people's safety, there would be less exposure to unusual circumstances by mine personnel and the travelways would be safer.

4. In further support of this request, petitioner states that:

(a) Prior to each startup, an audible alarm will be sounded for 30 seconds that can be heard the full length of the conveyor. A sufficient number of alarms horns will be installed and maintained along each belt conveyor flight to ensure that the prestart alarm can be heard over the ambient noise level along the entire length of the belt conveyor flight. The alarms will operate on a nominal voltage of 24 volts or less and will be examined, tested, and properly maintained.

(b) All miners who are assigned to work in belt conveyor entries will be trained about the purpose of the pre-start alarm systems, and the potential hazards of working on or near belt conveyors and belt conveyor drives:

(c) Belt power contactors will be built into or permanently affixed to the transformer enclosure, properly separated and isolated from the other components of the unit;

(d) Frequent examinations will be made by a qualified person, properly recorded and made available for inspection at all times;

(e) All affected personnel will be trained in the circuit plans used at these locations, and the subject will be covered in all electrical retraining classes with records kept and available for inspection at all times;

(f) Undervoltage release will be obtained by the electrical nature of contactors and relays, which drop out at 40 to 50%; and

(g) All control voltage will be 24 volts.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 27, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-6772 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-52-C]

J and W Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

J and W Coal Company, P.O. Box 361, Woodbine, Kentucky 40771 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 1 (I.D. No. 15-13265) located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 35% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of continuous machine mounted methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time betweeen trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous miner will be available to assure that all coal hauling tractors will be equipped with a continuous miner;

(e) Each monitor will be removed from the mine at the end of the shift, and

will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 27, 1987. Copies of the petition are available for inspection at that address.

Dated: March 20, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-6773 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-6-M]

Lundberg Industries Ltd.; Petition for Modification of Application of Mandatory Safety Standard

Lundberg Industries Limited, P.O. Box 31, Carlsbad, New Mexico 88220 has field a petition to modify the application of 30 CFR 57.12013 (splices and repairs of power cables) to its Lundberg Industries Limited Mine (I.D. No. 29-00173) located in Eddy County, New Mexico. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permanent splices and repairs made in power cables, including the ground conductor where provided, shall be mechanically strong with electrical conductivity as near as possible to that of the original; insulated to a degree at least equal to that of the original, and sealed to exclude moisture; and, provided with damage protection as near as possible to that of the original, including good bonding to the outer jacket.

2. The splices affected are in high voltage (2,300 V, 4,160 V, 12,470 V) cables transmitting power to transformers throughout the mine.

3. Petitioner states that the rebuilding of an outer jacket over the splices would result in a diminution of safety for the miners affected because the outer jacket would prevent periodic visual inspections of conductors and ground wires, and would make detection, with test equipment, of temperature rise from poorly made or loosened phase connections more difficult. The physical separation of the phase wires also would decrease the possibility of tracking or arcing between phases.

4. Petitioner further states that conditions throughout the mine are extremely dry and all such cables are suspended from either the back or rib. Coverings on individual conductor splices are dielectrically equal to or better than original insulation.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 27, 1987. Copies of the petition are available for inspection at that address.

Dated: March 19, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-6774 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-23-C]

Mid-Continent Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Mid-Continent Resources, Inc., 818 Colorado Avenue, Glenwood Springs, Colorado 81602 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Dutch Creek No. 1 Mine and its Rock Tunnels Project (I.D. No. 05-00301), and its Dutch Creek No. 2 Mine (I.D. No. 05-00469) all located in Pitkin County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that entries used as intake and return aircourses be separated from belt haulage entries, and that belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use the belt haulage entry to ventilate active working places.

3. In support of this request, petitioner proposes to install an early warning fire detection system. A low-level carbon monoxide (CO) detection system will be installed in all belt entries used as intake aircourses and at each belt drive and tailpiece located in intake aircourses. The monitoring devices will be capable of giving warning of a fire for a minimum of four hours should the power fail; a visual alert signal will be activated when the CO level is 10 parts per million (ppm) above ambient air and an audible signal will sound at 15 ppm above ambient air. All persons will be withdrawn to a safe area at 10 ppm and evacuated at 15 ppm. The fire alarm signal will be activated at an attended surface location where there is two-way communication. The CO system will be capable of identifying any activated sensor and monitoring electrical continuity to detect any malfunctions.

4. The CO system will be visually examined at least once each coal producing shift and tested for functional operation weekly to insure the monitoring system is functioning properly. The monitoring system will be calibrated with known concentrations of CO and air mixtures at least monthly.

5. If the CO monitoring system is deenergized for routine maintenance or for failure of a sensor unit, the belt conveyor will continue to operate and qualified persons will patrol and monitor the belt conveyor using hand-held CO detecting devices.

6. The permanent stoppings separating the conveyor belt entries from the intake escapeway will be specifically approved in the Ventilation System and Methane and Dust Control Plan for the mine.

7. Petitioner states that the proposed alternate method will provide the same degree of safety for the miner affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 27, 1987. Copies of the petition are available for inspection at that address.

Dated: March 19, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-6775 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-24-C]

Mid-Continent Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Mid-Continent Resources, Inc., 1058 Road 100, P.O. Box 158, Carbondale, Colorado 81623 has filed a petition to modify the application of 30 CFR 75.1403-5(g) (belt conveyors) to its Dutch Creek No.1 Mine and its Rock Tunnels Project (I.D. No. 05-00301), and its Dutch Creek No. 2 Mine (I.D. No. 05-00469) all located in Pitkin County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a clear travelway at least 24 inches wide should be provided on both sides of all belt conveyors. Where roof supports are installed within 24 inches of a belt conveyor, a clear travelway at least 24 inches wide should be provided on the side of such support farthest from the conveyer.

2. As an alternate method, petitioner seeks a modification of the standard to permit the RTP raw coal-haulage beltline, its structures and its continuations to be constructed and operated without a 24-inch clearance on the "off-side" (the North or non-travel side of the RTP north adit beltway) of such beltline. In further support of this request, petitioner states that:

(a) The RTP coal haulage beltline, by its design, can be examined, cleaned, serviced and repaired from its south-side (the normal travel side for the limited travel which should occur in the north-adit). Because of the length of the RTP coal haulage beltline, it is important that it be vehicle accessible along its entire length in an emergency and for examination, maintenance and repair. Vehicle access can be more safely achieved by placement of the RTP coal haulage beltline closer than 24-inches to the north rib off the north adit of the RTP;

(b) The beltline is used solely for transporting mined raw coal from the connecting underground coal seams and their respective working sections;

(c) The RTP coal haulage beltline will be conspicously posted with signs prohibiting pedestrian travel on the north- or off-side of the beltline. Any area where cross-over or cross-under is permitted will be conspicuously signed; and

(d) Persons performing examinations, service or repair work will only be permitted to trave at tailpieces or belt drives.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 27, 1987. Copies of the petition are available for inspection at that address.

Dated: March 20, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-6776 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-48-C]

Mingo Coal Co.; Inc.; Petition for Modification of Application of Mandatory Safety Standard

Mingo Coal Company, Inc., Route 4 Box 178, Corbin, Kentucky 40701 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 3 (I.D. No. 15-15213) and its Mine No. 4 (I.D. No. 15-15811) both located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternative method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of the continuous machine mounted methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will be provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous miner will be available to assure that all coal hauling tractors will be equipped with a continuous miner;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 27, 1987. Copies of the petition are available for inspection at that address.

Dated: March 20, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-6777 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-54-C]

Pickands Mather and Co.; Petition for Modification of Application of Mandatory Safety Standard

Pickands Mather & Company, Route 1, Box 819, Pikeville, Kentucky 41501 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Scotts Branch Mine (I.D. No. 15-08079) located

in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that return aircourses be examined in their entirely on a weekly basis.

2. Petitioner states that due to a roof fall, a certain area of the return aircourse is not safe to travel. Due to the extreme size of the fall area, it cannot be safely cleaned up and resupported.

3. As an alternate method, petitioner proposes that:

(a) There will be adequate air flow maintained across the top of the fall area to dilute and render harmless any concentrations of methane that might accumulate;

(b) While the longwall face is retreating toward the fall area, the top end bleeder system will be used to ventilate the face and maintain a positive pressure on the gob, as well as a flow of return air outby the tailgate entry and across the top of the fall area;

(c) While mining the longwall panel adjacent to the roof fall, a 4'0 diameter steel duct will be maintained from inby the roof fall area to extend outby the full length of the fall to the outby side of the fall area; and

(d) The tailgate immediate return aircourse on the 2nd Right panel will be physically examined in its entirely from the longwall face outby to the fall area, and also from where the immediate return aircourse dumps into the main return inby to the fall area. This will enable the petitioner to monitor both air flow and methane liberation in the fall area.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 27, 1987. Copies of the petition are available for inspection at that address.

Dated: March 19, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-6778 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-43-C]

Southern Mingo Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Southern Mingo Coal Company, P.O. Box 119, Naugatuck, West Virginia 25685 has filed a petition to modify the application of 30 CFR 75.900 (low- and medium-voltage circuits serving three-phase alternating current equipment; circuit breakers) to its Mine No. 1 (I.D. No. 46-06278) located in Mingo County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that low- and medium-voltage power circuits serving three-phase alternating current equipment be protected by suitable circuit breakers of adequate interrupting capacity which are properly tested and maintained. Such breakers shall be equipped with devices to provide protection against undervoltage, grounded phase, short circuit, and overcurrent.

2. Petitioner states that an unusually high number of momentary power losses have been experienced. When the power blinks or an outage occurs and service is restored, a lot of people rush about to get the U.V.R. breakers put back in at the belt drives. Many times, although they are qualified, people are performing a task that is not a part of their normal routine, and a sense of urgency often contributes to a set of circumstances which places the safety of not only themselves but those around them in jeopardy.

3. As an alternate method, petitioner proposes to use contactors in lieu of circuit breakers to obtain undervoltage protection. This would reduce the sense of urgency that jeopardizes people's safety, there would be less exposure to unusual circumstances by mine personnel and the travelways would be safer.

4. In further support of this request, petitioner states that:

(a) Prior to each startup, an audible alarm will be sounded for 30 seconds that can be heard the full length of the conveyor. A sufficient number of alarm horns will be installed and maintained along each belt conveyor flight to ensure that the prestart alarm can be heard over the ambient noise level along the entire length of the belt conveyor flight. The alarms will operate on a nominal voltage of 24 volts or less and will be examined, tested, and properly maintained.

(b) All miners who are assigned to work in belt conveyor entries will be trained about the purpose of the pre-start alarm systems, and the potential hazards of working on or near belt conveyors and belt conveyor drives;

(c) Belt power contactors will be built into or permanently affixed to the transformer enclosure, properly separated and isolated from the other components of the unit;

(d) Frequent examinations will be made by a qualified person, properly recorded and made available for inspection at all times;

(e) All affected personnel will be trained in the circuit plans used at these locations, and the subject will be covered in all electrical retraining classes with records kept and available for inspection at all times;

(f) Undervoltage release will be obtained by the electrical nature of contactors and relays, which drop out at 40 to 50%; and

(g) All control voltage will be 24 volts.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 27, 1987. Copies of the petition are available for inspection at that address.

Dated: March 20, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-6779 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-3-M]

Sunrise Construction Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Sunrise Construction Company, Inc., P.O. Box 1685, Rock Springs, Wyoming 82901 has filed a petition to modify the application of 30 CFR 56.12028 (testing grounding systems) to its Sunrise Crusher (I.D. No. 48-01277) located in Sweetwater County, Wyoming. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that continuity and resistance of grounding systems be tested immediately after installation, repair, and modification; and annually thereafter.

2. Petitioner requests a modification of the standard for portable or mobile plants.

3. As an alternate method, petitioner proposes to install at least two ground rods. In further support of this request, petitioner states that:

(a) When practical, all ground rods will be installed below the permanent moisture level. Each rod will be at least six feet from any other ground electrode and all electrodes will be free from any nonconductive coatings;

(b) Rod and pipe electrodes will be at least eight feet long. Electrodes of pipe or conduit will be at least ¾ inch trade size, and if iron or steel, will have a galvanized or equivalent noncorrosive coating. Electrodes of rods of steel or iron will be at least ⅝ inch in diameter. Where possible, the electrodes will be driven to a depth of at least eight feet. Where a rock bottom is encountered, the electrodes will be buried at a depth of at least four feet;

(c) The electrodes and associated conductors will be visually inspected for bonding and deterioration each time a plant move is made;

(d) Annual bed measurements will be performed when any plant remains in the same exact location for more than one year; and

(e) Equipment grounding continuity measurements will be performed after each move.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 27, 1987. Copies of the petition are available for inspection at that address.

Dated: March 19, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-6780 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-37-C]

Switch Energy Corp.; Petition for Modification of Application of Mandatory Safety Standard

Switch Energy Corporation, P.O. Box 550, Cornettsville, Kentucky 41731 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Mine No. 1 (I.D. No. 15-11596) located in Perry County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Petitioner states that due to deteriorated roof and ground conditions, certain portions of the mine are unsafe to travel and any attempt to rehabilitate these areas would be exposing miners to hazardous conditions.

3. As an alternate method, petitioner proposes to establish designated checkpoints where visual inspections can be made.

4. In further support of this request, petitioner states that there is no obstruction of airflow, and that the return is not used as nor designated as an escapeway.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 27, 1987. Copies of the petition are available for inspection at that address.

Dated: March 19, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-6781 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-41-C]

Western Mingo Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Western Mingo Coal Company, P.O. Box 119, Naugatuck, West Virginia 25685 has filed a petition to modify the application of 30 CFR 75.900 (low- and medium-voltage circuits serving three-phase alternating current equipment; circuit breakers) to its Mine No. 1 (I.D. No. 46-05055) located in Mingo County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that low- and medium-voltage power circuits serving three-phase alternating current equipment be protected by suitable circuit breakers of adequate interrupting capacity which are properly tested and maintained. Such breakers shall be equipped with devices to provide protection against undervoltage, grounded phase, short circuit, and overcurrent.

2. Petitioner states that an unusually high number of momentary power losses have been experienced. When the power blinks or an outage occurs and service is restored, a lot of people rush about to get the U.V.R. breakers put back in at the belt drives. Many times, although they are qualified, people are performing a task that is not a part of their normal routine, and a sense of urgency often contributes to a set of circumstances which places the safety of not only themselves but those around them in jeopardy.

3. As an alternate method, petitioner proposes to use contactors in lieu of circuit breakers to obtain undervoltage protection. This would reduce the sense of urgency that jeopardizes people's safety, there would be less exposure to unusual circumstances by mine personnel and the travelways would be safer.

4. In further support of this request, petitioner states that:

(a) Prior to each startup, an audible alarm will be sounded for 30 seconds that can be heard the full length of the conveyor. A sufficient number of alarm horns will be installed and maintained along each belt conveyor flight to ensure that the prestart alarm can be heard over the ambient noise level along the entire length of the belt conveyor flight. The alarms will operate on a nominal voltage of 24 volts or less and will be examined, tested, and properly maintained.

(b) All miners who are assigned to work in belt conveyor entries will be trained about the purpose of the pre-start alarm systems, and the potential hazards of working on or near belt conveyors and belt conveyor drives;

(c) Belt power contactors will be built into or permanently affixed to the transformer enclosure, properly separated and isolated from the other components of the unit;

(d) Frequent examinations will be made by a qualified person, properly recorded and made available for inspection at all times;

(e) All affected personnel will be trained in the circuit plans used at these locations, and the subject will be covered in all electrical retraining classes with records kept and available for inspection at all times;

(f) Undervoltage release will be obtained by the electrical nature of contactors and relays, which drop out at 40 to 50%; and

(g) All control voltage will be 24 volts.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 27, 1987. Copies of the petition are available for inspection at that address.

Dated: March 20, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-6782 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 87-29]

NASA Advisory Council (NAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, NASA announces a forthcoming meeting of the NASA Advisory Council, Informal Space Life Sciences Committee.

DATE AND TIME: April 29, 1987, 9:45 a.m. to 5:30 p.m., and April 30, 1987, 8 a.m. to 3:30 p.m.

ADDRESS: Ames Research Center (ARC), National Aeronautics and Space Administration, The Committee Room, Building 200, Moffett Boulevard, Moffett Field, CA 94035.

FOR FURTHER INFORMATION CONTACT: Dr. James H. Bredt, Code EBR, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1540).

SUPPLEMENTARY INFORMATION: The NASA Advisory Council Informal Space Life Sciences Committee was established to formulate a comprehensive strategic plan for space life sciences, identify essential efforts with appropriately phased objectives, and define efficient implementing strategies to pursue these goals. The Committee, chaired by Dr. Frederick C. Robbins, has 17 members.

This meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including Committee members and other participants).

Type of Meeting: Open.

Agenda:

April 29, 1987

9:45 a.m.—Announcements.

10 a.m.—Remarks by ARC Director and Overview of ARC Life Sciences Activities.

11:30 a.m.—Briefings by ARC staff.

5:30 p.m.—Adjourn.

April 30, 1987

8 a.m.—Briefings by Representatives of the European Space Agency and the National Space Development Agency of Japan.

9:30 a.m.—Study Group Reports and Discussion.

3:30 p.m.—Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

March 23, 1987.

[FR Doc. 87-6697 Filed 3-26-87; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Disposition Authority (Records Schedules)

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to other value. Notice is published for records schedules that: (1) Propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before [May 11, 1987]. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of orgin, the rights and interests of the Government and of private poersons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending Approval:

1. Department of the Army, Information Systems Command (N1-338-86-5). Housekeeping records of Army Commands (schedule provides for

permanent retention of records reflecting substantive policies, procedures, and activities).

2. Department of the Army, N1–77–87–1. Housekeeping records of the Office of the Chief of Engineers, ca. 1940–47 (schedule provides for permanent retention of records reflecting substantive policies, procedures, and activities).

3. Department of the Navy, Chief of Naval Operations, Commander Naval Oceanography Command (N1–NU–87–1). A comprehensive schedule of all oceanographic; meteorological; hydrographic; and mapping, charting, and geodetic activity records; including records documenting overall policies and programs which are permanent.

4. Department of Agriculture, Forest Service, information Systems Staff (N1–95–87–5). Information management correspondence dealing with routine administration of the agency's information systems and information resource management plans and studies.

5. Department of Agriculture, Forest Service, Computer Sciences and Telecommunications Staff (N1–95–87–6). Systems management correspondence dealing with routine administration of the agency's computer systems.

6. Department of Agriculture, Forest Service, Timber Management Staff (N1–95–87–10). Special plans and studies.

7. U.S. Arms Control and Disarmament Agency, Office of Administration (N1–383–87–1). Comprehensive records control schedule covering all program and administrative records.

8. Department of Commerce, National Oceanic and Atmospheric Administration (NC1–370–85–2). Case files pertaining to the approved, financial administration, and payment of grants.

9. Defense Communications Agency (N1–371–87–1). Technical and administrative support records relating to the Autodin II communication system.

10. Defense Logistics Agency (N1–361–86–3). Records relating to the administration of the Model Installation Program.

11. Defense Logistics Agency, Administration Staff Director, Resources Management Division (N1–361–86–4). Internal control program records. (Data is summarized in permanent annual reports maintained by the Office of the Secretary of Defense.)

12. Department of Justice, Civil Division, Foreign Litigation Section (N1–131–86–5, –7, –12, –20, –23, and –28). Records, 1917–66, of the Office of Alien Property: audit reports, proposed determinations involving insolvent estate debt claims, case files covering sales of vested properties, the Philippine Alien Property Administration, and fiscal records relating to the control and disposition of alien property during World War I.

13. Department of Justice, Federal Bureau of Investigation (N1–65–87–11). Schedule provides for disposal of routine investigative case files lacking historical significance and permanent retention of those of historical value.

14. National Archives and Records Administration, Office of Records Administration (N1–GRS–87–9). Revision of General Records Schedule relating to contract appeals case files arising under the Contract Disputes Act.

15. Tennessee Valley Authority, Office of Power, Division of Energy Use and Distributor Relations (N1–142–87–6). Analysis study reports used in determining the reasonableness of cost and adequacy of retail rate levels and revenues.

16. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms (N1–436–87–1). Claims (liquors, tobacco and firearms) on tax paid.

Dated: March 23, 1987.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 87–6815 Filed 3–26–87; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786–0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 5552b of Title 5, United States Code.

1. Date: April 27–28, 1987.
Time: 8:30 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review applications submitted to Humanities Projects in Libraries program, submitted to the Division of General Programs, for projects beginning after October 1, 1987.

2. Date: April 30–May 1, 1987.
Time: 8:30 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review applications submitted to Humanities Projects in Libraries program, submitted to the Division of General Programs, for projects beginning after October 1, 1987.

3. Date: April 22, 1987.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Summer Seminars for College Teachers applications in English, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1988.

4. Date: April 24, 1987.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Summer Seminars for College Teachers applications in Philosophy and Religion, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1988.

5. Date: April 27, 1987.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Summer Seminars for College Teachers applications in History and Politics, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1988.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 87–6808 Filed 3–26–87; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-412]

Duquesne Light Company, et al, Beaver Valley Unit 2; Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission [the Commission] is considering issuance of a schedular exemption from a portion of the requirements of General Design Criterion [GDC] 4 [10 CFR Part 50, Appendix A] to the applicants [1] for Beaver Valley Unit 2, located at Beaver County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action: The schedular exemption would permit the applicants not to install the pipe whip restraints and jet impingement shields and not to consider the dynamic effects associated with postulated pipe breaks in certain Beaver Valley Unit 2 piping, on the basis of advanced calculational methods ["leak-before-break"] for assuring that piping stresses would not result in rapid piping failure. All of the affected piping are inside containment and include: reactor coolant loop bypass lines, safety injection lines, accumulator injection lines, pressurizer surge line, and residual heat removal lines.

Need for Proposed Action: The proposed exemption is needed in order for the applicants not to consider the dynamic loading effects associated with the postulated full-flow circumferential and longitudinal pipe ruptures in certain piping. These dynamic loading effects include pipe whip, jet impingement, asymmetric pressurization transients and break-associated dynamic transients in unbroken portions of the subject piping. Therefore, the applicants would not be required to install protective devices such as pipe whip restraints and jet impingement shields related to postulated break locations for the subject piping. Analysis shows that the pipe breaks, which these devices are designed to protect against, are extremely unlikely. On the other hand, the presence of these devices increase inservice inspection time in the containment and their elimination would lessen the occupational doses to workers and facilitate inservice inspections.

GDC 4 requires that structures, systems and components important to safety shall be appropriately protected against dynamic effects, including the effects of discharging fluids that may result from equipment failures. In recent submittals, the applicants have provided information to show, by advanced fracture mechanics techniques, that the detection of small flaws by either inservice inspection or leakage monitoring systems is assured long before flaws in the piping materials can grow to critical or unstable sizes which could lead to large break areas. The NRC staff has reviewed and accepted the applicants' conclusion and has published the results in Safety Evaluation Report Supplement No. 4 (NUREG-1057). The NRC staff agrees that double-ended guillotine break in the piping so named above, need not be required as a design-basis accident for pipe whip restraints. Accordingly, the NRC staff agrees that schedular exemption from GDC 4 is appropriate. (The subject GDC 4 is currently being revised to permit use of "leak-before-break" technology to preclude use of pipe whip restraints. The applicant's application is in line with the rulemaking but is ahead of it).

Environmental Impact of the Proposed Action: The proposed exemption would not affect the environmental impact of the facility. No credit is given for the restraints and shields to be eliminated in calculating accident doses to the environment. While the jet impingement barriers and pipe whip restraints would minimize the damage from jet forces and whipping from a broken pipe, the calculated limitation on stresses required to support this exemption assures that the probability of pipe breaks which could give rise to such forces are extremely small; thus, the pipe whip restraints and jet shield would have no significant effect on the overall plant accident risk.

The exemption would not otherwise affect radiological plant effluents. Likewise, the exemption would not affect non-radiological plant effluents, and has no other environmental impact. The elimination of the pipe whip restraints would tend to lessen the occupational doses to workers inside containment. Therefore, the Commission concludes that there are no significant radiological or non-radiological impacts associated with the exemption.

The proposed exemption involves design features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect plant non-radioactive effluents and has no other environmental impact. Therefore, the Commission concludes that there are no non-radiological impacts associated with the exemption.

Since the staff has concluded that there are no measurable negative environmental impacts associated with this exemption, any alternatives would not provide any significant additional protection of the environment. The alternative to the exemption would be to require literal compliance with GDC 4.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in the Final Environmental Statement (Operating License) for Beaver Valley Unit 2.

Agencies and Persons Contacted: The NRC staff reviewed the applicants' request and applicable documents referenced therein that support this exemption for Beaver Valley Unit 2. The NRC staff did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for this action. Based upon the environmental assessment, the staff concludes that this action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the request for exemption dated February 2, 1987, as supplemented February 13, 1987. These documents, used in the NRC staff's technical evaluation of the exemption request, are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Local Public Document Room at the B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001. The staff's technical evaluation of the request has been published in Beaver Valley Unit 2 Safety Evaluation Report, Supplement 4 (NUREG-1057, Supplement 4) and is available for inspection at both locations listed above.

Dated at Bethesda, Maryland, this 13th day of March 1987.

For the Nuclear Regulatory Commission.

Lester S. Rubenstein,

Director, PWR Project Directorate #2, Division of PWR Licensing-A.

[FR Doc. 87-6798 Filed 3-26-87; 8:45 am]

BILLING CODE 7590-01-M

[1] The applicants are Duquesne Light Company, Ohio Edison Company, the Cleveland Illuminating Company and the Toledo Edison Company.

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff

for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 3.59, "Methods for Estimating Radioactive and Toxic Airborne Source Terms for Uranium Milling Operations," provides guidance on methods, models, data, and assumptions acceptable to the NRC staff for estimating airborne emissions of radioactive and toxic materials from various steps in uranium milling.

Comments and suggestions in connection with: (1) Items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 275–2060 or (202) 275–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 23rd day of March 1987.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 87–6799 Filed 3–26–87; 8:45 am]

BILLING CODE 7590–01–M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 3.60, "Design of an Independent Spent Fuel Storage Installation (Dry Storage)," provides guidance acceptable to the NRC staff for use in the design of a dry storage independent spent fule storage installation. This guide endorses, with certain exceptions and modifications, ANSI/ANS–57.9–1984, "Design Criteria for an Independent Spent Fuel Storage Installation (Dry Storage Type)."

Comments and suggestions in connection with: (1) Items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202)275–2060 or (202)275–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 23rd day of March 1987.

For the Nuclear Regulatory Commission.

Denwood F. Ross,

Deputy Director, Office of Nuclear Regulatory Research.

[FR Doc. 87–6800 Filed 3–26–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–321]

Georgia Power Co., et al., Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–57 issued to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia (the licensee), for the operation of the Edwin I. Hatch Nuclear Plant, Unit 1 located in Appling County, Georgia.

In accordance with the licensees' application for amendment dated March 4, 1987, the amendment would modify the Technical Specification for Hatch Unit 1 to: (1) Delete certain valves from the Table 3.7–4 that lists containment isolation valves subject to leak rate testing pursuant to the requirements of Appendix J to 10 CFR Part 50 (i.e., remove the Technical Specification requirements for leak testing these valves), (2) correct erroneous information in Table 3.7–4, and (3) change the pressure at which the main steam isolation valves are required to be leak tested.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and Commission's regulations.

By April 27, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the

subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Mr. Daniel R. Muller: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A coopy of the petition should also be sent to the Office of the General Counsel—Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and to Bruce W. Churchill, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i) through (v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 4, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Dated at Bethesda, Maryland, this 20th day of March 1987.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, BWR Project Directorate #2, Division of BWR Licensing.

[FR Doc. 87-6801 Filed 3-26-87; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22-12239]

Application and Opportunity for Hearing; Continental Airlines, Inc.

March 23, 1987.

Notice is hereby given that Continental Airlines, Inc. ("Continental") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeships of United States Trust Company of New York (the "Trust Company") under four indentures are not so likely to involve a material conflict of interest under the Act as to make it necessary in the public interest or for the protection of investors to disqualify the Trust Company from acting as trustee under such indentures.

Section 310(b) of the Act provides, in part, that if an indenture trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined therein) it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of that section provides, with certain exceptions stated therein, that a trustee is deemed to have a conflicting interest if it is acting as trustee under a qualified indenture and is trustee under another indenture of the same obligor.

Continental alleges that:

1. As of September 30, 1986, there were outstanding the following securities issued by, or in connection with aircraft financings involving, Continental:

(a) $24,487,000 principal amount of 3½% Convertible Subordinated Debentures, due May 1, 1992 (the "3½% Debentures"), issued under an Indenture dated as of May 1, 1967, as amended (the "3½% Debenture"), between Continental and the Trust Company, as successor trustee. The Debentures were registered under the Securities Act of 1933 (the "Securities Act") on Form S-1, as amended (File No. 2-16377). The Indenture was qualified under the Act.

(b) First Security Bank of Utah, National Association ("First Security"), as owner trustee, had outstanding in connection with two Continental 1980 DC-10 aircraft leveraged lease financings the following securities:

(i) $29,530,684.90 original principal amount of Loan Certificates, issued under a Trust Indenture and Security Agreement No. I dated as of August 20, 1980, between First Security, as owner trustee, and the Trust Company, as loan trustee, as supplemented by Trust Supplement No. 1 dated as of August 28, 1980, and executed by First Security, as owner trustee.

(ii) $29,542,041.41 original principal amount of loan Certificates, issued under a Trust Indenture and Security Agreement No. II dated as of August 25, 1980, between First Security, as owner trustee, and the Trust Company, as loan trustee, as supplemented by Trust Supplement No. 1 thereto dated September 25, 1980, and executed by First Security, as owner trustee.

The Loan Certificates were not registered under the Securities Act pursuant to the exemption contained in section 4(2) thereof. The related Trust Indentures and Security Agreements were not qualified under the Act in reliance on the exemption contained in section 304(b)(1) of the Act.

The obligation for payment in respect of the Loan Certificates is not the obligation of Continental, but is the obligation of First Security, as owner trustee.

The payment of each series of Loan Certificates is secured by a security interest in favor of the Trust Company, as loan trustee, in the owner trustee's right, title and interest in (A) a McDonnell Douglas DC-10-20 aircraft and (B) a lease of the aircraft between the owner trustee and Continental, including the right to receive rent. Upon

the default of Continental under either of the leases, the owner trustee has the right to take possession of and sell or relet the related aircraft and to receive liquidated damages as set forth in the leases in lieu of rent due and to become due.

(c) $17,806,200 principal amount of 11% Subordinated Debentures due 1996 (the "11% Debentures"), issued under an Indenture dated as of September 1, 1986 (the "11% Debenture Indenture") between Continental and the Trust Company, as successor trustee. The 11% Debentures, which are unsecured, were not registered under the Securities Act, as amended, in reliance on the exemptions provided by section 4(2) of the Securities Act and section 1145(b) of the Bankruptcy Reform Act of 1978. The 11% Debenture Indenture was qualified under the Act pursuant to an application on Form T-3 (Registration No. 22-15521). The 11% Debenture Indenture was filed as Exhibit T3C to that application.

2. Although Continental, as lessee, makes rental payments under the leases for the two Continental DC-10 aircraft to the owner trustee, Continental is neither the obligor nor a guarantor of the Loan Certificates. Accordingly, in its opinion, Continental is not an obligor of the Loan Certificates pursuant to the definition in section 303(12) of the Act or within the meaning of section 310(b) of the Act.

Continental has waived notice of hearing, any right to a hearing on the issues raised by the application, and all rights to specify procedures under the Rules of Practice of the Commission with respect to its application.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, File No. 22-12239, which is a public document on file in the offices of the Commission at the Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

Notice is further given that any interested person may, not later than April 13, 1987, request in writing that a hearing be held on such matter, or he may request that he be notified if the Commission orders a hearing. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reasons for such request, and the issues of fact of law raised by the application which he desires to controvert. At any time after such date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corportation Finance, pursuant to delegated authority.

Jonathan Katz,

Secretary.

[FR Doc. 87-6723 Filed 3-26-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1007]

South African Parastatal Organizations

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: A revised notice is given of which corporations, partnerships, and entities are deemed to be "parastatal organizations" for purposes of the Comprehensive Anti-Apartheid Act of October 2, 1986 (Pub. L. 99-440).

EFFECTIVE DATE: March 27, 1987.

FOR FURTHER INFORMATION CONTACT: Eric Benjaminson, Office of Southern African Affairs (202) 647-8433, or Lynda Clarizio, Office of the Legal Adviser (202) 647-4110.

SUPPLEMENTARY INFORMATION: Section 303(a) of the Comprehensive Anti-Apartheid Act of 1986 (Pub. L. 99-440), as amended, provides that no article which is grown, produced, manufactured by, marketed, or otherwise exported by a parastatal organization of South Africa may be imported into the United States, with certain limited exceptions. Section 314 of the Act prohibits U.S. Government procurement from parastatal organizations, except for items necessary for diplomatic and consular purposes.

Section 303(b) of the Act states that the term "parastatal organization" means a corporation, partnership, or entity owned, controlled, or subsidized by the Government of South Africa, but does not mean a corporation, partnership, or entity which previously received start-up assistance from the South African Industrial Development Corporation but which is now privately owned. Regulations have been promulgated by the Department of the Treasury to implement section 303 (South African Transactions Regulations, 31 CFR Part 545, published on November 19, 1986, 51 FR 41906).

Executive Order No. 12571 of October 27, 1986 provides that the Secretary of State is responsible for determining which corporations, partnerships, or entities are parastatal organizations within the meaning of the Act. Pursuant to section 2 of the Executive Order, the Department of State published on November 19, 1986 a public notice identifying 167 firms as "parastatal organizations" within the meaning of the Act (Public Notice 983, 51 FR 41912).

As the notice indicated, this list of parastatal organizations was not all-inclusive. The list was based on information then available to the U.S. Government. The Department of State intends periodically to revise and update the list. Before making a commitment to import from South Africa, importers may wish to seek guidance from the Office of Southern African Affairs (AF/S), Department of State, Washington, DC 20520 (202-647-8433) to ascertain whether a corporation, partnership, or entity has been identified as a parastatal organization.

This notice contains a revised list of parastatal organizations for purposes of the Act. Inaccuracies in the names of firms identified in the November 19, 1986 notice have been corrected. In addition, seventy-six firms that did not appear on the November 19, 1986 list have now been identified as parastatal organizations. These additions provide information on the subsidiaries of previously-listed parastatals and are based on other information that has become available to the Department of State since the publication of the original list.

Thirteen firms identified as parastatal organizations in the November 19, 1986 notice have been removed from the list. One of these firms, the Fisheries Development Corp. of South Africa, has been liquidated. Another, the South African Dried Bean Board, has been merged into the South African Potato Board (now called the Potato, Dried Bean & Grain Sorghum Board). The remaining eleven firms have been removed from the list on the basis of information submitted in requests to reconsider their classification as parastatal organizations. Such requests were made in accordance with the procedures set forth in the November 19, 1986 notice, which provided that any person believing that a firm should be included or excluded from the list of parastatal organizations could make a request in writing that the Department of State review the particular case.

Requests were submitted to the Department to review the status of seventeen firms identified as parastatal organizations in the November 19, 1986 list. On December 23, 1986 (51 FR 45981) and February 5, 1987 (52 FR 3731), the Department published two public

notices inviting interested persons to submit any written comments relevant to the Department's review of the status of these firms. No comments were received.

The Department determined that the submissions made on behalf of the following six firms failed to establish that these firms were not owned, controlled, or subsidized by the South African Government: Bophuthatswana National Development Corp.; Council for Scientific and Industrial Research; Putco Ltd.; Rand Water Board; South Africa Wool Board; and South West African Broadcasting Corp. These firms continue to be identified as parastatal organizations.

Note.—Rand Water Board is included under the heading of "Water Boards" on the revised list.

The Department determined that the submissions made on behalf of the following eleven firms established that these firms were not owned, controlled, or subsidized by the South African Government and thus should not be identified as parastatal organizations: [K]Alein Karoo Landboukooperasie, Ltd.; Andromeda Electronic Systems (Pty) Ltd.; Computer Technology (Pty) Ltd. (Comtec); Cooperative Wine Growers (KWV); Mercedes Datakor (Pty) Ltd.; Sasol Ltd. (and subsidiaries); Siemens Ltd.; South Africa Sugar Association; Thames Wire and Cable (Pty) Ltd.; Tecnetics (Pty) Ltd.; and Transvaal Copper Rod Co. Ltd. These firms have been removed from the list of parastatal organizations. Sasol Ltd. is removed from the list with the understanding that information will be provided to the Department of State every six months on the firm's behalf as to whether Sasol Ltd. has received during that period a fuel levy rebate such as one certain Sasol Ltd. subsidiaries received prior to January 1985 so that the Department could determine whether any such payment constitutes a subsidy under the Act. Sasol Three (Pty) Ltd. remains on the list.

The Department of State will continue to accept requests to reconsider the classification of particular firms as parastatal organizations. Requests made on behalf of those firms originally identified on the November 19, 1986 list must be made within one month of the date of publication of this notice. Requests made on behalf of all other firms identified on the list below must be made within three months of this date. The Department of State will attempt to provide a response to all requests at the end of this three-month period.

All requests must be submitted in writing. The Department of State may invoke the authorities set forth in section 603(a) of the Act in reviewing submissions. Any submission should contain detailed information as to the stock ownership and composition of the board of directors of the particular firm, as well as the amount of any financial assistance received by such firm on preferential terms from the South African Government. Any person who willfully makes a false or misleading statement in such a submission will be subject to the civil and criminal penalties set forth in section 603 (b) and (c) of the Act and 18 U.S.C. 1001.

The Department of State wishes to make the following clarification concerning the list of parastatal organizations. Placement of a firm on the list is based solely on an economic judgment as to the degree of South African Government ownership, control, or subsidization of the firm. The list is not intended to be used in any way except to prohibit importation into the U.S. of articles grown, produced, manufactured by, marketed, or otherwise exported by firms identified on the list and to prohibit U.S. Government procurement from such firms.

The list of parastatal organizations below contains the heading of "Government of the Republic of South Africa." It is the intention of the Department of State that this heading include entities which are part of the Government of South Africa. Such entities are generally viewed as parastatal organizations within the meaning of the Act.

This notice involves a foreign affairs function of the United States. It is excluded from the procedures of 5 U.S.C. 553 and 554 and Executive Order 12291. It implements a statutory requirement that entered into force on October 2, 1986, and section 2 of Executive Order 12571.

In accordance with these authorities, the following have been identified as South African parastatal organizations:

Agricultural Control Boards
- Banana Board
- Canning Fruit Board
- Chicory Board
- Citrus Board
- Cotton Board
- Dairy Board
- Deciduous Fruit Board
- Dried Fruit Board
- Egg Board
- Lucerne Seed Board
- Maize Board
- Meat Board
- Mohair Board
- Oilseeds Board
- Potato, Dried Bean & Grain Sorghum Board
- Rooisbos Tea Board
- South African Karakul Board
- South West African Karakul Board (Namibia)
- Tobacco Board
- Wheat Board
- Wool Board

Agricultural Corp. of Venda
Agricultural Development Corp. of Bophuthatswana
Altana (Pty) Ltd.
Aluminum Investment Co. (Pty) Ltd.
Aluminum Co. of South Africa (Pty) Ltd. (Alusaf)
- Alustang (Pty) Ltd.
- Richigate (Pty) Ltd.

Alzira Financial (Pty) Ltd.
Armaments Corp. of South Africa (Pty) Ltd. (Armscor)
- Atlas Aircraft Ltd.
- Eloptro (Pty) Ltd.
- Ernani Property (Pty) Ltd.
- Infloplan Ltd.
- Kentron (Pty) Ltd.
- Konchem (Pty) Ltd.
- Lyttleton Engineering Works Ltd.
- Musgrove (Pty) Ltd.
- Naschem (Pty) Ltd.
- Pretoria Metal Pressings (Pty) Ltd.
- Sonchem (Pty) Ltd.
- Swartklip Products (Pty) Ltd.

Atlantis Diesel Engines (Pty) Ltd.
- ADE Behuisings (Pty) Ltd.
- Adepart (Pty) Ltd.
- Atlantis Aluminum (Pty) Ltd.
- Atlantis Foundries (Pty) Ltd.
- Finasco (Pty) Ltd.

Atomic Energy Corp. of South Africa Ltd.
Bophuthatswana National Development Corp.
- Bophuthatswana Transport Holdings
- Fish Hoek Hotel (Pty) Ltd.
- Mankue Enterprises (Pty) Ltd.
- Heystekrand Furniture Factory (Pty) Ltd.
- T.A.B. Bophuthatswana

Central Energy Fund (Pty) Ltd.
Ciskei Agricultural Corp.
- Tainton Pineapple Estate

Ciskei People's Development Bank
- CTC Bus Company
- Indwe Commercial Enterprises (Pty) Ltd.

Ciskei Small Business Corp.
Commission for Fresh Produce Markets
Community Development Fund
Corporation for Public Deposits
Council for Mineral Technology (MINTEK)
Council for Scientific and Industrial Research
- South African Inventions Development Corp.

Department of Posts and Telecommunications
Deposit Fund for Housing
Development Bank of Southern Africa
Duntex Property (Pty) Ltd.
ESCOM (formerly Electricity Supply Commission)
Export Finance Development Corp.
First National Development Corp. of South West Africa
- Melkor (Pty) Ltd.
- Okatana Vulstasie (Pty) Ltd.
- Windhoek Wild (Pty) Ltd.

Government Motor Transport and Trading Account
Government of the Republic of South Africa

Government Printing Works
Guardians' Funds
Hooggenoeg Marketing (Pty) Ltd.
Human Sciences Research Council
Industrial Development Corp. of South Africa Ltd. (IDC)
  Industrial Selections
  Konoil (Pty) Ltd.
  National Selections
Industrial Minerals Development Co. (Pty) Ltd.
International Karakul Secretariat
KaNgwane Economic Development Corp. Ltd.
Kindoc Investments (Pty) Ltd.
Konbel (Pty) Ltd.
KwaNdebele Development Corp. Ltd.
KwaZulu Finance and Investment Corp. Ltd.
  Bambisanani Nongoma (Pty) Ltd.
  Intaba Motors Ltd.
  Isithebe Malt Factory (Pty) Ltd.
  KwaZulu Finance (Pty) Ltd.
  KwaZulu Garment Industries Ltd.
  KwaZulu Housing Company (Pty) Ltd.
  KwaZulu News Agency Ltd.
  KwaZulu Truck and Bus Ltd.
  Zululand Furniture Factory (Pty) Ltd.
Land and Agricultural Bank of South Africa (Landbank)
Land and Agricultural Bank of South West Africa
Lebowa Development Corp. Ltd.
  Dilokong Chrome Mine (Pty) Ltd.
  Lebowa Transport Company
Light Metals Investment Co. (Pty) Ltd.
Marmain (Pty) Ltd.
Mavaco (Pty) Ltd.
Motor Vehicle Assurance Fund
Nabucco Investments (Pty) Ltd.
National Building and Investment Corp. (South West Africa)
National Marketing Board
National Parks Board of Trustees
National Road Fund
National Supplies Procurement Fund
Navik (Pty) Ltd.
Oostra Inmakers (Pty) Ltd. (Eastern Packers)
Phosphate Development Corp. (Pty) Ltd. (Foskor)
  Foskem (Pty) Ltd.
  Palafos (Pty) Ltd.
Post Office Savings Bank
Public Investment Commissioners
Putco Ltd.
  African Body and Coach (Pty) Ltd.
  Crown Body and Coach (Pty) Ltd.
  Dubigeon Plastics SA (Pty) Ltd.
  Voms (Pty) Ltd.
  Voms Parts (Pty) Ltd.
QwaQwa Agricultural Co. Ltd.
QwaQwa Development Corp. Ltd.
Rehoboth Finance and Development Corp. Ltd.
Reinsurance Fund for Export Credit and Foreign Investment
Regional Water Service Corporations
Rosamond Properties (Pty) Ltd.
Rustenberg Industrial Finance (Pty) Ltd.
Saldok (Pty) Ltd.
Sapekoe (Pty) Ltd.
  Sapekoe Ngome Landgoed (Pty) Ltd.
  Sapekoe Richmond Landgoed (Pty) Ltd.
  Sapekoe Sales (Pty) Ltd.
Sasol Three (Pty) Ltd.
Satchem (Pty) Ltd.
Shangaan/Tsonga Development Corp. Ltd.
  Fumani Gold Mining Co. (Pty) Ltd.
Small Business Development Corp.
South African Abattoir Corp.
South African Abattoir Commission
South African Banknote Co. (Pty) Ltd.
South African Broadcasting Corp. (SABC)
South African Bureau of Standards (SABS)
South African Development Trust
South African Development Trust Corp. Ltd.
South African Gas Distribution Corp. Ltd.
South Africa Iron and Steel Industrial Corp. (ISCOR)
  Cape Town Iron and Steel Works (Pty) Ltd.
  Coastal Coal (Pty) Ltd.
  Dalestone (Pty) Ltd.
  Donkerhoek Quartzite (Pty) Ltd.
  Dunswart Iron and Steel Works Ltd.
  The Durban Navigation Colleries (Pty) Ltd.
  Grootageluk Coal Mine Construction Co. (Pty) Ltd.
  Heckett SA (Pty) Ltd.
  Holbane Collery
  I Stores (Pty) Ltd.
  Imcor Tim (Pty) Ltd. (Namibia)
  Imcor Zinc (Pty) Ltd. (Namibia)
  Iscor Berlin (Pty) Ltd.
  Iscor Utility Stores (Pty) Ltd.
  Minsa (Pty) Ltd.
  Pietersburg Iron Co. (Pty) Ltd.
  Steel Sales Co. of Africa
  Suprachem (Pty) Ltd.
  Tshikondeni Mining Co. (Pty) Ltd.
  Vantin (Pty) Ltd.
  Vryheid (Natal) Railway Coal and Iron Co.
  Yskor Landgoed (Pty) Ltd.
  Yskor Newcastle Grondesit Ltd.
South African Medical Research Council
South African Mint
  Gold Reef City Mint
South African Reserve Bank
South African Tourism Board
South African Transport Services
  South African Airways
  South African Harbours
  South African Pipeline
  South African Railways
  South African Road Motor Transport Services
South Atlantic Cable Co. (Pty) Ltd.
Southern Oil Exploration Corp. (Pty) Ltd.
Southern Oil Exploration Corp. (South West Africa) (Pty) Ltd.
South West African Broadcasting Corp.
South West African Water and Electricity Corp. (Pty) Ltd.
State Alluvial Diggings
State Trust Board
Tollgate Holdings Ltd.
  Atlantis Bus Services Ltd.
  Boland Passenger Transport Ltd.
  Cape Tramways (Pty) Ltd.
  Golden Arrow Bus Service Ltd.
  Springbok Atlas Safaris (Pty) Ltd.
Transkei Broadcasting Corp.
Transkei Development Corp. Ltd.
  Albron Foundary (Pty) Ltd.
Tribal Levies and Trust Account
Tusitala (Pty) Ltd.
Union Steel Corporation of South Africa Ltd. (Usco)
  Avon Wire (Pty) Ltd.
  Hall and Pickles (Coastal) (Pty) Ltd.
  National Materials Service Corp. (Pty)
  Usco Aluminum Corp. (Pty) Ltd.
  Usco Aluminum Systems (Pty) Ltd.
  Usco Huiseienaars (Pty) Ltd.
  Usco Kabelmaatskappy (Pty) Ltd.
  Veldmaster (Pty) Ltd.
  Veldmaster Incorporated (U.S.)
United Passenger Transport Investments (Pty) Ltd.
Urban Transport Fund
Venda Development Corp. Ltd.
  Aidec Venda (Pty) Ltd.
  N.T.K. Venda (Pty) Ltd.
  Thusani Stone Crushers (Pty) Ltd.
  Venbor (Pty) Ltd.
  Vhavenda Brickworks (Pty) Ltd.
Virema (Pty) Ltd.
Water Boards (all South African Water Boards)
Water Research Commission

Dated: March 20, 1987.

Chester A. Crocker,

Assistant Secretary for African Affairs.

[FR Doc. 87-6696 Filed 3-26-87; 8:45 am]

BILLING CODE 4710-26-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended March 20, 1987

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 44740

Date Filed: March 18, 1987

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 15, 1987

Description: Application of Highland Express Airways, Ltd., pursuant to section 402 of the Act and Subpart Q of the Regulations requests a foreign air carrier permit to engage in the foreign air transportation of passengers, cargo and mail between New York, New York in the United States and Prestwick/Glasgow in the United Kingdom.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

FR Doc. 87-6831 Filed 3-26-87; 8:45 am]

BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

[Docket No. IP 87-04; Notice 1]

Michelin Tire Corporation; Receipt of Petition for Determination of Inconsequential Noncompliance

Michelin Tire Corporation, of Woodbury, New York, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for an apparent noncompliance with 49 CFR 571.109, Motor Vehicle Safety Standard No. 109, *New Pneumatic Tires,* on the basis that it is inconsequential as it relates to motor vehicle safety.

This Notice of receipt of a petition is published under Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S4.3(f) of Federal Motor Vehicle Safety Standard No. 109, *New Pneumatic Tires,* requires the words "tubeless" or "tube type" to be permanently molded into or onto both sidewalls of tires as applicable. During the period June 27, 1986, to January 9, 1987, Michelin Tire Corporation manufactured and shipped 145,627 P185/70R13 MXL tubeless tires that are in noncompliance with Standard No. 109. These tires either lacked the word "tubeless" on both sidewalls or had the word "tubeless" molded on one sidewall. The P185/70R13 MXL is manufactured only as a tubeless tire; therefore, Michelin believes these tires will be sold and used as tubeless tires.

Interested persons are invited to submit written data, views and arguments on the petition of Michelin Tire Corporation, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the Federal Register pursuant to the authority indicated below.

Comment closing date: April 27, 1987.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on March 24, 1987.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87-6724 Filed 3-26-87; 8:45 am]

BILLING CODE 4910-59-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 59
Friday, March 27, 1987

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).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., April 3, 1987.

PLACE: 2033 K Street NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-6849 Filed 3-25-87; 10:58 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., April 10, 1987.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission

[FR Doc. 87-6850 Filed 3-25-87; 10:58 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., April 17, 1987.

PLACE: 2033 K Street., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Survellance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission

[FR Doc. 87-6851 Filed 3-25-87; 10:58 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., April 24, 1987.

PLACE: 2033 K Street, N.W., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-6851 Filed 3-25-87; 10:58 am]

BILLING CODE 6351-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

TIME AND DATE: 2:00 p.m. (eastern time) Monday, April 6, 1987.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 E Street, NW., Washington, DC 20507.

STATUS: Closed to the public.

MATTERS TO BE CONSIDERED:

Closed

1. Litigation Authorization; General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 634-6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634-6748.

Dated and issued: March 25, 1987.

Cynthia C. Matthews,

Executive Secretariat.

[FR Doc. 87-6896 Filed 3-25-87; 2:51 pm]

BILLING CODE 6750-06-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:37 a.m. on Thursday, March 19, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) Accept the bid submitted by State Bank of De Kalb, De Kalb, Texas, an insured State nonmember bank, for the purchase of certain assets of and the assumption of the liability to pay deposits made in Red River National Bank in Clarksville, Clarksville, Texas, which was expected to be closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, March 19, 1987; (2) approve the application of State Bank of De Kalb, De Kalb, Texas, for consent to purchase certain assets of and assume the liability to pay deposits made in Red River National Bank in Clarksville, Clarksville, Texas, and for consent to establish the two offices of Red River National Bank in Clarksville as branches of State Bank of De Kalb; 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;

(B)(1) Accept the highest acceptable bid which may be submitted in accordance with the "Instructions for Bidding" for a purchase and assumption transaction, or (2) in the event no acceptable bid for a purchase and assumption transaction is submitted, accept the highest acceptable bid for an insured deposit transfer transaction which may be submitted, or (3) in the event no acceptable bid for either type transaction is submitted, make funds available for the payment of the insured deposits of the closed bank, with respect to each of the following:

(a) Sweeny Bank, Sweeny, Texas, which was expected to be closed by the Banking Commissioner for the State of Texas on Thursday, March 19, 1987;

(b) Clarks Fork National Bank, Fromberg, Montana, which was expected to be closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, March 19, 1987;

(c) Morocco State Bank, Morocco, Indiana, which was expected to be closed by the Director of the Department of Financial Institutions for the State of Indiana on Friday, March 20, 1987; and

(d) New City Bank, Orange, California, which was expected to be closed by the Acting Superintendent of Banks for the State of California on Friday, March 20, 1987; and

(C) Discuss matters relating to the Madill Bank and Trust Company, Madill, Oklahoma, which was expected to be closed by the Acting Bank Commissioner for the State of Oklahoma on Friday, March 20, 1987.

At that same meeting, the Board also discussed matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its

consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: March 24, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-6860 Filed 3-25-87; 11:25 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, March 31, 1987, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for Federal deposit insurance:

St. George Finance, Inc., dba St. George Thrift & Loan, an operating noninsured industrial bank located at 10 North 400 East, St. George, Utah.

Application for Federal deposit insurance and for consent to exercise full trust powers:

Yasuda Bank and Trust Company (U.S.A.), a proposed new bank to be located at One World Trade Center, Suite 8833, New York City (Manhattan), New York.

Application for consent to purchase assets and assume liabilities:

Colonial Bank, Montgomery, Alabama, an insured State member bank, for consent to purchase the assets of and assume the liabilities of First Lee County Savings and Loan Association, Opelika, Alabama, a non-FDIC-insured institution.

Application for consent to purchase assets and assume liabilities and to establish one branch:

The Central Bank, Pleasureville, Kentucky, a State nonmember bank, for consent to purchase the assets of and assume the liability to pay deposits made in the North Pleasureville Branch of Republic Savings Bank, FSB, Benton, Kentucky, a non-FDIC-insured institution, and for consent to establish that branch as a branch of The Central Bank.

Application for consent to purchase assets and assume liabilities:

Midlantic National Bank/Merchants, Neptune, New Jersey, for consent to purchase certain assets of and assume the liability to pay deposits made in three branches of Security Savings & Loan Association, Vineland, New Jersey, a non-FDIC-insured institution.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,497-NR (Amendment)
Penn Square Bank, National Association, Oklahoma City, Oklahoma
Case No. 46,767-SR (Amendment)
West Coast Bank, Los Angeles (Encino), California
Case No. 46,842-L (Amendment)
United American Bank in Knoxville, Knoxville, Tennessee
Case No. 46,966-SR
Sunshine State Bank, South Miami, Florida

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications; request, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Trend Analysis Report re:
Trend Analysis of Liquidation Site Audit Results (Memo dated February 19, 1987)
Summary Audit Report re:
Continental National Bank of Kentucky, Louisville, Kentucky (2569) (Memo dated February 17, 1987)
Summary Audit Report re:
Farmers' Bank, Trimble, Tennessee (2579) (Memo dated February 13, 1987)
Summary Audit Report re:
Lubbock Consolidated Office Cost Center 403 (Memo dated February 20, 1987)
Summary Audit Report re:
LAMIS System Development Project Audit Report (Memo dated February 25, 1987)

Discussion Agenda:

Memorandum and resolution re: Proposed amendmends to Part 337 of the Corporation's rules and regulations, entitled "Unsafe or Unsound Banking Practices," which amendments, with respect to securities activities of subsidiaries of insured nonmember banks and the affiliate relationships of insured nonmember banks with securities companies, would (1) revise the existing requirement that such subsidiaries and affiliates must use separate offices from the bank that share no common entrance with the bank; (2) delete the prohibition against such subsidiaries and affiliates sharing a common name or logo with the bank; and (3) establish certain affirmative disclosure requirements to the effect that investments recommended, offered or sold by or through such subsidiary or affiliate are not FDIC-insured deposits, that the subsidiary and affiliate are separate organizations from the bank, and that the obligations of the subsidiary and affiliate are not obligations of the bank and are not guaranteed, warranted, or otherwise supported by the bank.

Memorandum and resolution re: Proposed amendments to Part 325 of the Corporation's rules and regulations, entitled "Capital Maintenance," which amendments would (1) clarify and revise certain definitions; (2) reserve the authority of the Corporation with respect to the definitions of "primary capital" and "secondary capital;" (3) specify that the terms and conditions to which capital instruments are subject must be consistent with safe and sound banking practices; and (4) limit the circumstances in which the Corporation will not approve a proposed merger transaction solely because the resulting entity does not meet the Corporation's minimum capital requirement.

Memorandum and resolution regarding a proposal relating to risk-based capital which would (1) add a risk-based capital measure (also known as a risk asset ratio) to be used in tandem with existing capital ratios, and (2) amend the definition of primary capital for purposes of computing existing capital to total assets ratios.

Memorandum re: Proposed Statement of Policy for Minimum Disclosure by Insured State Nonmember Banks which statement of policy would set forth the various types of information an insured state nonmember bank should make available to the public upon request.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: March 24, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-6861 Filed 3-25-87; 11:25 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, March 31, 1987,

the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552(b) (c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceeding, terminatin-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Memorandums regarding the Corporation's assistance agreement with an insured bank.

Discussion Agenda:

Application for Federal deposit insurance:

Brentwood Thrift and Loan Association, an operating noninsured industrial bank located at 12300 Wilshire Bouldevard, Los Angeles, California.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552(b) (c)(2) and (c)(6)):

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: March 24, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–6862 Filed 3–25–87; 11:25 am]

BILLING CODE 6714–01–M

Corrections

Federal Register
Vol. 52, No. 59
Friday, March 27, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE GENERAL SERVICES ADMINISTRATION NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 3

[Federal Acquisition Circular 84-24]

Federal Acquisition Regulation; Anti-Kickback Act of 1986

Correction

In rule document 87-4219 beginning on page 6120 in the issue of Friday, February 27, 1987, make the following corrections:

PART 3—[CORRECTED]

1. On page 6121, in the first column, in amendatory instruction 2, in the first line, "3.503" should read "3.502" and in the second line, "3.501-1" should read "3.502-1".

3.502-2 [Corrected]

2. On the same page, in the second column, in section 3.502-2(a), in the first line, "Prohibit" should read "Prohibits" and "persons" should read "person".

3. On the same page, in the same column, in section 3.502-2(d)(1), in the first line, "office" should read "officer".

4. On the same page, in section 3.502-2(d)(2), in the third column, in the second line, "subcontractor" should read "subcontract".

5. On the same page, in the same column, in section 3.502-2(e), in the sixth line, "is" should read "it".

6. On the same page, in the same column, in section 3.502-2(h), in the 11th line, "the audit" should read "audit the".

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 200, 203, 204, 213, 220, 221, 222, 226, 227, 234, 235, 237,and 240

[Docket No. R-87-1294; FR 1928]

Single Family Mortgage Insurance on Hawaiian Home Lands

Correction

In rule document 87-5518 beginning on page 8064 in the issue of Monday, March 16, 1987, make the following corrections:

1. On page 8064, in the third column, under **Background**, in the second paragraph, in the eighth line, insert "a" between "if" and "Federal".

2. On page 8065, in the first column, in the first paragraph, in the 20th line, "of" should read "on".

3. On the same page, in the second column, in the second complete paragraph, in the fifth line, "of" should read "on".

4. On the same page, in the third column, in the first complete paragraph, in the 12th line, "if" should read "in".

5. On the same page, in the same column, in the second complete paragraph, in the fourth line, "or" should read "of".

PART 200—[CORRECTED]

6. On page 8067, in the second column, in the **Authority**, in the first line, "Title" should read "Titles".

§ 200.163 [Corrected]

7. On the same page, in the same column, in § 200.163(a)(2), in the ninth line, "mortgage" should read "mortgagor", and in the 10th line, "in" should read "is".

§ 203.439 [Corrected]

8. On page 8068, in the second column, in the 15th line from the bottom, the section number should read "203.439".

BILLING CODE 1505-01-D

federal register

Friday
March 27, 1987

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 358

Wart Remover Drug Products For Over-the-Counter Human Use; Tentative Final Monograph; Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 358

[Docket No. 80N-0238]

Wart Remover Drug Products for Over-The-Counter Human Use; Tentative Final Monograph

AGENCY: Food and Drug Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a reproposal of the tentative final monograph (proposed rule) for over-the-counter (OTC) wart remover drug products to reflect new data and information. This reproposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs by May 26, 1987. New data relating to this notice by March 27, 1988. Comments on the new data by May 27, 1988. These dates are consistent with the time periods specified in the agency's revised procedural regulations for reviewing and classifying OTC drugs (21 CFR 330.10). Written comments on the agency's economic impact determination by July 27, 1987.

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

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drugs and Biologics (HFN-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 3, 1980 (45 FR 65609), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC wart remover drug products, together with the recommendations of the Advisory Review Panel on OTC Miscellaneous External Drug Products, which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. The agency's proposed regulation, in the form of a tentative final monograph, for OTC wart remover drug products was published in the **Federal Register** of September 3, 1982 (47 FR 39102). Interested persons were invited to file by November 2, 1982, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal.

In the **Federal Register** of January 5, 1982 (47 FR 522), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advanced notice of proposed rulemaking to establish a monograph for OTC corn and callus remover drug products. The agency's proposed regulation, in the form of a tentative final monograph, for OTC corn and callus remover drug products was published in the **Federal Register** of February 20, 1987 (52 FR 5412). In developing that proposal, the agency recognized that although the etiology and pathology of corns and calluses is different from that of warts, the Category I active ingredient, salicylic acid, and its mode of action, keratolysis, is common to both rulemakings.

Because no comments were submitted to the advance notice of proposed rulemaking for OTC wart remover drug products, the agency's tentative final monograph on OTC wart remover drug products proposed only minor changes from the Panel's recommendations. However, a number of comments as well as other data and information were submitted in response to the publication of the advance notice of proposed rulemaking for OTC corn and callus remover drug products. Based on that new data and information, the agency proposed a number of changes in the tentative final monograph for OTC corn and callus drug products (52 FR 5412).

Because of the similarities and overlap between the rulemakings for OTC corn and callus remover drug products and OTC wart remover drug products, the agency is proposing modifications in the tentative final monograph for OTC wart remover drug products to be consistent with the tentative final monograph for OTC corn and callus remover drug products. Because of the number of changes, the agency is restating its position on the establishment of a monograph for OTC wart remover drug products by reproposing Subpart B of Part 358 (21 CFR Part 358 Subpart B). Final agency action on this matter will occur with the publication at a future date of a final monograph, which will be a final rule establishing a monograph for OTC wart remover drug products. The definition of a wart remover drug product has been revised to be consistent with the corn/callus tentative final monograph.

A summary of the proposed changes and modifications that appear in the reproposed tentative final monograph follows:

(1) The tentative final monograph has been expanded to also include the use of a plaster vehicle containing 12 to 40 percent salicylic acid. In addition, the agency is proposing the term "collodion-like" in place of "a collodion vehicle" in describing the vehicle for liquid formulations of OTC wart remover drug products. The definition of a wart remover drug product also has been revised to be consistent with the definition of a corn and callus remover drug product, as proposed in § 358.503(a) of the tentative final monograph for OTC corn and callus remover drug products.

(2) A number of the warnings have been revised to conform with the warnings proposed in § 338.550(c) of the tentative final monograph for OTC corn and callus remover drug products.

(3) The directions for use of wart remover drug products have been revised to be similar to those proposed in § 338.550(d) of the tentative final monograph for OTC corn and callus remover drug products.

(4) Other changes have been made to conform to the format and content of other recent OTC drug tentative final monographs, e.g., the provision for other truthful and nonmisleading statements has been included in the indications section.

(5) Because of the changes summarized above, many of the paragraphs within the various sections have been redesignated.

Interested persons may communicate with the agency about the submission of data and information relating to this notice by following the procedures outlined in the agency's policy statement published in the **Federal Register** of September 29, 1981 (46 FR 47740) and clarified April 1, 1983 (48 FR 14050). That policy statement includes procedures for the submission and review of proposed protocols, agency meetings with industry or other interested persons, and agency communications on submitted test data and other information.

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that not one of these rules, including this proposed rule for

OTC wart remover drug products, is a major rule.

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

Interested persons may, on or before May 26, 1987, submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments, objections, or requests for oral hearing before the Commissioner on the proposed regulation. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before July 27, 1987. Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announced in the **Federal Register**.

Interested persons, on or before March 27, 1988, may also submit in writing new data relating to this notice. Written comments on the new data may be submitted on or before May 27, 1988. These dates are consistent with the time periods specified in the agency's final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the **Federal Register** of September 29, 1981 (46 FR 47730). Three copies of all data and comments on the data are to be submitted, except that individuals may submit one copy, and all data and comments are to be identified with the docket number found in brackets in the heading of this document. Data and comments should be addressed to the Dockets Management Branch (HFA-305) (address above). Received data and comments may also be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Data and comments submitted in response to the tentative final monograph for OTC wart remover drug products, published in the **Federal Register** of September 3, 1982 (47 FR 39102), have not yet been evaluated by the agency. Persons who previously submitted data and comments may wish to reevaluate them in light of this reproposed tentative final monograph.

Data and comments submitted in response to this reproposal as well as data and comments submitted in response to the tentative final monograph published in the **Federal Register** of September 3, 1982 (47 FR 39102), will be considered by the agency in establishing a final monograph. Data submitted after the closing of the administrative record on May 27, 1988, will be reviewed by the agency only after a final monograph is published in the **Federal Register**, unless the Commissioner finds good cause has been shown that warrants earlier consideration.

List of Subjects in 21 CFR Part 358

Labeling, Over-the-counter drugs, Wart remover drug products.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended by adding Part 358 (proposed in the **Federal Register** of September 3, 1982; 47 FR 39108), Subpart B to read as follows:

PART 358—MISCELLANEOUS EXTERNAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

* * * * *

Subpart B—Wart Remover Drug Products

Sec.
358.101 Scope.
358.103 Definitions.
358.110 Wart remover active ingredients.
358.150 Labeling of wart remover drug products.

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041-1042 as amended, 1050-1053 as amended, 1055-1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

* * * * *

Subpart B—Wart Remover Drug Products

§ 358.101 Scope.

(a) An over-the-counter wart remover drug product in a form suitable for topical application is generally recognized as safe and effective and is not misbranded if it meets each of the conditions in this subpart and each of the general conditions established in § 330.1.

(b) References in this subpart to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

§ 358.103 Definitions.

As used in this subpart:

(a) *Wart remover drug product.* A topical agent used for the removal of common or plantar warts.

(b) *Collodion-like vehicle.* A solution containing pyroxylin (nitrocellulose) in an appropriate nonaqueous solvent that leaves a transparent cohesive film when applied to the skin in a thin layer.

(c) *Plaster vehicle.* A fabric, plastic, or other suitable backing material in which medication is usually incorporated for topical application to the skin.

§ 358.110 Wart remover active ingredients.

The active ingredient of the product consists of any of the following when used within the specified concentration and in the dosage form established for each ingredient:

(a) Salicylic acid 12 to 40 percent in a plaster vehicle.

(b) Salicylic acid 5 to 17 percent in a collodion-like vehicle.

§ 358.150 Labeling of wart remover drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as a "wart remover."

(b) *Indications.* The labeling of the product states, under the heading "Indications," any of the phrases listed in this paragraph (b). Other truthful and nonmisleading statements, describing only the indications for use that have been established and listed in this paragraph, may also be used, as provided in § 330.1(c)(2), subject to the provisions of section 502 of the act relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) "For the removal of common warts. The common wart is easily recognized by the rough 'cauliflower-like' appearance of the surface."

(2) "For the removal of plantar warts on the bottom of the foot. The plantar wart is recognized by its location only on the bottom of the foot, its tenderness, and the interruption of the footprint pattern."

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) *For products containing any ingredient identified in § 358.110.* (i) "For external use only."

(ii) "Do not use this product if you are a diabetic or have poor blood circulation, except under the advice and supervision of a doctor."

(iii) "Do not use on irritated skin or on any area that is infected or reddened."

(iv) "If discomfort persists, see your doctor."

(v) "Do not use on moles, birthmarks, warts with hair growing from them, genital warts, or warts on the face or mucous membraces."

(2) *For any product formulated in a flammable vehicle.* (i) The labeling should contain an appropriate flammability signal word, e.g., "extremely flammable," "flammable," "combustible," consistent with 16 CFR 1500.3(b)(10).

(ii) "Keep away from fire or flame."

(3) *For any product formulated in a volatile vehicle.* "Cap bottle tightly and store at room temperature away from heat."

(4) *For any product formulated in a collodion-like vehicle.* (i) "If product gets into the eye, flush with water for 15 minutes."

(ii) "Avoid inhaling vapors."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions":

(1) *For products containing salicylic acid identified in § 358.110(a).* "Wash affected area and dry thoroughly." (If appropriate: "Cut plaster to fit wart.") "Apply medicated plaster. Repeat procedure every 48 hours as needed (until wart is removed) for up to 12 weeks."

(2) *For products containing salicylic acid identified in § 358.510(b).* "Wash affected area and dry thoroughly. Apply one drop at a time to sufficiently cover each wart. Let dry. Repeat this procedure once or twice daily as needed (until wart is removed) for up to 12 weeks."

(e) The word "physician" may be substituted for the word "doctor" in any of the labeling statements in this section.

(f) The phrase "or podiatrist" may be used in addition to the word "doctor" in any of the labeling statements in this section when a product is labeled with the indication identified in § 358.150(b)(2).

Dated: February 1, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 87-6703 Filed 3-26-87; 8:45 am]

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Friday
March 27, 1987

Part III

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171 and 175

Detailed Hazardous Materials Incident Reports; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 175

[Docket No. HM-36B; Notice 87-3]

Detailed Hazardous Materials Incident Reports

AGENCY: Office of Hazardous Materials Transportation, Research and Special Programs Administration, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes several changes to the Research and Special Programs Administration's (RSPA's) system of collecting information on incidents involving the transportation of hazardous materials.

The proposed amendment would revise the hazardous materials incident report form—DOT F 5800.1—to provide more meaningful and comprehensive incident data, especially in terms of incident causation and consequent factors; and carriers would be required to maintain a copy of the incident report forms submitted to RSPA for a period of two years. In addition, the proposed amendment would expand the present requirement that RSPA be notified, at the earliest practicable moment, of the occurrence of certain events (e.g. incidents involving fatalities, suspected radioactive contamination) relating to the transportation of hazardous materials to include events resulting in evacuations, the shutdown or closure of major transportation arteries, and instances where an aircraft is forced to deviate from its planned course, or is required to make an unscheduled landing. The proposed amendment would also require that all carriers involved in a hazardous materials incident provide assistance to an authorized representative of the Department of Transportation (DOT) in any follow-up investigations or special studies which DOT might undertake in connection with the incident.

The intended effect of these actions is to enhance the Department of Transportation's capability to evaluate the effectiveness of existing regulations; and to determine the need for regulatory changes to cover new or emerging transportation safety problems.

DATE: Comments must be received on or before July 29, 1987.

ADDRESS: Address comments to: Dockets Branch, Office of Hazardous Materials Transportation, DHM-30, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should be submitted, if possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed, stamped post card. The Dockets Branch is located in Room 8426, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Public dockets may be reviewed between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: J. S. Nalevanko, Policy Development and Information Systems Division, DHM-61, Office of Hazardous Materials Transportation, U.S. Department of Transportation, Washington, DC 20590, Telephone (202) 366-4484, or Irving R. Abis, Standards Division, DHM-12, Office of Hazardous Materials Transportation, U.S. Department of Transportation, Washington, DC 20590, Telephone (202) 366-4488.

SUPPLEMENTARY INFORMATION:

Background

On March 16, 1984, (49 FR 10042, March 16, 1984), RSPA published an Advance Notice of Proposed Rulemaking (ANPRM), Docket No. HM-36B, inviting comments on two major issues concerning the Department's collection of information on hazardous materials transportation incidents.

The first issue was whether the present criteria for submitting detailed, written reports on hazardous materials incidents should be changed and, if so, what the new criteria should be. Currently, written reports must be submitted if the incident requires a telephonic notice under § 171.15; or if, under § 171.16, there is an "unintentional release" of a hazardous material (not involving consumer commodities, batteries, paints, and related materials in packagings of five gallons or less).

The second issue was whether the current incident report form—F5800.1—should be changed and, if so, what the nature of this change should be.

In response to Docket No. HM-36B, RSPA received written comments from 27 different public and private organizations. One additional comment was entered into the Docket as a result of a public meeting on the subject, held on May 1, 1984, in Washington, DC. Each comment has been carefully considered in preparing this Notice of Proposed Rulemaking.

Resolution of Issues Raised in the ANPRM

Changing the current criteria for the submission of written hazardous materials incident reports.

The ANPRM requested comments on whether it would be desirable to change the current criteria for the submission of written reports, especially for hazardous materials incidents involving non-bulk packagings (generally, with a capacity of 110 gallons or less). The ANPRM suggested the possibility that such packagings might be exempted from the current reporting requirements, except for incidents resulting in a fatality or an injury, or meeting a certain number of other criteria.

Based on an analysis of the comments received, RSPA has decided not to exempt non-bulk packaging from the requirement of written incident reports. Among the reasons for this decision are the following.

First, the current reporting criteria are an important and necessary means to enable field investigators to monitor hazardous materials shippers, carriers, and packaging manufacturers of hazardous materials packages for compliance with the hazardous materials regulations; and to determine if a specific carrier, shipper or manufacturer is having problems with a particular package. This investigatory function pertains to both large and small packages and cannot be limited to large packages alone.

Second, RSPA has a rulemaking project under Docket HM-181, entitled "Performance-Oriented Packaging Standards," (47 FR 16268, April 15, 1982) which, among other things, proposes to make the DOT hazardous materials regulations performance standards as they pertain to non-bulk packagings. This will provide greater flexibility to both manufacturers and shippers in the design and utilization of packagings for hazardous materials. The proposed standards would apply to packages with a capacity of 450 liters or less for liquids or 400 kilograms or less for solids. Exempting incidents involving small packages from a reporting requirement would disrupt the continuity of RSPA's existing data base, and limit its ability to make comparative safety analyses and evaluate the record of the proposed performance packaging standards.

Finally, the current reporting criteria do not, either in the aggregate or in terms of individual carriers, constitute an excessive economic or administrative burden to the transportation industry. The reduction in the costs to carriers that would result from eliminating the current requirement to report all incidents involving non-bulk hazardous materials packages would not exceed $336,000 annually. This is not an excessive cost when shared by the thousands of companies engaged in the

transportation of hazardous materials. Moreover, several of the commenters to the ANPRM who were opposed to changing the current reporting criteria pointed to several "benefits" that might be lost through the elimination of the current requirement to report all hazardous materials incidents. These benefits include such things as tracking the prospective performance record of the packaging standards associated with Docket HM-181; facilitating the effectiveness of the compliance and inspection programs of Federal, state and local agencies; and improving the decisionmaking process of DOT's operating administrations. These "benefits", while almost impossible to quantify in dollar terms, would not have to be very large before they would annually exceed $336,000 and the information obtained would begin to pay for itself. This figure is close to the average socioeconomic benefit RSPA associates with the avoidance of a single serious injury resulting from a hazardous materials incident. RSPA believes that the benefits of continuing with the current reporting criteria (and even incrementally strengthening its information collection efforts, as discussed later) exceed the costs.

The principal reason cited by the commenters who supported the idea that the current criteria should be changed so as to reduce the number of incidents reported is that the criteria result in the reporting of "tiny" or "insignificant" spills of hazardous materials. This viewpoint, however, misconstrues two of the primary purposes behind the current reporting criteria. In terms of the current reporting criteria, knowing that a particular package failed in transportation—regardless of whether the package resulted in the spillage of an ounce, 55 gallons, or more than 100 gallons of hazardous materials—is fundamental to RSPA's regulatory safety program. RSPA is concerned with minimizing the likelihood that packages containing hazardous materials will fail in transportation, and it is, therefore, interested in package failure rates quite apart from the amount of material spilled. On the other hand, RSPA is also interested in knowing the amount of material that is spilled; and this includes small spills. Small spills may become large and serious spills under a variety of circumstances (e.g., late discovery, or if immediate and effective remedial action is not taken), and the knowledge obtained about small spills may be used to prevent large spills from occurring. For these reasons, RSPA also has a vital interest in knowing the full spectrum of spillage rates associated with hazardous materials packagings, and it does not view "spill size" as an appropriate criterion for exempting non-bulk packages from reporting requirements.

Although RSPA has decided not to propose changes to the current § 171.16 criteria for the submission of detailed hazardous materials incident reports, RSPA is proposing in this notice to amend § 171.15 to include three additional criteria for the immediate (telephonic) notification of RSPA of certain types of hazardous materials incidents. Under § 171.16(a), any incident satisfying the following proposed new criteria also would have to be the subject of a detailed hazardous materials incident report:

(1) The evacuation of one or more properties adjacent to the property on which the incident occurs.

(2) The closure or shutdown of one or more major transportation arteries or facilities for one hour or more.

(3) The forced deviation of an aircraft from its planned course, or its unscheduled landing.

The first type of incident for which it is proposed that RSPA be given immediate notification involves a reporting criterion that originally appeared in the ANPRM. There, it was suggested that all incidents involving the evacuation of people would require the submission of a detailed written report. Three of the commenters to the ANPRM opposed this reporting criterion. They contended that "evacuation" is a subjective decision of the person in charge at the scene of the incident, and such decisions may or may not be warranted. One commenter stated that if a hazardous material is spilled in a terminal area, the initial response of supervisory personnel is to clear the area until the material is identified, and that this action can be interpreted as an "evacuation" since people are removed from the immediate scene of the incident. This commenter also stated that when "evacuation," as the term is commonly interpreted, is warranted, it is highly probable that one of the other reporting criteria of § 171.15 will also have been met. Several other commenters, while not in apparent opposition to a reporting criterion involving "evacuation," stated that this term should be more clearly defined.

RSPA believes that information concerning the foregoing three proposed criteria, including "evacuations", is of intrinsic value to the proper carrying out of its legislative responsibilities and regulatory functions. Such information enables government agency personnel to effectively respond to requests for information from elected officials, the press, and the general public. Such information is not now readily available to RSPA. This is because, under the current incident reporting requirements, there is no specific criterion whereby carriers are required to provide RSPA with immediate notification of hazardous materials transportation events involving the proposed reporting criteria. Even when there is no actual spillage of a hazardous material, the events covered by the criteria can occur and have a significant social and economic impact on the local community. In these instances, it is not probable that one of the other reporting criteria of § 171.15 will also have been met; and even if they were met, there is no explicit requirement that information concerning evacuations be provided RSPA.

Explicitly including the events covered by the proposed criteria will also serve to add further content and meaning to § 171.15(a)(6), whereby each carrier, at the earliest practicable moment, is required to notify RSPA when a situation exists of such a nature that, in the judgment of the carrier, it should be reported as soon as practicable.

Changing the current incident report form F 5800.1.

The main question raised in the ANPRM concerning possible changes to the current incident report form was whether separate report forms should be developed for incidents involving bulk packages (e.g., rail tank cars, and cargo tanks) and non-bulk packages (e.g., 55 gallon drums). Roughly, half of the commenters were in favor of RSPA's developing two separate report forms; and half favored retaining the current report form but adding various new data fields. The current incident report form is designed to serve various purposes, but its main purpose is to provide a clear and concise understanding of the events characterizing an incident, especially the sequence of events leading to the failure of the package, and the resulting consequences of the packaging failure.

Those in favor of a separate incident report form for bulk and non-bulk packaging incidents noted that the current report form seems designed to reflect failure mechanisms primarily associated with small packagings. These commenters believed that a separate form should be developed for bulk packagings to more adequately reflect the accident conditions and failure mechanisms associated with bulk packagings. One commenter even

suggested that a separate incident report form might be desirable for each of the several modes, with each form tailored to describe the failure mechanisms unique to each mode.

RSPA has carefully evaluated these comments and has decided to continue to use only one report form for the reporting of incidents for all modes. RSPA does agree that there is a need for more and better descriptive statistics about hazardous materials incidents, and the causative and consequence factors involved with such incidents. RSPA believes that this objective can be best accomplished through appropriate changes in the format and information content of the current report form, and by requiring that all carriers involved in a hazardous materials incident provide assistance to DOT in any follow-up investigations or special studies which DOT might undertake in connection with the incident.

In addition to raising the question of whether a separate incident report form might be desirable for each of the several modes involved in a hazardous materials incident, the ANPRM requested comments on the clarity and usefulness of the data fields and organizational format of the current report form. While none of the commenters suggested deleting any of the information items contained in the current report form, several suggested that new data fields be added, or that existing data requirements be clarified.

Several commenters stated that data should be provided on the identity of the agencies and persons notified as a result of an incident, or the first responders arriving at the scene of an incident, including their addresses and telephone numbers. RSPA has decided not to include this data in its proposed change to the current report form. This type of information, while relevant to establishing the effectiveness of emergency response programs, is not, in itself, sufficient for this purpose. Describing all factors that characterize emergency response actions at the scene of a hazardous materials incident is more appropriately obtained through special studies specifically directed to this area.

One commenter stated that the hazardous materials identification number (i.e., UN number) and RQ (Reportable Quantity) number, if shown on the shipping paper, should be included in the report form. This suggestion has been adopted and is a part of the proposed new report form, since it will aid in the cross-referencing of hazardous materials incident reports.

One commenter stated the Environmental Protection Agency's generator, transporter, disposal facility and waste manifest numbers should be included as data fields on the report form. This information must currently be submitted along with the hazardous materials incident report form, by § 171.16(a)(1), which states that a copy of the hazardous waste manifest must be attached to the incident report form when the incident involves a hazardous waste.

One commenter suggested that the incident report form should explicitly differentiate between bulk and non-bulk packages. Although the current report form already provides a means of differentiating between bulk and non-bulk packaging (e.g., by requiring the identification of the DOT specification number of the package involved in the incident), the proposed new report form makes this differentiation even more explicit.

One commenter suggested that information be provided on the report form to indicate if the incident occurred while the package was being loaded or unloaded by shippers or consignees, as distinct from carriers; and that, in this situation, it is the shipper or consignee, rather than the carrier, who is required to submit the incident report. This suggestion represents a misunderstanding of the regulations. Section 171.16(a) requires the carrier to submit the incident report, whether or not the carrier was actually involved in the loading or unloading of the hazardous material. The incident reporting system is not intended to establish liability or facilitate settling insurance damage claims. Nor do incidents resulting from vandalism, or the negligence or actions of other parties, relieve carriers from the obligation to report incidents occurring during the course of transportation, including temporary storage incidental thereto. The current form provides, and the proposed new form would continue to provide, space for any remarks a carrier may wish to make concerning who was engaged in loading or unloading the package when the incident occurred.

One commenter suggested that the name, age, and social security number of the driver of the vehicle, or person loading or unloading the vehicle, be included in all incident reports. Although RSPA does not agree that this information is useful in all cases, the proposed change to the current incident report would capture some of this information when the incident involves a motor carrier accident.

Finally, the suggestion by one commenter that weather conditions at the time of the incident (e.g., temperature) be indicated on the report form is being adopted in part by RSPA, since many hazardous materials can be extremely sensitive to temperature variations.

Incident Reporting Requirements: Specific Proposed Revisions.

Sections 171.15(a) and 175.45(a) would be amended to require the immediate (i.e., as soon as practicable) notification of RSPA of incidents involving the evacuation of one or more properties adjacent to the property on which the incident occurs. If people in any residences or buildings adjacent to the private property on which the spill occurs are not evacuated, the incident does not require immediate notification.

Sections 171.15(a) and 175.45(a) would also be amended to require the immediate (i.e., as soon as practicable) notification of RSPA of incidents involving the closure shutdown of one or more major transportation arteries or facilities for one hour or more. Here, "major transportation arteries or facilities" include, at the minimum, interstate highways; bridges or tunnels providing access to interstate highways; airports where scheduled turbojet passenger operations are conducted; commercially navigable waterways; and railroad main line track.

Sections 171.15(a) and 175.45(a) would also be amended to require the immediate notification of RSPA of all incidents in which an aircraft is forced to deviate from its planned course, or is required to make an unscheduled landing.

In accordance with these proposed amendments, § 175.45(a)(7) would also be deleted. Currently, if an aircraft operator conforms to the provisions of § 175.45, the carrier requirements of § 171.15, except § 171.15(c), are deemed to have been satisfied. Under the proposed amendments, aircraft operators would be required to notify both RSPA and the Federal Aviation Administration (FAA) of those incidents meeting the proposed reporting criteria of § 171.15(a).

RSPA recognizes that the proposed wording for these reporting requirements may not exhaustively cover all situations, but believes that the information required is sufficient to include most significant incidents.

The current 15-day period for submitting incident report forms would be increased to 30 days to provide more time for gathering data and completing the report form as accurately as possible.

A new section—§ 171.21, Assistance in Investigations and Special Studies—is

proposed. This proposed section would require that all hazardous materials carriers make all records and information pertaining to any incident available to an authorized representative of the Department of Transportation upon request, and provide such representative all reasonable assistance in the investigation of any incident or studies involving such incidents. To further assist in these investigations and special studies, § 171.16 would be revised to require all carriers to maintain a copy of each incident report for a period of two years, at the carrier's principal place of business.

Incident Report Form: Proposed Changes

In general, RSPA has sought to retain as many features as possible of the current report form (DOT Form F 5800.1), not only because many of the data fields on the current form have been found essential and useful, but also because of the wide experience and familiarity the industry has had in its use. However, the report form has been reorganized for purposes of grouping the information into two major analytic/descriptive categories. Parts I through V of the proposed form generally pertain to conditions prevailing both immediately before and after the incident. Parts VI and VII pertain to information specific to the package or packages that failed in transportation, and the nature of that failure (a better understanding of how these parts of the proposed new incident report form interrelate can be gained by referring to Illustration 1 provided at the end of this document). The apparent increase in the length of the proposed form is largely due to an expansion of *choices* that those submitting the report have available to describe the nature of the incident. This is particularly the case with Part VII: Description of Packaging Failure. Since there are only 17 specific options available in the curent report form to describe the nature of the packaging failure, this information is often recorded in an unsystematic manner in the "Remarks" part of the report form. This has to be carefully reviewed by RSPA personnel to be sure of entering the correct data into the data base. The proposed report form provides 50 choices, systematically organized, to describe the nature of the packaging failure. Similar expansions of the choices available to describe the nature of a hazardous materials incident are contained in Part IV, item G, and Part V, items E and I of the proposed report form. RSPA believes these changes will facilitate the proper completion of the report form by carrier personnel and significantly reduce the amount of time necessary for RSPA to review and enter the data into its computerized data base. The proposed form will facilitate analyzing failure causes associated with hazardous materials incidents—which is the primary purpose behind the proposed changes to the incident report form.

It should also be noted that the proposed report form would not require information pertaining to what party issued the shipping papers accompanying the hazardous materials shipment. Also no longer required would be the trade name of the hazardous material involved in the incident; this information, while useful, is not considered essential to RSPA analysis and planning functions.

Since the majority of the information items on the proposed report form are not new and are self-explanatory, the following discussion focuses on those proposed changes RSPA considers to be significant or to require special emphasis.

In Part I, Description of Carrier, Company, or Individual Reporting, item C, information would be required on the reporting "code" or "number," if any, of the carrier submitting the incident report. In the case of motor carriers, the Federal Highway Administration (FHWA) issues each motor carrier under its jurisdiction a unique "census number," which is to be used if the carrier is involved in an accident meeting the reporting criteria for the FHWA. A similar carrier identification system (i.e., an alphabetical code) is in effect for the reporting of accidents to the Federal Railroad Administration (FRA), the U.S. Coast Guard (USCG), and the Federal Aviation Administration (FAA). This information is needed by RSPA for purposes of cross-referencing, checking and utilizing accident information on hazardous materials carriers which are also responsible for the reporting of accidents (which may or may not involve the spill of a hazardous material) to the modal administrations of DOT. Since this information is already required of carriers, no additional data burden is being imposed on the industry.

In Part III, Hazardous Material(s) Spilled, item C, information would be required on the identification number of the hazardous materials(s) spilled. For example, if the hazardous material involved in the incident is "Gasoline," the identification number of Gasoline is "UN 1203." The identification number for a hazardous material involved in an incident can be found on the shipping paper accompanying the material or from the Hazardous Materials Table at 49 CFR § 172.101, Column 3A.

In Part IV: Consequences of Spill, several things need to be emphasized. First, information would be required on the number of persons killed or injured as a result of the hazardous material(s) involved. If a fatality or injury resulted from a collision, and not from the release of the hazardous material, then "none" would be entered in the space provided. Second, concerning items E. and F. of Part IV (i.e., the number of people evacuated and estimated loss or property damage resulting from the spill), RSPA does not expect that these numbers will be exact. However, as previously mentioned, RSPA is proposing to change the current 15-day reporting period to 30-days. Within this time frame, much better estimates of the consequences of a spill should be available to carriers than was true in the past. The carriers should be able to obtain this information from police and newspaper reports and insurance and damage claim records.

Items F and G of Part V, Description of Incident, are closely related. If the spill was the result of a vehicle accident (e.g., collision with another vehicle, derailment, overturning while in transit), RSPA is proposing to require that a copy of all additional Federal report forms associated with the accident/incident be submitted, along with the hazardous materials incident report form. For example, if a motor carrier involved in a hazardous materials incident is also required to file a motor carrier accident report with the Federal Highway Administration a copy of that accident report form would have to be attached to the hazardous materials incident report form. It should be noted that this proposed requirement pertains only to vehicle accidents that result in a spill of hazardous materials. Copies of other Federal accident reports would not be required for vehicle accidents that do not result in a spill of the hazardous material. Copies of other Federal accident reports also would not be required for spills that were not the result of a vehicle accident. This proposed requirement complements the current requirement in § 171.16(a)(1) that a copy of the hazardous waste manifest must be attached to the incident report form when the incident involves a hazardous waste; and the current requirement of § 171.45(c), that a separate copy of incidents involving aircraft be sent to an FAA Civil Aviation Security Office. This information would be required, at little or no cost to the industry, in lieu of

developing a separate incident report form tailored to the hazardous materials package/incident environment unique to each mode. It will also aid in ensuring consistency and uniformity of the information obtained, and significantly benefit future safety analyses devoted to special conditions peculiar to each mode.

Part VI: Packaging Information; Part VII, Description of Packaging Failure. These two parts of the proposed report form are also closely tied together; their basic purpose is to identify the *number* and *type* of packages which resulted in a spill of hazardous materials, and the specific causes associated with each package that failed.

Other than providing more examples and clarifications of the information required, Part VI of the proposed report form is essentially the same as the current report form. As with the current form, columns a, b, and c may be used to convey a variety of information. The report form can convey the details of as many as three different types of packages that failed; or three packages of the same type but of different capacities; or three packages of the same type and size but made by three different manufacturers; or three different categories of packages involving numerous failure, with each category involving the same type of package and the same general failure mechanisms.

A brief example will serve to illustrate these matters. Suppose that an incident involved a shipment of hazardous materials in 40 DOT–12B fiberboard boxes, containing 4 glass jars per box; and due to the improper blocking of other freight, 4 boxes were crushed and 16 jars were cracked, spilling their contents. Then, in item A of Part VI, type of packaging from which material escaped, the entries would be "glass jar" in column a, and "fiberboard box" in column b. In item C, number of packages of same type which failed in identical manner, the entries would be "16" in column a, and "4" in column b. In item D, number of packages of same type in shipment, the entries would be "160" in column a, and "40" in column b. As this example indicates, columns a and b (and c, if necessary) may be used to indicate the details associated with failures involving multilayered packages (e.g., glass jars within fiberboard boxes). If columns a, b, and c are not adequate to describe the number of packages involved in the spillage of hazardous materials, then a separate sheet, or sheets, must be attached to the report form to provide the packaging information required by Parts VI and VII.

Part VII of the proposed report form expands the choices available to describe the failure mechanisms of the packages involved in an incident, and is expected to facilitate the accurate filling out of the report form, and to improve the analyses of packaging failures. With the current report form, ambiguities arise concerning the attribution of failure causes when an incident involves more than one package. The proposed form should obviate this problem.

The failure mechanisms associated with each package identified in columns a, b, and c of Part VI of the report form are to be identified in the corresponding columns a, b, and c of Part VII. Continuing with the example given above of glass bottles in 12B boxes crushed because of improper blocking, in item A.12. of Part VII, action causing packaging failure, improper blocking, the blocks under columns a and b would be marked to indicate this as a failure cause common to both packages involved in the incident; the same would be done for item B.1., object causing damage, other freight. In item C, how package(s) damaged, under column a, then block cracked would be marked, and under column b, the block crushed would be checked. Item D, where package(s) damaged may or may not be applicable in this example, and can be taken to illustrate the fact that not all the failure cause categories appearing in Part VII need be checked; nor are they intended to provide an exhaustive listing of how, where and why packagings can fail. In item E, what failed on package(s), "basic package material" seems to be the most appropriate descriptive term, and the "1" boxes under columns a and b would be checked.

Part VIII, Remarks. This part of the proposed report form is essentially the same as the current form, with one exception. Whereas the current form states that photographs and diagrams of the incident should be submitted when necessary for clarification, the proposed report form requires the submission of photographs of damage to packagings and a brief description of the incident when the incident involves bulk packaging such as portable tanks, rail tank cars or tank trucks, *and* the incident results in a fatality or an injury due to the hazardous material. The need for this type of information is based on the fact that since incidents involving fatalities and injuries requiring hospitalization are relatively rare events, it is important to obtain as much information concerning such events as is practicable. Photographs are one way to obtain such information. RSPA does not believe that this proposed requirement would impose a significant burden on industry. For one thing, incidents of such a nature usually result in photographs being produced for liability and insurance claims purposes. Furthermore, over the past 15 years, the number of incidents involving fatalities have averaged only 14 per year, with the largest number of such incidents never having exceeded 23. At the same time, RSPA currently receives approximately 75 photographs per year of incidents of all types, as a result of the present wording in the report form on this subject. Many, if not all, of these incidents include the incidents for which RSPA is now proposing that photographs be required to be submitted, in addition to the report form.

Administrative Notices

A. Paperwork Reduction Act

This proposed rulemaking contains information collection requirements in the following sections: Sections 171.15 and 171.16 and a new proposed § 171.21. These requirements will be submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1980 (44 U.S.C., Chapter 35).

B. Executive Order 12291

This proposed rule does not meet the criteria specified in section 1(b) of Executive Order 12291 and is, therefore, not a major rule; however, it is a significant rule under the regulatory procedures of the Department of Transportation (44 CFR 11034). This proposal rule does not require a Regulatory Impact Analysis, or an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). A regulatory evaluation is available for review in the Docket.

C. Impact on Small Entities

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires a review of certain rules proposed after January 1, 1981, for their effects on small businesses, organizations, and governmental bodies. I certify that this proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification is subject to modifications as a result of the review of comments received in response to this proposal.

List of Subjecta

49 CFR Part 171

General information, Regulations, Definitions.

49 CFR Part 175

Hazardous material transportation, Air carriers.

In consideration of the foregoing, 49 CFR Part 171 and Part 175 would be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 would continue to read as follows:

Authority: 49 U.S.C. 1802, 1803, 1804, 1808; 49 CFR Part 1, unless otherwise noted.

2. In § 171.15, paragraph (a)(6) would be revised and paragraphs (a)(7), (a)(8) and (a)(9) would be added to read as follows:

§ 171.15 Immediate notice of certain hazardous materials incidents.

(a) * * *

(6) One or more properties adjacent to the property on which the incident takes place are evacuated.

(7) One or more major transportation facilities are closed or shut down for one hour or more.

(8) An aircraft is forced to deviate from its planned course, or is required to make an unscheduled landing.

(9) A situation exists of such a nature that, in the judgment of the carrier, it should be reported in accordance with paragraph (b) of this section, even though it does not meet the criteria of paragraph (a)(1), (2), or (3) of this section; e.g., a continuing danger to life exists at the scene of the incident.

* * * * *

3. In § 171.16, paragraph (b) and the first sentence in paragraph (a) would be revised to read as follows:

§ 171.16 Detailed hazardous materials incident reports.

(a) Each carrier who transports hazardous materials shall report in writing, in duplicate, on DOT Form F 5800.1 to the Department within 30 days of the date of discovery, each incident that occurs during the course of transportation (including loading, unloading, or temporary storage) in which, as a direct result of the hazardous materials, any of the circumstances set forth in § 171.15(a) occurs or there has been an unintentional release of hazardous materials from a package (including a tank) or any quantity of hazardous waste has been discharged during transportation. * * *

* * * * *

(b) Each carrier making a report under this section shall send that report to: Director, Office of Hazardous Materials Transportation (Attention: DHM-63), Research and Special Programs Administration, Department of Transportation, Washington, DC 20590; a copy of that report shall be retained at the carrier's principal place of business for a period of two years.

* * * * *

4. In Part 171, a new § 171.21 would be added to read as follows:

§ 171.21 Assistance in investigations and special studies.

(a) A carrier of hazardous materials must make all records and information pertaining to any incident available to an authorized representative or special agent of the Department of Transportation upon request. A carrier of hazardous materials must give an authorized representative or special agent of the Department of Transportation all reasonable assistance in the investigation of any incident.

(b) If the Department of Transportation makes an inquiry to a carrier of hazardous materials in connection with a study of incidents, the carrier must—

(1) Respond to the inquiry within 15 days after its receipt or within such other time as the inquiry may specify; and

(2) Provide a full, true, and correct answer to any questions included in the inquiry.

5. The incident reporting form (DOT Form F. 5800.1) would be revised to read as indicated below.

Note.—The Hazardous Materials Incident Report form will not be shown in the Code of Federal Regulations.

BILLING CODE 4910-60-M

US Department of Transportation
Research and Special Programs Administration

HAZARDOUS MATERIALS INCIDENT REPORT

PURPOSE: The major purpose of this information is to support the assessment of hazardous materials packaging standards, and operating practices in hazardous materials transportation and temporary storage.

REQUIREMENTS: The regulations requiring reporting of hazardous materials incidents are contained in the Code of Federal Regulations, Title 49 Parts 100 to 199 (governing the transport of hazardous materials by rail, air, water and highway). Failure to comply with the reporting requirements contained therein can result in a civil penalty.

INSTRUCTIONS: Submit this report in duplicate to the Director, Office of Hazardous Materials Transportation, DHM-1, Research and Special Programs Administration, Department of Transportation, Washington, D.C. 20590. If space provided for any item is inadequate, complete that item under Section VIII, "Remarks," keying to the entry number being completed. Copies of this form, in limited quantities, may be obtained from the Director, Office of Hazardous Materials Transportation. Additional copies in this prescribed format may be reproduced and used, if on the same size and kind of paper.

I. DESCRIPTION OF CARRIER, COMPANY, OR INDIVIDUAL REPORTING

A. FULL NAME: _____. B. ADDRESS: _____.

C. LIST YOUR BMCS, MOTOR CARRIER CENSUS NUMBER, REPORTING RAILROAD, ALPHABETIC CODE, OR OTHER REPORTING CODE OR NUMBER (E.G., MERCHANT VESSEL ID#) HERE: _____.

II. SHIPMENT INFORMATION *(From Shipping Paper or Packaging)*

A. SHIPPER/ORIGIN:
1. Name: _____.
2. Address: _____.

B. CONSIGNEE/DESTINATION:
1. Name: _____.
2. Address: _____.

C. SHIPPING PAPER IDENTIFICATION NO.: _____

III. HAZARDOUS MATERIAL(S) SPILLED *(NOTE: REFERENCES TO SECTIONS ARE FROM 49 CFR.)*

A. PROPER SHIPPING NAME OF ITEMS (Sec. 172.101, Col 2): _____.

B. HAZARD CLASS (Sec. 172.101, Col. 3): _____.

C. IDENTIFICATION NUMBER (e.g., UN 2764, NA 2020): _____

IV. CONSEQUENCES OF SPILL:

A. ESTIMATED QUANTITY OF HAZARDOUS MATERIAL RELEASED (Indicate unit of measurement): _____.

B. NUMBER OF FATALITIES AS A RESULT OF SPILL: _____.

C. NUMBER OF INJURIES RESULTING IN HOSPITALIZATION AS A RESULT OF SPILL: _____.

D. NUMBER OF INJURIES NOT RESULTING IN HOSPITALIZATION AS A RESULT OF SPILL: _____.

E. NUMBER OF PEOPLE EVACUATED: _____.

F. ESTIMATED AMOUNT OF LOSS OR PROPERTY DAMAGE, INCLUDING COST OF DECONTAMINATION AND CLEAN-UP: _____.

1. PRODUCT LOSS: $_____.
2. CARRIER DAMAGE: $_____.
3. THIRD-PARTY PROPERTY DAMAGE: $_____.
4. DECONTAMINATION/CLEAN-UP: $_____.
5. OTHER: $_____.

G. WERE ANY OF THE FOLLOWING CONSEQUENCES ASSOCIATED WITH THE SPILL?
☐ VAPOR (GAS) DISPERSION ☐ FIRE ☐ ENVIRONMENTAL DAMAGE ☐ EXPLOSION ☐ OTHER _____

V. DESCRIPTION OF INCIDENT

A. TIME OF INCIDENT: Month: _____ Date: _____ Year: _____ Time: _____

B. ESTIMATED TEMPERATURE AT TIME OF INCIDENT: _____. C. LOCATION OF INCIDENT: City: _____ County: _____ State: _____ Route/Street: _____.

D. MODE: ☐ HIGHWAY-FOR-HIRE ☐ HIGHWAY-PRIVATE ☐ RAIL ☐ AIR ☐ WATER ☐ OTHER: _____

E. TRANSPORTATION PHASE DURING WHICH INCIDENT OCCURRED OR WAS DISCOVERED:
☐ ENROUTE BETWEEN ORIGIN/DESTINATION ☐ LOADING ☐ UNLOADING
☐ TEMPORARY STORAGE (E.G., TRUCK TERMINAL, CONSOLIDATION TERMINAL) ☐ OTHER: _____

F. WAS THE SPILL THE RESULT OF A VEHICLE ACCIDENT? ☐ NO (SKIP G) ☐ YES (COMPLETE G)

G. ATTACH COPY OF ALL ADDITIONAL FEDERAL REPORTS REQUIRED TO BE FILED AS A RESULT OF THE ACCIDENT.

H. ESTIMATED SPEED OF VEHICLE AT TIME OF INCIDENT: _____.

I. INDICATE TYPE(S) OF VEHICLE(S) INVOLVED: ☐ TANK TRUCK ☐ VAN TRUCK/TRAILER
☐ FLAT BED TRUCK/TRAILER ☐ RAIL TANK CAR ☐ BOX CAR ☐ BARGE ☐ OTHER MARINE VESSEL
☐ AIRCRAFT ☐ OTHER: _____

VI. PACKAGING INFORMATION: If the package is multilayered (e.g., glass jars within a fiberboard box), begin with Column I for information on the innermost package.

	PACKAGE(S) a	b	c
A. TYPE OF PACKAGING INCLUDING INNER RECEPTABLES (STEEL DRUM, FIBERBOARD BOX, CYLINDER, RAIL TANK CAR, TANK TRUCK, JAR) FROM WHICH MATERIAL ESCAPED.			
B. CAPACITY OR WEIGHT PER UNIT (55 GALLONS, 65 LBS., ETC.)			
C. NUMBER OF PACKAGES OF SAME TYPE WHICH FAILED IN IDENTICAL MANNER.			
D. NUMBER OF PACKAGES OF SAME TYPE IN SHIPMENT.			
E. DOT SPECIFICATION NUMBER(S) ON PACKAGE (E.G., 11P, 17E, 3AA, MC-310, 105A100, 1A1, 1H1). IF NO SPECIFICATION NUMBER(S) CAN BE FOUND, ENTER "NONE," AND DESCRIBE PACKAGE IN REMARKS SECTION.			
F. IF SHIPPED UNDER DOT OR USCG SPECIAL PERMIT OR EXEMPTION, ENTER PERMIT OR EXEMPTION NUMBER.			
G. SHOW ALL OTHER DOT PACKAGING MARKINGS (E.G., STC, 18/16-55-80).			
H. NAME, SYMBOL, OR REGISTRATION NUMBER OF PACKAGING MANUFACTURER.			
I. SHOW SERIAL NUMBER OF CYLINDERS, CARGO TANKS, TANK CARS (E.G, GUTX 98765), PORTABLE TANKS.			
J. TYPE DOT LABEL(S)/PLACARDING APPLIED.			
K. IF RECONDITIONED OR REQUALIFIED, SHOW: 1. REGISTRATION NUMBER OR SYMBOL; AND 2. DATE OF LAST INSPECTION.			

VII. DESCRIPTION OF PACKAGING FAILURE: *(Check all applicable boxes for the package(s), identified above.)*

A. ACTION CAUSING PACKAGING FAILURE

a b c		a b c	
1. ☐ ☐ ☐	VEHICLE COLLISION	9. ☐ ☐ ☐	FREEZING
2. ☐ ☐ ☐	VEHICLE OVERTURN	10. ☐ ☐ ☐	OVERLOADING/OVERFILLING
3. ☐ ☐ ☐	DROPPED	11. ☐ ☐ ☐	IMPROPER LOADING
4. ☐ ☐ ☐	STRUCK/RAMMED	12. ☐ ☐ ☐	IMPROPER BLOCKING
5. ☐ ☐ ☐	METAL FATIGUE	13. ☐ ☐ ☐	FRICTION/RUBBING
6. ☐ ☐ ☐	CORROSION	14. ☐ ☐ ☐	LOOSE FITTINGS, VALVES
7. ☐ ☐ ☐	INCOMPATIBLE MATERIALS	15. ☐ ☐ ☐	DEFECTIVE FITTINGS, VALVES
8. ☐ ☐ ☐	FIRE/HEAT	16. ☐ ☐ ☐	VANDALISM
		17. ☐ ☐ ☐	OTHER _____

B. OBJECT CAUSING DAMAGE

a b c	
1. ☐ ☐ ☐	OTHER FREIGHT
2. ☐ ☐ ☐	FORKLIFT
3. ☐ ☐ ☐	NAIL/PROTRUSION
4. ☐ ☐ ☐	OTHER VEHICLE
5. ☐ ☐ ☐	WATER
6. ☐ ☐ ☐	GROUND/FLOOR/ROADWAY
7. ☐ ☐ ☐	ROADSIDE OBSTACLE
8. ☐ ☐ ☐	NO APPARENT DAMAGE (BY OTHER OBJECT)
9. ☐ ☐ ☐	OTHER _____

C. HOW PACKAGE(S) DAMAGED

a b c	
1. ☐ ☐ ☐	PUNCTURED
2. ☐ ☐ ☐	CRACKED
3. ☐ ☐ ☐	BURST (FROM INTERNAL PRESSURE)
4. ☐ ☐ ☐	RIPPED
5. ☐ ☐ ☐	CRUSHED
6. ☐ ☐ ☐	RUBBED THROUGH/ABRADED
7. ☐ ☐ ☐	OTHER _____

D. WHERE PACKAGE(S) DAMAGED (FACING DIRECTION OF TRAVEL)

a b c	
1. ☐ ☐ ☐	END, FORWARD
2. ☐ ☐ ☐	END, REAR
3. ☐ ☐ ☐	SIDE
4. ☐ ☐ ☐	BOTTOM
5. ☐ ☐ ☐	TOP
6. ☐ ☐ ☐	OTHER _____

E. WHAT FAILED ON PACKAGE(S)

a b c	
1. ☐ ☐ ☐	BASIC PACKAGE MATERIAL
2. ☐ ☐ ☐	VALVE
3. ☐ ☐ ☐	FITTING
4. ☐ ☐ ☐	CLOSURE
5. ☐ ☐ ☐	CHIME
6. ☐ ☐ ☐	WELD
7. ☐ ☐ ☐	SEAMS
8. ☐ ☐ ☐	HOSE
9. ☐ ☐ ☐	TANK HEAD
10. ☐ ☐ ☐	INNER LINER
11. ☐ ☐ ☐	OTHER _____

VIII. REMARKS: Describe probable sequence of events that led to incident, action taken at time discovered, and action taken to prevent future incidents. Include any recommendations to improved packaging, handling, or transportation of hazardous materials. For BULK PACKAGING (PORTABLE TANKS, TANK CARS, TANK TRUCKS, ETC.) INCIDENTS RESULTING IN A FATALITY OR INJURY REQUIRING HOSPITALIZATION DUE TO THE HAZARDOUS MATERIAL, photographs of damage to packaging, and a brief description of incident sequence, cause, and results, must be submitted.

A. NAME OF PERSON PREPARING REPORT (Type or Print): _____. B. SIGNATURE: _____.

C. TELEPHONE NUMBER (Include Area Code): _____. D. DATE REPORT PREPARED: _____.

BILLING CODE 4910-60-C

PART 175—CARRIAGE BY AIRCRAFT

6. The authority citation for Part 175 would continue to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1807, 1808; 49 CFR Part 1, unless otherwise noted.

7. In § 175.45, paragraphs (a)(6) and (a)(7) would be revised and paragraphs (a)(8) and (a)(9) would be added, and the first sentence of paragraph (c) would be revised to read as follows:

§ 175.45 Reporting hazardous materials incidents.

(a) * * *

(6) One or more properties adjacent to the property on which the incident occurs are evacuated.

(7) One or more transportation facilities are closed or shut down for one hour or more.

(8) An aircraft is forced to deviate from its planned course, or is required to make an unscheduled landing.

(9) A situation exists of such a nature that, in the judgment of the carrier, it should be reported to the Department even though it does not meet the criteria of paragraph (a)(1), (2), or (3) of this section, e.g., a continuing danger to life exists at the scene of the incident.

* * * * *

(c) Each operator who transports hazardous materials shall report in writing, in duplicate, on DOT Form F 5800.1 within 30 days of the date of discovery, each incident that occurs during the course of transportation (including loading, unloading, or temporary storage) in which, as a direct result of the hazardous materials, any of the circumstances set forth in paragraph (a) of this section occurs or there has been an unintentional release of hazardous materials from a package.

* * *

* * * * * *

Issued in Washington, DC on March 23, 1987, under the authority delegated in 49 CFR Part 1, Appendix A.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 87-6702 Filed 3-26-87; 8:45 am]

BILLING CODE 4910-60-M

federal register

Friday
March 27, 1987

Part IV

Department of Education

34 CFR Part 653
Congressional Teacher Scholarship Program; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 653

Congressional Teacher Scholarship Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the actions of designated State agencies in their administration of the Congressional Teacher Scholarship Program (formerly known as the Carl D. Perkins Scholarship Program). These regulations are needed to implement the Higher Education Amendments of 1986. The Amendments changed the name of the program to "Congressional Teacher Scholarship Program" and broadened the purpose of the program to provide for assistance to individuals interested in teaching at the preschool level, as well as those interested in teaching at the elementary or secondary level. They also revised the provisions governing the teaching obligation of scholarship recipients.

DATES: Effective Date: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Neil C. Nelson, Chief, State Student Incentive Grant Program, Office of Postsecondary Education, U.S. Department of Education (Room 4018, ROB-3), 400 Maryland Avenue, SW., Washington, DC 20202, Telephone (202) 245-9720.

SUPPLEMENTARY INFORMATION: The purpose of the Congressional Teacher Scholarship program is to make available, through grants to the States, scholarships to outstanding high school graduates who demonstrate an interest in teaching. The new, broadened purpose of the program—to assist students interested in teaching at the preschool level as well as those interested in teaching at the elementary or secondary levels—is reflected throughout these regulations. Specific program provisions that formerly referred only to elementary and secondary level teaching now include the preschool level. For example, scholar selection criteria established by a State must now reflect its need for preschool teachers, as well as elementary and secondary school teachers.

Revisions to the teaching requirement for scholarship recipients are also reflected in these regulations. Formerly, recipients could satisfy the program's teaching obligation by teaching in public schools or private nonprofit schools located in certain districts serving large numbers of low-income individuals. Now, recipients may teach in any public or private nonprofit school. In addition, the provision that reduces the teaching obligation for certain individuals has also been revised. Formerly, recipients who taught in certain schools serving large numbers of low-income individuals and those who taught handicapped children or children with limited English proficiency were subject to a reduced teaching obligation. Now, only those recipients who teach in designated teacher shortage areas qualify for the reduced teaching provisions.

Section 653.30(a) has been revised so that program eligibility requirements for residents of the former Trust Territory of the Pacific Islands reflect the recently enacted Compact of Free Association (Pub. L. 99-239). According to the Compact, the citizens of the Marshall Islands and the Federated States of Micronesia are no longer eligible for assistance under the Congressional Teacher Scholarship Program. Since a separate compact for the Republic of Palau has not yet been put into effect, residents of these islands are still eligible for assistance. Also, since the Northern Mariana Islands recently became a Commonwealth of the United States, § 653.30(a) has been revised to reflect the new citizenship status of most residents of that area.

Executive Order 12291

These final regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. State educational agencies administer the program. States and State agencies are not small entities under the Regulatory Flexibility Act.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local governmental coordination and review of proposed Federal financial assistance. In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

The Secretary had determined that the regulations in this document would not require transmission of information that is being gathered by, or is available from, any other agency or authority of the United States.

Waiver of Notice of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the enactment of the Higher Education Amendments of 1986 requires the Secretary to revise certain program provisions. Since these regulations merely implement statutory amendments and do not establish substantive policy, the Secretary finds that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

List of Subjects in 34 CFR Part 653

Education, grant programs, Education, state-administered, Education, student aid.

(Catalog of Federal Domestic Assistance Number 84.176: Congressional Teacher Scholarship Program)

Dated: March 10, 1987.

William J. Bennett,

Secretary of Education.

The Secretary revises Part 653 of Title 34 of the Code of Federal Regulations to read as follows:

PART 653—CONGRESSIONAL TEACHER SCHOLARSHIP PROGRAM

Subpart A—General

Sec.

Subpart B—What Assistance Does the Secretary Provide Under This Program?

Authority: 20 U.S.C. 1111–1111h, unless otherwise noted.

Subpart A—General

§ 653.1 What is the Congressional Teacher Scholarship Program?

Under the Congressional Teacher Scholarship Program the Secretary makes available, through grants to the States, scholarships to eligible individuals to enable and encourage them to pursue teaching careers at the preschool, elementary, or secondary school level.

(Authority: 20 U.S.C. 1111)

§ 653.2 Who is eligible to participate in this program?

(a) States are eligible to apply for grants under this program.

(b) Outstanding high school graduates who wish to pursue teaching careers at the preschool, elementary, or secondary level are eligible to apply to their respective States of residence for scholarships under this program.

(Authority: 20 U.S.C. 1111b *et seq.*)

§ 653.3 What regulations apply to this program?

The following regulations apply to the Congressional Teacher Scholarship Program:

(a) The regulations in this Part 653.

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 76 (State-Administered Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Educational Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(Authority: 20 U.S.C. 1111–1111h *et seq.*)

§ 653.4 What definitions apply to this program?

The following definitions apply to terms used in this part:

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Application
EDGAR
Elementary school
Nonprofit
Preschool
Private
Public
Secondary school
Secretary
State
State educational agency

(b) *Other definitions that apply to this part.* The following additional definitions apply to this part:

"Academic year" means a period of time during which a full-time student is expected to complete the equivalent of one of the following:

(1) Two semesters.

(2) Two trimesters.

(3) Three quarters.

"Act" means the Higher Education Act of 1965, as amended.

"Award year" means the period of time from July 1 of one year through June 30 of the following year.

"Full-time student" means a student enrolled in an institution of higher education, other than a correspondence school, who is carrying a full-time academic workload as determined by the institution under standards applicable to all students enrolled in that student's program.

"Institution of higher education" has the same meaning under this part as the same term defined in 34 CFR 668.3 of the Student Assistance General Provisions regulations.

"Scholar" means a scholarship recipient.

"Scholarship" means an award made to an individual under this part for one academic year.

(Authority: 20 U.S.C. 1111–1111h)

Subpart B—What Assistance Does the Secretary Provide Under This Program?

§ 653.10 For what purposes may a State use its payments under this program?

A State may use its payments under the Congressional Teacher Scholarship Program, including principal and interest payments it receives from scholars under § 653.42, only for making payments to scholars.

(Authority: 20 U.S.C. 1111)

Subpart C—How Does a State Apply for Grants?

§ 653.20 What must a State do to receive grants under this program?

(a) To receive grants under the Congressional Teacher Scholarship Program, a State shall submit an application to the Secretary for review and approval.

(b) The Secretary approves an application that—

(1) Designates as the State agency for the administration of the Congressional Teacher Scholarship Program, either—

(i) The State agency which administers the State Student Incentive Grants Program under Title IV, Part A, Subpart 3 of the Act; or

(ii) The State agency which administers the Guaranteed Student Loan Program and with which the Secretary has an agreement under section 428(b) of the Act;

(2) Identifies the panel or agency which has established criteria and procedures for the selection of scholars and will select the scholars as required by §§ 653.31 and 653.32;

(3) Describes a program of activities for carrying out the purposes set forth in § 653.1 in such detail that the Secretary may determine the degree to which the State's program will accomplish those purposes. This description must include—

(i) The selection criteria and procedures to be used by the State, in the selection of scholars, which satisfy the provisions of this part; and

(ii) The procedures by which the designated State agency intends to publicize the availability of Congressional Teacher Scholarships to secondary school students in the State;

(4) Explains how the criteria and procedures for the selections of scholars were developed and in what ways they reflect the State's present and projected needs for preschool, elementary, and secondary teachers in general and for those with training in specific academic disciplines;

(5) Provides assurances that—

(i) No changes will be made in the designations of an agency to administer the Congressional Teacher Scholarship Program, in the selection criteria and procedures to be used in the selection of scholars, or any other aspect of the program of activities described in its application without the prior written approval of the Secretary;

(ii) No one will receive a Congressional Teacher Scholarship without entering into an agreement with the designated State agency under

which he or she agrees to the terms specified in § 653.40;

(iii) The terms and conditions of the agreement which the State agency will enter into with scholars under § 653.40 will be fully disclosed in the scholarship application form;

(iv) The State agency will monitor scholars' compliance with the provisions of §§ 653.40, 653.41(b), and 653.42;

(v) The State agency will make particular efforts to attract students from low-income backgrounds or who express a willingness or desire to teach in schools having less than average academic results or serving large numbers of economically disadvantaged students; and

(vi) Scholarships will be awarded without regard to sex, race, handicapping condition, creed, or economic background; and

(6) Contains a copy of the agreement referred to in paragraph (b)(5)(ii) of this section.

(c) Upon the Secretary's approval of its application, a State need not submit additional applications in order to continue to be considered for funding under this program.

(Authority: 20 U.S.C. 1111b)

(Approved by the Office of Management and Budget under control number 1840-0578)

§ 653.21 What requirements must be met by States in the administration of the program?

(a) To continue to receive payments under this part, a State shall—

(1) Provide scholarship assistance only to students who meet the requirements of §§ 653.30, 653.40, and 653.41;

(2) Limit scholarship assistance to no more than four academic years for each scholar;

(3) Make reports to the Secretary that are necessary to carry out the Secretary's functions under this part;

(4) Establish and implement policies and procedures which are necessary to administer the repayment provisions of § 653.42 and, in cases of noncompliance with these provisions, implement collection and litigation procedures consistent with 34 CFR Part 682; and

(5) Except as otherwise provided in paragraph (d) of this section—

(i) Expend all funds received from the Secretary for scholarship during the award year specified by the Secretary with regard to those funds; and

(ii) Expend in that award year, for scholarships, all funds received by the State prior to that award year from principal and interest payments made under the provisions of § 653.42.

(b) A State shall award a scholarship in the amount of $5,000 for an academic year, except as otherwise provided in paragraph (c) of this section.

(c) A State shall not award a scholarship which exceeds the scholar's cost of attendance. If a scholarship, when added to the amount the scholar is to receive for the same academic year under Title IV of the Act, would otherwise exceed the scholar's cost of attendance, as defined for the National Direct Student Loan Program in 34 CFR 674.11, the State shall reduce the scholarship by the amout in which the combined awards would be in excess of the scholar's cost of attendance.

(d) After awarding all scholarships for payment during an award year, as required by paragraph (a)(5) of this section, a State may reserve for expenditures in the following award year a remaining amount of funds which is less than the amount required for a scholarship as well as any funds that were awarded but were returned or not expended.

(Authority: 20 U.S.C. 1111c, 1111d, 1111e)

Subpart D—How Does a State Select Scholars Under This Program?

§ 653.30 What are the eligibility requirements?

To be selected as a scholar, an individual shall—

(a)(1) Be a United States citizen or National;

(2) Provide evidence from the U.S. Immigration and Naturalization Service that he or she—

(i) Is a permanent resident of the United States; or

(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(3) Be a permanent resident of the Trust Territory of the Pacific Islands;

(b)(1) Have graduated from High school;

(2) Be scheduled to graduate from high school within 3 months of the date of the award; or

(3) Have received a certificate of high school equivalency for successfully completing the Tests of General Educational Development (GED); and

(c)(1) Rank in the top ten per cent of his or her graduating class; or

(2) Have received GED test scores recognized by the State to be equivalent to ranking in the top ten per cent of the high school graduates in the State, or nationally, in the academic year for which the eligibility determination is being made.

(Authority: 20 U.S.C. 1111d)

§ 653.31 Who selects the scholars?

(a) Scholars must be selected by—

(1) A seven-member statewide panel appointed by the chief State elected official, acting in consultation with the State educational agency;

(2) An existing grant agency designated by the chief State elected official and approved by the Secretary, or

(3) An existing panel designated by the chief State elected official and approved by the Secretary.

(b) A selection panel must be representative of school administrators, teachers, and parents.

(Authority: 20 U.S.C. 1111d)

§ 653.32 What are the selection criteria and procedures?

(a) The panel or agency appointed or designated by the chief State elected official in accordance with § 653.31 shall establish criteria and procedures for the selection of scholars.

(b) The selection criteria and procedures must reflect the present and projected needs of the State for preschool, elementary, and secondary teachers as required by section 553(c) of the Act and must be developed after consideration of the views of the State and local educational agencies, private educational institutions, and other interested parties as required by section 553(d) of the Act.

(c) The State shall make applications available to high schools in the State and in other locations convenient to applicants, parents, and other interested parties.

(d) The panel or agency referred to in paragraph (a) of this section shall select scholars without regard to whether applicants plan to attend publicly or privately controlled institutions.

(Authority: 20 U.S.C. 1111b, 1111d)

Subpart E—What Are the Scholarship Conditions?

§ 653.40 What agreement must a scholar have with the State agency?

(a) To receive a scholarship, an individual shall enter into an agreement with the State agency under which he or she agrees, except as otherwise provided in paragraph (b) of this section—

(1) To teach on a full-time basis, as determined by the institution or agency in which he or she is teaching, for a period of not less than two years for each year for which scholarship assistance was received—

(i) In a public preschool, elementary school, or secondary school in any State;

(ii) In a public preschool, elementary, or secondary education program in any State;

(iii) In a private nonprofit preschool, elementary school, or secondary school;

(2) To fulfill the teaching obligation described in paragraph (a)(1) of this section within ten years after completing the postsecondary education degree program for which the scholarship was awarded;

(3) To provide the State agency evidence of compliance with paragraphs (a) (1) and (2) of this section and § 653.41 as required by the State agency; and

(4) To repay all or part of the scholarship plus interest and reasonable collection fees as specified in § 653.42 if the conditions of paragraphs (a) (1) and (2) of this section are not met or if the State agency determines that the individual is no longer pursuing a course of study leading to certification as a teacher at the preschool, elementary, or secondary level.

(b) The requirement to teach two years for each year a scholarship assistance is reduced by one-half in the case of individuals who teach on a full-time basis in a teacher shortage area that is designated by the Secretary as provided by section 428(b)(4) of the Act.

(c) The agreement referred to in paragraph (a) of this section must include—

(1) A description of the procedures under which the provisions of § 653.42 (g) through (k) will be implemented; and

(2) A description of the procedures under which a scholar may appeal any determination of noncompliance with any provisions under this part.

(Authority: 20 U.S.C. 1111b)

(Approved by the Office of Management and Budget under control number 1840-0578)

§ 653.41 What are the requirements for a scholar to continue to receive payments under this program?

(a) A State agency shall continue to make payments to a scholar under this program only during the periods that the State agency finds that the scholar meets the conditions described in paragraph (b) of this section.

(b) To maintain eligibility for a scholarship, a scholar must be—

(1) Enrolled as a full-time student in an institution of higher education that is currently accredited by a nationally recognized accrediting agency or association that the Secretary determines to be a reliable authority as to the quality of training offered, in accordance with section 1201(a) of the Act;

(2) Pursuing a course of study leading to certification as a teacher at the preschool, elementary, or secondary level, as determined by the State agency but not including graduate study that is not required for initial teacher certification; and

(3) Maintaining satisfactory progress as determined by the institution of higher education the student is attending, in accordance with the criteria established in 34 CFR 668.16(e) of the Student Assistance General Provisions regulations.

(Authority: 20 U.S.C. 1111e)

§ 653.42 What are the consequences of a scholar's noncompliance with the teaching requirement?

(a) A scholar found by a State to be in noncompliance with the agreement entered into under § 653.40, or to be no longer pursuing a course of study leading to certification as a teacher at the preschool, elementary, or secondary level, shall—

(1) Repay the amount of the scholarships received, prorated according to the fraction of the teaching obligation not completed, as determined by the State agency;

(2) Pay a simple, per annum interest charge on the outstanding principal; and

(3) Pay all reasonable collection costs as determined by the State agency.

(b) The interest charge referred to in paragraph (a)(2) of this section accrues from—

(1) The date of the initial scholarship payment if the State agency has determined that the scholar is no longer pursuing a course of study leading to certification as a teacher at the preschool, elementary, or secondary level; or

(2) The day after that portion of the scholarship period for which the teaching obligation has been fulfilled.

(c)(1) The interest charge referred to in paragraph (a)(2) of this section is adjusted annually, except as provided for under paragraph (c)(2) of this section, and is set at a rate which is the greater of—

(i) Fourteen percent; or

(ii) Five percent above the average of the bond equivalent rates of 91-day Treasury bills auctioned during the most recent quarter ending March 31.

(2) The interest charge applicable during the repayment period is the greater of the rates described in paragraphs (c)(1) (i) and (ii) of this section as determined when the repayment schedule is established.

(d) A scholar required by paragraph (a) of this section to repay his or her scholarship shall—

(1) Enter repayment status on the first day of the first calendar month after—

(i) The State has determined that the scholar is no longer pursuing a course of study leading to certification as a teacher at the preschool, elementary, or secondary level, but not before six months has elapsed after the cessation of the scholar's full-time enrollment in such a course of study;

(ii) The date the scholar informs the agency he or she does not plan to fulfill the teaching obligation; or

(iii) The latest date on which the scholar must have begun teaching in order to have completed the teaching obligation within ten years after completing the postsecondary education for which the scholarship was awarded, as determined by the State agency; and

(2) Make monthly or quarterly payments to the State which—

(i) Cover principal, interest, and collection costs according to a schedule established by the State which calls for complete repayment within ten years after the scholar enters repayment status, except as provided in paragraph (j) of this section; and

(ii) Amount annually to no less than $1200 or the unpaid balance, whichever is less, unless the scholar's inability to pay this amount because of his or her financial condition has been established to the State's satisfaction.

(e) The State agency shall not require scholarship repayments amounting to more than $1200 annually unless higher payments are needed to complete the entire repayment within the ten-year period described in paragraph (d)(2) of this section.

(f) The State agency shall capitalize any accrued interest at the time it establishes a scholar's repayment schedule.

(g) A scholar is not considered in violation of the repayment schedule established under paragraph (d) of this section during the time he or she is—

(1) Engaging in a full-time course of study at an institution of higher education;

(2) Serving, not in excess of three years, on active duty as a member of the armed services of the United States;

(3) Temporarily totally disabled, for a period not to exceed three years, as established by sworn affidavit of a qualified physician;

(4) Unable to secure employment for a period not to exceed twelve months by reason of the care required by a spouse who is disabled;

(5) Seeking and unable to find full-time employment for a single period not to exceed twelve months; or

(6) Unable to satisfy the terms of the repayment schedule established by the State under paragraph (d)(2)(i) of this.

section and is also seeking and unable to find full-time employment as a teacher in a public preschool, elementary school, or secondary school, or in a public or private nonprofit preschool, elementary, or secondary education program.

(h) To qualify for any of the exceptions in paragraph (g) of this section, a scholar shall notify the State agency of his or her claim to the exception and provide supporting documentation as required by the State agency.

(i) During the time a scholar qualifies for any of the exceptions in paragraph (g) of this section, he or she need not make the scholarship repayments referred to in paragraph (d) of this section and interest does not accrue.

(j) The State agency shall extend the ten-year scholarship repayment period established under paragraph (d) of this section by a period equal to the length of time a scholar meets any of the conditions listed in paragraph (g) of this section or if a scholar's inability to complete the scholarship repayments within this ten-year period because of his or her financial condition has been established to the State's satisfaction.

(k) The State agency shall cancel a scholar's repayment obligations if it determines—

(1) On the basis of a sworn affidavit of a qualified physician, that the scholar is unable to teach on a full-time basis because of an impairment that is expected to continue indefinitely or result in death; or

(2) On the basis of a death certificate or other evidence, conclusive under State law, that the scholar has died.

(Authority: 20 U.S.C. 1111f, 1111g)

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Part V

Office of Management and Budget

Freedom of Information Reform Act of 1986; Uniform Freedom of Information Act Fee Schedule and Guidelines

OFFICE OF MANAGEMENT AND BUDGET

The Freedom of Information Reform Act of 1986; Uniform Freedom of Information Act Fee Schedule and Guidelines

AGENCY: Office of Management and Budget.

ACTION: Final publication of Fee Schedule and Guidelines implementing certain provisions of the Freedom of Information Reform Act of 1986 (Pub. L. 99-570).

SUMMARY: These Guidelines implement certain provisions of the Freedom of Information Reform Act of 1986 which require the Office of Management and Budget (OMB) to promulgate guidelines containing a uniform schedule of FOIA fees applicable to all agencies that are subject to the FOIA.

EFFECTIVE DATE: April 27, 1987. Agencies are required to promulgate regulations pursuant to notice and comment implementing the provisions of this schedule and guidelines by April 25, 1987. They should develop and publish proposed rules as soon as possible after publication of this OMB Fee Schedule and Guidelines. Agencies will have met the statutory deadline if they promulgate final versions of such implementing regulations in the **Federal Register** on or before that date, even though their regulations will not be effective until 30 days after the date of publication.

FOR FURTHER INFORMATION CONTACT: Robert N. Veeder, Office of Management and Budget, Office of Information and Regulatory Affairs, Information Policy Branch, Telephone (202) 395-4814.

SUPPLEMENTARY INFORMATION: The Freedom of Information Reform Act of 1986 (Pub. L. 99-570) amended the Freedom of Information Act (5 U.S.C. 552) by modifying the terms of exemption 7 and by supplying new provisions relating to the charging and waiving of fees. The Reform Act specifically required the Office of Management and Budget to develop and issue a schedule of fees and guidelines, pursuant to notice and comment.

On January 16, 1987, OMB published a proposed fee schedule and guidelines explaining how to implement the schedule. The notice invited public comment especially on the definitions of "commercial," "representative of the news media," "educational institution," "non-commercial scientific institution," "search," and "review."

At the end of the comment period, February 17, 1987, OMB had received 80 comments from 6 identifiable categories of commentator:

- The Congress (1)
- The Federal Agencies (11)
- Publishers of Newsletters (41)
- Public interest groups affiliated with the news media (11)
- Other public interest groups (12)
- Individual members of the public (4)

Although many of the commentators focused exclusively on OMB's proposed definition of "representative of the news media," a significant number provided substantive comments on other aspects of the guidelines and schedule. These comments are discussed in the sectional analysis that follows.

Several commentators urged OMB to publish a revised schedule and guidance for a second round of public comment, while acknowledging the problems presented by the statutory deadline requiring agencies to promulgate their own fee regulations by April 25, 1987. OMB has carefully considered this suggestion, but declines to adopt it. Since agencies' regulations must be published not only pursuant to (and thus following) OMB's issuance and also for notice and comment, a second round of comment would make it impossible for agencies to meet the statutory deadline. It should be noted, however, that OMB intends to follow agencies' implementation of the schedule and guidelines closely and will issue clarifications when needed.

Section-by-Section Analysis

Section 1. Purpose.

Many commentators suggested that OMB's emphasis on collecting FOIA fees was contrary to the intent of the FOIA amendment which they insisted was to make information more widely and cheaply available, and they urged that we emphasize this intention. While it is true that many of the provisions of the FOIA amendments will have this effect, OMB's role in this process is limited to that of providing guidance on charging fees under the FOIA. Moreover, given OMB's budgetary responsibilities, it is quite appropriate for it to require agencies to develop and diligently carry out programs that charge, collect and deposit fees for FOIA services where such activities are clearly permitted by statute. Accordingly, no changes were made to this section.

Section 5. Authorities.

One commentator objected to the citation of statutory authorities other than the Freedom of Information Reform Act: specifically, the Paperwork Reduction Act of 1980 and the Budget and Accounting Act and Budget and Accounting Procedures Act. It was not OMB's intention to enlarge the scope of its authority or responsibilities in developing FOIA fee guidance by citing these Acts. Nevertheless, these Acts do provide a framework for the development and issuance of OMB policies relating to information access and dissemination policies and the collecting and disposition of fees. The Paperwork Reduction Act, for example, makes the Director of OMB responsible for developing and implementing "Federal information policies, principles, standards, and guidelines" (44 U.S.C. 3504(a)). Among these responsibilities are those for issuing guidance on the Privacy Act of 1974. These FOIA fee guidelines rely on that authority to remind agencies that the fee schedule provided herein does not apply to individuals seeking access to their own records which are filed in Privacy Act systems of records. Similarly, the budgetary authorities cited mandate that funds agencies receive for providing FOIA services are to be deposited in the general revenues of the United States rather than individual agency accounts. OMB has made one change to this section and that is to add a reference to the Privacy Act of 1974.

Section 6. Definitions:

Section 6b. "Statute Specifically Providing for Setting the level of fees for particular types of records."

A few commentators addressed this definition and suggested that it was too broad and general and could permit agencies, on a discretionary basis, to "circumvent the general FOIA policy of minimal fees for statutory access to agency records." The commentators urged that we include in the definition that a qualifying statute would have to specifically establish a level of fees and specifically identify a particular type of records for which the fees could be charged.

It was not OMB's intention to have this provision read broadly, since the legislative history relating to this provision is unambiguous in stating that it is not intended to change existing law. We have therefore revised the section to meet the concerns of the commentators. We would note only, however, that a number of commentators misquoted the plain wording of the provision by insisting that a qualifying statute must set a specific level of fees rather than specifically providing for the setting of fees by an agency. Our guidance makes it clear that a qualifying statute must require, not merely permit, an agency to establish fees for particular documents.

The commentators also objected to the first subparagraph in the definition

which refers to statutes that "serve both the general public and private sector organizations by conveniently making *available government information* . . .," and urged its elimination on the basis that it is "so vague and meaningless that it could probably be applied to any statute allowing disclosure of information." The objectionable paragraph is taken from the legislation establishing the National Technical Information Service (albeit somewhat condensed) and we have left it unchanged, but note that it is to be read in conjunction with the other subparagraphs in providing a generic description of such fee statutes.

Section 6c. "Direct Costs."

Two categories of commentators addressed the issue of charging a percentage of an employee's salary to cover benefits. Non-federal commentators thought that such charges were improper because they represented agency overhead costs rather than direct costs. Federal agency commentators, on the other hand, pointed out that the 16 percent rate the guidance attributed to benefits was inconsistent with OMB's own guidance in Circular No. A–76 which uses a much higher percentage.

As to the first point, the Freedom of Information Act permits agencies to charge only for allowable reasonable direct costs of providing certain FOIA services. Employee salaries are clearly a direct cost of providing FOIA services. The cost to the agency of conducting, for example, a search for a document is the salary that must be paid to the employee performing the search multiplied by the time he or she spends searching.

The elements used to calculate an employee's total salary are the pay grade of the employee and any fringe benefits. Because the agency is permitted to charge only "reasonable" direct costs, the inclusion of some kinds of fringe benefits would be clearly unreasonable. For example, an agency that maintains recreational facilities for employees and their families could not count the cost of operating the facility as a reasonable direct cost for FOIA fee purposes. But, an employer's contribution to a retirement system and to health and life insurance programs are concrete identifiable costs directly associated with the salary of the employee and should be counted as part of the direct costs of providing FOIA services.

As to the second point, the figure cited in OMB Circular No. A–76 was developed for a different purpose and on a different basis. The circular uses a figure, for example, of 27.9 percent as a cost factor in determining agency costs for employee retirement. The figure includes not only the direct 7 percent agency contribution, but other governmental sources of funds for the Civil Service Retirement System. While 27.9 percent may be an appropriate figure for purposes of Circular No. A–76, the "direct reasonable cost" restriction of the Freedom of Information Act precludes using more than the 7 percent agency contribution. OMB arrived at the 16 percent figure in consultation with the Office of Personnel Management, and it is retained in the final version of our guidance.

Some readers noted that the 16 percent figure was rendered 16.1 in Section 7a of the guidelines. That was a typographical error.

Section 6d. "Search."

Several commentators objected to the inclusion of line-by-line searches as an example of search. It is not often that an agency would need to read a document line-by-line to locate records responsive to a request, and agencies should not artificially raise search costs by unnecessarily spending time reading a document for responsive records when it would be cheaper and faster simply to reproduce the entire document. Our intention was to provide guidance on the *scope* of what constitutes FOIA search and we were careful to distinguish line-by-line search from review. We have accordingly modified the section to make it clear that agencies should not conduct line-by-line searches when whole document reproduction would be cheaper and faster.

Section 6f. "Review."

Several Federal agency commentators suggested that we provide greater detail on what constitutes review of documents for which agencies may charge commercial use requesters. We have therefore expanded the explanation.

Section 6g. "Commercial Use Request."

Athough the legislative history is in conflict on the precise meaning of this provision, it seems clear that the Congress intended to distinguish between requesters whose use of the information was for a use that furthered their business interests, as opposed to a use that in some way benefited the public. The amendment shifts some of the burden of paying for the FOIA to the former group and lessens it for the latter.

As opposed to the other fee categories created by the amendment, inclusion in this one is determined not by the identity of the requester, but the use to which he or she will put the information obtained. Because "use" is the exclusive determining criterion, it is possible to envision a commercial enterprise making a request that is not for a commercial use. It is also possible that a non-profit organization could make a request that is for a commercial use. Moreover, because "use," not identity, controls, agencies will have to spend more time than they do now in determining what the requester intends to do with the records sought.

Both the legislative history and the comments on OMB's proposed fee guidance contain suggestions that agencies can look to the identities of requesters and automatically assign them to or exclude them from this category. Indeed, the original OMB proposal instructed agencies that a request, without further explanation, submitted on corporate letterhead could be presumed to be for a commercial use. Commentators urged that we also include a presumption that requests submitted on the letterhead of a non-profit organization be for a non-commercial purpose. We no longer think either presumption should be made automatically since both would be based upon the identity of the requester as opposed to the use to which he or she intended to put the records sought. We have therefore revised the definition to eliminate the example.

Many commentators were troubled by the breadth of OMB's proposed definition of "commercial use," arguing that by defining such a use as one which is "related to" commerce, OMB was providing too tenuous a connection to be meaningful. OMB has revised the definition to attempt to provide a more meaningful linkage. "Commercial use" is therefore defined as a use that "furthers the commercial, trade or profit interests of the requester or person on whose behalf the request is made."

Section 6h. "Educational Institution."

Many commentators were concerned about our definition of "educational institution." One Federal agency, for example, pointed out that it would exclude high schools from this category of FOIA requesters. The legislative history is unhelpful on this point, nowhere defining the term. One commentator recommended the definition found in Webster's *New Twentieth Century Dictionary of the English Language* (2nd. ed. 1968) in which the word "education" means providing instruction or information; an "educational institutional" is an entity organized to provide instruction or information. The problem with this suggestion is that it is not sufficiently discriminating. There are very few

organizations that do not in some way "provide information" and who would not qualify as "an entity organized to provide information."

Other commentators recommended the definition of educational institution used by the Internal Revenue Service in its regulations implementing Section 501(c)(3) of the Tax Code. Institutions meeting this definition qualify for tax exempt treatment. The commentators pointed out that since the task the FOIA Reform Act set OMB was to develop a uniform fee schedule, looking to an existing definition would be consistent with the statutory intent. After some consideration, OMB agrees that while it would be appropriate to incorporate an existing and well understood definition, neither the Tax Code nor the IRS regulations implementing the Code serve that purpose well. The statute merely provides that "Corporations, and any community chest, fund, or foundation, organized and operated exclusively for . . . educational purposes . . .," qualify for exemption from taxation. The IRS regulations interpreting this somewhat vague statutory provision are themselves too general to be useful to the agencies in determining an institution's eligibility under the FOIA fee schedule. Moreover, OMB does not think it is appropriate to tie eligibility for inclusion in the "educational institution" fee category to an IRS interpretation of the institution's eligibility for tax exempt status.

Rather than using the IRS definition, OMB thinks it more appropriate to look to the Department of Education definition found in 20 U.S.C. 1681(c). Accordingly, the terms of that statutory definition have been adapted for use in a revised definition, but it is intended that they be given their plain meaning in the FOIA context. Moreover, these terms must be applied in conjunction with the FOIA's "scholarly research" requirement. Thus, the definition has been revised to read " 'educational institution' refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education and an institution of vocational education, which operates a program or programs of scholarly research."

As a practical matter, it is unlikely that a preschool or elementary or secondary school would be able to qualify for treatment as an "educational" institution since few preschools, for example, could be said to conduct programs of scholarly research. But, agencies should be prepared to evaluate requests on an individual basis when requesters can demonstrate that the request is from an institution that is within the category, that the institution has a program of scholarly research, and that the documents sought are in furtherance of the institution's program of scholarly research and not for a commercial use.

Agencies should ensure that it is apparent from the nature of the request that it serves a scholarly research goal of the institution, rather than an individual goal. Thus, for example, a request from a professor of geology at a State university for records relating to soil erosion, written on letterhead of the Department of Geology, could be presumed to be from an educational institution. A request from the same person for drug information from the Food and Drug Administration in furtherance of a murder mystery he is writing would not be presumed to be an institutional request, regardless of whether it was written on institutional stationary. Indeed, such a request could reasonably be construed to be a request that is for a commercial use.

The institutional versus individual test would apply to student requests as well. A student who makes a request in furtherance of the completion of a course of instruction is carrying out an individual research goal and the request would not qualify, although the student in this case would certainly have the opportunity to apply to the agency for a reduction or waiver of fees.

One commentator suggested that OMB should read the phrase "scholarly or scientific research" conjunctively in association with the term "educational institution" so that a request from an educational institution in furtherance of either scholarly or scientific research would qualify. OMB rejected this suggestion; the statute and the legislative history recite the formula "educational or scientific institution/scholarly or scientific research," and it seems clear that the phrase was meant to be read disjunctively so that scholarly applies to educational institution and scientific applies to non-commercial scientific institution.

Section 6i. "Non-Commercial Scientific Institution."

A number of Federal agencies commented on this definition. Several suggested that qualifying institutions be limited to those conducting research in the natural sciences. OMB rejected this suggestion; there is no support in either the statute, the legislative history, or the plain meaning of the term to permit such a narrow reading.

Other agency commentators suggested that the word "non-commercial" be more fully defined so that an institution whose purpose was to further a specific product or industry would be excluded from this category. OMB has accepted this suggestion and modified the definition accordingly.

OMB has also revised the definition to ensure consistency with the definition of "commercial" in Section 6g.

Section 6j. "Representative of the News Media."

This definition drew the most comments of any section. Commentators generally fell into two classes. The first consisted of newsletter publishers and their representatives who were concerned that the guidelines could be read to exclude them from qualifying as "representatives of the news media." The second class had broader concerns about the definition, and were especially concerned about its perceived narrowness.

Many of the newsletter commentators pointed to their accreditation to the House and Senate press galleries as evidence of their membership in the news media category. It was not OMB's intention to exclude the publishers of newsletters from this category. The examples provided in the definition were not intended to be all-inclusive. Certainly newsletters, if they meet all of the other criteria, would qualify as "representatives of the news media" for purposes of this definition. To avoid implying any such limitation, OMB has replaced the references to "newspaper" and "magazine" in the definition with the word "periodical."

The other class of commentators criticized the narrowness of OMB's proposed definition, pointing to the words of Senator Leahy in the legislative history that "[i]t is critical that the phrase 'representative of the news media' be broadly interpreted if the Act is to work as expected." Cong. Rec. S.14298 (daily ed. September 30, 1986). They asserted that including the words "established," "general circulation," "working for," and "regularly," all served to unnecessarily limit what they perceived to be the breadth of the definition's coverage.

OMB has carefully considered these comments. Our intention in this section was to provide the agencies and the public with a workable definition. We used the word "established" not to limit eligibility only to those organizations in being at the time of the issuance of the guidance, but simply to indicate that a qualifying organization must be able to show some evidence of its identity

beyond the mere assertion that it is a member of the news media. Press accreditation, guild membership, a history of continuing publication, business registration, Federal Communications Commission licensing, for example, would suffice. The word "regularly" which the legislative history shows Senator Leahy using in precisely this context, was meant to indicate that a qualifying organization would have to show that it was a continuing venture that was publishing or broadcasting news to the public. Thus, a newly established newspaper would be able to do so by demonstrating that it had held itself out for subscription and had in fact enrolled subscribers.

The phrase "general circulation" was misinterpreted by many commentators: members of the public and Federal agencies as well. OMB intended the phrase to refer to a newsworthy product that was broadcast or published in a manner that made it *available* to the general public, not that it had to have an exclusively general content or that it had to be circulated exclusively to a general audience.

In any case, OMB has sought to address these concerns by redrafting the section so that "news media" is defined generically as "an entity that is organized and operated to publish or broadcast news to the public." *The American Heritage Dictionary* (Second College Edition, 1982) defines the word "news" as ". . . Recent events and happenings, esp. those that are unusual or notable. . . . Information about recent events of general interest, esp. as reported by newspapers, periodicals, radio or television . . . A presentation or broadcast of such information: newscast. . . . Newsworthy material."

Thus, "news media" is further limited to purveyors of information that is current or would be of current interest. The Congress could easily have drafted the section to read "representative of the media" rather than "news media," but it did not; therefore, OMB thinks it is reasonable to give some weight to the term "news" when constructing a definition. The examples given cite the traditional models—radio and television stations as well as publishers of periodicals that disseminate "news,"—but also look to evolving non-traditional distributors, such as videotext. While these examples are not meant to be all-inclusive, they *are* meant to be limiting, and to give meaning to the phrase "publish or broadcast news" so that it implies something more than merely "make information available." The news media perform an active rather than passive role in dissemination. Thus, they can be distinguished, for example, from an entity such as a library which stores information and makes it available on demand.

The provision for freelancer eligibility, especially the term "solid basis for expecting publication" also drew comments. OMB's aim was to incorporate legitimate freelance representatives of the news media into the categorical definition without opening the door to anyone merely calling himself or herself a freelance journalist. Many commentators noted that while it was quite reasonable to require freelancers to show some evidence that they could expect their work to be published before granting them access to this category of requester, they were troubled by the use of the phrase "solid basis." OMB has attempted to address these concerns by adding to this section examples amplifying what solid basis means, e.g., a publication contract would be the clearest basis, but freelancer's past publication history could also be considered. In any case, freelancers who do not qualify for inclusion in the "representatives of the news media" category because they cannot demonstrate a solid basis for expecting publication could be eligible to seek a reduction or waiver of fees if they meet the statutory waiver criteria.

Section 7. "Fees to be Charged."

A number of commentators expressed frustration that OMB was not issuing a unitary schedule of fees which would establish one government-wide charge for each FOIA service performed. OMB is sympathetic to this position, but does not believe that the FOIA Reform Act gives it the authority to do so. Because the FOIA Reform Act requires each agency's fees to be based upon its direct reasonable operating costs of providing FOIA services, OMB is precluded from establishing a government-wide fee schedule.

Commentators urged OMB to emphasize in this section that the effect of the FOIA amendment was to minimize costs by creating categorical limitations on what fees could be charged. They asserted that OMB's direction to the agencies to "charge fees that recoup the full direct costs they incur . . ." was at the least misleading, given the statutory limitations. OMB agrees and has revised the sentence to read "full allowable direct costs" to make it clear that agencies must look to the categorical limitations in the statute and charge fees accordingly.

Commentators pointed out that OMB's encouragement of agencies to use private sector services to locate, reproduce and disseminate records in response to FOIA requests, while consistent with the policy articulated in OMB Circular No. A–130, needed some limitations. Commentator specifically wanted OMB to make it clear that the ultimate costs for requesters serviced by private sector contractors should be no different than if serviced by an agency. They also suggested that OMB clarify that there are some services that agencies may not contract out: e.g., reviewing records for the application of an exemption or the waiving of a fee. OMB has accordingly redrafted the section to accommodate these concerns.

Section 7b. "Computer Searches for Records."

At the suggestion of a Federal agency commentator, OMB has added a provision permitting agencies to establish agency-wide average computer processing unit operating costs and operator/programmer salaries for purposes of determining fees for computer searches where they can reasonably do so because these costs are relatively uniform across the agency. This provision is meant to encourage agencies to minimize FOIA costs by reducing the administrative steps necessary to establish a fee for a particular search. It is not meant to allow agencies to raise the prices of such searches by including in the average expensive but seldom-used equipment.

OMB has also revised this section to make it clear that agencies may only charge search costs for that portion of the operation of the central processing unit (CPU) and operator salary that is directly attributable to the FOIA search.

Section 7c. "Review of Records."

Several Federal agency commentators requested additional clarification of when review costs could be charged, i.e., at what point in the processing of a request were review charges permitted and could charges be made for subsequent review of materials. OMB has revised this section to address these concerns and clarify that charges may only be assessed the first time an agency reviews a record for the application of an exemption and not at the administrative appeal level of an exemption already applied.

At the suggestion of a Federal agency commentator, OMB has added a provision permitting agencies to establish an agency-wide average cost for review when review is performed by a single class of employee. The intent is to minimize agency administrative costs.

Section 7d. "Duplication of Records."

One commentator objected to the salary of the employee operating the duplicating machinery being included as a reasonable direct cost of duplication. Since the operation of a duplicating machine is necessary to produce a copy of a document, OMB considers this a reasonable direct cost and has not changed the section.

Section 7e. "Other Charges."

Several commentators objected to the inclusion of fees for normal packaging and mailing of records in this section, arguing that mailing records was a reasonable interpretation of the FOIA requirement that agencies "make . . . records promptly available . . ." They argued that an agency requiring a requester to come from Alaska to Washington, D.C. to obtain records responsible to his request could hardly be said to be making records available. Upon reflection, OMB concurs and has deleted charges for ordinary packaging and mailing as examples of allowable other charges.

Section 7f. "Restrictions on Assessing Fees."

OMB has revised this section to provide greater detail on how agencies should develop costs relating to the 100 free pages of reproduction and two hours of free search time the FOIA Reform Act permits certain classes of requesters. The revision also reminds agencies of the consequences of these restrictions for the use of contractors to perform search and duplication services: specifically, that contracts must incorporate free search and reproduction services when appropriate.

OMB also added an explanation of how agencies should determine what constitutes two hours of free computer search time. Since most computer searches are accomplished in seconds and fractions of seconds, it would be unreasonable to interpret the statutory free search time to mean that an individual would be entitled to require an agency to operate a computer for two hours. The cost and the disruption of an agency's normal ADP activities would be prohibitively expensive. OMB has therefore developed a formula based upon the concept of manual search, i.e., search done by an agency employee who examines records to find those that are responsive to a request. The employee performing the computer search who is most nearly like the clerical searcher is the operator. The guidance, therefore, tells agencies that a requester is entitled to two hours of operator salary translated into computer search costs (computer search consists of operator salary plus CPU operating time cost for the duration of the search).

Section 7g. "Waiving or Reducing Fees."

OMB has dropped this section. A number of commentators pointed out that OMB's role is limited by the plain wording of the statute to developing guidelines and a fee schedule. In looking carefully at this requirement, OMB has determined that developing a schedule providing for the charging of fees and issuing guidance on when fees should be reduced or waived are separate issues and that OMB's role does not involve the latter consideration. In developing a fee schedule and guidance on its implementation that the statute clearly contemplates, it was necessary for OMB to carefully define the categories or classes of requester and explain to the agencies what fees to charge them. Thus, for example, OMB discussed the exclusion of search fees for educational/scientific institutional requesters and representatives of the news media. This discussion was about the establishment and limitation of fees for a particular category of requester. It was not about waiving search fees since the statute gives agencies no discretion about what search fees to charge this class of requester. OMB considers the development of such definitions as required by the statute and thus squarely within its proper responsibilities.

Section 8. "Fees to be Charged."

OMB has added the phrase "requesters must reasonably describe the records sought" to all categories of requesters to accommodate some commentators' concerns that OMB was creating a new requirement for a particular class of requester by applying this requirement to educational/scientific institutional requesters and representatives of the news media alone.

Section 8d. "All Other Requesters."

OMB has revised this section to explain that the requests of record subjects asking for copies of records about themselves filed in agencies' systems of records must be processed under the Privacy Act's fee schedule.

Section 8e. "Commercial Use Requesters."

OMB has removed the reference to fee waivers, based upon the discussion in Section 7g. above.

Section 9a. "Charging Interest."

OMB has revised this section to specify that interest will accrue from the date the bill was mailed if fees are not paid by the 30th day following the billing date. To ensure that agencies do not bill interest because of defects in their own administrative procedures, the section has been revised to provide that agencies should ensure their accounting procedures are adequate to properly credit a requester who has remitted the fee within the time period. To guard against inadequate processing procedures, the guidelines require that receipt of a fee by the agency, whether processed or not, will stay the accrual of interest.

Section 9b. "Charges for Unsuccessful Search."

Many requesters urged OMB to delete this section. Some argued that it could be used by an agency to surprise and unwary requester with an unexpected and potentially ruinous bill. OMB thinks that an agency should be entitled to charge for unsuccessful search, but agrees that it should be done with the knowledge and consent of the requester. Thus the section has been revised to require agencies to notify requesters who have not agreed to pay fees as high as those anticipated when charges are likely to exceed $25.

Section 9c. "Aggregating Requests."

Requesters generally agreed that agencies should not permit a requester to make multiple requests merely to avoid paying fees. There was disagreement about what standard to use in such cases and many requesters urged that OMB adopt a 30-day limit.

The 30-day limit, while providing certainty for both the requester and the agency, does not achieve the goal of allowing an agency to identify requesters who are attempting to circumvent the fee provisions of the statute and charge accordingly. Therefore, OMB has declined to change its original proposal, a "reasonable belief" standard, but has provided examples to help agencies understand what "reasonable" means in this context. Thus, agencies could presume that multiple requests for documents that could reasonably have been the subject of a single request and which occur within a 30-day period are made to avoid paying fees. Agencies may make that presumption for requests occurring over a longer period, but should have a solid basis for doing so.

Commentators also suggested that agencies should not be able to aggregate requests from a single requester for records on unrelated subjects nor from different requesters for records about the same subject. As to the first, OMB

agrees and has revised this section to reflect this concern. As to the second, OMB does not agree that agencies should in no circumstances be able to aggregate requests from multiple users. However, such aggregation should occur rarely and only when the agency has solid evidence that multiple requesters are colluding to avoid paying FOIA fees. OMB has included cautions to this effect in the section.

Section 9d. "Advance Payments."

The Amendments clearly permit agencies to charge and collect advance payments in two specific circumstances: (1) When fees will exceed $250; or when a requester has previously failed to pay fees in a timely fashion. Non-federal commentators generally argued that this provision should be read as a limitation rather than an authorization: i.e., "agencies may only charge advance fees when. . . ." OMB has accordingly revised this section to incorporate the fee limitation concept and also to ensure that agencies use this provision fairly. Thus, when agencies determine the estimated fee is likely to exceed $250, they should seek satisfactory assurances of payment if the requester has a record of prompt payment. If the requester has no history of payment, they may ask for an advance payment of an amount up to the estimated cost. For requesters who have failed to pay in a timely fashion in the past, however, or who are currently delinquent, agencies are encouraged to require full prepayment of the estimated amount.

Uniform Freedom of Information Act Fee Schedule and Guidelines

To the Heads of Executive Departments and Establishments

1. *Purpose*—This Fee Schedule and Guidelines implement certain provisions of the Freedom of Information Reform Act of 1986 (Pub. L. 99-570) which require the Office of Management and Budget to promulgate guidelines containing a uniform schedule of FOIA fees applicable to all agencies that are subject to the FOIA.

Data from agencies' annual FOIA reports to the Congress as well as studies by the General Accounting Office and others indicate that inconsistent application of the Act's fee provisions has sometimes resulted in inequitable treatment of users of the Act as well as substantial loss of revenues to the Treasury. While the legislative history of the 1974 amendments to the Freedom of Information Act shows that the Congress did not intend that fees be erected as barriers to citizen access, it is quite clear that the Congress did intend that agencies recover of their costs. The 1986 Amendments to the Act clarify that congressional intention further by creating specific categories of requesters and prescribing fees for each category. Therefore, these Guidelines provide a schedule of fees and related administrative procedures in order to establish a consistent government-wide framework for assessing and collecting FOIA fees.

2. *Scope*—This Fee Schedule and Guidelines apply to all agencies subject to the Freedom of Information Act (see 5 U.S.C. 552(f)).

3. *Effective Date*—This Fee Schedule and Guidelines are effective April 27, 1987.

4. *Inquires*—Inquiries should be directed to Robert N. Veeder at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Telephone: (202) 395-4814.

5. *Authorities*—The Freedom of Information Act (5 U.S.C. 552), as amended; the Paperwork Reduction Act (44 U.S.C. 35); the Privacy Act of 1974 (5 U.S.C. 552a); the Budget and Accounting Act of 1921 (31 U.S.C. 1 et. seq.); the Budget and Accounting Procedures Act (31 U.S.C. 67 et seq.).

6. *Definitions*—For the purpose of these Guidelines:

a. All the terms defined in the Freedom of Information Act apply.

b. A "statute specifically providing for setting the level of fees for particular types of records" (5 U.S.C. 552(a)(4)(A)(vi)) means any statute that specifically requires a government agency, such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to set the level of fees for particular types of records, in order to:

(1) Serve both the general public and private sector organizations by conveniently making available government information;

(2) Ensure that groups and individuals pay the cost of publications and other services which are for their special use so that these costs are not borne by the general taxpaying public;

(3) Operate an information dissemination activity on a self-sustaining basis to the maximum extent possible; or

(4) Return revenue to the Treasury for defraying, wholly or in part, appropriated funds used to pay the cost of disseminating government information.

Statutes, such as the User Fee Statute, which only provide a general discussion of fees without explicitly requiring that an agency set and collect fees for particular documents do not supersede the Freedom of Information Act under section (a)(4)(A)(vi) of that statute.

c. The term "direct costs" means those expenditures which an agency actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

d. The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Agencies should ensure that searching for material is done in the most efficient and least expensive manner so as to minimize costs for both the agency and the requester. For example, agencies should not engage in line-by-line search when merely duplicating an entire document would prove the less expensive and quicker method of complying with a request. "Search" should be distinguished, moreover, from "review" of material in order to determine whether the material is exempt from disclosure (see subparagraph 6f below). Searches may be done manually or by computer using existing programming.

e. The term "duplication" refers to the process of making a copy of a document necessary to respond to an FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided must be in a form that is reasonably usable by requesters.

f. The term "review" refers to the process of examining documents located in response to a request that is for a commercial use (see subparagraph 6g below) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

g. The term "'commercial use' request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of

the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, agencies must determine the use to which a requester will put the documents requested. Moreover, where an agency has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, agencies should seek additional clarification before assigning the request to a specific category.

h. The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

i. The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in 6g above, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

j. The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but agencies may also look to the past publication record of a requester in making this determination.

7. *Fees To Be Charged—General.* Agencies should charge fees that recoup the full allowable direct costs they incur. Moreover, they shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA.

Agencies are encouraged to contract with private sector services to locate, reproduce and disseminate records in response to FOIA requests when that is the most efficient and least costly method. When doing so, however, agencies should ensure that the ultimate cost to the requester is no greater than it would be if the agency itself had performed these tasks. In no case may an agency contract out responsibilities which the FOIA provides that it alone may discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees.

In addition, agencies should ensure that when documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs (see definition in paragraph 6b above), such as the NTIS, they inform requesters of the steps necessary to obtain records from those sources.

a. Manual Searches for Records—Whenever feasible, agencies should charge at the salary rate(s) (i.e. basic pay plus 16 percent) of the employee(s) making the search. However, where a homogeneous class of personnel is used exclusively (e.g., all administrative/clerical, or all professional/executive), agencies may establish an average rate for the range of grades typically involved.

b. Computer Searches for Records—Agencies should charge at the actual direct cost of providing the service. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary apportionable to the search. When agencies can establish a reasonable agency-wide average rate for CPU operating costs and operator/programmer salaries involved in FOIA searches, they may do so and charge accordingly.

c. Review of Records—Only requesters who are seeking documents for commercial use may be charged for time agencies spend reviewing records to determine whether they are exempt from mandatory disclosure. It should be noted that charges may be assessed only for the *initial* review; i.e., the review undertaken the first time an agency analyzes the applicability of a specific exemption to a particular record or portion of a record. Agencies may not charge for review at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable. Where a single class of reviewers is typically involved in the review process, agencies may establish a reasonable agency-wide average and charge accordingly.

d. Duplication of Records—Agencies shall establish an average agency-wide, per-page charge for paper copy reproduction of documents. This charge shall represent the reasonable direct costs of making such copies, taking into account the salary of the operators as well as the cost of the reproduction machinery. For copies prepared by computer, such as tapes or printouts, agencies shall charge the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction or duplication, agencies should charge the actual direct costs of producing the document(s). In practice, if the agency estimates that duplication charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

e. Other Charges—It should be noted that complying with requests for special services such as those listed below is entirely at the discretion of the agency. Neither the FOIA nor its fee structure cover these kinds of services. Agencies should recover the full costs of providing services such as those enumerated below to the extent that they elect to provide them:

(1) Certifying that records are true copies;

(2) Sending records by special methods such as express mail, etc.

f. Restrictions on Assessing Fees—With the exception of requesters seeking documents for a commercial use, Section (4)(A)(iv) of the Freedom of Information Act, as amended, requires agencies to provide the first 100 pages of duplication and the first two hours of search time without charge. Moreover, this section prohibits agencies from charging fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. These

provisions work together, so that except for commercial use requesters, agencies would not begin to assess fees until after they had provided the free search and reproduction. For example, for a request that involved two hours and ten minutes of search time and resulted in 105 pages of documents, an agency would determine the cost of only 10 minutes of search time and only five pages of reproduction. If this cost was equal to or less than the cost to the agency of billing the requester and processing the fee collected, no charges would result.

The elements to be considered in determining the "cost of collecting a fee," are the administrative costs to the agency of receiving and recording a requester's remittance, and processing the fee for deposit in the Treasury Department's special account (or the agency's account if the agency is permitted to retain the fee). The per-transaction cost to the Treasury to handle such remittances is negligible and should not be considered in the agency's determination.

For purposes of these restrictions on assessment of fees, the word "pages" refers to paper copies of a standard agency size which will normally be "8½ x 11" or "11 by 14." Thus, requesters would not be entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout, however, might meet the terms of the restriction.

Similarly, the term "search time" in this context has as its basis, *manual search.* To apply this term to searches made by computer, agencies should determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, i.e., the operator, agencies should begin assessing charges for computer search.

8. *Fees to be Charged—Categories of Requesters.* There are four categories of FOIA requesters: commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. The Act prescribes specific levels of fees for each of these categories:

a. Commercial use requesters—When agencies receive a request for documents for commercial use, they should assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Requesters must reasonably describe the records sought. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents. Agencies are reminded that they may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records (see section 9b below).

b. Educational and Non-commercial Scientific Institution Requesters—Agencies shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must reasonably describe the records sought.

c. Requesters who are Representatives of the News Media—Agencies shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in Section 6j above, and his or her request must not be made for a commercial use. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. Thus, for example, a document request to the Department of Justice by a newspaper for records relating to the investigation of a defendant in a current criminal trial of public interest could be presumed to be request from an entity eligible for inclusion in this category and entitled to records for the cost of reproduction alone. Requesters must reasonably describe the records sought.

d. All Other Requesters—Agencies shall charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Moreover, requests from record subjects for records about themselves filed in agencies' systems of records will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction. Requesters must reasonably describe the records sought.

9. *Administrative Actions to Improve Assessment and Collection of Fees*—Agencies shall ensure that procedures for assessing and collecting fees are applied consistently and uniformly by all components. To do so, agencies should amend their agency-wide FOIA regulations to conform to the provisions of this Fee Schedule and Guidelines, especially including the following elements:

a. *Charging Interest—Notice and Rate.* Agencies may begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. Agencies should ensure that their accounting procedures are adequate to properly credit a requester who has remitted the full amount within the time period. The fact that the fee has been received by the agency, even if not processed, will suffice to stay the accrual of interest. Interest will be at the rate prescribed in Section 3717 of Title 31 U.S.C. and will accrue from the date of the billing.

b. *Charges for Unsuccessful Search.* Agencies should give notice in their regulations that they may assess charges for time spent searching, even if the agency fails to locate the records or if records located are determined to be exempt from disclosure. In practice, if the agency estimates that search charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

c. *Aggregating Requests.* Except for requests that are for a commerical use, an agency may not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When an agency reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the agency may aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period in which the requests have occurred. For example, it would be

reasonable to presume that multiple requests of this type made within a 30-day period had been made to avoid fees. For requests made over a longer period, however, such a presumption becomes harder to sustain and agencies should have a solid basis for determining that aggregation is warranted in such cases. Agencies are cautioned that before aggregating requests from more than one requester, they must have a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case may agencies aggregate multiple requests on unrelated subjects from one requester.

d. *Advance Payments.* Agencies may not require a requester to make an advance payment, i.e., payment before work is commenced or continued on a request, unless:

(1) The agency estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. Then, the agency should notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), the agency may require the requester to pay the full amount owed plus any applicable interest as provided above or demonstrate that he has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester.

When an agency acts under subparagraphs (1) or (2) above, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after the agency has received fee payments described above.

e. *Effect of the Debt Collection Act of 1982* (Pub. L. 97–365). Agencies' FOIA regulations should contain procedures for using the authorities of the Debt Collection Act, including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to encourage repayment.

10. *Agencies' Required Implementing Actions*—Section 1804(b)(1) of the Freedom of Information Reform Act requires agencies to promulgate final regulations in conformance with OMB's schedule and guidelines no later than the 180th day following enactment: April 25, 1987.

James C. Miller III,

Director.

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LIST OF PUBLIC LAWS

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H.R. 1056/Pub. L. 100-14

To amend the National Housing Act to limit the fees that may be charged by the Government National Mortgage Association for the guaranty of mortgage-backed securities. (Mar. 24, 1987; 101 Stat. 128; 1 page) Price: $1.00