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federal register

Thursday
May 3, 1984

Selected Subjects

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 460. Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action increases the quantity of fresh California-Arizona lemons that may be shipped to the fresh market to 260,000 cartons during the period April 22–28, 1984. Such action is needed to provide for orderly marketing of fresh lemons for the period specified due to the marketing situation confronting the lemon industry.

DATES: Effective for the period April 22–28, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule 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). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy currently in effect. The committee met by telephone on April 26, 1984, to consider the current and prospective conditions of supply and demand and recommended an increase in the quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is improving.

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 amendment is based and the effective date necessary to effectuate the declared policy of the Act, and it relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the Act 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 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

Section 910.760 Lemon Regulation 460 is revised to read as follows:

§ 910.760 Lemon Regulation 460.

The quantity of lemons grown in California and Arizona which may be handled during the period April 22, 1984, through April 28, 1984 is established at 260,000 cartons.

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

Dated: April 27, 1984.

Thomas R. Clark,

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

[FR Doc. 84–11895 Filed 5–2–84; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 991

Hops of Domestic Production; Marketing Policy for the 1984–85 Marketing Year; Establishment of Salable Quantity and Allotment Percentage; Extension of Time for Transferring Allotment Bases; and Waiver of Bona Fide Effort Requirement

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes the quantity of hops that may be freely marketed from the 1984 crop, extends the date for producers to transfer allotment bases, and waives the bona fide effort requirement for the 1984–85 marketing year. These marketing policy actions are under the marketing order for domestic hops, and are intended to promote the orderly marketing of domestic hops for the 1984–85 marketing year.

EFFECTIVE DATES: Extension of time for transferring allotment bases effective May 3, 1984 salable quantity and allotment percentage and waiver of bona fide effort requirement effective August 1, 1984 to July 31, 1985.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, (202) 447–5053.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified a "non-major" rule under critieria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a signficant economic impact on a substantial number of small entities.

It is found that good cause exists for not postponing the effective date of the portion of this action extending the date for producers to transfer allotment bases until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) Handlers and growers are making preparations for handling and growing 1984-crop hops; (2) producers will not be able to meet the April 1 deadline now specified for transferring allotment

bases since that date has already passed and (3) unless the date extension is made promptly producers will not be able to transfer base under the provisions of the order and the May 1 deadline specified herein.

Notice of this action was published in the March 26, 1984, issue of the **Federal Register** (49 FR 11185), and interested persons were afforded an opportunity to submit written comments. There were no comments submitted in response to the notice. However, four comments regarding the HAC's marketing policy recommendations contained in the notice were received from producers prior to March 26 opposing the establishment of an allotment percentage of 115 percent.

The establishment of a salable quantity and allotment percentage, the extension of time for producers to transfer allotment base, and suspension of the bona fide effort requirement, are in accordance with the provisions of Marketing Order No. 991, as amended (7 CFR Part 991), regulating the handling of hops of domestic production. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). These actions were recommended by the Hop Administrative Committee (HAC) which works with the Department in administering the marketing order program.

Pursuant to §§ 991.36 and 991.37 of the order, the salable quantity and allotment percentage for the 1984–85 marketing year, which begins August 1, 1984, are based upon a recommendation of the HAC, and the following estimates:

(1) Total domestic consumption of 39,500,000 pounds of hops;

(2) Minus imports of 12,000,000 pounds of hops, to result in domestic consumption of U.S. hops of 27,500,000 pounds;

(3) Plus total exports of 34,000,000 pounds of hops, to equal 61,500,000 pounds total usage of U.S. hops;

(4) Plus 2,000,000 pounds to adjust for weight loss of hops processed into pellets and extract;

(5) Minus inventory adjustment of 5,282,000 pounds;

(6) Plus an adjustment of 11,119,000 pounds to provide for adequate supplies should some producer allotments not be fully produced; and

(7) This results in a salable quantity for the 1984–85 marketing year of 69,337,000 pounds.

The allotment percentage of 115 percent is computed by subtracting from this salable quantity a total of 1,177,000 pounds for additional allotment bases for hops of the Fuggle variety granted pursuant to §991.38(b) and §991.138(c) and dividing the remainder by 59,269,877 pounds, the total of all other allotment bases.

Section 991.146(c) of Subpart—Administrative Rules and Regulations (7 CFR 991.130–991.938) currently provides that a producer can transfer all or part of his allotment base to another producer only if the transfer is effective prior to the issuance of annual allotment to the transferor or prior to April 1, whichever is earlier. The delay in the establishment of the salable quantity and allotment percentage for the 1984–85 marketing year makes it necessary to extend the April 1 cut-off date to May 1 for the 1984 calendar year. This will enable producers to transfer base under the order and complete their growing plans for the 1984–85 marketing year. Section 991.46 of the order permits producers to transfer allotment bases.

Pursuant to § 991.38(a)(5) of the order, the right of each producer to retain all or part of his allotment base depends on his continuing to make a bona fide effort to produce his annual allotment. If a producer fails to make a bona fide effort to produce his annual allotment, his allotment base must be reduced by an amount equivalent to the unproduced proportion. Subparagraph (5) also authorizes the HAC, with approval of the Secretary, to waive the bona fide effort requirement.

The HAC recommended waiving the bona fide effort requirement for the 1984–85 marketing year because it concluded that its implementation would result in additional and unneeded production. Currently, the hop market is inactive and an oversupply of hops exists, and enforcement of the bona fide effort requirement for the 1984–85 marketing year could further depress the market.

All four producers in opposition to the marketing policy contained in the notice objected to establishing an allotment percentage of 115 percent and three wanted the allotment percentage to be 130 percent. The basis for their objection to this allotment percentage was: (1) That the HAC had promised producers in a meeting held in October 1980, that the allotment percentage would be held at 130 percent through the 1984–85 marketing year: (2) that setting the allotment percentage at 115 percent would increase the value of allotment base and especially leased base; and (3) that such action would encourage an increased transfer of allotment bases among producers. Another alternative recommendation made by the four producers was for the suspension of all volume regulations for the 1984–85 marketing year. The four producers also commented on other issues not related to marketing policy but rather the amendment of the order.

Notice was published in the **Federal Register** (49 FR 1380) January 11, 1984, inviting interested persons to submit proposals by March 12, 1984, to amend the order. That time was extended to April 10, 1984 (49 FR 9740). The actions contained in this final rule are independent of that action and should not be considered to establish any precedent for actions taken in subsequent marketing years. Any findings and conclusions on proposals to amend the hop marketing order will be based on the record compiled at public hearings in the formal rulemaking proceedings.

All of the objections to the proposed marketing policy are denied because marketing conditions have changed considerably since the HAC's marketing policy meeting in 1980. The hop market is depressed by an oversupply of hops, diminishing demand, and current inactivity. It would be inappropriate to establish a marketing policy (whether in the form of a 130 percent allotment percentage or suspension of volume regulation) that promotes a high level of production in view of current market conditions. The recommended salable quantity is still higher than actual market needs but it endeavors to accommodate producers who are contracted at high levels, while attempting to adjust production to market needs. Because of these current marketing conditions, the recommended allotment percentage should not have a significant effect on the value or transfer of allotment base.

After consideration of all relevant matter presented, including that in the notice, the information and recommendations of the HAC, the four objections, and other available information, it is found that: (1) To establish a salable quantity of 69,337,000 pounds resulting in an allotment percentage of 115 percent; (2) to extend the cut-off date for producers to transfer allotment bases from April to May 1 for the 1984 calendar year, and (3) to waive the bona fide effort requirement for the 1984–85 marketing year will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 991

Marketing agreements and orders, Hops.

PART 991—[AMENDED]

Therefore, the Subpart—Administrative Rules and Regulations (7 CFR 991.130–991.938) is amended by revising §§ 991.146(c) and adding a new

§ 991.222 and § 991.939 as follows: (Sections 991.222 and 991.939 will not be published in the Code of Federal Regulations).

1. Section 991.146(c) is revised to read as follows:

§ 991.146 Transfer of allotment bases.

* * * * *

(c) Whenever a producer transfers all or part of his allotment base to another producer, the annual allotment referable to such transferred allotment base, or part thereof, shall be issued to the transferee only if the transfer is effective prior to the issuance of an annual allotment to the transferor or prior to April 1, whichever is the earlier: *Provided,* That for the 1984 calendar year that date shall be May 1 instead of April 1.

2. A new § 991.222 is added to read as follows:

§ 991.222 Allotment percentage and salable quantity for hops during the marketing year beginning August 1, 1984.

The allotment percentage during the marketing year beginning August 1, 1984, shall be 115 percent, and the salable quantity shall be 69,337,000 pounds.

3. Section 991.939 is added to read as follows:

§ 991.939 Waiver of bona fide effort requirement for the 1984–85 marketing year.

The bona fide effort requirement provided for in § 991.38(a)(5) shall be waived for the 1984–85 marketing year beginning August 1, 1984.

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

Dated: April 30, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 84–11955 Filed 5–2–84; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1040

Milk in the Southern Michigan Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rules.

SUMMARY: This suspension action relaxes for the months of April through September 1984 the requirement in the Southern Michigan Federal milk order that a cooperative association deliver to pool distributing plants at least 50 percent of its members' producer milk in order to qualify its supply plants as pool plants under the order. On the basis of a previous request, this requirement was suspended during December 1983 through March 1984. Continuation of the suspension was requested by a cooperative association that represents producers supplying milk to the fluid market. The action is needed to avoid inefficient handling of milk and to ensure that dairy farmers historically associated with the Southern Michigan market will continue to share in the market's fluid milk sales.

EFFECTIVE DATE: May 3, 1984.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–4829.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued April 2, 1984; published April 5, 1984 (49 FR 13543).

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Southern Michigan marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on April 5, 1984 (49 FR 13543) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon by April 12, 1984. No comments were received in opposition to the proposed action.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of April through September 1984, the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In § 1040.7(b)(2) the words "if transfers from such supply plant to plants described in paragraph (b)(5) of this section and by direct delivery from the farm to plants qualified under paragraph (a) of this section are:"

2. In § 1040.7(b)(2), paragraphs (i) and (ii).

Statement of Consideration

This action makes inoperative for the months of April through September 1984 the provisions requiring a cooperative association to deliver at least 50 percent of its members' producer milk to pool distributing plants, either through its supply plants or directly from farms, in order to qualify the supply plants as pool plants.

Michigan Milk Producers Association (MMPA), which represents a majority of the producers supplying the market, requested the suspension, which is a continuation of a suspension of these same provisions that has been in effect since December 1983.

This action is needed because a major distributing plant regulated by the Southern Michigan order stopped its operations in mid-February. The fluid milk sales, formerly made by the plant, have shifted to plants regulated by two other federal milk marketing orders. The loss of these sales ended a trend of increasing fluid milk requirements by distributing plants regulated by the Southern Michigan order. The amount of fluid milk sales by plants regulated by the order this spring and summer are expected to be below the sales made by those plants in the comparabe period of 1983.

The suspension is needed also because receipts of producer milk have continued at a high level. Producers in Michigan who participated in the milk diversion program contracted to reduce milk marketings which would result in a total reduction of milk production in Michigan of approximately four percent. However, the amount of producer milk receipts, on a daily average, has decreased by less than one percent for the first three months of 1984 compared to the same period in 1983 for the Southern Michigan market. During the spring and summer months, milk production in Michigan is expected to remain at a high level. The projected marketwide Class I utilization percentage will range between 35 percent and 45 percent of producer receipts for the April through September period.

Because of the above, it is unnecessary to maintain the qualification requirement for a cooperative association to deliver to distributing plants at least 50 percent of its members' producer milk in order to qualify its supply plants as pool plants under the order.

If the provisions were not suspended for the months of April through

September, Michigan Milk Producers Association would encounter considerable difficulty in pooling certain supply plants and the milk of producers who historically have been associated with the Southern Michigan fluid market. Without the suspension milk would be shipped in an inefficient and costly manner merely to assure its continued pooling under the order. This would disrupt the orderly marketing of milk in the Southern Michigan marketing area.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that substantial quantities of milk of producers who have regularly supplied this market otherwise could be excluded from the marketwide pool, thereby causing a disruption in the orderly marketing of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments were filed in opposition to this action.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register.**

List of Subjects in 7 CFR Part 1040

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the following provisions in § 1040.7 of the Southern Michigan order are hereby suspended for the months of April through September 1984:

§ 1040.7 [Temporarily suspended in part]

1. In § 1040.7, paragraph (b)(2) the words "if transfers from such supply plant to plants described in paragraph (b)(5) of this section and by direct delivery from the farm to plants qualified under paragraph (a) of this section are:"

2. In § 1040.7(b)(2), paragraphs (i) and (ii).

Effective Date: May 3, 1984.

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

Signed at Washington, D.C., on: April 27, 1984.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 84–11957 Filed 5–2–84; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 100

Statement of Organization; Transfer of District Office From Hong Kong, B.C.C. To Bangkok, Thailand

Correction

In FR Doc. 84–10706 appearing on page 16760 in the issue of Friday, April 20, 1984, make the following correction:

§ 100.4 [Corrected]

1. In the second column, § 100.4 (b)(33), line six, "wester" should read "western".

2. On the same page, column one, **SUPPLEMENTARY INFORMATION,** line five, "Spanule®" should read "Spansule®".

BILLING CODE 1505–01–M

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; TIL–1]

Truth in Lending; Official Staff Commentary Update

Correction

In a document correcting FR Doc. 84–9058 (49 FR 13482, April 15, 1984) appearing in the first column of page 17932 in the issue of Thursday, April 26, 1984 paragraph 2 should have read as follows:

2. On page 13486, column two, paragraph three, line five, "If the creditor may comply with the state law by placing the due-on-sale notice apart from the federal disclosures," should appear between "disclosures." and "the".

BILLING CODE 1505–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84–ANE–2; Amdt No. 39–4849]

Airworthiness Directives; Grob-Werke GMBH and CO KG Model G102 ASTIR CS Sailplanes Certificated in Any Category

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) requiring replacement of the original design spheric lock bolt attaching the horizontal stabilizer to the vertical stabilizer, and replacement of aft horizontal stabilizer locking pins, on Grob model G102 ASTIR CS sailplanes having a serial number in the range from 1001 through 1536. The AD is needed to preclude bolt and pin failure as a result of cracking which results in separation of the horizontal stabilizer from the sailplane.

DATES: Effective May 3, 1984. Incorporation by Reference approved by the Director of the Federal Register on May 3, 1984. Compliance required within the next 100 hours time in service but not later than 120 days after the effective date of this AD.

ADDRESSES: The applicable Technical Information may be obtained from: B. Grob Flugzeugbau, Industriestrabe, D–8948 Mindelheim-Mattsies, West Germany.

A copy of the Technical Information is contained in the Rules Docket, Federal Aviation Administration, Office of the Regional Counsel, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: C. Christie, Manager, Aircraft Certification Office, AEU–100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, Brussels, Belgium, Telephone 513.38.30; or Edward W. Maila, ANE–152, Boston Aircraft Certification Office, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts, 01803, Telephone (617) 273–7329.

SUPPLEMENTARY INFORMATION: Grob Technical Information TM 306–17, dated June 10, 1981, reports cracking in the threads of the original design spheric locking bolt attachment of the horizontal stabilizer to the vertical stabilizer, and

in the hardened surface of the lock pins which lock the aft spar of the stabilizer to the rear spar of the vertical stabilizer on the Grob model G102 ASTIR CS sailplane. Failure of the spheric lock bolt or lock pins results in separation of the horizontal stabilizer from the sailplane. German AD No. 81–126 Grob, issued June 26, 1981, specifies compliance with TM 306–17 as a safety measure to prevent loss of longitudinal control and loss of the sailplane. Since this condition is likely to exist on sailplanes of the same type design, and AD is being issued which requires replacement of the original design spheric locking bolt with a modified bolt P/N 102–3500.21 and special nut P/N 102–3510.21, and replacement of the aft stabilizer locking pins on Grob-Werke model G102 ASTIR CS sailplanes serial numbered in the range from 1001 through 1536.

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

Approximately 37 Grob model G102 ASTIR CS sailplanes, certificated under Type Certificate No. G33EU, are affected at a total estimated cost of $2220 ($60 per sailplane).

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Burkhart-Grob Flugzeugbau Industriestrabe: Applies to model G102 ASTIR CS sailplanes, serial numbers 1001 through 1536 inclusive, certificated in any category.

Compliance is required within the next 100 hours time in service, or within 120 days, whichever occurs first, after the effective date of this AD, unless already accomplished.

To prevent bolt and pin failure, install modified spheric locking bolt, P/N 102–3500.21, and special nut, P/N 102–3510.21, in the forward horizontal stabilizer connection to the vertical stabilizer, and install new locking pins, P/N 102–2142.46, in the aft connecting plate for the horizontal stabilizer in accordance with instruction 1 and 2 of Grob Technical Information TM 306–17, dated June 10, 1981, or an FAA approved equivalent.

Equivalent means of compliance may be approved by the Manager, Aircraft Certification Staff, AEU–100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, Brussels, Belgium.

The Burkhart Grob Flugzeugbau Industriestrabe Technical Information TM 306–17, dated June 10, 1981 identified and described in this directive is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Burkhart Grob Flugzeugbau Industriestrabe, D–8948 Mindelheim-Mattsies, West Germany or upon request to Burkhart Grob of America Inc., 1070 Navajo Drive, Bluffton, Ohio. These documents also may be examined at the Office of the Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

This amendment becomes effective on May 3, 1984.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, Jan. 12, 1983); 14 CFR 11.89)

Note.—The FAA has determined that this regulation only involves 37 sailplanes with estimated cost of $60 per sailplane. Therefore, I certify that this action: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have a significant economic impact on a substantial number of small entities under criteria of the Regulatory Flexibility Act.

Note.—The incorporation by reference provisions of this document were approved by the Director of the **Federal Register** on May 3, 1984. The referenced Technical Information is available at the **Federal Register.**

Issued in Burlington, Massachusetts, on April 12, 1984.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 84–11885 Filed 5–2–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 83–ANE–19; Amdt. 39–4856]

Airworthiness Directives; Avco Lycoming Model LTS101–600A–2 Gas Turbine Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain Avco Lycoming Model LTS101–600A–2 gas turbine engines by individual letters. The AD requires replacement of all thin rim output gear assemblies with more durable, thick rim output gear assemblies, and concurrent replacement of the torquemeter gear assembly. The AD is needed to prevent failure of the output gear which could result in in-flight power loss and power turbine overspeed.

DATES: Effective May 7, 1984, as to all persons except those persons to whom it was made immediately effective by priority letter AD, issued January 27, 1984, which contained this amendment.

Compliance schedule—As prescribed in body of AD.

ADDRESS: The applicable technical manuals may be obtained from Avco Lycoming Williamsport Division, 652 Oliver Street, Williamsport, Pennsylvania 17701.

FOR FURTHER INFORMATION CONTACT: Kirk E. Gustafson, General Aviation Engine Branch, ANE–142, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7347.

SUPPLEMENTARY INFORMATION: On January 27, 1984, priority letter AD 84–02–07 was issued and made effective immediately as to all known U.S. owners and operators of certain Avco Lycoming Model LTS101–600A–2 gas turbine engines. The AD required replacement of all thin rim output gear assemblies with more durable, thick rim output gear assemblies, and concurrent replacement of the torquemeter gear assembly. AD action was necessary to prevent failure of the output gear, which causes power loss and could result in power turbine overspeed.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual letters issued January 27, 1984, to all known U.S. owners and operators of certain Avco Lycoming Model LTS101–600A–2 gas turbine engines. These conditions still exist and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator,

§ 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Avco Lycoming Willamsport Division:

Applies to Avco Lycoming Model LTS101–600A–2 gas turbine engines.

Compliance is required as indicated [unless already accomplished).

To prevent power loss and power turbine overspeed, accomplish the following:

1. Replace, concurrently, the output gear assembly and torquemeter gear assembly with a new output gear assembly, part numbers (P/Ns) 4–081–120–10, –15, –16, or –17, and a new torquemeter gear assembly, P/Ns 4–081–070–12, –15, –19, –25, or –26, for those engines which have had the torquemeter gear assembly replaced without concurrent replacement of the output gear assembly, and which presently have output gear assembly P/Ns 4–081–120–11, –12, –13, or –14 installed, within the next 25 operating hours.

2. Replace, concurrently, the output gear assembly and torquemeter gear assembly with a new output gear assembly, P/Ns 4–081–120–10, –15, –16, or –17, and a new torquemeter gear assembly, P/Ns 4–081–070–12, –15, –19, –25, or –26, for those engines which have had the output gear assembly replaced without concurrent replacement of the torquemeter gear assembly, and which presently have output gear assembly P/Ns 4–081–120–11, –12, –13, or –14 installed, within the next 25 operating hours.

3. Replace, concurrently, the output gear assembly and torquemeter gear assembly with a new output gear assembly, P/Ns 4–081–120–10, –15, –16, or –17, and a new torquemeter gear assembly, P/Ns 4–081–070–12, –15, –19, –25, or –26, for those engines having output gear assembly P/Ns 4–081–120–11, –12, –13, or –14 installed, within the next 100 operating hours or before reaching 1,000 operating hours, whichever occurs later.

Aircraft may be ferried in accordance with the provisions of Federal Aviation Regulation (FAR) 21.197 and 21.199 to a base where the AD can be accomplished. Upon request of an operator, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, FAA, New England Region.

This amendment becomes effective May 7, 1984, as to all persons except those persons to whom it was made immediately effective by priority letter AD 84–02–07, issued January 27, 1984, which contained this amendment.

(Secs. 313(a), 601 and 603, Federal Aviation Act of 1958, as amended (46 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.89)

Note.—The FAA has determined that this regulation only involves 80 aircraft, and Avco Lycoming Division is providing 100% reimbursement for all labor and component costs associated with the accomplishment instructions in this AD. It is estimated that the labor required to perform the changeout is 5 manhours, and the resulting aircraft downtime is not expected to create an economic burden to operators. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291, and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

Issued in Burlington, Massachusetts, on April 20, 1984.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 84–11883 Filed 5–2–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 83–AAL–6]

Expansion of Control 1487, Additional Control Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment expands the western boundary of Control 1487, Additional Control Area, so that it coincides with the boundaries of the Oakland and Anchorage Oceanic Control Areas. This action allows the Anchorage Air Route Traffic Control Center to utilize domestic air traffic control (ATC) procedures, which are more efficient than oceanic procedures, in the established airspace.

EFFECTIVE DATE: July 5, 1984.

FOR FURTHER INFORMATION CONTACT: William C. Davis, Airspace and Air Traffic Rules Branch (AAT–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8783.

SUPPLEMENTARY INFORMATION:

History

On January 6, 1984, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to expand the boundary of Control 1487, Additional Control Area, westward and thereby facilitate utilization of domestic ATC procedures (49 FR 895). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.163 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations expands the boundary of Control 1487 westward so that it coincides with the boundaries of Oakland and Anchorage Oceanic Control Areas. This action allows ATC to utilize domestic ATC procedures which are more efficient than oceanic ATC procedures in the newly established airspace.

List of Subjects in 14 CFR Part 71

Additional control areas, Aviation safety, Airspace.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.163 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t., July 5, 1984, as follows:

Control 1487 [Amended]

By deleting the words "a line beginning at" and substituting the words "a line beginning at lat. 58°20'00"N., long. 148°55'00"W.; to". By deleting the word "VORTAC" and substituting the word "VOR/DME". By deleting the words "thence along the eastern boundary of the Anchorage Oceanic CTA/FIR boundary" and substituting the words "to lat. 54°00'00"N., long. 136°00'00"W.; to lat. 56°39'00"N., long. 143°07'00"W.;"

(Secs. 307(a), 313(a), and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), and 1510); Executive Order 10854 (24 FR 9565); (49 U.S.C. 106(g) (Revised Pub. L. 97–449, Jan. 12, 1983)); and 14 CFR 11.69)

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

Issued in Washington, D.C., on April 25, 1984.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 84–11881 Filed 5–2–84; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 83-AAL-5]

Revocations and Amendments to Federal Colored Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revokes two colored federal airways and deletes certain segments of five others in the State of Alaska because of their lack of use.

EFFECTIVE DATE: July 5, 1984.

FOR FURTHER INFORMATION CONTACT: William C. Davis, Airspace and Air Traffic Rules Branch (AAT-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

On January 30, 1984, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke two colored federal airways and delete certain segments of five others in the State of Alaska because of their lack of use (49 FR 3669). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. The FAA received two comments objecting to the decommissioning of the nondirectional radio beacons (NDBs) associated with the affected airways. The FAA did not propose such an action and the NDBs are not affected by this action. Except for editorial changes, this amendment is the same as that proposed in the notice. Sections 71.103, 71.105 and 71.107 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revokes Red Federal Airways R-27 and R-40; deletes segments of Amber Federal Airways A-15 and A-2 between Delta Junction, AK, RBN and Chena, AK, RBN; deletes segments of Green Federal Airways G-6 and G-9 between Aniak, AK, NDB and Cairn Mountain, AK, NDB and between Cairn Mountain, AK, NDB and Campbell Lake, AK, NDB, respectively; and deletes the segment of Red Federal Airway R-39 between Julius, AK, RBN and Chena, AK, RBN.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Colored Federal Airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, §§ 71.103, 71.105 and 71.107 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) are amended effective 0901 G.m.t., July 5, 1984, as follows:

§ 71.105

A-15 [Amended]

By deleting the words "RBN; Delta Junction, AK, RBN; Chena, AK, RBN;" and substituting the words "NDB; to Delta Junction, AK, NDB. From Chena, AK, NDB via"

A-2 [Amended]

By deleting the words "RNB; Delta Junction, AK, RBN; Chena, AK, RBN;" and substituting the words "NDB; to Delta Junction, AK, NDB. From Chena, AK, NDB via"

§ 71.103

G-6 [Amended]

By deleting the words "via Aniak, AK, NDB to Sparrevohn NDB." and substituting the words "; to Aniak, AK, NDB."

G-9 [Amended]

By deleting the words "Sparrevohn, AK, RBN; 24 miles, 29 miles, 53 MSL, 14 miles, 10,500 MSL, 42 miles, 12,500 MSL, to Campbell Lake, AK, RBN." and substituting the words "to Cairn Mountain, AK, NDB."

§ 71.107

R-27 [Revoked]

R-39 [Amended]

By deleting the words "RBN; Julius, AK, RBN; Chena, AK, RBN." and substituting the words "NDB; to Julius, AK, NDB."

R-40 [Revoked]

Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised Pub. L. 97-449, Jan. 12, 1983)); and 14 CFR 11.69)

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

Issued in Washington, D.C. on April 25, 1984.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 84-1182 Filed 5-2-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 83-AAL-7]

Alteration of Control 1234, Additional Control Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment expands control 1234, Additional Control Area, northward and westward to coincide with the newly established common boundary of the Oakland and Anchorage Oceanic Control Areas/Flight Information Regions. This action facilitates the use of the more efficient domestic, rather than oceanic, air traffic control (ATC) procedures in the newly designated airspace.

EFFECTIVE DATE: July 5, 1984.

FOR FURTHER INFORMATION CONTACT: William C. Davis, Airspace and Air Traffic Rules Branch (AAT-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

On January 10, 1984, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to expand Control 1234, Additional Control Area, westward and northward so that it would coincide with the newly established boundary of the Oakland and Anchorage Oceanic Areas/Flight Information Regions (49 FR 1211). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section

71.163 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations expands Control 1234, Additional control Area, westward and northward so that it coincides with the Oakland and Anchorage Oceanic Control Areas/ Flight Information Regions. This new airspace designation facilitates the use of the more efficient domestic ATC procedures and thereby allows the user more flexible access to the airspace.

List of Subjects in 14 CFR Part 71

Additional control areas, Aviation safety, Airspace.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.163 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t., July 5, 1984, as follows:

Control 1234

By deleting the words "to lat. 54°49'00"N., long. 170°12'30"E.; to lat. 54°23'00"N., long. 174°30'00"E.; to lat. 53°36'00"N., long. 176°47'00"W.; to lat. 54°02'00"N., long. 174°00'00"W.; to lat. 60°00'00"N., long. 174°00'00"W.;" and substituting the words "to lat. 60°00'00"N., long. 180°00'00"W.; to lat. 62°35'00"N., long. 175°00'00"W.;"

(Secs. 307(a), 313(a), and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), and 1510); Executive Order 10854 (24 FR 9565); (49 U.S.C. 106(g) (Revised Pub. L. 97–449, Jan. 12, 1983)); and 14 CFR 11.69)

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

Issued in Washington, D.C., on April 25, 1984.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 84–11884 Filed 5–2–84; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Prochlorperazine, Isopropamide, With Neomycin Sustained-Release Capsules

Correction

In FR Doc. 84–9474 appearing on page 14103 in the issue of Tuesday, April 10, 1984, make the following correction. In column one, SUMMARY, line nine, "is propamide" should read "isopropamide".

BILLING CODE 1505–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 635

Buy America Requirements

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This final rule revises the existing Buy America regulation to implement the provision mandated by Section 10 of Pub. L. 98–229, 98 Stat. 55, enacted on March 9, 1984. Section 10 amends Section 165(a) of the Surface Transportation Assistance Act of 1982 (STAA of 1982) by striking the word "cement" from the statutory language. The revised language removes cement from the materials and products that are covered by the Buy America provisions of the STAA of 1982. The regulations contained in 23 CFR 635.410 implementing Buy America are revised to reflect the statutory amendment.

EFFECTIVE DATE: March 9, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. P. E. Cunningham, Chief, Construction and Maintenance Division, (202) 426–0392, or Ms. Ruth R. Johnson, Office of the Chief Counsel, (202) 426–0781, Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: On March 9, 1984, the President signed into law an Act authorizing apportionment of certain funds for construction of the National System of Interstate and Defense Highways for fiscal year 1985 and to increase the amount authorized to be expended for emergency relief under Title 23, United States Code, and for other purposes (Pub. L. 98–229, 98 Stat. 55) (Act). This Act also amends the provisions of the STAA of 1982 (Pub. L. 97–424, 96 Stat. 2136) which had established Buy America requirements for Federal-aid highway projects. Section 10 amends Section 165 of the STAA of 1982 by deleting the word "cement" which removes the restriction that funds authorized for Federal-aid highway projects may not be obligated unless the cement and cement products used in such projects were produced in the United States. By deleting the word "cement," Congress made it clear that cement should not be covered by FHWA's Buy America requirements, which is consistent with FHWA practice prior to the STAA of 1982.

Since the provision mandated by Section 10 of the Act become effective on March 9, 1984, and since the current regulations in 23 CFR 635.410 (48 FR 53099, November 25, 1983) are in conflict with Section 10 and the legislative intent that gave rise to that section, immediate revision of the regulation is required. It is also extremely important to move quickly to issue regulations implementing this change because the most active highway construction period is now beginning. Since this regulation merely implements a statutory change to a grant program requirement, notice and public procedure herein is unnecessary and contrary to the public interest and good cause exists for publication as a final rule without a 30-day delay in effective date.

During the preparation of this final rule, FHWA received a petition for expedited rulemaking for the purpose of having Section 10 of Pub. L. 98–229, 98 Stat. 55, be interpreted as including clinker, cement, and concrete as "manufactured products" that are to be produced in the United States. After carefully evaluating the arguments contained in the petition, it was determined that no arguments of substantial merit were presented which warranted any change in FHWA's interpretation of Section 10 of Pub. L. 98–229, 98 Stat. 55, and the processing of this final rule. The amendment only deleted cement from coverage. The FHWA interprets this to mean that manufactured cement products are exempted from Buy America coverage. Therefore, for FHWA to include cement by coverage as a manufactured product would render the statutory amendment a nullity contrary to basic statutory construction rules. Clearly, this is contrary to congressional intent in enacting the amendment.

A regulatory evaluation, which included an assessment of the impacts

the Buy America provisions would have on the cement industry, was prepared in developing the regulations implementing section 165(a) of the STAA of 1982 (48 FR 53099, November 25, 1983) and remains current. A copy may be obtained by contacting Mr. P. E. Cunningham at the address provided under the heading "For Further Information Contact." The FHWA has determined that the change with respect to cement constitutes neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation.

In consideration of the foregoing, and under the authority of 23 U.S.C. 315, Section 10 of Pub. L. 98–229, 98 Stat. 55, Section 165 of Pub. L. 97–424, 96 Stat. 2136 and 49 CFR 1.48(b), the FHWA hereby amends Part 635, Subpart D by removing the word "cement" each time it appears in § 635.410. As revised, § 635.410 (b)(1)–(4) and (c)(1)(ii) read as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

List of Subjects in 23 CFR Part 635

Buy America, Government contracts, Grants programs—transportation, Highways and roads.

Issued: April 27, 1984.

Ray Barnhart,

Federal Highway Administrator, Federal Highway Administration.

PART 635—[AMENDED]

Section 635.410(b) (1)–(4) and (c)(1)(ii) and the authority citation are revised to read as follows:

§ 635.410 Buy America requirements.

* * * * *

(b) * * *

(1) The project either: (i) includes no permanently incorporated steel materials, or (ii) if steel materials are to be used, all manufacturing processes for these materials must occur in the United States.

(2) The State has standard contract provisions that require the use of domestic materials and products, including steel materials, to the same or greater extent as the provisions set forth in this section.

(3) The State elects to include alternate bid provisions for foreign and domestic steel materials which comply with the following requirements. Any procedure for obtaining alternate bids based on furnishing foreign steel materials which is acceptable to the Division Administrator may be used. The contract provisions must (i) require all bidders to submit a bid based on furnishing domestic steel materials, and (ii) clearly state that the contract will be awarded to the bidder who submits the lowest total bid based on furnishing domestic steel materials unless such total bid exceeds the lowest total bid based on furnishing foreign steel materials by more than 25 percent.

(4) When steel materials are used in a project, the requirements of this section do not prevent a minimal use of foreign steel materials, if the cost of such materials used does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or $2,500, whichever is greater. For purposes of this paragraph, the cost is that shown to be the value of the steel products as they are delivered to the project.

(c) * * *

(1) * * *

(ii) Steel materials/products are not produced in the United States in sufficient and reasonably available quantities which are of a satisfactory quality.

* * * * *

(23 U.S.C. 315, sec. 10 of Pub. L. 98–229, 98 Stat. 55, sec. 165 of Pub. L. 97–424, 96 Stat. 2136 and 49 CFR 1.48(b))

[FR Doc. 84–11934 Filed 4–30–84; 4:38 pm]
BILLING CODE 4910-22-M

Coast Guard

33 CFR Part 165

[COTP Baltimore, MD; Reg. 84–02]

Safety Zone Regulations; Chesapeake Bay, Severn River, Annapolis, MD

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a Safety Zone in the Severn River, Annapolis, MD. The Safety Zone is needed to protect watercraft from a safety hazard associated with the Naval Air Show of the U.S. Navy Blue Angels flight demonstration team at the U.S. Naval Academy. Entry into this Safety Zone is prohibited unless authorized by the Captain of the Port (COTP), Baltimore.

EFFECTIVE DATES: This regulation becomes effective on 20 May 1984. It terminates on 21 May 1984 unless the flight demonstration occurs on 22 May 1984 (Rain Date), in which event it will terminate on 22 May 1984.

FOR FURTHER INFORMATION CONTACT: LCDR Warren G. Schneeweis, USCG, Chief, Port Operations Dept., USCG Marine Safety Office, Custom House, Baltimore, MD 21202, (301) 962–5115.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to the potential hazards involved.

Drafting Information

The drafters of this regulation are LCDR Larry H. Gibson, project officer, Coast Guard Marine Safety Office, Baltimore, MD, and LCDR Michael Perone, project attorney, Fifth Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation will occur on 20, 21, and in the event of rain on 22 May 1984.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended by adding a new § 165.T0502 to read as follows:

§ 165.T0502 Safety Zone: Severn River, Annapolis, MD.

(a) *Location.* The following area is a Safety Zone: From the Western Abutment of the Old Severn River Bridge approximate position 38°59'29"N, 076°29'28"W then following the shoreline of the Severn River in a southeasterly direction to the Triton Light approximate position 38°58'53"N, 076°28'36"W then following a line across the width of the Severn River on a bearing of 084°T to the Southwestern tip of the U.S. Naval Station, Annapolis, MD approximate position 38°58'47"N, 076°27'45"W then following along the shore of the Severn River to the Eastern Abutment of the Old Severn River Bridge approximate position 38°59'40"N, 076°29'09"W then following a line drawn by the Old Severn River Bridge between its Eastern and Western abutments.

(b) *Regulations:*

(1) In accordance with the general regulations in § 165.23 of this part, entry into this Safety Zone is prohibited unless authorized by the Captain of the Port, Baltimore.

(33 U.S.C. 1225 and 1231; 49 CFR 1.46; 33 CFR 165.3)

Dated: April 24, 1984.

J. C. Carlton,

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

[FR Doc. 84-11953 Filed 5-2-84; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP Wilmington, NC; Reg. 84-02]

Safety Zone Regulations; Trent River, New Bern, North Carolina

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: At the request of WAZZ Radio and the Commanding Officer, U.S. Coast Guard Group, Fort Macon, North Carolina, the Coast Guard Captain of the Port will close the Trent River to all traffic from Union Point, New Bern, NC to the U.S. Route 70 Highway Highrise Bridge during the period of the Great Trent River Raft Race on Saturday, June 9, 1984. The regulations are intended to reduce river congestion and protect the lives ond property of festivity participants.

DATES: This rule becomes effective at 7:00 a.m. on Saturday, 9 June 1984, and will remain in effect until 4:00 p.m. on Saturday, 9 June 1984.

FOR FURTHER INFORMATION CONTACT: Lieutentant K. C. Olds, Chief, Operations Department, Coast Guard Marine Safety Office, Wilmington, North Carolina, Phone: (919) 343-4892.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published due to insufficient prior notice by the requesting organizations. Normally this type of regulation would first be published as a Notice of Proposed Rulemaking, but due to the reason previously stated and the fact that during the previous years raft race one person drowned and two persons were injured by outboard motorboat propellor blades, the need for an emergency rule is considered to be in the best interest of the public.

Drafting Information

The drafter of this notice is Lieutenant K. C. Olds, project officer for the Captain of the Port.

Economic Assessment and Certification

This proposed regulation is considered to be non-significant in accordance with DOT Policies and Procedures for Simplification, Analysis and Review of Regulations (DOT Order 2100.5). Its economic impact is expected to be minimal since the period of closure to river traffic will be nine hours. Vessel movement records indicate that commercial river traffic in this area of the Trent River is very minimal during the period of closure and scheduling of cemmercial vessel movements can be adjusted if necessary to avoid the area during the closure times. The most impact, though non-economic, will be to the pleasure boat operators who have in past years lined the riverbanks during past raft races. They have in the past created safety hazards and much congestion in this area of the river during the raft race. Based upon this assessment, it is certified in accordance with Section 805(b) of the Regulatory Flexibility Act (5 U.S.C 605(b)), that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, the regulation has been reviewed in accordance with Executive Order 12291 of February 17, 1981, on Federal Regulation and has been determined not to be a major rule under the terms of that order.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

PART 165—[AMENDED]

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations is amended by adding a new § 165.T502 to read as follows:

§ 165.T502 Safety Zone.

(a) *Location.* The following area is a safety zone: The Trent River from Union Point, New Bern, North Carolina to U.S. Route 70 Highway Highrise Bridge.

(b) *Regulations.* (1) In accordance with General Regulation in Subparagraph 165.23 of this part, entry into or remining in this zone is prohibited unless authorized by the Captain of the Port.

(33 U.S.C. 1225 and 1231; 49 CFR 146; 33 CFR 165.3)

Dated: April 23, 1984.

Edward V. Grace,

Commanding Officer, U.S. Coast Guard, Marine Safety Office.

[FR Doc. 84-11952 Filed 5-2-84; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-9-FRL 2580-1]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve one South Coast Air Quality Management District (SCAQMD) rule, one Kern County rule, and one Ventura County rule which control nitrogen oxides (NO_x) emissions. In addition, EPA is taking final action to approve procedures of the Bay Area Air Quality Management District (BAAQMD) for enforcement and monitoring. This notice is also approving a SCAQMD visible emission rule, except the provision which exempts coke oven operations. These rules are approvable because they represent measures necessary to insure attainment and maintenace of the national ambient air quality standards.

EFFECTIVE DATE: June 4, 1984.

ADDRESSES: Copies of the State's submittal are available for public inspection during normal business hours at the EPA Region 9 Office and at the following locations:

The Office of the Federal Register, 1100 L Street NW., Washington, D.C. 20460

Public Information Reference Unit, Environmental Protection Agency Library, 401 M Street SW., Washington, D.C. 20460

California Air Resources Board, 1102 Q Street, Sacramento, CA 95812

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109

Kern County Air Pollution Control District, 1601 H Street, Suite 250, Bakersfield, CA 93301

South Coast Air Quality Management District, 9150 Flair Drive, El Monte, CA 91731

Ventura County Air Pollution Control District, 800 South Victoria Avenue, Ventura, CA 93009.

FOR FURTHER INFORMATION CONTACT: Thomas Rarick, Chief, State Implementation Plan Section, Air Programs Branch, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-7641.

SUPPLEMENTARY INFORMATION:

Background

On March 23, 1983, EPA published a notice of proposed rulemaking (48 FR 12108) concerning five rules to control NO_x emissions, one SCAQMD rule to limit visible emissions, and portions of the BAAQMD's Manual of Procedures (MOP) submitted by the State. That notice should be used as a reference in reviewing today's notice. The March 23 notice provides a description and an evaluation of the proposed rules and compares them to the requirements of the Clean Air Act, as amended in 1977. Two of the five NO_x rules (SCAQMD Rules 1112 and 1117), proposed on March 23, were revised by the SCAQMD Board on January 6, 1984. EPA is therefore not approving Rule 1112 and Rule 1117 in this notice, but will publish a separate action concerning the revised rules.

Public Comments

Comments were received from Conoco, Inc. and the Western Oil and Gas Association (WOGA). A summary of these comments and EPA's response is provided below. For further details on the comments and EPA's response, please refer to EPA's technical support document which is available at the EPA Region 9 Office.

Conoco, Inc. commented that State Implementation Plans (SIP) and regulations should be cost-effective. Economic and technological feasibility are strictly State considerations in adopting rules. EPA is precluded from taking such factors into account in determining whether to approve SIP submittals.

WOGA and Conoco, Inc. disagree with EPA's statement that NO_x control could contribute to the attainment of the ozone standard. The Empirical Kinetics Modeling Approach (EKMA) was used in the California SIP to estimate future ozone levels. Due to the nature of EKMA analysis, all of the ozone plans presume a future level of NO_x emissions and concentrations, and thereby rely on such future NO_x levels in attaining the ozone standard. Beyond that, the ozone control strategy for Ventura County does rely on NO_x control measures in order to attain the ozone standard. However, EPA agrees that the lead planning agencies did not include NO_x control measures in the ozone control strategies of the SCAQMD and Kern County plans.

WOGA disagrees with EPA's assertion that NO_x control could contribute to the attainment of the total suspended particulate (TSP) standards in Kern County (Rule 425), Ventura County (Rule 74.9) and the SCAQMD (Rule 1110). WOGA argues that particulate reductions due to NO_x control must be quantified before they can be counted as progress towards the attainment of TSP standards. Regardless of the exact quantity, some particulate matter is formed through the oxidation of nitrogen oxides to nitrates. Given this oxidation process, it is clear that NO_x control could contribute to the attainment of the TSP standards in the three areas.

EPA Actions

EPA is taking final action under Section 110 of the Clean Air Act to approve the following rules, submitted on the indicated dates, since they strengthen the SIP and could contribute to the attainment of the NO_x, ozone, and/or particulate matter standards.

Bay Area AQMD

May 20, 1982

Manual of Procedures:
Volume I—Enforcement Procedures
Volume V—Continuous Emission Monitoring and Procedures
Volume VI—Air Monitoring Procedures

Kern County APCD

June 28, 1982

Rule 425 Oxides of Nitrogen Emissions From Steam Generators Used in Thermally Enhanced Oil Recovery

South Coast AQMD

March 1, 1982

Rule 1110 Emission From Stationary Internal Combustion Engines

Ventura County APCD

October 23, 1981

Rule 74.9 Emissions From Stationary Internal Combustion Engines.

In addition, EPA is approving SCAQMD Rule 401, Visible Emissions, submitted August 15, 1980, except the provision which exempts coke oven operations. Because the visible emission limit is especially important to the control of fugitive emissions and the coke oven operation is a major source of fugitive emissions, EPA is disapproving the exemption provision.

Regulatory Process

Under Executive Order 12291, today's action is not major. It has been submitted to the Office of Management and Budget (OMB) for review.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 2, 1984. This action may not be challenged later in proceedings to enforce its requirements. (See sec. 307(b)(2).)

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

Authority: Sections 110 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410, 7502 and 7601(a)).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Dated: April 27, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

Subpart F of Part 52, Chapter I, Title 40 the Code of Federal Regulations is amended to read as follows:

Subpart F—California

1. Section 52.220 is amended by adding paragraphs(c)(70)(i)(D), (c)(103)(iv) (D), (c)(121)(i)(C), (c)(125)(viii)(A) and (c)(132) to read as follows:

§52.220 Identification of plan.

* * * * *

(c) * * *

(70) * * *

(i) * * *

(D) Amended Rule 401 (except subparagraph 401(b)).

* * * * *

(103) * * *

(iv) * * *

(D) Amended Rule 74.9.

* * * * *

(121) * * *

(i) * * *

(C) Amended Rule 1110.

* * * * *

(125) * * *

(viii) Bay Area AQMD.

(A) Manual of Procedures: Volumes I, V and VI.

* * * * *

(132) Revised regulations for the following APCDs submitted on June 28, 1982, by the Governor's designee.

(i) Kern County APCD.

(A) Amended Rule 425.

* * * * *

2. Section 52.227 is amended by adding (b)(4)(i) to read as follows:

§ 52.227 Control and regulations: Particulate matter, Metropolitan Los Angeles Intrastate Region.

* * * * *

(b) * * *

(4) South Coast AQMD.

(i) Rule 401(b) submitted on August 15, 1980.

* * * * *

[FR Doc. 84-11938 Filed 5-2-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-9-FRL 2579-6]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking.

SUMMARY: Today's notice takes final action to approve revisions to rules of several air pollution control districts submitted by the California Air Resources Board (ARB) for incorporation into the California State Implementation Plan (SIP). These revisions generally are administrative and retain the previous emission control requirements. EPA reviewed these rules with respect to the Clean Air Act and determined that they should be approved.

DATE: This action is effective July 2, 1984 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: A copy of the revisions is available for public inspection during normal working hours at the EPA Region 9 office and at the following locations.

Public Information Reference Unit, Environmental Protection Agency, Library, 401 M Street SW., Room 2404, Washington, D.C.

Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Thomas Rarick, Chief, State Implementation Plan Section, Air Programs Branch, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-7641.

SUPPLEMENTARY INFORMATION: The ARB submitted as SIP revisions the following rules on August 30, 1983.

Bay Area

Regulation 3 Fees
- 3-100 General
- 3-101 Description
- 3-102 Exemption, Public Agencies
- 3-103 Exemption, Abatement Equipment
- 3-200 Descriptions
- 3-201 Cancelled Application
- 3-202 Change of Location
- 3-203 Filing Fees
- 3-204 Initial Fees
- 3-305 Internal Offset
- 3-206 Modification
- 3-207 Renewal Fee
- 3-208 Resubmitted Application
- 3-209 Small Business
- 3-210 Solvent Evaluation Sources
- 3-211 Source
- 3-300 Standards
- 3-301 Hearing Board Fees
- 3-302 Fees for New and Modified Sources
- 3-303 Retroactive Permits
- 3-304 Replacement
- 3-305 Cancellation or Withdrawal
- 3-306 Change in Conditions
- 3-307 Change of Ownership
- 3-308 Change of Location
- 3-309 Duplicate Permit
- 3-310 Late Fees
- 3-311 Banking
- 3-312 Emission Caps and Alternative Compliance Plans
- 3-313 Experimental Exemptions
- 3-400 Administration Requirements
- 3-401 Permits
- 3-402 Single Anniversary Dates
- 3-403 Change in Operating Parameters
- 3-404 Exemptions
- 3-405 Fee Not Paid
- 3-406 Anniversary Date
- 3-407 Fee to be Paid Before A/C is Issued
- 3-408 Permit to Operate Valid for 12 Months
- 3-409 Drycleaners

Kern County

Rule 405 Particulate Matter—Emission Rate

Rule 408 Fuel Burning Equipment—Valley Basin

Rule 409 Fuel Burning Equipment—Desert Basin

Rule 424 Sulfur Compounds from Oil Field Steam Generators

Stanislaus County

Rule 109 Penalties

Rule 213 Permit Violations

These rule revisions are administrative and they do not significantly impact current emission control requirements. The above mentioned rules reflect increased permit fees, previously approved changes in interim compliance schedule dates, prohibition to construct and operate in violation of permit conditions and further exemptions and/or clarifications.

Actions

Under Section 110 of the Clean Air Act as amended, and 40 CFR Part 51, EPA is required to approve or disapprove these rule amendments as SIP revisions. All rules submitted have been evaluated and found to be in accordance with EPA policy and 40 CFR Part 51. EPA's detailed evaluation of the submitted rules is available at the Region 9 office.

This notice approves all the rule revisions listed above and incorporates them into the California SIP. This is being done without prior proposal because the revisions are noncontroversial, have limited impact, and no comments are anticipated. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, the approval will be withdrawn and a subsequent notice will be published before the effective date. The subsequent notice will immediately postpone the effective date, modify the final action to a proposed action, and establish a comment period.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

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

Under the Clean Air Act, any provisions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 2, 1984. This action may not be challenged later in proceedings to enforce its requirements.

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

Authority: Section 110 and 301(a) of the Clean Air Act, as amended, (42 U.S.C. 7410 and 7601(a)).

List of Subjects in 40 CFR Part 52

Intergovernmental relations, Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Particulate matter, Carbon monoxide, Hydrocarbons, Lead.

Dated: April 27, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

Subpart F of Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220 is amended by adding paragraph (c)(140)(i)–(iii) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(140) Revised regulations for the following APCDs were submitted on August 30, 1983 by the Governor's designee.

(i) Bay Area AQMD.

(A) Amended Regulation 3: Rules 3–100 through 3–103, 3–200 through 3–211, 3–300 through 3–313 and 3–400 through 3–409.

(ii) Kern County APCD.

(A) New or amended rules 405, 408, 409, and 424.

(iii) Stanislaus County APCD.

(A) New or amended rules 109 and 213.

* * * * *

[FR Doc. 84–11937 Filed 5–2–84; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[A–6–FRL 2579–3]

Approval and Promulgation of Revisions to Louisiana State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: The purpose of this notice is to approve revised sections of the Louisiana Environmental Control Commission Fee System of the State Implementation Plan (SIP) which were submitted to EPA on November 17, 1983, by the Louisiana Department of Natural Resources (now the Department of Environmental Quality). The revised sections concern: (1) Determination and Payment of Fees, (2) Fee System Methodology, and (3) Explanatory notes for Table 4–1 Fee Schedule. The revised sections were submitted in order to satisfy the requirements of Section 110 of the Clean Air Act (CAA) and 40 CFR 51.6.

EFFECTIVE DATE: This action is effective on July 2, 1984, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments on this action should be addressed to EPA Region 6, Air Branch (address below). Copies of the State's submittal may be examined during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region 6, Air Branch, 1201 Elm Street, Dallas, Texas 75270

U.S. Environmental Protection Public Information Reference Unit, EPA Library, 401 M Street SW., Washington, D.C. 20460

The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: J. Ken Greer, Jr., State Implementation Plan Section, Air and Waste Management Division, EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270, (214) 767–9859.

SUPPLEMENTARY INFORMATION:

I. Background

On November 17, 1983, the Louisiana Department of Natural Resources, (now the Department of Environmental Quality, Air Quality Division, submitted to EPA revisions to the State's Environmental Control Commission Fee System of the Air Quality Control Program. Prior approval was granted in 1982 to the permit fee system (47 FR 29535). These previous amendments involved changes in the following regulations: 6.1 (fee schedule), 6.1.7 (requirements for permit fees), and 6.1.1 (permit exempt list). The current revisions which are being acted upon at this time represent minor modifications to the previously approved amendments, as well as additional changes to other sections. All revisions are considered administrative in nature and their content is outlined below. EPA has reviewed these revisions and developed and Evaluation Report[1] which is based on the requirements established in 40 CFR 51.6 and Section 110 of the CAA. This evaluation report is available for review during normal business hours at the addresses listed above.

II. Description of the Revised Sections

(1) 2.0 Determination and Payment of Fees.

Subsection 2.3, entitled Annual Fees, reflects a change in the due date of an annual fee from receipt of billing—from 45 days to 30 days.

(2) 3.0 Fee System Methodology.

Subsection 3.1 concerns formulas to apportion the following fees: Prevention of Significant Deterioration (PSD) application fee, National Emission Standards for Hazardous Air Pollutants (NESHAP) compliance fee, and New Source Performance Standards (NSPS) compliance fee. The formulas for these fees were added to the permit fee system regulations in 1983.

3.4 Permit Fee Methodology.

Subsections I through N outline factors for determination of various fees, including defining the basis for new application and compliance fees. In addition, minor and major modification fees are described in relation to annual compliance fees. These subsections were added in 1983.

(3) 4.1 Tables.

Explanatory Notes for Table 4–1 Fee Schedule.

In this section, minimum annual compliance determination fees for various facilities were revised and two new subsections were added. One concerns application fee computation for coal gasification and cogeneration and the other states a maximum fee for any gas transmission company.

III. Criteria Used in Evaluation

The submitted SIP revisions were reviewed against the requirements of Section 110 of the CAA and 40 CFR 51.6. Section 110(a)(2)(k) provides for the establishment of fees based on the reasonable costs of acting on permit applications, and of implementing and enforcing the terms and conditions of permits. According to 40 CFR 51.6(c), a state plan may be revised to be consistent with requirements applicable to implementation plans. The Louisiana Environmental Control Commission Fee System revisions met all applicable requirements contained in the aforementioned criteria. Therefore, based on this review, EPA is approving the revisions.

Since the revisions included in this approval notice are considered minor in substance, EPA ia approving these revisions without prior proposal. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 2, 1984. This action may not be challenged later in proceedings to enforce its requirements. (*See* Section 307(b)(2) of the CAA.)

[1] Evaluation Report for Louisiana SIP Revisions to Environmental Control Commission Fee System, January, 1984.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this proposal will not have a significant economic impact on a substantial number of small entities. This action only approves State actions. It imposes no new requirements.

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

Incorporated by reference the State Implemenatation Plan for the State of Louisiana was approved by the Director of the Federal Register on July 1, 1982.

This notice of final rulemaking is issued under the authority of section 110(a) and 172 of the Clean Air Act, 42 U.S.C. 7410(a) and 7502.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur dioxides, Nitrogen dioxides, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Dated: April 27, 1984

William D. Ruckelshaus,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart T—Louisiana

§ 52.970 [Amended]

1. Section 52.970 is amended by adding paragraph (c)(40) as follows:

* * * * *

(c) * * *

(40) Revisions to sections 2.3, 3.1, 3.4, and 4.1 of the Rules and Regulations for the Fee System of the Air Quality Control Program, as adopted by the Louisiana Environmental Control Commission on January 26, 1983, were submitted by the Louisiana Department of Natural Resources (now the Department of Environmental Quality), Air Quality Division, on November 17, 1983.

[FR Doc. 84-11936 Filed 5-2-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[TN-005; A-4-FRL 2580-6]

Approval and Promulgation of Implementation Plans; Chattanooga, Tennessee; Extension of Conditional Approval

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On March 22, 1983 (48 FR 11746), EPA conditionally approved the Part D plan for attainment of the particulate standards in Chattanooga, Tennessee. As a result of proposed changes in EPA's new source review regulations (August 29, 1983, 48 FR 38742), which may remove all obstacles to full approval, EPA is extending the conditional approval until December 31, 1984.

EFFECTIVE DATE: This action will be effective July 2, 1984 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments should be addressed to Raymond S. Gregory of EPA Region IV's Air Management Branch (see EPA Region IV address below). Copies of the materials submitted by Tennessee may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Management Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

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

Library, Office of the Federal, Register, 1100 L Street NW., Room 8401, Washington, D.C. 20005

Division of Air Pollution Control, Tennessee Department of Health and Environment, 150 9th Avenue N, Nashville, Tennessee 37203

Chattanooga-Hamilton County, Air Pollution Control, Bureau, 3511 Rossville Boulevard, Chattanooga, Tennessee 37407.

FOR FURTHER INFORMATION CONTACT: Raymond S. Gregory, EPA Region IV, Air Management Branch, at the above address, phone 404/881-3286 (FTS 257-3286).

SUPPLEMENTARY INFORMATION: On March 22, 1983 (48 FR 11946), EPA gave conditional approval to the State Implementation Plan (SIP) revision submitted by the State of Tennessee for Chattanooga, Hamilton County, Tennessee, as required by Part D of Title I of the Clean Air Act as amended in 1977, except for the permitting of any source which qualifies as a reconstruction under EPA's definition (40 CFR 51.18(j)(1)(ix)).

EPA approval of the SIP revision was given on condition that the State submit a definition of the phrase "Federally enforceable" and that all limitations and conditions, including permit restrictions, established under the authority of the plan be made Federally enforceable by December 31, 1983. The Agency noted (at 48 CFR 11947, bottom of col. 1) that because of a commitment by EPA to propose regulatory amendments as a result of the settlement agreement among EPA and petitioners in the Chemical Manufacturers Association litigation, conforming amendments to the plan revision might not be necessary for full approval. The note further stated that the conditional approval could be extended if on December 31, 1983, EPA was still in the process of revising the new source review requirements, but had not finalized the changes.

On August 25, 1983 (48 FR 38742), EPA proposed regulatory amendments which, if promulgated, would make amendment of the Part D Chattanooga TSP SIP unnecessary. Since final action has not been taken on the proposed amendments, the conditional approval of the Chattanooga plan is being extended until December 31, 1984.

The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

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

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 2, 1984. This action may not be challenged later in proceedings to enforce its requirements. (See sec. 307(b)(2)).

Incorporation by reference of the Tennessee State Implementation Plan was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Sec. 110 and 172 Clean Air Act (42 U.S.C. 7410 and 7502))

Dated: April 27, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart RR—Tennessee

Section 52.2231, is amended by revising paragraph (a) to read as follows:

§ 52.2231 Control strategy: Sulfur oxides and particulate matter.

Part D Conditional approval.

(a) The Chattanooga primary TSP plan's provisions for review of new sources and modifications in the nonattainment area are approved on condition that the State submit by December 31, 1984, a definition of the term "Federally enforceable" and provision for making Federally enforceable all limitations, conditions, and offsets, including permit restrictions, relied upon under the plan, and in the interim, implement these provisions in a manner consistent with EPA requirements.

* * * * *

[FR Doc. 84-11935 Filed 5-2-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[AD-FRL 2580-5]

Air Programs; Approval and Promulgation of Implementation Plans Compliance With the Statutory Provisions of Part D and Section 110 of the Clean Air Act

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of State Implementation Plan (SIP) Inadequacy and Call for SIP Revision—Information Notice.

SUMMARY: EPA here gives notice that it has (1) notified the Governor of those States listed in Table A that their SIP's for certain nonattainment areas are substantially inadequate to assure attainment and maintenance of certain primary national ambient air quality standards (NAAQS) and (2) called upon those States to submit curative SIP revisions to EPA for approval.

DATES: SIP revisions are due from a State with an approved SIP that did not attain the standards within one year of the date EPA notified the State (in most cases, this date was February 24, 1984). A SIP is due from a State that does not have an approved SIP within sixty days.

ADDRESSES: Copies of the technical support documents supporting the determinations of SIP inadequacy referred to in today's notice and EPA's responses to comments on closely-related February 3, 1983 proposed disapprovals are located in Docket No. A-83-01, West Tower Lobby, Gallery 1, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. The docket may be examined between 8:00 a.m. and 4:00 p.m. on weekdays, A reasonable fee may be charged for copying. A duplicate copy of the docket for each affected area is located in the EPA Regional Office of the Region in which the area is located.

FOR FURTHER INFORMATION CONTACT: Willis P. Beal, Office of Air Quality Planning and Standards (MD-15), Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (919/541-5665, FTS 629-5665). For questions relating to specific areas, please contact the appropriate EPA Regional Office.

Linda Murphy, Chief, Air Programs Branch, EPA Region I, J.F.K. Federal Building, Room 2203, Boston, Massachusetts, 02203, 617/233-5134, FTS 223-5134

William Baker, Chief, Air Programs Branch, EPA Region II, Federal Office Building, 26 Federal Plaza, Room 1009, New York, New York 10278, 212/264-2517, FTS 264-2517

Robert Kramer, Acting Chief, Air Management Branch, EPA Region III, Curtis Building, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106, 215/597-8175, FTS 597-8175

James T. Wilburn, Chief, Air Management Branch, EPA Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404/881-3043, FTS 257-3043

Steve Rothblatt, Chief, Air Programs Branch, EPA Region V, 230 South Dearborn Street, Chicago, Illinois 60604, 312/353-2211, FTS 353-2211

Jack Divita, Chief, Air Programs Branch, EPA Region VI, First International Building, 1201 Elm Street, Dallas, Texas 75270, 214/767-2746, FTS 729-2746

Carl Walter, Chief, Air Programs Branch, EPA Region VII, 324 East 11th Street, Kansas City, Missouri 64106, 214/374-3791, FTS 758-3791

Robert DeSpain, Chief, Air Programs Branch, EPA Region III, 1860 Lincoln Street, Denver, Colorado 80295, 303/837-3471, FTS 327-3471

David Calkins, Chief, Air Programs Branch, EPA Region IX, 215 Fremont Street, San Francisco, California 94105, 415/974-8058, FTS 454-8058

Clark Gaulding, Chief, Air Programs Branch, EPA Region X, 1200 Sixth Avenue, Seattle, Washington 98101, 206/442-1941, FTS 399-1941.

SUPPLEMENTARY INFORMATION:

I. Background

The 1970 Clean Air Act Amendments established deadlines for attainment of the primary NAAQS and required States to adopt SIP's providing for attainment within the deadlines. In many areas of the country, the first SIP's failed to bring about timely attainment. In 1976, EPA found these plans inadequate under section 110(a)(2)(H) and called for SIP revisions under section 110(c)(1)(c). Sed, e.g., 41 FR 28842 (July 13, 1976).

In 1977, Congress amended the Clean Air Act to address the problem of continuing nonattainment of the NAAQS. Section 107(d) was added which required each State to designate immediately all areas as either attaining the NAAQS, not attaining the NAAQS, or unclassifiable for lack of data. Section 107(d) further required EPA to review, modify, and promulgate these designations by February 1978. New Section 110(a)(2)(I) required each State to revise its SIP to prohibit major stationary source construction or modification after July 1, 1979 in any nonattainment area whose SIP did not meet the requirements of Part D of the amended Act. Section 172(a)(1) of that part required each nonattainment area SIP to "provide for" primary NAAQS attainment as soon as practicable, but no later than December 31, 1982.[1] Section 172(b) specified other requirements Part D plans had to meet. The 1977 amendments, however, retained the authority in Sections 110(a)(2)(H) and 110(c)(1)(C) to issue notices of deficiency and calls for SIP revisions as an additional remedial mechanism.

By July 1, 1979, few of the over 400 nonattainment areas designated by EPA had in effect a SIP meeting the requirements of Part D. As a result, on July 2, 1979 (44 FR 39471), EPA published a regulation inserting the statutory construction ban into SIPs and automatically imposing the ban as of July 1, 1979 in each nonattainment area without an approved or promulgated Part D plan. EPA stated it would lift the

[1] Section 172(a)(2) allowed areas that demonstrated that it would be impossible to attain either the ozone or carbon monoxide standards by the end of 1982 to obtain attainment date extensions and defer compliance with some of the requirements of Section 172(b).

ban when the necessary Part D provisions were in place.

Since 1979, EPA has approved, fully or conditionally, all portions of Part D plans for the majority of nonattainment areas with the 1982 attainment deadline.[2] However, many of those areas continued to experience NAAQS violations after the 1982 deadline.

On February 3, 1983, EPA proposed two sets of findings for Part D plans for nonattainment areas with the 1982 deadline (48 FR 4972). First, EPA proposed to find as a factual matter that many of these SIP's had failed to attain the NAAQS by the end of 1982. Second, EPA proposed that the legal consequences of such failures should be disapproval of the SIP and the imposition of a Section 110(a)(2)(I) construction ban.

After evaluating the comments on these proposals, EPA issued a final policy notice on November 2, 1983. This notice revised the Agency's position on the legal consequences of a failure to meet the 1982 deadline (48 FR 50686). In that policy, EPA agreed with many past commenters that imposition of the Section 110(a)(2)(I) ban was not a legal consequence in any case where EPA had previously fully or conditionally approved a State plan.

In that final policy, EPA, however, stated its intent to find inadequate any approved or conditionally approved Part D plan that failed to bring about attainment by 1982. For such inadequate plans pursuant to Section 110(a)(2)(H) of the Act, EPA specified it would call for corrective SIP revisions. The Agency would take further action to impose construction bans under Section 173(4) and funding restrictions under Section 176(b) in any area that fails to submit a revision in a timely manner. EPA also noted that it would take similar action in nonattainment areas subject to the 1982 deadline that lacked a previously approved plan, except that these areas would be provided less time to submit the necessary revisions than would the areas with previously approved plans. Moreover, the Section 110(a)(2)(I) ban currently in effect in these areas would continue to apply.

II. Finding of Inadequacy

On February 3, 1983, the Agency listed 160 areas not anticipated to meet the requirements of Part D of the Clean Air Act. Nineteen of these areas were on the list solely because of unmet conditions. EPA is deferring action on particulate matter for the moment but expects to issue such notices in the near future.[1] This accounts for an additional 80 areas, leaving 61 areas on the list for the other four pollutants (O_3, CO, NO_x, and SO_2). Calls for revisions were made for 27 of the remaining 61 areas. The Agency has determined that calls for revision are not appropriate for the remaining 34 areas at this time, generally because of more recent data or the receipt of subsequent State submittals. The pollutants and areas for which the SIP is inadequate are specified in Table A.

TABLE A.—CALLS FOR SIP REVISION (FEBRUARY 1984)

EPA region	State	Area	Pollutant
III	PA	Warren Co	SO_2
		Scranton/Wilkes-Barre	O_3
IV	AL	Jefferson Co	O_3
	FL	Dade Co	O_3
		Braward Co	O_3
		Palm Beach Co	O_3
	GA	Atlanta metropolitan area	O_3
V	IN	Marion Co	CO
		Wayne Co	SO_2
		St. Joseph Co	O_3
		Elkhart Co	O_3
	MN	Ramsey Co	CO
	OH	Portage Co	O_3
		Summit Co	O_3
VI	LA	Baton Rouge	O_3
	OK	Tulsa Co	O_3
	TX	Dallas Co	O_3
		Tarrant Co	O_3
		El Paso Co	O_3
		El Paso Co	CO
VII	KS	Wichita	CO
	NB	Lincoln	CO
		Omaha	CO
IX	AZ	Maricopa Co	O_3
	CA	Kern Co	O_3
		South Coast	NO_2
	NV	Clark Co	O_3

Note.—Two other areas—Nashua, New Hamphire (CO) and Spokane, Washington (CO)—were also sent letters on February 24, 1984, but that did not constitute calls for revisions. Nashua, New Hampshire, is a "newly designated nonattainment area" which must meet the same planning schedule as the earlier areas which had to demonstrate attainment by December 31, 1982. Spokane, Washington had a contingency inspection/maintenance plan which the State was to implement if the CO standard was violated. The standard was not met and EPA informed the State in a January 4, 1984, letter that it intended to find that the State was not carrying out its plan if it did not promptly implement inspection/maintenance.

The factual findings and technical support document that supported the proposed disapprovals published on February 3, 1983 will also serve as the bases for the findings of inadequacy listed here. Prior to making these final determinations, EPA reviewed all comments provided on the February 3, 1983, proposals that addressed individual areas. Comments of national significance were addressed in the November 2, 1983, policy notice. Comments specific to certain nonattainment areas or addressing specific technical issues are addressed in the Technical Support Document for this notice.

III. Call for SIP Revision

These findings of inadequacy require the States, pursuant to the provisions of section 110(a)(2)(H), to carry out their SIP obligations and to adopt and submit to EPA for approval whatever additional control measures are necessary to assure timely attainment and maintenance of the NAAQS in question. In its recent notices of inadequacy, EPA has called upon the States to meet these obligations. In addition, subsequent calls for SIP revisions may be made later in 1984 as the most recent air quality data analyzed.

Under section 110(c), a State would have sixty days to adopt and submit the necessary measures, unless EPA were to extend this period. EPA extended that period to one year for areas which had previously approved SIP's.

IV. Guidance on the Necessary Revisions

The States have already received copies of the EPA publication entitled "Guidance Document for Correction of Part D SIPs for Nonattainment Areas," issued on January 27, 1984, which will assist them in making the revisions necessary to cure the inadequacies in their SIP's. This document may also be inspected in the Docket identified above and at the EPA Regional Offices. EPA's November 2, 1983, notice (48 FR 50686) explains EPA's general policy on which the guidance for these revisions is based.

As noted by the Guidance Document and by EPA's general preamble for proposing rulemaking published on April 4, 1979 (44 FR 20372), additional control measures added to a SIP generally do not relax or revoke the existing requirement. The new requirement does not supersede or replace the old requirement until the source comes into compliance with the new requirement. Instead, the existing requirement remains an enforceable provision of the SIP and co-exists with the new requirement in the applicable implementation plan. The present emission control requirement must be retained because the source must be prevented from operating without controls (or with less stringent controls) while it is moving toward compliance with (or challenging) the new requirement. This policy applies to every Part D SIP action taken by EPA unless such action fits within one of the exceptions enumerated in the above

[2] If the State committed to submit corrections on a prompt, definite schedule, conditional approvals were given to Part D plans that contained only minor deficiencies.

referenced 1979 **Federal Register** notice. The fact that a SIP revision fits within an exception shall be indicated in the **Federal Register** notice approving that SIP revision.

V. Final Actions

In EPA's view, these findings of inadequacy do not constitute final actions that are reviewable inasmuch as they are not ripe for review. Under the test articulated in *Abbott Laboratories* v. *Gardner*, 387 U.S. 136 (1967), the determinations will not be sufficiently concrete for judicial resolution until additional action is taken by EPA in reliance on them. Moreover, States will not suffer hardship from delaying review because the findings do not have an immediate, direct, and substantial impact. Also, the States will have a later opportunity to obtain judicial review of the findings.

The sixty-day time period for filing a petition for review under section 307(b) is tolled until EPA makes the findings ripe by taking additional action in reliance on them, such as imposing sanctions or promulgating revisions, because a time limitation on petitions for judicial review can only run against challenges ripe for review. See, e.g., *Baltimore Gas & Electric Co.* v. *Interstate Commerce Commission*, 672 F.2d 146, 149 (D.C. Cir. 1982).

VI. Miscellaneous

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Authority: Sections 101, 107, 110, 116, 171–178 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7401, 7407, 7410, 7416, 7501–08, and 7601(a)); Section 129(a) of the Clean Air Act Amendments of 1977 (Pub. L. No. 95–95, 91 Stat. 685 (August 7, 1977).

Dated: April 27, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84–11920 Filed 5–2–84; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[A–6–FRL 2573–1]

Approval and Promulgation of Implementation Plan; Louisiana Lead Plan

Correction

In FR Doc. 84–11085 beginning on page 18484 in the issue of Tuesday, May 1, 1984, make the following correction. On page 18484, second column, in the **EFFECTIVE DATE** paragraph, the date should read May 31, 1984.

BILLING CODE 1505–01–M

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40 CFR Part 52

[A–9–FRL 2580–3]

Approval and Promulgation of Implementation Plans; State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: Today's notice approves a number of volatile organic compound (VOC) regulations for the State of California, and removes a condition of plan approval for the State of California. The regulations were submitted by the State of California for inclusion in the State Implementation Plan (SIP). EPA has evaluated these regulations and has determined that they are in conformance with the requirements of 40 CFR Part 51 and EPA policy.

DATE: This action is effective June 4, 1984.

FOR FURTHER INFORMATION CONTACT: David P. Howekamp, Director, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, Attn: Thomas Rarick, (415) 974–7641.

ADDRESS: A copy of today's revision to the California State Implementation Plan is located at:

The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C.

Public Information Reference Unit, EPA Library, 401 M Street, SW., Washington, D.C.

SUPPLEMENTARY INFORMATION:

Background

On September 23, 1983 (48 FR 43347) EPA published a notice proposing to approve California's statewide test procedures for gasoline vapor recovery systems. The test procedures also fulfill a condition of plan approval which was identified in EPA's July 8, 1982 NFR for VOC regulations in the State of California.

On November 8, 1983 (48 FR 51338) EPA published a notice which proposed approval of revisions to architectural coatings regulations for the Bay Area Air Quality Management District (AQMD), El Dorado County Air Pollution Control District (APCD), Fresno County APCD, Imperial County APCD, Kings County APCD, Kern County APCD, Madera County APCD, Merced County APCD, Monterey Bay Unified APCD, Placer County APCD (Mountain Counties Air Basin portion) and Ventura County APCD.

On December 13, 1983 (48 FR 55482) EPA published a notice proposing approval of VOC regulations for the Bay Area AQMD, El Dorado County APCD, Kern County APCD, Madera County APCD, and South Coast AQMD. A discussion of the basis for EPA's action can be found in the three notices of proposed rulemakings cited above.

Supplementary Revision

EPA has found that the following two rules proposed for approval have been superseded by an October 27, 1983 submittal from the ARB: Bay Area AQMD Regulation 8, Rule 25, *Pump and Compressor Seals at Petroleum Refineries* (submitted February 3, 1983) and Regulation 8, Rule 3, *Architectural Coatings* (submitted February 3, 1983). These revised regulations will be addressed in a separate **Federal Register** notice.

Public Comments

No comments were received on EPA's September 23, 1983, November 8, 1983 and December 13, 1983 proposal notices.

EPA Actions

EPA is taking final action under Section 172 of the Clean Air Act to approve the following rules since they are consistent with the requirements of section 110 and Part D of the Clean Air Act, and 40 CFR Part 51:

January 20, 1983 Submittals

California Statewide Regulations

Test Procedures for Determining the Efficiency of Gasoline Vapor Recovery Systems at Service Stations.

Certification and Test Procedures for Vapor Recovery Systems of Gasoline Delivery Tanks.

Test Procedures for Gasoline Vapor Leak Detection Using Combustible Gas Detector.

February 3, 1983 Submittals

Bay Area AQMD

Rule 13—Light and Medium-Duty Motor Vehicle Assembly Plants

Rule 29—Aerospace Assembly and Component Coating Operations

Fresno County APCD

Rule 409.1—Architectural Coatings

Imperial County APCD

Rule 424—Architectural Coatings

South Coast AQMD

Rule 461—Gasoline Transfer and Dispensing

Rule 1102—Petroleum Solvent Dry Cleaners

Rule 1102.1—Perchloroethylene Dry Cleaning Systems

Ventura County APCD

Rule 74.2—Architectural Coatings

April 11, 1983 Submittals

El Dorado County APCD

Rule 214—Transfer of Gasoline into Stationary Storage Containers
Rule 215—Architectural Coatings
Rule 216—Exemptions
Rule 217—Identification of Coatings
Rule 218—Perchloroethylene Dry Cleaning Operations
Rule 219—Emission Control Requirements
Rule 220—Exemptions to Rule 218 and Rule 219

Kern County APCD

Rule 414.1—Valves, Pressure Relief Valves and Flanges at Petroleum Refineries and Chemical Plants

Kings County APCD

Rule 410.1—Architectural Coatings

Madera County APCD

Rule 409—Architectural Coatings
Rule 410—Manufactured Metal Parts and Products Surface Coating Emissions
Rule 417—Gasoline Transfer into Stationary Storage Containers
Rule 418—Gasoline Transfer into Vehicle Fuel Tanks
Rule 419—Organic Liquid Loading

July 19, 1983 Submittals

Kern County APCD

Rule 410.1—Architectural Coatings

Merced County APCD

Rule 409.1—Architectural Coatings

Monterey Bay Unified APCD

Rule 426—Architectural Coatings

Placer County APCD (Mountain Counties Air Basin Portion)

Rule 218—Architectural Coatings

EPA also takes final action to remove the condition of plan approval which required the State of California to submit revised regulations for the testing of gasoline tank trucks.

Regulatory Process

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

Under the Clean Air Act, any petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements.

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

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxides, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Authority: Sections 110, 129, 171–178, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410, 7429, 7501 to 7508, and 7601 (a)).

Dated: April 28, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

Subpart F of Part 52 Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220 paragraph (c) is amended by adding subparagraphs (127)(i)(C), (ii)(B), (iv)(B), (vii)(B) and (viii)(B), (137)(i)(B), (ii)(B), (ix) and (x), (138)(ii)(B), (v)(B), (viii) and (ix), and (149)(i) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(127) * * *

(i) * * *

(C) Amended Rules 13 and 29.

(ii) * * *

(B) Amended Rule 409.1.

* * * * *

(iv) * * *

(B) Amended Rule 424.

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(vii) * * *

(B) New or amended Rules 461, 1102, and 1102.1.

(viii) * * *

(B) Amended Rule 74.2.

* * * * *

(137) * * *

(i) * * *

(B) Amended Rule 410.1.

(ii) * * *

(B) Amended Rule 409.1.

* * * * *

(ix) Monterey Bay Unified APCD.

(A) Amended Rule 426.

(x) Placer County APCD (Mountain Counties Air Basin portion).

(A) Amended Rule 218.

* * * * *

(138) * * *

(ii) * * *

(B) Amended Rules 214–220.

* * * * *

(v) * * *

(B) Amended Rules 409, 410, and 417–419.

(viii) Kern County APCD.

(A) Amended Rule 414.1.

(ix) Kings County APCD.

(A) Amended Rule 410.1.

* * * * *

(149) Revised regulations for the following APCD's submitted on January 20, 1983 by the Governor's designee.

(i) California State.

(A) New or amended California statewide regulations: Test Procedures for Determining the Efficiency of Gasoline Vapor Recovery Systems at Service Stations; Certification and Test Procedures for Vapor Recovery Systems of Gasoline Delivery Tanks; Test Procedure for Gasoline Vapor Leak Detection Using Combustible Gas Detector.

* * * * *

2. Section 52.232 is amended by removing and reserving paragraph (a)(14)(i).

§ 52.232 Part D conditional approval.

(a) * * *

(14) * * *

(i) [Reserved]

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[FR Doc. 84-11924 Filed 5-2-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-9-FRL 2580-4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision

AGENCY: Environmental Protection Agency.

ACTION: Notice of final rulemaking.

SUMMARY: Today's notice takes final action to approve revisions to the rules of several air pollution control districts (APCD's). These revisions were submitted by the California Air Resources Board (ARB) as revisions to the California State Implementation Plan (SIP). These revisions generally are administrative and retain the previous emission control requirements. EPA reviewed these rules with respect to the Clean Air Act and determined that they should be approved.

DATE: This action is effective July 2, 1984, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: A copy of the revisions is available for public inspection during normal business hours at the EPA Region 9 office and at the following locations.

California Air Resources Board, 1102 "Q" Street, Sacramento, CA 95814.

Office of the Federal Register, 1100 "L" Street, NW., Room 8401, Washington, D.C.
Public Information Reference Unit, EPA Library, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Thomas Rarick, Chief, State Implementation Plan Section, Air Programs Branch, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–7641.

SUPPLEMENTARY INFORMATION: The California Air Resources Board submitted as SIP revisions the following rules on October 27, 1983:

Bay Area Air Quality Management District

REGULATION 6

Rule 6–303.4 Piledrivers

REGULATION 9

Rule 1 Sulfur Dioxide
9–1–100 GENERAL
9–1–101 Description
9–1–110 Conditional Exemption, Area Monitoring
9–1–200 DEFINITIONS
9–1–201 Controlled Sulfur Recovery Plant
9–1–202 Uncontrolled Sulfur Recovery Plant
9–1–203 New Sulfur Recovery Plant or Sulfuric Acid Plant
9–1–204 Start-up
9–1–205 Fresh Fruit Sulfuring Operations
9–1–300 STANDARDS
9–1–301 Limitations on Ground Level Concentrations
9–1–302 General Emission Limitation
9–1–303 Emissions from Ships
9–1–304 Fuel Burning (Liquid and Solid Fuels)
9–1–305 Emission Limitations for Controlled Sulfur Recovery Plants
9–1–306 Emission Limitations for Uncontrolled Sulfur Recovery Plants
9–1–307 Emission Limitations for New Sulfur Recovery Plants
9–1–308 Emission Limitations for Sulfuric Acid Plants
9–1–309 Emission Limitations for New Sulfuric Acid Plants
9–1–310 Emission Limitations for Fluid Catalytic Cracking Units, Fluid Cokers, and Coke Calcining Kilns
9–1–311 Emission Limitations for Catalyst Manufacturing Plants
9–1–312 Emission Limitations for Fresh Fruit Sulfuring Operations
9–1–400 ADMINISTRATIVE REQUIREMENTS
9–1–401 Schedule for January 1, 1984, Compliance Date
9–1–402 Schedule for January 1, 1989, Final Compliance Date
9–1–403 Schedule for August 1, 1981, Final Compliance Date
9–1–404 Schedule for July 1, 1987, Final Compliance Date
9–1–500 MONITORING AND RECORDS
9–1–501 Area Monitoring Requirements
9–1–502 Emission Monitoring Requirements
9–1–503 Fresh Fruit Sulfuring Recordkeeping Requirements
9–1–600 MANUAL OF PROCEDURES
9–1–601 Sampling and Analysis of Gas Streams
9–1–602 Sulfur Content of Fuels
9–1–603 Averaging Times
9–1–604 Ground Level Monitoring
9–1–605 Emission Monitoring

REGULATION 5

Section 5—401.13 Wildlife Management

El Dorado County APCD

Rule 102 Definitions
Rule 226 Enforcement
Rule 227 Existing Sources
Rule 228 Compliance Tests

Monterey Bay Unified APCD

Rule 407 Open Outdoor Fires
Rule 410 Prescribed Burning
Rule 411 Forest Management Burning

San Diego County APCD

Rule 68 Fuel Burning Equipment

Shasta County APCD

Rule 2.6 Open Burning

South Coast AQMD

Rule 1105 Fluid Catalytic Cracking Units
Rule 1111 Natural-Fired/Fan-Type Central Furnaces

Ventura County APCD

Rule 30 Permit Renewal

These rules revisions are administrative and do not impact current emission control requirements. The above mentioned rules add new definitions, set emission limits for piledrivers and emission standards for sources emitting sulfur dioxide, limit open burning for wildlife management, and add exemptions and clarifications.

Under section 110 of the Clean Air Act as amended, and 40 CFR Part 51, EPA is required to approve or disapprove these regulations as SIP revisions. All rules submitted have been evaluated and found to be in accordance with EPA policy and 40 CFR Part 51. EPA's detailed evaluation of the submitted rules is available at the EPA Headquarters in Washington, D.C., and the Region 9 office.

It is the purpose of this notice to approve all the rule revisions listed above and to incorporate them into the California SIP. This is being done without prior proposal because the revisions are noncontroversial, have limited impact, and no comments are anticipated. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, the approval will be withdrawn and a subsequent notice will be published before the effective date. The subsequent notice will indefinitely postpone the effective date, modify the final action to a proposed action, and establish a comment period.

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

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

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

Authority: Sections 110 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410 and 7601(a)).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Dated: April 27, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

Subpart F of Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220 paragraph (c) is amended by adding subparagraph (148) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(148) Revised regulations for the following APCDs were submitted on October 27, 1983 by the Governor's designee.

(i) Bay Area AQMD.

(A) New or amended Regulations 6–303.4, 9–1–100, 9–1–101, 9–1–110, 9–1–200 through 9–1–205, 9–1–300 through 9–1–312, 9–1–400 through 9–1–404, 9–1–500 through 9–1–503, 9–1–600 through 9–1–605 and 5–401.13.

(ii) El Dorado County APCD.

(A) New or amended Rules 102, 226, 227, and 228.

(iii) Monterey Bay Unified APCD.

(A) New or amended Rules 407, 410, and 411.

(iv) San Diego County APCD.

(A) New or amended Rule 68.

(v) Shasta County APCD.

(A) New or amended Rule 2.6.

(vi) South Coast AQMD.

(A) New or amended Rules 1105 and 1111.

(vii) Ventura County APCD.

(A) New or amended Rule 30.

* * * * *

[FR Doc. 84–11923 Filed 5–2–84; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[A–10–FRL 2579–4]

Approval and Promulgation of State Implementation Plan; Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: By this Notice EPA approves the Idaho State Implementation Plan (SIP) adopted pursuant to the requirements of Section 110 of the Clean Air Act (hereinafter referred to as the Act) for maintenance of the lead standard in all parts of the State. This assumes the operational status of all existing lead sources does not change.

EFFECTIVE DATE: May 3, 1984.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at:

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

Air Programs Branch (10A–83–15), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

State of Idaho, Department of Health and Welfare, 450 W. State Street, Statehouse, Boise, Idaho 83720.

Copy of the State's submittal may be examined at: The Office of the Federal Register, 110 L Street, N.W., Room 8401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Richard F. White, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone (206) 442–4016, (FTS) 399–4016.

SUPPLEMENTARY INFORMATION:

Background

On December 7, 1983 the State of Idaho Department of Health and Welfare (IDHW) submitted a final draft lead maintenance SIP for EPA's review prior to public hearing and adoption. After a public hearing on January 10, 1984 IDHW finalized the lead maintenance SIP and submitted it to EPA on February 3, 1984. The final SIP was unchanged from the version proposed for approval on December 29, 1983 (48 FR 57330).

Technical Evaluation

Lead SIP

The requirements for an approvable lead SIP are contained in 40 CFR Part 51 Subpart E. As described in the technical evaluation document (TED), the Idaho maintenance SIP satisfies all requirements for demonstration of attainment and projections of air quality and emissions. In addition, the SIP provides for statewide review of all new or modified lead sources under its Rules and Regulations for the Control of Air Pollution in Idaho (Section 1–1003) previously approved by EPA (47 FR 32350).

Idaho has no significant point sources of lead in operation (i.e., those sources that emit from discrete points rather than from wide areas) and is currently attaining the lead standard in all areas of the State. The only potential point source of lead is the presently shutdown Bunker Limited lead smelter in Shoshone County. A separate plan is being developed by EPA to limit emissions from this source in the event that it resumes operation. Action on this plan will be taken at a later date.

Automobiles are the major contributors to lead emissions in the State. Federal regulations that limit the lead content of gasoline have resulted, and will continue to result, in a gradual decrease in lead emissions. The TED and the December 29, 1983 **Federal Register** fully describe the effect of the Federal regulation on future lead levels.

Air Quality Monitoring

The SIP also contains a description of the current statewide lead monitoring network. EPA has reviewed the network and finds that it conforms with the EPA requirements in 40 CFR Parts 51 and 58. In addition the lead analysis technique meets the requirements of 40 CFR Part 50.

EPA Response to Comments

The only comments received were from the State of Idaho Department of Health and Welfare. One comment suggested that EPA's proposal should approve the SIP for the entire State, and not exclude a portion of Shoshone County. EPA agrees that this maintenance lead SIP should be approved for the entire State, with the assumption that the Bunker Limited Smelter remain closed. At the same time it should be clear that EPA is developing its own lead plan for emissions from the smelter, should it resume operation.

The other comment dealt with EPA's technical analysis of the effect of the lead-in-gasoline phase down on maintenance of the lead standard in Idaho. IDHW felt EPA should have used a baseline concentration of 1.02 $\mu g/m^3$, instead of 1.64 $\mu g/m^3$. Their argument was that 1.02 $\mu g/m^3$ represented the highest *valid* (based on at least 75 percent of scheduled samples in the quarter) quarterly mean, while 1.64 $\mu g/m^3$ was based on less than 75 percent of scheduled samples.

EPA's response is two fold: First, for purposes of control strategy development any data representative of the situation should be used, even if it does not meet all sampling and analysis criteria (40 CFR 51.82). Second, in this case, regardless of which base value is used to demonstrate attainment and continued maintenance, they are both far less than the value (5.05 $\mu g/m^3$) used in the simplified procedure to demonstrate attainment by 1983. Therefore, the technical analysis will remain unchanged.

EPA Action

Based on evaluation of IDHW's final submittal, the Administrator has determined that the Idaho lead SIP revision and lead monitoring program meet the requirements of the Clean Air Act and 40 CFR Parts 50, 51, and 58.

Under section 307(b)(1) of the Act, petition for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 2, 1984. This action may not be

challenged later in proceedings to enforce its requirement. (See section 307(b)(2) of the Act.)

Under Executive Order 12291, EPA must judge whether or not a regulation is "major" and therefore subject to the requirements of regulatory impact analysis. This regulation is not judged to be major, since it merely approves actions taken by the State and does not establish any new requirements.

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

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

(Secs. 110, 129, 171–178, and 301(a) of the Clean Air Act, as amended; 42 U.S.C. 7410, 7429, 7501 to 7508, and 7601(a))

Dated: April 27, 1984.

William D. Ruckelshaus,

Administrator.

Note.—Incorporation by reference of the Implementation Plan for the State of Idaho was approved by the Director of the Office of Federal Register in July 1982.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 Code of Federal Regulations is amended as follows:

Subpart N—Idaho

1. In § 52.670 paragraph (c)(22) is added as follows:

§52.670 Identification of plan.

* * * * *

(c)* * *

(22) On February 3, 1984 the State of Idaho Department of Health and Welfare submitted a revision to add a lead maintenance strategy to the Idaho Implementation Plan.

2. In § 52.679 revise the listing of Chapters in the "Implementation Plan for the Control of Air Pollution in the State of Idaho" by inserting the following entries after "Chapter VIII" and before "Appendix A".

§ 52.679 Contents of Idaho State Implementation Plan.

* * * * *

"Chapter IX—(reserved)

"Chapter X—Plan for Maintenance of National Ambient Air Quality Standards for Lead."

[FR Doc. 84-11913 Filed 5-2-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 52 and 81

[A-FRL 2580-7; KY-021]

Approval and Promulgation of State Implementation Plans, Designation of Areas for Air Quality Planning Purposes; Kentucky: Marshall County TSP

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is today announcing approval of Kentucky's Part D total suspended particulate (TSP) State Implementation Plan (SIP) for Marshall County, and redesignation of the county to attainment for the secondary TSP national ambient air quality standards (NAAQS). (The area is attainment for the primary TSP NAAQS.) To qualify for redesignation, the area must have an approved Part D plan; therefore, these actions are concurrent. EPA's actions are based upon: (1) the State's submittal of information which clarifies visible emission (VE) test procedures for State Regulation 401 KAR 61:070—Existing Ferroalloy Production Facilities, and (2) the State's submittal of attainment data and request for EPA to redesignate the area to attainment for the secondary TSP NAAQS. EPA's approval actions provide Kentucky with a fully approved Part D plan for Marshall County and make the area attainment for both the TSP primary and secondary standards.

EFFECTIVE DATE: These actions will be effective July 2, 1984 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments should be addressed to Melvin Russell of EPA Region IV's Air Management Branch (see EPA Region IV address below). Copies of the materials submitted by Kentucky may be examined during normal business hours at the following locations.

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

Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C.

Environmental Protection Agency, Region IV, Air Management Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30365.

Kentucky Natural Resources and Environmental Protection Cabinet, Division of Air Pollution Control, 18 Reilly Road, Bldg. #2, Fort Boone Plaza, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Melvin Russell of the EPA Region IV Air Management Branch, at the above address, phone 404/881-3286 (FTS 257-3286).

SUPPLEMENTARY INFORMATION: The following information is presented in two parts: (1) Information related to approval of the Part D TSP plan and (2) redesignation to attainment for the secondary TSP NAAQS.

I. Part D TSP SIP for Marshall County, KY

In the December 24, 1980, **Federal Register** (45 FR 84999), EPA conditionally approved Kentucky's Part D TSP SIP for all TSP nonattainment areas except Marshall County. EPA, at pages 85001 and 85002, deferred action with regard to Marshall County because EPA believed that the affected State regulation was approvable as written only if the State would provide adequate clarification of test procedures to be followed in implementing the VE limits established in State Regulation 401 KAR 61:070. The Kentucky Department for Environmental Protection (KDEP), on March 15, 1982, submitted additional information including clarification of applicable VE test procedures used in enforcement of the VE limits. Section 3, Standard for Particulate Matter, is the applicable section of the regulation, and its relevant parts are as follows:

1. Section 3(1)(a) applies to electric submerged arc furnace gaseous emissions which exist from a control device and exhibit an opacity equal to or greater than three (3) percent, where the control device has dispersed discharge.

2. Section 3(2) applies to dust handling equipment emissions emitted from a stack and exhibit an opacity equal to or greater than fifteen (15) percent.

3. Section 3(1)(b) applies to electric submerged arc furnace emissions which exit from any building opening and exhibit an opacity equal to or greater than:

1. Fifteen (15) percent for those gases which are the result of routine smelting/melting operations where no auxiliary operations will occur.

2. Twenty (20) percent for those gases which are from a furnace associated with metallurgical treatment while no auxiliary operations are occurring.

3. Twenty-five (25) percent for those gases which are the result of tapping operations;

4. Forty (40) percent for those gases which occur only during a metallurgical treatment; or

5. Forty (40) percent for those gases which occur duing the pouring of metal from slag ladles into castbeds or molds.

(For full view of this regulation, please see the attached Technical Support Document (TSD), Attachment A.)

4. Section 4 requires that Reference Method 9 in Appendix A of 40 CFR Part 60 be used to determine compliance with the Section 3 opacity standards.

The State's March 15, 1982 submittal clarifies the related test procedures as follows:

(1) Baghouse emissions with dispersed discharge—401 KAR 61:070 Section 3(1)(a). For baghouses having a dispersed discharge, the emissions are measured using EPA Method 9, 40 CFR Part 60, Appendix A, Section 2.1. The procedure which is followed requires a qualified observer to "* * * stand at a distance sufficient to provide a clear view of the emissions with the sun oriented in the 140° sector to his back. Consistent with maintaining the above requirement, the observer shall * * * make his observations from a position such that his line of vision is approximately perpendicular to the plume direction and * * * approximately perpendicular to the longer axis of the outlet." The most dense portion of the plume being emitted from the building is used for the evaluation. (Paraphrase is from EPA Method 9.)

(2) Dust handling equipment emissions emitted from a stack—401 KAR 61:070 Section 3(2). Emissions from a stack are evaluated by having a qualified observer stand at a distance sufficient to provide a clear view of emissions, with the sun oriented in the 140° sector to his back. The inspector makes his observations from a position such that his line of vision is approximately perpendicular to the plume direction as specified in EPA Method 9. (Procedure as in 1 above.)

(3) Building emissions—401 KAR 61:070 Section 3(1)(b)(15). The production of ferroalloy includes a variety of furnace operations such as: melting, tapping and metallurgical treatment. The procedure followed for reading building emissions for these various operations requires two inspectors with their watches synchronized. One inspector records the beginning and end of each type of operation. The other inspector records visible emissions from a suitable point outside the building following the procedure contained in EPA Method 9, specifically Sections 2.1 and 2.3. A furnace tapping operation is considered to begin with the initiation of opening the tap hole and is concluded when the process of plugging the tapped hole is completed. The metallurgical treatment process is considered to begin with the pouring of additives into the reaction ladle (or with the tapping of the supporting furnace into the ladle if molten additive is not poured into the reaction ladle but is added cold), and is concluded at the end of the pouring of the reaction product into the holding ladle.

Castbed pouring occurs inside a building, therefore, two inspectors are again required to evaluate building emissions resulting from this operation and the same procedure is used for this operation as described above. Because of the proximity of a melt furnace to the castbed area, emissions emanating only from castbed pouring can never be measured separately from emissions emanating from an adjacent melt furnace. The opacity standard for castbed pouring accommodates the combination of these emissions.

EPA finds the KDEP clarifications adequate and therefore approves 401 KAR 61:070, and the Part D TSP SIP for Marshall County.

II. Redesignation of Marshall County to Attainment for Secondary TSP NAAQS

In the March 3, 1978 **Federal Register** (43 FR 8962), at page 8996, EPA designated Marshall County nonattainment for the secondary TSP NAAQS. On November 21, 1983, Kentucky submitted a request for redesignation of Marshall County to attainment of the secondary TSP NAAQS.

KDEP's November 21, 1983 submittal was based upon eight (8) quarters of air quality data (October 1, 1981–September 30, 1983), during which time the secondary TSP NAAQS were not violated.

The following table summarizes the twenty-four (24) months of data. Note: 1981–82 means 10/1/81–9/30/82, and 1982–83 means 10/1/82–9/30/83.

Site	Year	Annual geom. mean	First max. 24-hr.	Second max. 24-hr.	Times > 260	Times > 150
18-2600-010	1981-82	53	107	103	0	0
	1982-83	51	103	102	0	0

The EPA Standards are:

*Primary: 75 mg/m³ annual geometric mean

260 mg/m³ hour concentration

*Secondary: 60 mg/m³ annual geometric mean

150 mg/m³ 24-hour concentration*

*Not to be exceeded more than once per year.

EPA has reviewed the relevant data for quality and quantity and found it to be valid. Based upon the data and the Part D SIP for the county, EPA redesignates Marshall County, Kentucky to attainment of the secondary TSP NAAQS.

Action: Based on the foregoing discussions, I and II above, EPA today takes the following action: (1) Approves Kentucky's Part D TSP SIP revision for Marshall County including Regulation 401 KAR 61:070—Existing Ferroalloy Producton Facilities, and (2) redesignates Marshall County, Kentucky to attainment of the secondary TSP NAAQS.

These actions will be effective 60 days from the date of this **Federal Register** notice. However, if we receive notice within 30 days that someone wishes to submit critical comments, we will withdraw this action and will publish two subsequent notices before the effective date. One notice will withdraw the final action and the other will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under Section 307(b)(1) of the Act, petitions for judicial review of these actions must be filed in the United States Court of Appeals for the appropriate circuit by July 2, 1984.

These actions may not be challenged later in proceedings to enforce their requirements (*See* Section 307(b)(2) of the CAA.)

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

Incorporation by reference of the Kentucky State Implementation Plan was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Parts 52 and 81

Air pollution control, Intergrovernmental relations, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, National parks, Wilderness areas.

(Secs. 107, 110, 172, and 301 of the Clean Air Act (42 U.S.C. 7407, 7410, 7502, and 7601).)

Dated: April 27, 1984.
William D. Ruckelshaus,
Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

Subpart S—Kentucky

1. Section 52.920 is amended by adding paragraph (c)(42) as follows.

§ 52.920 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(42) Regulation 401 KAR 61:070, Existing Ferroally Production Facilities, for the Marshall County Part D TSP area, submitted on June 29, 1979, by the Kentucky Department for Environmental Protection.

PART 81—[AMENDED]

Part 81 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart C—Section 107 Attainment Status Designations

§ 81.318 [Amended]

2. In § 81.318, the "Kentucky TSP" table is amended by removing the entry for Marshall County.

[FR Doc. 84-11915 Filed 5-2-84; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 81

[EPA Action MO 1117; A-7-FRL 2579-7]

Designation of Areas for Air Quality Planning Purposes; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: Section 107(d) of the Clean Air Act, as amended, provides for the designation of areas as either attainment, nonattainment, or unclassified with respect to the National Ambient Air Quality Standards (NAAQS). EPA today takes final action to redesignate a portion of the Kansas City, Missouri, metropolitan area from nonattainment to attainment with respect to the primary NAAQS for total suspended particulates (TSP). This portion will remain designated nonattainment for the secondary TSP standard. This redesignation action is based on a request from the Missouri Department of Natural Resources (MDNR). The request was supported with recent air monitoring data.

DATE: This designation is effective May 3, 1984.

ADDRESSES: The state submittal is available for inspection during normal business hours at the following locations:

Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri 64106.
Environmental Protection Agency, Public Information Reference Unit, Room 2922, 401 M Street, SW., Washington, D.C. 20460.
Missouri Department of Natural Resources, 1101 Rear Southwest Boulevard, Jefferson City, Missouri 65102.

FOR FURTHER INFORMATION CONTACT: Larry A. Hacker at (816) 374-3791, or FTS 758-3791.

SUPPLEMENTARY INFORMATION: In response to Section 107(d) of the Clean Air Act, as amended, EPA and the State of Missouri have designated all areas of the State as attaining the NAAQS, not attaining the NAAQS, or having insufficient data to make a determination. An attainment area is one in which the air quality does not exceed the standards. A nonattainment area is one in which the air quality is worse than the standards. An unclassified area is one for which there are insufficient data to determine whether the area is attainment or nonattainment. EPA's Section 107 designation policy is summarized in an April 21, 1983 memorandum from EPA's Office of Air Quality Planning and Standards. At 40 CFR Part 81, Subpart C, the areas of the State which are nonattainment for one or more pollutants are identified.

On January 20, 1983, the MDNR submitted a request to redesignate the attainment status of a portion of the Kansas City, Missouri, metropolitan area for TSP. EPA reviewed this request and determined that it complied with agency redesignation policy. On October 13, 1983, EPA published a proposal to redesignate this area from primary nonattainment to secondary nonattainment (48 FR 46553).

The 30 day public comment period ended on November 14, 1983. No public comments were received. Subsequent to the proposal, EPA's review of recent air quality data indicates that this area continues to show attainment of the primary TSP standard.

Action: EPA takes final action to remove the primary nonattainment designation and retain the secondary nonattainment designation for the Kansas City, Missouri, TSP nonattainment area.

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

Under Section 307(b)(1) of the Clean Air Act, as amended, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days of today. This action may not be challenged in proceedings to enforce its requirements. (See Section 307(b)(2).)

This notice of final rulemaking is issued under the authority of Sections 107 and 301 of the Clean Air Act, as amended (42 U.S.C. 7407 and 7601).

List of Subjects in 40 CFR Part 81

Intergovernmental relations, Air pollution control, National parks, Wilderness areas.

Dated: April 27, 1984.
William D. Ruckelshaus,
Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart C—Section 107 Attainment Status Designation

§ 81.326 [Amended]

1. In § 81.326 in the table "Missouri-TSP", under Metropolitan Kansas City Interstate AQCR (094), remove the first entry, which reads as follows:

Kansas City (an area extending approximately from the Kansas State line east along 55th St. to I-435, then north to I-70, east to Maland Rd., north to I-35, southwest to I-29, northwest to I-635, and southwest to the state line)..... X X.....

* * * * *

[FR Doc. 84-11928 Filed 5-2-84; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 81

[A-5-FRL 2579-5]

Designations of Areas for Air Quality Planning Process; Attainment Status Designations; Wisconsin

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: This rulemaking revises the Total Suspended Particulates (TSP) designation for a portion of the City of

Neenah, located in Winnebago County, Wisconsin, from secondary nonattainment to attainment. This revision is based on a redesignation request from the State of Wisconsin and on supporting data that the State submitted. Under the Clean Air Act, designations can be changed if sufficient data are available to warrant such change.

EFFECTIVE DATE: June 4, 1984.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

Environmental Protection Agency, Region V, Air Programs Branch, 230 S. Dearborn Street, Chicago, Illinois 60604.

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

Uylaine E. McMahan, Air and Radiation Branch (5AR–26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 353–0396.

SUPPLEMENTARY INFORMATION: On December 14, 1983 (48 FR 55582), EPA proposed to revise the designation of a portion of Neenah,[1] Wisconsin, located in Winnebago County, from nonattainment to attainment for TSP. This revision was based on improvements in air quality resulting from fugitive dust emission reductions brought about primarily by the paving of unpaved streets and parking lots. Additionally, secondary emission reductions resulted from an improved street cleaning program in Neenah and the installation of baghouses on the fugitive dust control systems at a nearby foundry. A detailed discussion of the basis of EPA's action can be found in the December 14, 1983, notice of proposed rulemaking (48 FR 55582).

During the public comment period, no comments were submitted. Therefore, EPA is today taking final action redesignating a portion of Neenah, Wisconsin, from secondary nonattainment to attainment for TSP.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 2, 1984. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 81

Intergovernmental relations, Air pollution control, National parks, Wilderness areas.

(Sec. 107(d) of the Act, as amended (42 U.S.C. 7407))

Dated: April 27, 1984.

William D. Ruckelshaus,

Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES—WISCONSIN

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended by revising AQCR 237 in the table of § 81.350 to read as follows:

§ 81.350 Wisconsin

* * * * *

WISCONSIN—TOTAL SUSPENDED PARTICULATES (TSP)

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
AQCR 237:				
Winnebago:				
Oshkosh				
Sub-city area defined as follows.		X		
North: Corner Irving Ave. and Wisconsin Ave. east to Bowen St..				
West: Corner Ohio St. and west 11th Ave. north to Route 26/44, continue northeast along Route 26/44 to intersection with Irving Avenue.				
South: Corner Ohio St. and west 11th Ave., east along west 11th Ave. to Lake Winnebago.				
East: Corner Irving Ave. and Bowen St., South along Bowen to Lake Winnebago.				
Remainder of Winnebago County.				X

* * * * *

[FR Doc. 84–11918 Filed 5–2–84; 8:45 am]

BILLING CODE 6560–50–M

[1] Neenah subcity area defined as follows: NORTH: Corner Caroline St. and Harrison Street east to Frankin Street continue southeast on Franklin Street to Oak Street. WEST: Corner Dixie and Cecil Streets north to Harrison Street continue north Harrison Street to Caroline Street. SOUTH: Corner Dixie Street and Cecil Street. East on Cecil Street to Higgins Avenue. EAST: Corner Franklin Street and Oak Street south on Oak Street to Lauden Boulevard, west on Lauden Boulevard to Higgins Avenue south on Higgins Avenue to Cecil Street.

40 CFR Part 81

[EPA Action NE 1285; A–7–FRL 2580–2]

Revision to Attainment Status Designations; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: On August 23, 1983, EPA proposed revisions to attainment status designations in Nebraska, as requested by the Nebraska Department of Environmental Control, based upon supporting air quality data and evidence of an implemented control strategy.

Today's rule takes final action on the proposed revisions to the attainment status designations. No comments were received in response to the proposed rulemaking.

EFFECTIVE DATE: June 4, 1984.

ADDRESSES: Copies of the State submission are available for review during normal business hours at the following locations: Environmental Protection Agency, Air Branch, 324 East 11th Street, Kansas City, Missouri 64106; The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C.; and State of Nebraska, Department of Environmental Control, 301 Centennial Mall South, Lincoln, Nebraska 68509.

FOR FURTHER INFORMATION CONTACT: Mary C. Carter at (816) 374–3791, FTS 758–3791.

SUPPLEMENTARY INFORMATION: On March 18, 1983, the Nebraska Department of Environmental Control submitted air quality data summaries for the years 1981 and 1982 for total suspended particulate (TSP) in Weeping Water and Omaha. The submission contained a request that the areas indicating attainment of the National Ambient Air Quality Standards for TSP be formally designated as such.

For redesignation, EPA requires that there be two years of data showing no violations of the standards and evidence of an implemented control strategy. Based on the air quality data submitted by the State and evidence that the approved control strategy contained in the State Implementation Plan (SIP) had been implemented, EPA proposed to remove the primary nonattainment designations and retain the secondary nonattainment designation for the TSP standard in Weeping Water and at the 24th and "O" Street TSP nonattainment site in Omaha. (See 48 FR 38254, August 23, 1983, for further information.)

Weeping Water—TSP. The entire City of Weeping Water (located in Cass

County) is currently designated as nonattainment for the primary and secondary TSP standards. Air quality monitoring data show no violations of the primary annual geometric mean or the primary 24-hour TSP standard for 1981 and 1982, but show that seven violations of the secondary TSP standard occurred in 1981. The SIP for attainment of the TSP standard in Cass County requires reasonably available control measures for all existing major and minor sources of particulate in the county.

Action: EPA removes the primary nonattainment designation and retains the secondary nonattainment designation for the TSP standards in Weeping Water.

Omaha—TSP. Omaha (located in Douglas County) currently has two areas which are designated as nonattainment of the primary and secondary TSP standards, with the remainder of Omaha designated as nonattainment of only the secondary TSP standard. The air quality monitoring data submitted by the State for the 24th and "O" Street primary nonattainment area show that there were no violations of the primary annual geometric mean or the primary 24-hour TSP standard in 1981 or 1982, but show a violation of the secondary TSP standard in 1981.

The data submitted by the State for the 11th and Nicholas Street primary nonattainment area show that although there have been no violations of the primary maximum 24-hour standard, the primary annual geometric mean was violated in 1981. The data also show that the area experienced violations of the secondary TSP standard in both 1981 and 1982. Since there was a violation of the primary annual geometric mean at this site for one of the two years, EPA finds that the area should remain primary nonattainment.

The Nebraska SIP revision for attainment of the TSP standards in Douglas County provides the control strategy for attaining the primary TSP standards in Omaha. The State agency has confirmed that the control strategy contained in the SIP has been implemented.

Action: EPA removes the primary nonattainment designation and retains the secondary nonattainment designation for the 24th and "O" Street TSP nonattainment area. EPA retains the primary nonattainment designation for the 11th and Nicholas Street TSP nonattainment area.

This action removes the construction moratorium on major stationary sources of particulate which has been in effect since July 2, 1979 in Weeping Water and at the 24th and "O" Street site in Omaha.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 2, 1984. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

This notice is issued under the authority of section 107(d) and 301 of the Clean Air Act, as amended, 42 U.S.C. 7407(d) and 7601.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: April 27, 1984.

William D. Ruckelshaus,

Administrator.

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

SUBCHAPTER C—AIR PROGRAMS

* * * * *

PART 81—[AMENDED]

* * * * *

Subpart C—Section 107 Attainment Status Designations

* * * * *

1. Section 81.328 is amended by revising the table labeled "Nebraska—TSP" as follows:

§ 81.328 Nebraska.

NEBRASKA—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
AQCR 085 (Douglas & Sarpy Counties):				
Douglas County:				
Omaha—11th & Nicholas Street Site [1]	X			
Remainder of Omaha		X		
Remainder of Douglas County				X
Sarpy County:				
Bellevue		X [2]		
Remainder of Sarpy County				X
AQCR 086			X [2]	
AQCR 145				X
AQCR 146:				
Cass County:				
Louisville (Municipal boundaries)	X			
Weeping Water (Municipal boundaries)		X		
Remainder of Cass County			X [2]	
Dawson County			X [2]	
Remainder of AQCR 146				X

[1] As described in the State Implementation Plan.
[2] EPA designation replaces State designation.

[FR Doc. 84-11925 Filed 5-2-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 610

[AMS-FRL 2543-8]

Amendment To Transfer the Agency's Fuel Economy Retrofit Device Test Cost Liability to the Device Manufacturer

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action amends 40 CFR Part 610 of the fuel economy retrofit device evaluation regulations to make it clear that in cases where the manufacturer of a retrofit device applies for EPA evaluation, the manufacturer must pay the cost of any EPA testing of the device.

EFFECTIVE DATE: May 3, 1984.

ADDRESSES: Availability of documents: Copies of material relevant to this rulemaking are located in Public Docket No. A-83-30, at the U.S. Environmental Protection Agency, Central Docket Section (LE-131), Gallery 1, West Tower Lobby, Waterside Mall, 401 M Street SW., Washington, D.C. 20460. The docket may be inspected between 8 a.m. and 4 p.m., Monday through Friday. A reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Merrill W. Korth, Test and Evaluation Branch, Emission Control Technology Division, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone (313) 668-4299.

SUPPLEMENTARY INFORMATION: OMB Control Number: 2000-0419.

I. Background

EPA's existing regulations, 40 CFR 610.14, do not address whether the manufacturer or EPA should pay the cost of EPA testing of retrofit devices for those evaluations initiated at the request of the manufacturer under EPA's fuel economy retrofit device testing program. In the past, however, EPA has paid for the cost of testing of less than four devices per year that appeared promising based on preliminary testing at private laboratories.

Recently, however, EPA's Inspector General determined that EPA is precluded from paying for such testing under the terms of Section 511 of the Motor Vehicle Information and Cost Savings Act (MVICSA), 15 U.S.C. 2011. That section, which directs EPA to evaluate the fuel economy claims of retrofit devices, sets out three ways an EPA evaluation can be initiated; at the request of the Federal Trade Commission, at the request of the Administrator of EPA, or upon the application of the manufacturer himself. Section 511(b)(2) of the Act specifies who should bear the cost of such testing, providing that:

> If * * * the EPA Administrator tests, or causes to be tested, any retrofit device upon the application of a manufacturer of such device to the Administrator, such manufacturer shall supply, at his own expense, one or more samples of such device to the Administrator *and shall be liable for the costs of testing which are incurred by the Administrator.* [Emphasis supplied.]

In response to the Inspector General's determination, EPA has informed manufacturers that in the future they will have to pay for the cost of EPA testing that they initiate. Because the existing regulation does not address who must pay for Agency testing initiated by the manufacturer and the statute clearly requires that the manufacturer must pay for such testing, no change in the rule is necessary to implement this policy. The purpose of this action is simply to inform manufacturers in the text of the rule of their obligation to pay for EPA tests that they ask EPA to perform.

EPA wishes to make it clear that while under this action, manufacturers would have to pay the costs of EPA *testing* that they initiate, the costs of *engineering evaluation* of a device (e.g., the cost of the time of EPA engineers assessing the device, evaluating test data, and writing the engineering evaluation) would continue to be borne by EPA.

II. Comments Received

EPA proposed this amendment to the regulations governing the retrofit device evaluation program in a Notice of Proposed Rulemaking, 44 FR 55399 (December 12, 1983). The NPRM also provided for a comment period which subsequently closed on January 26, 1984. Because comments were not received regarding the proposed amendment, and also because EPA has no other reason for changing it, the amendment being made final by this action has not been changed from that proposed in the NPRM.

III. Administrative Designation

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because its annual cost will be far less than 100 million dollars and it will not have a significant adverse effect on competition, employment, investment, productivity, or innovation. Consequently, no Regulatory Impact Analysis is required.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection in the docket cited at the beginning of this preamble.

IV. Effect on Small Entities

Section 605 of the Regulatory Flexibility Act requires that the Administrator prepare an analysis of the effect of a regulation on small entities unless he certifies that the regulation will not have a significant impact on a substantial number of small entities. This proposed regulation may have an impact on a few small entities that apply for an evaluation and are required to pay the cost of testing, or that decide not to ask EPA to test their product because of the expense of EPA testing. However, the number of small entities affected will not be significant because in the past EPA has borne the expense of testing, on the average, less than four devices per year where the evaluations were triggered by the application of the manufacturer. Therefore, I certify that on a national basis, this action will not have a significant impact on a substantial number of small entities. For this reason, the Agency has not prepared an analysis under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

V. Reporting and Recordkeeping Requirements

Information and collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2000-0419.

V. Immediate Effective Date

Since this rule merely recognizes the explicit requirements of Section 511(b)(2) of the MVICSA, which is already being enforced as interpreted by the Inspector General, there is good cause to make the rule effective immediately, in accordance with Section 4(d) of the Administrative Procedure Act, 5 U.S.C. 553(d).

List of Subjects in 40 CFR Part 610

Fuel economy, Gasoline, Motor vehicles.

(15 U.S.C. 2011)

Dated: April 27, 1984.

William D. Ruckelshaus,

Administrator.

PART 610—[AMENDED]

For the reasons set forth in the preamble, Part 610, Subchapter Q, Chapter I of Title 40, Code of Federal Regulations, is amended as set forth below.

1. The authority citation for Part 610 reads as follows:

Authority: Sec. 511, Motor Vehicle Information and Cost savings Act, as amended, 15 U.S.C. 2011 (Sec. 301, Pub. L. 94-163, 89 Stat. 915).

2. In § 610.14, paragraph (b) is revised to read as follows:

§ 610.14 Payment of program costs.

* * * * *

(b) For those evaluation programs initiated at the request of a manufacturer of a retrofit device, should the Administrator test the device, or cause the device to be tested, as part of the evaluation, then that manufacturer shall supply, at his own expense, one or more samples of the device to the Administrator and shall be liable for the costs of testing which are incurrred by the Administrator. The manufacturer shall also be liable for the cost of any preliminary testing at an independent testing laboratory performed as part of the evaluation program. Apart from the costs of testing a device, EPA shall be

responsible for costs of formulating its engineering evaluation of a device.

* * * * *

[FR Doc. 84-11914 Filed 5-2-84; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Part 510

[Gen. Order 4, Revised, Docket No. 84-19]

Licensing of Ocean Freight Forwarders

AGENCY: Federal Maritime Commission.

ACTION: Interim rules and request for comments.

SUMMARY: On March 20, 1984, the President signed the Shipping Act of 1984, which will become effective June 18, 1984. The Commission hereby issues interim rules and requests comments on those changes to its General Order 4 (46 CFR Part 510) that are required by the new legislation. Also included herein are interim rules revising certain other sections of General Order 4 which the Commission had under consideration at the time the Shipping Act of 1984 was signed.

DATES: Effective date: Interim rules effective June 18, 1984. Comments due on or before June 4, 1984.

ADDRESS: Comments (Original and twenty (20) copies) to: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573.

FOR FURTHER INFORMATION CONTACT: Jeremiah D. Hospital, Chief, Office of Freight Forwarders, Bureau of Tariffs, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5843.

SUPPLEMENTARY INFORMATION: On March 20, 1984, the President signed the Shipping Act of 1984, which will become effective June 18, 1984. This legislation substantially alters the regulatory responsibilities of the Commission and directly impacts on the Commission's regulations pertaining to the ocean freight forwarding industry, General Order 4. A number of changes to General Order 4 are required by this new legislation. While most of the changes are technical in nature, some will have a significant impact on the industry.

Last August, the Commission issued a notice of proposed rulemaking in the Federal Register (48 FR 167 at p. 38856, Docket No. 83-35) proposing to revise certain provisions of General Order 4. In response to that notice, comments were received and evaluated by the staff. In view of the new legislation recently signed, the Commission has withheld adoption of final rules concerning those proposed changes noticed last August, and the Commission will again notice them as interim rules, as amended herein, for additional possible comment along with the changes required by the new legislation. It should be noted that the comments submitted in Docket No. 83-35, Proposed Revisions to General Order 4, will be incorporated into the record of this proceeding and it will not be necessary for commenters to submit their previous comments again in connection with this rulemaking proceeding.

The Commission's ultimate goal will be a single, comprehensive rule which will include all amendments required by new legislation as well as the changes noticed last August.

So as not to confuse issues, we discuss the changes to General Order 4 required by new legislation under Part A, "Legislative Changes," of the Supplementary Information. In Part B, "Other Changes," we discuss the proposals previously noticed last August.

These interim rules will take effect on June 18, 1984, the effective date of the Shipping Act of 1984. If individuals believe that there are serious problems created by these interim rules which should be addressed immediately, they are free to bring their concerns to the attention of the Commission without prejudice to subsequently filing additional comments within the thirty day comment period. In any event, all interested parties have been provided thirty days to comment on the interim rules.

Part A—Legislative Changes

The Shipping Act of 1984 has made several substantial changes in the regulation of the forwarding industry. The definition of an ocean freight forwarder is changed to mean any person in the United States who dispatches shipments from the United States via a common carrier and books or otherwise arranges space for those shipments on behalf of shippers; and processes the documentation or perform related activities incident to those shipments. Thus, there will be no prohibition against export shippers, sellers, consignees and purchasers of goods from the United States obtaining an ocean freight forwarder license as there currently is. Any class of person can obtain a license as an ocean freight forwarder if found qualified.

The qualifications for licensing will be changed from a fit, willing and able standard to an experience and character standard. We see, however, no great difference between the two standards. It appears that someone found unfit under the old standard would not possess the proper character to be licensed under the new standard.

The Commission will be able to revoke or suspend a license, after notice and hearing, where it finds that an ocean freight forwarder is not qualified to render forwarding services, or that it willfully failed to comply with a provision of the new Act or with a lawful order, rule, or regulation of the Commission (this would also include failure to honor financial obligations to the Commission such as for civil penalties). The Commission may also revoke a license for failure to maintain a surety bond. Again, we see no drastic differences between the old law and the new law in this area.

The payment of ocean freight forwarder compensation is still the prerogative of the carrier, although no conference or group of two or more carriers may deny in the export foreign commerce of the United States compensation to a forwarder or limit that compensation to less than a reasonable amount. On the issue of what is "reasonable", the Conferees' report accompanying the new legislation states:

> Rather than specify the limitation at 1¼ percent of the freight charge, as was done in the Senate version, the Conferees agree to proscribe any denial of compensation at less than a reasonable amount. "Reasonable" has been determined by the Federal Maritime Commission in those cases at which limitation of compensation was at issue to be no less than 1¼ percent. The Conferees view the approach taken by the Federal Maritime Commission as consistent with their continuing regulatory responsibility and assume that the Commission will by guided by its past actions when determining what a "reasonable amount" will be.

An ocean freight forwarder is still required to provide the carrier with a certification that it is entitled to the payment of compensation. However, the form of the certification has been changed to require that the forwarder (1) engage, book, secure, reserve, or contract directly with the carrier or its agent for space aboard a vessel or confirm the availability of that space, and (2) prepare and process the ocean bill of lading, dock receipt, or other similar document with respect to the shipment. Carriers may not pay compensation for services described above more than once on the same shipment. Compensation may only be paid in accordance with the carrier's tariff provisions. No ocean freight

forwarder may receive compensation on a shipment on which the ocean freight forwarder has a direct or indirect beneficial interest.

Section 20 of the new legislation, Repeals and Conforming Amendments, does not provide for the licensing of forwarders in the U.S. domestic off-shore trades. Hence, a person engaging in the business of ocean freight forwarding in the U.S. domestic off-shore trades will not be required to obtain a license from the Commission. Furthermore, General Order 4 (Part 510) will not apply to such activity.

The foregoing briefly outlines how the new legislation will impact on the forwarding industry. The Commission's regulations require changes to implement the new legislation. What follows is identification of the changes, section-by-section, required in General Order 4 to conform it with the new legislation. There are, however, several changes which occur throughout the rule that are better dealt with apart from the section-by-section analysis. These are:

1. Reference to "Independent Ocean Freight Forwarder" shall be changed to "Ocean Freight Forwarder".
2. Reference to the "Shipping Act, 1916" shall be changed to the "Shipping Act of 1984".
3. References to specific sections of the Shipping Act, 1916 shall be changed to the appropriate sections of the Shipping Act of 1984.
4. Reference to "oceangoing common carrier" shall be changed to "common carrier".
5. Reference to "Bureau of Certification and Licensing" shall be changed to "Bureau of Tariffs". This is required by internal reorganization and not by new legislation.
6. Any reference to the U.S. domestic off-shore trades shall be deleted.
7. The Authority shall be The Shipping Act of 1984.

Section 510.1 Scope.

In paragraph (b), add language indicating that if a violation is willfully and knowingly committed the amount of the civil penalty may not exceed $25,000 for each violation. Also revise the lower range of penalties to specify such penalty may not exceed $5,000 instead of $1,000.

Add language to provide that each day of a continuing violation shall constitute a separate offense.

Section 510.2 Definitions.

Add a definition for "common carrier" as defined in the Shipping Act of 1984 (The Act). This term will include both vessel-operating common carriers and non-vessel-operating common carriers.

Delete the definition for "Freight forwarder" as it is not necessary.

Amend paragraph (i) by eliminating reference to the domestic trades.

Delete the language in paragraph (j) and replace it with the definition of "ocean freight forwarder" contained in The Act.

Amend paragraph (1) so it comports with the definition of a non-vessel-operating common carrier contained in The Act.

Substitute the definition for "ocean common carrier" in The Act for the language contained in paragraph (n).

Add the definition for "shipment" in The Act.

Add the definition for "shipper" in The Act.

Substitute the definition of the "United States" in The Act for the language contained in paragraph (s).

Section 510.11 Basic requirements for licensing; eligibility.

Amend paragraph (a) to indicate that the basic requirement will now be experience and character of the applicant and the filing of an appropriate bond.

Section 510.12 Persons not eligible.

Delete the entire section as it is no longer necessary.

Section 510.14 Investigation of applicants.

Delete the phrase "and independence" in paragraph (c).

Delete paragraph (e).

Section 510.15 Surety bond requirements.

Delete the language contained in the third sentence in paragraph (a) and substitute statutory language that the surety company be acceptable by the Secretary of the Treasury.

Section 510.16 Denial of license.

Amend the language so that the grounds will now be:

1. does not possess the necessary experience or character to render forwarding services;
2. has failed to respond to any lawful inquiry of the Commission; or
3. has made any willfully false or misleading statement to the Commission in connection with its application.

Section 510.17 Revocation or suspension of license.

In subparagraph (a)(1) and (a)(2), add "order" of the Commission. In subparagraph (a)(4), amend the language to indicate that a ground for revocation or suspension shall be where the Commission finds the licensee is no longer qualified to render freight forwarding services. Delete language in subparagraph (a)(5) and substitute language regarding a licensee's financial obligations to the Commission.

Section 510.18 Application after revocation or denial.

Delete any reference to "unfit" or "lack of fitness" contained in this section and substitute "not qualified" or some variations thereof.

Section 510.19 Issuance and use of license.

Amend language of this section by deleting references to fit, willing and able and substitute the necessary experience and character criteria. Also add language concerning the filing of the required surety bond.

Section 510.20 Changes in organization.

Delete reference to "see section 15 of the Act" contained in paragraph (a)(6).

Section 510.21 Branch offices; interim operation.

Although not affected by the new legislation, this section is no longer necessary, thus it will be deleted.

Section 510.32 Forwarder and principal; fees.

Paragraph (a) is deleted as under the new legislation this prohibition will no longer be applicable.

Section 510.33 Forwarder and carrier; compensation.

In paragraph (a), delete the first sentence. Amend the remaining language to clarify that the identity of the actual shipper must be disclosed on the bill of lading and in instances where the licensee is not also the actual shipper, the licensee's name may appear after the shipper's name.

In paragraph (c) amend the language of the certification to comply with the language contained in the new legislation.

In paragraph (d) add language that conferences or groups of carriers shall not deny compensation or limit the level to less than a reasonable amount.

In paragraph (f) amend language so it comports with the language contained in the new legislation.

In paragraph (g) make several technical changes to clarify that it applies only to non-vessel-operating carriers.

Section 510.35 Reports required to be filed.

Paragraph (a) currently requires each licensee to file copies of its office stationery and invoice forms within sixty days of licensing. Although not affected by the new legislation, we do not believe that this requirement is necessary and, in order to reduce the burden on the industry, we are deleting the requirement.

In view of the proposed deletion of section 510.36 (see below), paragraph (b) of section 510.35 is deleted, as it contains reference to section 510.36.

Section 510.36 Section 15 Agreements.

Under the new legislation, forwarders are not required to file any of their agreements in the U.S. foreign commerce with the Commission. Thus, this section is deleted in its entirety.

Part B—Other Changes

As indicated earlier, the changes discussed under this part were originally noticed for comment last August. In its notice of proposed rulemaking, the Commission had proposed nine areas of change to the current rules. Our discussion addresses the comments on each area of change separately and, in accordance therewith, we are adopting interim rules along with the changes discussed under Part A that are required by new legislation.

1. Protecting the Shipping Public

(The language changes for the specific rules addressed under this topic appear in Amendments Nos. 11 (section 510.13(e)) and 20 (section 510.31(b).)

The Commission proposed that forwarders who are affiliated with export shippers or sellers of goods from the United States be required to give notice on their office stationery and billing invoices that they are affiliated with one or more shippers or sellers of goods from the United States and, upon request, the forwarder would be required to identify such affiliations in writing. It was the Commission's belief that such notification would give potential clients the opportunity to choose whether or not to employ certain forwarders who may be controlled by or otherwise affiliated with a potential competitor of the client.

The comments generally favor the proposal and support the intent of the Commission in proposing the change. Two forwarders, however, oppose the proposal. Davidson Forwarding Company, (FMC License No. 1086) believes that the proposal would harm small forwarders which have no shipper affiliations. This forwarder feels that shippers would lean more toward forwarders that are affiliated. It suggests that forwarders be required to make annual certifications stating their affiliations similar to the annual anti-rebate certification. NAVTRANS International Freight Forwarding, Inc. (FMC License No. 2522) argues that the prohibition contained in section 20 of the Shipping Act, 1916, which prohibits the disclosure of any information concerning a shipment which may be used to the detriment of the shipper/consignee or may improperly disclose the business transaction to a competitor, is sufficient and, in the absence of any showing to the contrary, it would seem somewhat capricious at best to simply dismiss section 20 of that Act as ineffectual or insufficient. It sees the proposal as an attempt to artificially restrain competition among freight forwarders.

With respect to NAVTRANS' argument that section 20 of the 1916 Act is sufficient to protect the shipping public, we would point out that the Shipping Act of 1984 contains no counterpart for section 20 of the 1916 Act which pertains to ocean freight forwarders. Hence, the notification of shipper affiliations becomes all that more important in alerting unknowing shippers that the forwarder they deal with may be a potential competitor. Furthermore, in light of the removal of the prohibition against shippers obtaining an ocean freight forwarder license by the new legislation, we are modifying our proposal to require notification of the fact that the forwarder is an export shipper.

The National Customs Brokers & Forwarders Association of America, Inc. (hereafter referred to as the National Association) has suggested a further revision to the notice requirement proposal. It recommends that the Commission require that the type size for the notice be the same as other portions of the forwarder's stationery. It fears that forwarders will put the notice in the smallest type possible. We do not believe the National Association's suggestion is practical as a forwarder's stationery may contain several different type sizes. Thus, we will not adopt the suggestion in our revised rule.

Also in this area, the Commission proposed to amend the rules to require forwarders to report to the Commission any changes in fact contained in the forwarder's original application form within thirty days. This rule is meant to rectify an oversight that occurred when the rules were revised in 1981. No commenter objected to the proposal.

In view of the favorable comments submitted regarding the proposals in this area, we will adopt the proposals, as modified above.

2. The Invoicing Rules

(See Amendments Nos. 21 § 510.32(h) and 23 § 510.34(b).)

With regard to the invoicing rules, the Commission proposed three alternatives: (a) retain the current rules with no change; (b) delete the rules entirely; or (c) any modification falling between alternatives (a) and (b), including a rule that would allow a forwarder to provide a lump sum invoice but, at the same time, require the forwarder, upon request of its principal, to provide copies of any or all pertinent documents (such as invoices for trucking, warehousing, insurance, etc.) pertaining to the forwarder's invoice.

No commenter supported alternative (a), i.e., make no change. The overwhelming sentiment was that the Commission should delete all requirements pertaining to how forwarders should invoice their clients. Given the possibility that the Commission probably would not adopt final rules which would eliminate the invoicing rule, the commenters generally support changes in the current rules which would allow forwarders to provide lump sum billing with no breakout of costs. Further, it is suggested by the commenters that, where a forwarder chooses to utilize an itemized invoice, the forwarder be allowed to show only the total cost to the client for accessorial services, such as inland freight, insurance, warehousing, etc., instead of having to break out the forwarder's cost for the accessorial service and its markup on the accessorial service.

We are amending the current invoicing rule to permit forwarders to provide lump sum billing on their invoices to their shipper-clients without breaking out specific costs.

However the rule will require that the forwarder, upon request of its shipper-client, must provide a break out of costs and a copy of any pertinent document relating to the invoice, for example, invoices from third parties. We also are requiring a notice to this effect be placed on each invoice the forwarder renders to its shipper-clients. We believe the shipper-client should have a way of determining for itself whether the charges billed by the forwarder are resonable and acceptable to it.

Additionally, to make it clear which particular documents a forwarder is required to retain in its files, we are amending § 510.34(b) to identify more specifically the types of documents, such as invoices for any service

arranged by the forwarder and performed by others, that are to be retained by the forwarder.

3. Sale or Transfer of Stock

(See Amendment No. 18 § 510.20(a)(5).)

Section 510.20(a)(5) currently requires the Commission's prior approval of the sale or transfer of five percent or more of a forwarder's stock to ensure that licensees remain independent of shipper connections. With the passage of the Shipping Act of 1984, the need for the prior approval of sale/transfer of stock in a forwarder no longer exists, as forwarders are allowed by law to be shippers or shipper-connected. Therefore, we are deleting this requirement.

We would point out that forwarders will still be required to notify the Commission of any stock sale or transfer for our information under the adopted revision discussed earlier. See revised § 510.13(e).

4. Arrangements With Unauthorized Persons

(See Amendment No. 20 (§ 510.31(e).)

It was proposed to clarify § 510.31(e) to allow forwarders to hire and compensate bona fide sales agents for services rendered, provided that such services are restricted to soliciting and obtaining business for the forwarder and are not otherwise prohibited by law or regulation. Also, the Commission wished to clarify that the rule's intent is that when a forwarder is employed for the transaction of forwarding business by a person who is not the person responsible for paying the forwarding charges, the forwarder shall transmit to the person paying the forwarding charges a copy of its invoice for services rendered.

Comments received on the proposed clarifications were favorable. Hence, we adopt these clarifications as interim rules.

5. Anti-Rebate Certification

(See Amendments Nos. 20 (§ 510.31(h)) and 22 (§ 510.33(c).)

To obtain as much comment as possible, the Commission proposed two alternatives dealing with the issue of requiring forwarders to place an anti-rebate policy declaration on each invoice to a shipper-client and on each certification for freight forwarder compensation to an oceangoing common carrier: First, that no change be made in the current rule as it serves to reinforce the Commission's policy against rebates among carriers, forwarders and shippers and, second, that the rule be deleted leaving only the annual certification as suggested by the National Association.

Comments on the proposals support the deletion of the rule as it is perceived as burdensome to stamp each such document. The National Association further argues that Shipping Act, 1916, does not require forwarders to continuously certify an antirebate policy. It is generally felt by the commenters that the annual certification is sufficient. One forwarder, however, did suggest that the annual certification requirement be deleted and that the supposed burden of stamping each document can be alleviated by simply having documents preprinted with the required statement.

We agree with the one forwarder's comment that if the notice is preprinted there is no continual burden, and we would urge all forwarders to have their documents preprinted. This policy declaration is but one means of insuring that the Commission's policy against rebates is disseminated to unknowing shippers and it is consistent with the intent of section 15 of the new legislation. However, we do not believe it is necessary for forwarders to declare this policy to carriers, as the carriers are fully aware of the Commission's policy; in fact, carriers file annual certifications similar to those filed by forwarders. Therefore, we are amending § 510.31(h) to the extent that forwarders now be required to provide the anti-rebate policy declaration only to their shipper-clients and not additionally to carriers. We would point out that, in view of the foregoing rule, a conforming amendment to § 510.33(c) will be necessary to delete the reference to § 510.31(h) contained therein, and it is, therefore, included.

We would emphasize that the change here would not in any way affect the annual anti-rebate certification as each forwarder will still be required to file its annual certification of its policies against rebating as required by § 510.35(c) of General Order 4.

6. Accounting to Principal

(See Amendment No. 21 § 510.32(k).)

In lieu of requiring forwarders to obtain written consent to offset funds on each and every shipment, the Commission proposed that the forwarder either execute a written agreement with its principal which would allow the forwarder to offset funds on all of the principal's shipments, or obtain oral consent on each shipment.

The general view of the comments on this issue is best expressed by the comments of the National Association. It is argued that the licensing statute did not create a fiduciary relationship with the exporter and that the forwarder should not be considered as an agent of the shipper but rather as an independent contractor. The forwarder should be allowed to offset funds without the principal's consent just like other business persons. It adds, however, that if the Commission does not agree with its position, it would support the proposed changes.

We see the interim rules here as a compromise between retaining the current rule and doing away with the requirement entirely. As such, we believe that the changes will benefit all parties involved as they provide the forwarder with an option that can be employed as conditions dictate and, in the case of a written agreement, they leave no doubt between a forwarder and its client of what can be expected in situations concerning offsetting obligations.

7. Section 15 Agreements, Exemptions

(See Amendment No. 27 (§510.36).)

The Commission had earlier proposed to amend the rules to delete the requirement that non-exclusive cooperative working agreements between forwarders be reduced to writing.

In view of the fact that agreements between forwarders are not required to be filed with the Commission under the new legislation, we have decided earlier to delete § 510.36 in its entirety.

8. Port-Wide Exemptions

(See Amendment No. 22 (§ 510.33(e).))

The Commission proposed to modify § 510.33(e) to allow compensation to be paid to a forwarder who requests that the carrier or its agent perform some of the forwarding functions, if such carrier or agent is a licensed independent ocean freight forwarder, or if no other licensee is willing and able to perform such services. With this allowance, the current port-wide exemption provision contained in the section would be unnecessary and hence would be deleted.

Comments directly addressing this issue favor the proposed changes. Several commenters apparently did not understand completely the intent of the current rule and they strayed off onto a discussion of why carriers and agents should not be licensed.

In view of the favarable comments, we are adopting the proposed changes.

9. Publication of Orders of Revocations

(See Amendment No. 15 (§ 510.17(c).))

The Commission proposed that, instead of publishing the entire order of revocation in the **Federal Register**, a

simple notice of such action be published.

The comments support this change. Therefore, we adopt the proposal.

Pursuant to 5 U.S.C. 601 *et seq.*, The Commission certifies that the interim rules published herein will not have a significant economic impact on a substantial number of small entities. The interim rules are intended to bring the Commission's regulations in line with new legislation. Further, they tend to lessen the regulatory burden upon the forwarding industry and they should have a cost-saving impact on daily operations.

Collection of information requirements contained in this regulation have been approved by the Office of Management and Budget under provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned control numbers 3072–0004 and 3072–0018.

List of Subjects in 46 CFR Part 510

Freight forwarders, Maritime carriers, Rates, Surety bonds, Exports.

PART 510—[AMENDED]

Therefore, pursuant to 5 U.S.C. 553; sections 8, 10, 15, 17, and 19 of the Shipping Act of 1984 (46 U.S.C. app. 1707, 1709, 1714, 1716, and 1718), the Commission is amending 46 CFR Part 510, as follows:

1. In Part 510, the authority citation appearing after the table of contents is revised to read as follows and all other authority citations are removed.

Authority: 5 U.S.C. 553; secs. 8, 10, 15, 17, and 19 of the Shipping Act of 1984 (46 U.S.C. app. 1707, 1709, 1714, 1716, and 1718).

2. References to "Independent Ocean Freight Forwarder", wherever they appear, shall be changed to "Ocean Freight Forwarder".

3. References to "Shipping Act, 1916", wherever they appear, shall be changed to "Shipping Act of 1984".

4. References to "Oceangoing Common Carrier", wherever they appear, shall be changed to "Common Carrier".

5. References to "Bureau of Certification and Licensing", wherever they appear, shall be changed to "Bureau of Tariffs".

6. In § 510.1, paragraph (b) is revised to read as follows:

§ 510.1 Scope.

* * * * *

(b) Information obtained under this part is used to determine the qualifications of freight forwarders and their compliance with shipping statutes and regulations. Failure to follow the provisions of this part may result in denial, revocation or suspension of a license for freight forwarding. Persons operating without the proper license may be subject to civil penalties not to exceed $5,000 for each violation unless the violation is willfully and knowingly committed, in which case, the amount of the civil penalty may not exceed $25,000 for each violation; for other violations of the provisions of this part, the civil penalties range from $5,000 to $25,000 for each violation. Each day of a continuing violation shall constitute a separate violation.

7. In § 510.2, remove paragraphs (f), (i), (j), (l), (n), and (s). In § 510.2(d), remove "§ 510.2(m) of this part" and insert "the definition of 'Ocean freight broker' in this section". In § 510.2(g), remove "freight forwarding services as specified in § 510.2(h) of this part" and insert " 'freight forwarding services' ".

8. In § 510.2, remove paragraph designations appearing before each definition; arrange definitions in alphabetical order. In definition of "freight forwarding services", redesignate paragraphs (1)–(13) as paragraphs (a)–(m), and add the following definitions in alphabetical order, to read as follows:

§ 510.2 Definitions.

* * * * *

"Common Carrier" means any person holding itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation that:

(a) Assumes responsibility for the transportation from the port or point of receipt to the port of destination, and

(b) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country.

* * * * *

"From the United States" means oceanborne export commerce from the United States, its territories, or possessions to foreign countries.

* * * * *

"Non-Vessel-Operating Common Carrier" means a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier.

"Ocean Common Carrier" means a vessel-operating common carrier; but the term does not include one engaged in ocean transportation by ferry boat or ocean tramp.

* * * * *

"Ocean Freight Forwarder" means a person in the United States that:

(a) Dispatches shipments from the United States via common carriers and books or otherwise arranges space for those shipments on behalf of shippers; and

(b) Processes the documentation or performs related activities incident to those shipments.

* * * * *

"Shipment" means all of the cargo carried under the terms of a single bill of lading.

"Shipper" means an owner or person for whose account the ocean transportation of cargo is provided or the person to whom delivery is to be made.

* * * * *

"United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, and all other United States territories and possessions.

9. In § 510.11, revise paragraph (a) to read as follows:

§ 510.11 Basic requirements for licensing; eligibility.

(a) *Necessary qualifications.* To be eligible for an ocean freight forwarder's license, the applicant must demonstrate to the Commission that:

(1) It possesses the necessary experience, that is, its qualifying individual has a minimum of three (3) years experience in ocean freight forwarding duties in the United States, and the necessary character to render forwarding services; and

(2) It has obtained and filed with the Commission a valid surety bond in conformance with § 510.15.

* * * * *

§ 510.12 [Removed]

10. Section 510.12 is removed.

11. In § 510.13, revise paragraph (e) to read as follows:

§ 510.13 Application for license.

* * * * *

(e) *Changes in facts.* Each applicant and each licensee shall submit to the Commission, in duplicate, an amended Form FMC–18 Rev., advising of any changes in the facts submitted in the original application, within thirty (30) days after such change(s) occur. In the case of an application for a license, any unreported change may delay the processing and investigation of the application and may result in rejection or denial of the application. No fee is required when reporting changes to an

application for an initial license under this section.

§ 510.14 [Amended]

12. In § 510.14, remove the phrase "and independence" in paragraph (c) and remove paragraph (e).

13. Section 510.15 is amended by revising paragraph (a) introductory text, to read as follows:

§ 510.15 Surety bond requirements.

(a) *Form and amount.* No license shall be issued to an applicant who does not have a valid surety bond (FMC–59 Rev.) on file with the Commission in the amount of $30,000. The amount of such bond shall be increased by $10,000 for each of the applicant's unincorporated branch offices. Bonds must be issued by a surety company found acceptable by the Secretary of the Treasury. Surety Bond Form FMC–59 Rev. can be obtained in the same manner as Form FMC–18 Rev. under § 510.13(a), and shall read as follows:

* * * * *

14. Section 510.16 is revised to read as follows:

§ 510.16 Denial of license.

If the Commission determines, as a result of its investigation, that the applicant:

(a) Does not possess the necessary experience or character to render forwarding services;

(b) Has failed to respond to any lawful inquiry of the Commission; or

(c) Has made any willfully false or misleading statement to the Commission in connection with its application, a letter of intent to deny the application shall be sent to the applicant by certified U.S. mail, stating the reason(s) why the Commission intends to deny the application. If the applicant submits a written request for hearing on the proposed denial within twenty (20) days after receipt of notification, such hearing shall be granted by the Commission pursuant to its Rules of Practice and Procedure contained in Part 502 of this chapter. Otherwise, denial of the application will become effective and the applicant shall be so notified by certified U.S. mail. Civil penalties for violations of the Act or any Commission order, rule or regulation may be assessed in any proceeding on the proposed denial of a license or may be compromised for any such violation when a proceeding has not been instituted in accordance with Part 505 of this chapter.

15. In § 510.17; paragraphs (a) introductory text, and (a)(1), (a)(2), (a)(4), (a)(5), and (c) are revised to read as follows:

§ 510.17 Revocation or suspension of license.

(a) *Grounds for revocation.* Except for the automatic revocation for termination of a surety bond under § 510.15(d), or as provided in § 510.15(c), a license shall be revoked or suspended after notice and hearing for any of the following reasons:

(1) Violation of any provision of the Act, as amended, or any other statute or Commission order or regulation related to carrying on the business of forwarding;

(2) Failure to respond to any lawful order of or inquiry by the Commission.

* * * * *

(4) Where the Commission determines that the licensee is not qualified to render freight forwarding services; or

(5) Failure to honor the licensee's financial obligations to the Commission, such as for civil penalties assessed or agreed to in a settlement agreement under Part 505 of this chapter.

* * * * *

(c) *Notice of Revocation.* The Commission shall publish in the **Federal Register** a notice of each revocation.

16. Section 510.18 is revised to read as follows:

§ 510.18 Application after revocation or denial.

Whenever a license has been revoked or an application has been denied because the Commission has found the licensee or applicant to be not qualified to render forwarding services, any further application within 3 years of the date of the most recent conduct on which the Commission's notice of revocation or denial was based, made by such former licensee or applicant or by another applicant employing the same qualifying individual or controlled by persons on whose conduct the Commission based its determination for revocation or denial, shall be reviewed directly by the Commission.

17. Section 510.19, paragraph (a) is revised to read as follows:

§ 510.19 Issuance and use of license.

(a) *Qualification necessary for issuance.* The Commission will issue a license if it determines, as a result of its investigation, that the applicant possesses the necessary experience and character to render forwarding services and has filed the required surety bond.

* * * * *

§ 510.20 [Amended]

18. Section 510.20, remove paragraph (a)(5) and in paragraph (a)(6), remove the phrase: "(see section 15 of the Act)".

19. Remove § 510.21.

20. In § 510.31, paragraphs (b), (e) and (h) are revised to read as follows:

§ 510.31 General duties.

* * * * *

(b) *Stationery and billing forms; notice of shipper affiliation.*

(1) The name and license number of each licensee shall be permanently imprinted on the licensee's office stationery and billing forms. The Commission may temporarily waive this requirement for good cause shown if the licensee rubber stamps or types its name and FMC license number on all papers and invoices concerned with any forwarding transaction.

(2) When a licensee is a shipper or seller of goods exported from the United States or affiliated with such an entity, the licensee shall have the option of either identifying itself as such or it affiliations on its office stationery and billing forms, or including the following notice on such items:

This company is a shipper or seller of goods exported from the United States or affiliated with such an entity. Upon request, a general statement of its business activities or that of its affiliations, along with a written list of the names of such affiliates, will be provided.

* * * * *

(e) *Arrangement with unlicensed persons.* No licensee shall enter into an agreement or other arrangement (excluding sales agency arrangements not prohibited by law or this part) with an unlicensed person so that any resulting freight forwarding fee, compensation, or other benefit inures to the benefit of the unlicensed person. When a licensee is employed for the transaction of forwarding business by a person who is not the person responsible for paying the forwarding charges, the licensee shall transmit to the person paying the forwarding charges a copy of its invoice for the services rendered.

* * * * *

(h) *Policy against rebates.* The following declaration shall appear on all invoices under § 510.32(h):

(Name of firm) has a policy against payment, solicitation, or receipt of any rebate, directly or indirectly, which would be unlawful under the United States Shipping Act of 1984.

21. In § 510.32, paragraph (a) is removed and paragraphs (h) and (k) are revised to read as follows:

§ 510.32 Forwarder and principal; fees.

(a) [Reserved]

* * * * *

(h) *Invoice; documents available upon request.* Licensees shall not be required to itemize the components of charges on shipments. However, upon request of its principal, each licensee shall provide a complete breakout of such components of its charges and a true copy of any underlying document or bill of charges pertaining to the licensee's invoice. The following notice shall appear on each invoice to a principal:

Charges indicated herein may include a markup. Upon request, we shall provide a detailed list of the components of these charges and a true copy of any pertinent document relating to the charges contained in this invoice.

* * * * *

(k) *Accounting to principal.* Each licensee shall account to its principal(s) for overpayments, adjustments of charges, reductions in rates, insurance refunds, insurance monies received for claims, proceeds of c.o.d. shipments, drafts, letters of credit, and any other sums due such principal(s). These sums shall be forwarded promptly to the principal or, with the principal's consent, may be used to offset the licensee's outstanding receivables due from such principal. A memorandum of such consent shall be retained by the licensee in each shipment file. Alternatively, the licensee may execute a written agreement with its principal which would authorize the licensee to offset funds on all the principal's shipments handled by the licensee.

22. In § 510.33, paragraphs (a), (c), (d), (e), (f), and (g) are revised to read:

§ 510.33 Forwarder and carrier; compensation.

(a) *Disclosure of principal.* The identity of the actual shipper must always be disclosed on the bill of lading. The licensee's name may appear after the name of the actual shipper, but the licensee must be identified as the shipper's agent.

* * * * *

(c) *Form of certification.* Prior to receipt of compensation, the licensee shall file with the carrier a signed certification as set forth below on one copy of the relevant ocean bill of lading which indicates performance of the listed services:

The undersigned hereby certifies that neither it nor any holding company, subsidiary, affiliate, officer, director, agent, or executive of the undersigned has a beneficial interest in this shipment; that it is the holder of valid FMC license No. ——, issued by the Federal Maritime Commission and has performed the following services;

(1) Engaged, booked, secured, reserved, or contracted directly with the carrier or its agent for space aboard a vessel or confirmed the availability of that space, and

(2) Prepared and processed the ocean bill of lading, dock receipt, or other similar document with respect to the shipment.

A copy of such certificate shall be retained by the licensee pursuant to § 510.34.

(d) *Compensation pursuant to tariff provisions.* No licensee, or employee thereof, shall accept compensation from an oceangoing common carrier which is different than that specifically provided for in the carrier's effective tariff(s) lawfully on file with the Commission. No conference or group of common carriers shall deny in the export commerce of the United States compensation to an ocean freight forwarder or limit that compensation to less than a reasonable amount.

(e) *Compensation for services performed by underlying carrier.* No licensee shall charge or collect compensation in the event the underlying common carrier or its agent has, at the request of such licensee, performed any of the forwarding services set forth in § 510.2(h) unless such carrier or agent is also a licensee, or unless no other licensee is willing and able to perform such services.

(f) *Duplicative compensation.* A common carrier shall not pay compensation for the services described in § 510.33(c) more than once on the same shipment.

(g) *Licensed non-vessel-operating common carriers; compensation.* A non-vessel-operating common carrier by water or person related thereto licensed under this part may collect compensation when, and only when, the following certification is made on the "line copy" of the underlying ocean common carrier's bill of lading, in addition to all other certifications required by this part:

The undersigned certifies that neither it nor any related person has issued a bill of lading or otherwise undertaken common carrier responsibility as a non-vessel-operating common carrier for the ocean transportation of the shipment covered by this bill of lading.

Whenever a person acts in the capacity of a non-vessel-operating common carrier by water as to any shipment, such person shall not collect compensation, nor shall any underlying ocean common carrier pay compensation to such person for such shipment.

* * * * *

23. In § 510.34, paragraphs (b) and (e) are revised to read as follows:

§ 510.34 Records required to be kept.

* * * * *

(b) *Types of services by shipment.* A separate file shall be maintained for each shipment. Each file shall include a copy of each document prepared, processed, or obtained by the licensee, including each invoice for any service arranged by the licensee and performed by others, with respect to such shipment.

* * * * *

(e) *Agreements to offset funds.* Any written agreement, or a memorandum of any oral agreement, with a principal to offset funds, as provided in § 510.32(k), shall be retained by the licensee.

24. In § 510.35, remove paragraphs (a) and (b).

25. In § 510.35(c), remove "section 21(b) of the Shipping Act, 1916" and insert "section 15(b) of the Shipping Act of 1984".

26. In § 510.35(c), remove "46 CFR parts 510 and 552" and insert "46 CFR parts 510 and 582".

27. Remove § 510.36

28. Add § 510.91 to read as follows:

§ 510.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. The Commission intends that this part comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement:

Section	Current OMB control No.
510.13 (Form FMC–18)	3072–0004
510.15	3072–0018
510.16	3072–0018
510.20 (Form FMC–18)	3072–0004
510.31 through 510.35	3072–0018

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84–11997 Filed 5–2–84; 8:45 am]

BILLING CODE 6730–01–M

46 CFR Parts 526, 533, 540, 550, and 551

[Docket No. 84-18]

Interim Rules To Implement the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Interim Rules and Request for Comments.

SUMMARY: On March 20, 1984, the President signed the Shipping Act of 1984, which will become effective on June 18, 1984. The Commission hereby issues interim rules to implement the Shipping Act of 1984 by its effective date and requests public comment on these rules for the purpose of their potential revision as final rules superseding the interim rules by December 15, 1984. The parts amended (and redesignated) by this rulemaking are Part 526 [free time and demurrage—new Part 525]; Part 533 [filing of tariffs by terminal operators—new Part 515]; Part 540 [security for the protection of the public on passenger vessels]; Part 550 [filing of tariffs by terminal barge operators in Pacific Slope States—new Part 520]; and Part 551 [truck detention at New York—new Part 530].

DATES: Interim Rules effective on June 18, 1984. Comments at any time but no later than June 4, 1984.

ADDRESS: Comments (Original and twenty (20) copies) to: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573.

FOR FURTHER INFORMATION CONTACT: Robert G. Drew, Director, Bureau of Tariffs, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C., (202) 523-5796.

SUPPLEMENTARY INFORMATION: The following summarizes the background for this rulemaking, sets forth the intended structure of the subchapter in which these rules will be included, and analyzes related proceedings and the interim rules themselves.

The Shipping Act of 1984; Interim Authority; Request for Comments

The Commission is issuing these interim rules to implement the Shipping Act of 1984, Pub. L. 98-237, 98 Stat. 67 (46 U.S.C. app. 1701-1720), which was signed on March 20, 1984 and becomes effective on June 18, 1984. In order that the Commission can properly implement this major legislation, Congress provided interim rulemaking authority under section 17(b) of that statute which is effective immediately. These rules are issued pursuant to that section in order that the Commission can perform its essential regulatory functions on and after June 18.

The interim authority provided under section 17(b) of the 1984 Act exempts the Commission from compliance with the notice and comment requirements of section 553 of Title 5, United States Code. In order to have its essential regulations in place by June 18, the Commission must utilize this authority bestowed by Congress.

At the same time, however, section 17(b) provides that all rules and regulations issued under the interim authority shall expire no later than 270 days after enactment, i.e., December 15, 1984, unless superseded by final rules which are not exempt from the requirements of 5 U.S.C. 553.

To provide for the basic notice and comment provisions of the Administrative Procedure Act, therefore, the Commission requests comments on these interim rules to assist it in developing final rules to supersede and, where necessary modify, these interim rules by December 15, 1984. Accordingly, the public is provided with thirty days within which to comment on the interim rules but, if anyone believes that there are serious problems created by these rules which should be addressed immediately, the Commission urges them to bring their concerns to the attention of the Commission, without prejudice to subsequently filing additional comments within the thirty day comment period.

Structure: Terminal Operations, Passenger Vessels and Freight Forwarders

The implementation of the Shipping Act of 1984 requires the Commission to develop new parts to the CFR. The Commission retains, however, regulatory functions under the revised Shipping Act, 1916, the Intercoastal Shipping Act, 1933 and other statutes, which also must be continued to be implemented by regulations. In order to synthesize all of its regulations into a more coherent and usable format and to correct style and typographical errors, the Commission is taking this opportunity to review all of its regulations and to restructure and improve them.

The entire intended reorganization has been set forth in the previous rulemaking for Subchapter A [Parts 500, 501, 502, 503, 504 (Old 547), and 505], as well as in the Commission's press release NR. 84-22. Briefly, however, it provides for all administrative matters to go into Subchapter A; all purely domestic regulations into Subchapter C; all purely foreign matters into Subchapter D; and the rules, here, into Subchapter B, "Regulations Affecting Ocean Freight Forwarders, Terminal Operations and Passenger Vessels".

An interim rule amending Part 510, "Licensing of Ocean Freight Forwarders", is being published separately.

This rulemaking provides full "coverage" of Subchapter B (except for other rulemakings that may be necessary from time to time) by providing the Commission with interim rules, in place by June 18, 1984, for the following new parts, listed in the intended structural organization for Subchapter B:

Part 510 Licensing of Ocean Freight Forwarders (separate rulemaking)
Part 515 Filing of Tariffs by Terminal Operators (Old part 533)
Part 520 Filing of Tariffs by Terminal Barge Operators in Pacific Slope States (Old part 550)
Part 525 Free Time and Demurrage Charges on Import Property applicable to all Common Carriers by Water (Old part 526)
Part 530 Truck Detention at the Port of New York (Old part 551)
Part 540 Security for the Protection of the Public

The rules in these listed parts attempt to put into place all the Commission's basic regulations for freight forwarders, passenger vessel operators and terminal operations, except for agreements which will be issued later under Subchapter C and/or D.

The Port Inquiry, Docket 83-38

Oral hearings in various port cities have recently been held in Docket No. 83-38, *Notice of Inquiry and Intent to Review Regulations of Ports and Marine Terminal Operators*, presided over by Commissioner Robert Setrakian.

The issues in that proceeding may eventually affect marine terminal operations, both tariffs and agreements, as well as other matters within the Commission's jurisdiction.

At this time, however, the Commission is issuing these interim rules to ensure that existing Commission surveillance over marine terminal-related practices continues to the extent necessary. Any changes resulting from the marine terminal inquiry will be the subject of later rulemaking(s).

Analysis of the Interim Rules

While the new organization has been set forth above, the order of the rule changes herein follows current numbering in the CFR (October 1, 1983, edition).

The major change intended to be effectuated by this rulemaking is to

provide the Commission with the necessary statutory authority to continue its regulation of terminal-related practices under the Shipping Act of 1984. This we have done in these rules by adding the pertinent provisions of that statute to the "Authority" sections of Parts 526, 533, 540, 550, and 551. This results in dual authority for these parts, i.e., the Shipping Act, 1916 (46 U.S.C. app. 801, *et seq.*) for the domestic aspect, and the Shipping Act of 1984 for the foreign aspect.

In providing for the new statute, penalty provisions and other technical language have also been conformed in §§ 533.1; 533.2; 533.4; 533.5; and 550.1(c).

Where applicable, new sections have been added to each part displaying the Office of Management and Budget's clearance numbers for information collection requirements. These are currently displayed in tabular form in § 503.91 of Title 46, Code of Federal Regulations, but the new separate sections should be convenient, especially after the parts are redesignated.

For terminal tariffs (Part 533), the Commission is continuing to require the filing of such tariffs but has excluded from this requirement the filing of tariffs on forest products, bulk cargo and recyclable metal scrap, waste paper and paper waste (Part 533, amendment #5), consistent with sections 8(a)(1) and 8(c) of the Shipping Act of 1984, and the Conference Report on this statute. See H.R. Rep. No. 98–600, 98th Cong., 2nd Sess.

Other amendments herein involve nomenclature changes resulting from reorganizations: Part 533—amendment # 2; Part 540—amendments #'s 2, 3, 4, 5, 6, 7 and 8.

In part 540, the forms in Appendixes A and B have been slightly revised to reflect organization changes and current language usage.

All other changes in this rulemaking involve minor corrections or redesignations resulting from the reorganization of Title 46, Chapter IV.

The Federal Maritime Commission has determined that this interim rule is not a "major rule" as defined in Executive Order 12291 dated February 17, 1981, because it will not result in:

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

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

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

The Federal Maritime Commission certifies that this interim rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small governmental jurisdictions.

List of Subjects

46 CFR Parts 526, 533, 550, 551

Barges, Cargo, Cargo vessels, Harbors, Imports, Maritime carriers, Motor carriers, Ports, Rates and fares, Trucks, Water carriers, Waterfront facilities, Water transportation.

46 CFR Part 540

Rates and fares, Passenger vessels, Surety bonds.

For the reasons set out in the preamble, Parts 526, 533, 540, 550 and 551 of Title 46 of the Code of Federal Regulations are amended as follows:

1. Revise the title of Subchapter B to read:

SUBCHAPTER B—REGULATIONS AFFECTING OCEAN FREIGHT FORWARDERS, TERMINAL OPERATIONS AND PASSENGER VESSELS

PART 526—FREE TIME AND DEMURRAGE CHARGES ON IMPORT PROPERTY APPLICABLE TO ALL COMMON CARRIERS BY WATER

1. In Part 526, the authority citation appearing after the table of contents is revised to read as follows and all other authority citations are removed.

Authority: 5 U.S.C. 553; secs. 17 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 816, 841a); secs. 10 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1709 and 1716).

§ 526.1 [Amended]

2. In § 526.1(c) remove "§§ 551.3(e)(2), 551.4(e), and 551.4(g) of Part 551" and insert "§§ 530.3(e)(2), 530.4(e), and 530.4(g) of this Chapter".

3. Part 526 of 46 CFR, Chapter IV, is redesignated as Part 525 and added to Subchapter B and all internal references are changed.

PART 533—FILING OF TARIFFS BY TERMINAL OPERATORS

1. In Part 533, revise the authority citation to read as follows:

Authority: 5 U.S.C. 553; secs. 17, 21, 43 of the Shipping Act, 1916 (46 U.S.C. app. 816, 820, 841a); secs. 10, 15, 17 of the Shipping Act of 1984 (46 U.S.C. app. 1709, 1714, 1716).

2. In Part 533, remove "Bureau of Domestic Regulation" everywhere it appears and insert "Bureau of Tariffs".

§ 533.1 [Amended]

3. Amend § 533.1, by removing "in the foreign commerce of the United States or in interstate commerce on the high seas or the Great Lakes." and inserting: "in the foreign or domestic offshore commerce of the United States."

4. Section 533.2 is revised to read:

§ 533.2 Purpose.

The purpose of this part is to enable the Commission to discharge its responsibilities under section 17 of the Shipping Act, 1916 and section 10 of the Shipping Act of 1984, by keeping informed of practices, rates and charges related thereto, instituted and to be instituted by terminals, and by keeping the public informed of such practices. Compliance is mandatory and failure to file the required tariffs may result in a penalty of not more than $5,000 for each day such violation continues. Additionally, if willful and knowing, the Shipping Act of 1984 provides a civil penalty of not more than $25,000 for each day a violation continues.

§ 533.3 [Amended]

5. In § 533.3, add at the beginning the following: "Except with regard to bulk cargo, forest products, recycled metal scrap, waste paper, and paper waste,"

§ 533.4 [Amended]

6. Amend § 533.4 by removing "agreements approved pursuant to section 15" and inserting: "agreements approved pursuant to section 15 of the Shipping Act, 1916 and/or effective under section 6 of the Shipping Act of 1984."

§ 533.5 [Amended]

7. Amend § 533.5 by removing "approved section 15 agreements" and inserting: "agreements approved under section 15 of the Shipping Act, 1916 and/or effective under section 6 of the Shipping Act of 1984."

8. Add § 533.91 to read as follows:

§ 533.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. The Commission intends that this section comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement:

Section	Current OMB control No.
533.3 through 533.5	3072-0002

9. Part 533 of 46 CFR, Chapter IV, is redesignated as Part 515 and added to Subchapter B.

10. Change all internal cross-references from old part 533 to new part 515. The cross-references are found in §§ 533.3, 533.4 and 533.91.

PART 540—SECURITY FOR THE PROTECTION OF THE PUBLIC

. In Part 540, the authority citation appearing after the table of contents is revised to read as follows and all other authority citations are removed.

Authority: 5 U.S.C. 552, 553; secs. 2 and 3, Pub. L. 89-777, 80 Stat. 1356-1358 (46 U.S.C. app. 817e, 817d); sec. 43 of the Shipping Act, 1916 (46 U.S.C. app. 841a); sec. 17 of the Shipping Act of 1984 (46 U.S.C. app. 1716).

2. In Part 540, Remove "Bureau of Investigation and Enforcement" everywhere it appears and insert "Bureau of Hearing Counsel".

§ 540.4 [Amended]

3. In § 540.4(a), in the last sentence, remove "and" and the period and add at the end:

Miami, Fla.; Los Angeles, Calif.; Hato Rey, P.R.; and Chicago, Ill.

§ 540.5 [Amended]

4. In § 540.5(a)(1), remove "1321 H Street, NW." and insert "1100 L Street, NW."

§ 540.9 [Amended]

5. Remove paragraph § 540.9(i).

§ 540.23 [Amended]

6. In § 540.23(a), in the last sentence, remove "and" and the period and add at the end:

Miami, Fla.; Los Angeles, Calif.; Hato Rey, P.R.; Chicago, Ill.

§ 540.24 [Amended]

7. In § 540.24(a)(1), remove "1321 H Street, NW." and insert "1100 L Street, NW."

§ 540.27 [Amended]

8. Remove paragraph § 540.27(i).

9. Add § 540.91 to read as follows:

§ 540.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511. The Commission intends that this section comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement:

Section	Current OMB control No.
540.4 (Form FMC-131)	3072-0012
540.5	3072-0011
540.6	3072-0011
540.8	3072-0011
540.9	3072-0011
540.23 (Form FMC-131)	3072-0012
540.24	3072-0011
540.26	3072-0011
540.27	3072-0011

10. Part 540, APPENDIX A, is revised to read:

Appendix A—Example of Settlement Agreement To Be Used Under 46 CFR 540.30-540.36

Settlement Agreement FMC File No. —

This Agreement is entered into between:

(1) the Federal Maritime Commission and,

(2) ——— hereinafter referred to as respondent.

Whereas, the Commission is considering the institution of an assessment proceeding against respondent for the recovery of civil penalties provided under the ——— Act ——, for —— alleged violation(s) of Section(s) ———.

Whereas, this course of action is the result of practices believed by the Commission to have been engaged in by respondent to wit;

———.

Whereas, the parties are desirous of expeditiously settling the matter according to the conditions and terms of this Agreement and wish to avoid the delays and expense which would accompany agency litigation concerning these penalty claims; and,

Whereas, Section ——— of the —— Act —— authorizes the Commission to collect and compromise civil penalties arising from the alleged violation(s) set forth and described above; and,

Whereas, the respondent has terminated the practices which are the basis of the alleged violation(s) set forth herein, and has instituted and indicated its willingness to maintain measures designed to eliminate, discourage and prevent these practices by respondent or its officers, employees and agents.

Now therefore, in consideration of the premises herein, and in compromise of all civil penalties arising from the violation(s) set forth and described herein that may have occurred between (date) and (date) , the undersigned respondent herewith tenders to the Federal Maritime Commission a bank cashier's check in the sum of $———, upon the following terms of settlement:

1. Upon acceptance of this agreement of settlement in writing by the Director of the Bureau of Hearing Counsel of the Federal Maritime Commission, this instrument shall forever bar the commencement or institution of any assessment proceeding or other claims for recovery of civil penalties from respondent arising from the alleged violations set forth and described herein, that have been disclosed by respondent to the Commission and that occurred between (date) and (date) .

2. The undersigned voluntarily signs this instrument and states that no promises or representations have been made to the respondent other than the agreements and consideration herein expressed.

3. It is expressly understood and agreed that this Agreement is not to be construed as an admission of guilt by undersigned respondent to the alleged violations set forth above.

4. Insofar as this agreement may be inconsistent with Commission procedures for compromise and settlement of violations, the parties hereby waive application of such procedures.

By ———

Title ———

Date ———

Approval and Acceptance

The above Terms and Conditions and Amount of Consideration are hereby Approved and Accepted:

By the Federal Maritime Commission:

(Hearing Counsel)

Director, Bureau of Hearing Counsel.

Date———

10. Part 540, Appendix B is revised to read:

Appendix B—Example of Promissory Note To Be Used Under 46 CFR 540.36

Promissory Note Containing Agreement for Judgment FMC File No. ——

For value received,——— promises to pay to the Federal Maritime Commission (the Commission) the principal sum of $———($——) to be paid at the offices of the Commission in Washington, D.C., by bank cashier's or certified check in the following installments:

$————————($——) within——
months of execution of the settlement agreement by the Director of the Bureau of Hearing Counsel:
$————————($——)within ——
months of execution of the agreement;
$————————($——)within ——
months of execution of the agreement;
[Further payments if necessary]

In addition to the principal amount payable hereunder, interest on the unpaid balance thereof shall be paid with each installment. Such interest shall accrue from the date of this execution of this Promissory Note by the Director of the Bureau of Hearing Counsel, and be computed at the rate of [——percent (——%) per annum.]

If any payment of principal or interest shall remain unpaid for a period of ten (10) days after becoming due and payable, the entire unpaid principal amount of this Promissory Note, together with interest thereon, shall become immediately due and payable at the option of the Commission without demand or notice, said demand and notice being hereby expressly waived.

If a default shall occur in the payment of principal or interest under this Promissory Note, (Respondent) does hereby authorize and empower any U.S. attorney, any of his assistants or any attorney of any court of record, Federal or State, to appear for him, and to enter and confess judgment against (Respondent) for the entire unpaid principal amount of this Promissory Note, together with interest in any court of record, Federal or State; to waive the issuance and service of process upon (Respondent) in any suit on this Promissory Note; to waive any venue requirement in such suit; to release all errors which may intervene in entering up such judgment or in issuing any execution thereon; and to consent to immediate execution on said judgment.

(Respondent) hereby ratifies and confirms all that said attorney may do by virtue thereof.

This Promissory Note may be prepaid in whole or in part by Respondent by bank cashier's or certified check at any time, provided that accrued interest on the principal amount prepaid shall be paid at the time of the prepayment.

By: _____
Title: _____
Date: _____

PART 550—FILING OF TARIFFS BY TERMINAL BARGE OPERATORS IN PACIFIC SLOPE STATES

1. In Part 550, the authority citation appearing after the table of contents is revised to read as follows and all other authority citations are removed:

Authority: 5 U.S.C. 553; secs. 18(a) and 43 of the Shipping Act, 1916 (46 U.S.C. app. 817(a) and 841(a)); sec. 2 of the Intercoastal Shipping Act, 1933 (46 U.S.C. app. 844); and secs. 8 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1707 and 1716).

§ 550.1 [Amended]

2. In § 550.1(c), remove the period and add at the end: "and/or the Shipping Act of 1984."

§ 550.2 [Amended]

3. In § 550.2(a), remove "General Order 13 (46 FR Part 536)" and insert "part 580 of this Chapter".

4. In § 550.2(b), remove "Tariff Circular 3 (46 CFR Part 531)" and insert "Part 550 of this Chapter".

5. In § 550.2(c), remove "§ 550.2(a)" and insert "520.2(a)".

§ 550.3 [Removed]

6. Remove § 550.3.

7. Part 550 of 46 CFR, Chapter IV, is redesignated as Part 520 and added to Subchapter B and all internal cross-references are changed.

PART 551—TRUCK DETENTION AT THE PORT OF NEW YORK

1. In Part 551, revise the authority citation to read as follows:

Authority: 5 U.S.C. 553; secs. 17 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 816 and 841a); secs. 10 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1709 and 1716).

§ 551.3 [Amended]

2. In § 551.3(e)(l), remove "General Order 8, § 526.1(c)" and insert "§ 525.1(c) of this Chapter".

§ 551.7 [Amended]

3. In § 551.7(e), remove "§ 551.4(1)" and insert "§ 551.4(i)".

4. Add § 551.91 to read as follows:

§ 551.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. The Commission intends that this section comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement:

Section	Current OMB control No.
551.1 through 551.3	3072-0010
551.8 (Form FMC-378)	3072-0010

5. Part 551 of 46 CFR, Chapter IV, is redesignated as Part 530 and added to Subchapter B.

6. Change all internal cross-references from old part 551 to new part 530. The cross-references are found in §§ 551.1(m), 551.2(b)(11), 551.2(c)(14); 551.2(g); 551.3(c)(2); 551.3(d)(1); 551.3(d)(2); 551.4(c); 551.4(d); 551.5(b); 551.6(a) [two references]; 551.7(b); 551.7(c); 551.7(d); 551.7(e) [two references]; 551.7(g); 551.8(e)(1) [three references] and 551.91.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84–11996 Filed 5–2–84; 8:45 am]
BILLING CODE 6730–01–M

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46 CFR Part 536

[Docket No. 84–21]

Publishing and Filing Tariffs by Common Carriers in the Foreign Commerce of the United States—Service Contracts and Time/Volume Contracts

AGENCY: Federal Maritime Commission.

ACTION: Interim rule and request for comments.

SUMMARY: This rule governs the form and use of service contracts, authorized by the Shipping Act of 1984, as well as the use of time/volume contracts. It is proposed that both types of contracts be accorded similar regulatory treatment and be integrated with existing regulations relating to time/volume rates. The existing time/volume rules would also be expanded to permit time/revenue contracts.

DATES: Interim Rule effective on June 18, 1984 except paragraph (f) of § 536.7 which is under OMB review. Comments on Interim Rule due on or before August 1, 1984.

ADDRESS: Comments (original and 20 copies) to: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION: This rule is intended to implement the provisions

of the Shipping Act of 1984 (the Act) relating to service contracts between shippers or shippers' associations and ocean common carriers or conferences. The relevant statutory provisions relating to service contracts appear at sections 3(21), 4(a) (7), and (8)(c) of the Act (46 U.S.C. app. 1702(21), 1703(a)(7), and 1707(c)). Section 3(21) defines a service contract as an agreement between a shipper and a carrier or conference wherein the shipper makes a commitment to provide a certain minimum quantity of cargo over a fixed time period and the carrier commits to a certain rate or rate schedule and a defined service level. Section 4(a)(7) brings conference agreements to regulate or prohibit service contracts within the scope of the Act. Section 8(c) provides that service contracts that are not otherwise exempted must be filed in confidence with the Commission and that their essential terms must be filed with the Commission and made available in tariff format to all similarly situated shippers. The exclusive remedy for a breach of a service contract is an action in an appropriate court, unless the parties agree otherwise.

In light of the similarity between service contracts authorized by the Act and time/volume rate contracts provided for in the Commission's existing regulations (46 CFR 536.7), the Commission believes that these two types of rate contracts should be accorded similar treatment. The Commission therefore proposes to carry forward most of its existing requirements relating to time/volume contracts and apply them to service contracts. It should be noted, however, that because of the statutory definition of "service contract," such contracts have been restricted to "ocean common carriers" while time/volume contracts are available to all "common carriers," including as a result, non-vessel operating common carriers.

In addition, it is proposed that volume incentive arrangements, such as the ones recently investigated by the Commission in Docket No. 83-31, be considered as a type of time/volume contract (wherein freight revenues rather than volume of cargo are used as the basis for a discount) and treated accordingly under the rule.[1]

This rule covers the use of time/volume contracts, although the Act expressly provides only for service contracts and addresses time/volume only in terms of rates.[2] Time/volume contracts are a traditional form of shipper-carrier cargo transportation arrangement presently authorized by the Commission's rules and actively engaged in by the ocean shipping industry.[3] They have not been expressly precluded by the Act. In fact, the definition of "loyalty contract" clearly recognizes the concept of a "contract based upon time-volume rates" (section 3(14)). Moreover, the legislative history of the Act indicates that Congress was aware that time/volume rates have historically been predicated upon underlying contract commitments.[4] We presume that Congress also recognized that these contracts are presently sanctioned by the Commission. Finally, time/volume contracts differ from service contracts in that the former do not contractually obligate the carrier/conference to any particular level of service or by their terms otherwise impose any other service commitment. The rule therefore provides for the filing of both time/volume and service contracts. In the event, however, that a carrier or conference chooses to offer a time/volume *rate* in its tariff, without basing that rate on an underlying contractual arrangement, the provisions of the rule would not apply. Offerings of time/volume rates not based upon contracts are governed by section 8(a) of the Act.

The Act requires that service contracts be filed in confidence with the Commission and that their essential terms be published in tariff format. It appears that there is no regulatory purpose to be served by treating time/volume contracts any differently. The rule therefore accords similar treatment to time/volume contracts, *i.e.* they must be filed with the Commission on a confidential basis with their essential terms made available to similarly situated shippers.

The Act does not specifically require that the essential terms of service contracts be set forth in tariffs filed with the agency, but rather states only that they be published in "tariff format." However, the legislative history of the Act does indicate that Congress contemplated that the essential terms of service contracts would be published in tariffs. The Senate Committee on Commerce, Science and Transportation, in commenting on a provision identical to section 8(c), noted:

> For public information, however, all "essential terms," as specifically enumerated, shall be published and filed in tariffs to ensure that such essential terms shall be available to all shippers similarly situated. This objective is consistent with the rationale for tariff publication and, accordingly, the essential terms must be stated with sufficient specificity to serve that purpose.

S. Rep. No. 3, 98th Cong., 1st Sess. 31 (1983). This is further supported by the statement of the House Merchant Marine and Fisheries Committee that: "It is hoped that the requirement that a service contract's essential terms be *filed publicly* so that those terms are available to all other shippers who may wish to use them, will preserve an important element of the common-carriage concept that the bill is based on." H.R. Rep. No. 53, at 17 and 34 (emphasis added). The Conference Report (H.R. Rep. No. 600, 98th Cong., 2nd Sess. (1984)) does not contradict the House and Senate Committees' stated intention that the essential terms of service contracts be publicly available in tariffs. It would appear, therefore, that a public filing appended to a tariff is not only consistent with the relevant legislative history but also may be the only practical method by which the Commission can ensure that the Congressional objective is met and that service contracts are in fact offered to all similarly situated shippers. The rule therefore requires that the essential terms of service and time/volume contracts be published in a special appendix to tariffs on file with the Commission.

The requirement that a service contract's "essential terms" be appended to a conference's tariff should not suggest the application of independent action required by section 5(b)(8) to such contracts. Conferences have specifically been provided the authority to regulate or prohibit the use of service contracts (section 4(a)(7). Moreover, the Conference Report makes it clear that independent action was not meant to apply to service contracts by stating:

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[1] The volume incentive arrangements under review in Docket No. 83-31 provided discounts or refunds to shippers if their freight revenues exceeded a stated minimum over a fixed time. Administrative Law Judge Joseph N. Ingolia (Presiding Officer) found that these volume incentive arrangements did not violate certain provisions of the Shipping Act, 1916. *Volume Incentive Program—Possible Violations of the Shipping Act, 1916,* ——— S.R.R. ——— (Initial Decision served January 19, 1984; administratively final February 29, 1984). In a related matter, the Presiding Officer concluded that although rulemaking may be advisable with respect to volume incentive programs, no rulemaking was necessary in that particular proceeding, especially in light of the enactment of the Shipping Act of 1984. *Volume Incentive Program—Possible Violations of the Shipping Act, 1916,* ——— S.R.R. ——— (Initial Decision served March 28, 1984).

[2] Section 8(b) of the Act states: Time-Volume Rates—Rates shown in tariffs filed under subsection (a) may vary with the volume of cargo offered over a specified period of time.

[3] *See Time/Volume Rate Contracts,* 21 S.R.R. 1020 (1982); 46 CFR 536.7.

[4] H.R. Rep. No. 53, Part 1, 98th Cong., 1st Sess. 34 (1983).

Section 8(a) does not require that service contracts be filed in a tariff. Consequently, section 5(b)(8) does not require conferences to permit their members a right of independent action on service contracts. The conferees agree that section 8(c) of the bill, which authorizes the use of service contracts, cannot be read as undermining the authority of a conference to limit or prohibit a conference member's exercise of a right of independent action on service contracts. However, conference agreements must permit independent action on time-volume rates in section 8(b), since time-volume rates must be filed under section 8(a).

H.R. Rep. No. 600, at 29.[5]

The rule may, in certain circumstances, result in the publication of contract terms beyond those delineated as "essential" in the statute. Essential terms numbered (d)(1) through (d)(7) are the basic essential terms listed in the Act. The additional terms (numbered (d)(8) and (d)(9)) are further elaborations on these essential terms. They are not, however, mandatory in all contracts, but rather may or may not apply depending on the agreement reached between the initial contracting parties. These additional terms are based upon experience gained in the administration of time/volume contracts, which contained similar provisions and, to the extent they are part of the contract, they should be made available to all other similarly situated shippers.

In should also be noted that, rather than require a statement of the "linehaul rate," the rule requires a statement of "the contract rate, rates or rate schedule, including whether any ancillary charges shall apply." This is consistent with Congress' intent that the essential terms include "all compensation to be paid." S. Rep. No. 3, at 31, 32.

It is proposed that time/volume and service contract terms be located in a special appendix to a tariff, so that the essential terms of the time/volume and service contracts will be readily available and identifiable to all shippers. The rule will also require that tariffs specify in the "Index of Commodities" the existence of any time/volume or service contract applicable to any commodity listed. In addition, the rule will require that contracts (both time/volume and service) be assigned a number and bear a cross-reference to the applicable tariffs to which the "essential terms" are attached so that a comparison can be made between the terms in the confidential contracts and those published in the appendix.

In the past the Commission has rejected amendments to time/volume contracts in instances where the amendment would have resulted in a retroactive adjustment in the original contract terms. The rule continues this policy. Once a time/volume or service contract is effective, any modification of its terms is treated as a new contract subject to the filing and publication requirements of this regulation, and is limited to prospective application. Carriers and conferences should draft their contract terms acccordingly. Failure to adhere to the terms of a service or time/volume contract could violate some of the prohibited acts set forth in section 10 of the Act (46 U.S.C. app. 1709).

The record keeping requirement contained in paragraph (f) of the rule contemplates a retention of shipping documents, such as bills of lading and disability notices, and the designation of a resident agent as a repository. The designation of an agent and the retention of records are designed to allow ready access to carrier records to ensure that contract rate deficiencies can be promptly addressed. These requirements have proven to be a minimal burden under the existing time/volume contract regulation. We believe that they are necessary to enable the Commission to adequately carry out its policing and surveillance functions under the new Act, particularly as it relates to ensuring that the essence of shipper-carrier contracts are made available to all shippers similarly situated. In addition, the records retained under this section should assist the Commission to carry out its obligations under section 18 of the Act (46 U.S.C. app. 1717).

The Commission has had no prior experience dealing with service contracts, since such arrangements have only recently been legitimized by the new Act. This rule is, therefore, based in large part on the Commission's experience with time/volume contracts, a shipper/carrier arrangement with which the Commission is more familiar. This approach is intended to reflect the Congressional concern that the use of service contracts "* * * not be employed so as to discriminate against all who rely upon the common carrier tradition of the liner system," and the expectation that "* * * the FMC * * * be cognizant of the effects of common carriage that abuse of service contracting may occasion." H. R. Rep. No. 53, at 17. The Commission recognizes that some adjustments in the rule may have to be made and, accordingly seeks guidance from all interested persons.

This rule is being published as an interim rule with opportuntiy for comment. It will serve as an interim rule until such time as a final rule is adopted.[6] This interim rule will take effect on June 18 1984, the effecitve date of the Shipping Act of 1984, unless otherwise modified. All interested persons have been provided 90 days to comment on the proposed rule. This interim rule and all comments filed within the 90-day period will be used as the basis for a final rule pursuant to the requirements of the Administrative Procedure Act (5 U.S.C. 553). If individuals believe that there are serious problems created by this interim rule which should be addressed immediately, they should submit these concerns in writing to the Commission without prejudice to subsequently filing additional comments within the 90-day comment period.

This interim rule is being added to current part 536, the rest of which will be the subject of a separate rulemaking, which will result in the redesignation of Part 536 as Part 580 in Subchapter D, "Regulations Affecting Maritime Carriers and Related Activities in Foreign Commerce." When all the separate rulemakings affecting current Part 536 are finalized, it may be necessary to reorganize that Part so that the definitions appearing in paragraph (a) of the attached section 536.7 are worked into the definitions' section of current Part 536, *i.e.*, section 536.2 and are renumbered appropriately.

The Commission finds that this amendment to its rules is exempt from the requirements of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). Section 601(2) of the Act excepts from its coverage any "rule of particular applicability relating to rates * * * or practices relating to such rates * * *." As the instant rule relates to particular applications of rates and rate practices, the Regulatory Flexibility Act requirements are inapplicable.

The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the information collection aspects of this rule should be submitted

[5] This rule does not address the issue of how the Act's mandatory independent action requirement affects time/volume rates and time/volume contracts. These matters will be considered in the Commission's rulemaking governing agreements subject to the Act, which will be published soon after this rule.

[6] The Commission was given the authority to prescribe interim rules, without adhering to notices and comment requirements, by section 17(b) of the Shipping Act of 1984.

to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Federal Maritime Commission. The Federal Maritime Commission will publish a document in the **Federal Register** confirming the effective date of paragraph (f) of § 536.7.

List of Subjects in 46 CFR Part 536

Maritime carriers, Rates.

PART 536—[AMENDED]

Therefore, pursuant to 5 U.S.C. 553 and Sections 8 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1707 and 1716), the Federal Maritime Commission amends Title 46, CFR Part 536, as follows:

§ 536.2 [Amended]

1. Remove paragraph (p) of § 536.2;
2. Revise § 536.7 to read as follows:

§ 536.7 Service contracts and time/volume contracts.

(a) *Definitions.* The following definitions shall apply for purposes of this section:

(1) "Contract party" means a party signing a contract as shipper or carrier and any parent, subsidiary, or other related company or entity including the membership of any shippers' association, conference, or agreement who may engage in the shipment of commodities in the trade covered by the contract.

(2) "Geographic area" means the general location from which or to which contract cargo will move in intermodal service, the scope of which will vary depending on the size of a particular country.

(3) "Port range" means those ports in the countries of loading or unloading of the contract cargo that are regularly served by the contracting carrier or conference, as specified in the tariff applicable to the service in which the contract is to be employed, even if the contract itself contemplates use of but a single port within that range.

(4) "Service contract" means a contract between a shipper or shippers' association and an ocean common carrier or conference in which the shipper makes a commitment to provide a certain minimum quantity of cargo over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule as well as a defined service level—such as, assured space, transit time, port rotation, or similar service features; the contract may also specify provisions in the event of nonperformance on the part of either party.

(5) "Shipper" means an owner or person for whose account the ocean transportation of cargo is provided or the person to whom delivery is to be made.

(6) "Time/volume rate" means a freight rate which varies with the volume of cargo offered or freight revenues received over a specified period of time.

(7) "Time/volume contract" means a contract between a shipper or shippers' association and a common carrier or conference in which the shipper makes a commitment to provide a certain minimum quantity of cargo or freight revenues, over a fixed time period, and the common carrier or conference commits to a certain rate or rate schedule.

(b) *Filing Requirements.* Except for contracts relating to bulk cargo, forest products, recycled metal scrap, waste paper, or paper waste, every ocean common carrier or conference which enters into a service contract or every common carrier or conference which enters into a time/volume contract with a shipper or shippers association shall file with the Director, Bureau of Tariffs a true and complete copy of each contract prior to its effective date. Such contract shall clearly state:

(1) The contract parties;

(2) The essential terms;

(3) A contract number bearing the prefix "SC" for service contract or "TV" for time/volume contract; and

(4) The applicable tariff identified by its Commission tariff number, to which the essential terms have been appended.

(c) *Confidentiality.* All service contracts and time/volume contracts filed with the Commission will, to the full extent permitted by law, be held in confidence.

(d) *Publication of Essential Terms.* The essential terms of all service and time/volume contracts required to be filed with the Commission shall be made available to all shippers or shippers' associations under the same terms and conditions for a period of at least thirty (30) days from filing. The essential terms for service and time/volume contracts shall be located in a separate appendix to tariffs on file with the Commission and shall bear a reference to their respective contract numbers. Every commodity listed in the "Index of Commodities" section of each tariff to which a time/volume or service contract applies shall be annotated to indicate the existence of such contract. The essential terms shall include, where applicable, the following:

(1) The origin and destination port ranges in the case of port-to-port movements, and the origin and destination geographic areas in the case of through intermodal movements;

(2) The commodity or commodities involved;

(3) The minimum quantity of cargo or freight revenue necessary to obtain the rate or rate schedule;

(4) The contract rate, rates or rate schedule, including whether any ancillary charges shall apply;

(5) The effective time period of the contract;

(6) Carrier or conference service commitments;

(7) Liquidated damages for nonperformance, if any; or where the volume requirement will not be met during the contract period in situations other than those described in paragraph (d)(9) of this section, the rate, charge, or rate basis which will be applied;

(8) An identification of the shipment records which will be maintained to support the contract; and

(9) A clear description of any circumstance which will permit:

(i) A reduction in the quantity of cargo or amount of revenues required under the contract,

(ii) An extension of the contract period without any change in the contract rate or rate schedule,

(iii) A discontinuance of the contract, or

(iv) Other deviations from the terms of the contract.

(e) *Contract Modifications.* Amendments to contracts on file with the Commission shall be treated as new contracts subject to the filing and publication requirements of this section. No new contract or contract modification may retroactively modify the terms or effects of a previously filed contract.

(f) *Resident Agent.* Every common carrier and conference shall designate a resident representative in the United States who shall maintain contract shipment records for a period of five years from the completion of each contract.

(g) *Rejection of Essential Terms.* Within 15 days of filing, the Commission may reject the statement of essential terms for any service or time/volume contract for failure to conform to the requirements of this section.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-11994 Filed 5-2-84; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 40453-4053]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

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

ACTION: Emergency rule.

SUMMARY: The Secretary of Commerce issues emergency regulations for the commercial and recreational ocean salmon fisheries off Washington, Oregon, and California for 1984. Although specific regulations vary by fishery and area, together they establish fishing seasons, legal gear, quotas, inseason management procedures, recreational daily catch limits, and minimum sizes for salmon taken in the fishery conservation zone off Washington, Oregon, and California. The regulations are intended to prevent overfishing and to apportion the harvest equitably between the commercial and recreational fisheries. Further, the regulations are calculated to allow salmon to escape the ocean fisheries to provide for treaty Indian and other inside fisheries and for spawning.

EFFECTIVE DATES: This emergency rule is effective from 12:01 a.m. Pacific Daylight Time (PDT) on May 1, 1984, to midnight PDT, July 29, 1984. Subparts A and B of Part 661 are suspended and new Subparts C and D are added to be effective in their place during this period.

ADDRESSES: You may submit comments on this emergency rule to the Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way N.E., BIN C15700, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Thomas E. Kruse (Acting Director, Northwest Region, NMFS), 206-526-6150; or E. Charles Fullerton (Director, Southwest Region, NMFS), 213-548-2575.

SUPPLEMENTARY INFORMATION:

Background

Under the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Fishery Management Plan for the Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California (FMP) was prepared by the Pacific Fishery Management Council (Council) and approved by the Secretary of Commerce (Secretary) on March 2, 1978. Regulations to implement the FMP were first published on April 14, 1978 (43 FR 15629), as emergency regulations. Regulations to implement the Council's 1983 amendment to the FMP were issued on October 4, 1983 (48 FR 45263). The 1983 rules at Subparts A and B of 50 CFR Part 661 are superseded by these emergency rules at Subparts C and D or Part 661 during the period the emergency rules are in effect. When the emergency rule expires, Subparts A and B will again be effective.

Since 1978, the Council has amended the 1978 salmon plan annually to establish regulations in accordance with salmon abundance estimates and social and economic factors of the fisheries. The Council's long-term goal for the planning process is to develop and implement a comprehensive plan for salmon management which will cover all important salmon stocks. As a first step, the Council developed a framework amendment to provide the mechanism to make necessary management adjustments without going through the cumbersome and time-consuming process of amending the plan annually. The framework mechanism is expected to be in place early in 1985.

For 1984, the Council and NMFS have agreed to follow the procedure and schedule for preseason modification of regulations outlined in the draft framework amendment, and to implement 1984 regulations by emergency action without amending the FMP.

These regulations are necessary immediately to address an emergency in the ocean salmon fishery. Section 305(e) of the Magnuson Act authorizes the Secretary to promulgate emergency regulations with or without an approved FMP or amendment when a Council finds that an emergency exists involving a fishery under its jurisdiction. The Council requested by majority vote, and the Secretary has agreed, that emergency regulations should be promulgated immediately to protect some depressed salmon stocks from overfishing and to meet Federal obligations for treaty Indian fishing allocations and spawning escapement.

This emergency rulemaking remains in effect for 90 days and may be extended for a second 90-day period.

Status of the Salmon Resource in 1984

Most major stocks of chinook and coho salmon contributing to the ocean salmon fisheries off the coasts of Washington, Oregon, and California in 1984 continue to be depressed and some are predicted to be at an all-time low. The warm ocean water condition called "El Niño" appears to have seriously affected the survival of salmon stocks expected to return to rivers and streams in 1984.

The Council's Salmon Plan Development Team (Team) presented the status of stocks in detail in its "Review of the 1983 Ocean Salmon Fisheries and Status of Stocks and Management Goals for the 1984 Salmon Season off the Coasts of California, Oregon, and Washington" (Pacific Fishery Management Council, March 1984). The report includes pertinent data from the previous season and preseason predictions of run sizes.

Preseason abundance forecasts employed by the Council in previous years were based on observations made and data gathered under normal environmental conditions. Applying these same predictors in 1984, with no adjustments to compensate for the probable effects of El Niño on different stocks of salmon, would overestimate adult populations and result in serious overfishing. Therefore, adjustments to the 1984 forecasts of stock size were necessary to compensate for El Niño effects.

The Council's adjustment factor for El Niño was established by estimating the increased natural mortality for each month the stocks were exposed to increased water temperatures and poor upwelling by comparing observations after the 1983 season with the preseason expectations of abundance. The number of months that various stocks due to return in 1984 were subjected to El Niño was determined, and the increased mortality was assumed for those months, resulting in an adjustment factor for the abundance of each stock.

Council Proposals for 1984

The Team's report recommended management measures for most fisheries in the upcoming season, based upon the procedures and management principles established in the framework plan amendment. Alternative management measures were also considered by the Council during its March 14-15, 1984, meeting. The options ranged from more restrictive than the 1983 management regime to measures similar to the 1983 regulations. The options were summarized and widely distributed, along with copies of the Team's analyses of impacts of each option. Six public hearings were held in Washington, Oregon, California, and Idaho on March 27-29. Written comments were invited between the March 14-15 and the April 11-12 meetings of the Council. Further public comments were heard by the Council in

San Francisco on April 11–12, prior to adoption of the management measures.

1984 Management Measures

After considering the comments received during the public comment period, the recommendations of the Washington, Oregon, California, and Idaho state fishery agencies, and the Team's analyses of the impacts of the options, the Council adopted the 1984 management measures described below. These management measures are intended to distribute equitably the regulatory burden among ocean fisheries, minimize shifts in fishing effort along the coast, provide for treaty Indian and other inside fisheries, and provide for spawning escapement. In view of the depressed condition of most of the salmon stocks in 1984, the management measures recommended by the Council, adopted by the Secretary, and implemented here as emergency regulations balance the short-term economic and social needs of the fishermen and coastal communities and the short-term and long-term needs of the salmon. The measures adopted are consistent with applicable law.

The 1984 management regime establishes discrete ocean management areas and management measures for each of those areas. These regulations are designed to minimize impacts on the weakest stocks and, at the same time provide adequate opportunities to harvest any surplus that exist in the most abundant stocks.

From the U.S.-Canada border to Cape Falcon, chinook salmon stocks primarily originate in the Columbia River and are in need of additional protection. Accordingly, the troll harvest quota is reduced from 95,000 chinook in 1983 to 16,700 chinook in 1984. Trollers will be allowed to harvest a total of 24,800 coho salmon in two subareas, one from Cape Falcon to the Columbia River mouth, and the other from the Canadian border southward about 30 miles to Cape Alava. Fishing in these two subareas will allow the harvest of coho returning primarily to Columbia River hatcheries on the south and Puget Sound on the north.

Recreational catches between the U.S.-Canada border and Cape Falcon are equally restrictive, with quotas of 10,300 chinook salmon and 50,200 coho salmon. The recreational fishery also is separated into subareas with a long midseason closure so that the harvest will be directed toward more abundant stocks while protecting more depressed stocks.

From Cape Falcon to Cape Blanco, while chinook salmon stocks continue to be in fair condition, coho salmon stock abundance, as measured by the Oregon Production Index (OPI), is the lowest on record. Accordingly, the commercial troll season for chinook salmon is two months shorter than the 1983 season, and commercial fishermen are prohibited from retaining coho salmon all season.

The recreational season from Cape Falcon to the Oregon-California border will not open until July 9, three weeks later than last year. There is a quota of 106,000 coho salmon for the entire recreational fishery from Cape Falcon to the U.S.-Mexico border—about half of the 1983 quota. Although coho caught off California count toward the quota south of Cape Falcon, the fishery off California will not close when the quota is reached.

From Cape Blanco to Point Delgada, commerical landings of chinook in 1983 were only 32 percent of the 1982 harvest, and the abundance of salmon is expected to be even lower this year. Accordingly, the length of the 1984 season in this area is reduced by about one-third. This was done by setting a five-week closure in midseason (compared with two weeks last year) and closing the season a week earlier. Further, the October fishery for all salmon except coho off Oregon is eliminated. The taking of coho salmon is prohibited all season to protect the drastically reduced coho stocks from the north.

The recreational season also has been reduced in northern California by a two-week closure in June and in Oregon south of Cape Blanco by a three-week delay in the opening and a reduced coho salmon quota.

A boundary line was established at Point Arena in 1982 to separate major harvest areas of Sacramento River chinook from Klamath River chinook stocks. On the basis of later data, the line was moved north to Cape Vizcaino in 1983. This year, on the basis of coded-wire tag recoveries made last season, the troll boundary is moved again northward to Point Delgada. Troll regulations south of the boundary are less restrictive than those to the north because Sacramento River chinook stocks are generally in beter condition than are Klamath River stocks which predominantly occur in the ocean north of the boundary.

South of Point Delgada, the commerical catch of chinook salmon in 1983 was only about 40 percent of the catch in 1982. However, production this year is expected to be only moderately below average. Therefore, because of the desperate economic conditions being experienced by the ocean salmon industry and the coastal communities that depend on it, the troll season is two weeks longer than last year. Further, many of the trollers who normally fish off the north California coast are expected to spend most of the season fishing in this area because of the closure of the northern area. The lengthened season and expected shift in effort from the north may cause the spawning escapement goal in the Sacramento River not to be achieved this year. The Council is willing to take this risk in 1984 to alleviate the severe economic situation facing salmon trollers.

The recreational fishing regulations south of Point Delgada remain the same as during the past several years.

Possible Inseason Adjustments in 1984

Inseason adjustments to management measures in 1984, in addition to automatic closures when quotas are met, will be limited to the following:

(1) A reduction in the recreational daily catch limit from two fish to one fish if it appears that such action can feasibly be used to extend the recreational season;

(2) A reduction in the Federal quotas and/or seasons in the FCZ if salmon catches occur in the territorial sea which were not accounted for when quotas or seasons were established and which may cause a Federal quota and/or allowable harvest to be exceeded; and

(3) A redistribution of quotas between the commercial and recreational fisheries, or between areas in the same fishery, if it appears that such action will increase the likelihood that the total quota or allowable harvest will be achieved. Total coho and chinook quotas are fixed and not subject to inseason adjustments.

Determinations necessary for inseason adjustments will be made by the Director, Northwest Region, NMFS, in consultation with the Chairman of the Council, the State fishery management agencies and the Director, Southwest Region, NMFS. Adjustments will be made by the Secretary.

Treaty Indian Ocean Fisheries

Adopted regulations for the Makah, Quileute, Quinault, and Hoh treaty tribal ocean troll fisheries provide for an upper harvest limit of 8,300 chinook and a range of 21,200 to 38,500 coho. All harvest by treaty troll fisheries in Washington Department of Fisheries statistical area 4B and from 0 to 200 miles off the Washington coast are to be counted toward attainment of harvest limits. Only barbless hooks may be used. Size limits are identical to those specified in 1983 regulations.

The States of Washington and Oregon, the U.S. Department of Commerce, and the participating treaty tribes have agreed to meet and negotiate measures to minimize impacts on Bonneville Pool hatchery chinook and Grays Harbor wild coho within the maximum harvest limit constraints adopted by the Council. Adjustments to harvest limits may result from agreements reached by the participating parties and will be announced by notice published in the **Federal Register**. The actual harvest of Grays Harbor wild coho by treaty troll fisheries is to be limited to 490 fish.

May 1 and an all-salmon season beginning on July 1. Taking and retention of chinook or coho salmon is prohibited after attainment of their respective quotas.

Except as noted in § 661.43(e), all other commercial salmon fishing regulations apply to persons exercising the Makah, Quileute, Quinault, and Hoh treaty right to fish in the ocean.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law. He has determined that continuing the regulations now in force would jeopardize the resource, and, therefore, that it is necessary to promulgate these emergency regulations immediately.

The Assistant Administrator finds that the reasons justifying promulgation of these rules on an emergency basis also make it impracticable to provide notice and opportunity for comment upon, or to delay for 30 days the effective date of these emergency regulations, under the provisions of section 553 (b) and (d) of the Administrative Procedure Act.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Washington, Oregon, and California. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that Order. This rule is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the regular procedures of that Order.

An environmental assessment (EA) for this action has been prepared and the Assistant Administrator has concluded that the action will reduce the available harvest in 1984 to preserve the long-term viability of the resource. No significant impact on the human environment will result. A copy of the EA is available from the Regional Director at the address above.

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

This emergency rule is exempt from the regular procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

List of Subjects in 50 CFR Part 661

Fish, Fisheries, Fishing, Indians.

Dated: April 27, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 661 is amended to read as follows:

1. The authority citation for Part 661 is as follows:

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

2. In Part 661, Subparts A and B, including Table of Contents, are suspended from 12:01 a.m., PDT, May 1, 1984, to 12:00 midnight, PDT, July 29, 1984; and new Subparts C and D, including Table of Contents, are added effective 12:01 a.m., PDT, May 1, 1984, to 12:00 midnight, PDT, July 29, 1984, to read as follows:

PART 661—OCEAN SALMON FISHERIES OFF THE COASTS OF WASHINGTON, OREGON, AND CALIFORNIA

Subpart C—General Measures

Sec.

Subpart D—Management Measures

Subpart C—General Measures

§ 661.31 Purpose.

The purpose of this part is to provide for the management of the salmon fisheries off the coasts of Washington, Oregon, and California in the fishery conservation zone (the FCZ, also known as the 3-to-200 mile zone) over which the United States exercises exclusive fishery management authority (i.e., the Pacific Fishery Management Council's Salmon Fishery Management Area) under the Magnuson Fishery Conservation and Management Act.

§ 661.32 Relation to other laws.

(a) This part does not apply to fishing for pink and sockeye salmon conducted under the Convention for the Protection, Preservation, and Extension of the Sockeye Salmon Fishery of the Fraser River System, as amended by the Pink Salmon Protocol, in U.S. Convention Waters between 48° N. latitude and the provisional international boundary between the United States and Canada.

(b) This part recognizes that any state law which pertains to vessels registered under the laws of that state while in the fishery management area, and which is consistent with this part or any applicable Fishery Management Plan for the Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon and California (Fishery Management Plan), including any state landing law, will continue to have force and effect with respect to fishing activities addressed herein.

(c) Any person fishing subject to this part shall be bound by the international boundaries of the management subareas described in § 661.33, notwithstanding any dispute or negotiation between the United States and any neighboring country regarding their respective jurisdictions, until such time as new boundaries are published by the United States.

(d) Any person fishing subject to this part who also engages in fishing for groundfish should consult Federal regulations at 50 CFR Part 663 for applicable requirements of that part, including the requirement that vessels greater than 25 feet in length have vessel identification in accordance with § 663.6 of that part.

§ 661.33 Definitions.

Authorized officer means:

(a) Any commissioned, warrant, or petty officer of the Coast Guard;

(b) Any special agent of the National Marine Fisheries Service or other officer authorized by the Secretary;

(c) Any officer designated by the head of any Federal or state agency which has entered into an agreement with the Secretary and the Secretary of Transportation to enforce the provisions of the Magnuson Act; and

(d) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Barbless hook means a hook with a single point, with no secondary point or barb curving or projecting in any other direction.

Commercial fishing means fishing with troll fishing gear as defined in this section, or fishing for the purpose of sale or barter of the catch.

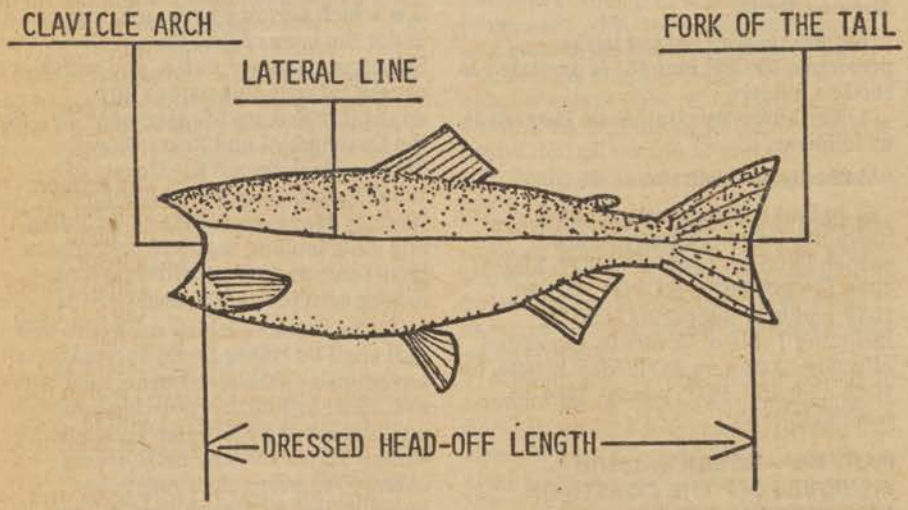
Conservation Zone (CZ) means one of two conservation zones as follows:

(a) *Conservation zone 1:* The ocean area surrounding the Columbia River mouth bounded by a line extending for 6 nautical miles due west from North Head along 46°18'00" N. latitude to 124°13'18" W. longitude, then southerly along a line of 167° True to 46°11'06" N. latitude and 124°11'00" W. longitude (lightship buoy), then due east to shore along 46°11'06" N. latitude.

(b) *Conservation zone 2:* The ocean area surrounding the Klamath River mouth bounded on the north by 41°38'48" N. latitude (approximately 6 nautical miles north of the Klamath River mouth), on the west by 124°23'00" W. longitude (approximately 12 miles from shore), and on the south by 41°26'48" N. latitude (approximately 6 nautical miles south of the Klamath River mouth).

Council means the Pacific Fishery Management Council.

Dressed, head-off length of salmon means the shortest distance between the midpoint of the clavicle arch (see illustration) and the fork of the tail, measured along the lateral line while the fish is lying on its side, without resort to any force or mutilation of the fish other than removal of the head, gills, and entrails.



Dressed, head-off salmon means salmon that have been beheaded, gilled, and gutted without further separation of vertebrae, and are either being prepared for on-board freezing, or are frozen and will remain frozen until landed.

Fishery management area means the fishery conservation zone (FCZ) off the coasts of Washington, Oregon, and California between 3 and 200 miles offshore, and bounded on the north by the Provisional International Boundary between the U.S. and Canada, and bounded on the south by the International Boundary between the U.S. and Mexico. The inner boundary of the FCZ is a line coterminous with the seaward boundaries of the States of Washington, Oregon, and California (the "3-mile limit"). The outer boundary of the FCZ is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured, or is a provisional or permanent international boundary between the United States and Canada or Mexico.

(a) The northeastern, northern, and northwestern boundaries of the fishery management area are as follows:

(1) Northwestern boundary—that part of a line connecting the light on Tatoosh Island, Washington, with the light on Bonilla Point on Vancouver Island, British Columbia, southerly of the International Boundary between the U.S. and Canada (at 48°29'37" N. latitude, 124°43'33" W. longitude), and northerly of the point where that line intersects with the boundary of the U.S. territorial sea.

(2) Northern and northwestern boundary is a line* connecting the following coordinates:

48°29'37.19" N. lat., 124°43'33.19" W. long.;
48°30'11" N. lat., 124°47'13" W. long.;
48°30'22" N. lat., 124°50'21" W. long.;
48°30'14" N. lat., 124°52'52" W. long.;
48°29'57" N. lat., 124°59'14" W. long.;
48°29'44" N. lat., 125°00'06" W. long.;
48°28'09" N. lat., 125°05'47" W. long.;
48°27'10" N. lat., 125°08'25" W. long.;
48°26'47" N. lat., 125°09'12" W. long.;
48°20'16" N. lat., 125°22'48" W. long.;
48°18'22" N. lat., 125°29'58" W. long.;
48°11'05" N. lat., 125°53'48" W. long.;
47°49'15" N. lat., 126°40'57" W. long.;
47°36'47" N. lat., 127°11'58" W. long.;
47°22'00" N. lat., 127°41'23" W. long.;
46°42'05" N. lat., 128°51'56" W. long.;
46°31'47" N. lat., 129°07'39" W. long.

(3) The southern boundary of the fishery management area is the U.S./Mexico International Boundary, which is a line connecting the following coordinates:

32°35'22" N. lat., 117°27'49" W. long.;
32°37'37" N. lat., 117°49'31" W. long.;
31°07'58" N. lat., 118°36'18" W. long.;
30°32'31" N. lat., 121°51'58' W. long.

(b) Geographical landmarks referenced in this part are located at the following latitudes:

Cape Alava—48°10'00" N. lat.
Queets River—47°31'42" N. lat.
Cape Shoalwater—46°44'06" N. lat.
Klipsan beach—46°28'12" N. lat.
North Head—46°18'00" N. lat.
Columbia River—46°14'24" N. lat.
South Jetty—46°14'06" N. lat.
Columbia River Lightship Buoy—46°11'06" N. lat.
Cape Falcon—45°46'00" N. lat.
Cape Blanco—42°50'20" N. lat.
OR/CA Border—42°00'00" N. lat.
Klamath River—41°32'48" N. lat.
Point Delgada—40°01'24" N. lat.
Cape Vizcaino—39°43'30" N. lat.
Point Arena—39°00'00" N. lat.

Fishing means—

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

*The line joining these coordinates is the provisional international boundary of the U.S. FCZ as shown on NOAA/NOS Charts #18480 and #18002.

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish: or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraph (a) through (c) of this definition.

Fishing vessel means any boat, ship, or other craft which is used for, equipped to be used for, or of a type that is normally used for fishing.

Freezer trolling vessel means a fishing vessel, equipped with troll fishing gear, which has a present capability for (a) on-board freezing of the catch, *and* (b) storage of the fish in a frozen condition until they are landed.

Land or landing means to begin offloading fish, to arrive in port with the intention of offloading fish, or to cause fish to be offloaded.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

Recreational fishing means fishing with recreational fishing gear as defined in this section and not for the purpose of sale or barter.

Recreational fishing gear means conventional angling tackle consisting of a rod, reel, line, and barbless hook(s) with bait or lure attached.

Regional Director means the Director, Northwest Region, National Marine Fisheries Service (7600 Sand Point Way, N.E., BIN C15700, Seattle, WA 98115) or his designee. For fisheries occurring primarily or exclusively in the fishery management area seaward of California. *Regional Director* means the Director, Northwest Region, National Marine Fisheries Service, acting in consultation with the Southwest Regional Director (300 South Ferry Street, Terminal Island, CA 90731).

Salmon means any anadromous species of the family Salmonidae and genus *Oncorhynchus*, commonly known as Pacific salmon, including but not limited to:

Chinook (king) salmon—*Oncorhynchus tshawytscha*
Coho (silver) salmon—*Oncorhynchus kisutch*
Pink (humpback) salmon—*Oncorhynchus gorbuscha*
Chum (dog) salmon—*Oncorhynchus keta*
Sockeye (red) slamon—*Oncorhynchus nerka*

Secretary means the Secretary of Commerce, or a designee.

Special fishery zone means the ocean area south of the Columbia River mouth bounded by a line extending from the tip of the South Jetty (46°14'06" N. latitude and 124°04'00" W. longitude), then southwesterly along a line of 239° True to the lightship buoy (46°11'06" N. latitude and 124°11'00" W. longitude), then due west along 46°11'06" N. latitude to 124°13'24" W. longitude (approximately 10 nautical miles offshore), then south along a line of 180° True (approximately 10 nautical miles offshore from the baseline from which the territorial sea is measured), and then due east to Cape Falcon along 45°46'00" N. latitude.

Total length of salmon means the shortest distance between the tip of the snout or jaw (whichever extends furthest while the mouth is closed) and the tip of the longest lobe of the tail, without resort to any force or mutilation of the salmon other than fanning or swinging the tail.

Treaty Indian fishing means fishing for salmon in the fishery management area by a person authorized by the Makah Tribe to exercise fishing rights under the Treaty with the Makah, or by the Quileute, Hoh, or Quinault Tribes to exercise fishing rights under the Treaty of Olympia.

Troll fishing gear means fishing gear that consists of one or more lines that drag barbless hooks with bait or lures behind a moving fishing vessel, *and* which lines are affixed to the vessel and are not disengaged from the vessel at any time during the fishing operation.

§ 661.34 [Reserved]

§ 661.35 Reporting requirements.

This part recognizes that catch and effort data necessary for implementation of any applicable Fishery Management Plan is collected by the States of Washington, Oregon, and California under existing State data-collection provisions. No additional catch reports will be required of fishermen or processors as long as the data collection and reporting systems operated by State agencies continue to provide the Secretary with statistical information adequate for management.

§ 661.36 [Reserved]

§ 661.37 General restrictions.

(a) The fishery management area is closed to salmon fishing except as opened by this part or superseding regulations. All open fishing periods begin at 0001 hours and end at 2400 hours local time on the dates specified. Except as otherwise provided by or pursuant to this part, the following restrictions apply to all salmon fishing in the fishery management area.

(b) It is unlawful for any person to—

(1) Take and retain, or land salmon caught with a net in the fishery management area, except that a hand-held net may be used to bring hooked salmon on board a vessel.

(2) Fish for, or take and retain, any species of salmon:

(i) During closed seasons or in closed areas;

(ii) Once any bag or retention limit is attained;

(iii) By means of gear or methods other than recreational fishing gear or troll fishing gear;

(iv) In violation of any notice issued under this part; or

(v) In violation of any applicable area, season, species, zone, gear, daily bag limit, or length restriction.

(3) Take and retain or possess aboard a fishing vessel any species of salmon which is less than the applicable minimum total length.

(4) Possess aboard a fishing vessel a salmon, for which a minimum total length is set by this part, in such a condition that its minimum total length is extended, or cannot be determined, except that "dressed, head-off salmon" may be possessed aboard a "freezer trolling vessel" (unless the adipose fin of such salmon has been removed—see paragraph (6) of this section).

(5) Fail to return to the water immediately and with the least possible injury any salmon the retention of which is prohibited by this part.

(6) Remove the head of any salmon caught in the fishery management area, or possess a salmon with the head removed, if that salmon has been marked by removal of the adipose fin to indicate that a coded wire tag has been implanted in the head of the fish.

(7) Take and retain, or possess any steelhead (*Salmo gairdneri*) within the fishery management area, unless authorized by a judicially-declared Indian right.

(8) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, export, or land, any species of salmon or salmon part which was taken and retained in violation of the Magnuson Act, this part, or any regulation issued under the Magnuson Act.

(9) Refuse to permit an authorized officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation issued under the Magnuson Act.

(10) Forcibly assault, resist, oppose, impede, intimidate, or interfere with any authorized officer in the conduct of any search or inspection described in this section.

(11) Resist a lawful arrest for any act prohibited by this part.

(12) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person knowing that such other person has committed any act prohibited by this part.

(13) To interfere with, obstruct, delay, or prevent by any means a lawful investigation or search conducted in the process of enforcing the Magnuson Act.

§ 661.38 Facilitation of enforcement.

(a) *General.* The operator of, or any other person aboard, any fishing vessel subject to this part shall immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF–FM or high frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must—

(1) Guard Channel 16, VHF–FM, if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (.— .— .— .— .— .—)[1] [2] is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY–CY" (.—. —.— — —.—. — .— —) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (... ——.— ..——) means "you should stop or heave to; I am going to board you."

(4) "L" (.—..) means "you should stop your vessel instantly."

§ 661.39 Penalties.

Any person or fishing vessel found to be in violation of this part will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Magnuson Act.

Subpart D—Management Measures

§ 661.40 Commercial fishing.

(a) Areas, open seasons, species, and zone and gear restrictions are set forth in Table 1.

TABLE 1.—AREAS, OPEN SEASONS, AND GEAR RESTRICTIONS FOR COMMERCIAL OCEAN SALMON FISHING

Areas and open seasons[1]	Species	Zone restrictions[2]	Gear restrictions
U.S./Canada Border to Cape Falcon: May 1 to earlier of May 31 or chinook quota.	All except coho	Conservation zone 1 (Columbia River mouth) is closed.	Only barbless hooks.
U.S/Canada Border to Cape Alava: Aug. 4 to earlier of September 3 or coho quota.	All salmon		Do.
Columbia River to Cape Falcon: Aug. 4 to earlier of Sept. 3 or coho quota.	do	Only waters *within* special fishery zone (south of Columbia River mouth) are open.	Do.
Cape Falcon to Cape Blanco:			
May 1 to June 15	All except coho		Do.
July 1 to Aug. 31	do		Do.
Cape Blanco to OR/CA Border:			
May 16 to June 6	do		Do.
July 16 to Aug. 22	do		Do.
OR/CA Border to Point Delgada:			
May 16 to June 6	do		Barbless hooks only, and no more than 6 troll lines.
July 16 to Aug. 22	do	Conservation zone 2 (Klamath River mouth) is closed Aug. 1 to Aug. 22.	Do.
Point Delgada to Point Arena:			
May 1 to Sept. 30	do		Do.
Point Arena to U.S./Mexico Border:			
May 1 to May 31	do		Do.
June 1 to Sept. 30	All salmon		Do.

[1] Quotas referenced in this column are set forth in the quota table at § 661.42.
[2] Conservation zones and special fishery zones are defined in § 661.33.

(b) *Gear restrictions.*—(1) *Troll gear.* No person shall engage in commercial salmon fishing using other than troll fishing gear (as defined in § 661.33) in the fishery management area; however, between the Oregon/California border and the U.S./Mexico border, troll fishing gear need not be affixed to the fishing vessel as specified in § 661.33.

[1] Period (.) means a short flash of light.

[2] Dash (—) means a long flash of light.

(2) Where *barbless hooks* are specified, hooks manufactured with barbs can be made "barbless" by forcing the point of the barb flat against the main part of the point. Where *barbless hooks* are specified, barbless hooks must be used with all types of gear including whole bait and plugs. *Barless hook* is defined in § 661.33.

(c) *Length restrictions.* Minimum total lengths of salmon and minimum dressed head-off lengths of salmon are as follows:

Areas	Species	Minimum total lengths	Minimum lengths for dressed, head-off salmon (inches)
U.S./Canada Border—Cape Falcon.	Chinook	28	21½
	Coho	16	12
Cape Falcon—OR/CA Border.	Chinook	26	16
	Coho	16	
OR/CA Border—U.S./Mexico Border.	Chinook	26	19½
	Coho	22	16½
All Areas	Species other than chinook and coho.	None	None.

(d) *Restriction on use of commercial troll fishing gear for recreational fishing.* No person while on a fishing vessel with troll fishing gear on board shall use any part of that troll fishing gear to engage in recreational fishing for salmon.

§ 661.41 Recreational fishing.

(a) Areas, open seasons, species, zone and bag restrictions are set forth in Table 2.

TABLE 2.—AREA, OPEN SEASONS AND DAILY CATCH LIMITS FOR RECREATIONAL OCEAN SALMON FISHING

Areas and open seasons[1,7]	Species	Open Zones[2,4]	Daily bag and length limits[5,6]
Queets River to Klipsan Beach: May 26 to earlier of June 17 or chinook quota.	All except coho	0–6 miles	Two fish legal size.
Cape Shoalwater to Klipsan Beach: July 28 to earlier of Sept. 3 or coho quota.	All salmon	0–200 miles	Do.
South Jetty to Cape Falcon: July 28 to earlier of Sept. 3 or coho quota.	do	Only waters within special fishery zone (south of Columbia River mouth) are open.	Do.
Cape Falcon to Cape Blanco: July 9 to earlier of Sept. 3 or coho quota.	do	0–200 miles	Do.
Cape Blanco to OR/CA border: July 9 to earlier of Sept. 3 or coho quota.	do	do	Do.
Earlier of Sept. 4 or coho quota to Oct. 31.	All except coho	do	Do.
OR/CA border to Cape Vizcaino: Feb. 18 to June 15	All salmon	0–200 miles except conservation zone 2 (Klamath River mouth) is closed Aug. 1 to Aug. 31.	Do.
July 1 to Nov. 18	do	do	Do.
Cape Vizcaino to U.S./Mexico Border: Feb. 18 to Nov. 18.	do	0–200 miles	Do.

[1] Seasons are subject to automatic quota closures. *See*, § 661.42(a)(2).
[2] Distances shown are in nautical miles and are measured from "O", the nearest point on the shore from which the baseline used to measure the width of the territorial sea is measured.
[3] All areas are subject to inseason quota and season adjustments. *See*, § 661.42(b).
[4] Conservation zones and special fishery zones are defined in § 661.33.
[5] The daily bag limit may be reduced to one fish in one or more areas during the season. *See*, § 661.42(c).
[6] Length limits are set forth in the table at § 661.41(c).
[7] In addition to the recreational seasons listed, there will be an all-salmon-except-coho season in State waters (Washington Management Area 4, including 4B) from July 1 to July 27 or chinook quota, and an all-salmon fishery in Washington Management Areas 3 and 4, including 4B, from July 28 to earlier of September 3 or coho quota.

Note.—Replacement page 29B to 50 CFR Part 661, Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California.

(b) *Gear restrictions.* (1) No person shall engage in recreational salmon fishing in the fishery management area using other than recreational fishing gear (as defined in § 661.33), to which may be attached not more than one artificial lure or natural bait.

(2) No person shall use more than one rod and line for recreational salmon fishing from the U.S./Canada border to the Oregon/California border; however, there is no limit to the number of rods or lines used for recreational salmon fishing from the Oregon/California border to the U.S./Mexico border.

(3) No person engaged in recreational fishing for salmon from the Oregon/California border to the U.S./Mexico border may use weights of more than four (4) pounds attached directly to the line.

(4) Recreational fishing gear (as defined in § 661.33) must be held by hand while playing a hooked fish and reducing it to possession.

(c) *Length restrictions.* Minimum total lengths of salmon are as follows:

Areas	Minimum total lengths (inches)		
	Chinook	Coho	Other salmon
U.S./Canada border—Cape Falcon	24	16	None.
Cape Falcon—U.S./Mexico Border	20	20	None.

(d) *Daily bag limits.* No person shall fish for, or take and retain, or possess more than two salmon per day [or one salmon if the daily bag limit is reduced inseason under § 661.42(c)] while recreationally salmon fishing in the fishery management area.

§ 661.42 Inseason adjustments.

(a) *Automatic season closures based on quotas.* (1) Salmon harvest quotas, which include fish caught in the territorial sea (0–3 nautical miles) seaward of Washington, Oregon, and California, and Washington Management Area 4B, are set forth in Table 3.

TABLE 3.—QUOTAS BY AREA FOR COMMERCIAL AND RECREATIONAL OCEAN SALMON FISHERIES

Areas	Coho quotas		Chinook quotas	
	Recreational	Commercial	Recreational	Commercial
U.S./Canada Border—Cape Falcon [1]	50,200	24,800	10,300	16,700
U.S./Canada Border—Cape Alava (including Washington Management Area 4B)		(12,400)	(2)	(2)
U.S./Canada Border—Cape Falcon				[3](14,000)
U.S./Canada Border—Queets River (including Washington Management Area 4B)	(6,500)		(2)	
Queets River—Klipsan Beach	(4)		(5,900)	
Cape Shoalwater—Cape Falcon	(43,000)		(6)	
Columbia River—Cape Falcon		(12,400)		(7)
Cape Falcon—U.S./Mexico Border	106,000	(7)		

[1] Numbers in parentheses (subquotas) plus incidental catch estimates and hooking mortalities identified in the footnotes add up to the total recreational and commercial coho and chinook quotas north of Cape Falcon.
[2] The troll chinook quota for these two subarea fisheries is 2,700 fish.
[3] May 1 to May 31; all-salmon-except-coho-season quota.
[4] A combined total chinook quota of 900 fish will be allowed for these fisheries, which are in State waters, based on 1983 chinook/coho ratios in August.
[5] Estimated hooking mortality of 700 coho during all-salmon-except-coho fishery with a 5,900 chinook quota.
[6] Estimated chinook catch of 3,500 for this area based on 1983 chinook/coho ratios in August.
[7] Estimated hooking mortality of 19,000 coho during all-salmon-except-coho fishery.

(2) When a quota for the commercial or the recreational fishery, or both, for any species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary shall, by publishing a notice in the **Federal Register**, close the commercial or recreational fishery, or both, for all species as of the date the quota will be reached.

(b) *Adjustment of quotas and seasons.*—(1) *Catches in the territorial sea.* The Regional Director will monitor salmon catches in the territorial sea (0–3 nautical miles) seaward of Washington, Oregon, and California. If the Regional Director determines that salmon catches have occurred in the territorial seas or a portion thereof which were not accounted for when the Federal quota(s) and/or season(s) were established and which may cause the Federal quota(s) or anticipated catch during the Federal season(s) to be exceeded, the Secretary may reduce the Federal quota(s) or shorten the Federal season(s) accordingly by publishing a **Federal Register** notice.

(2) *Attainment of overall quota.* The Secretary may redistribute a portion of one or more of the quotas during the season by publishing a **Federal Register** notice, if the Regional Director determines that redistribution between the commercial and recreational fisheries, or between areas in the same fishery, will increase the likelihood that an overall quota for a species will be achieved, and redistribution is consistent with ocean escapement goals, conservation of the salmon resource, and any adjudicated Indian fishing rights.

(c) *Reduction in daily bag limit.* The Secretary may reduce one or more of the daily bag limits from two fish to one fish during the season by publishing a notice in the **Federal Register**. Any such modification will be consistent with ocean escapement goals, conservation of the salmon resource, any adjudicated Indian fishing right, and the ocean allocation scheme, and based on consideration of the following factors:

(1) Predicted sizes of salmon runs.

(2) Apparent actual sizes of salmon runs.

(3) Recreational quota for the area.

(4) Amount of recreational and commercial catch of each species in the area to date.

(5) Amount of recreational and commercial fishing effort in the area to date.

(6) Estimated average daily catch per fisherman.

(7) Predicted recreational fishing effort for the area to the end of the scheduled season.

(8) Other factors as appropriate.

(d) *Availability of data.* The Regional Director will compile in aggregate form all data and other information relevant to the actions described in this section and shall make them available for public review during normal office hours at the Northwest Regional Office, National Marine Fisheries Service, 7600 Sand Point Way N.E., Seattle, Washington.

(e) *Effective dates.* (1) Any notice issued under this section is effective on the date specified in the notice or on the date the notice is filed for public inspection with the Office of the Federal Register, whichever is later.

(2) Any notice issued under this section will remain in effect until the expiration date stated in the notice, or until rescinded or superseded; *Provided that,* no such notice has any effect beyond the end of the calendar year in which issued, at which time provisions of this part that were superseded by such notice again become effective until subsequently modified or superseded.

(f) Nothing contained in this part limits the authority of the Secretary to issue emergency regulations under section 305(e) of the Magnuson Act, if the Secretary determines that an emergency involving the salmon fishery exists. Such emergency regulations are effective upon filing for public inspection with the Office of the Federal Register or upon the date specified in the notice, whichever is later.

§ 661.43 Treaty Indian fishing.

(a) Area, season, species and gear restrictions are set forth in Table 4.

TABLE 4.—TREATY INDIAN FISHING

Tribe	Open area	Open season	Species	Gear restrictions
Makah	North of Norwegian Memorial (48°02'15") and east of 125°44' West longitude.	May 1 to chinook quota July 1 to earlier of coho or chinook quota.	All salmon except coho All salmon	Only barbless hooks. Do.
Quileute	Sand Point (48°07'36") to Queets River (47°31'42").	May 1 to chinook quota July 1 to earlier of coho or chinook quota.	All salmon except coho All salmon	Do. Do.
Hoh	Quillayute River (47°54'18") to Quinault River (47°21'100").	May 1 to chinook quota July 1 to earlier of coho or chinook quota.	All salmon except coho All salmon	Do. Do.
Quinault	Destruction Island (47°40'06") to Point Chehalis (46°54'03").	May 1 to chinook quota July 1 to earlier of coho or chinook quota.	All salmon except coho All salmon	Do. Do.

Length restrictions. Minimum total lengths of salmon are as follows:

TABLE 5.—TREATY INDIAN SALMON LENGTH RESTRICTIONS

Tribe	Species	Minimum total length (inches)	Minimum total lengths for ceremonial and subsistence use (inches)
Makah	Chinook	24	
	Coho	16	
Quileute	Chinook	26	[1] 24
	Coho	16	16
Hoh	Chinook	26	[1] 24
	Coho	16	16
Quinault	Chinook	26	[1] 24
	Coho	16	16

[1] A daily limit of two chinook salmon between 24 and 26 inches may be retained for ceremonial and subsistence purposes.

(c) *Quotas.* The following total chinook and coho quotas apply to the Makah, Quileute, Hoh, and Quinault Treaty Tribe Ocean fisheries:

Chinook—8,300
Coho—38,500, or limit of 490 Grays Harbor wild coho, whichever is reached first.

When the quota for either chinook or coho is projected by the Regional Director to be reached on or by a certain date, the Secretary shall, by publishing a notice in the **Federal Register**, close the fisheries for all species.

(d) *Inseason adjustments.* The above regulations for the treaty Indian ocean fisheries are subject to inseason adjustment upon agreement among the participating tribes, the Washington Department of Fisheries, the Oregon Department of Fish and Wildlife, and the National Marine Fisheries Service. Negotiations are continuing to reach agreement on management measures which would minimize impacts on Grays Harbor wild coho and on Bonneville Pool hatchery chinook stocks. Quotas may be adjusted downward upon agreement of the participating parties. Management measures and/or quotas may be adjusted by publishing a notice in the **Federal Register.**

(e) *Exceptions.* Unless otherwise provided by this section, persons engaged in treaty Indian fishing are subject to the provisions of this part, the Magnuson Act, and any other regulations issued under the Magnuson Act, except that the restrictions contained in § 661.40 (b)(1), and (d) and § 661.41 (b) and (d) do not apply.

§ 661.44 Experimental fisheries.

(a) Upon the recommendation of the Council, the Regional Director may allow such experimental fisheries for research purposes in the fishery management area as may be proposed by the Council, the Federal Government, State Governments, and treaty Indian tribes having usual and accustomed fishing grounds in the fishery management area.

(b) The Regional Director shall not allow any experimental fishery recommended by the Council unless he determines that the purpose, design, and administration of the experimental fishery are consistent with the goals and objectives of the Council's fishery management plan, the national standards (Section 301(a) of the Magnuson Act), and other applicable law.

(c) Each vessel participating in any experimental fishery recommended by the Council and allowed by the Regional Director is subject to all provisions of this part, except those portions necessarily relating to the purpose and nature of the experimental fishery. These exceptions will be specified in a letter issued by the Regional Director to each vessel participating in the experimental fishery and that letter must be carried aboard each participating vessel.

§ 661.45 Scientific research.

Nothing in this part is intended to inhibit or prevent any scientific or oceanographic research in the fishery management area by a scientific research vessel. The Regional Director shall acknowledge any notification he might receive of any scientific or oceanographic research with respect to salmon being conducted by a scientific research vessel, by issuing to the operator or master of that vessel a letter of acknowledgement, containing information on the purpose and scope (locations and schedules) of the activities. The Regional Director shall transmit copies of such letter to the Council, and to State and Federal administrative and enforcement agencies, to ensure that all concerned parties are aware of the research activities.

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Proposed Rules

Federal Register
Vol. 49, No. 87
Thursday, May 3, 1984

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 991

[Docket No. F&V AO-352-A-2]

Hops of Domestic Production; Hearing on Proposed Amendment of the Marketing Order, as Amended

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Public hearing on proposed amendment.

SUMMARY: The hearing is being held to consider proposed changes in the marketing order for domestically produced hops to improve program operations. Interested persons were provided an opportunity to submit proposals on amending the order. Comments and/or proposals were received from a number of persons. The hearing will give all interested persons an opportunity to present testimony on the proposals.

DATE: The hearing will begin on June 12 and June 18, 1984, at 9:00 a.m. local time.

ADDRESSES: The hearing will begin on June 12, 1984, at Portland State University, 1825 SW. Broadway, Michael J. Smith Memorial Center, Room 296, Portland, Oregon. On June 18, 1984, it will continue at the Masonic Center, 510 N. Nachez, Yakima, Washington. Hearing sessions will begin at 9:00 a.m., local time, at both hearing sites.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447-5053.

SUPPLEMENTARY INFORMATION: Prior documents in the proceeding: Notice of opportunity to submit proposals published January 11, 1984 (49 FR 1380) and extension of time for submitting proposals published March 15, 1984 (49 FR 9740).

This administrative action is governed by provisions of Sections 556 and 557 of Title 5 of the United States Code, and therefore is excluded from the requirements of Executive Order 12291.

The "Regulatory Flexibility Act" (Pub. L. 96-354) seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. Most parties subject to the hop order are considered as small businesses. In order that due consideration be given to the objectives of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the Regulatory Flexibility Act, interested persons are invited to assist the Department in collecting information about the economic effect of these proposals on small growers and handlers. Specifically, questions that parties may wish to address with regard to the issues noticed for hearing include, but are not limited to, the following:

Are growers in different districts affected differently?

How do provisions of the proposed amendment affect different sized handlers.

What is the impact of different options on the marketing flexibility for individual growers and handlers?

Do such options affect small growers or handlers production, price and distribution decisions differently?

Are there regulatory alternatives within the scope of this hearing, which meet the goals of the Agricultural Marketing Agreement Act of 1937, while reducing regulation?

Information of this nature will be utilized in AMS's evaluation of the impact of the order on small entities. Comments on this issue and all others discussed in the recommended decision will be invited prior to the final decision of the Secretary.

Included in this Notice of Hearing are proposals which, if implemented, would make major changes in the existing marketing order for hops. Proponents should be prepared to present evidence as to the need for such changes, including the appropriate terms and conditions to be included in any changed order. Evidence should also be presented with respect to the effect of proposals on the level of hop production currently existing in the industry.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, of Marketing Order No. 991, as amended, regulating the handling of domestically produced hops.

Interested persons were provided an opporunity to submit written proposals through April 10, 1984. Proposals were received from the Capitol Legal Foundation, Washington, D.C.; Carl A. Pescosolido, Jr.., Exeter, California; Wiley C. Harrell, Anheuser-Busch Companies, Washington, D.C.; Leo Gasseling & Sons, Inc., Wapato, Washington; Robert W. Graham, Seattle, Washington, representing David W. Wyckoff and Wyckoff Farms, Inc.; The Hop Administrative Committee, Portland, Oregon; Wayne Perrault, Outlook, Washington; Don W. Schussler, Yakima, Washington, representing Max Benitz, Jr., Charles P. St. Mary, Leon Willard, Lyle Brulotte, Ben and Arnold Brulotte, and Sebastian Charron; Harlan L. Shinn, Lawrence K. Tobin, and R. Martin Puterbaugh, all of Mabton, Washington; and James Youde, Vancouver, Washington.

List of Subjects in 7 CFR Part 991

Marketing Agreements and orders, Hops.

The proposed amendments, set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Capitol Legal Foundation

Proposal No. 1

Eliminate artificial entry barriers by deleting §§ 991.37, and 991.38 from the order.

Proposed by Carl A. Pescosolido, Jr.

Proposal No. 2

Eliminate the requirement of Order No. 991 which prevents any present or future producer of hops from selling whatever quantity the producer desires with no controls whatsoever.

Proposed by Anheuser-Busch Companies

Proposal No. 3

Since the basic characteristics of producing and marketing hops do not support the need for a Hop Marketing Order, the order should therefore be terminated.

Proposed by Leo Gasseling and Sons, Inc.

Proposal No. 4

Change § 991.15 Establishment and membership in the following manner:

Eliminate one position from District 4 and add an at large position to District 1, bringing the total at large in District 1 to 3. Also, if California (District 4) ceases to produce hops, the remaining District 4 position would move to District 1 and become an additonal at large position.

Proposal No. 5

Revise § 991.25(b) Committee and Board-Selection and term of Office by adding a sentence as follows:

No member shall serve more than three (3) consecutive two year terms.

Proposal No. 6

Revise § 991.37(b) to read as follows:

(b) *Limitations on allotment percentage.* The allotment percentage applicable to the 1985 and 1986 crops shall not be less than 100 percent each year. The allotment percentage applicable to the 1987 crop shall be no less than 93 percent. No allotment applicable to the 1988 and subsequent crops shall be less than 75 percent.

Proposal No.7

Change § 991.37(b) by adding a new provision to read as follows:

Also, the Committee shall make minimum recommendations of salable for future years. These recommendations shall be for no more than five years and no less than three years. All future Committees can increase these recommendations, but not go below them.

Proposal No. 8

Revise § 991.38 to read as follows:

§ 991.38 Allotment of salable quantity.

(a) Allotment Bases: (1) Except as otherwise provided in this section, the allotment base for each producer shall be the highest average amount per acre sold or produced from any one of the producer's 1979, 1980, 1981 or 1982 harvested acreage multiplied by such producer's highest acreage recorded in any of those four years. (Under this proposal the current provisions of § 991.38(a)(1)(ii) would be eliminated.)

(2) Where a producer's hop acreage is expanding as a result of new plantings, and where a bona fide effort was made to produce and harvest more hops, his allotment base shall include the volume, beginning with the 1985 or 1986 marketing year, whichever is the normal first year of harvest for such hops, obtained by multiplying the new harvested acreage of the producer planted to the same variety by his allotment base average sales per acre. Where such expansion arises from transfer of acreage upon which hops were produced in 1984 and subsequent to 1984 harvest but prior to the effective date of this subpart, the allotment base shall be computed and determined in the same manner as though such acreage had not been transferred, but no such allotment base shall be granted unless the producer makes a bona fide effort to produce and harvest a 1985 crop from such acreage.

(3) If a producer has no applicable sales history for the reasons listed in this subparagraph, the producer's allotment base, beginning with the first year of harvest, shall be the acreage multiplied by the average amount per acre sold for the like variety in the allotment bases of other producers in the state or locality, whichever is applicable, in which the acreage is located. The reasons are as follows:

(i) All of the producer's 1984 acreage was unharvested.

(ii) Part of the producer's acreage was unharvested and planted to a variety with yields per acre substantially different from such producer's harvested acreage, or

(iii) All of the producer's acreage was planted and harvested in 1984, or part of such acreage was planted to a new variety and harvested in 1984 where first year harvesting is not the normal practice for the variety.

(4) New harvested acreage for the purposes of subparagraphs (2) and (3) of this paragraph must have been planted to hops no later than 1984 and been committeed to the production of hops by February 8, 1985, by having entered into a bona fide contract calling for delivery of a specified quantity of hops at a specified price from such new acreage, by completing the planting of hops, by completing construction of trellises, or by meeting such other indications of commitment as the Committee, with the approval of the Secretary, may prescribe.

(5) In accordance with paragraph (a) and based on reports of handlers, producer certifications and other information, the Committee shall establish each producer's allotment base, and shall assign such allotment base to such producer. The right of each producer receiving an allotment base shall be dependent on the producer continuing to make a bona fide effort to produce the annual allotment referable thereto and failing in any year to do so, such allotment base shall be reduced by an amount equivalent to such unproduced proportion: *Provided,* That the Committee, with the approval of the Secretary, may waive such requirement and, upon application to the Committee and receipt of acknowledgement of such, such requirement shall be waived for the 1985 crop for all producers except those hop acreage is expanding by reason of additional plantings or transfer of acreage and shall be waived for the 1986 crop for all producers.

(b) Additional Allotment Bases: Each marketing season the Committee shall consider the need for granting and if appropriate, grant, with the approval of the Secretary, additional allotment bases, to either a new producer or an existing producer, for such purposes as satisfying the demand for one or more varieties, providing more equitable allotment bases where allotment bases reflect below normal sales as a result of heptachlor damage to plants, or adjusting the total of all allotment bases to trade demand based on the following:

(1) *Adjust Industry Base.* Increase industry base to reflect readjusted allotment bases as stated in amended § 991.38(a).

(2) Additional Allotment Base to Existing Growers. (i) If salable needs to be increased to meet trade demand, make any increase that would exceed 100 percent salable in the form of permanent base, to be given out on a pro rate basis to existing growers.

(ii) This permanent base would only be given to existing growers who, after their pro rate increase still needed base allotment, or existing growers who could show a bona fide effort to produce additonal hops.

(iii) If base to be made available to existing growers was not all used, the balance would be made available to new growers. If at this point there is any allotment left, it would be eliminated.

(iv) Existing growers must make a 100 percent bona fide effort and would have two years to come into compliance, or the allotment would go back to the Committee for redistribution.

(3) *Additional Allotment Base to New Growers.* (i) In years where the salable percentage is decreased or remains the same, four hundred thousand pounds must be made available to new growers on a lottery basis.

(ii) In years where the salable percentage is increased, one million pounds must be made available to new growers on a lottery basis.

(iii) If any base made available to new growers, in years of no salable increase or a salable decrease, is not used in the year it is offered, it ceases to exist and the process starts over the following year.

(iv) If any base made available to new growers, in years of a salable increase is not used in the year it is offered, it will be offered to existing growers on a pro rata basis.

(4) *Periodic Readjustment of Industry Base.* (i) Every seven years the industry base allotment will be readjusted to reflect existing grower acreage at that time. It would be based on each grower's highest production of the past three years, taking into consideration any extenuating circumstances such as crop failure, natural disaster, contract cancellations, and moving of contracts.

(c) *Issuance of Annual Allotments to Producers.* That a producer chooses not to grow and harvest hops from all or part of his acreage, and he notifies the Committee thereof prior to allotment issuance, it shall reduce the annual allotment consistent with such producer's action. This action shall be allowed once every six years. If it occurs more frequent than this, the grower loses that amount of base allotment. It would be returned to the Committee for distribution to existing growers who need additional allotment on a pro rata basis. Any base left would be made available to new growers. Also, any grower who fails to make a bona fide effort to grow 100 percent of his allotment for two consecutive years, will have that base allotment revert back to the Committee for redistribution.

(d) *Contract Exemptions.* (1) A handler may acquire from a producer who, except for this part, is legally obligated to deliver to said handler a specific quantity of hops, from a specified acreage of his own production, pursuant to the terms of a written contract entered into prior to and effective by January 1, 1985.

(2) Committee may in the future grant contract exemptions if it is deemed necessary by the Secretary.

(e) *Filling of Deficiencies.* A producer who produces less than his annual allotment under conditions where he had sufficient hops under trellis to produce his allotment, taking into consideration his previous average yields, will make available to the Committee this unused portion to be given to growers who need additional allotment to cover excess grown hops for that year on a pro rata basis at no charge. This unused allotment will revert back to the original grower for the coming year, if all the above requirements are met.

Proposal No. 9

Revise § 991.46 to read as follows:

§ 991.46 Transfers to Another Producer.

(a) Transfers of allotment may occur in the following instances:

(1) Between family members.

(2) To another producer who by this transfer will not be in excess, based on his current base allotment needs, or can show a bona fide effort to produce the additional amount.

(i) This transfer shall be permanent and the grower transferring the base away cannot acquire additional base for a three year period from date of transfer.

(ii) Producer transferring away is not eligible for additional permanent base given by the Committee for a period of two years from date of transfer.

(3) In case of land sale, the base can go with the property, only if person acquiring the allotment complies with excess base rule or bona fide effort.

(4) If Secretary finds that a grower is trading excessively in base allotment, he may rule that this grower's base be returned to the Committee for redistribution.

Proposed by Robert W. Graham of the Law Firm Bogle and Gates, Representing David W. Wyckoff and Wyckoff Farms, Inc.

Proposal No. 10

Change §§ 991.38 and 991.46 by adding the following paragraph:

Allotment base shall not be transferable except in the following circumstances:

(1) In the event of sale or other transfer of a producer's production facilities, the base may be transferred to the person acquiring and continuing the use of such facilities;

(2) In the event of death of the producer, the entire base may be transferred to such producer's heirs, devisees or beneficiaries;

(3) If base is held jointly and the joint venture or partnership is terminated, the entire base may be transferred to one of the partners or joint venturers or divided among them; and

(4) In the event of a mortgage foreclosure or transfer of property pursuant to the provisions of a deed of trust, base may be transferred to the successor in interest of the property so foreclosed or transferred.

Proposal No. 11

Change § 991.38 by adding the following:

There shall be issued to all producers having hops under trellis as of *March 1, 1984,* such additional allotment base as may be required to provide such grower allotment base for all acreage under trellis as of that date. The required allotment base shall be computed upon the basis of the average of the three highest years of production out of the last five years of production for the producer's acreage. In the event a producer had less acres under trellis during the prior five year period or did not produce hops during three out of the last five years, his allotment base shall be computed in an equitable manner to reflect the average annual production of his acreage under trellis.

Proposal No. 12

Change § 991.37(b) to require that the Hop Administrative Committee and the Secretary shall be authorized to establish the "allowable percentage" at less than 75 percent.

Proposal No. 13

Change §§ 991.36 and 991.37 to require the Hop Administrative Committee and the Secretary to establish a minimum "allowable percentage" for not less than three years in advance.

Proposal No. 14

Change §§ 991.38(e) and 991.139 to require that the "bona fide" effort requirement in determining transferrable deficiencies shall be strictly enforced.

Proposal No. 15

Change § 991.39 by adding a paragraph to read as follows:

In the event that a producer transfers excess production into the reserve pool and the allowable percentage for the year is subsequently increased, such producer shall be permitted to withdraw hops from the reserve pool in such amount as may be required to increase his salable hops to that amount authorized under the revised "allowable percentage".

Proposal No. 16

Change § 991.38 by adding a paragraph to read as follows:

There shall be authorized for issuance each year equal amounts of additional allotment base to: (1) New entrants (defined as producers who have not engaged in the productioin of hops since 1978), and (2) existing producers desiring to expand their operations. The total additional allotment base to be made available each year shall not be less

than one percent nor more than two percent of the salable quantity of the preceding year. Such additional base shall be allocated by lot or some other fair and equitable manner among applicants for such additional base. In the event that there are not applicants for all of such additional allotment base made available under this sectin in any given year, the allotment base not subscribed shall be carried forward by the Hop Administrative Committee to the next succeeding year and the additional allotment base otherwise allowable under this section for such year shall be reduced by the amount of such carryover, it being the intent of this section that there shall be not less than one percent nor more than two percent of the preceding year's salable quantity as additional allotment base for new entrants and growers desiring to expand their operations.

Proposed by the Hop Administrative Committee

Proposal No. 17

Change §§ 991.22, 991.23, 991.24, 991.25, and 991.28 by changing the name of the "Hop Advisory Board" to the "Hop Handler Board".

Proposal No. 18

Revise § 991.22 as follows:

In lieu of five members and five alternatives from the current categories the Board consists of one representative from each handler who handled in excess of one percent of the total amount handled during the preceding marketing year.

Proposal No. 19

Change § 991.15 as follows:

(1) Reassignment of Co-op members in District 1. Reassign positions 1 through 7 in District 1 (Washington) as follows:

"Positions 1 through 3 each representing one of the three subdistricts of District 1."

"Positions 4, 5, 6, and 7 representing producers at large in District 1".

(2) Eliminate position 13 from District 4 (California).

Proposal No. 20

Change § 991.18 as follows:

Change quorum requirements from 10 to 9 and number of votes required to pass any motion from 9 to 8.

Proposed by Wayne Perrault

Proposal No. 21

Change § 991.38(a)(5) by adding a sentence as follows:

Allotment base forfeited by a producer for failing to meet the bona fide effort requirement should be available to the Committee for redistribution in the manner specified in proposed § 991.38(b).

Proposal No. 22

Change § 991.46 by adding a new paragraph as follows:

Except during years in which the bona fide effort requirement is waived by the Committee, only producers should be permitted to hold allotment base. If a nonproducer does not permanently transfer away his allotment base within two years, it should revert to the Committee for redistribution in the manner specified in proposed § 991.38(b).

Proposal No. 23

Revise § 991.38(b) to read as follows:

(b) *New allotment bases.* In years in which demand is increasing and exceeds total existing allotment base, the Committee should create new allotment base in an amount equal to the lesser of the excess of that year's demand over total existing allotment base, or 2 percent of the total existing allotment base. This new base would be distributed by the Committee as provided in subparagraph (1).

(1) *Distribution of allotment bases.* Any allotment base held by the Committee for distribution or redistribution pursuant to the above provisions would be auctioned off annually. Two separate auctions would be held, with one-half of the available base being offered in each auction. One auction would be limited to new growers, but anyone could participate in the other auction. The auction proceeds would be held in trust by the Committee for use as explained below. A person who bought base at an auction could not transfer it for several years. The Committee would specify the size of the units to be auctioned and other details.

(2) *Retirement of excess allotment bases.* The Committee should be able to use the proceeds of prior auctions to buy allotment base on the open market when conditions warrant, and retire the base thus purchased.

Proposed by Don W. Schussler of the Law Firm Gavin, Robinson, Kendrick, Redman & Mays Inc., P.S., Representing Max Benitz, Jr., Charles P. St. Mary, Leon Willard, Lyle Brulotte, Ben and Arnold Brulotte, d.b.a. A&B Farms, and Sebastian Charron

Proposal No. 24

Change § 991.38(a) to provide that in 1985, distribution of permanent allotment base shall be recomputed using the annual average of sales for the three highest of the past five years, prorated over 79 million pounds, and that a similar recalculation shall be performed every five years thereafter.

Proposal No. 25

Change §§ 991.46 and 991.146 to prohibit any transfer of base, beginning in 1985, except: (1) With the sale or lease of hop production facilities, (2) in the event of death of the producer, or (3) where required by law.

Proposal No. 26

Change §§ 991.38(e) and 991.139 to provide for the free filling of deficiencies.

Proposal No. 27

Change § 991.38(a)(5) as follows:

(1) The annual allotment ("salable") should not be permitted to drop below 60 percent; (2) any permanent allotment base which has reverted to the HAC shall be redistributed to new and existing growers as a condition precedent to any increase in the salable above 100 percent; and (3) furthermore, the salable shall not exceed 100 percent without first offering new allotment base, equal to the desired increase, one-half to new growers and one-half to existing growers.

Proposal No. 28

Change § 991.38(a)(5) to prohibit waiver of its terms.

Proposal No. 29

Change §§ 991.15 and 991.16 to provide that: (a) Four members of the Hop Administrative Committee should represent the public at large; (b) actual geographic production areas should be fairly represented; and (c) tenure on the Committee should be limited.

Proposed by Harlan L. Shinn, Lawrence K. Tobin and R. Martin Puterbaugh

Proposal No. 30

Change appropriate sections in the hop marketing order to provide for the exclusion of contracts for amounts up to 100 percent of a grower's allotment base in any future reductions of the yearly salable percentage.

Proposed by James Youde Northwest Economic Associates

Proposal No. 31

Change appropriate sections of the order to provide that all base allotments would revert to the Hop Administrative Committee each marketing year. Growers would apply for base allotment and demonstrate their capacity to produce and market hops during that marketing year. Evidence of this

capacity would include: (1) Ownership or lease of producing hop yards, including roots and trellises; (2) access to harvesting and drying equipment and facilities by ownership, lease, or contract for custom services; and (3) approval of credit lines by agricultural lenders. Historic yield levels would be used to arrive at realistic production potentials on each grower's hop acreage. Applications for annual base allotments would be reviewed and approved, adjusted or rejected. A total amount of base allotment would be determined for each marketing year as the total of the approved individual grower base allotments. The percentage of base allotment that growers could sell to handlers would be determined by dividing the salable quantity by the total base allotments for that marketing year.

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

Signed at Washington, D.C., on April 30, 1984.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 84–11956 Filed 5–2–84; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR–186–80]

Installment Obligations Received in Certain Nonrecognition Exchanges; Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to installment obligations received in certain nonrecognition transactions. Changes to the applicable tax law were made by the Installment Sales Revision Act of 1980. These regulations would provide guidance to those taxpayers receiving installment obligations in certain nonrecognition exchanges and to personnel of the Internal Revenue Service who administer the installment sale provisions.

DATES: Written comments and requests for a public hearing must be delivered or mailed by July 2, 1984.

Except as otherwise provided in this document, the amendments are proposed to apply to certain nonrecognition exchanges occurring after October 19, 1980.

ADDRESS: Send comments and a request for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–186–80), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Linda M. Kroening of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC 20224. (Attention: CC:LR:T) (202–566–3288).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 453(f)(6) of the Internal Revenue Code of 1954 relating to installment obligations received in certain nonrecognition exchanges. These amendments are proposed to reflect the amendment of section 453 by section 2 of the Installment Sales Revision Act of 1980 (94 Stat. 2247). The amendments are to be issued under the authority contained in sections 453(j) and 7805 of the Code (94 Stat. 2247, 68A Stat. 917; 26 U.S.C. 453(j), 7805).

Under prior law, except as otherwise required by the 30-percent initial payment limitation, an installment obligation received as boot in an exchange of like-kind property described in section 1031 qualified for installment method reporting. The value of the like-kind property received by the seller was considered a payment in the year of the exchange and was taken into account in determining both the selling price and the contract price. The Installment Sales Revision Act of 1980 reverses this rule. The value of the like-kind property received is no longer considered a payment in the year of sale nor is it taken into account in determining either the selling price or the contract price. This change in the treatment of the receipt of like-kind property does not change the amount of gain which a taxpayer will recognize on the sale but does defer the time when the taxpayer reports the gain. Under prior law, a taxpayer reported gain upon receipt of the like-kind property. Under the new law, the taxpayer does not report gain with respect to an installment obligation until he receives payment on or disposes of the installment obligation.

Under the Installment Sales Revision Act of 1980, the total contract price in a like-kind exchange in which an installment obligation is received as boot (property received in addition to the like-kind property) is the sum of cash received, the fair market value of other property (i.e., property other than like-kind property) received, and the face amount (less any discount required under section 483) of the installment obligation.

The basis of the like-kind property received (determined under section 1031(d)) will be determined as if the obligation had been satisfied at its face value less any discount for unstated interest. The taxpayer's basis in the transferred property is allocated first to the like-kind property received (but not in excess of its fair market value) and any remaining basis is used to determine the gross profit ratio.

The Act also provides that, under a plan of corporate reorganization, exchanges described in section 356(a) shall be treated similarly to section 1031(b) exchanges if the installment boot is not treated as a dividend. The Act excludes from installment method reporting any installment obligation which is treated as a dividend or would be treated as a dividend if the corporation had had sufficient earnings and profits to distribute a dividend.

These regulations also permit installment method reporting in certain nonrecognition exchanges (for example, section 351(b) exchanges) which are not explicitly dealt with in the Act. For these nonrecognition exchanges, the same basic rules apply: basis in the transferred property is first allocated to the nonrecognition property received, but not in excess of the fair market value of that property. Any excess basis is allocated to the installment note and any nonqualifying property.

Section 1.453–1 contains material relating to installment sales by dealers in personal property. It is intended that eventually all of the regulations relating to installment sales will be amended to reflect the amendments to section 453 made by the Installment Sales Revision Act of 1980. Until those amendments are adopted, provisions in § 1.453–1 which relate to matters not covered in this document or other proposed regulations relating to installment method reporting will remain in effect.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not

apply. Accordingly, no Regulatory Flexibility Analysis is required by chapter 5 of title 5, United States Code.

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably seven copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in **Federal Register.**

Drafting Information

The principal author of this regulation is Phoebe A. Mix of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects in 26 CFR Part 1

Income taxes, Accounting, Deferred compensation plans.

Proposed Amendments to the Regulations

Accordingly, the following amendments are proposed to be made to 26 CFR Part 1:

PART 1—[AMENDED]

Paragraph. Section 1.453–1 is amended by revising paragraph (f) to read as follows:

§ 1.453–1 Installment method reporting for sales of real property and casual sales of personal property.

* * * * *

(f) *Installment obligations received in certain nonrecognition exchanges*—(1) *Exchanges described in section 1031(b)*—(i) *In general.* The provisions of paragraph (f)(1) of this section apply to exchanges described in section 1031(b) ("section 1031(b) exchanges") in which the taxpayer receives as boot (property which is "other property" under section 1031(b)) an installment obligation issued by the other party to the exchange, as well as property with respect to which no gain or loss is recognized ("permitted property" for purposes of paragraph (f)(1) of this section). However, an exchange otherwise described in section 1036 in which the receipt of an installment obligation is treated as a dividend (or would be treated as a dividend if the issuing corporation had adequate earnings and profits) is not a section 1031(b) exchange for purposes of this section.

(ii) *Exclusion from payment.* Receipt of permitted property will not be considered payment for purposes of paragraph (c) of this section.

(iii) *Installment method determinations.* In a section 1031(b) exchange, the taxpayer's basis in the property transferred by the taxpayer, including nondeductible expenses of the exchange, will first be allocated to the permitted property received by the taxpayer up to, but not in excess of, the fair market value of such property. If the taxpayer's basis exceeds the fair market value of the permitted property, that excess amount of basis is "excess basis." In making all required installment method determinations, the exchange is treated as if the taxpayer had made an installment sale of appreciated property (with a basis equal to the amount of excess basis) in which the consideration received was the installment obligation and any other boot. In a section 1031(b) exchange, only net qualifying indebtedness is taken into account in determining the amount of qualifying indebtedness (as defined in § 1.453–1A(b)(2)(iv)). For this purpose, net qualifying indebtedness is the excess of—

(A) Liabilities of the taxpayer (or liabilities encumbering the property) assumed or taken subject to by the other party to the exchange as part of the consideration to the taxpayer, over

(B) The sum of any net cash paid (cash paid less any cash received) by the taxpayer in the exchange and any liability assumed or taken subject to by the taxpayer in the exchange.

Therefore, for purposes of installment method determinations, the selling price is the sum of the face value of the installment obligation (reduced by any portion of the obligation characterized as interest by section 483 or 1232), any net qualifying indebtedness, any cash received (in excess of any cash paid) by the taxpayer, and the fair market value of any other boot. The basis is the excess basis. The total contract price is the selling price less any net qualifying indebtedness that does not exceed the excess basis. Finally, payment in the year of exchange includes any net qualifying indebtedness that exceeds the excess basis.

(iv) *Examples.* The provisions of paragraph (f)(1) of this section are illustrated by the following examples:

Example (1). In 1981, A makes a section 1031(b) exchange of real property held for investment (basis $400,000) for permitted property worth $200,000, and an $800,000 installment obligation issued by the other party to the exchange bearing adequate stated interest. Neither the property transferred by A nor the property received in the exchange is mortgaged property. A's basis of $400,000 is allocated first to the permitted property received, up to the fair market value of $200,000. A's excess basis is $200,000 ($400,000−$200,000). Since the installment obligation is the only boot received by A in the exchange, A's entire excess basis of $200,000 is allocable to it. Under the installment method, the selling price is $800,000 (the face amount of the installment obligation), and the contract price is also $800,000 (selling price less qualifying indebtedness, $800,000−0). The gross profit is $600,000 (selling price less excess basis allocated to the installment obligation, $800,000−$200,000), and the gross profit ratio is 75% ($600,000/$800,000). A recognizes no gain until payments are received on the installment obligation. As A receives payments (exclusive of interest) on the installment obligation, 75% of each payment will be gain attributable to the exchange and 25% of each payment will be recovery of basis. A will hold the permitted property received in the exchange with a basis of $200,000.

Example (2). The facts are the same as in example (1), except that in the exchange A receives permitted property worth $200,000, a $600,000 installment obligation, and $200,000 in cash. A is treated as having sold appreciated property (basis equal to the $200,000 excess basis) for $200,000 cash and a $600,000 installment obligation. As in example (1), the contract price and the selling price are $800,000, the gross profit is $600,000, and the gross profit ratio is 75%. Accordingly, A will recognize gain of $150,000 on receipt of the cash (75% of the $200,000 payment). A holds the permitted property with a basis of $200,000.

Example (3). The facts are the same as in example (2), except that A does not receive $200,000 in cash. Instead, the property transferred by A in the exchange was subject to a mortgage (meeting the definition of qualifying indebtedness) of $200,000 to which the other party to the exchange took subject. The permitted property received by A in the exchange was not subject to a mortgage. A is treated as having sold appreciated property (basis equal to $200,000 excess basis) for $800,000 cash and $200,000 net relief of mortgage liability. The mortgage liability of which A is deemed relieved ($200,000), reduced by any cash paid by A and any mortgage liability encumbering the like-kind property received by A in the simultaneous exchange ($0), is treated as qualifying indebtedness. Since the qualifying indebtedness ($200,000) does not exceed A's excess basis ($200,000), B's taking subject to such indebtedness does not constitute payment to A in the year of exchange. Under the installment method, the selling price is $800,000 and the total contract price is $600,000 (selling price of $800,000 less $200,000 of qualifying indebtedness that does not exceed A's excess basis). Gross profit is also $600,000 ($800,000 selling price less

$200,000 excess basis), and the gross profit ratio is 1 ($600,000/$600,000). A recognizes no gain until payments are received on the installment obligation. As A receives payment (exclusive of interest) on the $600,000 installment obligation, the full amount received will be gain attributable to the exchange. A holds the permitted property with a basis of $200,000.

Example (4). The facts are the same as in example (2), except that A's basis in the property transferred by A was only $160,000. Since A's basis first must be allocated to permitted property received in the exchange up to the fair market value ($200,000) of that permitted property, there is no excess basis. Accordingly, A will recognize gain equal to the full amount of cash received ($200,000), and will hold the installment obligation at a basis of zero. A will hold the permitted property at a basis of $160,000.

(2) *Certain exchanges described in section 356 (a)*—(i) *In general.* The provisions of paragraph (f)(2) of this section apply to exchanges described in section 356(a)(1) ("section 356(a)(1) exchanges") in which the taxpayer receives as boot (property which is "other property" under section 356(a)(1)(B)) an installment obligation issued by qualifying corporation which is not treated as a dividend to the taxpayer. For purposes of section 453(f)(6) and paragraph (f)(2) of this section, any such section 356(a)(1) exchange shall be treated as a disposition of property by the taxpayer to the qualifying corporation and an acquisition of such property by the qualifying corporation from the taxpayer. If section 354 would apply to the exchange but for the receipt of boot, the term "qualifying corporation" means a corporation the stock of which could be received by the taxpayer in the exchange without recognition of gain or loss. If section 355 would apply to the exchange but for the receipt of boot, the term "qualifying corporation" means the distributing corporation (referred to in section 355(a)(1)(A)). Receipt of an installment obligation is treated as a dividend if section 356(a)(2) applies (determined without regard to the presence or absence of accumulated earnings and profits), or if section 356(e) (relating to certain exchanges for section 306 stock) applies to the taxpayer's receipt of the installment obligation.

(ii) *Exclusion from payment.* Receipt of permitted property shall not be considered payment for purposes of paragraph (c) of this section. For purposes of paragraph (f)(1) of this section, "permitted property" means property, the receipt of which does not result in recognition of gain under section 356(a)(1) (i.e., stock of a qualifying corporation).

(iii) *Installment method determinations.* Installment method determinations with respect to an installment obligation receive in an exchange to which paragraph (f)(2) of this section applies shall be made in accordance with the rules prescribed in paragraph (f)(1)(iii) of this seciton. In applying such rules, a section 356(a)(1) exchange shall be treated as a section 1031(b) exchange and permitted property shall mean permitted property described in paragraph (f)(2) of this section.

(iv) *Examples.* The provisions of paragraph (f)(2) of this section are illustrated by the following examples:

Example (1). T corporation and P corporation are unrelated closely held corporations. A owns 10% of the stock of T. A is not related to any other T stockholder or to any P stockholder. S corporation is a wholly-owned subsidiary of P. Pursuant to a plan of reorganization, T merges with and into S. In the merger, the T shares held by A are exchanged for shares of P worth $100,000 and a $300,000 installment obligation (bearing adequate interest) issued by P. In the merger the other stockholders of T exchange their T shares solely for P shares worth, in the aggregate, $3,600,000. The merger is a reorganization described in sections 368(a)(1)(A) and (a)(2)(D), and T, S, and P each is a party to the reorganization under section 368(b). P is a qualifying corporation and A is party to a section 356(a)(1) exchange in which receipt by A of the installment obligation will not be treated as a dividend to A. Because, for purposes of section 453(f)(6), this transaction is treated as a direct exchange between P and A, no gain or loss is recognized by S with respect to the P obligation. Assume A's basis in the T shares exchanged by A was $150,000. A's basis is allocated first to the permitted property (P shares) received, up to the fair market value of $100,000. A's excess basis is $50,000 ($150,000–$100,000). Since the installment obligation is the only boot received by A in the exchange, the entire excess basis of $50,000 is allocable to it. Under the installment method, the contract price is $300,000 (face amount of the installment obligation), the gross profit is $250,000 (contract price less $50,000 excess basis allocated to the installment obligation), and the gross profit ratio is 5/6 ($250,000/$300,000). A recognizes no gain until payments are received on the installment obligation. As A receives payments (exclusive of interest) on the installment obligation, 5/6ths of each payment will be gain attributable to the exchange and 1/6th of each payment will be recovery of basis. A will hold the permitted property (P stock) received in the exchange at a basis of $100,000.

Example (2). The facts are the same as in example (1). B, who also owns 10% of the stock of T directly and owns no other stock of T by attribution within the meaning of 318(a), exchanges the T shares in the merger for a $400,000 installment obligation issued by P (bearing adequate interest). Although section 356(a)(1) will not apply to this exchange because B receives no P stock in the transaction and the character of the gain is determined under section 302(a), for purposes of section 453 and paragraph (a) of this section, B is treated as having sold the T shares to P in exchange for P's installment obligation. B will report the installment sale on the installment method unless B elects under paragraph (e) of this section not to report the transaction on the installment method. If, by reason of constructive ownership of T shares under section 318(a) and failure to meet the requirements of section 302(c)(2), the character of the transaction as to B were determined under section 302(d), section 453 would not apply to the exchange by B.

Example (3). The facts are the same as in examples (1) and (2), except that the P stock is voting stock and S merges into T in a reorganization described in section 368(a)(2)(E). The results are the same as in examples (1) and (2).

Example (4) (i). T Corporation and larger P Corporation are unrelated public corporations the stock of each of which is widely held. A is a stockholder of T. S Corporation is a wholly owned subsidiary of P. On December 31, 1981, pursuant to a plan of reorganization which provides for a "note option" election, T merges with and into S. In the merger, A exercises the note option and the T shares held by A are exchanged for a $30,000 installment obligation (bearing adequate interest) issued by P, 1,000 P shares (worth $10 per share on the date of merger), and a non-negotiable certificate evidencing a right to receive (within 5 years from the date of merger) up to 1,000 additional P shares (plus adequate interest) if certain earnings conditions are satisfied. Neither the installment obligation nor the certificate evidencing the right to receive additional P shares is readily tradable within the meaning of § 1.453–1A(c)(4)(iv)(C). There is a valid business reason for not issuing all of the P shares immediately. Certain of the other T shareholders exercise the note option and exchange their T shares for a similar package. Other T shareholders do not exercise the note option and receive in the merger P shares plus a non-negotiable right to receive up to an equal number of additional P shares (plus adequate interest) within 5 years. In the aggregate, the total outstanding T shares are exchanged for 20% P installment obligations, 40% P shares, and rights to receive an equal number of additional P shares within 5 years. The merger of T into S qualifies as a reorganization under section 368(a)(1)(A) and (a)(2)(D). P is a qualifying corporation, the P shares received and which may subsequently be received by A are permitted property, and the exchange to which A is a party is a section 356(a)(1) exchange.

(ii) Assume A's basis in the T shares exchanged by A was $25,000. A's basis is allocated first to permitted property (P shares) up to fair market value. In the exchange A has received 1,000 P shares (worth $10,000) and may receive up to an additional 1,000 P shares in the future. In

allocating A's basis, it is assumed that all contingencies contemplated by the merger agreement will be met or otherwise resolved in a manner that will maximize the consideration A will receive. It is further assumed that each P share, when received, will have a fair market value equal to the fair market value ($10) of a P share at the date of merger. Accordingly, since A may receive a maximum of 2,000 P shares, $20,000 (2,000 × $10) of A's basis will be allocated to the 1,000 P shares A has received ($10 per share) and to A's right to receive up to an additional 1,000 P shares (at $10 per share). A's excess basis of $5,000 ($25,000–$20,000) is allocated to the $30,000 P installment obligation.

(iii) In 1983 the earnings condition is fully satisfied and A receives an additional 1,000 P shares (plus adequate interest). Each P share held by A has a basis of $10.

(iv) Assume instead that the earnings condition is only party satisfied and, by the close of 1986, A has received only an additional 600 P shares and is not entitled to receive any further P shares. Initially, each P share received by A was assigned a basis of $10. Of A's $25,000 basis in the T shares exchanged, $4,000 ($20,000 initially allocated to P shares received and to be received less $16,000 (1,600 P shares × $10)) now must be accounted for. The $4,000 of remaining basis will be assigned to the P shares then held by A.

Thus, if A continues to hold all 1,600 P shares, A's basis in each P share will be increased by $2.50 ($4,000 divided by 1,600 P shares). If A previously sold 800 P shares and retains only 800 P shares, A's basis in each retained P share will be increased by $5 ($4,000 divided by 800 P shares). If A retains no P shares, and if all of the additional 600 P shares were issued to A and sold by A before the final year of the five year earn-out term (*i.e.*, by the end of 1985), A's remaining basis of $4,000 will be added to the basis at which A holds the unpaid portion of the P installment obligation (up to but not in excess of the maximum amount remaining payable under that obligation less A's remaining basis in the installment obligation determined immediately before the addition to basis). If A has previously disposed of the P installment obligation, so that A holds neither P shares nor the P installment obligation to which the remaining $4,000 of A's basis can be allocated, A will be allowed a $4,000 loss in 1986. Similarly, if A continues to hold the P installment obligation but the facts are such that the maximum amount thereafter payable under the obligation is only $3,000 in excess of A's basis in the obligation determined immediately before assignment of A's remaining $4,000 basis, $3,000 of that remaining basis would be assigned to the installment obligation and P would be allowed a $1,000 loss in 1986.

Example (5). Pursuant to a plan to acquire all the stock of T corporation, P purchases 90% of the T stock for cash. To acquire the remaining 10% of T stock P creates S corporation and transfers P stock and P's newly issued installment notes to S in exchange for all of S's stock. The P notes are not readily tradable. Thereafter S merges into T, the P stock and P's installment notes are distributed to the T minority shareholders, and the S stock held by P is automatically converted into T stock. Assume that for federal tax purposes the existence of S is disregarded and the transaction is treated as a sale of T stock to P in exchange for P stock and P's installment notes. The minority shareholders will report the gain realized on the receipt of the P installment notes on the installment method unless they elect otherwise. The receipt of P stock will be treated as a payment in the year of sale.

Example (6). The facts are the same as example (5) except P transferred only P's installment notes to S and only these notes were distributed to T minority shareholders. As in example (5) the transaction is treated as a sale of T stock to P in exchange for P's installment notes. Each minority shareholder realizing gain on the receipt of the installment notes will report the gain on the installment method unless electing otherwise.

(3) *Other partial recognition exchanges*—(i) *In general.* The provisions of paragraph (f)(3) of this section apply to exchanges not described in paragraph (f) (1) or (2) of this section in which a taxpayer, in exchange for appreciated property, receives both permitted property (*i.e.*, property with resepct to which no gain or loss would be recognized but which, in the hands of the taxpayer, would have as basis for determining gain or loss the same basis in whole or in part as the property exchanged) and boot that includes an installment obligation issued by the other party to the exchange. Ordinarily, the installment method rules set forth in paragraph (f)(1) (ii) and (iii) of this section will apply to an exchange described in paragraph (f)(3) of this section subject to such variations, if any, as may be required under the applicable provisions of the Code.

(ii) *Exchanges to which section 351 applies.* If a taxpayer receives, in an exchange to which section 351(b) applies (a "section 351(b) exchange"), an installment obligation that is not a security within the meaning of section 351(a), the installment obligation is boot and the stock and securities (within the meaning of section 351(a)) are permitted property (within the meanming of paragraph (f)(1)(ii) of this section). The taxpayer will report the installment obligation on the installment method and any other boot received will treated as a payment made in the year of the exchange. In applying the rules of paragraph (f)(1)(iii) of this section to a section 351(b) exchange the excess basis is the amount, if any, by which the taxpayer's basis in the property transferred (plus and cash transferred) by the taxpayer exceeds the sum of the transferred liabilities which are not treated as money received under section 357 plus the fair market value of permitted property received by the taxpayer. In determining selling price and total contract price, transferred liabilities which are not treated as money received under section 357 shall be disregarded. For purposes of paragraph (f)(3)(ii) of this section, transferred liabilities are liabilities described in section 357(a)(2). Solely for the purpose of applying section 358(a)(1), the taxpayer shall be treated as if the taxpayer elected not to report receipt of the installment obligation on the installment method. Under section 362(a)(1) the corporation's basis in the property received from the taxpayer is the taxpayer's basis in the property increased by the gain recognized by the taxpayer at the time of the exchange. As the taxpayer recognizes gain on the installment method, the corporation will increase its basis in the property by an amount equal to the amount of gain recognized by the taxpayer.

(iii) *Examples.* The provisions of paragraph (f)(3) of this section are illustrated by the following examples. In each example, assume that adequate stated interest means both a reasonable rate of interest within the meaning of any applicable regulation promulgated under section 385 and a rate of interest not less than the test rate prescribed in the regulations under section 483, and that the debt to equity ratio of the issuing corporation is a permissible ratio under any applicable regulation promulgated under section 385.

Example (1). A owns Blackacre, unimproved real property, with a basis of $300,000. The fair market value of Blackacre is $700,000. Blackacre is encumbered by a longstanding mortgage of $200,000. A transfers Blackacre, subject to the mortgage, to newly organized X corporation. A receives in exchange all of the stock of X, worth $400,000, and a $100,000 installment obligation (bearing adequate stated interest) issued by X. A realizes $400,000 of gain on the exchange. The installment obligation calls for a single payment of the full $100,000 face amount three years following the date of issue. The installment obligation is not a "security" within the meaning of section 351(a), and thus the exchange by A is a transaction described in section 351(b). The installment obligation is boot received by A in the exchange and the X stock is permitted property received by A in exchange. In applying the provisions of paragraph (f)(1) (ii) and (iii) of this section to a section 351(b) exchange, reference is required to section 357(a) under which the $200,000 mortgage liability is not treated as money or other property received by A in the exchange, and to section 358 (a)(1) under which the basis of the X stock in the hands of A will be determined. These rules apply as follows: Neither receipt of the X stock nor relief of the mortgage encumbrance is treated as payment to A and thus A will recognize no gain in the

year of the exchange. A's basis of $300,000 in Blackacre is reduced by the $200,000 mortgage from which A is deemed relieved in the exchange. The remaining basis of $100,000 is allocated to the X stock (but not in excess of the fair market value of the X stock); since the fair market value of the X stock is $400,000, the basis of the X stock in the hands of A is $100,000. Accordingly, in A's hands the installment obligation has a basis of zero. In the hands of X, the initial basis of Blackacre, determined under section 362(a), is $300,000 (the basis of the property in the hands of A), increased by the amount of gain recognized by A at the time of the transfer ($0)). As A receives payments on the installment obligation and recognizes gain, X's basis in Blackacre will be increased, at that time, in an amount equal to the gain recognized by A. Thus, if the $100,000 installment obligation is paid in full on the third anniversary date, A will recognize gain, of $100,000 (because A's basis in the installment obligation is zero) and X at that time will increase the basis at which it holds Blackacre by $100,000. If in the third year X had sold the property for cash before making payment on the installment obligation, X would recognize a loss of $100,000 when X paid the obligation in that amount to A on the third anniversary date.

Example (2). B owns Whiteacre, unencumbered, unimproved real property, with a basis of $250,000. The fair market value of Whiteacre is $300,000. A transfers Whiteacre to newly organized Y corporation in exchange for all of the stock of Y corporation (worth $200,000) and a $100,000 installment obligation (bearing adequate interest). The installment obligation is payable in full on the second anniversary of the date of issue. The installment obligation is not a "security" within the meaning of section 351(a), and thus the transaction is a section 351 (b) exchange. Applying the rules summarized in example (1) to the facts of this case, receipt of the installment obligation is not treated as payment to A. $200,000 of A's basis of $250,000 in Whiteacre is allocated to the Y stock (equal to the fair market value of the Y stock), and the excess basis of $50,000 is allocated to the installment obligation. In the hands of Y, the basis of Whiteacre initially is $250,000, and will be increased by $50,000 when the installment obligation is paid and A recognizes gain of $50,000.

Example (3). D owns a machine which is unencumbered 5-year recovery property with an adjusted basis of $500,000. The recomputed basis (as defined in section 1245(a)(2)) of the machine in the hands of D is $1 million. The fair market value of the machine also is $1 million. D transfers the machine to newly organized X Corporation, and E, an unrelated individual, simultaneously transfers property worth $1 million to X Corporation. D receives in exchange 400 shares of X common stock worth $400,000, a $400,000 15-year debenture issued by X (worth its face amount), and a $200,000 installment obligation (bearing adequate interest) issued by X. The installment obligation calls for a single payment of the full $200,000 face amount two years following the date of issue. E receives in the exchange 1,000 shares of X common stock worth $1 million. D and E are in control (as defined in section 368(c)) of X immediately after the exchange. The debenture received by D is a "security" within the meaning of section 351(a), but the installment obligation received by D is not a "security" within the meaning of that section and thus the exchange by D is a transaction described in section 351(b). The installment obligation is boot received by D in the exchange and the X stock and X debenture are permitted property received by D in the exchange. Since the aggregate fair market value ($800,000) of the X stock ($400,000) and the X debenture ($400,000) received by D exceeds D's $500,000 adjusted basis in the machine, all of that basis is allocated proportionately among the items of permitted property. This, D will hold the X stock with a basis of $250,000. Since there is no excess basis, in the hands of D the installment obligation has a basis of zero. In the hands of X, the adjusted basis of the machine remains $500,000. When D receives payment from X on the $200,000 installment obligation, D will recognize gain of $200,000, all of which gain will be treated as ordinary income, See sections 1245(a)(1) and 453B(a). At that time, X's adjusted basis in the machine will be increased in an amount equal to the $200,000 gain recognized by D.

Example (4). In 1976 H and W purchased Blackacre as their principal residence for $50,000. In 1981 H and W, both of whom are less than 55 years of age, sold Blackacre to A for $90,000: $15,000 cash, A's assumption of the $40,000 mortgage, and A's promise to pay H and W $7,000 (with adequate stated interest) in each of the next 5 years. Within 2 years of the sale of Blackacre, H and W acquire. Whiteacre, an unencumbered property, which will be their principal residence, for $80,000. Of the $40,000 gain that H and W realized upon the sale of Whiteacre, $30,000 will not be recognized pursuant to the provisions of section 1034. Unless H and W elect not to report the transaction on the installment method, they will treat the $10,000 gain to be recognized as the gross profit for purposes of calculating the gross profit ratio. Accordingly the gross profit ratio is ⅓ ($10,000 gross profit/$50,000 contract price) and H and W will report as gain $3,000 (⅓×$15,000) in the year of the sale and $1,400 (⅓×$7,000) in each of the next five years.

(4) *Installment obligations received as distributions in redemptions of stock pursuant to section 302(a).* If a corporation redeems its stock and the redemption is treated as a distribution in part or full payment in exchange for the stock under section 302(a), then an installment obligation which meets the requirements of section 453 and is distributed in the redemption shall be reported on the installment method unless the taxpayer elects otherwise.

Example. A owns 10% of the Stock of X corporation and is not considered as owning (under section 318(a)) any other shares of X corporation. X redeems all of A's X shares and distributes its installment obligation to A in full payment. The reduction is treated as a sale of the X shares by A under section 302(b)(3). A will report any gain realized in the redemption on the installment method unless A elects otherwise.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 84-11830 Filed 5-2-84; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 89

[CGD 83-028]

Inland Navigation Rules; Implementing Rules

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: On December 8, 1983, the Coast Guard published a notice of proposed rulemaking proposing to extend the Western Rivers provisions of the Inland Navigation Rules (or Inland Rules) to the Tennessee-Tombigbee Waterway and several rivers (48 FR 54998). The proposed rule at subsection (i) of § 89.25, Title 33, Code of Federal Regulations would have included the Apalachicola River as far south as the John Gorrie Memorial Bridge within the area of applicability of the Western Rivers provisions. The portion of the Apalachicola River from its confluence with the Jackson River to the John Gorrie Memorial Bridge is part of the Intracoastal Waterway upon which the Inland Rules now apply. This supplemental notice provides that only that portion of the Apalachicola River above its confluence with the Jackson River will fall under the Western Rivers provisions of the Inland Navigation Rules.

DATE: Comments must be received on or before June 18, 1984.

ADDRESSES: Comments should be submitted to Commandant (G-CMC/44), (GGD 83-028), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593. Comments may be delivered to and will be available for inspection and copying at the Marine Safety Council, U.S. Coast Guard Headquarters, Room 4402, 2100 2nd Street SW., Washington, D.C. between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Kent Kirkpatrick, Marine Information and Rules Branch, Office of Navigation, (202) 245-0108.

SUPPLEMENTARY INFORMATION:
Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 83-028), and the specific section to which their comments apply, and give reasons for each comment. Receipt of each comment will be acknowledged if a stamped self-addressed envelope or postcard is enclosed.

The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one will be held if requested by anyone raising a genuine issue.

Drafting Information

The principal persons involved in the drafting of this proposal are LCDR Kent Kirkpatrick, Project Manager, Office of Navigation, and Lieutenant Dave Shippert, Project Attorney, Office of Chief Counsel.

Discussion of Proposed Regulations

The Inland Navigational Rules Act of 1980 (33 U.S.C 2001-2073) establishes navigation rules that apply to all vessels operating on the inland waters of the United States and on the Great Lakes to the extent that there is no conflict with Canadian law. Inland Rules 9(a)(ii) and 15 (b) are unique because they apply only to the Great Lakes, Western Rivers, or waters specified by the Secretary of the department in which the Coast Guard is operating. Rule 24(i) is also unique because it applies only to the Western Rivers or waters specified by the Secretary. These three Rules constitute the special provisions for navigation on the Western Rivers. The term "Western Rivers" is defined by Rule 3(1) as essentially the Mississippi River and its tributaries. The Secretary has delegated the authority to implement the Inland Rules to the Commandant of the Coast Guard.

The Tennessee-Tombigbee Waterway will be connected to the Tennessee River in late 1985. The Tennessee River is a tributary of the Mississippi River. Therefore, it is defined as a Western River subject to the special provisions in Rules 9(a)(ii), 15(b), and 24(i). The Tennessee-Tombigbee Waterway, however, does not fit the Western Rivers definition. Unless the special Western Rivers provisions are extended to the Tennessee-Tombigbee Waterway, navigators will be required to operate under different sets of rules.

When the Tennessee-Tombigbee Waterway is connected to the Tennessee River, vessels will be able to navigate from the Ohio River to Mobile, Alabama, without traveling on the Mississippi River. The type of vessel traffic which will use this route will be similar to the type of traffic which now transmits the Western Rivers. Also, much of this new route will resemble the Western Rivers in physical characteristics. It would be confusing and impractical for a vessel navigating on the Western Rivers to have to change its lighting and philosophy of operation when utilizing this new route.

A vessel traveling to Mobile, Alabama, from the Ohio River using the new route will transit the Tennessee River, the Tennessee-Tombigbee Waterway, the Tombigbee River, and the Mobile River. The Black Warrior River joins the Mobile River and the Coosa and Alabama Rivers empty into the Mobile River. It would be similarly confusing and impractical to apply different navigation rules in these connecting rivers.

The Rules of the Road Advisory Council, at the December 7, 1982, meeting, recommended that the Coast Guard initiate rulemaking to extend applicability of Rules 9(a)(ii), 15(b), and 24(i) to the above-mentioned waters. The Council also recommended that Apalachicola, Flint, and Chattahoochee Rivers receive a similar designation. These waters are similar to the Western Rivers in many respects. The uniform application of the Western Rivers provisions on these similar bodies of water would enhance navigation safety.

The notice of proposed rulemaking published on December 8, 1983, purported to extend the Western Rivers provisions to the Apalachicola River as far south as the John Gorrie Memorial Bridge. However, since that part of the Apalachicola River south of its confluence with the Jackson River is part of the Intracoastal Waterway, it should not be subject to the additional Western Rivers provisions of the Inland Rules. Only two comments were received on the original proposal. Both comments were in favor of extending the Western Rivers provisions for the purposes of consistency and standardization. Neither comment related to the Apalachicola River. The nature of the comments, however, indicates agreement with the general proposition that, to the extent possible, only one set of rules should apply on one inland waterway system. Therefore, this supplemental notice will delete that portion of the Apalachicola River which coincides with the Intracoastal Waterway from the area of applicability of the Western Rivers provisions of the Inland Rules.

This supplemental proposal, with the exception of subsection (i) of Part 89.25 is identical to that contained in the original notice of proposed rulemaking (48 FR 54998, December 8, 1983) and proposes to restructure Part 89 of Title 33, Code of Federal Regulations. A new Subpart A would contain the existing alternative compliance procedures and a new Subpart B would designate those waters on which Rules 9(a)(ii), 15(b), and 24(i) apply.

Regulatory Evaluation

These proposed regulations are considered to be non-major under Executive Order 12291 and non-significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal has been found to be so minimal that further evaluation is unnecessary. The proposed regulations only change the definition of the waterways to which the Western Rivers provisions of the Inland Navigation Rules apply and have no economic impact upon the users. Since the impact of this proposal 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 89

Navigation (water), Waterways.

PART 89—INLAND NAVIGATION RULES: IMPLEMENTING RULES

For the reasons stated above, the Coast Guard proposes to amend Part 89 of Title 33, Code of Federal Regulations as follows:

1. Add a Table of Contents to Part 89 to read as follows:

Subpart A—Certificate of Alternative Compliance

Sec.
89.1 Definitions.
89.3 General.
89.5 Application for a certificate of alternative compliance.
89.9 Certificate of alternative compliance: Contents.
89.17 Certificate of alternative compliance: Termination.
89.18 Record of certification of vessels of special construction or purpose.

Subpart B—Waters Upon Which Certain Inland Navigation Rules Apply

89.21 Purpose.
89.23 Definitions.
89.25 Waters upon which Inland Rules 9(a)(ii), 15(b), and 24(i) apply.

Authority: Sec. 3, Pub. L. 96–591, 33 U.S.C. 2071; 49 CFR 1.46(n)(14).

2. Add a new Subpart A heading immediately preceding § 89.1 to read as follows:

Subpart A—Certificate of Alternative Compliance

§ 89.1 [Amended]

3. In the first sentence of § 89.1, change the word "part" to the word "Subpart".

4. Add a new Subpart V following § 89.18 to read as follows:

Subpart B—Waters Upon Which Certain Inland Rules Apply

§ 89.21 Purpose.

Inland Navigation Rules 9(a)(ii), 15(b), and 24(i) apply to the "Western Rivers", as defined in Rule 3(l), and to additional specifically designated waters. The purpose of this Subpart is to specify those additional waters upon which Inland Navigation Rules 9(a)(ii), 15(b), and 24(i) apply.

§ 89.23 Definitions.

As used in this Subpart:

"Inland Rules" refers to the Inland Navigation Rules contained in the Inland Navigational Rules Act of 1980 (Pub. L. 96–591, 33 U.S.C. 2001 et. seq.) and the technical annexes established under that act.

§ 89.25 Waters upon which Inland Rules 9(a)(ii), 15(b), and 24(i) apply.

Inland Rules 9(a)(ii), 15(b), and 24(i) apply on the following waters,

(a) Tennessee-Tombigbee Waterway;

(b) Tombigbee River;

(c) Black Warrior River;

(d) Alabama River;

(e) Coosa River;

(f) Mobile River above the Cochrane Bridge at St. Louis Point;

(g) Flint River;

(h) Chattahoochee River; and

(i) The Apalachicola River above its confluence with the Jackson River.

Dated: April 30, 1984.

H. H. Kothe,

Captain, U.S. Coast Guard, Acting Chief, Office of Navigation.

[FR Doc. 84–11951 Filed 5–2–84; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD3–84–17]

Regatta; Night in Venice, Great Egg Harbor Bay, Ocean City, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed rulemaking.

SUMMARY: Special Local Regulations are being proposed for the Night in Venice Regatta being sponsored by the city of Ocean City, New Jersey held on July 14, 1984 between the hours of 6:00 p.m. and 10:00 p.m. The Coast Guard is considering the issuance of this regulation to provide for the safety of participants and spectators on navigable waters during the event.

DATE: Comments must be received on or before June 18, 1984.

ADDRESSES: Comments should be mailed to Commander (b), Third Coast Guard District, Governors Island, New York, NY 10004. The comments will be available for inspection and copying at the Boating Safety Office, Building 110, Governors Island , New York, NY. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LTJG D. R. Cilley, (212) 668–7974.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD3–84–17) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LTJG D. R. Cilley, Project Officer, Boating Safety Office, and Ms. MaryAnn ARISMAN, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Proposed Regulations

The annual Night in Venice Boat Parade is a Marine Parade to be held on Great Egg Harbor Bay on July 14, 1984. It is sponsored by the city of Ocean City, New Jersey and is well known to the boaters and residents of this area. Approximately 800 spectator craft are expected to watch the 125 participating vessels in the boat parade. The sponsor is providing in exess of 6 patrol vessels in conjunction with Coast Guard and local resources to patrol this event. In order to provide for the safety of life and property, the Coast Guard will restrict vessel movement in the marine parade area and will establish special anchorages for what is expected to be a large spectator fleet. The parade route has not been altered from that of previous years and there have not been any problems in the past with the Special Local Regulations issued by the Coast Guard; therefore, this regulation remains virtually unchanged from the one issued last year.

Economic Assessment and Certification

This proposed regulation is considered to be nonsignificant in accordance with DOT Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5). Its economic impact is expected to be minimal since this event will draw a large number of spectator craft into the area for the duration of the event. This should easily compensate area merchants for the slight inconvenience of having navigation restricted. Based upon this assessment it is certified in accordance with Section 605(b) of the Regulatory Flexibility Act (5 U.S.C 605(b)) that this regulation will not have a significant ecónomic impact on a substantial number of small entities. Also, the regulation has been reviewed in accordance with Executive Order 12291 of February 17, 1981, on Federal Regulation and has been determined not to be a major rule under the terms of that order.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations by adding a temporary § 100.35–301 to read as follows:

§ 100.35–301 Night in Venice, Great Egg Harbor Bay, City of Ocean City, NJ.

(a) *Regulated Area:* The southwest side of Ship Channel from Buoy C, seaward to Point of Shoal Buoy (red and black nun), then south to Great Egg Waterway Daybeacon 28.

(b) *Effective Period:* This regulation will be effective from 4:30 p.m. to 10:30 p.m. on July 14, 1984. In case of postponement, the raindate will be July 15, 1984 and this regulation will be in effect for the same time period.

(c) *Special Local Regulations:*

(1) All persons or vessels not registered with sponsor as participants

or not part of the regatta patrol are considered spectators.

(2) No person or vessel may enter or remain in the regulated area unless participating in the event, or authorized to be there by the sponsor or Coast Guard patrol personnel.

(3) Spectator vessels must be at anchor within a designated spactator area or moored to a waterfront facility within the regulated area in such a way that they shall not interfere with mariners transiting Great Egg Harbor Bay. The spectator fleet shall be held behind buoys or committee boats provided by the sponsor in the following areas:

(i) Northwestward of a line of buoys and daybeacons between Great Egg Waterway Point of Shoal Buoy (red and black nun) and the 9th Street Route 52 Bridge in Ocean City, New Jersey, including Great Egg Waterway Daybeacons 2 and 4, but shall not extend northwestward of the Great Egg Waterway Point Buoy.

(ii) Westward of a line of daybeacons between Great Egg Waterway Daybeacons 10 and 14.

(iii) Within the area around the shoals and islands in Beach Thoroughfare between Great Egg Waterway Daybeacons 15 and 21. This area shall at no point be closer than 150 yards from the line of bulkheads and lagoon entrances in Ocean City, New Jersey.

(4) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(5) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

(46 U.S.C. 454; 49 U.S.C. 1655(b); 49 CFR 1.46(b) and 33 CFR 100.35)

Dated: April 20, 1984.

W. E. Caldwell,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 84-11946 Filed 5-2-84; 8:45 am]

BILLING CODE 4910-14-M

PANAMA CANAL COMMISSION

35 CFR Part 111

Revised Shipping and Navigation Rules

AGENCY: Panama Canal Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Changes in the requirements concerning the type of flag used to mark the location of diving operations in the Panama Canal are proposed in order to conform to Occupational Safety and Health Administration requirements. It is also proposed to delete other provisions rendered surplusage by this change.

DATE: Written comments should be submitted or or before June 4, 1984.

ADDRESSES: Send comments to: Panama Canal Commission, 425 13th Street N.W., Rm. 312, Washington, D.C. 20004 or Panama Canal Commission, Office of General Counsel, APO Miami, Florida 34011.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rhode, Jr., Secretary, Panama Canal Commission, (202) 724-0104, or Mr. John L. Haines, Jr., General Counsel, Panama Canal Commission, telephone in Balboa Heights, Republic of Panama, 52-7511.

SUPPLEMENTARY INFORMATION: By a document published on November 22, 1983 (48 FR 52703), the Panama Canal Commission made comprehensive revisions to the rules for prevention of collisions in the Panama Canal. The purpose of these revisions was to standardize the rule for prevention of collisions, using the International Regulations for Preventing Collisions at Sea as a model and supplementing them where necessary, with rules of particular application in the Panama Canal. The changes in the collision rules are to become effective on April 1, 1984. The purpose of this document is to make an additional substantive change to the collision rules.

The present regulations concerning diving require the use of a U.S. Diver's Flag to mark industrial or commercial diving operations, section 111.38(a), and recreational diving, § 111.38(b). This section is being revised to require the use of the International Code Flag "A", in keeping with the Occupational Health and Safety Administration's standards for marking diving operations. Paragraph (c) requires that vessels approaching or passing an area where commercial, industrial, or recreational diving operations are underway to reduce speed sufficiently to avoid creating a dangerous wash or wake.

Section 111.27(e) is also being revised to conform to the changes made in § 111.38.

The Commission has determined that this rule does not constitute a major rule within the meaning of Executive Order 12291 dated February 17, 1981 (47 FR 13193). The bases for that determination are, first, that the rule, when implemented, would not have an annual effect on the economy of $100 million or more per year. Secondly, the rule would not result in a major increse in costs or prices for consumers, individual industries or local governmental agencies or geographic regions. Finally, the agency has determined that implementation of the rule would not have a significant adverse effect on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Further, the Commission has determined that this proposed rule is not subject to the requirements of section 603 and 604 of Title 5, United States Code, in that its promulgation will not have a significant impact on a substantial number of small entities, and the Administrator of the Commission so certifies pursuant to 5 U.S.C. 605(b).

List of Subjects in 35 CFR Part 111

Vessels, Anchorage grounds, Harbors, Marine safety, Maritime carriers, Navigation (Water).

PART 111—[AMENDED]

Accordingly, it is proposed to amend Part 111 as follows:

1. Section 111.38 is revised to read as follows:

§ 111.38 Diving operations (Rule 38).

(a) When industrial or commerical diving operations are being conducted in the Canal, or waters adjacent thereto, a revolving red light shall be displayed in all weathers from sunset to sunrise from the diving barge or other craft serving the diver. The light shall be so mounted and of sufficient intensity as to be visible for not less than 1 mile. The International Code Flag "A", not less than 18 inches in height and of standard proportions, shall be displayed from such craft by day where it may best be seen. A rigid replica of this flag may be substituted in lieu thereof.

(b) Recreational skin diving in waters of the Canal, including Gaillard Cut and the channel through Gatun and Miraflores Lakes and in the waters of all ships' anchorages, is prohibited unless authorized in writing by the Chief, Navigation Division or his designee.

Authorization shall not be given for skin diving at night. When recreational skin diving activities are under way in the Canal, or waters adjacent thereto, a flag of the type described in paragraph (a) of this section shall be displayed from the craft serving the skin diver in a manner which allows all-round visibility; however, the flag displayed for recreational diving shall be not less than 12 inches in height and of the standard proportions.

(c) Vessels approaching or passing an area where diving activities are under way shall reduce speed sufficiently to avoid creating a dangerous wash or wake.

2. In § 111.27, paragraph (e) is revised to read as follows:

§ 111.27 Vessels not under Command or Restricted in their Ability to Maneuver (Rule 27).

* * * * *

(e) Whenever the size of a vessel engaged in diving operations makes it impracticable to exhibit all lights and shapes prescribed by paragraph (d) of this section, the lights and shapes prescribed by § 111.38 shall be exhibited.

* * * * *

Authority: 22 U.S.C. 3811, E.O. 12215.

Dated: April 18, 1984.

D. P. McAuliffe,

Administrator, Panama Canal Commission.

[FR Doc. 84-11890 Filed 5-2-84; 8:45 am]

BILLING CODE 3640-04-M

FEDERAL MARITIME COMMISSION

46 CFR Part 505

[Docket No. 84-20]

Compromise, Assessment, Settlement and Collection of Civil Penalties Under the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to revise its rules governing the assessment, compromise, settlement, and collection of claims to make certain changes suggested by the Commission's experience under the existing rules. The changes proposed to Part 505 are designed to establish criteria and procedures for the handling of penalty claims in an expeditious manner, while at the same time, insuring that all persons against whom such claims are made are justly and fairly treated. Additionally, it is proposed herein to make failure to refusal to pay a civil penalty a possible ground for revocation or suspension of an Ocean Freight Forwarder's license.

DATE: June 18, 1984.

ADDRESS: Comments (original and twenty copies) to: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: John Robert Ewers, Director, Bureau of Hearing Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5783.

SUPPLEMENTARY INFORMATION: The Commission is proposing a revision of the rules in 46 CFR Part 505 which govern the handling of penalty claims arising under the Shipping Act, 1916, the Intercoastal Shipping Act, 1933, and the Shipping Act of 1984.

Previously, by separate rulemaking, the Commission issued amendments to Part 505 in order to reflect the enactment of the Shipping Act of 1984 and to make certain corrections and organizational changes. Those rules are final rules to become effective on June 18, 1984.

The proposed amendments here are changes which the Commission concludes will result in a more efficient and just method for dealing with penalty claims arising under the shipping statutes mentioned above. The comment period established is 45 days to give the public adequate opportunity to provide the Commission with their views and should result in the finalization of these proposed rules shortly after June 18, 1984, after the other, final rules become effective.

Each change to Part 505 proposed here is discussed below:

The Title of Part 505 is proposed to be changed (shortened) to: "Compromise, Assessment, Settlement and Collection of Civil Penalties."

Section 505.1 is proposed to be amended to delete the sentence referring to 4 CFR part 101-105, which is considered unnecessary in view of proposed changes being made to §§ 505.3 and 505.4.

In § 505.2, self explanatory definitions of terms such as "includes" and "and" are being proposed in paragraph (h), and a definition of "settlement", as used in the part, is also being added in paragraph (f).

In paragraph (a) of § 505.3, the Commission is proposing to incorporate the specific language of section 13 of the Shipping Act of 1984, e.g., "after notice and opportunity for hearing". The provision that assessment proceedings are governed by the Rules of Part 502 is being retained.

Proposed paragraph (b) of § 505.3 again uses the specific language of section 13 of the Shipping Act of 1984, in establishing the criteria to be used by the Commission in determining the amount of the penalty to be assessed. When determining the amount of a civil penalty, therefore, the Commission would take into account "the nature, circumstances, extent and gravity of the violation committed and the policies for deterrence and future compliance with the Commission's rules and regulations." With respect to the person against who the claim is made, the Commission would consider the degree of culpability, history of prior offenses, ability to pay and such other matters as justice requires.

In paragraph (c) of § 505.3, the Commission is proposing to make reference to the 5-year limitation period for instituting a civil penalty action, which stems from 28 U.S.C. 2462 for the 1916 and 1933 Acts, as well as from section 13(f)(2) of the Shipping Act of 1984 [46 U.S.C. app. 1712(f)(2)] for violations of the latter statute. Additionally, the second sentence of proposed paragraph (c) merely provides that the Commission may institute an assessment proceeding, even after compromise negotiations under § 505.4, below, have begun, except where a final compromise agreement for the same violations have become effective.

Section 505.4 has been rewritten to expedite, and in some respects, clarify the procedures for compromise of civil penalties. The basic change [proposed in § 505.4(b)] is the elimination of two of the three "written demands" for payment of the claim called for in present § 505.4(a). The proposed provision calls for a single registered (or certified) letter informing the respondent of the specific violations on which the claim is based and the specific facts, dates and other elements necesary to identify the specific conduct constituting the violation. The letter shall state the amount of the penalty demanded, shall identify the Commission personnel with whom the demand may be discussed and include the deadlines for the institution and completion of compromise negotiations.

Proposed paragraph (c) of § 505.4 retains the existing request for compromise provision of present § 505.4(b), except that present § 505.4(b)(2) is proposed to be deleted, since the letter noticing the claim will include this information. In addition to the other matters which a respondent can submit at this stage, e.g., extenuating circumstances, etc., the Commission is proposing a specific reference to the opportunity to make voluntary disclosures, which would be

taken into consideration in mitigating the amount of a penalty and would further the Commission's enforcement program.

Proposed paragraph (d) of § 505.4 contains the additional criteria for compromise which would include litigation probabilities, cost of collecting claim, and such other matters of enforcement policy deemed relevant.

Proposed paragraph (e) of § 505.4, with the exceptions of certain language changes, retains the provisions for the disposition of claims now found in present § 505.4(c). Subparagraph (3), however, proposes a new provision to reflect the current practice of the issuance of press releases.

Present §§ 505.5 and 505.6 are proposed to be superseded by proposed §§ 505.3(c) and 505.4(f), which are intended to provide, modify and clarify any mutual exclusivity as between the assessment and compromise procedures. Proposed paragraph (f) of § 505.4 is intended to preempt, by formal proceeding (where initiated), any informal compromise negotiations, except by specific order of the Commission. The settlement provisions of part 502, the Rules of Practice and Procedure, are, of course, still applicable to such a docketed proceeding.

Proposed paragraph (g) of § 505.4 retains the delegation of compromise authority to Hearing Counsel.

Besides numbering changes, proposed § 505.5 tracks current § 505.7, except that in proposed paragraph (2), specific reference has been made to the payment of interest in installment payments to reflect current practice. This paragraph is also proposed to be amended to allow forms of payment other than by check, such as by electronic transfer, where feasible. Proposed paragraph (c) provides that a default in payment of a penalty may be grounds for suspension or revocation of a freight forwarder's license, after notice and opportunity for hearing. This new provision is also contained in the interim rules to amend 46 CFR Part 510, Licensing of Ocean Freight Forwarders, which has been published separately.

The forms in Appendixes A and B are being changed slightly to clarify language and to reflect current practices.

It is believed that these proposed amendments will aid the Commission in the discharge of its enforcement responsibilities while insuring just and fair treatment of those subject to its jurisdiction.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), the Commission certifies that this proposed rule will not, if adopted, have a significant impact on a substantial number of small business entities.

List of Subjects in 46 CFR Part 505

Fines and penalties, Ocean freight forwarders.

Therefore, pursuant to 5 U.S.C. 553; sections 32 and 43 of the Shipping Act 1916 (46 U.S.C. app. 831 and 841a); and sections 11, 13 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1710, 1712 and 1716), the Commission proposes to revise 46 CFR Part 505 to read as follows:

PART 505—COMPROMISE, ASSESSMENT, SETTLEMENT AND COLLECTION OF CIVIL PENALTIES

Sec.

Authority: 5 U.S.C. 552, 553; secs. 32 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 831 and 841a); secs. 10, 11, 13, and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1709, 1710, 1712, and 1716).

§ 505.1 Purpose and scope.

The purpose of this part is to implement the statutory provisions of section 32 of the Shipping Act, 1916, and section 13 of the Shipping Act of 1984, by establishing rules and regulations governing the compromise, assessment, settlement and collection of civil penalties arising under certain designated provisions of the Shipping Act, 1916, the Intercoastal Shipping Act, 1933, the Shipping Act of 1984, and/or any order, rule or regulation (except for procedural rules and regulations contained in part 502 of this chapter) issued or made by the Commission in the exercise of its powers, duties and functions under those statutes.

§ 505.2 Definitions.

For the purposes of this part:

(a) "Assessment" means the imposition of a civil penalty by order of the Commission after a formal docketed proceeding.

(b) "Commission" means the Federal Maritime Commission.

(c) "Compromise" means the process whereby a civil penalty for a violation is agreed upon by the respondent and the Commission outside of a formal docketed proceeding.

(d) "Person" includes individuals, corporations, partnerships, and associations existing under or authorized by the laws of the United States or of a foreign country.

(e) "Respondent" means any person charged with a violation.

(f) "Settlement" means the process whereby a civil penalty or other disposition of the case for a violation is agreed to in a formal, docketed proceeding instituted by order of the Commission.

(g) "Violation" includes any violation of sections 14 through 21 (except section 16 First and Third) of the Shipping Act, 1916; section 2 of the Intercoastal Shipping Act, 1933; any provision of the Shipping Act of 1984; and/or any order, rule or regulation (except for procedural rules and regulations contained in part 502 of this chapter) issued or made by the Commission in the exercise of its powers, duties and functions under the Shipping Act, 1916, the Intercoastal Shipping Act, 1933, or the Shipping Act of 1984.

(h) Words in the plural form shall include the singular and vice versa; and words importing the masculine gender shall include the feminine and vice versa. The terms "includes" and "including" do not exclude matters not listed but which are in the same general class. The word "and" includes "or", except where specifically stated or where the context requires otherwise.

§ 505.3 Assessment of civil penalties; procedure; criteria for determining amount; limitations; relation to compromise.

(a) *Procedure for assessment of penalty.* The Commission may assess a civil penalty only after notice and opportunity for a hearing under section 22 of the Shipping Act, 1916, or sections 11 and 13 of the Shipping Act of 1984. The proceeding, including settlement negotiations, shall be governed by the Commission's Rules of Practice and Procedure in Part 502 of this Chapter. All settlements must be approved by the Presiding Officer. The full text of any settlement must be included in the final order of the Commission.

(b) *Criteria for determining amount of penalty.* In determining the amount of any penalties assessed, the Commission shall take into account the nature, circumstances, extent and gravity of the violation committed and the policies for deterrence and future compliance with the Commission's rules and regulations and the applicable statutes. The Commission shall also consider the respondent's degree of culpability,

history of prior offenses, ability to pay and such other matters as justice requires.

(c) *Limitations; relation to compromise.* When the Commission, in its discretion, determines that policy, justice or other circumstances warrant, a civil penalty assessment proceeding may be instituted at any time for any violation which occurred within five years prior to the issuance of the order of investigation. A proceeding may also be instituted at any time after the initiation of informal compromise procedures, except where a compromise agreement for the same violations under the compromise procedures has become effective under § 505.4(e).

§ 505.4 Compromise of penalties: relation to assessment proceedings.

(a) *Scope.* Except in pending assessment proceedings provided for in § 505.3, the Commission, when it has reason to believe a violation has occurred, may invoke the informal compromise procedures of this section.

(b) *Notice.* When the Commission considers it appropriate to afford an opportunity for the compromise of a civil penalty, it will, except where circumstances render it unnecessary, send a registered or certified demand letter to the respondent informing him of specific violation(s) on which the claim is based, including the particular facts, dates and other elements necessary for the respondent to identify the specific conduct constituting the alleged violation; the amount of the penalty demanded; and the names of Commission personnel with whom the demand may be discussed, if the person desires to compromise the penalty. The demand shall also include the deadlines for the institution and completion of compromise negotiations and the consequences of failure to compromise.

(c) *Request for compromise.* Any person receiving a demand provided for in paragraph (b) of this section may, within the time specified, deny the violation, or submit matters explaining, mitigating or showing extenuating circumstances, as well as make voluntary disclosures of information and documents.

(d) *Criteria for compromise.* In addition to the factors set forth in § 505.3(b), in compromising a penalty claim, the Commission may consider litigative probabilities, the cost of collecting the claim and enforcement policy.

(e) *Disposition of claims in compromise procedures.* (1) When the penalty is compromised, such compromise will be made conditional upon the full payment of the compromised amount upon such terms and conditions as may be allowed.

(2) When a penalty is compromised and the respondent agrees to settle for that amount, a compromise agreement shall be executed. (One example of such a compromise agreement is set forth as Appendix A to this part.) This agreement, after reciting the nature of the claim, will include a statement evidencing the respondent's agreement to the compromise of the Commission's penalty claim for the amount set forth in the agreement and will also embody an approval and acceptance provision which is to be signed by the appropriate Commission official. Upon compromise of the penalty in the agreed amount, a copy of the executed agreement shall be furnished to the respondent.

(3) Upon completion of the compromise, the Commission may issue a public notice thereof, the terms and language of which are not subject to negotiation.

(f) *Relation to assessment proceedings.* Except by order of the Commission, no compromise procedure shall be initiated or continued after institution of a Commission assessment proceeding directed to the same violations. Any offer of compromise submitted by the respondent pursuant to this section shall be deemed to have been furnished by the respondent without prejudice and shall not be used against the respondent in any proceeding.

(g) *Delegation of compromise authority.* The compromise authority set forth in this part is delegated to the Director, Bureau of Hearing Counsel.

§ 505.5 Payment of penalty: method; default.

(a) *Method.* Payment of penalties by the respondent shall be made by:

(1) A bank cashier's check or other instrument acceptble to the Commission;

(2) Regular installments, with interest where appropriate, by check or other instrument acceptable to the Commission after the execution of a promissory note containing a confess-judgment agreement (Appendix B); or,

(3) A combination of the above alternatives.

(b) All checks or other instruments submitted in payment of claims shall be made payable to the Federal Maritime Commission.

(c) *Default in payment.* Where a respondent fails or refuses to pay a penalty properly assessed under § 505.3, or compromised and agreed to under § 505.4, appropriate collection efforts will be made by the Commission, including, but not limited to referral to the Department of Justice for collection. Where such a defaulting respondent is a licensed freight forwarder, such a default may also be grounds for revocation or suspension of the respondent's license, after notice and opportunity for hearing, unless such notice and hearing have been waived by the respondent in writing.

Appendix A—Example of Compromise Agreement To Be Used Under 46 CFR 505.4

Compromise Agreement FMC File No.——

This Agreement is entered into between:

(1) the Federal Maritime Commission and,

(2) ————hereinafter referred to as respondent.

Whereas, the Commission is considering the institution of an assessment proceeding against respondent for the recovery of Civil penalties provided under the ———— Act ——, for —— alleged violations(s) of Section(s)————

Whereas, this course of action is the result of practices believed by the Commission to have been engaged in by respondent to wit; —, ————————————————

Whereas, the parties are desirous of expeditiously settling the matter according to the conditions and terms of this Agreement and wish to avoid the delays and expense which would accompany agency litigation concerning these penalty claims; and,

Whereas, Section ———— of the —— Act —— authorizes the Commission to collect and compromise civil penalties arising from the alleged violations) set forth and described above; and,

Whereas, the respondent has terminated the practices which are the basis of the alleged violation(s) set forth herein, and has instituted and indicated its willingness to maintain measures designed to eliminate, discourge and prevent these practices by respondent or its officers, employees and agents.

Now therefore, in consideration of the premises herein, and in compromise of all civil penalties arising from the violation(s) set forth and described herein that may have occurred between (date) and (date) , the undersigned respondent herewith tenders to the Federal Maritime Commission a bank cashier's check in the sum of $———, upon the following terms of settlement:

1. Upon acceptance of this agreement of settlement in writing by the Director of the Bureau of Hearing Counsel of the Federal Maritime Commission, this instrument shall forever bar the commencement or institution of any assessment proceeding or other claims for recovery of civil penalties from respondent arising from the alleged violations set forth and described herein, that have been disclosed by respondent to the Commission and that occurred between (date) and (date) .

2. The undersigned voluntarily signs this instrument and states that no promises or representations have been made to the respondent other than the agreements and consideration herein expressed.

3. It is expressly understood and agreed that this Agreement is not to be construed as an admission of guilt by undersigned respondent to the alleged violations set forth above.

4. Insofar as this agreement may be inconsistent with Commission procedures for compromise and settlement of violations, the parties hereby waive application of such procedures.

By _____
Title _____
Date _____

Approval and Acceptance

The above Terms and Conditions and Amount of Consideration are hereby Approved and Accepted:

By the Federal Maritime Commission.

(Hearing Counsel)

Director, Bureau of Hearing Counsel.

Date _____

Appendix B—Example of Promissory Note To Be Used Under 46 CFR 505.5

Promissory Note Containing Agreement for Judgment FMC File No. ——

For value received, _____ promises to pay to the Federal Maritime Commission (the Commission) the principal sum of $ _____ ($ ——) to be paid at the offices of the Commission in Washington, D.C., by bank cashier's or certified check in the following installments:

$ _____ ($ ——) within —— months of execution of the settlement agreement by the Director of the Bureau of Hearing Counsel;

$ _____ ($ ——) within —— months of execution of the agreement;

$ _____ ($ ——) within —— months of execution of the agreement;

[Further payments if necessary]

In addition to the principal amount payable hereunder, interest on the unpaid balance thereof shall be paid with each installment. Such interest shall accrue from the date of this execution of this Promissory Note by the Director of the Bureau of Hearing Counsel, and be computed at the rate of [—— percent (—— %) per annum.]

If any payment of principal or interest shall remain unpaid for a period of ten (10) days after becoming due and payable, the entire unpaid principal amount of this Promissory Note, together with interest thereon, shall become immediately due and payable at the option of the Commission without demand or notice, said demand and notice being hereby expressly waived.

If a default shall occur in the payment of principal or interest under this Promissory Note, (Respondent) does hereby authorize and empower any U.S. attorney, any of his assistants or any attorney of any court of record, Federal or State, to appear for him, and to enter and confess judgment against (Respondent) for the entire unpaid principal amount of this Promissory Note, together with interest, in any court of record, Federal or State; to waive the issuance and service of process upon (Repondent) in any suit on this Promissory Note; to waive any venue requirement in such suite; to release all errors which may intervene in entering such judgment or in issuing any execution thereon; and to consent to immediate execution on said judgment.

(Respondent) hereby ratifies and confirms all that said attorney may do by virtue thereof.

This Promissory Note may be prepaid in whole or in part by Respondent by bank cashier's or certified check at any time, provided that accrued interest on the principal amount prepaid shall be paid at the time of the prepayments.

By: _____
Title: _____
Date: _____

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-11995 Filed 5-2-84; 8:45 am]

BILLING CODE 6730-01-M

Notices

Federal Register
Vol. 49, No. 87
Thursday, May 3, 1984

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 Marketing Service

Tobacco Inspection; Grower's Referendum Results

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The document is the official notice of a referendum on the proposed designation of new flue-cured tobacco market of Waycross and Blackshear, Georgia. The referendum was conducted during the period of March 26–30, 1984, among tobacco growers who have sold their tobacco at auction in Waycross and Blackshear, Georgia, to determine if producers favored the designation of these two markets as one new consolidated market. The proposal failed to achieve the required two-thirds majority of eligible voters. Therefore, the Waycross and Blackshear, Georgia, tobacco markets shall continue to operate as separate entities.

EFFECTIVE DATE: May 3, 1984.

SUPPLEMENTARY INFORMATION: A notice was published in the March 20, 1984 issue of the **Federal Register** (48 FR 316) advising that a referendum would be conducted among flue-cured producers who market their tobacco on the Waycross and Blackshear, Georgia, markets to ascertain if such producers favored the designation of a new, consolidated market. Waycross and Blackshear has been officially designated as separate markets on June 26, 1942 (7 FR 4811) under the Tobacco Inspection Act of 1935 (7 U.S.C. 511 *et seq.*).

In accordance with 7 U.S.C. 1312(c) and 7 CFR Part 29 and 717, ballots for the March 26–30 referendum were mailed to 471 producers who, according to Department records, had sold tobacco on either the Waycross or Blackshear markets during the 1983 season. The Department received a total of 272 responses: 88 eligible producers or 34 percent voted in favor of the designation of a single Waycross and Blackshear market, 172, eligible producers or 66 percent opposed the designation and 12 ballots were determined to be ineligible because they were not completed and/or signed.

Based on the results of the referendum, the markets of Waycross and Blackshear, Georgia, shall continue to operate as separately designated flue-cured tobacco auction markets.

Dated: April 26, 1984.

Karen K. Darling,

Deputy Assistant Secretary, Marketing & Inspection Services.

[FR Doc. 84-11958 Filed 5-2-84; 8:45 am]

BILLING CODE 3410-02-M

Forest Service

Colville National Forest; Grazing Advisory Board; Meeting

The Colville National Forest Grazing Advisory Board will meet at 2:00 p.m. on May 15, 1984 at the Colville Ranger District conference room, 755 South Main, Colville, WA 99114. The purpose of this meeting is to discuss range allotment management planning and to review the projects which will receive funding from the Range Betterment Fund monies in 1985.

The meeting is open to the public. Persons who wish to attend should notify Gary Oliverson, Colville National Forest, 695 South Main, Colville, WA 99114. Written statements may be filed with the committee before or after the meeting.

Dated: April 20, 1984.

William D. Shenk,

Forest Supervisor.

[FR Doc. 84-11981 Filed 5-2-84; 8:45 am]

BILLING CODE 3410-11-M

Human Nutrition Information Service

Dietary Guidelines Advisory Committee; 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: Dietary Guidelines Advisory Committee

Date: May 22 and 23, 1984

Place: Administration Building, Room 104–A, U.S. Department of Agriculture, Independence Avenue, SW., Washington, D.C. 20250.

Time: May 22, 9 a.m. to 5 p.m.; and May 23, 9 a.m. to 1:30 p.m.

Purpose: To review comments received on "Nutrition and Your Health: Dietary Guidelines for Americans," Home and Garden Bulletin Number 232, and make any recommendations the Committee deems appropriate.

Agenda: The agenda will include the following items: Review of the progress of the Dietary Guidelines subcommittes since the December 1983, meeting, review of written comments received since December 1983, discussion of any proposals related to the Dietary Guidelines, and plans for future work of the Committee.

The meeting is open to the public. There is a limited amount of space available for public attendance.

Dated: April 24, 1984.

Done at Washington, D.C. this 24th day of April, 1984.

Isabel D. Wolf,

Administrator, Human Nutrition Information Service.

[FR Doc. 84-11896 Filed 5-2-84; 8:45 am]

BILLING CODE 3410-KE-M

Soil Conservation Service

Twin Ponies Watershed, Iowa; Environmental Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact..

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is now being prepared for the Twin Ponies, Pottawattamie County, Iowa.

FOR FURTHER INFORMATION CONTACT: J. Michael Nethery, State Conservationist, Soil Conservation Service, 693 Federal Building, 210 Walnut Street, Des Moines, Iowa 50309, telephone 515–284–4260.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that

the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, J. Michael Nethery, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood prevention. The planned works of improvement include six grade stabilization structures.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basis data developed during the environmental assessment are on file and may be reviewed by contacting J. Michael Nethery.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A-95 regarding State and Local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Dated: April 25, 1984.

J. Michael Nethery,

State Conservationist.

[FR Doc. 84-11940 Filed 5-2-84; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

[Order 84-4-103; Docket 41993]

Application of James M. Foode d/b/a Chitina Air Service for Certificate Authority Under Subpart Q

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause, Order 84-4-103, Docket 41993.

SUMMARY: The Board is directing all interested persons to show cause why it should not issue an order granting James M. Foode d/b/a Chitina Air Service a certificate of public convenience and necessity to engage in scheduled interstate and overseas air transportation.

DATES: Persons wishing to file objections should do so in Docket 41993 by May 18, 1984. Answers to objections should be filed by May 29, 1984.

ADDRESS: Objections and answers to objections should be filed in Docket 41993, and addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428..

FOR FURTHER INFORMATION CONTACT: Steven B. Farbman, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-5340.

SUPPLEMENTARY INFORMATION: The complete text of Order 84-4-103 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84-4-103 to that address.

By the Civil Aeronautics Board: April 27, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-11987 Filed 5-2-84; 8:45 am]

BILLING CODE 6320-01-M

[Order 84-4-90]

Application of Pacific Air Express, Inc. for Certificate Authority

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause 84-4-90.

SUMMARY: The Board is proposing to find Pacific Air Express, Inc. fit, willing, and able and to issue a certificate of public convenience and necessity authorizing it to provide scheduled interstate and overseas air transportation of property and mail, including intra-Hawaii service.

Responses

All interested persons having objections to the Board issuing the proposed certificate shall file their objections in Docket 41725. Objections should be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428, and should be served upon the parties listed in Attachment A to the order. Objections shall be filed no later than May 15, 1984.

FOR FURTHER INFORMATION CONTACT: Carolyn S. Kramp, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428 (202) 673-5090.

SUPPLEMENTARY INFORMATION: The complete text of Order 84-4-90 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84-4-90 to that address.

By the Civil Aeronautics Board: April 25, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-11965 Filed 5-2-84; 8:45 am]

BILLING CODE 6320-01-M

Commuter Fitness Determination

The Board is proposing to find the following carriers fit, willing and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and that aircraft used in this service conform to applicable safety standards.

Order	Applicant	Response date
84-4-96	Lake Coastal Airlines, Inc.	May 17, 1984.
84-4-97	Kenosha Aero, Inc. d/b/a Alliance Airlines.	May 15, 1984.
84-4-100	Bullfrog, Inc.	May 18, 1984.

All interested persons wishing to respond to he Board's tentative fitness determination shall serve their responses on all persons listed in Attachment A of the respective orders and file response or additional data with the Special Authorities Division, Room 915, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

The complete text of the orders is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request to the above address.

FOR FURTHER INFORMATION CONTACT: Nicholas Collins for Orders 84-4-96 and 84-4-97, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, Washington, D.C. 20428, (202) 673-5216 and Ms. Barbara P. Dunnigan for Order 84-4-100, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, Washington, D.C. 20428, (202) 673-5918.

By the Civil Aeronautics Board: April 27, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-11984 Filed 5-2-84; 8:45 am]

BILLING CODE 6320-01-M

[Order 84-4-28]

Fitness Determination of Clearwater Flying Service, Inc., d.b.a. Empire Airways

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 84-4-28, Order to Show Cause concerning name similarity.

SUMMARY: The Board is proposing to require Clearwater Flying Service to change its trade name "Empire Airways" with respect to its commuter operations within six months. The order is being issued in response to an objection filed by Empire Airlines, Inc. concerning the similarity in the two carriers' names. The complete text of this order is available, as noted below.

Responses

All interested persons wishing to respond to the Board's tentative determination shall file their responses with the Special Authorities Division, Room 915, Civil Aeronautics Board, Washington, D.C. 20428, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than May 23, 1984.

FOR FURTHER INFORMATION CONTACT: Patricia T. Szrom, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428 (202) 673-5088.

SUPPLEMENTARY INFORMATION: The complete text of Order 84-4-28 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard for Order 84-4-28 to that address.

By the Civil Aeronautics Board: April 10, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-11983 Filed 5-2-84; 8:45 am]

BILLING CODE 6320-01-M

[Docket 42117]

Lusair International, Inc., Fitness Investigation; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on May 8, 1984, at 10:00 a.m. (local time) in Room 1027, 1825 Connecticut Avenue, N.W., Washington, D.C. before the undersigned Administrative Law Judge.

Dated at Washington, D.C., April 26, 1984.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 84-11986 Filed 5-2-84; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 20-84]

Foreign-Trade Zone 18—San Jose, California; Application for Subzone for GM-Toyota Auto Plant in Fremont and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of San Jose, California, grantee of Foreign-Trade Zone 18, requesting special-purpose subzone status for the automobile manufacturing facility of New United Motor Manufacturing, Inc. (NUMMI), a joint venture between General Motors Corporation (GM) and Toyota Motor Corporation, located in Fremont, California, within the San Francisco-Oakland Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on April 30, 1984. The applicant is authorized to make this proposal under Sections 6300-6304, Chapter 4, of the California Government Code.

The proposed subzone would be located at the former GM assembly plant at 45500 Fremont Boulevard at Highway 17 in Fremont. NUMMI will use 211 acres at the facility to produce some 200,000 new subcompact automobiles annually, involving 3000 new jobs. Roughly half the value of the vehicle will involve foreign-sourced parts and material, including engines, transaxles, brake system components, steering components, and a portion of its steel requirements.

Zone procedures will exempt NUMMI from paying duties on foreign material used for its exports. On its domestic sales, the company will be able to defer duty payments and take advantage of the same duty rate available to importers of finished autos. The estimated average duty rate on most of the foreign components NUMMI expects to use will be 4 to 5 percent, whereas the rate for finished autos is 2.7 percent. The reduction of Customs costs and material transit time as provided by zone procedures will play an important role helping to make NUMMI competitive with auto assembly facilities offshore.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Paul R. Andrews, District Director, U.S. Customs Service, Pacific Region, 555 Battery St., P.O. Box 2450, San Francisco, CA 94111; and Colonel Edward M. Lee, Jr., District Engineer, U.S. Army Engineer District San Francisco, 211 Main Street, San Francisco, CA 94105.

As part of its investigation, the examiners committee will hold a public hearing on June 7, 1984, beginning at 9:00 a.m., in the City Council Chambers of the San Jose City Hall, 501 North First Street, San Jose.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377-2862) by May 31. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through July 9, 1984.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, Federal Building, 450 Golden Gate Ave., P.O. Box 36013, San Francisco, CA 94102.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1872, 14th and Pennsylvania, NW., Washington, D.C. 20230.

Dated: April 30, 1984.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 84-11966 Filed 5-2-84; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 19-84]

Proposed Foreign-Trade Zone, Minneapolis-St. Paul Port of Entry Area; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zone Board (the Board) by the Greater Metropolitan Foreign-Trade Zone Commission, an instrumentality of the Port Authority of the City of Bloomington, the Port Authority of the City of Minneapolis, and the Minneapolis Community Development Agency, requesting authority to establish a general-purpose foreign-trade zone at sites within the Minneapolis-St. Paul Customs port of entry area. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as

amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on April 27, 1984. The applicant is authorized to make this proposal under § 458.192(13) of the Minnesota Statutes.

The proposed foreign-trade zone will involve four sites totalling 62 acres. Site 1 is at the air freight complex of the Minneapolis-St. Paul International Airport some 10 miles south of downtown Minneapolis. Site 2 covers 26 acres in the City of Bloomington at the Alpha Business Center, immediately south of the airport. This site has several existing structures that would be available for initial zone activity. Site 3 covers 10 acres within the Energy Park in St. Paul, north of I–94 between downtown Minneapolis and downtown St. Paul. Site 4 involves the International Market Square, a 900,000 square foot wholesale merchandise mart at Glenwood and Lyndale Avenues in Minneapolis.

The application contains evidence of the need for zone services in the Greater Minneapolis-St. Paul area. Anumber of firms have expressed interest in using zone procedures for warehousing/distribution of products such as computers and parts, electronic equipment, food service equipment, medical instruments, hardware, fans, lumber products, machine tool parts, fasteners, cameras, fireplaces, ammunition, shoes, cutlery, and food products. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case by case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Robert Nordness, District Director, U.S. Customs Service, North Central Region, 110 S. Fourth St., U.S. Courthouse, Room 137, Minneapolis, MN 55401; and Colonel Edward G. Rapp, District Engineer, U.S. Army Engineer District St. Paul, 1135 USPO and Customs House, St. Paul, MN 55101.

As part of its investigation, the examiners committee will hold a public hearing on June 6, 1984, beginning at 9:00 a.m., in Room 303, Main Terminal Building of the Minneapolis-St. Paul International Airport.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377–2862) by May 30. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through July 6, 1984.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, 218 Federal Bldg., 110 South Fourth Stree, Minneapolis, MN 55401 Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1872, 14th and Pennsylvania, NW., Washington, D.C. 20230

Dated: April 27, 1984.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 84–11965 Filed 5–2–84; 8:45 am]

BILLING CODE 3510–DS–M

[Docket No. 16–84]

Foreign-Trade Zone 41, Milwaukee, Wisconsin; Application for Reorganization—Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Foreign-Trade Zone of Wisconsin, Ltd. (FTZW), grantee of Foreign-Trade Zone 41, Milwaukee, requesting authority to reorganize its zone project, adding sites in Milwaukee County, within the Milwaukee Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on April 27, 1984. The applicant is authorized to make this proposal under Chapter 110 of the Wisconsin Laws of 1977, approved October 13, 1977.

On September 29, 1978, the Board authorized FTZW to establish a foreign-trade zone in the Milwaukee area (Board Order 136, 43 FR 46887, 10/11/78). The project was expanded in August 1981 (Board Order 178, 46 FR 40718, 8/11/81) adding 40 acres to the original 5.8-acre site in Milwaukee's Northwestern Industrial Park (NIP).

The reorganization of the zone would involve relocating general-purpose zone warehousing operations to a site at General Mitchell Airfield and adding industrial park space in West Allis. Zone warehousing activities, currently operated by FTZW on a 5.8-acre site at 8512 W. Bradley Road in Milwaukee, would be moved to 2100 East College Avenue in Cudahy at the airport. The new 78,000-square foot warehouse facility is owned and operated by Ace World Wide Moving and Storage. The 40-acre open space area at NIP would remain as part of the zone project.

The new industrial park site would be located at the 120-acre West Allis Industrial Center, 1126, S. 70th St., West Allis, which has over one million square feet of manufacturing space. This facility would provide zone space for prospective heavy asembly and manufacturing operations that cannot be accommodated at other zone facilities. Allis Chalmers Corporation, which owns the park, will also operate the facility's zone activity.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Clinton P. Littlefield, District Director, U.S. Customs Service, North Central Region, 628 E. Michigan St., Milwaukee, WI 53202; and Colonel Raymond T. Beurket, Jr., District Engineer, U.S. Army Engineer District Detroit, P.O. Box 1027, Detroit, MI 48231.

As part of its investigation the examiners committee will hold a public hearing on June 5, 1984, beginning at 9:00 a.m. in Room C–263, Auditorium, Milwaukee Area Technical College, 1036 North 8th Street, Milwaukee.

Interested parties are invited to present their views at the meeting. Persons wishing to participate should notify the Board's Executive Secretary in writing at the address below or by phone (202/377–2862) by May 28. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through July 6, 1984.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, Federal Bldg., 517 E. Wisconsin Avenue, Milwaukee, WI 53202

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1872, 14th and Pennsylvania NW., Washington, D.C. 20230.

Dated: April 27, 1984.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 84-11963 Filed 5-2-84; 8:45 am]

BILLING CODE 3510-DS-M

[Docket Nos. 17 and 18-84]

Foreign-Trade Zone 41, Milwaukee, Wisconsin; Application for Subzones at General Motors Auto and Electronic Products Plants in Janesville and Oak Creek, Wisconsin

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Foreign-Trade Zone of Wisconsin, Ltd. (FTZW), grantee of Foreign-Trade Zone 41, Milwaukee, requesting special-purpose subzone status for General Motors Corporation (GM) plants in Janesville (Doc. 17-84) and Oak Creed (Doc. 18-84). Wisconsin, adjacent to the Milwaukee Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 USC 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on April 27, 1984. The applicant is authorized to make this proposal under Chapter 110 of the Wisconsin Laws of 1977, approved October 13, 1977.

On September 29, 1978, the Board authorized FTZW to establish a foreign-trade zone project in the Milwaukee area (Board Order 136, 43 FR 46887, 10/11/78). On August 4, 1981, FTZW was authorized to expand the project and to sponsor subzones for American Motors in Kenosha and for Muskegon Piston Ring in Manitowoc (Board Order 178, 46 FR 40718, 8/11/81).

The proposed subzones will be located at GM's two plants in the Milwaukee area. One is GM's Janesville plant (Doc. 17-84), a 126-acre automobile manufacturing facility at 1000 Industrial Avenue, Janesville, some 60 miles southwest of Milwaukee. The other is the company's Oak Creek Plant (Doc. 18-84), a 155-acre electronic products manufacturing facility at 7929 Howell Avenue in Oak Creek, some 12 miles south of downtown Milwaukee, with a 1-acre satellite facility at 4066 North Port Washington Road in Milwaukee.

The Janesville plant employs 6400 persons producing Chevrolet Cavalier and Cadillac Cimarron model automobiles and Chevrolet/GMC light trucks. Although most of the parts and material used at the plant are produced domestically, 9 percent of the components are imported, including transaxles, heat shields, bumpers and radios. A smaller percentage of the vehicles are exported.

The Oak Creek plant is for GM's Delco Electronics, AC Spark Plug and Power Products Divisions. The facility employs 2000 persons and produces auto engine on-board computers, auto engine control modules, and inertial aviation navigation systems. Some 7 percent of the components used in the plant's production is purchased from foreign sources, including semi-conductors, electronic sub-assemblies, and other electronic parts. About 19 percent of finished electronic products are exported.

Zone procedures will exempt GM from paying duties on foreign components used on its exports. On its domestic sales the company will be able to defer duty and to take advantage of the same duty rate available to importers of finished autos. The estimated average duty rate on the foreign components used by GM is 4.2 percent at its auto assembly plants and about 7 percent at electronics products plants, whereas the rate for finished autos in 2.7 percent. The reduction of Customs costs is part of GM's overall program to modernized and reduce costs at its U.S. assembly plants, making them more competitive with auto assembly facilities offshore.

In accordance with the Board's regulations, and examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washingtn, D.C. 20230; Clinton P. Littlefield, District Director, U.S. Customs Service, North Central Region, 628 E. Michigan St., Milwaukee, WI 53202; for Docket No. 17-84, Colonel Bernard P. Slofer, District Engineer, U.S. Army Engineer District Rock Island, Clock Tower Bldg., Rock Island, IL 61201; and for Docket No. 18-84, Colonel Raymond T. Beurket, District Engineer, U.S. Army Engineer District Detroit, P.O. Box 1027, Detroit, MI 48231.

Comments concerning the proposed subzones are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before June 8, 1984.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, Federal Building, 517 East Wisconsin Ave., Milwaukee, WI 53202

Office of the Executive Secretary Foreign-Trade Zones Board, U.S. Department of Commerce Room 1872, 14th and Pennsylvania NW., Washington, D.C. 20230.

Dated: April 27, 1984.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 84-11964 Filed 5-2-84; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[C-201-007]

Pectin From Mexico; Final Results of Administrative Review of Suspension Agreement

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Administrative Review of Suspension Agreement.

SUMMARY: On February 28, 1984, the Department of Commerce published the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on pectin from Mexico. The review covers the period December 7, 1982 through March 31, 1983.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as the preliminary results.

EFFECTIVE DATE: May 3, 1984.

FOR FURTHER INFORMATION CONTACT: Victoria Marshall or Joseph Black, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 7260) the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation of pectin from Mexico (47 FR 54987, December 7, 1982). The Department has now completed 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 Mexican pectin, used as an ingredient in food and drugs. Such merchandise is currently classifiable under item 455.0400 of the Tariff

Schedules of the United States Annotated. The review covers the only known exporter of Mexican pectin to the United States, Pectina de Mexico, S.A., the signatory to the suspension agreement.

The review covers the period December 7, 1982, the effective date of the suspension agreement, through March 31, 1983 and eight programs: (1) CEDI; (2) FOMEX; (3) CEPROFI; (4) FONEI; (5) FOGAIN: (6) State Tax Incentives; (7) Import Duty Reductions and Exemptions; and (8) NIDP Preferential Price Discounts on Petroleum Products.

Final Results of the Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as the preliminary results. We determine that Pectina has complied with the terms of the suspension agreement for the period December 7, 1982 through March 31, 1983. Therefore, the suspension agreement for Mexican pectin shall remain in effect. The Department intends to begin immediately the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible after the Department's receipt of the requested information.

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 § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: April 27, 1984.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 84-11959 Filed 5-2-84; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENATION OF TEXTILE AGREEMENTS

Announcing New Limits on Certain Man-Made Fiber Textile Products From Hong Kong

April 30, 1984.

On February 28 and March 8, 1984, notices were published in the **Federal Register** (49 FR 7272 and 49 FR 8660) announcing that the Government of the United States had requested consulations with the Government of Hong Kong concerning man-made fiber playsuits in Category 637 and man-made fiber underwear in Category 652 under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 23, 1982, as amended.

The purpose of this notice is to announce that consulations on these categories were held March 15–16, 1984 and limits of 45,502 dozen in Category 637 and 3,513,103 dozen in Category 652 have been established for 1984 under the terms of the bilateral agreement.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-11886 Filed 5-2-84; 8:45 am]

BILLING CODE 3510-DR-M

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. CRT 81-1]

1980 Cable Royalty Distribution Proceeding

The Copyright Royalty Tribunal (Tribunal) filed a motion with the United States Court of Appeals for the District of Columbia Circuit requesting the Court to remand to the Tribunal the Tribunal's final determination in the 1980 cable television royalty distribution proceeding so that the Tribunal might further consider its final determination in that proceeding in accordance with the opinion of the Court in *The Christian Broadcasting Network* v. *CRT* (Nos. — 82–1312, et al.) concerning the Tribunal's final determination in the 1979 cable royalty distribution proceeding. The Court in an order of February 9, 1984 vacated the Tribunal's decision and remanded the case to the Tribunal for proceedings consistent with the court's opinion.

The Tribunal directs that parties to the 1980 distribution proceeding submit not later than May 17, 1984 their procedural proposals concerning the implementation of the Court's order for further proceedings. Reply comments shall be submitted not later than May 24, 1984.

Thomas C. Brennan,

Chairman.

April 30, 1984.

[FR Doc. 84-11960 Filed 5-2-84; 8:45 am]

BILLING CODE 1410-08-M

[Docket No. CRT 83-1]

1982 Cable Royalty Distribution Proceeding

The Copyright Royalty Tribunal (Tribunal) on October 12, 1983 published in the **Federal Register** (48 FR 46412) notice of the existence of a controversy concerning the distribution of the 1982 cable television royalty fund. A Number of claimants have advised the Tribunal of voluntary agreements relating to the Tribunal's Phase I proceeding.

The Tribunal directs that not later than May 17, 1984 claimants wishing to participate in the Phase I proceeding shall notify the Tribunal of such intention. The Tribunal directs that not later than May 24, 1984 any party wishing to present evidence shall submit any pre-hearing statements, witness lists, concise summary of each witnesses' testimony, and copies of all documentary evidence. Exhibits will be identified as in the 1980 proceeding, except that settling parties presenting a joint case may so identify exhibits.

The Tribunal subsequently will announce necessary hearing dates.

The Tribunal reminds parties that issues that may require consideration of the Tribunal shall be presented by written motion.

Thomas C. Brennan,

Chairman.

April 30, 1984.

[FR Doc. 84-11961 Filed 5-2-84; 8:45 am]

BILLING CODE 1410-11-M

DEPARTMENT OF DEFENSE

Department of the Navy

Chief of Naval Operations, Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App I), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee will meet May 23–24, 1984, from 9 a.m. to 5 p.m. each day, at the Naval War College, Newport, Rhode Island. All sessions will be closed to the public.

The purposes of the meeting is to familiarize Panel members with recent Naval War College initiatives related to analysis of naval issues including strategic studies and wargaming. The entire agenda for the meeting will consist of discussions of key issues related to naval aspects of national security policy and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be keep secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy had determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with

matters listed in section 552(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Thomas E. Arnold, Executive Secretary of the CNO Executive Panel Advisory Committee, 2000 North Beauregard Street, Room 392, Alexandria, Virginia 22311. Phone (703) 756–1205.

Dated: April 27, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84–11892 Filed 5–2–84; 8:45 am]

BILLING CODE 3810–AE–M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Naval Research Advisory Committee Panel on Reduced Observables will meet on May 24 and 25, 1984, at the Office of Naval Research, 800 No. Quincy Street, Room 915, Arlington, Virginia. Sessions of the meeting will commence at 9:00 a.m. and terminate at 5:00 p.m. on May 24, 1984; and commence at 9:00 a.m. and terminate at 5:00 p.m. on May 25, 1984. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to receive technical briefings on passive sensor technology, remote sensor capabilities, low probability of intercept development and bi-static/multi-static sensor systems. In addition, the panel members will review material presented at previous meetings and discuss future briefings to be received by the Panel. These matters constitute classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M. B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217, Telephone number (202) 696–4870.

Dated: April 27, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84–11893 Filed 5–2–84; 8:45 am]

BILLING CODE 3810–AE–M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Naval Research Advisory Committee Panel on Man-in-the-Loop Targeting will meet on May 22 and 23, 1984, at the Applied Physics Laboratory, Johns Hopkins University, Laurel, Maryland. Sessions of the meeting will commence at 9:00 a.m. and terminate at 4:00 p.m. both days. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to review material and presentations previously received by the Panel and to conduct a working session to draft the final report. These matters constitute classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M. B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217, Telephone number (202) 696–4870.

Dated: April 27, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84–11891 Filed 5–2–84; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

International Atomic Energy Agreements; Proposed Subsequent Arrangement; European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale:

Contract Number S–EU–802, for 0.025 grams of plutonium–244, for use as standard reference material at the Transurane Institute EURATOM, in the Federal Republic of Germany.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: April 27, 1984.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 84–11899 Filed 5–2–84; 8:45 am]

BILLING CODE 6450–01–M

Floodplain and Wetland Involvement Notification for Remedial Action at the Shiprock Inactive Uranium Mill Tailings Site, Shiprock, New Mexico

AGENCY: Department of Energy.

ACTION: Notice of Floodplain and Wetland Involvement.

SUMMARY: The Department of Energy (DOE) proposes to conduct remedial actions involving the stabilization and control of uranium mill tailings at a site in Shiprock, New Mexico. Remedial actions must comply with the standards promulgated by the Environmental Protection Agency (40 CFR Part 192) as required by the Uranium Mill Tailings Radiation Control Act of 1978 (Pub. L. 95–604). Remedial action would involve the removal of contaminated soils and vegetation from the floodplain/wetland area along the San Juan River.

In accordance with DOE regulations for compliance with floodplain/wetland environmental review requirements (10 CFR Part 1022), DOE will prepare a floodplain and wetland assessment, to be incorporated in the environmental assessment of this proposed action. Maps and further information are available from DOE at the address shown below.

DATE: Any comments are due on or before May 18, 1984.

ADDRESS: Send comments to: Robert J. Stern, Director, Office of Environmental Compliance, PE–25, Office of the Assistant Secretary for Policy, Safety, and Environment, Room 4G–085 Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585.

Issued at Washington, D.C., April 25, 1984.

Jan W. Mares,

Assistant Secretary for Policy, Safety, and Environment.

[FR Doc. 84–11970 Filed 5–2–84; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Cases Filed; Week of March 9 Through March 16, 1984

During the Week of March 9 through March 16, 1984, the applications for 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, D.C. 20585.

Dated: April 26, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Mar. 9 through Mar. 16, 1984]

Date	Name and location of applicant	Case No.	Type of submission
Mar. 8, 1984	Oasis Petroleum Corp., Washington, D.C.	HCX–0100	Supplemental order. If granted: The April 11, 1980 Decision and Order (Case No. BSG–0015) issued to Oasis Petroleum Corporation by the Office of Hearings and Appeals would be modified in connection with the February 9, 1984 Court Order issued by the United States District Court for Northern District of Texas.
Mar. 14, 1984	Petrade International, Inc., Washington D.C.	HRH–0208 and HRD–0208.	Motion for discovery and request for evidentiary hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the Statement of Objections submitted by Petrade International, Inc., in response to the Proposed Remedial Order (Case No. HRO–0208) issued to Petrade International, Inc.
Mar. 16, 1984	Bill Ray Jones, Jackson, Miss.	HRH–0206 and HRD–0206.	Motion for discovery and request for evidentiary hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the Statement of Objections submitted by Transco Trading Company et al. in response to December 20, 1982, Proposed Remedial Order (Case No. HRO–0114) issued to in Transco Trading Company and Refiners and Producers Marketing, Inc.

REFUND APPLICATIONS RECEIVED

[Week of Mar. 9 to Mar. 16, 1984]

Date	Name of refund proceeding/name of refund applicant	Case No. assigned
Mar. 12, 1984	Amoco/Virginia	RQ21–67.
Mar. 14, 1984	Amoco/Sault Ste. Marie Tribe of Chippewa Indians	RQ21–70.
Mar. 16, 1984	Amoco/Ramsey Oil Co.	RF21–12291
Do	Belridge/Missouri Amoco/Missouri	RQ8–71, RQ21–72.
Mar. 15, 1984	Amoco/Brown Oil Co.	RF21–12292.
Do	do.	RF21–12293.

[FR Doc. 84–11971 Filed 5–2–84; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders; Week of April 2 Through April 6, 1984

During the week of April 2 through April 6, 1984, the decisions and orders summarized below were issued with respect to appeals and 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.

Appeals

Herbert Holmes, 4/4/84, HFA–0213

Herbert Holmes filed an Appeal from a denial by the Nevada Operations Office of the DOE of a request for information which he submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that the search performed by the Operations Office for documents responsive to Mr. Holmes' request was adequate and that no responsive documents existed. Accordingly, the Appeal was denied.

Howard L. Rosenberg, 14/2/84, HFA–0211

Howard L. Rosenberg filed an Appeal from a denial of a request for a waiver of search and copying fees associated with documents he received pursuant to the Freedom of Information Act. In considering the Appeal, the DOE found that there was a significant public interest in the subject matter of the request and that Mr. Rosenberg would effectively communicate information contained in the material to the public. However, the DOE also found that Mr. Resenberg had a personal interest in the documents, since he was being paid to prepare a report based on the material. The DOE therefore determined that a 50 percent reduction of fees was warranted. Accordingly, the Appeal was granted in part.

Remedial Orders

Entex Petroleum, Inc., 4/5/84, BRO–1252

Entex Petroleum, Inc. objected to a Supplemental Proposed Remedial Order (SPRO) in which the ERA found that the firm improperly sold crude oil from two of its leases at prices that exceeded the appropriate ceiling price levels. In considering Entex's objections, the DOE rejected the firm's argument that if the ERA had accounted for variances in temperature in calculating the firm's crude oil inventory, the leases would have qualified as stripper well properties. The DOE also rejected the firm's proposed alternate method for

calculating curde oil inventories, because it was based on estimated volumes which were less reliable than the actual volume data used by ERA. Accordingly, the DOE concluded that the SPRO should be issued as a final Supplemental Remedial Order.

H.H. Gungoll & Associates, 4/5/84, BRO–1234

H.H. Gungoll & Associates objected to a Proposed Remedial Order in which the Economic Regulatory Administration alleged that the firm misclassified a single crude oil producing premises as two properties, and sold the production at prices in excess of the applicable ceiling prices. After considering Gungoll's objections, DOE concluded that the PRO, with modifications, should be issued as a final Remedial Order. The important issues discussed in the Decision and Order include (i) the definition of property for federal price control purposes; and (ii) whether overcharges with respect to one property may be offset by undercharges made with respect to other properties.

Nola Oil Company, Inc., 4/4/84, HRO–0205

Nola Oil Company, Inc. responded to the allegations set forth in a Proposed Remedial Order issued to it by filing a Notice of Objection setting forth a general denial and statement of interest. NOLA failed to file a Statement of Objections, or otherwise respond to the precise findings of fact and conclusions of law contained in the PRO. The DOE examined the record and found that NOLA's Notice of Objection had failed to rebut the prima facie case established by the PRO. Therefore, the PRO was issued as a final Remedial Order.

Petition for Special Redress

USA Petroleum Company, 4/4/84, HEG–0029, HER–0086, HES–0041

USA petroleum Company filed a Petition for Special Redress and/of Application for Modification or Rescission with the Office of Hearings and Appeals. In its submission, USA sought an order that would provide security for payment of entitlements exception relief in the amount of $3.8 million, which was awarded to the firm in a Federal Energy Regulatory Commission proceeding. Among the remedies proposed by USA was its retention of $1.75 million which it is required to pay to the DOE under the terms of a consent order. USA further sought a stay of the requirement that it make further installment payments under the consent order. The firm also asked that ERA be stayed from disbursing the consent order fund until a final decision was reached on the Petition for Special Redress and other relief. In considering the USA submissions, the OHA determined that: (i) the firm had not met the threshold requirements for special redress relief by showing that no other administrative proceeding was available or that the agency was not complying with the law or its own regulations; (ii) the firm had not established the existence of "significantly changed circumstances," and accordingly was not entitled to modification or rescission of the consent order; and (iii) the firm's proposal that its obligation to make installment payments under the consent order be set-off against its outstanding entitlements exception relief was inappropriate because the requisite mutuality of obligations was lacking and the interests of third parties would be adversely affected. Accordingly, the Petition for Special Redress and/or Application for Modification or Rescission was denied, and the Application for Stay was dismissed.

Interlocutory Order

Pel-Star Energy, Inc., Economic Regulatory Administration/Pel-Star Energy, Inc., 4/4/84, HRZ–0165, HRZ–0187

Pel-Star Energy, Inc. filed a Motion to Dismiss a Proposed Remedial Order alleging that the firm charged prices in excess of those allowed crude oil resellers. In denying the Motion, the DOE found that, contrary to Pel-Star's assertions, the PRO presented a prima facie case. The ERA filed a Motion in which it sought to join four Pel-Star shareholders in the PRO proceeding. The DOE found that two of these individuals had received significant financial benefit as a result of Pel-Star's activities, and had played an active role in the transactions that were the subject of the PRO, and further that public policy considerations supported their joinder. Accordingly, the Motion to Join was granted in part.

Supplemental Order

O. B. Mobley, Jr., 4/4/84, HEX–0070

In a Decision and Order issued to O. B. Mobley, Jr. on December 5, 1978, the DOE ordered that overcharges escrowed by Mobley be disbursed to the Lion Oil Division of the Tosco Corporation (Tosco). In the present Order, the DOE pointed out that as a result of decontrol of petroleum prices, firms were no longer required to pass through to their own customers the refunds that they received. The DOE therefore determined that disbursing the funds to Tosco would not achieve the objective of effecting restitution to the parties ultimately aggrieved by Mobley's overcharges. Accordingly, the DOE decided to implement special refund procedures pursuant to 10 CFR Part 205, Subpart V with respect to the escrowed funds.

Refund Applications

Belridge Oil Company/State of Wisconsin/ Belridge Oil Company/State of Nevada, 4/4/84, RQ8–62, RQ8–77

The States of Wisconsin and Nevada filed applications for second stage refunds in connection with a consent order fund made available by Belridge Oil Company. Wisconsin proposed to use its share of the consent order funds to supplement the Institutional Conservation program, which provides matching grants to schools and hospitals to install energy conservation measures. Nevada proposed to use its refund to publish a brochure promoting Park and Ride parking lots throughout the State. The DOE found that the plans proposed by the two States would benefit the individuals who sustained the impact of the alleged Belridge overchargs. Accordingly, the Applications were approved.

Standard Oil Company (Indiana)/Bystol Oil, Inc., et al., 4/5/84 RF21–12298, et al.

The DOE issued a Decision and Order approving refunds for 18 retailers of Amoco motor gasoline. Each of the applicants elected to apply for a refund based upon the presumption of injury and the formulae set forth in *Office of Special Counsel*, 10 DOE ¶85,048 (1982). Under that presumption, for each gallon of Amoco motor gasoline purchased during the consent order period, a successful applicant received a refund equal to 40 percent of the volumetric refund amount (including accrued interest). Subsequently, the DOE was informed that six of the 18 firms had previously been granted refunds as wholesalers and therefore were entitled only to a supplemental 6 percent refund for sales made at the retail level. Accordingly, the DOE rescinded a total of $16,714 in excessive refunds granted to these six retailers.

Standard Oil Company (Indiana)/Capitol Rent a Truck, Inc.; Capitol Rent a Car, Inc., 4/5/84 RF21–6348, RF21–12286, RF21–12289.

On June 1, 1983, the DOE issued a Decision and Order approving Applications for Refund filed by Capitol Rent a Truck, Inc., and its affiliate, Capitol Rent a Car, Inc. (Capitol). Based on its assertion that it was a consumer of motor gasoline directly supplied by Amoco, Capitol received a refund based upon the presumption of injury and the formulae applicable to consumers of motor gasoline as outlined in *Office of Special Counsel*, 10 DOE ¶85,048 (1982). Those presumptions permit such a consumer to receive a refund equal to 100 percent of the volumetric refund amount. Subsequently, the DOE learned that the nature of Capitol's operations made it likely that it was actually a retailer of Amoco gasoline and was thus entitled to receive refunds under the presumption method of only 40 percent of the volumetric amount. The DOE therefore found that Capitol's refund for motor gasoline purchases should be reduced. The DOE further found that Capitol was entitled to receive a refund as a reseller of Amoco middle distillates. The DOE decided that the amount of the excessive gasoline refunds that Capitol would be required to remit should be offset by its middle distillates refund. Accordingly, Capitol was directed to remit a total of $1,610 to the DOE.

Standard Oil Company (Indiana)/H&M Oil Company Standard Oil Company (Indiana)/ Carl W. Johnson 4/2/84 RF21–12296, RF21–12297

The DOE granted refunds to a reseller of Amoco middle distillates and to a retailer of Amoco motor gasoline. The refunds were based on the volumes of Amoco products purchased by each applicant. Subsequently, the DOE learned that the volume data submitted by the applicants was incorrect, and that they had received excessive refunds. Accordingly, the DOE required the two applicants to remit the overpayments to the Amoco escrow account.

Standard Oil Company (Indiana)/Walls & Marshall Fuel Company Inc., 4/2/84 RF21–3.

The DOE dismissed an Application for Refund filed by a purchaser of Amoco middle distillates, Wall & Marshall Fuel Company.

Inc., because the firm has failed to provide sufficient information to support its claim. Walls & Marshall then filed a Motion for Reconsideration in which it furnished more extensive documentation of its middle distillate refund claim. After carefully reviewing the information submitted, the DOE determined that the firm should receive a refund based upon its total purchases of 1,804,818 gallons of Amoco middle distillates. The amount of the refund was based upon the presumption of injury and formulae set forth in *Office of Special Counsel*, 10 DOE ¶85,048 (1982). The DOE granted Walls & Marshall a refund of $693.

Dismissals

The following submissions were dismissed:

Name and Case No.

Doma Corporation, HRO-0204
Pester Corporation, HRO-0195, HRD-0200

The following application for refund from a retailer of Amoco motor gasoline was dismissed because the firm elected to accept the presumption of injury applicable to wholesalers:

Alco Oil Company, RF21-12295

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 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.

Dated: April 26, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 84-11972 Filed 5-2-84; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

National Petroleum Council Subcommittee on Enhanced Oil Recovery; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Petroleum Council Subcommittee On Enhanced Oil Recovery.

Date and time: Friday, May 18, 1984—10:30 a.m.

Place: The Madison Hotel, Mount Vernon Room, 15th and M Streets, NW., Washington, D.C.

Contact: Gerald J. Parker, U.S. Department of Energy, Office of Oil, Gas and Shale Technology, Mail Stop D-122, GTN, Washington, D.C. 20545; Telephone: 301-353-3032.

Purpose of National Petroleum Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Tentative Agenda

—Review the draft report on Enhanced Oil Recovery.
—Review the schedule for completion of the Committee's assignment.
—Discuss any other matters pertinent to the overall assignment from the Secretary.
—Public Comment (10 minute rule).

Public Participation

The meeting is open to the public. The Chairperson of the Subcommittee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gerald J. Parker at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts

Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on May 2, 1984.

Howard H. Raiken,

Deputy Advisory Committee Management Officer.

[FR Doc. 84-12169 Filed 5-2-84; 11:59 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AMS-FRL 2534-4]

California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption Notice of Decision

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA is granting California a waiver of Federal preemption pursuant to section 209(b) of the Clean Air Act to adopt and enforce amendments to its exhaust emission standards and test procedures for particulates for new motor vehicles for the 1985, 1986-88 and 1989 and subsequent model years. The decision document is reprinted in its entirety below.

FOR FURTHER INFORMATION CONTACT: Mary Smith, Attorney/Advisor, Manufacturers Operations Division (EN-340), U.S. Environmental Protection Agency, Washington, D.C. 20460. Telephone: (202) 382-2514.

SUPPLEMENTARY INFORMATION: A copy of the above standards and procedures, as well as the record of the hearing and those documents used in arriving at this decision, are available for public inspection during normal working hours (8:00 a.m. to 4:30 p.m.) at the U.S. Environmental Protection Agency, Central Docket Room (Docket EN-83-01), West Tower Lobby, 401 M Street, SW., Washington, D.C. 20460. Copies of the standards and test procedures are also available upon request from the California Air Resources Board, 1120 Q Street, Sacramento, California 95814.

Under section 307(b)(1) of the Act, EPA hereby finds that this is a final action of national applicability. Accordingly, judicial review of this action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of publication. Under section 307(b)(2) of the Act, the requirements which are the subject of today's notice may not be challenged later in judicial proceedings brought by EPA to enforce these requirements.

Dated: April 27, 1984.

William D. Ruckelshaus,

Administrator.

Environmental Protection Agency

California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption; Decision of the Administrator.

I. Introduction

By this decision, issued under section 209(b) of the Clean Air Act, as amended (Act),[1] I am granting the State of California a waiver of federal preemption to adopt and enforce amendments to its motor vehicle pollution control program. Those amendments establish new standards and testing procedures for particulate exhaust emissions for diesel passenger cars (PC), light-duty trucks (LDT) and medium-duty vehicles (MDV).[2]

[1] 42 U.S.C. 7543(b) (1978).

[2] The amendments are set forth in section 1960.1, article 2, chapter 3, subchapter 1 of Title 13, California Administrative Code, as supplemented by "California Exhaust Emission Standards and Test Procedures for 1981 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles" as amended August 26, 1982.

Section 209(a) of the Act provides:

> No state or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No state shall require certification, inspection or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment. [42 U.S.C. 7543(a).]

However, with respect to standards, section 209(b)(1) of the Act requires the Administrator, after notice and opportunity for public hearing, to waive application of the prohibitions of section 209(a) for:

> Any State which has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards * * * [unless] the Administrator finds that: (A) the determination of the State is arbitrary and capricious, (B) the State does not need such State standards to meet compelling and extraordinary conditions, or (C) such State standards and accompanying enforcement procedures are not consistent with section 202(a) of [the Act].[3]

As previous decisions waiving Federal preemption have explained, State standards are not consistent with section 202(a) if there is inadequate lead time to permit the development of the technology necessary to meet those requirements, giving appropriate consideration to the cost of compliance within that time frame.[4]

For enforcement procedures accompanying standards, I must grant the requested waiver unless I find that the procedures may cause the California standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards under section 202(a), or if the Federal and California certification and test procedures are inconsistent.[5] I note at the outset that the enforcement procedures for which California requests a waiver are identical to the corresponding Federal procedures and therefore do not, by themselves, present the issues of whether they may cause California standards to be less protective in the agregate or are inconsistent with section 202(a). Therefore, throughout this decision I focus my consideration of the standards alone.[6]

On the basis of the record before me, I cannot make the findings required for a denial of the waiver under section 209(b)(1) with respect to the amendments to California's particulate exhaust emission standards (particulate standards) and test procedures; therefore, I am granting the waiver of Federal preemption that California has requested.

II. Background

On December 2, 1980, the California Air Resources Board (CARB) first adopted particulate standards, identical to the then-applicable federal standards, for 1982 and subsequent model year PCs, LDTs and MDVs. CARB received a waiver of Federal preemption for those standards on December 28, 1981.[7] In a letter dated March 23, 1983, requesting the instant waiver (CARB Letter or Request),[8] CARB notified EPA that on August 26, 1982, it had amended its 1985 and subsequent model year particulate standards for PCs, LDTs and MDVs and had formally adopted the Federal test procedures applicable to particulate exhaust emission standards for diesel-powered vehicles. These amendments set particulate standards for PCs, LDTs and MDVs as follows:

Model Year and Particulate[9]
1985 ..... 0.4
1986–88 ..... 0.2
1989 and subsequent 0.08

On June 6, 1983, a public hearing concerning the waiver request was held at the EPA Region IX office in San Francisco.[10] The written comment period closed on July 25, 1983.[11] This determination is based on the record of that hearing, written submissions by CARB and other interested parties, and other relevant information.[12]

III. Standard of Proof

The role of the Administrator in a section 209 proceeding is to:

> Consider all evidence that passes the threshold test of materiality and * * * thereafter assess such material evidence against a standard of proof to determine whether the parties favoring a denial of the waiver have shown that the factual circumstances exist in which Congress intended denial of the waiver.

Motor and Equipment Manufacturer's Association, Inc. v. *EPA*, 627 F.2d 1095, 1122 (D.C. Cir. 1979) (*MEMA*). In *MEMA*, the court considered the standard of proof under section 209 associated with the two findings necessary to grant a waiver for an "accompanying enforcement procedure"—the "protectiveness in the aggregate" and "consistency with section 202(a)" findings. The court instructed:

> The standard of proof must take account of the nature of the risk of error involved in any given decision, and it therefore varies with the finding involved. We need not decide how this standard operates in every waiver decision. [*Id.*]

The court went on to uphold the Administrator's finding that there must be "clear and convincing evidence" to show that the proposed procedures undermine the protectiveness of California's standards, noting that "[this standard of proof] also accords with the Congressional intent to provide California with the broadest possible discretion in setting regulations it finds protective of the public health and welfare * * *." *Id.* With respect to the consistency finding, the court did not articulate a standard of proof applicable to all proceedings, but found that the opponents of the waiver were unable to meet their burden even if the standard were a mere preponderance of the evidence. *Id.* at 1122–1123. Although *MEMA* did not explicitly consider the standard of proof under section 209 in connection with a waiver request for "standards," there is nothing in the opinion to suggest that the court's analysis would not apply with equal force to such determinations.

EPA's past waiver decisions have consistently made clear that:

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[3] California is the only State which meets the section 209(b)(1) eligibility criteria for receiving waivers. *See, e.g.*, S. Rep. No. 403, 90th Cong., 1st Sess. 632 (1967).

[4] *See, e.g.*, 43 FR 32182 (July 25, 1978).

[5] *See, e.g., Motor and Equipment Manufacturers Association, Inc.* v. *EPA*, 627 F.2d 1095, 1112 (D.C. Cir. 1979); 43 FR 25729 (June 14, 1978).

[6] California has indicated its intention to amend its testing procedures for diesel-powered vehicles to account for the storage and periodic burning (*i.e.*, regeneration) of particulate matter in trap-oxidizers. *See* State of California Air Resources Board "Notice of Public Hearing * * * Regarding Technical Changes to the Test Procedure for Diesel-Powered [vehicles] with Trap Oxidizer Systems," dated July 26, 1983, and accompanying Staff Report. However, EPA has of yet not received a request for a waiver in connection with those amended test procedures and thus I am not considering them in this decision.

[7] *See* 47 FR 1015 (January 8, 1982).

[8] Letter from James D. Boyd, Executive Officer, CARB, to Richard D. Wilson, Director, Office of Mobile Sources, EPA, dated March 23, 1983.

[9] The standards are expressed in grams per vehicle mile (g/mi).

[10] Oral testimony was heard from CARB, the Motor Vehicle Manufacturers Association of the United States, Inc. (MVMA), General Motors Corporation (GM), Volkswagen of America, Inc. (VW), Chrysler Corporation (Chrysler), Automobiles Importers of America, Inc. (AIA), U.S. Technical Research Company (representatives of Automobiles Peugeot) (Peugeot) and American Motors Corporation (AMC).

[11] 48 FR 31460 (July 8, 1983).

[12] This information is contained in Docket EN–83–01.

Even in the two areas concededly reserved for Federal judgment by this legislation—the existence of "compelling and extraordinary" conditions and whether the standards are technologically feasible—Congress intended that the standard of EPA review of the state decision be a narrow one.

40 FR 23102, 23103 (May 28, 1975).

Congress' intent that EPA's review of California's decisionmaking be narrow has led EPA in the past to reject arguments that, whatever their appeal might seem to be, are not specified as grounds for denying a waiver:

The law makes it clear that the waiver requests cannot be denied unless the specific findings designated in the statute can properly be made. The issue of whether a proposed California requirement is likely to result in only marginal improvement in air quality not commensurate with its cost or is otherwise an arguably unwise exercise of regulatory power is not legally pertinent to my decision under section 209, so long as the California requirement is consistent with section 202(a) and is more stringent than applicable Federal requirements in the sense that it may result in some further reduction in air pollution on California.

36 FR 17458 (August 31, 1971).[13] Thus, my consideration of all the evidence submitted in connection with this waiver request is circumscribed by its relevance to those questions which I may consider under section 209.

Finally, it is important to remember that the burden of proof in a section 209 waiver proceeding is squarely upon the opponents of the waiver:

The language of the statute and its legislative history indicate that California's regulations, and California's determination that they comply with the statute, when presented to the Administrator are presumed to satisfy the waiver requirements and that the burden of proving otherwise is on whoever attacks them. California must present its regulations and findings at the hearing, and thereafter the parties opposing the waiver request bear the burden of persuading the Administrator that the waiver request should be denied.

MEMA, supra, 627 F.2d at 1121.

IV. Discussion

A. Public Health and Welfare

I have already set forth in the introduction to this decision the criteria for review of the public health and welfare protectiveness issue as it pertains to both emission standards and accompanying enforcement procedures for which California requests a waiver.

CARB has made a determination that its particulate emission standards and test procedures are, in the aggregate, at least as protective of the health and welfare as corresponding Federal standards.[14] No commenter has questioned CARB's "protectiveness" determination, with the exception of the Natural Resources Defense Council, Inc. (NRDC), which expressed concern that the California particulate standard was not as protective as the then-existing Federal light-duty particulate standards for 1985.[15] However, since EPA has delayed imposition of its scheduled 1985 particulate standards for two years,[16] the California particulate standards are at least as numerically stringent for each model year, 1985 and subsequent, as the corresponding Federal standards.[17] Moreover, as noted above, CARB has adopted the Federal Test Procedure for measuring particulate emissions.[18] Thus, I cannot find that California's determination that its amended particulate standards and test procedures are, in the aggregate, at least as protective of public health and welfare as applicable Federal standards, is arbitrary and capricious.

B. Compelling and Extraordinary Conditions

Under section 209(b)(1)(B) of the Act, I cannot grant the waiver if I find that California "does not need such State standards to meet compelling and extraordinary conditions." CARB states that it adopted its amended particulate standards in response to compelling and extraordinary conditions, including the impact on the health and welfare of its citizens caused by decreased visibility, as well as adverse health effects and the economic cost of soiling, anticipated from diesel vehicular particulate emissions.[19] A number of commenters from the automotive industry argue, on the other hand, that California has failed to demonstrate the existence of "compelling and extraordinary" circumstances, and, that even if such circumstances did exist, California's particulate standards are not needed to meet them.[20]

Before reviewing the various arguments and the supporting evidence, it is helpful to focus again upon the pertinent statutory language to determine the scope of my inquiry here. Section 209(b)(1)(B) provides in pertinent part that:

The Administrator shall . . . waive application of this section . . . if the State determines that the State standards will be, in the aggregate, at least as protective . . . as applicable Federal Standards . . . No such waiver shall be granted if the Administrator finds that—

* * * * *

(B) such State does not need such State standards to meet compelling and extraordinary conditions. . . .

CARB argues that under this criterion EPA's inquiry is restricted to whether California needs its own motor vehicle pollution control *program* to meet compelling and extraordinary conditions, and not whether any given standard, (*e.g.*, the instant particulate standards) is necessary to meet such conditions.[21] A number of the

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[13] *See also MEMA, supra*, 627 F.2d at 1116–1117 (holding that EPA properly declined to consider the alleged anti-competitive effect of California's in-use maintenance regulations).

[14] CARB Letter of Request at 2. Although CARB limited its analysis to its particulate standards, rather than to its entire set of standards, no manufacturer has disputed CARB's determination that its standards are as least as protective as Federal standards. Moreover, EPA has already considered California's determination that its set of standards is at least as protective as the applicable Federal program, and could not find the California determination to be arbitrary and capricious. *See* Determination of the Administrator, dated December 23, 1982, Docket EN–82–9 (granting California a waiver of Federal preemption to enforce its optional standards for oxides of nitrogen) at 6–7, n. 11.

[15] Letter from David Doniger, Senior Staff Attorney, NRDC, to William Heglund, Acting Director, Manufacturers Operations Division, EPA, dated June 3, 1983 at 2, n. 1. The California light and medium-duty vehicle particulate standard for 1985 is 0.4 g/mi while the then-existing Federal standard for the 1985 model year was 0.2 g/mi for light-duty vehicles (LDV) and 0.26 g/mi for LDTs. (The Federal classification of "LDV" generally corresponds to California's classification of PC. *See* 40 CFR 86.082–2(b).)

[16] See 49 FR 3010 (January 24, 1984).

[17] Compare the California particulate standards, *supra* at 4, with the current Federal particulate standards of 0.6 g/mi for LDVs and LDTs for the 1985 and 1986 model years, and 0.2 g/mi for LDVs and 0.26 g/mi for LDTs for the 1987 and subsequent model years. *See* 49 Fed. Reg. 3010 (January 24, 1984).

[18] California Exhaust Emission Standards and Test Procedures at 1.

[19] CARB Letter of Request at 1.

[20] *See, e.g.*, Transcript (Tr.) of Hearing on the CARB Request for a Waiver of Federal Preemption for Particulate Emission Standards, Docket EN–83–01, held on June 7, 1983, at 51 (MVMA), 120 (VW) and 154 (AIA); "Memorandum of Law of AIA and MVMA to EPA Regarding California Request for Waiver of its 1985 and Later Model Year Particulate Standards," dated July 25, 1983 (AIA/MVMA Comment) at 7; "General Motors Submission to EPA of Supplemental Information Relating to the June 7, 1983, Public Hearing Considering the California Request for a Waiver of Federal Preemption for the California 1985 and Later Light-Duty Diesel Particulate Standards," dated July 25, 1983 (GM Comment) at 13; Comments of Daimler-Benz, A.G. to California's Request for a Waiver of Federal Preemption for Particulate Emission Standards for Diesel Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles," dated July 18, 1983 (DB Comment) at 5.

[21] "Supplemental Submittal of California Air Resources Board," dated July 25, 1983 (CARB Comment) at 9–11.

manufacturers assume that my consideration of whether "compelling and extraordinary conditions" exist must be with respect to California's particulate situation only. For the reasons elaborated below, I agree with California that my basis inquiry concerns whether "compelling and extraordinary conditions" exist that justify California's continued need for its own mobile source emissions control program.

Support for this interpretation, is found in the legislative history of section 209, particularly the fact that in creating an exception to Federal preemption for California, Congress expressed particular concern with the potential problems to the automotive industry arising from the *administration* of two programs.[22] Therefore, as CARB points out, "[t]he 'need' issue thus went to the question of standards in general, not the particular standards for which California sought [a] waiver in a given instance."[23]

The interpretation that my inquiry under (b)(1)(B) goes to California's need for its own mobile source program is borne out not only by the legislative history, but by the plain meaning of the statue as well. Specifically, if Congress had intended a review of the need for each individual standard under (b)(1)(B), it is unlikely that it would have used the phrase "* * * does not need *such* state standards" (emphasis supplied), which apparently refers back to the phrase "State standards * * * in the aggregate," as used in the first sentence of section 209(b)(1), rather than to the particular standard being considered. The use of the plural, i.e., "standards," further confirms that Congress did not intend EPA to review the need for each individual standard in isolation.[24] Given that the manufacturers have not demonstrated that California no longer has a compelling and extraordinary need for its own program, which now includes these amended particulate standards, I cannot deny the waiver on this basis.[25]

Furthermore, a review of the legislative history of section 209 additionally reveals that the phrase "compelling and extraordinary conditions" primarily refers to certain general circumstances, unique to California, primarily refers to certain general circumstances, unique to California, primarily responsible for causing its air pollution problem. The House debate on the adoption of the original (1967) California waiver provision is most probative in this regard. Representative Harley Staggers, chairman of the House Interstate and Foreign Commerce Committee, which was responsible for the legislation, stated:

> The majority of the committee felt that the overall national interest required administration of controls on motor vehicle emissions, with special recognition given by the Secretary to *the unique problems facing California as a result of numerous thermal inversions that occur within that state because of its geography and prevailing wind patterns.*

113 CONG. REC. 30948 (bound ed. November 2, 1967) (emphasis supplied). These geographical and climatic factors were cited as "compelling and extraordinary" factors time and time again during the House debate.[26] The other ingredient recognized by Congress as contributing to "compelling and extraordinary conditions" was the presence and growth of California's vehicle population, whose emissions were thought to be responsible for ninety percent of the air pollution in certain parts of California.[27]

It is evident from this history that "compelling and extraordinary conditions" does not refer to levels of pollution directly, but primarily to the factors that tend to produce them: geographical and climatic conditions that, when combined with large numbers and high concentrations of automobiles, create serious air pollution problems. The question of whether these fundamental conditjons continue to exist was not directly dealt with by the manufacturers.[28] Rather, the manufacturers have advanced a number of arguments based on narrower views of California's need for its particulate standards and on the relatively slight benefit which they claim will accure to the state by imposing its more stringent standards. These arguments provide an insufficient basis for denying the waiver, not only because they are mistakenly premised on the theory that each standard must be analyzed in isolation, but also because, as I will explain below, the manufacturers would not have met their burden of proof even if their theory were correct.

AIA and MVMA assert that the phrase "compelling and extraordinary conditions" found in section 209 refers primarily to California's smog problem and that California's particulate standards do not have "the benefit of the Congressional presumptions which supported all prior waivers."[29] If Congress had been concerned only with California's smog problem, however, it easily could have limited the ability of California to set more stringent standards to hydrocarbons and oxides of nitrogen—the only two regulated automotive pollutants substantially contributing to that phenomenon.[30]

Instead, Congress took a broader approach consistent with its goal of allowing California to operate its own comprehensive program. As discussed below, however, even absent a "Congressional presumption" including

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[22] *See id.* at 10.

[23] *Id.*

[24] Indeed, to find that the "compelling and extraordinary conditions" test should apply to each pollutant would conflict with the amendment to section 209 in 1977 allowing California to select standards "in the aggregate" at least as protective as federal standards. In enacting that change, Congress explicity recognized that California's mix of standards could include some less stringent than the corresponding federal standards. *See* H.R. Rep. No. 95–294, 95th Cong., 1st Sess. 302 (1977). Congress could not have given this flexibility to California and simultaneously assigned to the state the seemingly impossible taks of establishing that "extraordinary and compelling conditions" exist for each less stringent standard. Since no such specific finding is required for less stringent standard, no such finding should be required for each more stringent standard.

[25] AIA and MVMA maintain that "even the California smog problem no longer represents the unique situation it once was." AIA/MVMA Comment at 13, n.3. Even to the extent this may be true, it does not directly bear upon whether the "compelling and extraordinary conditions" exist since the continuation of California's more stringent program would appear likely to be a basic reason for any improvement in the smog problem.

Further, Congress has made it abundantly clear that the manufactourers would face a heavy burden in attempting to show "compelling and extraordinary conditions" no longer exist: The Administrator, thus, is not to overturn California's judgment lightly. Nor is he to substitute his judgment for that of the State. There must be clear and compelling evidence that the State acted unreasonably in evaluating the relative risks of various pollutants in light of the air quality, topography, photochemistry, and climate in that State, before EPA may deny a waiver. [H.R. Rep. No. 95–294, 95th Cong., 1st Sess. 302 (1977).]

[26] *See, e.g.*, 113 CONG. REC. *supra*, at 30942, 30943 (remarks of Rep. Tunney); 30963 (remarks of Rep. Wilson); 30967 (remarks of Rep. Holifield referring to "atmospheric inversion"); 30955 (remarks of Rep. Roybal); 30975 (remarks of Rep. Moss referring to "unique" meteorological problems).

[27] *See id.* at 30946 (remarks of Rep. Bell); 30950 (remarks of Rep.—Corman: "The uniqueness and the seriousness of California's problem is evident-more than 90 percent of the smog in our urban area is caused by automobiles, and in the next 15 years the number of automobiles in the state will almost double").

[28] The failure of the manufacturers to reach this question is particularly significant given that the topographical and climatic conditions that section 209(b) is in part premised upon not only trap "smog," but also may prevent the dispersal of fine particulate matter such as that emitted from diesel engines.

[29] AIA/MVMA Comment at 14.

[30] Congress was apparently aware that California might decide to control other non-smog-producing pollutants. *See, e.g.*, 113 CONG. REC. 30951 (November 2, 1967) (remarks of Rep. Herlong: "[T]he total program for control of automotive emissions is expected to include [in addition to hydrocarbons and nitrogen oxides] carbon monoxide, lead and *particulate matter.*" (emphasis supplied.)

particulates, I would be unable to conclude on this record that the opponents of the waiver have met their burden of proof.

A number of manufacturers contend that California's determination that it needs its more stringent particulate standards is supported by an unrealistically high prediction of diesel penetration of the California market.[31] However, these manufacturers do not adequately respond to the fact that California's determination was based on both low demand (*i.e.*, 10%) and high demand (*i.e.*, diesel sales increasing to 23% of the California market by 1990) scenarios.[32] The manufacturers also ignore the upward trend in diesel penetration in California that contrasts with the rest of the country.[33] The fundamental rejoinder to the manufacturers' argument remains, however, that:

> Arguments concerning * * * the marginal improvements in air quality that will allegedly result [from implementation of the standards], and the question of whether these particular standards are actually required by California * * * fall within the broad area of public policy. The EPA practice of leaving the decision on such controversial matters of public policy to California's judgment is entirely consistent with the Congressional intent * * *.[34]

MVMA, AIA, GM and VW also argue that in order to be granted a waiver for its particulate standards California must have a "unique" particulate problem; i.e., one that is demonstrably worse than in the rest of the country.[35] However, as CARB points out, there is no indication in the language of section 209 or the legislative history that California's pollution problem must be the worst in the country, for a waiver to be granted.[36]

Nonetheless, CARB has shown that California has unique visibility problems. Certain areas of the state, including the South Coast Air Basin, have the worst visibility in the country.[37] CARB argues that the problem is particularly compelling in view of the potentially scenic vistas in many of the areas with the worst visibility and the negative impact such poor visibility has on its tourism industry.[38] CARB relies on scientific studies that, it argues, establish that an increase in diesel particulates will reduce visibility due to their light scattering and absorption characteristics.[39]

Additionally, CARB concludes that diesel particulate emissions, in combination with the high ozone and oxides of nitrogen concentrations found in areas such as the South Coast Air Basin, potentially pose at least three unique health problems. First, polycyclic aromatic hydrocarbons adsorbed by diesel particulates could react with specific photo-oxidants and form potentially more hazardous compounds.[40] Second, impaired lung defense mechanisms caused by certain compounds in photochemical smog could increase the retention time of potentially mutagenic and carcinogenic compounds in the lungs.[41] Finally, CARB fears that "carcinogens adsorbed to diesel particles could act synergistically with certain compounds in photochemical smog."[42] The manufacturers challenging the waiver request have not met their burden of overcoming California's conclusions.

Several of the manufacturers argue California's "need" for stricter particulate standards by principally arguing that California has failed to demonstrate that its standards, as opposed to the Federal standards, are "needed" based on the emissions benefits they will provide.

AIA and MVMA argue that even if California does have a particulate problem it does not follow that these particulate standards are needed to address that problem.[43] Similarly, GM contends that CARB has not determined explicitly the relative impact of its standards compared with the Federal standards and, therefore, has not demonstrated its need for its own standards.[44] However, it is not necessary for CARB to quantify the exact emissions benefits its new standards will create when it is clear that its standards are significantly more stringent than the corresponding Federal particulate standards and thus will result in greater emission reductions. *See* page 6, *Supra.*

Moreover, even if it were true that California's total suspended particulate problem is, as certain manufacturers argue,[45] no worse than some other areas of the country, this does not mean that *diesel* particulates do not pose a special problem in California. CARB recognizes that diesel particulates do not appear numerically significant when compared to total suspended particulates.[46] However, as discussed above, California has submitted evidence that diesel particulates have a unique chemical composition and size that make them particularly harmful with respect to visibility and potentially to the public health.[47]

GM, on the other hand, contends that the composition of particulates (i.e., the size distribution and the amount contributed by motor vehicles) in California is not significantly different from that found elsewhere in the country.[48] GM also disputes CARB's analysis that its stricter particulate standards are needed due to potential health risks on the basis that diesel particulates only contribute a relatively minor amount of the mutagenicity risk from airborne particulates.[49] Even assuming, *arguendo*, that these contentions are true, GM has not secceeded in showing that CARB does not need its standards. First, California has already demonstrated that its visibility is uniquely poor, which supports its need for its more stringent standards to prevent even further degradation. Second, CARB has indicated that its concerns about potential health risks spring not only from the potential mutagenicity and carcinogenity of diesel particulates *per se*, but from their exacerbation by California's characteristic smog.[50] GM

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[31] *See, e.g.*, Tr. at 37 (MVMA asserting that CARB determination is based upon inaccurate prediction of 23% diesel penetration); DB Comment at 5.

[32] CARB Comment at 5 and CARB Staff Report regarding the adoption of particulate exhaust emission standards for 1985 and subsequent model year diesel-powered vehicles, dated July 9, 1982 (CARB Particulates Staff Report) at 58.

[33] Compare California diesel penetrations of 4.2%, 5.6% and 7.0% for the years 1980–1982, respectively (*id.*) with nationwide diesel penetrations of 4.4%, 6.1% and 4.5% for the same years. Hearing statement of AIA, Exhibit A.

[34] 41 FR 44209, 44210 (October 7, 1976). This is particularly true where, as here, California's prediction is necessarily speculative due to the strong correlation between diesel sales and historically volatile fuel prices.

Moreover, other factors, such as the recent decisions of certain manufacturers to significantly cut diesel prices may contribute to a resurgence in diesel sales. *See Ward's Automotive Reports*, September 26, 1983 at 307, and *Automotive News*, August 29, 1983 at 46.

It is also worth noting that at least one division of a major manufacturer predicts a significant increase in diesel penetration in California for 1984. *Automotive News*, August 29, 1983, at 46.

[35] MVMA/AIA Comment at 12–14; GM Comment at 13; and Statement by Volkswagenwerk AG, *et al.*, concerning California State Motor Vehicle Particulate Emission Standards, dated June 7, 1983 (VW Comment) at 4.

[36] *See* CARB Comment at 12–13.

[37] CARB Comment at 14–15.

[38] *Id.*

[39] CARB Particulates Staff Report, Exhibit A.

[40] CARB Comment at 17.

[41] *Id.* at 17–18.

[42] *Id.* at 19.

[43] AIA/MVMA Comment at 15.

[44] *See, e.g.*, GM Comment at 16 and Attachment I at 3.

[45] *See, e.g.*, AIA/MVMA Comment at 14.

[46] CARB Particulates Staff Report at 58.

[47] *See, e.g., id.* at Exhibit A, pp. 1 and 6.

[48] GM Comment at 15.

[49] *See, e.g.*, GM Comment, Attachment I at 4.

[50] *See*, notes 40–42 and accompanying text.

has not adequately demonstrated that the composition of particulates in California presents no special health problems, in view of this showing by CARB.

CARB has considered scientific information that does not support its position that its stricter standards are needed,[51] but has concluded, on balance, that it can best protect the health and welfare of its citizens by implementing those standards. As indicated above, CARB has articulated numerous reasons why it believes diesel particulates present a compelling and extraordinary problem. EPA has long recognized that:

> The structure and history of the California waiver provision clearly indicate a Congressional intent and an EPA practice of leaving the decision on ambiguous and controversial public policy to Califorina's judgment.

40 FR 23101, 23103 (May 28, 1975). Thus, even if my finding regarding the existence of "compelling and extraordinary conditions" were focused only upon California's particulate problem, I could not find on this record that the opponents of the waiver had met their burden of proof to show that such conditions do not exist.

C. Consistency with Section 202(a)

Under section 209(b)(1)(C), I must grant California its waiver request unless I find that California's standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act. Section 209(a)(2) states, in part, that any regulation promulgated under its authority, "shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period."

EPA has long held that consistency with section 202(a) does not require that all manufacturers be permitted to sell all motor vehicle models in California. Rather, as discussed below, EPA has found California standards consistent with section 202(a) in cases where certain models were eliminated but the "basic market demand" was satisfied.

For example, in granting a waiver to California to implement standards more stringent than Federal standards for the 1975 model year, and which would force the introduction of catalyst technology, the Administrator acknowledged:

> At these levels, I expect the manufacturers to market a full range of vehicles in California, although there may well be a few models of some manufacturers which do not meet these standards. Any unmarketed models would be expected to be replaced by other models of the same manufacturer, or by vehicles sold by other manufacturers. In this way, competitive pressure is likely to be forced for clean air.

38 FR 10317 (April 26, 1973).

Similarly, in granting a waiver to California to enforce its more stringent hydrocarbon emission standards for motorcycles, the Administrator found that:

> * * * while California's emission standards may severely limit the number of two stroke motorcycles which may be sold in California in the future, this will not result in the unavailability of motorcycles which are substantially similar in size and function to the current two strokes. Two stroke and four stroke engines merely represent two different types of engines for the same general class of motorcycles.
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> I am not deciding here that the "basic demand" test of *"International Harvester* [v. *Ruckelshaus*, 478 F. 2d 615 (D.C. Cir. 1973)]" is applicable in the context of a California waiver. However, as I stated in the May 28, 1975, (40 FR 23101) California waiver decision, I do believe that if the test were to be applied, it would not be applicable to its fullest stringency due to the degree of discretion given to California in dealing with its mobile source pollution problems. In addition, the court's approach in "International Harvester" is fully consistent with the potential outcome of eliminating some or all two stroke engines from the California motorcycle market. As the court stated:
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> We are inclined to agree with the Administrator that as long as feasible technology permits the demand for new passenger automobiles to be generally met, the basic requirements of the Act would be satisfied, even though this might occasion fewer models and a more limited choice of engine types. The driving preferences of hot rodders are not to outweight the goal of a clean environment. [478 F. 2d at 640].

41 FR 44209, 44213 (October 7, 1976) (motorcycle waiver decision).

The rationale of these two earlier decisions, acknowledging that some models might be unavailable under California's more stringer standards, is reflected in, for example, the fact that for the 1983 model year, 73 models of small gasoline-powered pick-up trucks are available federally while only 55 models are available in California.[52]

Only once has the Agency found a PC, LDT or MDV standard inconsistent with section 202(a) in a California waiver proceeding. In that case, imposition of the standard would have forced manufacturers out of the California market for an entire class of vehicles, *i.e.*, light-duty trucks. *See* 38 FR 30136 (November 1, 1973). Thus, at least some manufacturers would have been unable to market any vehicles "substantially similar in size and function" (*see* motorcycle waiver decision, *supra*, 41 FR 44213) to light-duty trucks.

Ultimately, I conclude that Congress left to California the policy choice that its standards might result in some reduction of model availability for its citizens. I cannot lightly overturn California's judgment that some sacrifice in model availability is worth the benefits of reduced exposure to particulates.[53] If the manufacturers "dislike the substance of the CARB's regulations * * * then they are free to challenge the regulations in the state courts of California." *MEMA, supra*, 627 F.2d. at 1105. The scope of my review of whether California's action is consistent with section 202(a) is narrow; it is limited to determining whether those opposed to the waiver have met their burden of establishing that California's standards are technologically infeasible. *Id.* at 1126.

1. *1985 standard*—CARB indicates that its 1985 particulate standard of 0.4 gram per mile is in effect a "capping standard" designed to prevent manufacturers from increasing the existing particulate emissions of their vehicles in an effort to meet the stringent California NO_x standard to be implemented in 1984.[54] CARB had previously projected that its 1985 particulate standard, in conjuction with its NO_x standard, might result in the unavailability of up to one-third of the diesel-powered passenger cars that would otherwise be available in 1985.[55]

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[51] *See, e.g.*, CARB Comment at 18–21 discussing, *inter alia*, the National Research Council report "Health Effects of Exposure to Diesel Exhaust," which report disagreed with CARB's conclusion that standards stricter than 0.6 g/mi are warranted now. Chrysler and AIA argue that this report demonstrates and absence of "compelling and extraordinary conditions." *See* statement by Gordon E. Allardyce, Manager, Regulatory Analysis and Planning, Chrysler Corporation, dated June 7, 1983 at 3 and Hearing Statement of AIA at 5. Of course, EPA has recently affirmed its commitment to the imposition of the 0.2 g/mi standard, which was chosen primarily to protect the public health.

[52] CARB Staff Report Regarding Certification of Federally Certified Light-Duty Motor Vehicles for Sale in California (June 13, 1983) at 11.

[53] *Cf. MEMA, supra*, 627 F.2d at 1119 ("The EPA Administrator does not have authority to regulate either the motor vehicle manufacturing industry or the State of California under a broad charter to advance the public interest.")

[54] The 1984 and subsequent model year NO_x standards are 1.0 g/mi for all PCs and for LDTs and MDVs under 4,000 lbs. and 1.5 g/mi for LDTs and MDVs from 4,000 lbs to 6,000 lbs. CARB's concern over the impact of these more stringent NO_x standards stems from the fact that increased exhaust gas recirculation—a primary means of NO_x reduction—tends to lead to proportionally increased particulates. *See, e.g.*, CARB Particulate Staff Report at 4.

[55] Tr. at 21.

However, more recently CARB has submitted 1983 and 1984 model year certification data which indicate that numerous engine families already meet the 1985 model year standards, while many other engine families are close to these standards.[56] Only three of the thirty-one 1983 model year and two of twenty-one 1984 model year certified diesel PC, LDT and MDV engine families exceed the 0.4 g/mi. particulates standard.[57] CARB has stated that when required to meet the more stringent 1984 NO_x standard some of the engine families serving heavier models will experience increases in particulates that may carry them over the 0.4 g/mi standard.[58] However, CARB also indicates that "[t]he 1983 [certification] values indicate that for a significant majority of engine families, simple engine calibration changes should maintain particulates below a 0.4 g/mi emission level while the 1.0 g/mi NO_x standard is met."[59]

The manufacturers assert great skepticism about their ability to simultaneously comply with the 1985 NO_x and particulate standards. All vehicle manufacturers publicly maintain that trap-oxidizers will not be commercially available for the 1985 model year.[60] Thus, engine modifications such as electronically controlled exhaust gas recirculation (EGR) and electronic fuel injection appear to be the primary new technologies available to attempt to attain the standards. However, some manufacturers argue that additional engine controls will be insufficient or unavailable in time to meet the 1985 standards.

For example, DB submits that diesel passenger cars over 3,500 pounds will be unable to meet 1985 particulate and NO_x standards simultaneously. It argues that since they "are the only class of vehicles which will require technological improvements to meet the [1985 California particulate] standard," they should be separately considered for CARB's and EPA's "technological analysis."[61] Although California could have subdivided the diesel class in setting its particulate standards, I cannot find that its approach is arbitary, so long as Califorina's standards are consistent overall with section 202(a). Heavier diesel-powered passenger cars, while generally having a fuel economy advantage over similar size gasoline-powered vehicles, are not truly unique in function.[62] Even if these models are unavailable in California, basic demand may be met through DB's smaller diesels,[63] its remaining large gasoline powered vehicles,[64] or the available large diesel and gasoline-powered vehicles of other manufacturers.

GM asserts that its 5.7 liter(L) and 6.2L engine families will be unavailable in California in 1985 due to the combination of the 0.4 g/mi particulate standard and the 1985 NO_x standard.[65] The 5.7L engine family represented slightly less than fifty precent of GM's diesel passenger car sales in California for 1983 production through March,[66] while the 6.2L engine is the only light-duty truck diesel engine family that GM currently offers in California.[67] These engine families represent approximately 1 percent and 37 percent of GM's PC and LDT total sales in California, respectively.[68] GM does have two other diesel PC engine families that can meet the 1985 California standards,[69] though it appears that neither engine can be utilized in GM's heaviest PC series.[70] Thus, GM, like DB, will not be eliminated from the California marketplace as the result of imposition of the 1985 standards.

VW maintains that the 0.4 g/mi particulate standard will force "our largest displacement, diesel-powered vehicles out of the California market."[71] However, VW has already certified a total of six 1983 and 1984 model year engine families that meet both the 1985 NO_x and particulate standards.[72] It thus appears very likely that VW will be able to offer a wide range of diesel-powered vehicles for the 1985 model year.

Ford states that one of its two diesel passenger car engines planned for production in 1985 will be unavailable in California in light of the 0.4 g/mi particulate standards.[73] This engine was to be utilized in PCs weighing 3,625–4,000 lbs and was anticipated to account for aproximately one-third of its PC sales.[74] Ford additionally "estimates that 14 of the 24 Ford [LDT] powertrains" (*i.e.*, combinations of truck body, transmission and axle ratio) planned for the engine it intends to offer in LDTs in 1985, are "estimated * * * [not] to meet design targets associated with the [standards]." These powertrains account for "just over 50 percent of Ford's projected diesel light truck sales."[75] Even if Ford's forecasts eventually prove to be true, however, Ford nonetheless appears capable of marketing a diesel-powered line of LDTs and all but its heaviest diesel-powered passenger cars.

Other manufacturers, including Nissan,[76] Toyota,[77] Mitsubishi,[78] BMW

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[56] The mean 1983 California certification emission rates (expressed in g/mi) for diesel-powered vehicles are:

PC: 0.3 pm; 1.16 NO_x

LDT: 0.27 pm: 1.14 NO_x

MDV: 0.35 pm; 1.31 NO_x

CARB Comment at 23. Three manufacturers have certified 1983 model year diesel-powered PC engine families to the 1985 California standards for both NO_x and particulates; two manufacturers have certified 1983 model year diesel-powered LDT engine families to the 1985 standards; and one 1983 model diesel-powered MDV engine family has also attained the 1985 standards. *Id.* at 24. More significantly, all but two of the 1984 model year California certified diesel-powered PC, LDT, and MDV engine families representing nine manufacturers and twenty different engine families (fifteen PCs, four LDTs and one MDV) meet both the 1985 NO_x and particulate standards. *See* CARB Staff Report: "Consideration of Petition by General Motors Corporation to Amend * * * 1985 and Subsequent Model Year Particulate Exhaust Emission Standards for Diesel-Powered * * * Vehicles," dated September 22, 1983 (CARB Staff Report on GM Petition), at 5; and 1984 California Passenger Car, Light-Duty Truck and Medium-Duty Vehicle Certification Emissions Data (dated October 24, 1983) (1984 California certification data).

[57] CARB Comment at 23–24; 1984 California certification data.

[58] Tr. at 21.

[59] CARB Comment at 26.

[60] *See, e.g.*, AIA/MVMA Comment at 18, n. 7. But *see* "Wards Engine Update," August 15, 1983, indicating that DB may be attempting to certify to California standards a trap-oxidizer-equipped turbocharged engine for the 1985 model year.

[61] DB Comment at 8.

[62] *Cf.* motorcycle waiver decision, *supra*, 41 Fed. Reg. at 44213.

[63] DB has certified a 1984 model year diesel PC that meets the 1985 standards for NO_x and PM. CARB Staff Report on GM Particulate Petition at 5.

[64] DB indicates that it has a gasoline substitute for one of its four models over 3,500 lbs. DB Comment at 10. DB has also certified at least one other gasoline engine family for use in vehicles over 3,500 lbs for which there is no diesel substitute.

[65] GM Comment at 5, 8.

[66] *Id.* at 9.

[67] *Id.* GM is, however, currently undergoing California certification on a smaller 1984 model year engine family, which has already been certified to the 1985 standards by its manufacturer, Isuzu, for potential use in its LDTs.

[68] *Id.*

[69] CARB Comment at 24.

[70] Letter from William C. Chapman, Director, Washington, D.C. office, Industry-Government Relations, General Motors, to Christopher C. Demuth, Administrator, Information and Regulatory Affairs, U.S. Office of Management and Budget, dated August 2, 1983.

[71] VW Comment at 2.

[72] *Id.*; and 1984 California certification data.

[73] Letter from Donald R. Buist, Ford, to William Heglund, dated July 25, 1983, at 3. This letter did not include testing data.

[74] *Id.*

[75] *Id.* at 4.

of North America (BMW),[79] and Peugeot,[80] have alleged that it will be difficult or impossible for them to meet the 1985 particulate standard in conjunction with the more stringent NO_x standards for some or all of their diesel-powered PCs and LDTs. The fact remains, however, that all of these manufacturers (with the exception of BMW, which has been undergoing certification testing) have already certified at least one diesel engine family capable of meeting the 1985 particulate and NO_x standards.[81]

MVMA, GM and AMC additionally argue that California's particulate standards for LDTs are inconsistent with section 202(a) because they are identical to the PC standards, whereas the Federal particulate standard for 1987 and subsequent model year LDTs is less stringent than for corresponding model year PCs.[82] However, as I indicated above with respect to heavier passenger cars, *supra* at 31, the only requirement needed to show consistency with section 202(a) is that the standards be technologically feasible; there is no requirement that California set different standards for different sizes or types of vehicles. The California 1985 model year LDT standards appear to be feasible given the previously described certification data indicating that six LDT engine families, all from different manufacturers, have already been certified to both the 1985 particulate and NO_x standards, and the fact that the mean certification level for 1983 LDTs was less than that for the corresponding PCs.[83]

A review of the above data from the manufacturers and CARB reveals that some diesel engine families serving vehicles 3,500 pounds and greater may be eliminated from California in the 1985 model year. However, each of the ten manufacturers currently making diesel passenger cars in California appears capable of certifying at least one diesel engine family for use in PCs for 1985. At least six of the eight current manufacturers of diesel LDTs have demonstrated their ability to meet the 1985 standards. In view of these facts, I cannot find that the manufacturers have met their burden of establishing that the 1985 particulate standards are technologically infeasible, and thus I cannot find that the California 1985 standard is inconsistent with section 202(a).[84]

2. *1986–1988 standards*— CARB forecasts that trap-oxidizers (traps) will be available for use in the 1986 model year in the limited California market.[85] The manufacturers uniformly reject this possibility, maintaining that the earliest that traps will be available is for the 1987 model year and that the 1986 model year particulate standard of 0.2 g/mi therefore is technologically infeasible.[86] A number of manufacturers also argue that EPA's decision to delay imposition of the nationwide 0.2 g/mi particulate standard until 1987, in part because of potentially insufficient leadtime, makes California's imposition of its 0.2 g/mi standard for 1986 inconsistent with section 202(a).[87] However, this reliance is misplaced for a number of reasons. First, the federal leadtime assessment was expressly based on trap-oxidizer availability on a nationwide basis:

> It should be noted, however, that these conservative leadtime projections consider only the time necessary to enable manufacturers to introduce trap-oxidizers on most or all models requiring them in order to meet the 0.2 g/mi particulate standard on a nationwide basis. The Agency's decision to grant a delay until the 1987 model year to provide adequate leadtime on a Federal basis does not consider whether trap-oxidizer technology may be available at an earlier date in the California market if needed to meet the State's 1986 model year implementation of the 0.2 g/mi standard for light-duty motor vehicles.

See 49 FR 3010, 3013 n. 7 (January 24, 1984) (preamble to federal particulate matter standards for diesel-powered light-duty vehicles and light-duty trucks). It seems clear that the introduction of trap-oxidizers in a single state comprising approximately a tenth of the nationwide market would not be as difficult a task, and no information to the contrary has been submitted.

Moreover, EPA's conservative leadtime analysis must be viewed in the context of assessing the risk of applying technology on a nationwide basis rather than only in the California market. The Agency has recognized this important distinction previously in denying Volvo's request for reconsideration of a grant of a waiver to California to enforce new stringent NO_x standards. Volvo had argued that California's standards were "inconsistent" with Agency feasibility findings made in granting Volvo a nationally applicable section 202(b) NO_x waiver. In rejecting that contention the Agency responded:

> [In granting Volvo the NO_x waiver], a finding of unreasonable risk in applying technology nationally was made rather than a finding of technological infeasibility. The risks and costs inherent in attempting to certify an engine family for sale in forty-nine states, which were taken into account for the federal diesel NO_x waivers, cannot be equated with the risks and costs of attempting to produce complying vehicles for the limited California market.

46 FR 22032, 22035 (April 15, 1981).

Historically, EPA has granted waivers allowing the introduction of new technology in California prior to its introduction nationwide. For example, as discussed above, EPA waived preemption of the standard requiring the introduction of catalysts in California a

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[76] Nissan's Comments to EPA on CARB WAiver Application for Diesel Particulate Standards, dated July 6, 1983, at 2, arguing that Nissan cannot meet the standards for one engine family due to potential emission control deterioration.

[77] Letter from J. Kawona, General Manager, U.S. Office, Toyota Motor Corporation, to William Heglund, Acting Director, Manufacturers Operations Division, EPA dated July 14, 1983 ("[a] significant amount of the diesel powered vehicles which are to be marketed in California will not meet this [particulate] standard * * *").

[78] Letter from M. Fujimato, General Manager, Technical Administration Department, Office of Product Planning and Engineering, Mitsubishi, to William Heglund, EPA, dated July 5, 1983 (the 1985 standard "would be difficult to meet with our light-duty truck, taking account of variation of particulate emission level[s] in production").

[79] Letter from Wilhelm Hall, Manager Emission Control Engineering, BMW, to William Heglund, EPA, dated July 7, 1983 (engine for 4,000 lbs vehicle class cannot meet both standards; "extremely difficult" for engine designed for 3,500 lbs class to meet standards).

[80] Peugeot Comments on the California Request for A Waiver of Federal Preemption with Respect to Model Year 1985 and Later Particulate Standards at 1 ("[o]ur most sophisticated EGR system will unfortunately not allow a large percentage of production vehicles to meet the [1985 particulate] standards.")

[81] CARB Comment at 24; CARB Staff Report on GM Request at 5; 1984 California certification data. Indeed, Nissan and Toyota each have certified both a PC and a LDT meeting the 1985 standards. CARB Comment at 24, 25; CARB Staff Report on GM Request at 5.

[82] *See* Tr. at 40–41 (MVMA); General Motors [Waiver Hearing] Statement, dated June 7, 1983 at 4; and American Motors Corporation [Waiver Hearing] Statement, dated June 7, 1983 at 2.

[83] *See* note 56, *supra*. Additionally, the allegation made by GM that CARB failed to properly account for the higher particulate emissions typical of "heavier weight vehicles such as trucks," General Motors [Waiver Hearing] Statement at 4, even if true, is offset by the fact that CARB has less stringent NO_x standards for LDTs and MDVs of 4000–5,999 lbs, and still less stringent NO_x standards for LDTs and MDVs of 6,000–8,500 lbs. *See* CARB Comment at 33. Of course, it is understood that generally the less stringent the NO_x standard, the easier it is to control particulates.

[84] CARB recently approved regulations that authorize the sale of some 1985 model year PCs, LDTs and MDVs that are certified to the Federal, but not the California particulate standards, in order to enhance California diesel model availability. *See* "Notice of Public Hearing * * * Regarding Trading of Particulate Emissions for Certification of Federally Certified Light-Duty Motor Vehicles for Sale in California," dated October 18, 1983 (and accompanying summary and staff report) and "Calif[ornia] eases rules on sale of '85 diesels," *Automotive News*, December 26, 1983, at 2. These regulations, which supplement parallel existing regulations for the sale of PCs, LDTs, and MDVs which meet Federal, but not California, NO_x, HC and CO standard, should further lessen any model availability problem faced by the manufacturers.

year prior to their introduction nationally. In so doing, the Administrator noted that this "phase-in" of technology serves the purposes of the Act:

> It is my judgment that [this approach] best serves the total public interest and the mandate of the statute. It promotes continued momentum toward installation of control systems meeting the statutory standards, while minimizing risks incident to national introduction of a new technology. This option also offers the opportunity to gain experience with production of catalyst systems for a full range of automobiles by requiring catalysts of a portion of each model introduced by each manufacturer in the State of California.

38 FR 10317, 10319 (April 26, 1973).

This rationale is particularly appropriate in this case, where a new emission control system—the trap-oxidizer—can be phased-in in California, which will help ensure successful implementation on a nationwide basis the following year.[88]

Furthermore, even if traps were unavailable for the 1986 model year in the California market, a number of diesel engine families would remain available in California, with present technology. It is apparent from the CARB certification data that at least three manufacturers—Volkswagen, Toyo Kogyo and Ford—have at this early date demonstrated their ability to meet the 0.2 g/mi particulate standard in conjunction with the applicable NO_x standards without traps.[89] Several additional manufacturers are very close to the standard without traps, and presumably will have an economic incentive to perfect their technology so that they can meet the standard without the use of traps.[90] Thus, even if CARB was overly optimistic in its leadtime assessment, some diesel vehicles will be available for the 1986 model year.

It is also apparent that if traps are not available in California in 1986, the majority of currently available diesel vehicles will probably be eliminated from that market for that year. Nonetheless, I cannot find that California's 1986 particulate standard is inconsistent with section 202.

First, California has determined that traps will be available for the 1986 model year. Although the manufacturers dispute this prediction, it has a substantial basis and does not conflict with the federal leadtime determination. As noted above, the EPA leadtime determination did not address whether the traps could be introduced earlier in the limited California market. Moreover, the risk of traps not being available for the 1986 model year could be lessend to the extent the manufacturers are willing to introduce diesel-powered vehicles later in the calendar year, for example, in February 1986 rather than September 1985.[91]

Second, if California's leadtime projections later prove to have been overly optimistic, the manufacturers can ask that California reconsider its standard. If they are unsuccessful in securing such relief, the manufacturers could petition EPA to reconsider the waiver. Given the leadtime remaining, the avenues of potential relief provide a practical safety valve that underscores the reasonableness of California's standards. *Cf. Natural Resources Defense Council* v. *EPA*, 655 F.2d 318, 329–332 (D.C. Cir. 1981), *cert. denied*, 102 S.Ct. 552 (1981).

Third, in assessing the risk of whether traps will be available for timely introduction in 1986, I must bear in mind that light-duty diesel penetration appears unlikely to exceed ten percent of the California market, in the near term at least, which itself is only slightly more than ten percent of the federal market for all light-duty vehicles and light-duty trucks. This small segment of the total U.S. light-duty market (approximately one percent or less), even if it were faced with temporary elimination, is not so significant as to evoke the concerns raised in *International Harvester* of an Agency decision "allowing companies to produce cars but at a significantly reduced level of output." *International Harvester, supra*, 478 F.2d at 641. Moreover, if an inaccurate assessment of feasibility in California resulted in elimination of some or all diesel vehicles, potential diesel buyers would likely purchase the remaining diesel-powered or fuel efficient gasoline-powered models, and thus it would probably not significantly affect the potential level of output of vehicles in the aggregate.

Fourth, even if traps are not available in 1986, a number of diesel-powered vehicles will apparently be available. To the extent that diesel technology is desired by consumers, the innovative manufacturers of these vehicles stand to be advantaged and the industry's level of technology will be encouraged to rise. "Where regulatory requirements for emission control challenge conventional technology to its limits, the marketplace will in my judgement provide a strong lever for causing a shift into any superior technology." 38 FR 10317, 10319 (April 26, 1973).

Fifth, the manufacturers have failed to demonstrate that imposition of the 0.2 g/mi standard in 1986 will be technologicially infeasible on "cost of compliance within available leadtime" grounds. GM, for example, asserts that the cost of the trapoxidizer is "prohibitively excessive" and "could have dire consequences on the sales of diesels."[92] However, this is an insufficient showing. EPA has already found the cost of trap technology, assuming nationwide implementation in the 1987 model year, to be acceptable under section 202(a) and no data have been presented which would indicate that implementation of traps in 1986 in California would cause the cost of compliance to increase.[93]

Finally, although it is unnecessary to reach this conclusion to grant the waiver, it is arguable that "basic demand for new passenger automobiles," *International Harvester, supra*, 478 F.2d at 640, LDTs and MDVs will be met even if traps are not

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[88] EPA has consistently recognized Congress' intent that California pioneer efforts in automotive emission control:

> [T]here is a well-established pattern that emission control advances have been phased in through use in California before their use nationwide. This pattern grew out of early recognition that auto-caused air pollution problems are unusually serious in California. In response to the need to control auto pollution, California led the nation in development of regulations to require control of emissions. This unique leadership was recognized by Congress in enacting federal air pollution legislation both in 1967 and 1970 by providing a special provision to permit California to continue to impose more stringent emission control requirements than applicable in the rest of the nation. The experience of Federal and State officials as well as the industry itself in meeting such standards for California will facilitate an orderly implementation of the more stringent, catalyst-forcing standards for California in this case. [38 FR 10317, 10324.]

See also, MEMA, supra, 627 F.2d at 1108–1111, reviewing applicable legislative history and concluding:

> [T]hat Congress intended the State to continue and expand its pioneering efforts at adopting and enforcing motor vehicle emission standards different from and in large measure more advanced than the corresponding federal program; in short, to act as a kind of laboratory for innovation. [*Id.* at 1111.]

[89] CARB Supplement at 24; CARB Staff Report on GM Petition at 5. Toyo Kogyo has engine families available for both PCs and LDTs.

[90] CARB Supplement at 24, 25; 1984 California certification data.

[91] The nationally-based EPA projection of trap-oxidizer availability for production vehicles is "sometime between the fall of 1985 and the summer of 1986." 49 FR 3010, 3013, *supra*. Even on the basis of the less optimistic federal projection there is a good possibility that a moderately delayed introduction of some diesel-powered vehicles requiring traps could be made in the 1986 model year.

[92] GM [Waiver Hearing] Statement at 7.

[93] *See MEMA, supra*, 627 F.2d at 1118 ("Section 202's cost of compliance consideration * * * relates to the *timing* of a particular emission control regulation [emphasis in original].") *See also* disucssion at Tr. 108–111.

available.[94] Gasoline-powered vehicles are, notwithstanding the current fuel economy superiority generally provided by diesels, substantially similar in size and function to diesel-powered vehicles. Because gasoline powered PCs, LDTs and MDVs encompassing virtually all sizes, functions and price ranges would still be available in California, the California emission standards appear feasible.

3. *The standard for 1989 and subsequent model years*—CARB has set a .08 g/mi particulate standard for the 1989 and subsequent model years. In support of its conclusion that such a standard is feasible, CARB has submitted evidence that some existing traps have demonstrated collection efficiencies of 90% which, when acting upon an "engine out" particulate level of .35 g/mi (approximately the mean 1982 certification level), would produce particulate levels of .035 g/mi.[95] In recognition of testing and production variability, CARB set the standard at a somewhat higher level.[96]

Numerous manufacturers contend that there is no technological basis for believing the .08 g/mi standard can be met.[97] Additionally, they assert that the development of "effective regeneration systems" is necessary to meet that standard.[98] Finally, some manufacturers argue that consideration of a waiver for this standard is premature.[99]

Reviewing the record of this proceeding, it is clear that the manufacturers have not presented evidence rebutting CARB's evidence—including a 50,000 mile test on a 1980 Mercedes 300 SD with particulate levels under 0.08 g/mi and NO_x levels below 1.0 g/mi—demonstrating that the necessary collection efficiencies are possible.[100] Further, the manufacturers have not demonstrated how, if at all, development of a commercially available regeneration system will be made more difficult by reason of the more stringent standard. On the other hand, EPA's own technological assessment predicts that regeneration systems will be commercially available on a nationwide basis no later than the 1987 model year.[101]

The Manufacturers of Emission Controls Association (MECA) also forecasts the availability of the requisite technology for meeting the .08 g/mi standard in 1989.[102] MECA also is concerned that progress in meeting the .08 g/mi standard may be impeded if the waiver were not granted: "If our members and others do not have a specific target at which to direct their efforts the incentive will not be present to undertake the necessary development and production efforts."[103]

With the possible exception of an acceptable regeneration system, the technology to meet a .08 g/mi standard appears to currently exist. Given the significant lead time,[104] and that the only major remaining technological step—the regeneration system—is nearing its final stages, I cannot find that the .08 g/mi standard is inconsistent with section 202(a). *Cf. Natural Resources Defense Council* v. *EPA, supra*, 655 F.2d at 328–336.[105]

V. Decision

Based upon the above discussion and findings, I hereby waive the application of section 209(a) to the State of California with respect to § 1960.1 of Title 13, California Administrative Code, and "California Exhaust Emission Standards and Test Procedures for 1981 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," adopted November 23, 1976, as amended August 26, 1982.

Dated: August 27, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84-11917 Filed 5-2-84; 8:45 am]

BILLING CODE 6560-50-M

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[94] CARB strongly asserts this position. *See, e.g.*, Tr. at 10–11.

[95] CARB Comment at 28–29.

[96] *Id.*

[97] *See, e.g.*, AIA/MVMA Comment at 23 and DB Comment at 11.

[98] AIA/MVMA Comment at 23.

[99] *See, e.g.*, Ford letter, dated June 6, 1983, at 3.

[100] CARB Comment at 29 (reviewing results of Society of American Engineers (SAE) Paper #830084). CARB also cites another testing program designed to consider the feasibility of the .08 g/mi standard, which found a mean particulate emission rate of 0.04 g/mi for the 2,000 miles the vehicle was tested. *Id.*

[101] *See* 49 FR 3010 *supra.*

[102] Letter from Bruce I. Bertelsen, Executive Director, MECA, to William Heglund, EPA, dated July 25, 1983, at 2.

[103] *Id.*

[104] As I indicated with respect to the 0.2 g/mi standard, supra at pages 40–41, if CARB's assessment of the availability of the necessary technology is too optimistic, the manufacturers would be able to petition CARB again for reconsideration of the .08 standard, or to petition EPA for reconsideration of its decision to grant this waiver.

[105] In *NRDC*, the court considered the validity of EPA's regulation, which was envisioned as generally requiring trap-oxidizers on light-duty vehicles, in light of the arguments of the vehicle manufacturers that EPA incorrectly assessed the period of time necessary to permit developmental application of the requisite technology. The Court upheld EPA's 1980 prediction that traps would be available in 1985 and concluded:

> Given this time frame, we feel that there is substantial room for deference to the EPA's expertise in projecting the likely course of development. The essential question in this case is the pace of that development, and absent a revolution in the study of industry, defense of such a projection can never possess the inescapable logic of a mathematical deduction. We think that the EPA will have demonstrated the reasonableness of its basis for prediction if it answers any theoretical objections to the trap-oxidizer method, identifies the major steps necessary in refinement of the device, and offers plausible reasons for believing that each of those steps can be completed in the time available. If the agency can make this showing, then we cannot say that its determination was the result of crystal ball inquiry, or that it neglected its duty of reasoned decisionmaking. [655 F.2d at 332–333.]

The manufacturers have not shown that the trap-oxidizer technology is unavailable, particularly in view of current existence of all of the necessary technology other than a fully perfected regeneration system, the abundant leadtime available, and the opportunity to petition California or EPA later if current projections prove to be overly optimistic.

[OPTS-51514; TSH-FRL 2565-4]

Certain Chemicals; Premanufacture Notices

Correction

In FR Doc. 84–9956 beginning on page 14802 in the issue of Friday, April 13, 1984, make the following corrections.

On page 14803, first column, PMN–548, third line from the bottom, *"Disposal.*0.2" should read *"Disposal.* 0.2"; third column, PMN 84–557, second line, "alkan" should read "alkane"; PMN84–558, second line, "Darbocylated" should read "Carboxylated".

BILLING CODE 1505-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-361]

American Savings Bank, FSB; New York, New York; Final Action Approval of Conversion Application

Notice is hereby given that on March 22, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of American Savings Bank, FSB, New York, New York, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of New York, One World Trade Center, Floor 103, New York, New York 10048.

Dated: April 27, 1984.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 84-11931 Filed 5-2-84; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-359]

Capitol Federal Savings & Loan Association of Denver, Denver, Colo.; Final Action Approval of Conversion Application

Notice is hereby given that on March 23, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Capitol Federal Savings and Loan Association of Denver, Denver,

Colorado, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Topeka, P.O. Box 176, Topeka, Kansas 66601.

Dated: April 27, 1984.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 84-11933 Filed 5-2-84; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-362]

Home Federal Bank of Florida, F.S.B., St. Petersburg, Fla.; Final Action Approval of Conversion Application

Notice is hereby given that on March 21, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Home Federal Bank, F.S.B., St. Petersburg, Fla., for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, D.C. 20552 and at the Office of Supervisory Agent of said Corporation at the Federal Home Loan Bank of Atlanta, P.O. Box 56527, Peachtree Center Station, Atlanta, Georgia 30343.

Dated: April 27, 1984.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 84-11930 Filed 5-2-84; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-360]

United Savings and Loan Association; Lebanon, Mo.; Final Action Approval of Conversion Application

Notice is hereby given that on March 30, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of United Savings and Loan Association, Lebanon, Mo., for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Des Moines, 907 Walnut Street, Des Moines, Iowa 50309.

Dated: April 27, 1984.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 84-11932 Filed 5-2-84; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Beverly National Corp.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 25, 1984.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Beverly National Corporation,* Beverly, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of The Beverly National Bank, Beverly, Massachusetts.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Consolidated Banc Shares, Inc.,* Clarksburg, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of The Lowndes Bank, Clarksburg, West Virginia.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Assumption Bancshares, Inc.,* Napoleanville, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of Assumption Bank & Trust Company, Napoleonville, Louisiana.

2. *Hancock Holding Company,* Gulfport, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of Hancock Bank, Gulfport, Mississippi.

D. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Mid-Continent Financial Services, Inc.,* Minneapolis, Minnesota; to become a bank holding company by acquiring 96.6 percent of the voting shares of State Bank of Edgerton, Edgerton, Minnesota.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Richland State Bancorp, Inc.,* Rayville, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of Richland State Bank, Rayville, Louisiana.

Board of Governors of the Federal Reserve System, April 27, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-11887 Filed 5-2-84; 8:45 am]

BILLING CODE 6210-01-M

Irving Bank Corp.; Applications To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed applications under § 225.23(a)(3) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843 (c)(8)) and section 255.21(a) of Regulation Y (49 FR 794), to engage *de novo* throught national bank subsidiaries in deposit-taking, including the taking of demand deposits, and other activities specified below. The proposed subsidiaries will not engage in commercial lending transactions as defined in Regulation Y. The Board has determined by order that such activities are closely related to banking. *U.S. Trust Company* (Press Release of March 23, 1984). Although the Board is publishing notice of these applications, under established Board policy the record of the applications will not be

regarded as complete and the Board will not act on the applications unless and until a preliminary charter for each proposed national bank subsidiary has been submitted to the Board.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the applications 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 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 applications must be received at the Federal Reserve Bank or the offices of the Board of Governors not later than May 24, 1984.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Irving Bank Corporation*, New York, New York; to engage *de novo* through the following national bank subsidiaries in the activities of commercial, consumer and mortgage lending and the acceptance of time and savings deposits and money market deposit accounts: Irving Tust Connecticut N.A., Stamford, Connecticut; Irving Trust Illinois, N.A., Chicago, Illinois; Irving Trust Vermont, N.A., Burlington, Vermount; Irving Trust New Jersey, N.A., Morristown, New Jersey; Irving Trust California, N.A., Los Angeles, California; Irving Trust North Carolina, N.A., Charlotte, North Carolina; Irving Trust Massachusetts, N.A., Boston, Massachusetts; Irving Trust Pennsylvania, N.A., Philadelphia, Pennsylvania; Irving Trust Georgia, N.A., Atlanta, Georgia; Irving Trust Texas, N.A., Dallas Texas; Irving Trust Ohio, N.A., Cincinnati, Ohio; Irving Trust Minnesota, N.A., Minneapolis, Minnesota; and Irving Trust New Hampshire, N.A., Nashua, New Hampshire. Each subsidiary will serve the Standard Metropolitan statistical Area in which it is located.

Board of Governors of the Federal Reserve System, April 27, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-11889 Filed 5-2-84; 8:45 am]

BILLING CODE 6210-01-M

S.B.T. Financial, Inc., 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 (49 FR 794) 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 (49 FR 794) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in section 225.25 of Regulation Y as closely related to banking and permissible for banking 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 May 25, 1984.

A. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *S.B.T. Financial, Inc.*, Townsend, Montana; to Acquire Kearns Agency, Townsend, Montana, and thereby engage in general insurance agency activities in a community that has a population not exceeding 5,000. These activities will serve the counties of Broadwater, Lewis & Clark, Meagher, Gallatin, and Jefferson in the State of Montana.

Board of Governors of the Federal Reserve System, April 27, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-11888 Filed 5-2-84; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Office of the Administrator

Advisory Board; Meeting

Notice is hereby given that the General Services Administration (GSA) Advisory Board's subcommittee on Finance will meet from 9:00 a.m. to 4:00 p.m. on May 25, 1984 in Room 5141-A, 18th & F Streets, N.W., Washington, D.C. 20405.

The meeting will be devoted to discussions related to GSA's audit and audit resolution process; the agency's performance with regard to implementing effective internal management controls; and, initiatives to improve GSA's financial management systems. This meeting is open to the public.

Questions regarding this meeting should be directed to Mr. James Dean on (202) 566-0382.

Dated: April 27, 1984.

Thomas J. Simon,

Director, Office of Program Initiatives.

[FR Doc. 84-11878 Filed 5-2-84; 8:45 am]

BILLING CODE 6820-BR-M

Advisory Board; Meeting

Notice is hereby given that the General Services Administration (GSA) Advisory Board will meet from 9:00 a.m. to 4:00 p.m. on May 15, 1984 in Room 6120, 18th & F Streets, N.W., Washington, D.C. 20405.

The meeting will be devoted to discussions related to GSA's management goals and objectives; the agency's 1984 internal communications plan; the current activities of the Board's subcommittees; agency training initiatives; GSA financial management improvements; and, actions being undertaken by GSA to utilize private sector management techniques with regard to real property. This meeting is open to the public.

Questions regarding this meeting should be directed to Mr. James Dean on (202) 566-0382.

Dated: April 27, 1984.

Thomas J. Simon,

Director, Office of Program Initiatives.

[FR Doc. 84-11877 Filed 5-2-84; 8:45 am]

BILLING CODE 6820-BR-M

National Archives and Records Service

Notice of Special Closing of Microfilm Research Room

The Microfilm Research Room located in the main National Archives Building (Room 400) will be closed for painting from Friday, May 4, 1984 at 5:00 PM until Monday, May 7, 1984 at 8:45 AM. Reopening of the research room may be delayed if painting is not completed as scheduled. Anyone planning to visit the Microfilm Research Room on May 7 should call in advance. The telephone number to call is 523-3284.

Dated: April 25, 1984.

Robert M. Warner,

Archivist of the United States.

[FR Doc. 84-11879 Filed 5-2-84; 8:45 am]

BILLING CODE 6820-26-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

President's Committee on Mental Retardation; Meeting

Agency Holding the Meeting: President's Committee on Mental Retardation.

Time and Date: Subcommittees will meet May 14, 1984 from 2:00-5:00 p.m. and the Steering Committee will meet at 7:00 p.m. The Full Committee will meet May 15 from 8:30 to 5:30 p.m. and May 16 from 8:30 to 12 noon.

Place: Sheraton of Boca Raton, 2000 N.W. 19th Street, Boca Raton, Florida 33432.

Status: The meetings are open to the public. An Interpreter for the deaf will be available upon advance request. All locations are barrier free.

Matters To Be Considered: Reports by the Steering Committee of the President's Committee on Mental Retardation (PCMR) will be given. PCMR plans to discuss critical issues concerning deinstitutionalization, prevention, family and community services, full citizenship, public awareness, simplification of service delivery and other issues relevant to the PCMR's goals.

The President's Committee on Mental Retardation was established by Executive Order No. 11280. PCMR acts in an advisory capacity to the President and the Secretary of the Department of Health and Human Services on matters relating to programs and services for persons who are mentally retarded and is responsible for evaluating the adequacy of current practices in programs for the retarded.

Contact Person for More Information: Linda L. Tarr, Ph. D., 330 Independence Avenue SW., Room 4057, North Building, Washington, D.C. 20201, (202) 245-7634.

Dated: April 27, 1984.

Linda L. Tarr,

Executive Director.

[FR Doc. 84-11967 Filed 5-2-84; 8:45 am]

BILLING CODE 4130-01-M

Public Health Service

Health Systems Agencies and State Health Planning Development Agencies; Certificate of Need Reviews

AGENCY: Health Resources and Services Administration, Public Health Service, HHS.

ACTION: Notice regarding adjustment of the expenditure minimum for capital expenditures and the expenditure minimum for annual operating costs.

SUMMARY: This notice provides necessary information for each State which chooses to adjust the capital expenditure and annual operating cost expenditure minimums that are used to determine whether proposals are subject to review under a State's certificate of need program. The notice also provides guidance to assist a State Health Planning and Development Agency (State Agency) in determining the exact minimum dollar figure it will use and in seeking further information.

SUPPLEMENTARY INFORMATION: The Health Planning and Resources Development Amendments of 1979 (Pub. L. 96-79) as amended by the Health Programs Extension Act of 1980 (Pub. L. 96-538) and the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) require the Secretary to designate by regulation (1) an index maintained or developed by the Department of Commerce which could be used by States to adjust the minimum threshold for capital expenditues and (2) an index which could be used by States to adjust the minimum threshold for annual operating costs in the State certificate of need programs. Pub. L. 97-35 also raised the minimum threshold for capital expenditures to $600,000 and for annual operating costs to $250,000 effective October 1, 1981. The Secretary designated the Department of Commerce Composite Construction Cost Index for both threshold adjustments in the certificate of need final regulations published October 31, 1980 (42 CFR 123.401). Threshold adjustments are based on the change in the index from October 1 of one year to October 1 of the next year. Application of the yearly change in the index is compounded from 1979, the base year for threshold adjustments, to 1983. This notice provides the change in the Department of Commerce Composite Construction Cost Index from October 1, 1979 to October 1, 1983. On October 1, 1979, the index was fixed at 133.4. On October 1, 1983, the index was fixed at 158.8. This 25.4 point change represents a 19 percent increase. States which are authorized to adjust the capital expenditure and operating cost expenditure minimums may increase them up to 19 percent, resulting in a capital expenditure minimum threshold of $174,000 and an annual operating cost minimum threshold of $297,500.

FOR FURTHER INFORMATION CONTACT: Jon Gold, Director, Division of Regulatory Activities, Office of Health Planning, BHMORD, HRSA, 5600 Fishers Lane, Room 13A-44, Rockville, Maryland 20857, (301) 443-6350.

Dated: April 28, 1984.

Robert Graham,

Administrator, Assistant Surgeon General.

[FR Doc. 84-11922 Filed 5-2-84; 8:45 am]

BILLING CODE 4160-16-M

Request for Applications To Produce a Virus and an Assay System for Detection of Antibodies to the Virus Associated With Acquired Immune Deficiency Syndrome (AIDS)

AGENCY: Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services solicits applications to produce the HTLV-III virus and to develop and distribute an assay system for the detection of antibodies to HTLV-III, the newly discovered virus associated with the AIDS Syndrome, under non-exclusive, royalty-bearing licenses from the Department (See 45 CFR 6.3). Scientists from the National Cancer Institute have isolated HTLV-III and have developed systems for its replication in a permissive cell line in tissue culture. Applicants are sought who will be able to:

1. Grow the virus on a large scale, sufficient to provide test material for a broad range of needs.

2. Develop an assay kit for an ELISA or similar assay for detection of antibodies to HTLV-III, for distribution to blood banks, plasmapheresis centers, hematology and disease laboratories and medical research institutions in the United States and abroad, under the sponsorship of an Investigational New Drug Application to be held by the

National Cancer Institute or an IND Application held by the applicant. Prior to being released for commercial distribution, any assay kit would have to be granted a product license by the Food and Drug Administration.

3. Provide a nationwide distribution system for the assay kit, and a system for monitoring the results of the assay in blood banks and research laboratories.

ADDRESS: Applications should be sent to the Assistant Secretary for Health, Department of Health and Human Services, 200 Independence Avenue, SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: (including a copy of the patent application) Dr. Lowell T. Harmison, Science Advisor, 5600 Fishers Lane, Room 13–95 Parklawn Bldg., Rockville, Maryland 20857, Telephone (301) 443–2650.

DATE: In view of the important public health considerations involved, interested parties should submit responses to the Assistant Secretary for Health within 10 days from the date of this Notice. Late responses will be considered only as time permits. Applicants may be provided an opportunity to provide additional information, to present an oral statement, and to answer questions if the Department determines that to be necessary.

SUPPLEMENTARY INFORMATION: Criteria for choosing licensees for this task will include:

1. Experience in the isolation, purification, and characterization of retroviruses.

2. Ability to grow cells in culture for mass production of virus. Experience with human lymphoid cell growth in culture will be particularly important.

3. Availability of P–3 containment facilities for production and purfication of virus and viral antigens.

4. Capacity of the virus production facility adequate to concentrate and inactivate viral harvests, and to maintain quality control on the inactivation process.

5. Prior manufacturing experience with ELISA or radio-immunoassays for broad distribution.

6. Ability to package, market and distribute radio-immunoassay test kits in a nationwide marketing system at a reasonable price. (for example, applicants should have proven capacity to routinely distribute kits to thousands of facilities including the United States blood banks and plasmapheresis establishments.)

7. Experience in the evaluation and monitoring of data from tests of investigational biologic assays under an Investigational New Drug Application.

8. Willingness to cooperate with PHS in collection, evaluation, and maintaining of data from tests of investigational biological assays.

9. Ability to grow sufficient materials for large scale commercial use, *i.e.*, millions of assays per year.

10. Skill in recombinant DNA technology with expression vectors for the expression of viral glycoproteins and/or experience in the development of peptide specific antibodies.

Applications shall include information addressing the above points. In addition, applications must provide all information required by 41 CFR 101–4.104.2.

Responses should identify an existing capability that satisfies the above criteria and that demonstrates the ability to produce the needed HTLV–III virus and/or develop and distribute an assay system for detection of anitbodies to the HTLV–III virus.

Selection of licensees by the Assistant Secretary for Health will be based upon the information compiled in the course of the above proceedings.

Dated: April 30, 1984.

Edward N. Brandt, Jr., M.D.,

Assistant Secretary for Health.

[FR Doc. 84–12062 Filed 5–2–84; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Solar Energy and Energy Conservation Bank

[Docket No. N–84–1355; FR–1700]

Tentative Allocation of Funds for Financial Assistance Through the Solar Energy and Energy Conservation Bank; Solicitation of Program Proposals

AGENCY: Solar Energy and Energy Conservation Bank, HUD.

ACTION: Notice of tentative allocation of funds and notice of solicitation of program proposals; correction.

SUMMARY: This document corrects a notice published in the **Federal Register** on March 16, 1984 (49 FR 9962) that set forth the tentative allocations of funds for Fiscal Year 1984 and solicited program proposals to be submitted by States without current cooperative agreements with the Bank and by interested applicants for designation as Indian Assistance Coordinator for the Bank. The purpose of this correction is to include an OMB control number at the place where current information requirements are described.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Francis, Manager, Solar Energy and Energy Conservation Bank, Telephone (202) 755–7166. This is not a toll-free number.

Accordingly, the following correction is being made in FR Doc. 84–7035 appearing on page 9964 in the March 16, 1984 issue of the **Federal Register**.

(1) On page 9964, middle column, under the section on "OMB Control Number," the paragraph should indicate that OMB has approved the information collection requirements relating to States without current cooperative agreements with the Solar and Energy Conservation Bank and applicants for designation as Indian Assistance Coordinator and assigned them OMB control number 2504–0002.

Authority: Subtitle A, Title V, Energy Security Act of 1980; Pub. L. 96–294; 12 U.S.C. 3601 et seq.

Dated: April 30, 1984.

Donald Franck,

Acting Assistant General Counsel for Regulations.

[FR Doc. 84–11944 Filed 5–2–84; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Survey Plat Filing; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plat of Survey.

SUMMARY: Plats of survey of the lands described below accepted March 16, 1984, will be officially filed in the Montana State Office effective 8 a.m. on June 20, 1984.

Principal Meridian, Montana

T. 29 N., R. 10 W.

The plat represents the dependent resurvey of a portion of the subdivisional lines, the survey of the subdivision of section 11, and the metes and bounds survey of parcels within Indian Allotment No. 237–A in Township 29 North, Range 10 West, Principal Meridian, Montana. The area described is in Pondera County.

This survey was requested by the Bureau of Indian Affairs.

EFFECTIVE DATE: June 20, 1984.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Dated: April 23, 1984.

Linda M. Wagner,

Chief, Branch of Records.

[FR Doc. 84-11976 Filed 5-2-84; 8:45 am]

BILLING CODE 4310-DN-M

[N-37906]

Nevada; Notice of Conveyance

Notice is hereby given that, pursuant to the Act of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 1713, James Lee Anderson, et al. purchased and received a patent for the following public lands in White Pine County, Nevada:

Mount Diablo Meridian, Nevada

T. 16 N., R. 63 E.,
Sec. 23, N½NW¼SW¼.
Containing 20 acres.

The purpose of this notice is to inform the public and interested State and local government officials of the conveyance.

Richard G. Morrison,

Chief, Lands and Minerals Operations

[FR Doc. 84-11978 Filed 5-2-84; 8:45 am]

BILLING CODE 4310-HC-M

[N—38779; N—38779-A]

Nevada; Notice of Conveyance

Notice is hereby given that, pursuant to the Act of December 23, 1980, 94 Stat. 3381 and the Act of October 21, 1976 (90 Stat. 2757; 43 U.S.C. 1719), Eugene A. Grows has purchased and received a patent for public lands in Clark County, Nevada:

Mount Diablo Meridian, Nevada

T. 20 S., R. 60 E.,
Sec. 27, NW¼NE¼NE¼SW¼.
Containing 2.5 acres.

The purpose of this notice is to inform the public and interested State and local governmental officials of the conveyance.

Richard G. Morrison,

Chief, Lands and Minerals Operations.

[FR Doc. 84-11979 Filed 5-2-84; 8:45 am]

BILLING CODE 4310-HC-M

Nevada; Filing of Plats of Survey and Order Providing for Opening of Lands

1. The Plat of Survey of lands described below will be officially filed at the Nevada State Office, Reno, Nevada, effective at 10:00 a.m., on May 29, 1984.

Mount Diablo Meridian, Nevada

T. 22 N., R. 47 E.

2. The land within the above township ranges from about 5,600 to 5,900 ft. above sea level and is nearly level to rolling land. The soil is sandy clay loam along the level land and rocky in the higher elevations and is covered with scattered sagebrush.

An improved gravel road crosses from southwest to northeast, entering in sec. 31 and leaving in sec. 1.

Callaghan Creek enters the township in sec. 31 and leaves in sec. 4.

Principal users of the area are ranchers. A windmill is located in sec. 10. No mineral formations of consequence were noted during the survey.

3. Subject to valid existing rights, the provisions of existing withdrawals and classifications, and the requirements of applicable law, the lands described above are hereby open to such applications and petitions as may be permitted. All such valid applications received at or prior to 10:00 a.m. on May 29, 1984, shall be considered as simultaneously filed at the time. Those received thereafter shall be considered in order of filing.

4. The Plats of Survey of lands described below were officially filed at the Nevada State Office, Reno, Nevada, effective at 10:00 a.m., on the dates indicated.

Mount Diablo Meridian, Nevada

T. 32 S., R. 66 E.,
(Supplemental Plat)
Filed February 2, 1984.
T. 21 N., R. 47 E.,
(Dependent Resurvey)
Filed April 3, 1984.

The purpose of this notice is to inform the public and interested State and local government officials of the filing of plats of survey. Inquiries concerning the surveys shall be addressed to the Nevada State Office, Bureau of Land Management, 300 Booth Street, P.O. Box 12000, Reno, Nevada 89520.

Lacel E. Bland,

Acting Deputy State Director, Operations.

[FR Doc. 84-11980 Filed 5-2-84; 8:45 am]

BILLING CODE 4310-HC-M

[N-39502]

Nevada; Notice of Realty Action—Exchange

April 26, 1984.

The following described federal land comprising 442.08 acres in Lyon County, Nevada, has been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716:

Mount Diablo Meridian, Nevada

T. 11 N., R. 23 E.,
Sec. 12, NW¼NE¼, S½NE¼.
T. 11., R. 24 E.,
Sec. 7, Lots 1 and 2, NE¼, E½NW¼.

The federal government is offered the following described 360 aces of non-federal land in Douglas County, Nevada, by John J. Ascuage:

Mount Diablo Meridian, Nevada

T. 14 N., R. 19 E.,
Sec. 16, SE¼NW¼, E½SW¼;
Sec. 21, NE¼NW¼;
Sec. 22, SW¼;
Sec. 27, N½N½NW¼.

The purpose of this exchange is to acquire non-federal land within and adjacent to the boundary of the Toiyabe National Forest. This proposed exchange will be based on equal value determined by fair market value appraisals and may ultimately involve less than the total acreage described for either federal or non-federal land.

This exchange is consistent with Bureau of Land Management land use planning. The federal land is not needed for any federal program. The land has previously been identified for transfer from federal ownership via public sale. Two unsuccessful sales were held.

Grazing privileges in the Colony Settlement Allotment will be reduced upon successful completion of this exchange. The grazing permittee was first notified of the planned disposal of the subject federal land by letter dated November 6, 1980.

There is no known value for minerals in the federal land. It is expected that the mineral estate will be conveyed with the surface estate.

Patent, if and when issued, will contain the following reservation to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

Patent will also be subject to the following depending upon which parcels of federal land are conveyed;

1. A right-of-way, approximately 150 feet in width along the north boundary of Section 12, granted to the Nevada Highway Department of public access (Nev-054978).

2. A right-of-way, 150 feet in width extending along the north bounday of Section 7 for a distance of approximately 4000 feet east from the northwest corner then diagonally through the northeast quadrant for approximately 2200 feet, granted to the Nevada Highway Department for public access (Nev-054978).

3. A right-of-way,60 feet in width traversing the western portion of Lot 1, Section 7, for approximately 732 feet,

granted to the Nevada Highway Department, for ingress and egress to adjacent land (Nev-055377).

Upon publication of this Notice of Realty Action in the Federal Register, the federal land will be segregated from all appropriations under the public land laws, including the mining laws, except exchanges, for a period of two (2) years or upon issuance of patent or other documents of conveyance, whichever occurs first. After acquisition, the non-federal land will become a part of the National Forest System.

Detailed information concerning the exchange is available for review at the Forest Supervisor's Office, Toiyabe National Forest, 1200 Franklin Way, Sparks, Nevada, and at the Carson City District Office, Bureau of Land Management, 1050 E. William Street, Suite 335, Carson City, Nevada 89701.

For a period of 45 days from the first publication of this notice, interested parties may submit comments to the District Manager, Carson City District Office, at the aforementioned address. Any adverse comments will be evaluated by the District Manager and forwarded to the Nevada State Director, Bureau of Land Management, who may vacate or modify this realty action and issued 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.

Thomas J. Owen

District Manager, Carson City District.

[FR Doc. 84-11941 Filed 5-2-84; 8:45 am]

BILLING CODE 4310-HC-M

[W-37608; W-53684; W-82146]

Wyoming; Notice of Proposed Reinstatement of Terminated Oil and Gas Leases

Pursuant to the provisions of Pub. L. 31-245 and Title 43 Code of Federal Regulations, § 3108.2-1(c), and Pub .L. 97-451, petitions for reinstatement of oil and gas lease W-37608 for lands in Fremont County, Wyoming, oil and gas lease W-53684 for lands in Campbell County, Wyoming, and oil and gas lease W-82146 for lands in Hot Springs County, Wyoming, were timely filed and were accompanied by all the required rentals accruing from their respective dates of termination. The lessees have agreed to new lease terms for rentals and royalties at rates of $5.00 per acre, and 16⅔ percent, respectively. The lessees have paid the required $500 administrative fee and will reimburse the Department for the cost of this **Federal Register** notice.

The lessees having met all the requirements for reinstatement of the leases as set out in Section 31 (d) and (e) of the Minerals Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate lease W-37608, effective March 1, 1984, lease W-53684 effective March 1, 1984 and lease W-82146 effective January 1, 1984, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Richard L. Hopkins,

Acting Chief, Branch of Fluid Minerals.

[FR Doc. 84-11973 Filed 5-2-84; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

United States Outer Continental Shelf Advisory Board; Gulf of Mexico Regional Technical Working Group; Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92-463. A meeting of the Outer Continental Shelf Advisory Board's Gulf of Mexico Regional Technical Working Group will be held on June 13-14, 1984, in Tampa, Florida. The agenda of the meeting is a follows:

June 13—Gulf of Mexico Summer Ternary Studies Meeting 8:30 a.m. to 4:30 p.m.

June 14—Continuation of Summer Ternary Studies Meeting 8:30 a.m. to 12:00 noon

Regional Technical Working Group Business Meeting 1:00 p.m. to 5:00 p.m.

A. Updating on Offshore Lease Sales

B. Preliminary Draft Environmental Impact Statement: Proposed Sales 94, 98, 102

C. Industry Presentation on Use of Oil Dispersants

The meeting will be held at the Sheraton-Downtown Hotel, 515 East Cass Street, Tampa, Florida. All sessions are open to the public, and interested persons may make oral or written presentations upon request. Such requests must be made not later than June 8, 1984, to Mr. Sydney H. Verinder, Gulf of Mexico Regional Office, Minerals Management Service, 3301 North Causeway Boulevard, P.O. Box 7944, Metairie, Louisiana 70010, or telephone (504) 838-0627.

A taped cassette transcript and summary minutes of the meeting will be available for public inspection in the Office of the Regional Manager, Gulf of Mexico Regional Office, not later than 60 days afte the meeting.

Dated: April 24, 1984.

John L. Rankin

Regional Manager, Gulf of Mexico Region, Minerals Management Service.

[FR Doc. 84-11977 Filed 5-2-84; 8:45 am]

BILLING CODE 4310-MR-M

Bureau of Reclamation

Quarterly Status Tabulation of Water Service and Repayment Contract Negotiations; Proposed Contractual Actions Pending Through June 1984

Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273), and to § 426.20 of the rules and regulations published in the Federal Register December 6, 1983, Vol. 48, page 54785, the Bureau of Reclamation will publish notice of proposed irrigation or amendatory irrigation contract actions in newspapers of general circulation in the affected area at least 60 days prior to contact execution. The Bureau of Reclamation announcements of irrigation contract actions will be published in newspapers of general circulation in the areas determined by the Bureau of Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms or written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation requirements do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. The Secretary or the district may invite the public to observe any contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act if the Bureau determines that the contract action may or will have "significant" environmental affects.

Pursuant to the "Final Revised Public Participation Procedures" for water service and repayment contract negotiations, published in the Federal Register February 22, 1982, Vol. 47, page 7763, a tabulation is provided below of all proposed contractual actions in each of the seven Reclamation regions. Each proposed action listed is, or is expected to be, in some stage of the contract negotiation process during April, May, or June of 1984. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary, or pursuant to delegated or redelegated authority, the Commissioner of

Reclamation or one of the Regional Directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved. The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the addresses and telephone numbers given for each region.

This notice is one of the variety of means being used to inform the public about proposed contractual actions. Some of the actions listed have been publicized in the **Federal Register** previously. When this is the case, the date of publication is given. Individual notice of intent to negotiate, and other appropriate announcements, will be made in the **Federal Register** for those actions found to have widespread public interest

Acronym Definitions Used Herein

(FR) Federal Register
(ID) Irrigation District
(IDD) Irrigation and Drainage District
(M&I) Municipal and Industrial
(D&MC) Drainage and Minor Construction
(R&B) Rehabilitation and Betterment
(O&M) Operation and Maintenance
(CVP) Central Valley Project
(P-SMBP) Pick-Sloan Missouri Basin Program
(CRSP) Colorado River Storage Project
(SRPA) Small Reclamation Projects Act
(SOFAR) Southern Fork American River

Pacific Northwest Region

Bureau of Reclamation, 550 West Fort Street, Box 043, Boise, ID 83724, telephone (208) 334–9011.

1. Boise Cascade Corporation, Columbia Basin Project, Washington: Industrial water service contract; 250 acre-feet; FR notice published April 7, 1980, Vol. 45, page 23531.

2. Boise Project Board of Control, Boise Project, Idaho-Oregon; Irrigation repayment contract; 22,800 acre-feet of stored water in Arrowrock Reservoir.

3. Douglas County, Oregon; SRPA loan repayment contract; $11,605,000 proposed loan obligation. Loan application also includes a request for $14,395,000 in grant funds towards anadromous fish enhancement, recreation, fish and wildlife functions.

4. Miscellaneous Water Users, Pacific Northwest Region, Idaho, Oregon and Washington; Temporary (interim) water service contracts for surplus project water; Maximum of 10,000 acre-feet annually per contractor for irrigation and maximum of 2,000 acre-feet annually per M&I contractor for terms of up to 2 years.

5. Rouge River Basin water users, Rogue River Basin Project, Oregon; Water service contracts; $5 per acre-foor of $20 minimum per annum, not to exceed 320 acres or 1,000 acre-feet of water per contractor for terms up to 40 years.

6. Willamette Basin water users, Willamette Basin Project, Oregon; Water service contracts; $1.25 per acre-foot or $20 minimum per annum, not to exceed 320 acres or 1,000 acre-feet of water annually per contractor for terms up to 40 years.

7. Willow Creek Improvement Company, Willow Creek Project, Oregon; Irrigation repayment contract; 3,500 acre-feet of stored water in Willow Creek Reservoir.

8. Washington Water Power Company, Inc., Columbia Basin Project, Washington; Industrial water service contract; 32,000 acre-feet of water per year from Franklin D. Roosevelt Lake for the proposed Creston Powerplant; FR notice published December 11, 1982, Vol. 46, page 60658.

9. Cascade Reservoir water users, Boise Project, Idaho; Irrigation repayment contracts; 57,251 acre-feet of stored water in Cascade Reservoir.

10. Boise Water Corporation, Boise Project, Idaho; Short-term (2 years) M&I water service contract; up to 5,000 acre-feet annually from stored water in Lucky Peak Reservoir.

11. Grandview I.D., Yakima Project, Washington; R&B loan repayment contract; $1,054,000 proposed obligation.

12. Irrigation Districts and Similar Water User Entities; Amendatory repayment and water service contracts; Purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

Mid-Pacific Region

Bureau of Reclamation (Federal Office Building) 2800 Cottage Way, Sacramento, CA 95825, telephone (916) 484–4680.

1. 2047 Drain Water Users Association, CVP, California; Water right settlement contract; FR notice published July 25, 1979, Vol. 44, page 43535.

2. Tuolumne Regional Water District, CVP, California; Water service contract; 3,200 acre-feet from New Melones Reservoir; FR notice published February 5, 1982, Vol. 47, page 5473.

3. Calaveras County Water District, CVP, California; Water service contract; 500 acre-feet from New Melones Reservoir; FR notice published February 5, 1982, Vol. 47, page 5473.

4. Miscellaneous Water Users, Mid-Pacific Region, California, Oregon, and Nevada; Temporary (interim) water service contracts for surplus project water; Maximum of 10,000 acre-feet annually per contractor for irrigation and maximum of 2,000 acre-feet annually per M&I contractor for terms up to 2 years.

5. Mountain Gate Community Services District, CVP, California; Amendatory water service contract providing for increased M&I use to the community of Mountain Gate.

6. Pacheco Water District, CVP, California; Amendatory water service contract providing for a change in point of delivery from Delta-Mendota Canal to the San Luis Canal.

7. City of Redding, CVP, California; Agreement for operation of the City of Redding's Lake Redding Power Project and resolution of potential impacts on Keswick Powerplant.

8. South San Joaquin ID, CVP, California; Operating agreement for conjunctive operation of New Melones Dam and Reservoir on the Stanislaus River; FR notice published June 6, 1979, Vol. 44, page 32483.

9. San Luis Water District, CVP, California; Amendatory water service contract providing for a change in point of delivery from Delta-Mendota Canal to the San Luis Canal.

10. The Westside Irrigation District, CVP, California; Amendment to existing water service contract to provide for transportation of district-owned water rights through the Delta-Mendota Canal.

11. Solano Irrigation District, Solano Project, California; Amendatory loan contract providing for reconveyance of title to land and M&I water supply delivery.

12. Lindsay-Strathmore Irrigation District, CVP, California; Amendatory water service contract providing for M&I use to the city of Lindsay.

13. Yuba County Water Agency, South County Irrigation Project, SRPA, California; Loan repayment contract, $18,500,000 proposed obligation.

14. Irrigation Districts and Similar Water User Entities; Amendatory repayment and water service contracts; Purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

15. United Water Conservation District, SRPA, California; Loan repayment contract, $18,730,000 proposed obligation.

16. Shasta Dam Area Public Utility District, CVP, California; Amendatory water service contract providing for increased M&I use to the district.

Upper Colorado Region

Bureau of Reclamation, P.O. Box 11568 (125 South State Street), Salt Lake City, UT 84147, telephone (801) 524–5435.

1. Miscellaneous water users, Upper Colorado Region, Utah, Wyoming, Colorado, and New Mexico; Temporary (interim) water service contracts for surplus project water; Maximum of 10,000 acre-feet annually per contractor for irrigation and maximum of 2,000 acre-feet annually per M&I contractor for terms up to 2 years.

2. Fontenelle (Chevron) State of Wyoming, Seedskadee Project, Wyoming; Water sales contract for 22,500 acre-feet per year for industrial use. Environmental Impact Statement under preparation; approval pending outcome and compliance with section 7, Endangered Species Act. FR notice published January 26, 1983, Vol. 48, No. 18, page 3662.

3. Animas-La Plata Conservancy District, Animas-La Plata Project, Colorado; Water service contract; 9,200 acre-feet per year for M&I use; 72,200 acre-feet per year for irrigation; FR notice published April 17, 1981, Vol. 46, No. 74, page 22474.

4. La Plata Conservancy District, Animas-La Plata Project, New Mexico; water service contract; 16,000 acre-feet per year for irrigation; FR notice published April 17, 1981, Vol. 46, No. 74, page 22474.

5. City of Farmington, Animas-La Plata Project, New Mexico; M&I water service contract; 19,700 acre-feet per year; FR notice published April 17, 1981, Vol. 46, No. 74, page 22474.

6. City of Aztec, Animas-La Plata Project, New Mexico; M&I water service contract; 5,800 acre-feet per year; FR notice published April 17, 1981, Vol. 46, No. 74, page 22474.

7. City of Bloomfield, Animas-La Plata Project, New Mexico; M&I water service contract; 5,300 acre-feet per year; FR notice published April 17, 1981, Vol. 46, No. 74, page 22474.

8. Preston-Whitney Irrigation Company, North Cache Water Development Project, Idaho; SRPA; Repayment contract for $26,000,000; Federal loan to convert open ditch system with individual pumps for sprinkler pressurization to a closed pipe gravity pressurized system; FR notice published April 26, 1983, Vol. 48, No. 81, page 18907.

9. Central Utah Project, Bonneville Unit, Utah; Supplemental M&I repayment contract for 99,000 acre-feet per year; Negotiations anticipated to be reactivated; FR notice published August 22, 1980, Vol. 45, No. 165, page 56199.

10. Central Utah Project, Bonneville Unit, Utah; $34,000,000 D&MC Contract—Duchesne River Area Canals rehabilitation to meet 1987 construction commitment. Repayment covered under executed repayment contract. FR notice published February 17, 1984.

11. Strawberry Valley R&B, Rehabilitation of Spanish Fork Diversion Structure and Strawberry Power Canal. Loan amount $7,254,000, FR notice published April 11, 1984, Vol. 49, No. 71, page 14451.

12. Dorchester Coal Company, Blue Mesa Reservoir, Colorado, Colorado River Storage Project; M&I water service contract, 400 acre-feet per year, for 40 years.

13. Irrigation District and Similar Water User Entities; Amendatory repayment and water service contracts; Purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

Lower Colorado Region

Bureau of Reclamation, P.O. Box 427 (Nevada Highway and Park Street), Boulder City, NV 89005, telephone (702) 293–8536.

1. City of Yuma, Boulder Canyon Project, Arizona; Supplemental and amendatory M&I water service contract; 3,613 acre-feet per year.

2. Agricultural and M&I water users, Central Arizona Project, Arizona; Water service subcontracts; A certain percent of available supply for irrigation entities and up to 640,000 acre-feet per year for M&I use.

3. Roosevelt Water Conservation District, Higley, Arizona; R&B loan contract; $7,474,424; FR notice published March 30, 1979, Vol. 44, page 19048.

4. Agricultural and M&I water users, Central Arizona Project, Arizona; Contracts for repayment of Federal expenditures for construction of distribution systems.

5. Contracts with 16 agricultural entities located near the Colorado River in Arizona; Boulder Canyon Project; Water service contracts for up to 27,894 acre-feet per year total.

6. Fallbrook Public Utility District, Santa Margarita Project, California; repayment and water service contract; $46,000,000 total obligation.

7. Gila River Indian Community, CAP, Arizona; Water service contract; Contract for delivery of up to 173,100 acre-feet per year.

8. Yuma-Mesa Irrigation and Drainage District, Gila Project, Arizona; Amendatory contract to allow the district to market up to 10,000 acre-feet of water per year for M&I purposes.

9. Hillcrest Water Company, Boulder Canyon Project, Arizona; Conract for delivery of 84 acre-feet of water per year to serve existing mobile home park pursuant to recommendation by Arizona Department of Water Resources.

10. Sunset Mobile Home Park, Boulder Canyon Project, Arizona; M&I water service contract for delivery of 30 acre-feet of water per year pursuant to recommendation of Arizona Department of Water Resources.

11. Irrigation Districts and Similar Water User Entities; Amendatory repayment and water service contracts; Purpose is to conform to the Reclamation Reform Act of 1982 (P.L. 97–293).

12. Santa Ana Watershed Project Authority, Riverside, California; Contract for the repayment of a $14,917,000 SRPA loan

13. Yuma County Water Users Association, Valley Division, Yuma Project, Arizona; Amendatory contract for the advancement of $1,500,000 to the association by the United States on a nonreimbursable basis for the construction of new headquarters facilities and accompanying relocation costs.

14. Ak-Chin Indian Community, Maricopa, Arizona; Contract for repayment of $13,018,000 SRPA loan.

Southwest Region

Bureau of Reclamation, Commerce Building, Suite 201, 714 South Tyler, Amarillo, TX 79101, telephone (806) 378–5430.

1. City of Belen, San Juan-Chama Project, New Mexico; M&I water service contract for 500 acre-feet annually. FR notice published April 26, 1982, Vol. 47, Page 1782.

2. Fort Cobb Reservoir Master Conservancy District, Washita Basin Project, Oklahoma; Amendatory repayment contract to convert 4,700 acre-feet of irrigation water to M&I use; FR notice published August 13, 1981, Vol. 46, page 40940.

3. Foss Reservoir Master Conservancy District, Washita Basin Project, Oklahoma; Amendatory repayment contract for remedial work. Necessity of amendment is dependent upon outcome of pending Safety of Dams legislation, S. 956 and H. R. 3208.

4. Vermejo Conservancy District, Vermejo Project, New Mexico; Amendatory contract to relieve the district of further repayment obligation, presently exceeding $2 million, pursuant to Pub. L. 96–550.

5. State of Colorado, Closed Basin Division, San Luis Valley Project; Repayment contract for State's share of costs associated with development of recreation facilities and certain fish and

wildlife facilities; Obligation will be negotiated in accordance with the Federal Water Project Recreation Act (Pub. L. 89–72), as amended; FR notice published February 12, 1982, Vol. 47, page 6493.

6. Harlingen Irrigation District, Lower Rio Grande Valley, Texas; R&B loan contract; $3 million potential obligation; Also amendment of existing SRPA repayment contract.

7. Hidalgo County Irrigation District No. 1, Lower Rio Grande Valley, Texas; Supplemental SRPA loan contract for approximately $13,205,000. The contracting process is dependent upon final approval of the supplemental loan report.

8. Irrigation Districts and Similar Water User Entities; Amendatory repayment and water service contracts; Purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

Upper Missouri Region

Bureau of Reclamation, P.O. Box 2553, Federal Building, 316 North 26th Street, Billings, Montana 59103, Telephone (406) 657–6413.

1. Miscellaneous Water Users, Upper Missouri Region, Montana, Wyoming, North Dakota, and South Dakota; Temporary (interim) water service contracts for surplus project water; Maximum of 10,000 acre-feet annually per contractor for irrigation and maximum of 2,000 acre-feet annually per M&I contractor for terms of up to 2 years.

2. Individual Irrigators, Canyon Ferry Unit, P–SMBP, Montana; Irrigation water service contracts not to exceed 320 acres or 1,000 acre-feet of water annually per contractor for terms up to 40 years.

3. Crook County ID (formerly Belle Fourche-Wyoming Water Association), Keyhold Unit, P–SMBP, Wyoming; Repayment contract for irrigation storage; 10 percent (presently 18,500 acre-feet) of Keyhole Reservoir storage space as provided by Belle Fourche River Compact; FR notice published August 21, 1980, Vol. 45, Page 55842.

4. Bell Fourche Irrigation District, Belle Fourche Unit, P–SMBP, South Dakota; Repayment contract covering construction and rehabilitation of existing irrigation facilities authorized by Public Law 98–157.

5. Town of Kirby, Boysen Unit, P–SMBP, Wyoming; Water service contract for municipal water services; Water entitlement not expected to exceed 50 acre-feet annually.

6. Nokota Company, Lake Sakakawea, P–SMBP, North Dakota; Industrial water service contract; Up to 16,800 acre-feet of water annually; FR notice published May 5, 1982, Vol. 47, Page 19472.

7. State of Wyoming, Buffalo Bill Dam Modifications, P–SMBP, Wyoming; Contract with State of Wyoming for division of additional water impounded, sharing of revenues, and sharing of costs to construct, operate, and maintain modifications of the existing Buffalo Bill Dam and Reservoir.

8. Helena Valley ID, P–SMBP, Montana; R&B loan repayment contract; Up to $2.2 million.

9.Fort Shaw ID, Sun River Project, Montana; R&B loan repayment contract; Up to $1.5 million.

10. Glasgow Irrigation District, Milk River Project, Montana; R&B loan repayment contract; Up to $2.2 million.

11. Irrigation Districts and Similar Water Users Entities; Amendatory repayment and water service contracts; Purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293)

12. City of Huron, James Diversion Dam, P–SMBP, South Dakota; Agreement for continued use of James Diversion Dam and Reservoir facilities and operation and maintenance arrangements; Contract term 20 years.

13. Shoshone Irrigation District, Shoshone Project, Wyoming; Cost escalation loan under SRPA to provide funds to complete Garland Canal Power Project; Loan amount $214,000; Contract term 40 years.

14. Individual Irrigators, Garrison Diversion Unit, P–SMBP, North Dakota; Use of surplus capacity in water supply system to deliver water to nonproject lands for terms up to 10 years.

15. East Bench Irrigation District, East Bench Unit, P–SMBP, Montana; SRPA loan of up to $3.2 million to enclose portions of lateral system in pipe to improve water use efficiency and provide gravity sprinkler pressure.

Lower Missouri Region

Bureau of Reclamation, P.O. Box 25247 (Building 20, Denver Federal Center), Denver, Colorado 80225, telephone (303) 234–3327.

1. H&RW ID, Frenchman-Cambridge Unit, P–SMBP, Nebraska; Amendatory water service contract; $1,200,000 outstanding; FR notice published February 5, 1982, Vol. 47, Page 5472.

2. Central Nebrasks Public Power and ID, Glendo Unit, P–SMBP, Nebraska; Irrigation water service contract; 8,000 acre-feet; FR notice published December 30, 1983, Vol. 48, Page 57632.

3. Purgatoire River Water Conservancy District, Trinidad Project, Colorado; Amendatory repayment contract for extension of the development period and revision of the repayment determination methodology; FR notice published August 6, 1982, Vol. 47, page 34206.

4. Casper-Alcova ID, Kendrick Project, Wyoming; Amendatory contract to provide water service to subdivided district lands; FR notice published November 24, 1980, Vol. 45, page 77522.

5. Corn Creed ID, Mitchell ID, Earl Michael, Glendo Unit, P–SMBP Wyoming, and Nebraska; Irrigation water service contracts. FR notice published January 26, 1983, Vol. 48, page 3662.

6. Town of Breckenridge, Colorado-Big Thompson Project, Colorado; Storage in Green Mountain Reservoir. FR notice published January 26, 1983, Vol. 48, page 3662.

7. Pueble West Metropolitan District, Fryingpan-Arkansas Project, Colorado; Use of municipal outlet of Pueblo Dan for conveyance service; FR notice published January 26, 1983, Vol. 48, page 3662.

8. Miscellaneous water users, Lower Missouri Region, Southeastern Wyoming, Colorado, Nebraska, and northern Kansas; Temporary (interim) water service contracts for surplus project water, maximum of 10,000 acre-feet annually per contractor for irrigation and maximum of 2,000 acre-feet annually per M&I contractor for terms up to 2 years; FR notice first published on February 16, 1982, Vol. 47, page 6725.

9. Reudi Reservoir, Fryingpan-Arkansas Project, Colorado; Second round of proposed contract negotiations for sale of water from the regulatory capacity of Ruedi Reservoir; FR notice published April 26, 1983, Vol 48, page 18909.

10. Irrigation Districts and Similar Water User Entities; Amendatory repayment and water service contracts; Purpose is to conform to the Reclamation Reform Act of 1982 (P.L. 97–293); FR notice published October 31, 1983, Vol. 48, page 50178.

11. Lower South Platte Water Conservancy District, Central Colorado Water Conservancy District, and the Colorado Water Resources and Power Development Authority, P-SMBP, Narrows Unit, Colorado; Water service contracts for repayment of costs; FR notice published August 3, 1983, Vol. 48, page 35182.

12. CF&I Steel Corporation (formerly Colorado Fuel and Iron Corporation), Fryingpan-Arkansas Project, Colorado; Amendment of Contract No. 6–07–70–W0089 to include provision for assignment of part of the replacement storage contract to third parties when

CF&I Steel Corporation sells storage space.

13. Board of Water Works of Pueblo, Fryingpan-Arkansas Project, Colorado; Negotiate and execute a 6,000 acre-foot 1984 temporary storage contract.

14. Amity Mutual Irrigation Company, Colorado; SRPA loan repayment contract; $4,223,000 proposed loan obligation.

Opportunity for public participation and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

(1) Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

(2) Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of the Bureau of Reclamation.

(3) All written correspondence regarding proposed contracts will be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

(4) Written comments on a proposed contract or contract action must be submitted to the appropriate Bureau of Reclamation officials at locations and within time limits set forth in the advance public notices.

(5) All written comments rceived and testimony presented at any public hearings will ber reviewed and summarized by the appropriate regional office for use by the contract approving authority.

(6) Copies of specific proposed contracts may be obtained from the appropriate Regional Director or his designated public contact as they become available for review and comment.

(7) In the event modifications are made in the form of proposed contract, the appropriate Regional Director shall determine whether republication of the notice and/or extension of the 60-day comment period is necessary.

Factors which shall be considered in making such a determination shall include, but are not limited to: (1) The significance of the impact(s) of the modification and (ii) the public interest which has been expressed over the course of the negotiations. As a minimum, the Regional Director shall furnish revised contracts to all parties which requested the contract in response to the initial public notice.

Dated: April 27, 1984.

Richard Atwater,

Acting Commissioner of Reclamation.

[FR Doc. 84-11939 Filed 5-2-84; 8:45 am]

BILLING CODE 4310-09-M

National Park Service

National Registry of Natural Landmarks

AGENCY: National Park Service, Interior.

ACTION: Public notice and request for comment.

SUMMARY: The areas listed below appear to qualify for designation as national natural landmarks, in accordance with the provisions of 36 CFR Part 62. Pursuant to § 62.4(d)(1) of 36 CFR Part 62, written comments concerning the potential designations of these areas as national natural landmarks may be forwarded to the Director, National Park Service (413), U.S. Department of the Interior, Washington, D.C. 20240. Written comments should be received no later than 60 days from the date of this notice.

FOR FURTHER INFORMATION CONTACT: Charles M. McKinney, Branch of National Landmarks, Interagency Resources Division (202) 343-9525.

Dated: April 25, 1984.

Russell E. Dickenson,

Director.

CALIFORNIA

Kern County

Sand Ridge Wildflower Preserve—This 98-acre site southeast of Bakersfield is important because of its diverse botanical values. Endemic to Kern County, the *Opuntia treleasii* (Bakersfield cactus) here is becoming increasingly rare. The site has become a remnant natural area displaying scores of other spectacular floral species.

Shasta County

Burney Falls—This 2.5-acre site 80 miles northeast of Redding is isolated within the McArthur-Burney Memorial State Park. It is one of the best examples in the western United States of river drainage regulated by stratigraphically-controlled springs, and also of waterfall retreat due to undercutting of horizontal rock layers.

IDAHO

Fremont and Jefferson Counties

St. Antony Sand Dunes—This 27,670-acre site near the town of St. Anthony contains a variety of distinctive geological and biological features, including the largest and most spectacular remnant sand dune in its natural condition in the Columbia Plateau region. The dunes specifically represent a rare and fragile geological feature. This site also serves as a critical winter habitat for big game populations.

INDIANA

Crawford County

Marengo Cave—This 80-acre cavern located in Marengo Cave Park is a textbook example of a cave in the middle (mature) stage of development. It is the most profusely decorated cave known in the Interior Lowlands with speleothems of the highest quality. This cave is the type locality for five organisms and has had an extensive and continuous history of research and protective custody since 1883.

IOWA

Monona and Harrison Counties

Loess Hills—This dual site (Turin) composed of 7,740 acres and (Little Sioux/Smith Lake) composed of 2,980 acres, together represent the best examples of loess topography (wind-blown silt) in the Missouri River Bluffs region. It is in this region of the U.S. where the deepest loess has accumulated, presenting the best example of this unusual type landscape. Together, these sites express the representative landforms and native vegetation of classic loess deposits. The only known comparable area is located along the Yellow River in northern China.

MAINE

Somerset County

No. 5 Bog and Jack Pine Stand—This 1,841-acre undisturbed bog in remote northwestern Maine is one of the larger peatlands in Maine and the only intermontane peatland in the northern Appalachian Mountains. It has the greatest abundance and variety of string patterns of any U.S. peatland east of the Northern Great Lakes. Its association with jack pine forest, well-defined surficial glacial features and scenic vistas mark this site as being of great diversity with natural features found nowhere else in the northern United States.

MICHIGAN

Ontonagon and Gogebic Counties

Porcupine Mountains—This 47,671-acre tract west of White Pine contains the best and largest stand of virgin northern hemlock in the Lake States, and is the largest relatively undisturbed northern hemlock hardwood forest west of the Adirondacks. Lake of the Clouds is nestled within the virgin forest and is a spectacular view from the escarpment.

Mirror and Lilly Pond lakes remain unspoiled. The Presque Isle River cascades over the falls and rapids into Lake Superior adding outstanding scenic beauty. The site contains excellent examples of wave-cut beaches carved by former glacial lake shorelines.

SOUTH CAROLINA

Lancaster County

Flat Creek Natural Area and 40 Acre Rock—This 335-acre site 54 miles northeast of Columbia contains the largest granitic flat-rock outcrop in the Carolina Piedmont, remaining virtually undisturbed. Flat-rock vegetation is in good condition, including 13 rare or endemic or near-endemic species and 20 other species characteristic of these outcrops. Chestnut oak, mockernut hickory, sweetgum and pignut hickory trees abound on the southeast facing slopes. Flat Creek Dike is one of the thickest in eastern North America (1123 feet). Taken together, these geological and biological features in such close proximity represent an unusual outdoor laboratory.

[FR Doc. 84-11962 Filed 5-2-84; 8:45 am]
BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Intent To Prepare a Draft Environmental Impact Statement for Western Energy Company's Area D West Expansion of the Rosebud Mine, Rosebud County, Montana (Federal Coal Lease M54713)

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement.

SUMMARY: Notice is hereby given that the Office of Surface Mining Reclamation and Enforcement (OSM), Western Technical Center, and the Montana Department of State Lands (DSL) intend to prepare an environmental impact statement (EIS) on the permit application and mining plan submitted by Western Energy Company to OSM and the State of Montana for the proposed Area D West expansion of the Rosebud mine. The EIS will evaluate the alternative actions of approval or disapproval, and any other alternatives that may be developed after all comments from the scoping process have been evaluated. This EIS will assist the Department of the Interior and Montana DSL in making a decision on the application for the proposed surface coal mining operation approximately 1 mile northwest of Colstrip, Montana. OSM and Montana DSL are soliciting comments on the scope of the EIS, proposed alternatives, significant issues, emphasis, or any other concerns relating to EIS preparation. Montana DSL will be distributing a public scoping brochure to obtain public imput concerning the proposed mine and to aid in determining the scope of the EIS.

DATES: Comment period. Written comments must be received by 4:00 p.m., June 4, 1984.

ADDRESSES: Written comments. Send or hand-deliver to Allen D. Klein, Administrator, Attn: Charles Albrecht, OSM, Western Technical Center, Second Floor, Brooks Towers, 1020 15th Street, Denver, Colorado 80202, or to Mr. Kit Walther, Montana DSL, Environmental Analysis Bureau, 1539 11th Avenue, Helena, Montana 59620.

Permit application and mining plan. Copies of the permit application and mining plan are available for review at the OSM office above, the Montana DSL, 1625 11th Avenue, Helena, Montana 59620, and the OSM Casper Field Office, Freden Building, 925 Pendell Boulevard, Mills, Wyoming 82644.

FOR FURTHER INFORMATION CONTACT: Allen D. Klein, Attn: Charles Albrecht (telephone (303) 837-5421), at the Denver, Colorado, location given under "ADDRESSES."

SUPPLEMENTARY INFORMATION: Mining operations. The Rosebud mine is an existing surface mine located adjacent to Colstrip, Montana. The proposed permit area for Area D is in sections 13, 14, 15, 22, 23, 24, 25, 26, 27, and 35, T.2N., R.41E. The existing tipple facility in Area E would be used. Mining would be completed in Area D West 15 years after initiation of operations. Approximately 1,164 acres would be under during the initial proposed 5-year permit, and 2,615 total acres would be disturbed during the 15-year life of the operations in the area. Coal production for the 5- and 15-year time periods would total 26.9 and 64.4 million tons, respectively. Coal mined from the area would be burned at the Colstrip Power Generation Complex, Units 1 and 2, and at the Corette Generating Plant.

EIS preparation. OSM has made a preliminary determination that significant impacts to the human environment would occur if mining were allowed in Area D West. Therefore, and EIS in accordance with the National Environmental Policy Act of 1969 is required.

OSM and Montana DLS will jointly analyze the impacts of the proposal and the disapproval alternative. Much of the cumulative impact analysis for the EIS will be taken from the Comprehensive Environmental Impact Study for Western Energy Company's Rosebud Mine (OSM 83-10) that was jointly prepared by OSM and Montana DSL. The comprehensive study is a reference document for the entire Rosebud mine and serves as a framework for subsequent EIS's to analyze environmental impacts from site-specific activities at the mine.

Dated: April 27, 1984.

Brent Wahlquist,

Assistant Director, Technical Services and Research.

[FR Doc. 84-11894 Filed 5-2-84; 8:45 am]
BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

[I.C.C. Order No. P-73]

Passenger Train Operation

It appearing, that the National Railroad Passenger Corporation (Amtrak) has established through passenger train service between New Orleans, Louisiana, and Los Angeles, California. The operation of these trains requires the use of the tracks and other facilities of Southern Pacific Transportation Company (SP). A portion of the SP tracks near Benson, Arizona, are temporarily out of service because of a derailment. An alternate route is available via The Atchison, Topeka and Sante Fe Railway Company between Los Angeles, California and El Paso, Texas.

It is the opinion of the Commission that the use of such alternate route is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

(a) Pursuant to the authority vested in me by order of the Commission served April 29, 1982, and of the authority vested in the Commission by Section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. § 562(c)), The Atchison, Topeka and Sante Fe Railroad Company (ATSF) is directed to operate trains of the National Railroad Passenger Corporation (Amtrak) between Los Angeles, California, and a connection with Southern Pacific Transportation Company at El Paso, Texas.

(b) In executing the provisions of this order, the common carriers involved

shall proceed even through no agreements or arrangements now exist between them with reference to the compensation terms and conditions applicable to said transportation. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all or the said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign commerce.

(d) *Effective date.* This order shall become effective at 11:20 a.m., (EST), April 8, 1984.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m. (EST), April 9, 1984, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon The Atchison, Topeka and Sante Fe Railway Company and upon the National Railroad Passenger Corporation (Amtrak), and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., April 8, 1984.

Interstate Commerce Commission.

John H. O'Brien,

Agent.

[FR Doc. 84-11897 Filed 5-2-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collections Under Review

April 30, 1984

OMB has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. The list has all the entries grouped into new forms, revisions, or extensions. Each entry contains the following information:

(1) The name and telephone number of the Agency Clearance Officer (from whom a copy of the form and supporting documents is available); (2) The office of the agency issuing this form; (3) The title of the form; (4) The agency form number, if applicable; (5) How often the form must be filled out; (6) Who will be required or asked to report; (7) An estimate of the number of responses; (8) An estimate of the total number of hours needed to fill out the form; (9) An indication of whether section 3504(H) of Pub. L. 96-511 applies; (10) The name and telephone number of the person or office responsible for OMB review. Copies of the proposed forms and supporting documents may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions about the items on this list should be directed to the reviewer listed at the end of each entry and to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer and the Agency Clearance Officer of your intent as early as possible.

Department of Justice

Agency Clearance Officer Larry E. Miesse—202-633-4312

Reinstatment of a Previously Approved Collection for Which Approval has Expired

- Immigration and Naturalization Service, Department of Justice

Request for Asylum in the United States (I-589)

On occasion

Individuals or households

Data used by Immigration and Naturalization Service and the Department of State to determine eligibility of applicant for asylum in the United States: 109,000 respondents; 109,000 hours; not applicable under 3504(h).

Robert Veeder—395-4814

New Collection

- Immigration and Nautralization Service, Department of Justice

Request to Enforce Affidavit of Financial Support and Intent to Petition for Legal Custody for Public Law 97-359 Amerasian (I-363)

On occasion

Individuals or households

Used by the Immigration and Naturalization Service to determine the validity of request to enforce affidavit of financial support and intent to petition for legal custody for Pub. L. 97-359 Amerasian: 200 respondent; 100 hours; 2,500 responses, 1,166 hours, not applicable under 3504(h).

Robert Veeder—395-4814

- Immigration and Naturalization Service, Department of Justice Petition to Classify Public Law 97-359 Amerasian as the Child, Son, or Daughter of a United States Citizen (I-360)

On occasion

Individuals or housseholds

Data used by the Immigration and Naturalization Service to determine immigrant eligibility of Pub. L. 97-359 Amerasian ans sponsorship eligibility of petitioner: 10,00 respondents; 10,000 hours; not applicable under 3504(h)

Robert Veeder—395-4814

- Immigration and Naturalization Service, Department of Justice

Affidavit of Financial Support and Intent to Petition for Legal Custody for Public Law 97-359 Amerasian (I-361)

On occasion

Individuals or households

Used in support of INS Form I-360 to assure financial support for Pub. L. 97-359 Amerasians: 10,000 respondents; 5,000 hours; not applicable under 3504(h).

Robert Veeder—395-4814

Larry E. Miesse,

Department Clearance Officer, Justice Management Division, Department of Justice.

[FR Doc. 84-11954 Filed 5-2-84; 8:45 am]

BILLING CODE 4410-01-M

Attorney General

Lodging of an Amended Consent Order Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on April 11, 1984, a proposed Amended Consent Order in *United States* v. *City of Springfield,* Civil Action No. 76-0141 was lodged with the United States District Court for the Central District of Illinois. The proposed amended consent order resolves a motion to enforce judgment against the City for failure to maintain compliance with the New Source Performance Standards (NSPS) established under the Clean Air Act for sulfur dioxide emissions at its Dallman 3 electrical generating station, as required by the original consent order.

The amended consent order requires the City to meet the NSPS standards at its Dallman 3 electrical generating station and to take steps to improve the station's performance in controlling sulfur dioxide emissions, including maintaining a 12 person operating staff and a spare parts inventory, undertaking a study to improve performance and following maintenance and cleaning programs. In settlement of outstanding penalty claims, the City agreed to undertake a substantial environmental credit program, designed to reduce the

amount of particulates emitted from each of the City's generating stations. This program would require new or rebuilt pollution control equipment to be installed at each of the City's generating stations on a staggered schedule, ending on June 1, 1987. The City would be required to meet an emission limit of 0.08 pounds of particulates per million BTU at each station for two years after the new or rebuilt equipment is installed. The cost of this program has been estimated at $22 million. In addition, the City agreed to pay $15,000 to the United States. In settlement of certain claims of the State of Illinois, the City agreed to pay $5,000 to the Illinois Environmental Trust Fund.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed amended consent order. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Springfield* D.J. Ref. 90–5–1–2–46.

The proposed amended consent order may be examined at the office of the United States Attorney, 600 E. Monroe Street, Room 312, Springfield, Illinois 62701 and at the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the amended consent order may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20530. A copy of the proposed amended consent order may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please endorse a check in the amount of $4.30 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht, II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 84–11974 Filed 5–2–84; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Importation of Controlled Substances; Application

Pursuant to Section 1008 of the Controlled Substance Import and Export Act (21 U.S.C 958(h)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II, and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provided manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on April 7, 1983, Bio-Fine Pharmaceuticals, Inc., 3600 Cambridge, Las Vegas, Nevada 89109, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Raw Opium (9600)	II
Opium Plant Form (9650)	II

As to the basic classes of controlled substances listed above for which application for registration has been made, any other applicant therefor, and any existing bulk manufacturer registered therefor, may file written comments on or objections to the issuance of such registration and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1203), and must be filed no later than June 4, 1984.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Dated: April 26, 1984.

Gene R. Haislip,

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

[FR Doc. 84–11909 Filed 5–2–84; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Senior Executive Service; Appointment of Member to the Performance Review Board

This Notice amends Department of Labor Notice published on December 9, 1983 (48 FR 55199), listing Department of Labor members of the Performance Review Board of the Senior Executive Service.

Mr. Thomas J. Shepich has been appointed to a new three-year term, effective April 9, 1984. He replaces Mr. Robert S. Smith, who resigned from the Board.

For Further Information Contact: Mr. Frank A. Yeager, Director of Personnel Management, Room C5526, Department of Labor, Frances Perkins Building, Washington, D.C. 20210.

Signed at Washington, D.C., this 27th day of April, 1984.

Raymond J. Donovan,

Secretary of Labor.

[FR Doc. 84–11910 Filed 5–2–84; 8:45 am]

BILLING CODE 1510–23–M

Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: May 8, 1984, 9:30 a.m., Rm. S4215 A & B Frances Perkins, Department of Labor Building, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of Section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Fernand Lavellee, Executive Secretary, Labor Advisory Committee, Phone: (202) 523–6565.

Signed at Washington, D.C. this 24th day of April 1984.

Robert W. Searby,

Deputy Under Secretary for International Affairs.

April 24, 1984.

[FR Doc. 84-11911 Filed 5-2-84; 8:45 am]

BILLING CODE 4510-28-M

NATIONAL SCIENCE FOUNDATION

Statement of Organization

A. Creation and Authority. The National Science Foundation (NSF) is an independent agency of the U.S. Government, established by the National Science Foundation Act of 1950, as amended, and related legislation, 42 U.S.C. 1861 *et seq.*, and was given additional authority by the National defense Education Act of 1958 (72 Stat. 1601; 42 U.S.C. 1876–1879), the Science and Technology Equal Opportunities Act (42 U.S.C 1885), and the National Medal of Science Act (42 U.S.C. 1880–1881). The Foundation consists of the National Science Board of 24 members and a Director (who also serves as *ex officio* National Science Board member), each appointed by the President with the advice and consent of the U.S. Senate. Other senior officials include a Deputy Director and four Assistant Directors who are appointed by the President with the advice and consent of the U.S. Senate, and three other additional Assistant Directors.

The Foundation's organic legislation authorizes it to engage in the following activities:

1. Initiate and support, through grants and contracts, scientific and engineering research and programs to strengthen scientific and engineering research potential and education programs at all levels and appraise the impact of research upon industrial development and the general welfare.

2. Award graduate fellowships in the sciences and in engineering.

3. Foster the interchange of scientific information among scientists and engineers in the United States and foreign countries.

4. Foster and support the development and use of computers and other scientific methods and technologies, primarily for research and education in the sciences.

5. Evaluate the status and needs of the various sciences and engineering and take into consideration the results of this evaluation in correlating its research and educationl programs with other Federal and non-Federal programs.

6. Maintain a current register of scientific and technical personnel, and in other ways provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and technical resources in the Unites States, and provide a source of information for policy formulation by other Federal agencies.

7. Determine the total amount of Federal money received by universities and appropriate organizations for the conduct of scientific and engineering research, including both basic and applied, and construction of facilities where such research is conducted, but excluding development, and report annually thereon to the President and the Congress.

8. Initiate and support specific scientific and engineering activities in connection with matters relating to international cooperation, national security, and the effects of scientific and technological applications upon society.

9. Initiate and support scientific and engineering research, including applied research, at academic and other nonprofit institutions and, at the direction of the President, support applied research at other organizations.

10. Recommend and encourage the pursuit of national policies for the promotion of basic research and education in the sciences and engineering. Strengthen research and education in the sciences and engineering, including independent research by individuals, throughout the United States.

11. Support activities designed to increase the participation of women and minorities and others underrepresented in science and technology.

B. Organization. The Foundation is organized along functional and disciplinary lines corresponding to program support of science, engineering, and science and engineering education.

1. *National Science Board.* The National Science Board is composed of 24 part-time members and the Director of the Foundation *ex officio*. Members serve for 6-year terms and are selected because of their distinguished service in the fields of the basic, medical, or social sciences, engineering, agriculture, education, public affairs, research management, or industry. They are chosen in such a way as to be representative of scientific and engineering leadership in all areas of the Nation. The officer of the Board, the Chairman and Vice Chairman, are elected by the Board from among its members for 2-year terms. The Board exercises authority granted it by the NSF Act, including establishing policies for carrying out the purposes of the Act. Meetings of the Board are governed by the Government in the Sunshine Act, (Pub L. 94–409) and the Board's Sunshine regulations (45 CFR 614). The policies of the Board on the support of science and engineering and development of human resources are generally implemented through the various programs of the Foundation. The National Science Board is required by statute to render a biennial report to the President for submission to the Congress.

2. *Director.* The Director of the National Science Foundation is the Chief Executive Officer of the Foundation and serves *ex officio* as a member of the National Science Board and as Chairman of its Executive Committee. The Director is responsible for the execution of the Foundation's programs in accordance with the NSF Act and other provisions of law, and the powers and duties delegated to the Director by the Board and for recommending policies to the Board. The Director is assisted by a Deputy Director who is appointed by the President, with the advice and consent of the Senate. A Staff Director is responsible for all operations of the Office of the Director, including the successful execution of directives, initiative, and policies established by the National Science Board and the Director. The Staff Director is also responsible for overall staffing and human resource allocations in the Fundation.

C. Activities of the Foundation. The activities of the Foundation are carried out by a mumber of Foundation components reporting to the Director through their respective senior officers (i.e., Assistant Directors in the case of Directorates and Staff Director in the case of Staff Offices).

1. *Staff Offices.* All Staff Offices report to the Director, NSF, through the Staff Director.

a. *National Science Board Office.* Responsible for operation and representation of the National Science Board, identifying policy issues for consideration by the Board, developing Congressional testimony for Board members, and providing liaison between the Board and the Director and his staff.

b. *Office of Advanced Scientific Computing.* Responsible for the development and management of a comprehensive program in advanced scientific computing, including communication networks and computing centers; coordination of the NSF activity with the university community, other Federal agencies and the private sector; provision of leadership in building a community of experienced users of the most advanced computing resources

available; dissemination of information about the research and other activities through the program; and provision of staff support for a Directorate Liaison Committee and the Advisory Committee for Advanced Scientific Computing.

c. *Office of Audit and Oversight.* Responsible for post hoc sampling of proposal actions and post-award administration to evaluate documentation and adherence to stated procedures; assessing overall system performance and recommendations for improved and simplified procedures; investigating charges of improper actions by NSF staff and monitoring the decision reconsideration system; conducting financial, evaluation, and program audits; and monitoring and coordinating procedures for scientific oversight undertaken by disciplinary advisory panels.

d. *Office of Equal Opportunity.* Responsible for developing, maintaining, and carrying out a continuing Agency-wide affirmative action program designed to provide equal employment opportunity for all persons and to eradicate every form of prejudice or discrimination based on race, color, religion, sex, age, or national origin.

e. *Office of Legislative and Public Affairs.* Responsible for representing the Foundation, the Director, and key associates in relationships with the Congress, the communications media and the public, various academic groups and professional societies, institutions, and other NSF clientele. The Office is responsible for providing the coordination, analysis, and liaison necessary in the annual Congressional consideration of the NSF budget as well as all non-budget legislative matters; providing insight and advice to the Director and key NSF staff on interactions with the Congress; participating in the development of Congressional hearing testimony and briefing materials; providing analysis and liaison on Congressional budget and other legislative matters with OMB, OSTP, and other appropriate external groups and organizations; coordinating NFS's response to Congressional inquires on proposed legislation; implementing an ongoing Congressional communications and liaison activity; preparing reports, films, periodicals and other material for public use; and maintaining relations with the press, broadcast media, and the general public.

f. *Office of the Controller.* Responsible for budgeting activities of the Foundation by coordinating development of the Foundation's annual budget requests to OMB and the Congress, assisting in the development of long-range plans for the Foundation, providing independent analyses of programmatic issues, assisting in the development of testimony and other materials for congressional and OMB hearings, and monitoring execution of budget and program plans with respect to technical content to provide early indication of changes in program direction that may have policy or budget implications, developing and maintaining budget/management procedures, data bases, and monitoring systems for providing budget control on behalf of the Director. The Office is also responsible for preparing and monitoring the Foundation's Program Development and Management (PD&M) budget, preparing and monitoring the Foundation's annual operating plan, and maintaining liaison with OMB in the implementation of the Foundation's annual budget.

g. *Office of Small Business Research and Development.* Responsible for fostering communication between the National Science Foundation and the small business community; collecting, analyzing, compliling, and publishing information concering grants and contracts awarded to small business concerns by the Foundation; assisting small business concerns in obtaining information regarding programs, policies, and procedures of the Foundation; and recommending to the Director and to the National Science Board any changes in procedures and practices which would enable the Foundation to use more fully the resources of the small business research and development community.

h. *Office of Small and Disadvantaged Business Utilization.* Responsible for NSF compliance with the provisions of Public Law 95–507. Assists small and disadvantaged businesses with information about NSF programs and procurement opportunities.

i. *Office of the General Counsel.* Provides legal advice to the Director, the National Science Board, and NSF staff and represents them in legal matters, including the development of laws and regulations likely to affect the NSF, science, or the use of science. Prepares and coordinates NSF comments on proposed legislation.

2. *Directorates.*

a. *Assistant Director for Administration.* The Assistant Director serves as the principal advisor to the Director on all administrative and general management activities of the National Science Foundation. This responsibility encompasses: grants and contracts administration, personnel management and employee-oriented programs, financial management systems, management analysis, general administrative and logistic support functions, and information processing activities, including the operation of the NSF computer facility. In addition to the Divisions described below, the Administration Directorate includes a Health Services Office and a Reform '88 Project Coordination Staff. The Staff assists the Assistant Director for Administration in carrying out the requirements of Reform '88 by developing policies and procedures for the conduct of Reform '88, maintaining liaison with OMB and other organizations concerned with Reform '88, and providing oversight and review of Reform '88 activities in NSF in order to keep NSF management informed of the Agency status in achieving assigned goals.

(1) *Division of Administrative Services.* Responsible for the management and direction of administrative services in the following areas: travel arrangements; procurement and issuance of supplies, materials, and equipment, including maintenance; space management; communications and building maintenance; records disposition; mail (including mailing list control) and messenger services; property accountability records; document and building security matters; printing, reproduction, and binding services, including publications distribution and storage, contractual, and typographic services. This Division also provides a library program for the Foundation.

(2) *Division of Financial Management.* Responsible for the development, coordination, and direction of financial management policies, programs, and operations, and responsible for the design of modern automated business management systems. This Division provides fund control, payroll and disbursing services, and maintains accounting systems to manage the financial aspects of Foundation operations and to produce timely and accurate data for financial management and budgetary purposes.

(3) *Division of Grants and Contracts.* Responsible for the negotiation and administration of grants and contracts or other arrangements in accordance with existing laws, regulations, and Foundation policy and procedures. Negotiation includes those activities necessary to obtain agreement on the arrangements between the grantee or contractor and the Foundation prior to the making of an award. Administration includes those activities necessary to execute the award, monitor performance, and close out the grant, contract, or other arrangement. This

Division also develops and coordinates the implementation of Foundation grant and contract administration policies and procedures with both staff and external groups, including other Federal agencies, National organizations of performing institutional representatives, and pertaining institutions.

(4) *Division of Information Systems.* Responsible for development, operation, maintenance, and oversight of automated systems that provide management information and support program and administrative staff activities throughout the Foundation's business cycle. Included are policy development, technical assistance, systems analysis (for both manual and automated systems), computer programming, operation of the central computer facility, implementation/coordination of office automation/word processing systems and external computing services, and a variety of services for document handling and data entry for proposals, award budgets, reviewer forms, financial management, and grants and contracts administration.

(5) *Division of Personnel and Management.* Responsible for planning, developing, and implementing the personnel management program of the Foundation to provide for the effective acquisition, retention, motivation, development, and use of NSF personnel. The Division is also responsible for improvement of Foundation management systems and procedures and management of the NSF Internal Issuance System and the Committee Management Program.

b. *Assistant Director for Astronomical, Atmospheric, Earth, and Ocean Services.* The Assistant Director is appointed by the President, with the advice and consent of the Senate and serves as the principal advisor to the Director in the development and implementation of research and facilities support policies, annual programs and budgets, long-range plans and the establishment of research priorities to further national goals in the areas of astronomical, atmospheric, earth, and ocean sciences and the multidisciplinary research conducted in the polar regions, within the framework of statutory and National Science Board authority. Five divisions report to the Assistant Director. The divisions are managed by a Division Director and are organized into Sections and Programs along disciplinary and functional lines, as appropriate. Each Division supports conferences, symposia, and research seminars in the areas of science for which it has responsibility, in addition to the specific areas of support described below.

(1) *Division of Astronomical Sciences.* The objectives of the Division are to increase our understanding of the physical nature of the universe, particularly that of the solar system, individual stars, star clusters, galaxies, and special objects in space such as molecular clouds and quasars. Through its astronomy project support programs, the Division supports researchers in all areas of ground-based astronomy, including research on the sun, the solar system, the structure and evolution of the stars, steller distances and motions, the composition and distribution of interstellar gas and dust, and galaxies and quasars. Also, support is provided for the operation of several major university observatories and for the development and acquisition of new instrumentation incorporating the latest technology for the detection and analysis of radiation through the electromagnetic spectrum. In addition, the Division provides developmental and operational support for the five National Astronomy Centers, operated and managed by nonprofit organizations or universities, under contract to NSF. The Centers provide a variety of optical, infrared, radio and other specialized instrumentation, on a competitive basis, to scientists throughout the Nation. Scientfic and support staff are maintained at the Centers to support the research programs of visiting scientists, to develop advanced instrumentation, and to participate in national research programs. The Centers include: National Astronomy and Ionosphere Center (NAIC), located near Arecibo, Puerto Rico, and it has the world's largest radio/radar telescope; Kitt Peak National Observatory (KPNO), with facilities near Tuscon, Ariz.; it is the Nation's largest center for ground-based optical and infrared astronomy; Cerro Tololo Inter-American Observatory (CTIO); observing facilities are located on the western slopes of the Andes with headquarters in La Serena, Chile. CTIO is the only southern hemisphere observatory generally available to U.S. researchers in ground-based optical astronomy; National Solar Observatory (NSO), located on Sacramento Peak near Sunspot, New Mexico, is one of the world's foremost observatories for solar observations and studies; and the National Radio Astronomy Observatory (NRAO), with radio astronomy facilities at Green Bank, W. Va. and Socorro, New Mexico, is one of the world's principal centers for radio astronomy. The Division's astronomy project support programs and Centers operations are fully coordinated for maximum exploitation.

(2) *Division of Atmospheric Sciences.* The objectives of the Division are to increase our knowledge of the behavior of the earth's atmosphere from the earth's surface to outer space and to provide basic knowledge that can be used to underpin applications by mission-oriented Federal agencies. Through its grants support programs, the Division supports research that will expand fundamental knowledge of the physics, chemistry, and behavior of the atmospheres of the earth, other planets, and the sun including the physical behavior of climate and weather; the global cycles of gases and particles in the earth's atmosphere and the chemical and physical processes that control them; understanding the composition of dynamics of the upper atmospheric systems; and enhanced knowledge of the sun and neighboring planets as they relate to our understanding of the earth's upper atmosphere and space environment. In addition, the Division provides developmental and operational support for the National Center for Atmospheric Research (NCAR), which is managed and operated under contract to NSF by a nonprofit consortium of 53 academic institutions offering doctoral programs in atmospheric sciences. This national research complex, with major laboratories in Boulder, Colo., facilitates and conducts large-scale atmospheric research projects, including those requiring the use of aircraft, computing facilities and specialized instruments. NCAR staff identifies the needs of the scientific community for atmospheric sciences facilities required for research; develops and maintains these facilities at the forefront of technology; and makes these facilities available in support of the scientific community's programs. The Division also supports the operations of the Upper Atmospheric Facilities (UAF), the Nation's four large incoherent-scatter radar facilities. These radar facilities, forming a longitudinal chain from Greenland to Peru, permit scientists to investigate both local and global upper atmospheric problems. The Division coordinates its research support and facilities operations with the scientific community and other Federal agencies.

(3) *Division of Earth Sciences.* The principal objective of the Division is to support research and studies that enhances a new understanding of the earth, its processes and resources, and its evolution through time, particularly rigorous research that tests the concept of plate tectonics and the new discoveries about the processes of

continental assemblage and continental deformation with their important implications for resource development and for improved understanding of earthquakes and volcanic eruptions. The Division's research emphasis is on improving our understanding of the continental lithosphere—its structure, composition, and evolution; on seismic investigations of the continental crust; continental scientific drilling; the physics and chemistry of geological materials; a global digital seismic array, and satellite geodesy. Division priority is assigned, also, to the support of large multidisciplinary projects and shared facilities in earth sciences and the development, updating and acquisition of advanced instrumentation for university laboratories in the geological sciences. In addition to these areas of special emphasis, the Division continues to support research across a broad range of geoscience disciplines including: research on the fundamental nature of earthquakes; research on the hydrothermal and magnetic systems and their relationship to mineral deposits; research on ancient asteroid impacts and their possible influence on mass-extinctions of life forms as seen in the fossil record; research on the tectonic and thermal history of sedimentary basins; research on the structures and properties of rocks and minerals at the pressures and temperatures existing within the earth's interior; and research on volcanoes and their historical patterns of eruption.

(4) *Division of Ocean Sciences.* The division's principal objective is to support all aspects of ocean sciences research directed towards an improved basic understanding of the sea and its relationship to human activities. Division support is supported through three major program areas: Ocean Sciences Research support programs that support research in all aspects of ocean sciences, including interdisciplinary projects and applied research activities. Studies supported by these programs seek an improved understanding of the factors controlling physical, chemical, geological, and biological processes in the ocean and at its boundaries: the sea-air interface, the seafloor, and the coast—the processes that control the composition and movements of ocean waters, the nature and distribution of marine life, and the character of the ocean bottom; Oceanographic Facilities Support programs support research ships and specialized shared-use facilities and operational capabilities at key locations in the academic community, to promote shared use of major facilities, and to ensure effective management of these oceanographic facilities; and the Ocean Drilling Program that supports research to enhance understanding of the composition and processes of the submerged portion of the earth's crust, using advanced drilling technology. This understanding is essential to several disciplines in earth, ocean, and atmospheric sciences.

(5) *Division of Polar Programs.* The Division is responsible for the management and support of two major U.S. science programs: The U.S. Antarctic Program and the Artic research Program. The U.S. Antarctic Program supports national goals to: Maintain the Antarctic Treaty, ensure that the continent will continue to be used for peaceful purposes only, foster cooperative research to contribute to the solution of regional and worldwide problems, protect the environment, and ensure equitable and wise use of living and nonliving resources. The U.S. scientific research program is the principal expression of national interest and policy in Antarctica. The Division manages the U.S. Antarctic Program under two specific subactivities: The U.S. Antarctic Research Program that supports scientific research intended to increase knowledge of the Antarctic continent and the surrounding oceans by developing an understanding of the antarctic ice sheets and the antarctic physical, biological, geological, meteorological, atmospheric, chemical, and oceanographic processes; and the Operations Support Program that provides direct support of science activities and the maintenance of an effective U.S. presence in Antarctica, through the operations and maintenance of four antarctic stations, charter of research ships, the operations of the NSF-owned ship *Hero*, aircraft support for research programs, field camp support, and laboratory and research equipment support. The Division contracts for many of these support services, when it is cost effective and in consonance with the national interest. The Division's objectives of the Arctic Research Program are the advancement of scientific knowledge in selected areas of fundamental research that are best or uniquely pursued in the Artic. These include mechanisms of energy transfer between the magnetosphere, the ionosphere, and the neutral atmosphere; the role of the Artic Basin in influencing climate; the interactions of arctic and subarctic seas with the global ocean system; sea ice occurrence and behavior in coastal waters; the history of climatic changes as revealed in the study of ice cores obtained at depth in the Greenland ice sheet and of fossil plants and animals in the geological record, permafrost properties and characteristics; and the structure, functions and regulation of arctic freshwater, terrestrial and marine ecosystems.

c. *Assistant Director for Biological, Behavioral, and Social Sciences.* Appointed by the President, with the advice and consent of the Senate, the Assistant Director serves as principal advisor to the Director in the development of long-range plans, annual programs, and research policy in the biological, behavioral, and social sciences as established by statute and the National Science Board authority. The Assistant Director is also responsible for developing and implementing programs to strengthen scientific research potential in these sciences. The Directorate, composed of five Divisions reporting to the Assistant Director, is structured primarily on a disciplinary basis. Each Division, headed by a Division Director, is subdivided into Programs.

(1) *Division of Behavioral and Neural Sciences.* Responsible for basic and applied research in anthropology, linguistics, memory and cognitive processes, social and developmental psychology, developmental neuroscience, integrative neural systems, molecular and cellular neurobiology, and sensory physiology and perception. The Division also provides support for dissertation research, systematic anthropological collections, conferences and workshops, specialized facilities, and instrumentation. The major goals of the Division are to advance human understanding of behavior and nervous systems and to comprehend better the biological, psychological, and cultural mechanisms underlying behavior.

(2) *Division of Biotic Systems and Resources.* Responsible for research in ecology, ecosystem studies, population biology and physiological ecology, and systematic biology. The Division provides support for biological research resources such as systematic collections, controlled environmental facilities, field research facilities, and culture collections. Support is also provided for dissertation research, research equipment, and research conferences and workshops. The research supported by this Division is to advance knowledge of the attributes and interrelations of organisms, populations, and communities as they exist in their natural environment.

(3) *Division of Information Science and Technology.* Responsible for

programs to increase understanding of the properties and structure of information and information transfer, to contribute to the store of scientific and technical knowledge which can be applied in the design of information systems, and to improve understanding of the economic and other impacts of information science and technology.

(4) *Division of Physiology, Cellular, and Molecular Biology.* Responsible for supporting research in the fields of biochemistry, biophysics, genetics, cell physiology, cellular, developmental, metabolic, and regulatory biology, and on alternative biological resources. The Division also provides support for specialized facilities, research conferences and workshops, and biological instrumentation. The major objectives of the Division are to understand better how plants, animals, and microbes regulate their metabolic and physiological activities; reproduce, grow, and age; and, in physical and chemical terms, how these life processes occur at the molecular, cellular, and organismal level.

(5) *Division of Social and Economic Science.* Responsible for basic and applied disciplinary and multidisciplinary research in economics, geography and regional science, history and philosophy of science, law and social sciences, political science, sociology, measurement methods and data improvement, decision and management science, and regulation and policy analysis. The goal of the Division is to develop fundamental knowledge of how social and economic systems work, to advance understanding of organizations and institutions, how they function and change, and to enhance the scientific capability of research efforts designed to produce explanations of how human interaction and decisionmaking take place. Programs within the Division also consider proposals for doctoral dissertation support, research conferences, the acquisition of specialized research equipment, group international travel, and data resources development.

d. *Assistant Director for Engineering.* The Assistant Director participates with the Director in planning, analyzing, and evaluating activities and in establishing and maintaining an effective liaison with the Congress, other Federal agencies, the educational and scientific communities, professional societies, and other interested parties. The Directorate is responsible for strengthening engineering research and, as appropriate, focusing research in areas which are relevant to national problems. This is accomplished by supporting research across the entire range of engineering disciplines and by identifying and supporting special areas of engineering research where results are expected to have timely impacts on selected problems. The specific objectives of the Directorate for Engineering are to advance fundamental knowledge of engineering principles that can be applied to the analysis and design of a large variety of man-made devices, systems, and processes; strengthen the academic engineering research base in order to address the need for increased basic knowledge underlying engineering technology; create an improved academic research environment which will encourage larger numbers of young engineers to seek graduate education and enter research; and stimulate the application of fundamental engineering knowledge and capabilities towards the solution of significant problems of national interest. Four Divisions report to the Assistant Director. Each Division is headed by a Division Director and generally subdivided on a disciplinary or functional basis into Sections and/or Programs. There is also an Office of Interdisciplinary Research which seeks to bring scientific and engineering expertise to bear most effectively on problems spanning several fields, recognizing that scientific, engineering, and societal problems often cannot be addressed using the knowledge and methods from a single discipline.

(1) *Division of Chemical and Process Engineering.* Responsible for promoting the creation of knowledge relevant to the design, optimization, and operation of a wide range of processes in the chemical, petroleum/petrochemical, food, biochemical/pharmaceutical, mineral, and allied industries. Research efforts include the development of fundamental principles, design and control strategies, mathematical models, and experimental techniques which cut across a large number of industries and processes. Areas of support include catalysis, combustion, plasma chemistry, biochemical, electrochemical, macromoleuclar, and separation processes, particulate characterization and interaction, thermodynamic and transport properties, and renewable and nonrenewable materials processing.

(2) *Division of Civil and Environmental Engineering.* Deals with extending our understanding of the basic behavior of natural and man-made physical structures and systems from both the elemental and macroscopic viewpoints, and with the interaction of the built environment and man's activities with the natural environment. Areas of research include geotechnical engineering, structural mechanics, water resources, and environmental engineering. Under the Earthquake Hazards Act of 1977, the Division also supports research on phenomena involved in hazards produced by earthquakes, and the means by which earthquake and other natural hazards can be mitigated.

(3) *Division of Electrical, Computer, and Systems Engineering.* Seeks to stimulate exploration of fundamental engineering principles applicable to man-made electrical systems and devices. Research topics include studies of electronic materials, solid-state devices, very large scale integrated circuits, integrated optics, lasers and optoelectronics, sensors and imaging systems, plasmas and particle beams, computer engineering, machine intelligence, robotics and automation, information theory and communications, control systems methodologies and networks, and operations research.

(4) *Division of Mechanical Engineering and Applied Mechanics.* Seeks to develop a better understanding of the physical processes associated with power developed by various machines and engines, and to focus that understanding on key issues related to industrial productivity. Applied mechanics research deals with the continuum behavior of solids, fluids, multi-phase mixtures, and biological materials including the effects of heat transfer, phase changes and chemical reaction. Special attention is given to time dependent or unsteady phenomena. Mechanical engineering research deals with fundamental problems relating to the behavior and design of mechanical systems and industrial production. It supports research relating to the analysis and synthesis of machines and mechanical systems including tribology and dynamic behavior, and optimization of manufacturing processes.

(5) *Office of Interdisciplinary Research.* Activities are undertaken to identify potential research areas and to stimulate quality interdisciplinary research proposals. Conferences and workshops are conducted and interdisciplinary state-of-the-art review papers are written in order to identify societal, scientific or engineering problems, research gaps, and needs. Support also may be provided to study the interdisciplinary research process to improve both the effectivenes of the process itself and the mechanism of research support.

e. *Assistant Director for Mathematical and Physical Sciences.* Appointed by the President, with the

advice and consent of the Senate, the Assistant Director serves as an advisor to the Director in the development of long-range plans, annual programs, and research policy in the areas of mathematical and physical sciences, as established under statutory and National Science board authority; and is responsible for developing and carrying out a program to accomplish the Foundation's research support mission in these areas. Five Divisions report to the Assistant Director for Mathematical and Physical Sciences. Each Division is headed by a Division Director and generally is subdivided on a disciplinary or functional basis into sections and/or Programs. In addition to the specific areas of support discussed below, each Division supports appropriate conferences, symposia, and research workshops in the areas of science for which it has responsibility.

(1) *Division of Chemistry.* Responsible for the support of fundamental research in all areas of chemistry, to improve understanding and make possible new applications of chemistry beneficial to other sciences, engineering and technology. The broad subfields supported are inorganic and organic synthesis, chemical dynamics and thermodynamics, structural chemistry, quantum chemistry, and chemical analysis. In addition, a special program exists to assist departments and individual investigators in acquiring advanced instrumentation critical to modern chemical inquiry.

(2) *Division of Computer Research.* Responsible for research in computer science and engineering, including research in theoretical computer science, the structure and design of computer systems, both hardware and software, computational methods and algorithms, and other areas which help increase understanding of computing processes and computer technology. Special programs exist to assist departments and individual investigators in acquiring advanced instrumentation, promote moderm computer research, and improving academic opportunities for experimental research.

(3) *Division of Materials Research.* Responsible for the support of research designed to extend and deepen our understanding of materials and to help discover ways to apply that understanding. Included is research in solid state physics and chemistry, metallurgy, polymers, ceramics, and other areas of science and engineering necessary to improve basic understanding of materials and their engineering properties. This also includes research on the preparation, characterization, and understanding of the properties of crystalline and amorphous materials.

(4) *Division of Mathematical Sciences.* Responsible for providing research support in mathematics and in the applications of mathematics to other sciences. The Division also provides support for regional meetings on topics at the forefront of mathematics research.

(5) *Division of Physics.* Responsible for providing support for research which concentrates on the most fundamental aspects of the properties and interactions of matter and energy. Support is provided through programs in atomic, molecular and plasma physics, nucler physics, elementary particle physics, theoretical physics, intermediate energy physics, and gravitational physics. In addition, support is provided for university physics research facilities.

f. *Assistant Director for Science and Engineering Education.* The Assistant Director is responsible for the initiation of and support for programs to strengthen science education at all levels and to maintain the vitality of science and engineering education in the United States. This responsibility includes improving science and mathematics education of all precollege students and addressing the long term development of a strong human resource base to meet the needs of science and technology. The Assistant Director services as the Director's principal advisor in these areas, formulating long-range plans, annual programs and priorities, and educational policy within the framework of statutory and National Science Board authority. The Directorate is organized into two major groups.

(1) *Division of Precollege Education in Science and Mathematics.* Responsible for the following precollege activities: Improved Instructional Materials, Improved Methods of Teacher Development, Applications of New Technologies, Research in Teaching and Learning, Local and Regional Teacher Development, Honors Workshops for Precollege Teachers of Science and Mathematics, Informal Science Education, Information in Science and Mathematics Education, and the Presidential Awards for Excellence in Science and Mathematics Teaching.

(2) *Office of Research Career Development.* Responsible for administering the following ongoing graduate and postdoctoral programs: Graduate Research Fellowships, NATO Postdoctoral Fellowships, and NATO Travel Grants. The Office also coordinates the Presidential Young Investigator Awards for which funds are provided by the research Directorates.

g. *Assistant Director for Scientific, Technological and International Affairs.* The Assistant Director serves as a principal advisor to the NSF Director in the development of long-range plans, programs, and policy for scientific, technological, and international affairs. Also has responsibility for providing policy analysis and assessments of scientific and technological issues of interest to decisionmakers in the Executive Office of the President, the National Science Board, and the Congress. Directorate is responsible for programs designed to: Collect and analyze data pertaining to the status of the national scientific and technological enterprise, study public policy issues related to science and technology, and support research that cuts across scientific disciplines and is directed toward strengthening the science and technology (S&T) research enterprise, both nationally and internationally. The Directorate consists of five Divisions.

(1) *Division of Industrial Science and Technological Innovation.* Responsible for programs designed to accelerate industrial science and technological innovation by improving the linkage between universities and industries. This is done by supporting research centers and projects where industrial and university scientists and engineers collaborate in work on specific topics of mutual interest. In addition, opportunities are provided for small science- and technology-based firms to perform research projects leading to more rapid commercialization of new ideas, products, and processes. The Division also supports studies to improve the understanding of the processes by which technological innovation occurs and how those processes are affected by Federal actions.

(2) *Division of International Programs.* Administers the Foundation's programs for international cooperative scientific activities including joint research projects, seminars, and scientific visits. Facilitates U.S. scientists' access to unique facilities and sites abroad. Provides staff support to Joint Commissions and other U.S. international scientific efforts. Manages the use of Special Foreign Currency for programs in research and related activities. Coordinates other National Science Foundation programs with international aspects.

(3) *Division of Policy Research and Analysis.* Responsible for conducting and supporting research and analysis on

public policy issues that have substantial science and technology content. Research results and related analyses provide a source of knowledge and information for use by decisionmakers and the general public. Furthermore, responsible for maintaining and developing economic and technological data bases and analytic tools, and for continually interacting with other NSF Directorates to gather relevant information on current and emerging issues in science and technology.

(4) *Division of Research Initiation and Improvement.* Activities include: Providing support to predominantly undergraduate institutions for purposes such as research instrumentation, research in undergraduate institutions and other activities which strengthen the research and teaching capabilities of the Nation's undergraduate institutions; providing support for women scientists and engineers to conduct research, teaching, and counselling activities as visiting professors at academic institutions; providing increased access to research opportunities for minority scientists and engineers; improving reserch environments at predominantly minority institutions through support of facility research and equipment acquisition; fostering development and utilization of scientific and technical resources that respond to issues addressed by state and local governments; and supporting resarch and related activities that improve public and professional understanding of issues of ethics and values in science and engineering.

(5) *Division of Science Resources Studies.* Responsible for development and maintenance of a data base dealing with the characteristics, magnitude, and utilization of the Nation's human and financial resources for S&T activities. Studies and analyses provide information on scientific and technical personnel, science education, scientific institutions, the funding of research and development (R&D), the nature and relationship of different types of R&D activities, the economic impact of R&D, and related topics.

Information for Guidance of the Public

A. *Inquiries and Transaction of Business.* All inquiries, submittals, or requests should be addressed to the National Science Foundation, Washington, D.C. 20550. A member of the public may call at the Foundation offices at 1800 G Street NW., Washington, D.C. during normal business hours, 8:30 a.m. to 5:00 p.m., Monday through Friday. The information provided below indicates the offices with which members of the public should deal on particular matters. If an individual is uncertain as to which office to contact, that person may write the Foundation's mailing address or visit the National Science Foundation, Public Affairs and Publications Group, Room 527, 1800 G Street, NW., Washington, D.C. 20550.

B. *General Method of Functioning, Procedures, Forms, Description of Programs.* The Foundation accomplishes its mission primarily through the award of grants and other agreements to universities, colleges, and other nonprofit organizations, as well as to individuals and profit-making organizations. In instances where NSF has a specially assigned mission, or where services are being procured, contracts are used rather than grants. The Foundation's general method of operation is to provide financial support for basic and applied research and education in the sciences and engineering in response to requests, applications, and proposals submitted, pursuant to NSF guidelines, by the person or organization desiring support. In general, grants are made on a merit basis after a review process involving several qualified outside commentators drawn from the scientific, educational, and industrial communities.

C. *Honorary Awards.* The National Science Foundation annually bestows the Alan T. Waterman Award on an outstanding young scientist for support of research and study. This award provides for up to $150,000 for 3 years of research and study at the institution of the awardee's choice. From time to time, the National Science Board presents the Vannevar Bush Award to a person who, through public service activities in science and technology, has made an outstanding contribution toward the welfare of the Nation and mankind. The two awards together are designed to encourage individuals to seek to achieve the Nation's objectives in scientific research and education.

The National Science Foundation also provides support for the President's Committee on the National Medal of Science.

D. *Pertinent Publications.* The Foundation and the National Science Board publish a variety of booklets and other materials describing the programs and procedures of the Foundation and assessing the status of science in the Nation. All publications and forms may be obtained by writing to or visiting the Foundation, unless otherwise indicated below. The following are key publications of the Foundation.

1. *Grants for Scientific and Engineering Research (NSF 83-57)*—Provides basic guidelines and instructions for investigators applying to the Foundation's programs of scientific and engineering research project support and other closely related programs, such as the support of foreign travel, conferences, symposia, and specialized research equipment and facilities. Complete details are given on application procedures. Additional information outlines the more detailed areas of how application data must be presented and scientific areas for which NSF support funds may be granted. Also provides information on the evaluation process concerning the merit review of proposals for support. Available from the Forms and Publications Unit, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550 or calling the Foundation at 202/357-7861.

2. *NSF Grant Policy Manual*—A compendium of basic NSF grant administration policies and procedures generally applicable to most types of NSF grants and to most categories of recipients. Included are fiscal regulations regarding the use and expenditure reporting of NSF granted funds and other specific administrative procedures and policies. This manual, identified by GPO as NSF 77-47, was last revised in April 1983 and is updated periodically. The NSF Grant Policy Manual (GPM) is available only by subscription, $12.00 domestic and $16.25 foreign, from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. GPM subscription rules and prices are subject to change by GPO.

3. *NSF Bulletin*—A monthly publication that summarizes program announcements and other NSF activities. Available from Public Affairs and Publications Group, Room 527, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

4. *NSF Annual Report*—An annual presentation to the President for submission to the Congress highlighting the activities of the Foundation for the fiscal year. Accomplishments in research project support activities and science and engineering education are reflected in a series of brief synopses illustrating and explaining recent undertakings and results which have been brought about through NSF grants. Other data relating to the Foundation staff, financial reports, patents, research center contractors, advisory committees and panels and their membership are contained in the appendices. Available from the Superintendent of Documents,

Government Printing Office, Washington, D.C. 20402.

5. *National Science Board Reports*—National Science Board assessments of the status and health of science and engineering. A report on indicators of the state of science and engineering in the United States is rendered biennially to the President for submission to the Congress. Other reoprts on policy matters related to science and engineering and education in science and engineering are provided from time to time. The last two reports that have been submitted are:

University—Industry Research Relationships: Myths, Realities and Potentials (Fourteenth NSB Report, 1982)

Science Indicators—1982 (Fifteenth NSB Report, 1983)

6. *Publications of the National Science Foundation*—Provides a listing of issued NSF publications available to the public, with prices where they apply.

7. *Guide to Programs*—Contains summary information about assistance support programs of the National Science Foundation. The Guide is a source of general information for individuals interested in participating in these programs. Program listings describe the principal characteristics and basic purpose of each activity, as well as eligibility requirements, closing dates (where applicable), and the address from which more detailed information, brochures, or application forms may be obtained. Available from the Forms and Publications Unit, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550 or calling the Foundation at 202/357–7861.

8. *Individual Program Announcements*—Detailed program publications are issued by individual program areas of the Foundation, announcing and describing award programs and containing critical dates and application procedures for competitions.

9. *Important Notices*—The primary means of general communication by the Director, NSF, with organizations receiving or eligible for NSF support. These notices convey important announcements of NSF policies and procedures or other subjects determined to be of interest to the academic community and to other selected audiences.

10. *NSF Organization and Functions Handbook*—Contains approved organization structure of discrete elements of the Foundation, including the functions and responsibilities of each major component, described in chart and narrative form.

11. *Internal Issuances*—The Foundation maintains a system of internal issuances for communication within the Agency on matters of policy, procedures, and general information. The internal issuances are published to establish organizations, define missins, set objectives, assign responsibilities, delegate or limit authorities, establish program guidelines, delineate basic requirements affecting activities of the Foundation, etc.

a. *Staff Memoranda*—Issuances reserved for use by the Director and Deputy Director, for communication with the staff on subjects of their choice.

b. *Circulars*—A series of issuances to communicate Agency policies, regulations, and procedures of a continuing nature. (NSF is in the process of converting all policy and procedures contained in Circulars, Staff Memoranda, and Bulletins into a series of Manuals.)

c. *Manuals*—Contain NSF policy and detailed information on operating procedures, requirements, and criteria.

d. *Bulletins*—Issuances to communicate urgent information concerning changes in policy or procedure prior to their incorporation into a Circular or Manual, and to communicate information that is pertinent generally for a period of less than 2 years.

12. *Mosaic*—An interdisciplinary magazine of basic and applied research. Published six times a year. Edited for nonspecialists in the sciences as a way for the Foundation to report on the scientific research it supports. Available from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Subscription is $11.00 per year in the United States and possessions. A single copy may be purchased for $2.75.

13. *Antarctic Journal of the United States*—A magazine, published quarterly, available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

14. *Arctic Bulletin*—A quarterly publication, available from the Division of Polar Programs, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

E. *Availability of Information*—Persons desiring to obtain information, including documents, may submit a request by telephone or in writing to Public Affairs and Publications Group or to other Foundation units. If not satisfied with the response, they may submit a formal request under terms of the NSF Freedom of Information Act regulations, 45 CFR Part 612, or, if applicable, the NSF Privacy Act regulations, 45 CFR Part 613. All documents will be made available for inspection or copying, except for those which fall within the exemptions specified in the law and the withholding of which is deemed absolutely necessary.

Sources of Information

Grants. Individuals or organizations planning to submit grant proposals should refer to the *NSF Guide to Programs*, and the *Grants for Scientific and Engineering Research* brochures or other appropriate program brochures and announcements, single copies of which may be obtained by writing the Forms and Publications Unit, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550 or calling the Foundation at 202/357–7861.

Contracts. The Foundation publicizes contracting and subcontracting opportunities in the *Commerce Business Daily* and other appropriate publications. Organizations seeking to undertake contract work for the Foundation may contact the Division of Grants and Contracts, 202/357–7842, Room 640, or the Division of Administrative Services, 202–357–7922, Room 237, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Small Business. Information concerning NSF research and procurement opportunities for small, small and disadvantaged, or women owned businesses may be obtained from the Office of Small Business Research and Development/Office of Small and Disadvantaged Business Utilization, 202/357–7464, Room 511–A, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Engineering Information Resources. Information concerning engineering resources may be obtained from the Office of the Assistant Director for Engineering, Room 537, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

National Science Board Documents. Schedules of Board meetings, agendas, and summary minutes of the open meetings of the Board may be obtained from the NSB Office, 202/357–9582, Room 545, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Committee Minutes. Summary minutes of meetings of the Foundation's advisory groups may be obtained from the Division of Personnel and Management, Management Analysis Section, 202/357–9520, Room 217–A, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Freedom of Information Act (FOIA) Inquiries. Requests from the public for Agency records should be clearly identified "FOIA REQUEST" and addressed to Public Affairs and Publications Group, Room 527, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Privacy Act Inquiries. Persons desiring to obtain personal records that are legally available to the individual under the Privacy Act of 1974, should submit a request in accordance with the NSF Privacy Act Regulations, 45 CFR Part 613.

Reading Room. Persons who wish to inspect or copy records should contact the NSF Public Affairs and Publications Group, 202/357–9498, Room 531, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550

Employment. Inquiries may be directed to the National Science Foundation, Division of Personnel and Management, 202/357–9859, Room 212, 1800 G Street, NW., Washington, D.C. 20550. The Division of Personnel and Management has a Telephonic Device for the Deaf (TDD) which enables individuals with hearing impairment to communicate with the NSF personnel office for information relating to NSF programs, employment, or general information. The TDD number is 202/357–7492.

Dated: April 27, 1984.

Thomas Ubois,

Assistant Director for Administration.

[FR Doc. 84–11907 Filed 5–2–84; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Report; Section 208 Report Submitted to the Congress

Notice is hereby given that pursuant to the requirements of section 208 of the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission (NRC) has published and issued the periodic report to Congress on abnormal occurrences (NUREG–0090 Vol. 6, No. 3).

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurrence is defined as "an unscheduled incident or event which the Commission (NRC) determines is significant from the standpoint of public health or safety." The NRC has made a determination, based on criteria published in the **Federal Register** (42 FR 10950) on February 24, 1977, that events involving an actual loss or significant reduction in the degree of protection aganist radioactive properties or source, special nuclear, and byproduct materials are abnormal occurrences.

This report to Congress is for the third calendar quarter of 1983. The report identifies the occurrences or events that the Commission detemined to be significant and reportable; the remedial actions that were undertaken are also described. During the report period, there were three abnormal occurrences at the nuclear power plants licensed by the NRC to operate. The first involved large diameter pipe cracking in boiling water reactors; the second involved an uncontrolled leakage of reactor collant outside primary containment; and the third involved improper control rod manipulations. There were seven abnormal occurrences for the other NRC licensees. Three involved overexposures; two involved medical misadministrations; one involved widespread radiological contamination; and one involved willfull violation of license and a material false statement to the NRC. There were no abnormal occurrences reported by the Agreement States.

The report also contains information updating some previously reported abnormal occurrences.

Interested persons may review the report at the NRC's Public Document Room, 1717 H Street, NW, Washington, DC or at any of the nuclear power plant Local Public Document Rooms throughout the country.

Copies or microfiche of NUREG–0090 Vol. 6, No. 3 (or any of the previous reports in this series), may be purchased by calling (301) 492–9530 or by writing to the Publication Services Section, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A year's subscription to the NUREG–0090 series publication, which consists of four issues, is also available. Documents may be purchased by check, money order, Visa, Master Card, or charged to a GPO Deposit Account.

Copies of the report may also be purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Dated at Washington, DC this 27th day of April 1984.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84–11989 Filed 5–2–84; 8:45 am]

BILLING CODE 7590–01–M

Abnormal Occurrences; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health and safety). The following incidents were determined to be abnormal occurrences (AOs) using the criteria published in the **Federal Register** on February 24, 1977 (42 FR 10950). These AOs are described below, together with the remedial actions taken.

These AOs are also included in NUREG–0090, Vol. 6, No. 3 ("Report to Congress on Abnormal Occurrences: July–September 1983"). The latter document also described one additional abnormal occurrence (i.e., "Overexposure to a Radiographer's Hand") which was previously published in the **Federal Register** on November 21, 1983 (48 FR 52655).

Large Diameter Pipe Cracking in Boiling Water Reactors (BWRs)

Example II.A.2 of the AO criteria notes that major degradation of the primary coolant pressure boundary can be considered an abnormal occurrence. In addition, Example I.D.4 of the AO criteria notes that incidents with implications for similar facilities (generic incidents) which create major safety concern can be considered an abnormal occurrence.

Date and Place.—Beginning in March 1982, at Nine Mile Point Unit 1, major cracking in large diameter piping has occurred in several boiling water reactors (BWRs).

Nature and Probable Consequences.—Cracking in austenitic stainless steel piping in BWRs has been observed for many years. However, on March 23, 1982 the Niagara Mohawk Power Corporation reported an event involving leakage from welds on two nozzles connecting recirculation system piping to the reactor vessel of Nine Mile Point Unit 1 which is located in Oswego County, New York. The leakage was discovered during performance of a routine hydrostatic pressure test prior to return to operation from a scheduled maintenance outage. Subsequent inspections and evaluations showed extensive intergranular stress corrosion cracking (IGSCC) in heat affected zones near weld areas of the large (28-inch) diameter reactor coolant recirculation system. The license decided to replace the recirculation piping in all five

recirculation loops, all ten safe ends, and branch piping as warranted. The replacement material is of a type less susceptible to IGSCC. The findings at Nine Mile Point Unit 1 were the first examples of major cracking in large diameter piping in the United States (cracking in large diameter piping had been reported on some foreign reactors).

The NRC issued Inspection and Enforcement (IE) Bulletin No. 82–03, Revision 1 ("Stress Corrosion Cracking in Thick-Wall, Large Diameter, Stainless Steel, Recirculation System Piping at BWR Plants") on October 28, 1982 for action by nine BWR plants scheduled for refueling outages in late 1982 and early 1983. Inspections pursuant to this Bulletin showed cracking in five of the first seven plants examined, prompting issuance of IE Bulletin No. 83–02 ("Stress Corrosion Cracking in Large-Diameter Stainless Steel Recirculation System Piping at BWR Plants") on March 4, 1983. This Bulletin required augmented inspection of welds in the recirculation system piping, using ultrasonic testing (UT) inspection procedures of demonstrated effectiveness, for all plants beyond those identified in Bulletin No. 82–03, Revision 1, at their next refueling or extended outage but no later than January 1984. No indications of pipe cracking were found at Quad Cities Unit 1, Millstone Unit 1, Oyster Creek, Big Rock Point, and Duane Arnold. At FitzPatrick one defect was characterized as probably due to IGSCC; however, after multiple inspections the defect was determined to be well within NRC acceptance criteria for continued operation without repair.

In conjunction with these Bulletins, joint efforts by the NRC and industry have been underway to train and qualify inspection personnel, using improved UT procedures on well-characterized pipe cracks in pipe segments removed from Nine Mile Point Unit 1, to assure higher reliability in the inspection process. Although this has considerably upgraded the reliability of UT in crack detection field situations, there still remains concern about the ability of current UT procedures, in field situations, to adequately characterize the depth of identified cracks although it is believed that the discovery of cracking, where it exists, is probable.

Inspections conducted in response to these Bulletins, and other inspections, have revealed extensive cracking both in large diameter recirculation and residual heat removal (RHR) system piping welds. In Orders issued to certain plants on August 26, 1983, as discussed below, inspections were mandated for susceptible systems for 4" diameter and larger pipes.

Table 1 is a summary of the cracking observations from BWRs where piping has been examined and defects found. The summary is as of late October 1983 and indicates the extent of cracking in large diameter recirculation and RHR system piping. For the plants listed in Table 1, the total number of welds range from about 100 to 135 per plant.

TABLE 1.—SUMMARY OF PIPING WELD CRACK OBSERVATIONS

[Data as of late-October 1983]

Plant name	Licensee	Plant location	12" through 28" pipe welds	
			Number examined	Number defective
Browns Ferry Unit 1	Tennessee Valley Authority	Limestone County, Alabama	123	47
Browns Ferry Unit 2	Tennessee Valley Authority	Limestone County, Alabama	34	2
Brunswick Unit 1	Carolina Power & Light Co	Brunswick County, No. Carolina	32	3
Cooper	Nebraska Public Power District	Nemaha County, Nebraska	135	22
Dresden Unit 2	Commonwealth Edison Company	Grundy County, Illinois	51	10
FitzPatrick	Power Authority of the State of N.Y.	Oswego County, New York	55	1
Hatch Unit 1	Georgia Power Company	Appling County, Georgia	58	7
Hatch Unit 2	Georgia Power Company	Appling County, Georgia	108	39
Monticello	Northern States Power Company	Wright County, Minnesota	135	6
Oyster Creek	Jersey Central Power & Light Co.	Ocean County, New Jersey	31	0
Peach Bottom Unit 2	Philadelphia Electric Company	York County, Pennsylvania	123	20
Peach Bottom Unit 3	Philadelphia Electric Company	York County, Pennsylvania	111	15
Quad Cities Unit 2 *	Commonwealth Edison Company	Rock Island County, Illinois	66	8
Vermont Yankee	Vermont Yankee Nuclear Power Co.	Windham County, Vermont	60	34

* Preliminary results—still being evaluated.

Although IGSCC in the sensitized material of the heat-affected zone in BWR piping influenced by the environmental conditions existing in the BWR reactor coolant system and stresses in the piping, including residual stresses induced by welding, there is no clear correlation between extent of cracking and operating time. Some plants with a relatively brief operating history, e.g., Hatch Unit 2, show extensive cracking. The licensee for Hatch Unit 2, Georgia Power Company, will replace the affected piping in 1984.

The pipe cracks represent a degradation from the original condition of one of the primary boundaries for the containment of radioactive material. As discussed above, cracking in austenitic stainless steel piping in BWRs has been observed for many years. Prior to Nine Mile Point Unit 1 in March 1982, however, the cracking had not occurred in large diameter piping in United States reactors. Generally, the probable consequences of small cracks is crack propagation and minor leakage of primary coolant. When small but measurable leaks occur, leakage monitoring systems detect the change of leak rate, and a plant shutdown is required if allowable leak rate limits are exceeded. Licensees are also required to perform periodic inspections of piping to detect evidence of pipe leaks. Redundant core cooling systems are available to provide cooling of the core even in the remote case of a pipe failure.

However, the Nine Mile Point Unit 1 results and subsequent inspections performed on other BWRs resulted in increased safety concern regarding the extensive range of pipe sizes involved, the large number of plants affected, the size and number of cracks, adequacy of detection and characterization of such cracks, repair techniques, and adequacy of licensees' compensatory measures (leak detection capability, emergency core cooling system availability, and operator training).

Causes of Causes—As discussed previously, the cracking has been determined to be the result of intergranular stress corrosion of the piping. Investigations of the basic causes of such corrosion are being made, however they are not yet fully understood.

Actions Taken To Prevent Recurrence

Licensees/Vendors—Inspections of piping either have been or are being made in accordance with IE Bulletins Nos. 82–03 Revision 1 and 83–02. Where cracking is observed, resolution is in accordance with NRC requirements, as discussed below. Efforts are underway to train and qualify inspection personnel, using improved UT procedures, to assure higher reliability in crack detection and sizing. Electric Power Research Institute (EPRI) is involved in programs for the detection and characterization of cracks, and working with the licensees in formulating qualification programs for weld inspectors. Included in EPRI's efforts is a "round robin" program to compare crack depth measurements made by UT versus results of actual destructive examinations. The purpose of this program is not only to improve UT crack detection methodology, but to train inspectors in this methodology. The NRC is participating in this program.

General Electric, the nuclear steam supply system vendor for the BWRs, is also involved by studying field and laboratory data on cracks caused by intergranular stress corrosion, rate of crack propagation, etc.

For the licensees which had not yet made inspections required by the IE Bulletins, interim compensatory measures (e.g., improved leak detection cabability, ECCS availability, operator training) were established where necessary.

NRC—The NRC is closely involved in the licensees' and the vendors' efforts to assure proper detection, characterization, and resolution of the cracking problem. The NRC staff has been reviewing the inspection results of each plant on a case-by-case basis. In general, for the plants where such cracking has been observed, repairs, analysis, and/or additional surveillance conditions were required. Where repair was proposed, consideration was given to the strength (relative to ASME Code margin) of the repair, its effect on the piping system, and further inspectability. Where repair was not proposed, consideration was given to uncertainties in the measurements of cracking depth and to projected growth of cracks during subsequent operation. NRC staff evaluation criteria require maintaining the inherent factor of safety prescribed by Section III of the ASME Boiler and Pressure Vessel Code for normal and faulted conditions with consideration of the uncertainties in crack size and growth rate.

As of early July 1983, five plants (Browns Ferry Unit 3, Brunswick Unit 2, Dresden Unit 3, Pilgram Unit 1, and Quad Cities Unit 2) had not yet begun inspections. These plants were scheduled for inspections at various times from August 1983 through January 1984. However, the NRC concluded that these uninspected facilities may have similar IGSCC, which may be unacceptable for continued safe operation without inspections and repair or replacement of the affected pipes and additional surveillance requirements. Therefore, on July 21, 1983, the NRC sent letters to the licensees of the five uninspected plants requesting that by August 4, 1983 the licensees submit information regarding justification for continued operations, costs and impact of conducting the inspections on an accelerated schedule, availability of qualified personnel, and other bases to support their previously established schedules for IGSCC inspections.

On August 4, 1983, EPRI presented to the NRC staff the results of their "round robin" UT program to compare crack depth measurements made by UT versus actual destructive examination. Also on August 4, 1983, the NRC staff met with representatives from General Electric. On August 8 and 9, 1983, the NRC staff met with licensee representatives from the five BWR plants yet to be inspected to discuss their responses to the NRC letters. As a result of the meeting with the five licensees, accelerated schedules for inspections and interim additional compensatory measures (improved leak detection capability, emergency core cooling system availability, and operator training) were committed to by the licensees. The staff evaluated the information and commitments received from the licensees. On August 24, 1983, the NRC staff met with the Commission and advised them of its intent to issue Order for each of the five plants that would confirm these accelerated inspection schedules and impose new interim compensatory measures, or confirm compensory measures proposed by the licensees. On August 26, 1983, Orders were issued to each of the five plants. Of these five plants, preliminary inspection results as of late October 1983 were only available for one plant, Quad Cities Unit 2; these results are shown in Table 1.

On September 14, 1983, the NRC Executive Director for Operations requested the existing NRC Piping Review Committee to expand its activities into the BWR pipe crack area. The Committee is integrating its work with that of industry. The goal of this work is to develop future inspection programs and to determine the best course of action extending from inspection to long-term resolution. On October 3, 1983, the NRC Commissioners were briefed on BWR pipe crack issues. Throughout the month of October 1983, the NRC staff drafted requirements for reinspection of plants inspected under the provisions of the IE Bulletins, and criteria for repair and/or replacement of piping. At a meeting with BWR licensees on October 21, 1983, the NRC staff described the development of these plans and brought the industry up-to-date on the pipe crack issues. At the same meeting, the licensees described their past and planned future actions regarding inspection, repair, and replacement. These meetings with licensees as a group, and individual meetings with licensees to discuss specific proposals, will continue in late October and into November 1983.

* * * * *

Uncontrolled Leakage of Reactor Coolant Outside Primary Containment

Example II.A.2 of the AO criteria notes that major degradation of fuel integrity, primary coolant pressure boundary, or primary containment boundary can be considered an abnormal occurrence.

Date and Place—During August 1983, the NRC staff completed a preliminary report of a plant system interaction event which occured at Edwin I Hatch Unit 2 on August 25, 1982.* As described in the report, a complex series of systems interactions which followed during post-scram recovery operations resulted in a sustained and uncontrolled loss of hot pressurized reactor coolant outside primary containment and had the potential to threaten the operation of certain vital equipment. Hatch Unit 2, a boiling water reactor nuclear power plant, is operated by Georgia Power Company and is located in Appling County, Georgia.

Nature and Probable Consequences—On August 25, 1982, during power operation, the main valve disk of the "C" main steam line isolation valve (MSIV) separated from the valve stem resulting in the valve closing unexpectedly. The closure of the MSIV caused the reactor scram from high flux due to the pressure increase associated with the shut valve, and a Group 1 isolation caused by increased steam flow in the three steam lines which

*"Preliminary Case Study Report for the Edwin I. Hatch Unit No. 2 Plant Systems Interaction Event on August 25, 1982," NRC Office for Analysis and Evaluation of Operational Data, August 1983.

remained open. The Group I isolation automatically closed all MSIVs.

With the reactor scrammed and isolated, pressure began to increase quickly towards the opening pressure of the safety relief valves (SRVs). By a combination of automatic and manual opening of two SRVs, reactor pressure was brought back down to approximately 900 psig. The reactor scram and vessel isolation also resulted in a rapid shrinkage of vessel water level down to the low-low level setpoint initiating both the high pressure coolant injection (HPCI) system and the reactor core isolation cooling (RCIC) system. However, the combination of injection flow coastdown from the turbine-driven reactor feed pumps and SRV operation quickly brought water level back up to the high level trip setpoints for HPCI and RCIC. Accordingly, even though both systems had autostarted, no injection occurred prior to tripping off-line.

With level restored and pressure stabilized, the control room operators prepared to reopen the closed MSIVs by first resetting the Group 1 isolation signal which had cleared. Isolation reset allowed pressure equalization around the closed MSIVs via the steam line drain lines which had also isolated during the event. When all initial reactor trip conditions had cleared, the operators reset the scram allowing the scram discharge volumes to begin draining and depressurizing. By this time the RCIC system was manually restarted for level control of the isolated vessel. However, inventory loss through the main steam line drain lines resulted in a low reactor water level alarm condition even though RCIC was operating. When this occurred, HPCI was manually started to restore water level.

During the scram, the scram discharge volume drain line isolation valve, which received a close signal, did not fully close. The result of this malfunction which was caused by a loose valve body-to-operator yoke, was that an open flow path existed between the reactor coolant system and the reactor building equipment drainage system. Operating personnel observed that fluid temperature and level in the reactor building equipment drain sump were rising well beyond normal operating values. Based on the overall indications in the reactor building, operating personnel concluded that hot scram exhaust water from the still pressurized reactor was discharging at high pressure into the reactor building equipment draining system. To terminate the discharge of high temperature fluid into the reactor building, the control room operators realized that it would be necessary to reset the scram which would close the outlet scram valve and effectively isolate the reactor coolant system from the reactor building equipment drainage system.

Normal reset of the scram was not possible, however, because shortly after the scram, drywell pressure had risen above the high pressure scram setpoint initiating a second scram signal which was still in effect. This second scram signal had occurred because, as the operators were maintaining pressure by use of safety relief valves, it is surmised that one of the safety relief valve tail pipe vacuum breakers malfunctioned and allowed a momentary stream release into the drywell which pressurized the drywell to above the drywell high pressure scram point. Another complication arose in that the high daywell pressure also initiated a load shedding logic which secured electrical power to the drywell chiller units which would have been the normal means of reducing the high drywell pressure. The load shedding logic also tripped the control rod drive (CRD) pumps, resulting in a loss of cooling flow to the CRD seals. Eventually, CRD temperatures increased to over 500°F, compared to their normal operating range of 160°F to 200°F; however, there was no indication of damage to the CRD seals.

Meanwhile, the RCIC system, which was being used to maintain reactor vessel water level, malfunctioned and isolated on an erroneous high turbine exhause diaphragm pressure signal while it was injecting into the vessel. This isolation was caused by instrument draft which occurred due to abnormally high temperatures in the RCIC equipment room. These abnormally high temperatures, in turn, were caused by the release of steam from the equipment drainage system to the RCIC room via an opening in the drainage system caused by a missing threaded stainless steel pipe cap. The cap normally was intalled on a short drainage hub located in the RCIC room. The steam in the drainage system was the result of the blowdown through the partially open scram discharge volume drain valve to the drainage system.

Operations personnel started a reactor feed pump and used the feedwater system and main condenser to maintain reactor vessel level. The high drywell pressure signal was electrically jumpered and the drywell chiller unit restarted. This action reduced drywell pressure to the point where the reactor scram caused by high drywell pressure could be reset. When this action was accomplished, the leakage of the reactor coolant system to the reactor building equipment drainage system was halted. The total elapsed time from the initial reactor scram until the second scram was reset, was approximately 3½ hours.

The event is significant in that it resulted in sustained and uncontrolled leakage of the reactor coolant outside primary containment. The event indicated the potential for a serious and simultaneous degradation of both the reactor coolant pressure boundaray and the primary containment boundary. Primary coolant discharged through a partially stuck-open scram discharge volume drain line isolation valve into the equipment drain system, subsequently discharging to the open areas of the reactor building through an open drain hub. The scram discharge volume drain line utilizes 2-inch diameter piping. Even though the isolation valve was only partially open, this represented a direct flow path for the primary coolant and indicates the potential for an even more significant degradation of the primary coolant boundary. The resultant harsh environment in the reactor building shut down the operating RCIC system (a system important to safety); had the valve failed completely and had the leakage been larger or significantly prolonged, the possibility existed that other vital equipment located in the reactor building could have been threatened. During the event, adequate core cooling capability was available to protect fuel integrity.

Cause or Causes— Several otherwise unrelated failures combined to cause the complex chain of events which occurred. As discussed above, a main steam line isolation valve closed unexpectedly when the main valve disk separated from the valve stem. This was caused by disengagement of the poppet from the stem. The loss of the drywell chiller units occurred when they were tripped off-line because of load shedding logic associated with their safety buses. This load shedding feature was provided to prevent a potential faulted condition associated with the nonseismically qualified and nonenvironmentally qualified chiller equipment from adversely affecting the emergency power supplies during a postulated loss of coolant accident inside containment. The safety relief valve discharge to the drywell is believed to have been caused when the valve opened normally and its associated tail pipe vacuum breaker stuck in an open or partially open

position. Thus, when the valve lifted a second time, the stuck open vacuum breaker allowed steam to be released directly into the drywell. The scram discharge volume drain valve failure was caused by a loose valve body-to-operator yoke which prevented the attached air operator from seating the valve plug tightly into its seat. Finally, the missing RCIC room equipment drain hub cover was probably removed several months earlier during RCIC room equipment maintenance or testing activities. Removal of this cover allowed hot steam to emanate from the opening, which wetted down and significantly increased the temperature of the electrical equipment and devices located in the room. The increased temperature also set off the fire suppression system sprinkler head located above the drain system opening. These adverse conditions caused instrument drift of devices located in the room, including the trip setting for the Barksdale pressure switch which was used for the RCIC turbine exhaust diaphram high pressure isolation function. This switch's setpoint was found to have drifted from 8 psig to 0 psig.

Actions Taken To Prevent Recurrence

Licensee—The main steam line isolation valve manufacturer, Rockwell International, had investigated the cause of similar, earlier, valve failure at Hatch and other facilities and had recommended three potential solutions to the disk-to-stem disassembly problem for the Rockwell valves. These recommended actions had either not been finalized or not been adequately evaluated and implemented for Hatch at the time of the event. The licensee has replaced the entire disk and stem assembly in both the inboard and the outboard isolation valves on the "C" steam line. In addition, the licensee plans to implement the MSIV lockpin installation discussed in General Electric Service Information Letter No. 224 as recommended by the valve supplier. This work will probably be accomplished in the upcoming Unit 2 refueling outage; furthermore, a procedure will be issued requiring MSIV inspection during each refueling outage after these modifications are completed.

Regarding the scam discharge volume drain value failure, the licensee had earlier, in February 1981, proposed plant technical specification changes which would include the scram discharge volume vent and drain valves in the facility surveillance requirements. However, the proposed surveillance requirements did not meet NRC requirements, and the licensee acknowledged that revisions to the technical specifications were necesssary. However, the licensee did not submit revised technical specifications, and, therefore, the revised technical specifications were not implemented at the time of the event. The licensee has since resubmitted revised Technical Specifications on September 19, 1983 and December 14, 1983, as required by a June 24, 1983 NRC confirmatory order.

Following issuance of NRC Inspection and Enforcement Information Notice No. 83–44 ("Potential Damage to Redundant Safety Equipment as a Result of Backflow Through the Equipment and Floor Drain System," July 1, 1983), the licensee performed a walkdown to determine the potential for flood propagation through equipment and floor drains. This walkdown verified that drain hub caps on the 87 foot elevation were capped; furthermore, the hub caps have been tack welded to drain header hubs to assure they remain in place. To prevent the recurrence of a missing drain hub cap, administrative controls over drain hub caps will be upgraded. The caps will be tack welded in place and a specific maintenance authorization will be required to break the weld to remove the caps. The maintenance procedural controls involved will also be revised to specifically address the need to replace covers following completion of the activities requiring their removal.

Prior to being returned to service, those instruments associated with RCIC circuitry that experienced contact with an adverse environment were inspected, calibrated and functionally tested. As long term corrective action for the RCIC system instrument drift problem, a previously planned analog trip system incorporating transmitter and bistables will be installed to replace the mechanical switches and trip devices used in the current instrumentation and control system.

The scram discharge header drain valve that allowed escape of coolant steam into the RCIC room was inspected, disassembled, cleaned, properly reassembled and satisfactorily tested after reinstallment. The potential for loss of coolant through the scram discharge system is a generic concern and is the subject of several new NRC requirements. These include the installation of redundant scram discharge volume vent and drain valves and technical specifications for periodic surveillance of these valves. These requirements are being implemented at the Hatch units and will be complete in the near future. Implementation of these requirements should significantly reduce the probability of a recurrence of the subject event.

Loss (by design) of drywell chillers occurred due to the high drywell pressure scram. Operators were unable to reset the chillers due to the existing scram signal. No corrective actions have been pursued for this concern since manual bypasses on Engineered Safety Features are undesirable. Site personnel have been trained on bypassing signals in general (Test Shop). It is felt that this training along with the operator training on functions of systems would allow signals to be bypassed, if needed, in this or other systems on an emergency basis.

The control rod drive (CRD) pumps were lost due to the high drywell pressure scram resulting in a long period of time without cooling which caused elevated CRD seal temperatures. To allow manual restart of the CRD pumps, override switches have been installed on Unit 2 and will be installed on Unit 1 in the near future.

Since the event, safety/relief valve (SRV) functional test procedures have been revised. These revised procedures impose new surveillance requirements that call for more frequent SRV exercise including exercise under power conditions. In addition, SRV tailpipe vacuum breakers were inspected in detail to assure proper operation. A new vacuum breaker design is currently being studied for probable installation.

The NRC proposed emergency procedures guidelines for this type of event are under consideration for addition to the BWR Emergency Procedure Gudelines being developed by the BWR owners group. The procedures are expected to be completed in 1984. Training related to the procedures will commence in 1984 and should be completed in 1985.

NRC—The main steam line isolation valve disk-to-stem disassembly problem had been the subject of NRC Inspection and Enforcement Information Notice No. 81–28 ("Failure of Rockwell-Edward Main Steam Isolation Valves") issued on September 3, 1981, based on similar, earlier events.

Regarding the scram discharge volume drain valve failure, NRC had, in July 1980, based upon similar, earlier failures, requested all operating BWR licensees to propose technical specification surveillance requirements for the existing scram discharge volume vent and drain valves. The surveillance requirements were intended to be an interim measure to assure scram discharge volume vent and drain valve operability on a continuing basis during reactor operation. The NRC determined

in December 1980, that long term hardware improvements in the isolation arrangements for the scram discharge volume system would also be required. As discussed above, the NRC issued a confirmatory order on June 24, 1983 regarding the surveillance requirements. The same order confirmed the licensee's commitment to install permanent scram discharge system modifications (including redundant vent and drain valves) by December 31, 1983. These modifications were developed by the BWR Owners Subgroup.

The importance of rector building equipment drain hub covers had been identified to licensees by NRC Inspection and Enforcement Circular No. 78-06 ("Potential Common Mode Flooding of ECCS Equipment Rooms at BWR Facilities") issued on May 25, 1978. The Circular recommended that administrative controls be reviewed to assure that separation criteria were maintained and that watertight room separation devices, such as doors and hatches, were closed as appropriate. The information in the Circular was supplemented by the previously referenced NRC Inspection and Enforcement Information Notice No. 83-44.

Based on a review of the previously referenced NRC staff report (Ref. 3), and a review of actions taken to date, the NRC staff will determine whether further corrective actions are appropriate.

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Improper Control Rod Manipulations

Example I.D.3 of the AO criteria notes that serious deficiency in management or procedural controls in major areas can be considered an abnormal occurrence.

Date and Place—Events at two separate licensees, involving improper control rod insertions and other violations, demonstrated breakdowns in plant management control systems designed to control operations activities and ensure safe operations of the facilities.

The first event occurred on March 10 and 11, 1983, at Quad Cities Unit 1, a boiling water reactor nuclear power plant. The plant is operated by Commonwealth Edison Company and is located in Rock Island County, Illinois.

The second event occurred on July 14, 1983, at Edwin I. Hatch Unit 2, a boiling water reactor nuclear power plant. The plant is operated by Georgia Power Company and is located in Appling County, Georgia.

Nature and Probable Consequences

Quad Cities Unit 1

On March 10 and 11, 1983, the plant was being shut down for a scheduled maintenance outage. During the day shift on March 10, the nuclear engineer requested to have the Rod Worth Minimizer (RWM) bypassed so he could load a new shutdown control rod sequence into the RWM computer. The RWM serves as a backup to procedural controls so limit control rod reactivity worth during startup and low power operation; this helps limit the reactivity addition rate in the event of a control rod drop accident. The system blocks (prevents) rod movements if the existing control rod pattern deviates from a specific sequence which was developed by the plant nuclear engineers and loaded into the RWM computer memory. Due to lower rod worths at higher power levels, the plant's procedures do not require the RWM to be operable above 30% reactor power.

After the nuclear engineer loaded the new sequence into the RWM computer, he gave the unit operator the new shutdown control rod sequence procedure (designated QTP 1600-S3, dated March 9, 1983) and a RWM control rod sequence computer printout (the printout sequence was a rod withdrawal sequence which was the reverse of the approved rod insertion sequence). The RWM was left in the bypass condition.

Following shift change, the nculear engineer prepared a handwritten explanatory note to the sequence procedure and gave it to the evening shift unit operator and shift engineer. Reactor shutdown was to begin during the evening shift. An extra operator, scheduled for the night shift, was called in early to assist with control rod insertion because the evening shift unit operator was performing numerous surveillance tests. The extra operator reviewed the handwritten note and the computer printout and mistakenly concluded (the unit operator agreed with the extra operator's interpretation) that the rods should be inserted in the sequence listed on the RWM computer printout. As discussed previously, this sequence was the reverse of the proper sequence given in QTP 1600-S3.

At about 8:00 p.m., the extra operator began inserting control rods. By 10:15 p.m., the extra operator had inserted 33 control rods improperly; at this time, reactor power was about 30%. Contrary to procedures requiring recirculation pump speed to be manually reduced at set intervals during control rod insertion, the pumps automatically ran back to minimum speed reducing reactor power to about 20%. Also contrary to procedures, the RWM remained in a bypass condition when power was reduced below 30%.

At 11:00 p.m., the night shift came on duty. At about 11:10 p.m., the oncoming unit operator returned the RWM to service. The RWM automatically prevented additional rod movements because of the out-of-sequence control rods, but did not display any error messages because there were so many insertion errors. After failing to clear the rod block, the unit operator (after discussion with the shift engineer) declared the RWM inoperable and it was again bypassed at 11:18 p.m. The unit operator requested the extra operator to continue rod insertions. Ten more control rods were improperly inserted, reducing power from about 20% to 9%; at this point, the reactor was manually scrammed (shut down) as part of normal shutdown procedures. On the following morning, March 11, 1983, plant management discovered that the control rods had been inserted in reverse order using the RWM computer printout.

Had the plant reached very low power levels, the improper insertion of the control rods and the bypassing of the RWM could have affected the plant's ability to withstand a rod drop accident (in which a control rod suddenly drops from the reactor core, resulting in a rapid, localized increase in power and possible damage to the surrounding fuel rods). In this case, no fuel damage occurred and General Electric, the reactor vendor, determined that safety margins were not seriously degraded. The unit was manually scrammed at 9% of power, a level well above the point where safety margins would have been significantly reduce.

The event, together with numerous other violations identified by the licensee's and the NRC's investigation, however, raised concerns regarding plant management control systems designed to control operating activities and to ensure safe, controlled shutdown of the reactor.

Hatch Unit 2

On July 14, 1983, during normal startup activities from a refueling outage the plant was operating at about 25% power. Problems with main condenser vacuum had occurred and air ejector troubleshooting had been in progress. Condenser vacuum began to decrease and the turbine was unloaded and tripped. Control rods were inserted in an attempt to reduce reactor power to within the limit of the mechanical vacuum pump so that it could be placed in service in order to maintain vacuum

above the trip set point of the reactor feed pumps. A reactor feed pump low vacuum trip would cause aloss of feedwater flow to the vessel.

To reduce power more quickly, the licensee bypassed the RWM and assigned a second licensed operator to verify control rod movement as permitted by the technical specifications. At one point, the emergency rod in position switch was used to achieve the greatest possible insertion rate.

When the operator reached groups of low worth peripheral rods in the sequence, a collective discussion among the licensed operators and the supervision in the control room resulted in a decision to scram individual rods by using the individual scram switches at the scram timing panel which was already set up for scram time testing. This was not an approved procedure and resulted in the insetion of rods in an out of sequence manner. Vacuum at the time was about ½ inch above the trip point.

While the plant operator continued inserting rods at the front panel, two other operators began to insert rods at the scram timing panel with the individual scram switches. When the front panel operator observed those rods going in, he stopped inserting and verified further insertions from the scram panel. A process computer printout indicated that several rods were not fully inserted (i.e., scram toggle switches were not held down sufficiently long). These rods were subsequently rescrammed. One rod was also found in a position which was not expected based upon the rod manipulations performed by the operators. The cause of this rod being improperly positioned is not known. The vacuum pump was placed in service and vaccum stabilized at a low level. Because the one rod was improperly positioned, the reactor was scrammed as required by procedure.

The consequences of this sequence of events was operation of the reactor outside of the accident analyses contained in the plant's Final Safety Analysis Report. In addition, a control rod configuration resulted which had not been analyzed. The RWM, which is used to minimize the effects of a rod drop accident, was bypassed; the use of a second operator to verify control rod movements was apparently ineffective as evidenced by the out-of-sequence rod position.

In addition, the rod sequence control system (RSCS) was effectively by-passed. The RSCS is a backup system to the RWM and independently imposes restrictions on control rod movements to mitigate the effects of a control rod drop accident. The plant's technical specifications require the RSCS to be operable when reactor power is below 20%. However, the use of the emergency rod in position switch and the scram switches on the scram timing panel circumvented the RSCS.

Even though no fuel damage occurred, the event and related violations identified by the NRC's investigation raised concerns regarding the application of management resources to the overview of facility operations.

Cause or Causes

Quad Cities Unit 1 and Hatch Unit 2

For both events, the cause was a weakness in the plant management control systems, as evidenced by the number of procedural violations, the number and types of personnel involved, the poor judgment exercised by the control room staff, and the insufficient guidance provided by management.

Actions Taken To Prevent Recurrence

Quad Cities Unit 1

Licensee—The following corrective actions were taken pertaining to the control rod insertion error event:

1. The Station Superintendent met with each person involved in the incident to discuss with him his understanding of the event, and to personally emphasize the scope of importance of accountability for his actions. In addition, the Station Superintendent conducted accountability meetings with all plant personnel in groups.

2. A committee was formed to implement a special program to monitor all the work activities of Control Room personnel involved in the event.

3. A new system for control rod movements and sequences was established which provides clearer instructions and a better means of documentation for rod movements. To implement this system, station procedures were revised to direct responsibilities and provide instructions.

4. The RWM procedures were revised which provide better instructions for operation, sequence loading, initializing and determining operability.

5. Training was accomplished on the aforementioned procedures for control room employees.

In addition, in terms of general control room conduct, procedures and practices were reviewed and rewritten to improve the quality of interpretation, to foster adherence to all procedures, and to enhance communication among control room personnel during shift turnovers.

NRC—The NRC Region III performed a special safety inspection on March 11 through 29, 1983, of the circumstances associated with the event. Three Severity Level III violations were identified involving failures to follow shutdown procedures, to accurately document actions completed, to record operating conditions and equipment status, to perform proper shift turnover, and to maintain proper overall perspective of facility operations.

On June 21, 1983, the NRC Region III sent a letter to the licensee enclosing a notice of violation and proposed imposition of civil penalties in the amount of $150,000. In addition, the NRC letter expressed the NRC's concern over the performance of certain operating personnnel during the event. A special enforcement conference was held on October 20, 1983, between those individuals and senior NRC management to discuss the Quad Cities performance. A separate enforcement conference was held previously with the licensee's management on March 29, 1983. On August 12, 1983, the licensee paid the civil penalty and described the corrective actions taken. The corrective measures will be examined during future NRC inspections.

Hatch Unit 2

Licensee—Upon being notified by the NRC Resident Inspector (as discussed further below) of individual rods being scrammed from the scram timing panel without authorized procedures, senior on-site plant management immediately relieved all involved operators and shift technical advisors of control room duties. Senior licensee management counseled the individuals on their improper actions. Appropriate procedures, simulator and other training techniques, and other orders to control room personnel either have been or will be modified to clarify corrective actions and to prohibit those actions which resulted in the event. The licensee also conducted a "lessons learned" program for operators during the week of August 4, 1983. Further actions may be necessary in response to pending NRC enforcement action.

NRC—The NRC Region II performed a special inspection on July 14 and 15, 1983 of the circumstances associated with the event. Three violations were identified involving failure to follow procedures for reactor operations, and failures pertaining to operation of the RWM and RSCS. Collectively, the violations were evaluated as a Severity Level II problem (Supplement I).

The NRC participated in the licensee's "lessons learned" program to discuss

the event from the perspective of the NRC. An enforcement conference was held in early November between licensee and NRC personnel. Three sessions were conducted: the first with non-supervisory senior reactor operators, reactor operators, and shift technical advisors; the second with supervisory and non-supervisory personnel involved with the event; and the third with corporate and plant management.

On December 27, 1983, the NRC Region II sent a letter (Ref. 9) to the licensee enclosing a notice of violation and proposed imposition of civil penalties in the amount of $100,000. In addition, the NRC letter requested the licensee to address a number of questions regarding plant operations and individual responsibilities. the licensee responded on January 25, 1984, including payment of the civil penalty.

On November 3, 1983, the NRC issued Inspection and Enforcement Information Notice No. 83-75 ("Improper Control Rod Manipulation") to inform licensees of the Quad Cities Unit 1 and Haltch Unit 2 events.

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Overexposure of Radiation Workers' Hands

Example I.D.3 of the AO criteria notes that serious deficiency in management controls in major areas can be considered an abnormal occurrence. In addition, Example I.D.4 of the AO criteria notes that recurring incidents which create major safety concern can be considered an abnormal occurrence.

Date and Place—During the fourth quarter of 1982 and first quarter of 1983, several foundry workers employed by Nuclear Metals, Inc., of Concord, Massachusetts, received exposures to their hands estimated at 125 rems. It is possible that overexposures to their hands also occurred prior to the fourth quarter of 1982. However, this could not be determined from available data at the time the event was first reported.

Nature and Probable Consequences—Nuclear Metals, Inc., has performed essentially the same work, as described below, with depleted uranium for several years. In the past three years, the number and size of melts conducted in the foundry have increased substantially.

The licensee receives depleted uranium metal that is sent to the foundry for melting, alloying, and casting. The melting is performed in a graphite crucible in a vacuum furnace. Foundry workers load the uranium into the crucibles, place fire brick on top of the crucibles, and load them into the furnaces. After a liquid state is reached, the metal is poured from the botton of the crucibles into castings. The foundry workers, wearing leather gloves, remove the fire bricks and crucibles from the furnace and clean them before they are reused.

The beta dose rate at the surface of uranium metal is typically 230 millirads per hour or less. However, when uranium is melted, uranium decay products (primarily thorium-234 and protactinium-234m, both beta emitters) are physically separated. When the melted uranium is poured, quantities of these decay products remain behind, coating the crucibles, fire bricks, and inside of the furnaces. The beta dose rate from these decay products is much higher than that of the original uranium. In addition, these decay products are loose and transferable, such as to the leather gloves worn by the workers while handling and cleaning the contaminated fire bricks and crucibles. The majority of the dose rate from the contamination is contributed by the protactinium-234m which emits a beta particle with a maximum energy of 2.28 MeV.

During May 1983, a licensee representative notified the NRC Rigion I that they had discovered a problem involving hand contamination of workers in the foundry. The problem was described as recently identified and involved inability to decontaminate workers' hands. The representative also stated that recent measurements indicated higher radiation doses to workers' hands than had previously been measured.

The NRC Region I conducted inspections on May 26-27 and June 8-10, 1983 to review these matters. The inspectors determined from interviews with members of the licensee's health physics staff and foundry workers that in November 1982 the health physics staff identified that the leather gloves worn by the foundry workers were routinely contaminated with uranium decay products which produced high beta dose rates inside the gloves. Licensee representatives stated that one reason why contamination levels and resulting radiation levels might have been higher during this time period than previously was the implementation of a policy allowing only three pairs of leather gloves per day per worker. While foundry workers were provided with wrist badges during 1982 and the first quarter of 1983, these badges did not adequately measure the exposure to the workers' hands.

Addition evaluation of the exposure to the workers' hands were not made until March of 1983. In March 1983, dosimeters were placed on the hands of foundry workers and four workers were removed from work in the foundry because their measured exposure exceeded the licensee's administrative limit of 12.5 rem during the first quarter of 1983.

On June 9, 1983, NRC inspectors obtained a contaminated glove and made measurements of the dose rate on the inside of the glove to assist in determining the probable exposure to the hands of foundry workers during the fourth quarter of 1982 and first quarter of 1983. The licensee made identical measurements and reported the results to the NRC. The licensee agreed to transfer the contaminated glove to the Department of Energy, Idaho National Engineering Laboratory (INEL) for a more precise determination of the dose rate and an identification of the radionuclides on the contaminated glove. INEL provides such analysis under contract to NRC.

Based on the INEL determination and the other measurements, the inspectors concluded that the inside surface dose rate on a typical glove was approximately 960 millirems per hour. Interviews with foundry workers indicated that they typically wore such gloves for 10 hours per week. The inspectors concluded that the typical extremity dose was 9.6 rems per week or 125 rems per quarter for 10-15 foundry personnel. NRC regulations limit the dose to the extremities to not more than 18.75 rems per calendar quarter. In March 1983 the licensee required the use of better extremity dosimetry, the simultaneous use of multiple gloves and other engineering controls.

Based on further evaluations performed by the licensee, and submitted to the NRC on October 14, 1983, the licensee concluded that 16 workers received between 19.8 and 143 rems to the hands during both the fourth quarter of 1982 and the first quarter of 1983. These estimates are in relative agreement with the NRC estimates, considering the potential errors involved. The licensee further estimated that the workers each received between 1000 rems and 2200 rems to the hands over the past six years.

The NRC medical consultant reports that no visible damage has occured to the worker's hands; however, he will continue to review the case.

Cause or Causes—Weaknesses in the management control of the licensee's radiation safety program resulted in inadequate evaluation of the exposures to the workers' hands and assignment of inadequate extremity dosimetry. In addition, implementation of the policy

allowing only three pairs of gloves per worker per day may have produced higher contamination levels and resulting higher radiation levels on the gloves than normal. The exposures received could have been considerably reduced had timely management actions been taken after the problem was first identified.

Actions Taken To Prevent Recurrence

Licensee—The licensee has assigned hand dosimetry (ring thermoluminescent dosimeters) to each individual, provided additional protective clothing, required frequent changing of contaminated gloves, provided remote handling tools and implemented engineering controls. The health physics technician assigned to the area is monitoring work closely and the health physics staff is monitoring measured exposures to assure no exposures in excess of the limits occur.

On July 22, 1983, the licensee submitted a preliminary report to the NRC Region I regarding an evaluation of the exposures received by the workers. A more complete evaluation was submitted on October 14, 1983.

NRC—An enforcement conference was held with the licensee at the Region I office on July 27, 1983. A follow-up management meeting was held at the licensee's facility on August 2, 1983. A letter confirming the licensee's planned actions to strengthen their radiation safety program was sent on August 5, 1983.

On September 1, 1983, the NRC sent to the licensee a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of $9,600. Several violations were identified, including radiation exposures in excess of regulatory limits to the skin of the hands of the workers. On September 30, 1983, the licensee forwarded a letter describing corrective actions. These corrective actions, and their effectiveness, will examined by the NRC during subsequent inspections. In addition, the licensee paid the civil penalty.

NRC Inspection and Enforcement Information Notice No. 883–73 "Radiation Exposure from Gloves Contaminated with Uranium Daughter Products") was issued on October 31, 1983 to inform appropriate licensees of the event. Suggestions were made to the licensees to help prevent similar problems.

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Willful Violation of License and Material False Statement to the NRC

Example I.D.3 of the AO criteria notes that serious deficiency in management or procedural controls in major areas can be considered an abnormal occurrence.

Date and Place—On January 17, 1983, during a routine inspection of American Testing Laboratories, Inc., in Salt Lake City, Utah, licensee management made a material false statement regarding use of licensed material. Further, during a subsequent investigation, it was found that the licensee had willfully violated certain license conditions.

Nature and probable Consequences—During the NRC inspection on January 17, 1983, the licensee's laboratory manager stated to the inspector that all licensed material had been in storage and had not been used. The inspector, therefore, did not review licensee activities and records in regard to license conditions governing the use of portable moisture/density gauges and an asphalt content gauge. The gauges contained sealed radioactive sources not exceeding 10 millicuries of cesium-137 and 330 millicuries of americium-241.

Following the inspection, the NRC Region IV office received allegations that, at the time of the insection, the licensee was using three gauges. As a consequence of these allegations, an investigation of the licensee's facility at Salt Lake City, Utah, was conducted May 23-25, 1983, by representatives of the NRC Office of Investigations Field Office in Region IV. The results of this investigation indicated that at the time of the January inspection, one of the gauges was in use and, in fact, from the time the NRC license was issued, the gauges had been used repeatedly in conducting licensed activities. The licensee's laboratory manager admittted in sworn statement that licensed material had been in use at the time of the previous inspection. Three violations of NRC radiation safety regulations and license conditions were also identified during the inspection including: (1) failure to perform sealed source leak tests at proper intervals, (2) failure to institute an external dosimetry program, and (3) failure to use an approved shipping container and to block and brace the container used during the transport.

Cause or Causes—As previously stated, licensee management had willfully violated certain license conditions ever since the license was issued. In addition, licensee management made a material false statement to the NRC regarding use of licensed material.

Actions Taken To Prevent Recurrence

Licensee—The licensee responded to the NRC Order, described below, by letter dated June 23, 1983, wherein was made a commitment to honesty during future dealings with the NRC and commitment to implement corrective actions for the safety-related violations identified during the NRC investigation.

NRC—As a result of the NRC investigation, an Order to Show Cause and Order Temporarily Suspending License (Effective Immediately) was issued to the licensee on June 10, 1983. An enforcement conference was held with licensee management at the NRC Region IV Office on June 14, 1983. The licensee responded to the Order to Show Cause on June 23, 1983. The licensee responded to each of the items of noncompliance cited in the Order and described corrective actions planned to preclude recurrence of the violations. An inspection of the licensee's premises on July 26, 1983, confirmed that licensed material had been secured and apparently had been stored in compliance with the Order Temporarily Suspending License.

The NRC examined the licensee's response and conclue that the license should be revoked. An Order Revoking License was sent to the licensee on December 16, 1983.

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Radiation Overexposure

Example I.A.1 of the AO criteria notes that exposure of the whole body of any individual to 25 rems or more of radiation can be considered an abnormal occurence.

Date and Place—On July 29, 1983, Kay-Ray, Inc., Arlington Heights, Illinois, an industrial gauge manufacturer and distributor, reported that one of its employees had received whole body and hand radiation overexposures. The licensee had previously reported on May 24, 1983, that another employee had received an overexposure to his hands.

Nature and Probable Consequences—The July overexposure involved an employee whose duties included loading sealed radiation sources into industrial gauges. The film badges worn during the period July 18–24, 1983, and subsequent evaluation by NRC Region III inspectors indicated a whole body radiation exposure of 25.3 rems (14.4 rems gamma radiation and 10.9 rems beta radiation). The exposure to the employee's hands during the same time period was indicated to be 60.7 rems. (NRC regulations limit radiation exposure in a calendar quarter to 3 rems whole body and to 18.75 rems to the hands. A rem is a standard measure of radiation exposure.)

An NRC inspection was unable to determine the specific cause of the overexposures. No known incidents occurred

during the source handling activities which would account for the radiation exposure levels. The inspectors did note that the number of source handling operations was greater than normal and that several problems were encountered by the individual in loading sources. The additional workload and the problems encountered, however, were not considered sufficient to explain the overexposures.

The employee was examined at a local hospital and blood tests were performed. There was no evidence of any radiation damage. Radiation exposures of this magnitude would not be expected to result in any medically observable effects.

The second radiation overexposure occurred in May 1983 with an employee receiving a quarterly exposure to his hand of 29.9 rems, as measured by a ring thermoluminescent detector (TLD), which measures radiation exposure.

The specific cause of the overexposure could not be determined in an NRC inspection. A contributing factor, however, may have been the use of a new procedure for removing sources from their holders in preparation for disposal. The new proceudre proved to be more time-consuming and arduous than the one previously used, and the procedure has subsequently been discontinued.

Cause or Causes—While no specific incident or direct cause of these two overexposures could be determined, the overexposures and other violations identified in recent NRC inspections indicated serious weaknesses in the company's radiation protection program and its ability to ensure the safe handling of radioactive materials.

Actions Taken To Prevent Recurrence

Licensee—In response to an NRC Order issued as a result of the overexposures, the licensee has upgraded its radiation protection and management program. Source handling procedures have been revised and employees have received extensive retraining. In addition, the licensee has developed a program to audit employee performance during source loading and other activities involving radioactive materials. It has also retained a radiation protection consultant to assist it in training and other radiation protective activities.

NRC—On August 15, 1983, the NRC issued an Order suspending the NRC license of Kay-Ray, Inc., as a result of the overexposures and other violations. In addition, on September 23, 1983, a $1,800 fine was proposed for the violations, which was subsequently paid by the licensee. The suspension order was rescinded on September 16, 1983, after the licensee had submitted it plans for upgrading its radiation protection program.

An NRC inspection on October 18, 1983, determined that the upgraded radiation protection program had been satisfactorily implemented.

* * * * *

Diagnostic Misadministration of a Radiopharmaceutical

The general AO criterion notes that a moderate or more severe impact on the public health or safety can be considered an abnormal occurrence.

Date and Place—On August 24, 1983, the NRC Region I office was notified by Thomas Jefferson University, Philadelphia, Pennsylvania, that a patient had been orally administered 100 millicuries of technetium-99m DTPA (diethylene triminepentacetic acid) for the purpose of evaluating gastric emptying. The dose prescribed for this procedure was 100 microcuries of technetium-99h DTPA, which is 100 times less than the dose actually administered.

Nature and Probable Consequences—On August 24, 1983, a patient was presented at the licensee's Nuclear Medicine Department in preparation for a gastric emptying analysis. The patient arrived prior to the Department's normal work hours. The study had been requested by the patient's attending physician in a written request which had been received in the Department on the previous day. The written request had not been reviewed by the Nuclear Medicine physician, a standard, but not required, procedure, since the Nuclear Medicine physician had not yet arrived in the Department.

Normally, it is during this review that the Nuclear Medicine physician prescribes the appropriate radiopharmaceutical and dose the patient is to receive. It is an accepted practice at this institution to proceed with a Nuclear Medicine study, without the physician review, when the requested study is a routine procedure for which a standard dose is prescribed in the Department procedure manual. A copy of the portion of the manual specifying the dose is on file in the radiopharmacy for review by the radiopharmacist when the written request has not received a physician review.

On August 24, 1983, both the radiopharmacist and the Nuclear Medicine technologist who routinely perform this procedure, were on leave from the Department. The substitute radiopharmacist, though familiar with the preparation of technetium-99m DTPA in bulk, had not prepared the radiopharmaceutical in the dose required for the gastric emptying analysis. The Nuclear Medicine technologist, who administered the dose, and performed the imaging procedure, had participated in this study on approximately four other occasions. This study has been performed an average of 20 times per year for the last four years. The substitute radiopharmacist, upon referring to the dose chart in the radiopharmacy, noted that the dose was not listed on the chart. The Nuclear Medicine technologist referred the pharmacist to the Department procedure manual. The procedure in the manual contained a typographical error; the dose was written as "100 MCI of 99m Tc DTPA", meaning 100 millicuries of technetium-99m DTPA. The procedure should have read, "100uCi of 99m Tc DTPA", meaning 100 microcuries of technetium-99m DTPA. The pharmacist, though not familiar with the dose range, did question the dose listed, as it was 4 to 5 times higher than any other diagnostic radiopharmaceutical dose listed on the radiopharmacy chart. The Nuclear Medicine technologist requested that the pharmacist again review the written procedure. The Nuclear Medicine technologist did not give the pharmacist her full attention on the matter, as she was engaged in setting up the imaging equipment because of the patient's early arrival to the Department. The pharmacist prepared the 100 millicuries dose of technetium-99m DTPA, which was orally administered to the patient by the technologist. Only after the imaging equipment's overresponse to the high radioactive content in the patient did the technologist realize that a misadministration had occurred.

Since less than 1% of the technetium-99m DTPA is absorbed from the digestive tract, the licensee attempted to reduce the radiation dose through emetics and laxatives. This proved ineffective since the patient had a gastric neuropathy which was not responsive to these treatments. Initial dose estimates of 200 rems to the lining of the stomach and intestinal tract were revised downward to less than 50 rems based on a more thorough evaluation of information available from the Medical Internal Radiation Dose (MIRD) calculations published by the Society of Nuclear Medicine. An NRC medical consultant concurred in these dose estimates. The patient exhibited no ill effects due to the misadministration of the radiopharmaceutical.

Cause or Causes—The direct cause of this incident was the typographical error contained in written procedure combined with the substitute radiopharmacist's unfamiliarity with the dose range associated with this procedure. A contributing cause was the patient's early arrival in the Department which altered the daily routines of both the pharmacist and the technologist in bypassing the Nuclear Medicine physician's review.

Actions Taken To Prevent Recurrence

Licensee—The licensee has eliminated all abbreviations in radiopharmaceutical dose prescriptions contained in the procedure manual and dose charts. In addition all procedures and doses will be periodically reviewed to ensure that all information is correct and current. The licensee has also taken steps through additional training to ensure that substitute staff members are knowledgeable in both routine and special procedures when regular staff members are unavailable.

NRC—An inspection was performed to verify the licensee's corrective actions. An NRC medical consultant was retained. The consultant concurred in the estimated dose received by the patient.

* * * * *

Widespread Radiological Contamination

One of the general AO criteria notes that moderate release of radioactive material licensed by or otherwise regulated by the Commission can be considered an abnormal occurrence. The importance of the event was enhanced by the widespread nature of the radiological contamination (including unrestricted areas) and the significant clean-up efforts required.

Date and Place—On September 13, 1983, a sealed radiation source containing cesium-137 was damaged at the Shelwell Services, Inc., facility in Hebron, Ohio. The cesium contamination was spread about the Shelwell facility and subsequently carried to employees' homes and other locations in the Hebron area.

Nature and Probable Consequences—Shelwell Services, Inc., is licensed by the Nuclear Regulatory Commission for use of radiation sources in well logging activities. Well logging for gas and oil wells involves lowering a radiation source into the drilled hole and measuring the radiation reflected on the rock strata.

On September 13, 1983, three Shelwell employees were attempting to remove a sealed source containing 2 curies of cesium-137 from a source holder. The source was a stainless steel capsule about 0.34 inch in diameter and 0.75 inch long. After several attempts to free the capsule, the workers placed the cylindrical source holder on a lathe, began turning the lathe, and used a hand-held drill bit to penetrate the end of the holder. The drill bit cut into the capsule itself, allowing a portion of the contents, a compound of cesium and silicon, to spill out.

The cesium was spread throughout the room as airborne contamination and on the shoes and clothing of the workers. Shelwell personnel attempted to clean up the contamination, but did not have adequate survey equipment, nor did they have the expertise to perform an adequate radiation survey and decontamination. The workers also failed to realize that they were carrying the cesium powder on their shoes and clothing. As a result the workers' cars and homes as well as other locations they visited were contaminated by the cesium carried on their shoes and clothing.

The licensee reported the source damage incident to the NRC's Region III office on September 14, 1983. A Region III inspector was dispatched to the Shelwell facility and when he arrived on September 15, 1983, he determined that there was extensive cesium contamination throughout the Shelwell facility and a strong likelihood that the contamination had been spread offsite.

An additional team of four NRC inspectors and a Department of Energy representative was sent to the Shelwell site by charter aircraft on September 15 and they were joined by additional personnel from the Ohio Disaster Services Agency and the U.S. Department of Energy's Radiological Assistance Team. Preliminary surveys that night indicated that the homes of the three workers involved in the source damage accident were contaminated with the cesium powder.

Surveys by the State and Federal teams determined that the contamination levels did not represent an immediate health and safety problem, but were such that the contamination should be cleaned up as a precaution.

Radioactive contamination in the three homes, and a fourth home visited by one of the workers, involved generalized contamination levels ranging up to 250 microrems per hour with spotty contamination measuring 10 to 20 millirems per hour. The highest measurement in the homes was a single isolated spot surveyed at 100 millirems per hour. (A rem is a standard measure of radiation exposure. A millirem is 1/1000th of a rem and a microrem is 1/1,000,000 of a rem. Natural background radiation typically measures 10 microrems per hour, while the NRC's limit for radiation exposure to members of the public is 2 millirems per hour.)

The State and Federal survey teams later identified a total of 15 homes with cesium contamination levels which required decontamination—the four homes with the highest amounts of contamination plus 11 additional homes with lesser levels. The licensee retained a radiation services contractor to decontaminate the homes, and decontamination was completed on November 14, 1983. Follow-up surveys were performed by the NRC Region III to assure that the homes had been adequately decontaminated.

In addition, the survey teams checked 16 area businesses with detectable radioactivity being identified at 6 of them. This contamination involved only small areas and was readily cleaned up by the survey teams. Five individuals who had visited the Shelwell site and their vehicles were also surveyed. Minor contamination requiring cleanup was found in one vehicle.

On September 20, 1983, the NRC's Office of Inspection and Enforcement issued an Order suspending all licensed activities using radiation materials at the Shelwell site and field locations. The licensee was also ordered to show cause why its license should not be revoked because of the mishandling of the cesium source and subsequent spread of contamination. The licensee was also directed to submit, for NRC approval, a plan for decontamination of its facility.

The licensee's contractor, in preparation for formulating a decontamination plan, surveyed the buildings on the Shelwell site. Building 1, a garage containing maintenance vehicles and equipment, had several isolated spots measuring 1 to 2 millirems per hour. Building 2, a storage facility where the September 13 incident took place, showed multiple areas of contamination with surface readings from 2 to 10 millirems per hour. A vacuum cleaner, apparently used by the employees to clean up the contamination after the source was damaged had a measurement of 600 millirems per hour, the highest found in the Shelwell facility.

The NRC retained a medical consultant to examine the individuals involved in the source damage incident and in the subsequent attempted cleanup activities. The three individuals who were present when the source was damaged and two additional employees who performed cleanup activities were examined at the University of Cincinnati and checked in a whole body radiation

counter. All five individuals showed some evidence of uptake (inhalation) of the cesium powder, but the levels observed were well within NRC regulatory limits of occupational exposures.

The film badges worn by the three employees involved in the source damage incident showed radiation exposures of 13 rems, 2.7 rems, and 110 millirems with the highest reading for the worker who actually handled the source in its storage tube and performed the machining work on the lathe. While two of the exposures are above the NRC occupational exposure limit of 1.25 rems per calendar quarter, they are below the point where any observable medical effects would be expected.

Cause or Causes—The damage to the source and subsequent spread of contamination was caused by inadequate source handling procedures and a lack of understanding of the hazards of radiation and contamination. Had adequate technical assistance been sought promptly the contamination would have been limited to only a portion of the licensee's facility.

Actions Taken To Prevent Recurrence

Licensee—As described in the licensee's October 17, 1983, response to the NRC Order, all licensed radioactive material was placed in storage. Offsite decontamination was accomplished and was verified by NRC site officials on November 16, 1983, to be in compliance with NRC criteria. The licensee described a revised radiation protection program which would aid in complying with the terms of its license. In addition, the licensee described its proposed onsite decontamination plan.

NRC—Because the damage to the source and subsequent mishandling of the initial decontamination by the licensee, the NRC issued an Order on September 20, 1983, immediately suspending the license of Shelwell Services, Inc., and requiring the company to show cause why the license should not be reviewed to determine whether or not license revocation is the appropriate regulatory action.

The NRC and other state and federal agencies took prompt and effective action to minimize the offsite consequences of the spread of contamination. After approving the licensee's proposed onsite decontamination plan on October 25, 1983, the NRC has closely monitored the licensee's activities and those of its contractor in decontaminating the company's facility.

The NRC staff met with licensee representatives on October 28, 1983 to obtain additional information regarding corrective actions. Subsequently, on November 7, 1983, the NRC issued a rescission of the license suspension and modified the license to include additional conditions.

The NRC issued Inspection and Enforcement Information Notice No. 83–74 ("Rupture of Cesium-137 Source Used in Well Logging Operations") on November 3, 1983, to inform NRC well logging licensees of the circumstances of the Shelwell source damage incident and subsequent contamination.

* * * * *

Exposure of Patients to Significantly Less Than Prescribed Therapeutic Doses

Example I.D.4 ofthe AO criteria notes that recurring incidents which create major safety concern can be considered an abnormal occurrence.

Date and Place—On September 27, 1983, the NRC Region I Office was notified by the University of Pittsburgh, Pittsburgh, Pennsylvania, of the undertreatment of a number of patients who had had teletherapy with cobalt-60. The undertreatments, to a total dose more than 10% lower than prescribed in the treatment plan, had occurred between July 8, 1980 and August 30, 1983.

The licensee's 30-day report dated October 28, 1983, identified a total of 53 patients who had been undertreated with total doses more than 10% below that prescribed in the treatment plan.

Nature and Probable Consequences—On August 30, 1983, the licensee recalibrated the radiation attenuation factors for all wedges used in treatment of head and neck tumors by cobalt-60 teletherapy. The individual performing the measurements reported to the Director of Physics that there was a discrepancy between the July 7, 1980 wedge factors and the August 30, 1983 wedge factors. For example, for the 60 degree wedge, the radiation attenuation factor was found to be 2.71 rather than 1.63 as had been used in treatment planning since July 8, 1980.

The Director of Physics verified the August 30, 1983 wedge factors by independent measurements on three separate occasions. Additionally, on September 21, 1983, a representative from the Radiological Physics Center, Houston, Texas, verified the wedge factors as measured on August 30, 1983. The licensee began reviewing treatment plans on August 30, 1983 to determine the effect of this error on the radiation dose delivered to tumors. As of October 3, 1983, 53 instances of delivered doses more than 10% below the prescribed dose had been identified by the licensee. Most of the 53 cases identified were 10 to 15% below the prescribed dose, however, 4 cases were 30% below the prescribed dose; over 800 treatment plans were reviewed by the licensee.

The licensee states in the October 28, 1983 report that, although patients received doses less than prescribed by the physician based on the licensee's treatment protocol, only one patient received a dose that was less than the lower limit of the dosage range normally accepted within the community of physicians specializing in radiation therapy.

A review of patient records indicated that in 47 of the 53 cases identified, there had been no further evidence of disease. The licensee stated that for the types of cancer treated, 6 out of 53, or (11%), is within the expected range of recurrence. Additionally, the licensee noted that in one of the six cases with evidence of recurrence of disease, there was concurrent diagnosis of primary carcinoma of the lung at the time head and neck carcinomas were being treated.

As of December 5, 1983, the licensee had notified all referring physicians of the patients involved.

Cause or Causes—The direct cause of this incident was either a mistake in measurement or a misrecording of a correct measurement. In addition, only a single measurement of radiation transmitted through the wedge was recorded.

Actions Taken to Prevent Recurrence—The licensee, as of August 30, 1983, corrected the radiation attenuation factor for all wedges. In addition, future calibrations of wedges will require that three measurements be made of the transmitted radiation through a wedge. The wedge will then be rotated 180 degrees and three more measurements will be made. Any discrepancies between the two sets of measurements will cause the placement of the wedge in the radiation beam to be examined and the measurements to be repeated. A second set of measurements by a different individual will be performed to verify the initial measurements. Both sets of data will be recorded in a log book for review by the Director of Physics.

The NRC performed an inspection on October 3, 1983. The NRC reviewed the licensee's evaluations in the October 28 and December 3, 1983, reports and verified that corrective actions have been taken.

Dated in Washington, D.C. this 27th day of April 1984.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84-11990 Filed 5-2-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-352-OL; 50-353-OL]

Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2); Notice of Resumption of Evidentiary Hearing

April 27, 1984.

Please take notice that the evidentiary hearing in this operating license proceeding will be resumed on May 7, 1984, at 1:30 p.m., to hear the testimony on the Air and Water Pollution Patrol's (AWPP) Contention VI-1 (welding). The hearing may continue, as necessary, on May 8-11 and on May 22 (at 1:30 p.m.) through May 25. The hearing will be held at: Old Customs Courtroom, U.S. Customs House, Third Floor, Second & Chestnut Streets, Philadelphia, PA 19106.

It is ordered.

For the Atomic Safety and Licensing Board.

Bethesda, Maryland, April 27, 1984.

Lawrence Brenner,

Chairman, Administrative Judge.

[FR Doc. 84-11991 Filed 5-2-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-327 and 50-328]

Tennessee Valley Authority; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 35 to Facility Operating License No. DPR-77 and Amendment No. 26 to Facility Operating License No. DRP-79, issued to Tennessee Valley Authority (the licensee), which revised conditions in the licenses for operation of the Sequoyah Nuclear Plant, Units 1 and 2, (the facilities) located in Hamilton County, Tennessee. The amendments were effective as of the date of their issuance.

The amendments change license conditions to authorize operation of the installed Post Accident Sampling System.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on February 16, 1984 (49 FR 6040). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendment.

For further details with respect to the action see (1) the application for amendments dated November 23, 1983, and supplemented December 21, 1983, January 9 and 10, and March 23, 1984, (2) Amendment No. 35 to Facility Operating License No. DPR-77 and Amendment No. 26 to Facility Operating Licensing No. DPR-79, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., and at the Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37401. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 24th day of April 1984.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 84-11992 Filed 5-2-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-397]

Washington Public Power Supply System; Issuance of Amendment to Facility Operating License

On December 20, 1983, the U.S. Nuclear Regulatory Commission (the Commission) issued Facility Operating License NPF-21, to Washington Public Power Supply System (WPPSS, also the licensee) authorizing operation of the WPPSS Nuclear Project No. 2 (the facility), at reactor core power levels of 166 megawatts thermal (five percent power) in accordance with the provisions of the license, the Technical Specifications and the Environmental Protection Plan.

The Commission has now issued Amendment No. 1 to Facility Operating License NPF-21, which authorizes operation of WPPSS Nuclear Project No. 2 at reactor core power levels not in excess of 3323 megawatts thermal (100 percent power) in accordance with the provisions of the amended license. The amendment is effective as of the date of issuance.

WPPSS Nuclear Project No. 2 is a boiling water nuclear reactor located on Hanford Reservation in Benton County, Washington, approximately 12 miles north of Richland, Washington.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the amended license. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on July 26, 1978 (43 F.S. 32338-32339). The increase in power level authorized by this amendment is encompassed by that prior public notice.

The Commission has determined that the issuance of this license amendment will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this action, see (1) Amendment No. 1 to Facility Operating License No. NPF-21; (2) Facility Operating License No. NPF-21 dated December 20, 1983 authorizing five percent power; (3) the report of the Advisory Commission on Reactor Safeguards dated October 13, 1982; (4) the Commission's Safety Evaluation Report dated March 1982, Supplement No. 1 dated August 1982, Supplement No. 2 dated December 1982, Supplement No. 3 dated May 1983, Supplement No. 4 dated December 1983 and Supplement No. 5 dated April 1984; (5) the Final Safety Analysis Report and amendments thereto; (6) the Environmental Report and supplements thereto; and (7) the Final Environmental Statement dated December 1981.

These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, DC 20555, and at the Richland City Library, Swift & Northgate Streets, Richland, Washington 99352. A copy of Amendment No. 1 to Facility

Operating License No. NPF-21 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing. Copies of the Safety Evaluation Report and its Supplements 1, 2, 3, 4, and 5 (NUREG-0892) and the Final Environmental Statement (NUREG-0812) may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and through NRC GPO sales program by writing to the U.S. Nuclear Regulatory Commission, Attention: Sales Manager, Washington, DC 20555. GPO deposit account holders can call (301) 492-9530.

Dated at Bethesda, Maryland, this 13th day of April 1984.

For the Nuclear Regulatory Commission.

A. Schwencer,

Chief, Licensing Branch No. 2, Division of Licensing.

[FR Doc. 84-11993 Filed 5-2-84; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the Advisory Committee on Reactor Safeguards will hold a meeting on May 10-12, 1984, in Room 1046, 1717 H Street, NW., Washington, DC. Notice of the meeting was published in the **Federal Register** on April 24, 1984 (49 FR 17629). This revision reflects the cancellation of one item and the rescheduling of several others.

The agenda for the subject meeting will be as follows:

Thursday, May 10, 1984

8:30 a.m.-8:48 a.m.: Chairman's Report (Open)—The ACRS Chairman will report briefly to the Committee regarding items of current interest.

8:45 a.m.-10:45 a.m.: Seismic Qualification of Nuclear Power Plant Equipment (Open)—The Committee members will hear and discuss the proposed NRC plan of action to provide for seismic qualification of electrical equipment in operating nuclear power plants.

10:45 a.m.-11:30 a.m.: Recent Operating Experience (Open)—The members will hear and discuss reports from representatives of the NRC staff regarding recent incidents of pipe cracking in nuclear power plant systems and a leak in the rod drive stub tube at the Nine Mile Point Nuclear Station.

11:30 a.m.-12:00 Noon: Future ACRS Activities (Open)—The members will discuss anticipated ACRS subcommittee activity and items proposed for consideration by the full Committee.

1:00 p.m.-3:00 p.m.: Emergency Core Cooling System (Open)—The members will hear and discuss reports from its subcommittee, representatives of the NRC Staff, and the General Electric Company regarding proposed changes in the ECCS evaluation codes for boiling water reactors.

Portion of this session may be closed to discuss Proprietary Information related to this matter.

3:00 p.m.-4:00 p.m.: ACRS Subcommittee Activities (Open)—Designated ACRS Subcommittees will report to the full Committee regarding assigned activities including a proposed rule regarding residual radioactive contamination limits, prioritization of unresolved generic safety issues, and implementation of the NRC integrated safety assessment program.

4:30 p.m.-4:30 p.m.: New Members (Closed)—The members will discuss the qualifications of candidates proposed for appointment to the Committee.

This portion of the meeting will be closed to discuss information the release of which would represent an unwarranted invasion of personal privacy.

Friday, May 11, 1984

8:30 a.m.-10:30 a.m.: Maintenance Practices and Procedures (Open)—The members of the Committee will hear and discuss reports regarding the proposed NRC action plan to matters relating to maintenance practices and procedures at nuclear power plants.

Portions of this session will be closed as necessary to discuss information provided in confidence by a foreign source.

10:30 a.m.-11:30 a.m.: Evaluation of Operating Information (Open)—Representatives of the NRC Staff will report on the proposed AEOD program for review and evaluation of trends in nuclear power plant operations.

11:30 a.m.-12:00 Noon: NRC Regulatory Guides (Open)—Representatives of the NRC Staff will report to the Committee regarding the status of implementation of Regulatory Guide 1.97, Instrumentation for Light-Water Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following An Accident.

1:00 p.m.-2:00 p.m.: Meeting with NRC Commissioners (Open)—The members wil discuss topics scheduled for discussion with the NRC Commissioners related to the proposed NRC safety research program, proposed NRC QA/QC initiatives, consideration of an NTSB-like board for review and evaluation of nuclear power plant accidents, and proposed amendments to Part 50 limiting the use of high-enriched uranium in non-power reactors.

2:00 p.m.-3:30 p.m.: Meeting with NRC Commissioners (Open)—The members will meet with the NRC Commissioners to discuss the items noted above.

3:30 p.m.-5:00 p.m.: Preparation of ACRS Reports (Open/Closed)—The members will discuss proposed ACRS reports to the NRC regarding items discussed during this meeting. Portions of the session will be closed as required to discuss proprietary information related to the matters considered during this meeting.

Saturday, May 12, 1984

8:30 a.m.-12:30 p.m. and 1:30 p.m.-330 p.m.: Preparation of ACRS Reports (Open/Closed)—The members will discuss proposed ACRS reports to the NRC regarding items discussed during this meeting. Portions of these sessions will be closed as required to discuss Proprietary Information related to the matters considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 28, 1983 (48 FR 44291). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R. F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92-463 that it is necessary to close portions of this meeting as noted above to discuss Proprietary Information and information

provided in confidence by a foreign source [5 U.S.C. 552(b)(c)(4)] and information the release of which would represent an unwarranted invasion of personal privacy [5 U.S.C. 552(b)(c)(6)].

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634-3265), between 8:15 a.m. and 5:00 p.m. e.s.t.

Dated: April 27, 1984.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 84-11988 Filed 5-2-84; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 20901; SR-Amex-84-7]

Self-Regulatory Organizations; American Stock exchange, Inc.; Order Approving Proposed Rule Change

April 27, 1984.

The American Stock Exchange, Inc. ("Amex"), 86 Trinity Place, New York, NY 10006, submitted on February 24, 1984, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to amend Amex Rule 345 to permit the Exchange to institute summary proceedings against member firm employees who are neither Exchange members nor approved persons. Rule 345 currently provides only for the commencement of formal disciplinary proceedings against such member firm employees. The Exchange states that the proposed amendment would improve the efficiency of the Amex disciplinary system by permitting the Exchange to utilize the expedited procedures of a summary proceeding against member firm employees, where such action is warranted by charges of minor or technical violations of the Exchange's Constitution and Rules.[1]

[1] According to the Amex, summary proceedings would be appropriate in the case of an unintentional or first-time violation or a technical violation not involving public customers. The Amex states that sanctions in summary proceedings are limited to a censure and/or a fine not to exceed $2,500, and a respondent has no right to appeal from the determinations of the Disciplinary Committee. However, a respondent served with summary charges may elect instead to have formal charges served against him. In such a case, he would thereby preserve his right to appeal to the Board of Governors but would expose himself to potentially more significant penalties.

In addition, the Exchange proposes to repeal Amex Rule 521 because, according to the Exchange, Amex Rule 342(f) restates, among other things, the requirement of Rule 521 that members notify the Amex of any disciplinary action taken against them by any other exchange, association or government regulatory body.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 20752, March 14, 1984) and by publication in the **Federal Register** (49 FR 11045, March 23, 1984). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-11908 Filed 5-2-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13908; (812-5790)]

Bayerische Vereinsbank Aktiengesellschaft; Application

April 26, 1984.

Notice is hereby given that Bayerische Vereinsbank Aktiengesellschaft ("Applicant"), c/o Milborne, Tweed, Hadley & McCloy, 1 Chase Manhattan Plaza, New York, New York 10005, filed an application on March 1, 1984, for an order of the Commission, pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act"), exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it is a publicly owned private corporate banking institution with limited liability. Applicant was established in 1869 in Munich and merged in 1971 with Bayerische Staatsbank, established in 1780. Among Germany's private banks, Applicant ranks fourth in total assets. As of December 31, 1982, Applicant's total consolidated assets were $44.4 billion. Applicant states that somewhat more than 42% of its aggregate assets relate to mortgage banking; approximately 46% relate to customer lending and deposit operations, and about 9% of Applicant's assets are committed to money market operations. Applicant states further that bonds issued and borrowings in the long term sector amounted to $25.8 billion or 58% of Applicant's' total liabilities. Amounts due to customers totalled $9.7 billion.

Applicant states that it offers the widest possible range of banking services. Applicant states further that it is a commercial bank active in corporate business domestically and overseas while also concentrating heavily on retail banking at home. Applicant also engages in the mortgage banking business in Germany making loans secured by mortgages. Applicant states that, together with its mortgage subsidiaires, Applicant is the largest long-term banking group in Germany. According to the application, Applicant provides a number of other services such as those of a broker-dealer, underwriter and trust administrator. Applicant is also extensively engaged in international banking.

Applicant represents that the Federal Banking Supervisory Authority ("FBSA") supervises and regulates all banking activities within the Federal Republic of Germany in accordance with the Banking Act (West Germany) the main purpose of which is to protect banking institutions' depositors and other creditors and the integrity of the banking system. Applicant states that the West German Central Bank assists and cooperates with the FBSA in the supervision of banking activities in West Germany. Moreover, Applicant is subject to special supervision and regulation by the FBSA under the provisions of the Law of Mortgage Banks. In addition to complying with regulation of its banking operations, Applicant must comply with regulations designed to achieve uniformity and full disclosure in bank financial statemetns. Applicant is also subject to an annual audit and an examination of depositaries holding customers' securities. Applicant states that it participates in a system of deposit insurance provided by the Federal Association of Private German Banks. The coverage protects Applicant's deposits in an amount equal to 30% of its shareholder's equity which at year end

1982, was approximately $224 million. Applicant's branches and agencies in the United States are subject to substantial regulation and examination by United States banking authorities.

Applicant proposes to issue and sell in the United States unsecured short term promissory notes of the type generally known as commercial paper (the "Notes"). The Notes will be in bearer form, denominated in United States dollars, of prime quality and issued in minimum denominations of $100,000. Applicant states that the Notes will be direct liabilities of Applicant and will rank *pari passu* among themselves and equally in right of payment with all other unsubordinated indebtedness of Applicant, including deposit liabilities, and superior to the rights of shareholders.

According to the application, Applicant wishes to issue and sell the Notes in the United States because it grants significant credits in U.S. dollars. The Notes will provide Applicant with an additional source of funding to meet its short-term U.S. dollar requirements. These requirements include the funding of short-term credit lines such as "prime rate"-based demand loans extended through Applicant's U.S. offices, the funding of short-term advances to cover account party reimbursement obligations in respect of documentary letters of credit and the funding out of portions of interest periods for Eurodollar and other loans to customers which are not match-funded.

Applicant estimates that the total amount of Notes to be issued and sold will not exceed $300,000,000. The Notes will be issued and sold by Applicant through one or more commercial paper dealers in the United States to institutional investors and other entities and individuals who normally purchase commercial paper. The Note will not be advertised or otherwise offered for sale to the general public. Applicant undertakes to ensure that the dealer or dealers will provide each offeree of the Notes, prior to any sale of the Notes to such offeree, with (1) a memorandum describing Applicant's business, and (2) Applicant's most recent publicly available fiscal year-end balance sheet and income statement which will have been audited in the customary manner for Applicant. Such memorandum will be updated as promptly as practicable to reflect additional information concerning Applicant's business and financial status which is made public in connection with Applicant's outstanding securities or new isues of Applicant's securities and which reflects material changes in Applicant's financial condition. The memorandum will be at least as comprehensive as those customarily used in offering prime quality commercial paper in the United States. The memorandum will also describe differences, if any, which are material to investors, between the accounting principles applied by Applicant in the preparation of such statements and "generally accepted accounting principles" used by United States banks. Applicant consents to any order granting the requested relief being expressly conditioned with compliance with the foregoing undertaking.

Applicant represents that the presently proposed and any future issuance of Notes will have received prior to issuance one of the three highest investment grade ratings from at least one nationally recognized United States statistical rating firm and that Applicant's United States legal counsel will certify that such rating has been received. It is intended that the terms of the Notes (including their negotiability, maturity, minimum denominations, quality, amount outstanding and manner of offering) and the use of the Notes' proceeds to finance current transactions will qualify the Notes for the exemption from registration under the Securities Act of 1933 provided by Section 3(c)(3) thereof. Applicant states that it will not issue or sell the Notes until it has received an opinion of United States counsel that, under the circumstances of the proposed offering, the Notes would be entitled to such exemption. Applicant does not request Commission review or approval of the aforementioned opinion of counsel.

Applicant states that it will appoint a bank in the United States as its authorized agent to issue and pay the Notes from time to time. Applicant will also appoint a bank or trust company or a corporation providing corporate services for lawyers as agent to accept any process which may be served in any action based on the Notes and instituted in any State or Federal court by the holder of any Note and will accept the jurisdiction of any State or Federal court in the City and State of New York in respect of any such action. Such appointment of an authorized agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the Notes have been paid by Applicant. Applicant states that it will also be subject to suit in any other court in the United States having jurisdiction because of the manner of the offering of the Notes or otherwise.

According to the application, it is possible that in the future Applicant will offer other debt securities for sale in the United States, but Applicant will not offer equity securities for sale in the United States without further exemptive relief. Applicant represents that any future offering of its debt securities in the United States will be done on the basis of disclosure documents at least as comprehensive as customary for offerings of similar debt securities in the United States. Applicant consents to any order granting the relief requested being expressly conditioned upon Applicant's compliance with the foregoing undertaking. Applicant represents further that any future offering of debt securities in the United States will be made pursuant either to a registration statement under the Securities Act of 1933 or an applicable exemption from registration thereunder. Applicant states that, if an offering is made pursuant to a registration statement under the Securities Act of 1933, the disclosure documents will be provided as required by such Act and the regulations thereunder. In all other cases, disclosure documents will be provided to each offeree indicating an interest in the securities then offered prior to sale of such securities to such offeree.

Applicant states that, in connection with any future offering in the United States of Applicant's securities, Applicant will appoint an agent to accept any process served in any action based on such securities and instituted in any State or Federal court by any holder of any such security. Applicant will accept the jurisdiction of any State or Federal court in the City and State of New York in respect of any such action. Such appointment of an agent to accept service of process and such consent to jurisdiction will be irrevocable so long as such securities remain outstanding and until all amounts due and to become due in respect of such securities have been paid. Applicant states that it will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of such securities or otherwise.

Applicant requests an order pursuant to Section 6(c) of the Act exempting Applicant from all provisions of the Act. Applicant asserts that it is a major commercial bank subject to extensive regulation by West German and United States banking authorities and as such it is significantly different from the type of institution that Congress intended the Act to regulate. Accordingly, Applicant contends that granting an exemptive

order, pursuant to Section 6(c) of the Act, would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than May 21, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the adress stated above. Proof of service (by affidavit or, in the case of an attorney-at-law by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant ot delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-11903 Filed 5-2-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23294; (70-6975)]

Central Ohio Coal Co.; Proposed Transactions Regarding Mining Equipment Leases by Coal Mining Subsidiaries

April 27, 1984.

Central Ohio Coal Company ("COCCo"), Southern Ohio Coal Company ("SOCCo"), Windsor Power House Coal Company ("Windsor"), Simco, Inc. ("Simco"), and Blackhawk Coal Company ("Blackhawk"), which are indirect subsidiaries of American Electric Power Company, Inc. ("AEP"), a registered holding company, and which are sometimes referred to collectively herein as the "Applicants," 1 Riverside Plaza, Columbus, Ohio 43215, have filed an application with this Commission pursuant to Sections 9(a) and 10 of the Public Utility Holding Company Act of 1935 ("Act").

COCCo, SOCCo, and Windsor are wholly-owned coal mining subsidiaries of Ohio Power Company ("Ohio Power"); Simco is a wholly-owned subsidiary of Columbus and Southern Ohio Electric Company ("C&SOE"); and Blackhawk is a wholly-owned subsidiary of Indiana & Michigan Electric Company ("I&MECo"). Ohio Power, C&SOE, and I&MECo are electric utility subsidiaries of AEP. Each Applicant proposes to enter into a Master Leasing Agreement ("Lease A") with Bankers Leasing and Financial Corporation of San Mateo, California, or an affiliate thereof or trustee therefor, ("Bankers Leasing"), pursuant to which Bankers Leasing will commit to lease to such companies mining equipment with an aggregate acquisition cost not exceeding $25,000,000. Each Applicant also proposes to enter into an amendment to the existing Master Leasing Agreement ("Lease B") between each such Applicant and BLC Corporation ("BLC"), an affiliate of Bankers Leasing, pursuant to which the Applicants are currently leasing new and used office furniture and equipment, communications equipment, and automotive equipment. Under Lease B, as proposed to be amended, BLC will commit to lease to the Applicants mining equipment with a total aggregate acquisition cost not exceeding $10,000,000.

Lease A will provide for the lease by each Lessee of various types of equipment for surface and underground mining of coal for lease terms of from three years to seven years. Each monthly payment of Basic Rent with respect to a unit of equipment covered by an Individual Leasing Record shall be in an amount equal to the product of (i) the Basic Lease Rate Factor applicable to that unit and (ii) the Lessor's Acquisition Cost. The Basic Lease Rate Factors have been calculated on the basis of a Basic Interest Rate of 10.9583%. Each installment of Basic Rent shall be increased or decreased by the Interest Differential, which is an amount equal to the difference between (i) the Actual Interest Rate and (ii) the Basic Interest Rate. The Actual Interest Rate is the actual interest rate on the unpaid principal amount of borrowing made by the Lessor to acquire the equipment. The Basic Interest Rate is 10.9583%.

Lease B will provide for the lease by each Lessee of various types of equipment for surface and underground mining of coal for lease terms of from three years to ten years. During the Amortization Period, rental payments shall be paid monthly in arrears in an amount sufficient to amortize the Acquisition Cost of the equipment in equal amounts on a straight-line basis plus a monthly interest factor on the unamortized Acquisition Cost. The interest factor will equal the lower of the Base Rate (which is defined as the sum of the interest rate announced from time to time by Citibank, N.A. as its base rate in effect on the fifteenth day of the month preceding the month in which such day shall occur, plus .15%) or the LIBO Rate (which is defined as the sum of the rate of interest offered on 30-day deposits at the main office of Citibank, N.A. in London, England to prime banks in the London Interbank market, plus .65%); but in no event shall such rate be lower than the rate charged BLC Corporation on its 30-day commercial paper sold on the fifteenth day of the preceding month, plus 1.25%. Such interest factor will float on a month-to-month basis. Thereafter, monthly rental payments shall be made in arrears (and shall be in equal amounts) in an amount equal to 1/16 of 1% of the Acquisition Cost of the equipment.

The application and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by May 23, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy of the applicants at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application, as filed or as it may be amended, may be granted.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-11901 Filed 5-2-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23293; (70-6877)]

Central and South West Corp.; Requested Authorization for Nonutility Subsidiary To Extend Cogeneration Activities Outside of Central and South West Corporation's Service Area

April 26, 1984.

Central and South West Corporation ("CSW"), 2700 One Main Place, Dallas, Texas 75202 a registered holding company, has filed with this Commission a post-effective amendment to its application-declaration in this proceeding pursuant to Section 9(a) and 10 of the Pulbic Utility Holding Company Act of 1935 ("Act").

By order in this proceeding dated August 4, 1983 (HCAR No. 23021), CSW was permitted, *inter alia*, to form CSW

Energy, Inc. ("NEWCo") and NEWCo was permitted to invest in qualifying cogeneration facilities located and selling electricity within the service territories of the operating subsidiaries of CSW.

CSW now seeks the authority to extend the permitted operations of NEWCo to the investment in (and related activities with respect to) qualifying cogeneration facilities located and selling electricity (to, among others, non-affiliated utility companies) outside of the service territories of the CSW operating subsidiaries, but within the service territories of the member utilities of the power pools in which the operating electric utility companies of CSW participate.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by May 21, 1984, to the Secretary, Securities and Exchange Commisison, Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, that may be ordered, and will receive a copy of any notice or order issued in this matter. After said date, the Commission will take such further action as may be appropriate.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-11900 Filed 5-2-84; 8:45 am]

BILLING CODE 8010-01-m

[Release No. 13906; (812-5792)]

Investors Mutual, Inc.; Application

April 26, 1984.

Notice is hereby given that Investors Mutual, Inc. ("Mutual"), Investors Stock Fund, Inc. ("Stock"), Investors Variable Payment Fund, Inc. ("Variable Payment"), Investors Selective Fund, Inc. ("Selective"), IDS New Dimensions Fund, Inc. ("New Dimensions"), IDS Progressive Fund, Inc. ("Progressive"), IDS Growth fund, Inc. ("Growth"), IDS Cash Management Fund, Inc. ("Cash Management"), IDS Tax-Exempt Bond Fund, Inc. ("Tax-Exempt"), IDS Bond Fund, Inc. ("Bond"), IDS High Yield Tax-Exempt Fund, Inc. ("High Yield"), IDS Tax-Free Money Fund, Inc. ("Tax-Free Money Fund"), IDS Discovery Fund, Inc. ("Discovery"), IDS Extra Income Fund, Inc. ("Extra Income"), and IDS Strategy Fund, Inc. ("Strategy") (collectively the "Funds") 1000 Roanoke Building, Minneapolis, MN 55402, each registered under the Investment Company Act of 1940 ("Act") as an open-end, management investment company, and IDS/American Express, Inc. ("IDS") (with the Funds, collectively "Applicants"), IDS Tower, Minneapolis, MN 55402, filed an application on March 8, 1984, for an order pursuant to Section 6(c) of the Act, 1) exempting Strategy from the provisions of Sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rule 22c-1 thereunder, to the extent necessary to permit Strategy to assess a contingent deferred sales load on redemptions of its shares and to permit a waiver of the contingent deferred sales load with respect to redemptions following the death of a shareholder and redemptions from an Individual Retirement Account or other tax-qualified retirement plan, and 2) amending previous orders of the Commission granting exemption from the provisions of Section 22(d) of the Act and permitting certain offers of exchange pursuant to Section 11 of the Act to permit certain exchanges between the Funds. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below and to the Act and the rules thereunder for the text of the applicable provisions.

According to the application, the Funds comprise the publicly offered funds in the Investors Group of Companies. Applicants state that IDS serves as investment adviser and principal underwriter for each of the Funds. IDS is registered as a broker/dealer under the Securities Exchange Act of 1934 and as an investment adviser under the Investment Advisers Act of 1940.

According to the application, Strategy is a Minnesota Corporation which currently has four portfolios, each authorized to issue its own series of shares. Strategy requests that the exemptive relief sought in connection with the present application extend to its initial four portfolios and series of shares and to any additional portfolios and series of shares that may be offered in the future on substantially the same basis.

Strategy proposes to offer its shares without the imposition of a front-end load and proposes to impose a contingent deferred sales load to be paid to IDS, upon certain redemptions of its shares by its shareholders. Strategy represents that the contingent deferred sales load imposed upon redemption would not, in the aggregate, exceed 5% of the aggregate purchase payments made by the investor. Strategy represents that where a sales load would be imposed on a redemption, it would be based on the amount of the redemption and the number of years that have passed since the purchase of the shares being redeemed.

Applicants state that when the sales load is imposed, the amount of the sales load will be 5% if the redemption occurs during the same twelve month period during which the shares being redeemed were purchased; 4% if during the next twelve month period; 4% if during the third; 3% if during the fourth; 2% if during the fifth; 1% if during the sixth; and 0% if the redemption occurs during the seventh and subsequent years. For purposes of calculating a twelve month period, the first day of the month during which a purchase payment was made would be considered the beginning of the twelve month period.

Applicants state that no sales load would be imposed on amounts redeemed that represented a net increase in the value of a shareholder's investment in that portfolio arising from appreciation in the value of his shares from income earned by his shares or from capital gains. The contingent fee also would not apply to increases in an investor's account due to reinvestment of distributions. Applicants also state that redemptions would be made from the earliest purchase payment invested in the portfolio from which shares are being redeemed.

Strategy proposes to waive the contingent deferred sales load on any redemption following the death of an investor. Applicants state that the waiver of the contingent fee would apply to a total or partial redemption, but would only apply to redemptions of shares held at the time of death. Strategy also proposes to waive the contingent fee on total or partial redemptions made in connection with certain distribution under Individual Retirement Accounts ("IRA") or other tax-qualified retirement plans. It is proposed that the sales load be waived for any redemptions in connection with a lump-sum or other distribution following retirement or attaining age 59½ in the case of an IRA or Keogh plan or a custodial account pursuant to Section 403(b)(7) of the Internal Revenue Code ("Code"). The contingent fee would also be waived on any

redemption which resulted from the tax-free return of an excess contribution pursuant to Code Section 408(d) (4) or (5), or from the death of the employee.

Strategy proposes to finance its own distribution expenses pursuant to a plan adopted under Rule 12b–1 under the Act ("Plan"). Under the Plan an annual fee is paid by Strategy to IDS, the distributor, as reimbursement for expenses incurred by IDS in connection with the sale of shares of Strategy. Applicants state that Strategy's distribution fee are calculated on the basis of 1.0% per annum of aggregate purchase payments invested in Strategy since it began business (subject to a cap at 1.0% of net assets). Therefore, the annual distribution fee would be equal to 1.0% of the lesser of i) aggregate gross sales (not including reinvestments of dividends or capital gains), less redemptions subject to the contingent deferred sales load or in which the contingent fee was waived, or ii) average daily net assets of the Fund.

Where amounts attributable to purchase payments are redeemed (and thus no longer contribute to the annual distribution charge) Applicants believe that it is fair (1) to impose on the withdrawing shareholder a lump sum payment reflecting approximately the amount of distribution expense which has not been recovered through distribution and (2) to remove the assets on which the contingent deferred sales load was imposed from the base amount on which the distribution fee is calculated. Applicants state that, in their review of the Plans pursuant to Rule 12b–1, the board of directors will also consider the effect of revenues raised by the contingent deferred sales load.

Strategy requests an exemption from Section 2(a)(32) of the Act to the extent necessary to permit it to qualify as an open-end company under Section 5(a)(1) of the Act. Applicants also request an exemption from the provisions of Sections 2(a)(35) and 22(c) of the Act and Rule 22c–1 thereunder to the extent necessary to implement the proposed charge.

Applicants state that the proposed waiver is consistent with the purposes of Strategy because the Fund is designed for long-term investors. Applicants further state that in each situation in which the contingent fee would be waived, the redeeming shareholder would be a member of a class of shareholders which is favored under the tax laws or the securities laws.

IDS, as a principal underwriter for the Funds, maintains a continuous public offering of shares of each Fund. On purchases of less than $50,000, the sales charge is 5% for Selective, Mutual, Stock, Variable, New Dimensions, Discovery, Progressive, Growth, Tax-Exempt, High-Yield and Extra Income. Bond has a sales charge of 3½%. For each of the Investors Group Funds, the sales charge is reduced on larger purchases, except Bond, which has a level sales charge. There is no sales charge for purchases of Cash Management or Tax-Free Money Fund. All of the Funds permit reinvestment of capital gains distributions without payment of a sales charge. All of the Funds, except Bond, permit reinvestment of dividends without payment of a sales charge.

Applicants state that, on July 6, 1983, IDS and each of the Funds which charges a sales load, except for Bond Fund, agreed to standardize sales charges. IDS and the Funds also established a separate sales charge table for employee benefit Plans which are qualified under Section 401 of the Internal Revenue Code (excluding Keogh Plans) and certain pension and retirement Plans.

Applicants represent that, pursuant to earlier Orders of the Commission, the Funds already permit certain exchanges of shares. In addition to the existing transfer procedures, Applicants now propose to allow shareholders of Strategy to transfer their investments in Strategy, upon payment of the contingent fee, into the other Funds without payment of the other Funds' sales load irrespective of the size of the sales load paid upon the redemption of his shares from Strategy. Applicants state that transfers from a Fund which charges a 5% sales load into Strategy would not be subject to any charge at the time of transfer, nor would the investment be subject to a contingent deferred sales load upon redemption from Strategy. Applicants state that shares transferred from Bond into Strategy may incur an additional charge if the shares are redeemed or transferred from Strategy before they have been held for at least eight months after having initially paid a sales load. The additional charge would be equal to the difference between the sales load paid on the shares transferred from Bond and the contingent deferred sales charge that would have been paid upon transfer or redemption of the shares from Strategy if the investment had initially been in Strategy. Applicants state that there would be no additional charge if these shares were transferred or redeemed after the eight month period. Applicants also state that any shares transferred into Strategy from one of the no-load funds, currently Cash Management or Tax-Free Money Fund, would be subject to the contingent deferred sales load unless those shares were previously charged a sales load by one of the Funds.

Applicants state that no transfers would be allowed from or into any of the other (non-publicly offered) Investors Group funds. Applicants also state that if a transfer created a new account, it would have to satisfy the minimum dollar amount for new purchases in that Fund unless it was for an IRA or Keogh account or one of the systematic investment programs offered by the Funds. Applicants also seek authority to incorporate any new funds which may be established within the Investors Group, and any new portfolios which may be established within Strategy Fund, within the over all transfer privilege Plan. Applicants seek an order pursuant to Section 11(a) of the Act approving the terms of the proposed offers of exchange and exempting the exchange transactions from the provisions of Section 22(d) of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than May 21, 1984, at 5:30 p.m., do so by submitting a written request setting foth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the addresses stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Divsion of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–11902 Filed 5–2–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 13909; (812–5436)]

Mount Isa Mines (Coal Finance) Limited; Application

April 26, 1984.

Notice is hereby given that Mount Isa Mines (Coal Finance) Limited (the "Company"), c/o Gravath, Swaine & Moore, One Chase Manhattan Plaza, New York, New York 10005, an Austrailian finance company subsidiary of Mount Isa Mines Limited, filed an application on April 11, 1984, for a Commission order, pursuant to Section

6(c) of the Investment Company Act of 1940 (the "Act"), amending a prior order dated March 28, 1983 (investment Company Act Release No. 13113) (the "Prior Order") to eliminate the reporting requirements imposed by conditions (1) and (2) of the Prior Order (the "Conditions"). The Prior Order conditionally exempted the Company from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representation contained therein, which are summarized below.

Under the Prior order, the Company was subject to the following reporting requirements:

(1) The Company will file with the Commission within 120 days after the close of the first fiscal year of the Company (a) information with respect to persons in a control relationship with the company (except with respect to persons under common control with the Company), persons and number of persons owning equity securities of the Company and directors, officers, employees and legal counsel required by Items 11 and 12 of Form N–2 under the Act, (b) a statement of financial position as of the close of such fiscal year, including a statement of income, paid-in surplus and retained earnings, and (c) a schedule of investments as of the close of such fiscal year, and thereafter notify the Commission promptly of any material change in such information, statement or schedule.

(2) The Company will file with the Commission within 120 days of the close of the first fiscal year of the Company a schedule of the number of holders of its short-term or other bearer securities and of its securities in registered form as of the close of such fiscal year and the mumber of transfers of such registered securities during such fiscal year, and thereafter notify the Commission promptly of any material change in such schedule.

The company asserts that the Commission has decided to exempt certain special purpose finance companies, similar to the Company, from all provisions of the Act without imposing reporting requirements similar to those set forth in the Conditions. The Company further asserts that the filing required by the Conditions would not provide significant public disclosure when measured against the costs of preparing such filings. Accordingly, the Company believes that amending the Prior Order to eliminate the reporting requirements imposed by the Conditions is appropriate in the public interst and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than May 21, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon the Company at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–11904 Filed 5–2–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 13910; (811–527)]

Savings Bank Investment Fund; Application

April 26, 1984.

Notice is hereby given that Savings Bank Investment Fund ("Applicant"), 50 Congress Street, Boston, Massachusetts 02109, a Massachusetts corporation, registered under the Investment Company Act of 1940 ("Act"), as an open-end, diversified management investment company, filed an application on January 4, 1984, pursuant to Section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant was organized as a corporation in the Commonwealth of Massachusetts on August 8, 1945, by special act of the General Court and registered under the Act on April 14, 1947, as an open-end diversified management investment company. At December 29, 1983, Applicant consisted of one series, the Income Series. On March 30, 1983, the Board of Directors of Applicant adopted an Agreement and Plan of Reorganization (the "Plan") pursuant to which substantially all of Applicant's assets were transferred to Massachusetts Financial Bond Fund, Inc. ("MFB"), a registered investment company, in exchange for shares of capital stock of MFB. The Plan was approved by the incorporator of Applicant on May 6, 1983. The exchange became effective on December 29, 1983.

According to the application, the MFB shares have been distributed to the accounts of shareholders of the Income Series of Applicant in proportion to their ownership of shares of the Income Series. As of December 30, 1983, Applicant had assets of $10,000, which have been retained to liquidate final expenses and liabilities.

Applicant filed a petition for dissolution in the Superior Court Department of Suffolk County, Massachusetts, on December 30, 1983. Upon the entry of a decree of the court, Applicant's existence will cease under Massachusetts law except for such purposes as are necessary to close its affairs.

Applicant represents that it has no known debts or outstanding liabilities, and is not a party to any litigation or administrative proceeding other than its petition for dissolution referred to above.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and, upon the taking effect of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than May 21, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-11905 Filed 5-2-84; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2127]

Mississippi; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration, I find that the Counties of Lafayette, Leflore, Tallahatchie, and Yalobusha in the State of Mississippi constitute a disaster loan area because of damage from tornadoes beginning on or about April 21, 1984. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on June 25, 1984, and for economic injury until January 28, 1985, at: Disaster Area 2 Office, Small Business Administration, Richard B. Russell Federal Bldg., 75 Spring Street SW., Suite 822, Atlanta, GA 30303, or other locally announced locations.

Interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 212712 for physical damage and for economic injury the number is 616100.

(Catalog of Federal Domestic assistance Program Nos. 59002 and 59008)

Dated: April 27, 1984.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 84-11998 Filed 5-2-84; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2124; Amdt. No. 1]

New Jersey; Declaration of Disaster Loan Area

The above numbered declaration (49 FR 17660) is amended in accordance with the amendment to the President's declaration of April 20, 1984, to include Cape May and Ocean Counties as adjacent counties in the State of New Jersey as a result of damage from severe storms, coastal storms, and flooding beginning on or about March 28, 1984.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: April 30, 1984.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 84-11999 Filed 5-2-84; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2125; Amdt. No. 1]

New York; Declaration of Disaster Loan Area

The above numbered declaration (49 FR 17661) is amended in accordance with the amendment to the President's declaration of April 17, 1984, to include Westchester County as an adjacent county in the State of New York as a result of damage from severe storms, coastal storms, and flooding beginning on or about March 28, 1984.

(Catalog of Federal Domestic Assistance Programs Not. 59002 and 59008)

Dated: April 30, 1984.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 84-12000 Filed 5-2-84; 8:45 am]

BILLING CODE 8025-01-M

Region III Advisory Council Meeting; Public Meeting

The Small Business Administration, Region III Advisory Council, located in the geographical area of Clarksburg, West Virginia, will hold a public meeting at 1:00 p.m., on Wednesday, May 30, 1984, at the Canaan Valley State Park, Davis, West Virginia, to discuss such matters as may be presented by members, staff or the Small Business Administration, or others present.

For further information, write or call Marvin P. Shelton, District Director, U.S. Small Business Administration, P.O. Box 1608, Clarksburg, West Virginia 26302-1608 or call (304) 622-6601.

Dated: April 30, 1984.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 84-12001 Filed 5-2-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 904]

Security Assistance Programs; Certification

In accordance with Section 502B of the Foreign Assistance Act of 1961, as amended (the Act), I have reviewed the international security assistance programs of the United States now proposed for the fiscal year 1984 in order to assure that:

(1) All security assistance programs are consistent with the provisions of Section 502B of the Act concerning the promotion and advancement of human rights and the avoidance of United States identification with human rights violations, and

(2) With respect to those countries where human rights conditions give rise to the most serious concerns, the security assistance provided by the United States is warranted in each case by extraordinary circumstances involving the national security interests of the United States.

On the basis of this review, I certify that these security assistance programs are in compliance with the requirements of Section 502B of the Act.

This certification shall be reported to the Congress and published in the **Federal Register** as required by law.

Dated: March 5, 1984.

Kenneth W. Dam

The Deputy Secretary.

[FR Doc. 84-11975 Filed 4-2-84; 8:45 am]

BILLING CODE 4710-08-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 84-036]

U.S. Coast Guard Academy Advisory Committee: Membership Applications

AGENCY: Coast Guard, Department of Transportation.

ACTION: Request for applications.

SUMMARY The U.S. Coast Guard is seeking applications for appointment to membership of the Coast Guard Academy Advisory Committee. This committee advises the Commandant, United States Coast Guard, on the status of the curricula and faculty of the United States Coast Guard Academy.

The Committee consists of seven members who are recognized persons of distinction in the field of education and other fields relating to the purpose of the Academy. The Secretary of

Transportation appoints members to serve three-year terms.

ADDRESS: Persons interested in applying should write to Commandant (G–PTE), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593 (202–426–9866).

Dated:April 27, 1984.

R. P. Cueroni,

Rear Admiral, U.S. Coast Guard, Chief, Office of Personnel.

[FR Doc. 84–11947 Filed 5–2–84; 8:45 am]

BILLING CODE 4910–14–M

[CGD–84–035]

Ship Structure Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Ship Structure Committee. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1, section 10(a)(2)).

DATE: May 30, 1984, 9:15 a.m. to 11:30 a.m.

ADDRESS: U.S. Coast Guard Headquarters, 2100 Second Street, SW.—Room 2415 Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: LCDR D. B. Anderson, USCG, Secretary, Ship Structure Committee, U.S. Coast Guard Headquarters (G–MTH–4/13), Washington, D.C. 20593, (202) 426–2197.

SUPPLEMENTARY INFORMATION: The agenda for this meeting is as follows: To approve research projects of the Committee for fiscal year 1985 and to review ongoing research projects of the Committee. Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the hearing. Persons wishing to attend and persons wishing to present oral statements should notify LCDR D. B. Anderson, Secretary, Ship Structure Committee not later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

Dated: April, 24, 1984.

Clyde Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 84–11948 Filed 5–2–84; 8:45 am]

BILLING CODE 4910–14–M

National Highway Traffic Safety Administration

National Voluntary Standards for Emergency Medical Services; Organizational Workshop

AGENCY: Nationl Highway Traffic Safety Administration (NHTSA), Transportation.

ACTION: Notice of Organizational Workshop.

SUMMARY: This notice sets forth the dates and objectives for a forthcoming workshop to establish an organization for creating, updating, and improving national voluntary standards and guidelines for emergency medical services (EMS). This document is intended to notify the general public, and EMS organizations and interest groups of the procedure to be followed to attend the workshop.

DATES: July 25–26, 1984—National EMS Voluntary Standards Organizational Workshop, Philadelphia, Pennsylvania. Details on workshop location and agenda to be provided by letter.

FOR FURTHER INFORMATION CONTACT: Robert Nuzzio; Principal Investigator, NHTSA Contract DTNH22–83–C–05104; MAXIMUS Inc.; P.O. Box 1074; McLean, Virginia 22101; Phone (703) 734–4200.

SUPPLEMENTARY INFORMATION: In accordance with Federal Standards Policy as set out in Office of Management and Budget (OMB) Circular A–119, dated October 26, 1982, the Department of Transportation, National Highway Traffic Safety Administration (DOT/NHTSA), is currently supporting an effort designed to create, improve, and update national voluntary standards and guidelines for EMS. As part of this effort, NHTSA, in conjunction with the Department of Health and Human Services (DHHS) and the Federal Emergency Management Agency (FEMA), sponsored a planning workshop at the National Bureau of Standards on March 15–16, 1984.

The invited participants, representing Federal and State agencies and national private organizations concerned with EMS systems, services, and materials, were charged with the responsibility of planning a national EMS voluntary standards-setting process that could be implemented by October 1984. Information on different approaches to setting voluntary standards and guidelines were presented by representatives from the National Bureau of Standards, the Joint Commission on Accreditation of Law Enforcement Agencies, and the American Society for Testing and Materials (ASTM).

After discussing the need for national voluntary EMS standards and guidelines as well as the resources required for developing and promulgating them, the participants voted to adopt the approach to standard setting described by ASTM. This approach involves establishing an Executive Committee for Emergency Medical Services, creating a series of subcommittees representative of different functional areas of EMS, and establishing task forces to write specific standards and guidelines. Mr. Pearson, ASTM representative at the workshop, pointed out the advantages of using the services of non-profit organizations like ASTM. They are as follows:

1. Full administrative support is provided.
2. Task forces meeting to write standards and guidelines receive professional assistance in standard writing techniques.
3. Each standard/guideline written subjected to an extensive balloting process to ensure true consensus.
4. The process results in published standards which are available for dissemination nationally and internationally.
5. Use of ASTM eliminates the necessity of establishing an organization of EMS groups to write, coordinate, and publish standards.
6. The process closely parallels the guidelines for voluntary standard setting issued by the OMB Circular No. A–119.

Recognizing these advantages, the workshop participants supported the motion to establish an Executive Committee for Emergency Medical Services, tentatively approved a mission statement for this committee, and identified five possible subcommittees. They also agreed that NHTSA should schedule an organizational workshop open to all EMS organizations and interest groups, who would be asked to review the recommendations developed at the planning workshop, decide on an organizational structure for standard setting, and conduct subcommittee meetings.

The Organizational workshop will be held in Philadelphia, Pennsylvania, on July 25–26, 1984. The purpose of this notice is to request all organizations, agencies, and interest groups who wish to be represented at the meeting to submit a letter of interest to MAXIMUS, Inc.; P.O. Box 1074; McLean, Virginia 22101. Letters of interest must be postmarked within 30 days of publication of this notice.

Following receipt of the letters of interest, an invitation will be sent to

organizational representatives who have indicated an interest to attend. Detailed information on agenda and registration for the meeting will be supplied at that time by MAXIMUS with whom NHTSA has contracted for assistance on this project.

Dated: April 30, 1984.

Diane K. Steed,

Administrator.

[FR Doc. 84-11969 Filed 5-2-84; 8:45 am]

BILLING CODE 4910-59-M

Urban Mass Transportation Administration

Utilization of Competitive Negotiation Method for Rolling Stock Procurements

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice.

SUMMARY: The Urban Mass Transportation Administration (UMTA) of the Department of Transportation (DOT) gives notice that competitive negotiation is an appropriate method for procuring rolling stock with Federal mass transportation grant assistance.

EFFECTIVE DATE: January 6, 1983.

FOR FURTHER INFORMATION CONTACT: Tom Mara, Director, Office of Procurement and Third Party Contracts, (202) 754-4980; or Gerald Musarra, Office of the Chief Counsel, (202) 426-1936, UMTA, 400 7th Street, SW., Room 7101, Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION: On January 6, 1983, the President signed into law the Surface Transportation Assistance Act of 1982 ("the Act") (Pub. L. 97-424). Section 308 of the Act amended section 12(b)(2) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1608(b)(2)), to read as follows:

> In lieu of requiring that contracts for the acquisition of rolling stock be awarded based on the consideration of performance, standardization, life-cycle costs and other factors, or on the basis of lowest initial capital cost, such contracts may be awarded based on a competitive procurement process . . .

This provision applies to rolling stock procurements conducted under UMTA grants made on or after January 6, 1983. The language of the new provision has two effects: (1) Congress has made it clear that competitive negotiation is an appropriate method, in addition to low bid, for procuring rolling stock; (2) grantees using a competitive procurement process (primarily competitive negotiation or low bid) are not required to evaluate life cycle cost factors, but may continue to do so at their option. With the exception of those provisions which have been superseded by the new law, the third party contracting guidelines, set out in UMTA Circular 4220.1A, continue to apply to all UMTA-funded procurements. Although UMTA has published two previous clarifications concerning the impact of the new law on rolling stock procurements [UMTA Circular 9020.1, page IX-1, February 2, 1983; UMTA Circular 9030, page VII-1, June 27, 1983], some uncertainty persists about the "appropriateness" of using the competitive negotiation method for such procurements. The purpose of this notice is to emphasize that competitive negotiation is clearly authorized by law as a procurement method which grantees may elect to use as an alternative to competitive low bid when purchasing transit vehicles.

Section 17(c) of Circular 4220.1A contains the procedural requirements applicable to negotiated procurements. These requirements are meant to ensure that procurements by negotiation are conducted in a manner that provides for maximum open and free competition. Proposals should be solicited from the maximum number of qualified sources consistent with the legitimate needs of the grantee, the Request for Proposals shall be publicized and shall identify all significant evaluation factors, including price or cost and the importance to be accorded to price or cost in relation to other factors. Negotiations should normally be conducted with more than one of the sources submitting offers, and either a fixed-price or cost-reimbursable type contract awarded to the responsible offeror whose proposal will be most advantageous to the grantee, after due consideration of price and other factors. These other factors have been interpreted, in Federal procurement regulations, Comptroller General opinions and judicial decisions, to include a wide variety of considerations including, but not limited to: technical factors; price and cost analyses; business reputation, capacity, and responsiblity; delivery requirements; the most desirable contract type; and business size and ownership characteristics. At the same time, price is clearly a factor which must be accorded significant consideration in a rolling stock procurement, with the grantee responsible for determining the measure of importance to be assigned to price in relation to other factors which reflect justified and valid needs. Although, in appropriate circumstances, some factor other than price may determine contract award, it is UMTA's general policy that products and services be procured by its grantees from responsible sources at fair and reasonable prices calculated to result in the most efficient and economical use of Federal funds.

Since it is UMTA's intention to clarify the current requirements applicable to rolling stock procurements, comments would be welcomed which identify any remaining impediments to the use of the competitive negotiation method by grantees purchasing transit vehicles.

Issued: April 17, 1984.

Ralph L. Stanley,

Administrator, Urban Mass Transportation Administration.

[FR Doc. 84-11912 Filed 5-2-84; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: April 24, 1984.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, P.L. 96-511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 535-6020. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and/or to the Treasury Department Clearance Officer, Room 7227, 1201 Constitution Avenue, N.W., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: New

Form Number: IRS Form 6878

Type of Review: New Collection

Title: Request for Child Support Group 2 Information

OMB Reviewer: Norman Frumkin (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Gary Kowalczyk,

Departmental Reports Management Office.

[FR Doc. 84-11908 Filed 5-2-84; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Grants Program for Private Not-For-Profit Organizations; International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The primary purpose of the program is to enhance the achievement of the Agency's international public diplomacy goals and objectives by stimulating and encouraging increased private sector commitment and activity.

Private sector organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate:

U.S. Election Observation Project.—USIA is interested in establishing a two-week international exchange program for foreign scholars, high-level government and political party officials, and other qualified persons. The program will begin on or about October 26, 1984. The program focus will be on a conceptual analysis and observation of National (Presidential and Congressional), State, and Local elections. The pre-election program will take place in a metropolitan area and its environs with a post-election series of discussions in Washington, D.C. Programs should provide in-depth analysis of the election structure and processes (to include the role of the media, finances, volunteer organizations, interests groups, etc.) and of public opinion polling and evaluation. Interested private sector organizations should have demonstrated expertise in the analysis of American electoral processes, political polling and survey research, American intellectual and cultural traditions, and substantive knowledge and sensitively to international regional areas and cross-cultural communication.

Your submission of a letter indicating interest in the above project begins the consultative process. This letter should further explain why your organization has the professional expertise and logistical capability to successfully design, develop and conduct the above project.

Emphasis during the preliminary consultative process will be on identifying organizations whose goals and objectives clearly complement or coincide with those of USIA. Furthermore, USIA is most interested in working with organizations that show promise for innovative and cost effective programming; and with organizations that have substantial potential for obtaining third party private sector funding in addition to USIA support. Organizations must also demonstrate a potential for designing programs which will have a lasting impact on their participants. In your response, you may also wish to include other pertinent background information.

This is not a solicitation for a grant proposal. Following the receipt of your letter, and an internal review, USIA may invite your organization to examine and further develop USIA's initiative program concept (summarized above). USIA would then consider your fully developed proposal for limited financial assistance. To be eligible for consideration, organizations *must* postmark their general letter of interest within 20 days of the date of this notice.

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs (Attn: Initiative Programs), United States Information Agency, 301 4th Street, SW., Washington, D.C. 20547

Dated: April 30, 1984.

Charles N. Canestro,

Management Analyst, Federal Register Liaison.

[FR Doc. 84-11604 Filed 5-2-84; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Veterans Administration Medical Center, Clinical Addition, Atlanta, Georgia; Finding of No Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impacts that may occur as a result of the proposed construction and operation of a clinical addition at the VA Medical Center (VAMC), Atlanta, Georgia, and has determined that they will be minimal.

The project is a multi-level addition to the existing main hospital building with approximately 100,000 gross square feet (GSF) of new construction and 200,000 GSF of interior renovation of existing space. Several architectural alternatives are being evaluated to determine the best solution for space layouts and construction phasing.

Construction and operation of the project will cause minor impacts on the human and natural environment; affecting noise levels, ambient air quality (dust and fumes), onsite traffic and parking. The project will remove asbestos insulation from the base floors of the existing hospital. This solid waste will be handled and disposed of in compliance with all applicable local, State, and Federal requirements. Also, the project will have little or no impact on the existing 100-year flood hazard area of South Fork Peachtree Creek. New construction is intentionally sited outside of the floodway and will have a finished ground floor elevation well above normal flood hazard conditions. The VA will comply with Executive Order 11988 for flood hazard/floodplain public notification. The Agency will also adhere to all applicable Federal, State, and local environmental regulations during construction and operation of this project.

The significance of the identified impacts has been evaluated relative to the considerations of both context and intensity, as defined by the Council on Environmental Quality (Title 40 CFR 1508.27).

An Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, Sections 1501.3 and 1508.9. A "Finding of No Significant Impact" has been reached based upon the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. William F. Sullivan, Director, Office of Environmental Affairs (088C), Room 423, Veterans Administration, 811 Vermont Avenue, NW., Washington, D.C. 20420, (202) 389-3316. Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: April 25, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

[FR Doc. 84-11698 Filed 5-2-84; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 87
Thursday, May 3, 1984

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).

CONTENTS

1

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of 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 Monday, May 7, 1984, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the of Board Directors, pursuant to sections 552b (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 proceedings, termination-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.

Discussion Agenda:

Application for Federal deposit insurance:

Farmers and Miners State Bank, an operating noninsured private bank, located at 104 West Front Street, Lucas, Iowa.

Application for consent to purchase assets and assume liabilities and establish seven branches:

Live Stock State Bank, Mitchell, South Dakota, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in seven branches of United National Bank, Sioux Falls, South Dakota, and for consent to establish those offices as branches of Live Stock State Bank.

Recommendation regarding the Corporation's assistance agreement involving an insured bank pursuant to Section 13 of the Federal Deposit Insurance Act:

Name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

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. 552b (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, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: April 30, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-12046 Filed 5-4-84; 11:40 am]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of 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 Monday, May 7, 1984, 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.

Applications for Federal deposit insurance:

State Bank of Brooks, an operating noninsured private bank located at 701 Benton Avenue, Corning, Iowa.

First Savings Company of Sidney, an operating noninsured industrial bank located at 841 Illinois Street, Sidney, Nebraska.

Application for consent to purchase assets and assume liabilities:

The O'Neill National Bank, O'Neill, Nebraska, for consent to purchase the assets of and assume the liability to pay deposits made in Page Cooperative Credit Association, Page, Nebraska, an operating noninsured institution.

Application for consent to merge and establish a branch:

Phelps County Bank, Rolla, Missouri, an insured State nonmember bank, for consent to merge, under its charter and title, with St. James Bank, St. James, Missouri, and for consent to establish the sole office of St. James Bank as a branch of the resultant bank.

Applications for consent to establish a branch:

Barnett Bank of Columbia County, Lake City, Florida, for consent to establish a branch adjacent to Gleason's Corner Mall at U.S. Highway 90 West, Lake City, Florida.

Barnett Bank of Indian River County, Vero Beach, Florida, for consent to establish a branch at 1450 South U.S. Highway 1, near the intersection of U.S. Highway 1 and 14th Street, Vero Beach, Florida.

Bank of Hartshorne, Hartshorne, Oklahoma, for consent to establish a branch at the intersection of Main and Hailey Streets, Haileyville, Oklahoma.

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. 45,038–L—Mt. Pleasant Bank and Trust Company, Mount Pleasant, Iowa
Memorandum and Resolution re: Security National Bank of Lubbock, Lubbock, Texas

Memorandum and Resolution re: Final amendments to Part 303 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control" which expand the authority delegated to the Director of the Division of Bank Supervision, and the authority subdelegated to the Corporation's Regional Directors, to act on branch, main office or branch relocation, and remote service facility applications.
Memorandum and Resolution re: Final amendments to Part 336 of the Corporation's rules and regulations, entitled "Employee Responsibilities and Conduct," which (1) increase the categories of employees required to report indebtedness and employees subject to credit restrictions; (2) ease existing restrictions on credit from affiliates of prohibited creditors and on ownership of bank securities; (3) permit assumptions of home mortgage loans from prohibited creditors; (4) require the reporting of family member employment by insured banks and the acceptance of private sector employment upon resignation; and (5) make certain technical changes.

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, requests, 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:
Audit Report re: Payroll System Development Project (dated March 30, 1984)
Audit Report re:
City and County Bank of Knox County, Knoxville, Tennessee
City and County Bank of Roane County, Kingston, Tennessee
Report of the Director, Division of Liquidation:
Memorandum re: Reports Under Delegated Authority Status of Approved Committee Cases

Discussion Agenda:

Memorandum and Resolution re: Proposed amendments to the Corporation's rules and regulations in the form of new Part 325, to be entitled "Capital Maintenance", which would (1) define capital for insured banks and, on a consolidated basis, for holding companies with insured bank subsidiaries; (2) establish minimum standards for adequate capital for all insured banks and, on a consolidated basis, for all holding companies that have insured bank subsidiaries; and (3) establish standards to determine when an insured bank is operating in an unsafe or unsound condition by reason of the amount of its capital.
Memorandum and Resolution re: Proposed amendments to Parts 330 and 346 of the Corporation's rules and regulations entitled "Classification and Definition of Deposit Insurance Coverage" and "Foreign Banks," respectively, which would (1) revise the Corporation's regulations implementing the International Banking Act of 1978 with respect to asset maintenance, pledge of assets, and country exposure, and (2) restrict insurance coverage of deposits to the credit of all affiliates of a foreign ban which has an insured branch, as well as all offices of the foreign bank.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: April 30, 1984.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 84–12047 Filed 5–1–84; 11:40 am]
BILLING CODE 6714–01–M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:27 p.m. on Saturday, April 28, 1984, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to adopt a resolution making funds available: (1) For the payment of insured and fully secured deposits in West Coast Bank, Los Angeles (Encino), California, which had been closed by the Superintendent of Banks for the State of California on Friday, April 27, 1984; and (2) for an advance payment to uninsured depositors and other general creditors of West Coast Bank equal to 50 percent of their uninsured claims.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Doyle L. Arnold, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: April 30, 1984.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 84–12082 Filed 5–1–84; 3:52 am]
BILLING CODE 6714–01–M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:55 p.m. on Friday, April 27, 1984, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Citizens Bank of Monroe County, Tellico Plains, Tennessee, which was closed by the Commissioner of Financial Institutions for the State of Tennessee on Friday, April 27, 1984; (2) accept the bid for the transaction submitted by Bank of Oak Ridge, Oak Ridge, Tennessee; (3) approve the application of Bank of Oak Ridge, Oak Ridge, Tennessee, for consent to purchase certain assets of and assume the liability to pay deposits made in Citizens Bank of Monroe County, Tellico Plains, Tennessee, and to establish the four offices of Citizens Bank of Monroe County as branches of Bank of Oak Ridge; and (4) 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) adopt a resolution making funds available for the payment of insured and fully secured deposits in United of America Bank, Chicago, Illinois, which had been closed by the Commissioner of Banks and Trust Companies for the State of Illinois on Thursday, April 26, 1984; (2) accept the bid of and appoint The Mid-City National Bank of Chicago, Chicago, Illinois, as the transfer agent for the Corporation for the payment of insured and fully secured deposits of the closed bank; and (3) make funds available for an advance payment to uninsured depositors and other general creditors of United of

America Bank equal to 60 percent of their uninsured claims;

(C) consider a recommendation with respect to the initiation, termination, or conduct of an administrative enforcement proceeding involving a certain insured bank or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and name and location of bank 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)); and

(D) consider 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:

Memorandum and Resolution re: City and County Bank of Knox County, Knoxville, Tennessee

Memorandum and Resolution re: The First National Bank of Midland, Midland, Texas

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Doyle L. Arnold, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

Dated: April 30, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-12063 Filed 5-4-84; 3:52 p.m.]

BILLING CODE 6714-01-M

5

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, May 8, 1984, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

* * * * *

DATE AND TIME: Thursday, May 10, 1984, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (Fifth Floor)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Eligibility for candidates to receive Presidential primary matching funds
Draft Advisory Opinion No. 1984-12: Michael A. Nemeroff on behalf of the Board of Regents of The American College of Allergists, Inc.
Draft Advisory Opinion No. 1984-16: Mark A. Siegel & Associates, Inc. on behalf of Jim Shannon for Senate Committee
National Council of Farmers Cooperative Petition
Revised fiscal year 1984 Management Plan/ Mid Year Reallocations
Finance Committee Report
Routine Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone 202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 84-12006 Filed 5-1-84; 9:22 am]

BILLING CODE 6715-01-M

6

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, May 9, 1984.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: May 1, 1984.

James McAfee,

Associate Secretary of the Board

[FR Doc. 84-12064 Filed 5-1-84; 3:52 pm]

BILLING CODE 6210-01-M

7

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, May 8, 1984.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints:
   a. Certain stretch wrapping apparatus and process (Docket No. 1045).
5. Investigations 701-TA-213; 731-TA-184 through -187 [Preliminary] and 303-TA-15 (Potassium Chloride from East Germany, Israel, Spain, and the U.S.S.R.)—briefing and vote.
6. Investigation 104-TAA-21 (Cotton Yarn from Brazil)—briefing and vote.
7. Investigation 104-TAA-22 (Bottled Green Olives from Spain)—briefing and vote.
8. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-12070 Filed 5-1-84; 8:45 am]

BILLING CODE 7020-02-M

8

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: 10:00 a.m., Monday 14, 1984.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints:
   a. Complaint of Luxo Lamp Corporation (Docket No. 1046).
   b. Certain rowing machines and components thereof (Docket No. 1047).
   c. Certain aramid fibers (Docket No. 1050).
5. Investigation 751-TA-8 (Acrylic Sheet from Japan)—briefing and vote.
6. Investigation 731-TA-166 (Bicycle Tires and Tubes from Taiwan)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-12071 Filed 5-1-84; 1:57 pm]

BILLING CODE 7120-02-M

9

INTERSTATE COMMERCE COMMISSION

TIME AND DATE: 10:30 a.m., Thursday, May 10, 1984.

PLACE: Hearing Room A, Interstate Commerce Commission Building, 12th & Constitution Avenue NW., Washington, D.C. 20423.

STATUS: Open Special Conference.

MATTER TO BE DISCUSSED: Conferences On Significant Commission Proceedings Involving Major Transportation Issues.

CONTACT PERSON FOR MORE INFORMATION: Robert R. Dahlgren, Office

of Public Affairs, Telephone: (202) 275–7252.

James H. Bayne,

Acting Secretary.

[FR Doc. 84–12072 Filed 5–1–84; 2:09 pm]

BILLING CODE 7035–01–M

10

NUCLEAR REGULATORY COMMISSION

DATE: Friday, May 4, 1984 (Revised) and Week of May 7, 1984.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE DISCUSSED:

Friday, May 4

9:45 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. UCS Motion on TMI

Monday, May 7

9:30 a.m.
Oral Argument in Shoreham (Public Meeting)

Wednesday, May 9

10:30 a.m.
Briefing by AIF on the State of the Industry (Public Meeting)

Thursday, May 10

10:00 a.m.
Briefing on Steam Generator Generic Requirements (Public Meeting)
2:00 p.m.
Continuation of 4/24 Discussion on Possible Steps to Avoid Licensing Delays (Public Meeting)

Friday, May 11

10:00 a.m.
Discussion of Indian Point Adjudicatory Proceeding (Closed—Ex. 10)
2:00 p.m.
Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)

ADDITIONAL INFORMATION:

Discussions of Shoreham Licensing Proceeding were held on April 23, 26, and 27 (Closed).
Discussion of Markey Letter (4/24/84) was held April 24 (Closed).
Affirmation of Petition for Stay of Part 70 License was held April 25 (Open).
Affirmation of License Fees—Final Rule was held April 26 (Open).
Affirmation of Shoreham Order was held April 30 (Open).
Items previously announced for April 27 and 30 were postponed.
Discussion of Proposed Insider Safeguard Rules scheduled for May 1 was *postponed.*

TO VERIFY THE STATUS OF MEETINGS CALL: (Recording)—(202) 634–1198.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634–1410

Walter Magee,

Office of the Secretary.

April 30, 1984.

[FR Doc. 84–12081 Filed 5–1–84; 3:52 pm]

BILLING CODE 7590–01–M

11

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENTS: (To be published)

STATUS: Closed/open meetings.

PLACE: 450 Fifth Street, NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Wednesday, April 25, 1984.

CHANGE IN THE MEETING: Additional meeting/deletion.

The following item was considered at a closed meeting scheduled on Friday, April 27, 1984, at 3:00 p.m.

Institution of injunctive action.

The following item will not be considered at an open meeting scheduled for Tuesday, May 1, 1984, at 10:00 a.m.

Consideration of a legislative proposal to implement the Commission's responses to the recommendation of the Tender Offer Advisory Committee. Passage of the proposed legislation would authorize the Commission to regulate or prohibit (i) "golden parachutes"; (ii) issuer selftenders; (iii) certain defensive issuances of securities; and (iv) "greenmail." Also, the Commission would be granted expanded authority under Section 13 of the Exchange Act in order to close the existing "ten-day window" for Schedule 13D filings. For further information, please contact Alan Cohen at (202) 272–7519.

Commissioner Cox, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: JoAnn Zuercher at (202) 272–2014.

George A. Fitzsimmons,

Secretary.

April 30, 1984.

[FR Doc. 84–11968 Filed 4–30–84; 8:45 am]

BILLING CODE 8010–01–M

federal register

Thursday
May 3, 1984

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Part 191

Transportation of Natural Gas and Other Gas by Pipeline; Annual Reports and Incident Reports; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 191

[Amdt. 191-5; Docket OPS-49]

Transportation of Natural and Other Gas by Pipeline; Annual Reports and Incident Reports

AGENCY: Materials Transportation Bureau (MTB).

ACTION: Final rule.

SUMMARY: This amendment changes the present requirements and reduces the burden for the reporting of gas pipeline leaks by operators of gas distribution and transmission systems and by operators of gas gathering systems in nonrural areas. It revokes certain of the present regulations for gas pipeline and liquefied natural gas (LNG) facility operators relative to telephonic, written incident and annual reports dealing with gas incidents and leaks. It also rescinds the present requirements for reporting test failures, and the reporting of an incident for the sole reason that a segment of transmission line is taken out of service or that the incident resulted in gas igniting.

EFFECTIVE DATE: June 4, 1984. Requirements for the written reports will not be implemented until printing and distribution of the relevant forms has been completed. Distribution of the forms is scheduled to take place on or about June 1, 1984, for the incident reporting forms and December 15, 1984, for the annual reporting forms. The new incident reporting forms should be used beginning July 1, 1984. The annual reporting forms will be due March 15, 1985, to report for calendar year 1984.

FOR FURTHER INFORMATION CONTACT: Robert F. Langley, 202-426-2082, regarding the content of this amendment, or the Dockets Branch, 202-426-3148, regarding copies of the amendment or other information in the docket.

SUPPLEMENTARY INFORMATION:

Background

The objective of this amendment, revising the present reporting requirements of 49 CFR Part 191, is to reduce the reporting burden of the present regulations. At the same time, it will continue to provide for the collection of the pipeline data that are considered necessary for the identification, analysis, and evaluation of pipeline safety problems leading to practical solutions of these problems by this agency and by industry.

The existing requirements for reporting leaks, failures, and system data, in use over the past decade, have proved useful in helping pipeline safety regulatory agencies and the reporting operators to highlight safety problems. Notable among these problems have been damage to gas pipelines by outside forces and lack of notification by outside parties preparing to excavate in the vicinity of buried pipelines. Due to the written and telephonic reports of incidents caused by outside forces, regulations [1] have been promulgated to aid gas pipeline operators in protecting their facilities from such damage and possible severe consequences.

The present authorized forms (the "Individual Leak Report" forms submitted in response to 49 CFR 191.9 and 191.15 and the "Annual Report" forms submitted in response to 49 CFR 191.11 and 191.17) are lengthy and may be cumbersome to the gas pipeline operators—in particular the small (less than 1,500 services) operators. Gas pipeline operators, State regulatory agencies, the National Transportation Safety Board (NTSB), and industry associations have, within recent years, requested a simplification of these forms. MTB believes that changing the reporting requirements and reducing the information requested on these forms to a minimal amount will retain the current benefits of the reporting requirements without imposing undue burdens.

In 1976, MBT specifically solicited and received comments from various State agencies, the pipeline industry, and its affiliated associations on possible revisions to the reporting forms presently in use. On June 5, 1978, Docket OPS-49, Notice 1, "Transportation of Natural and Other Gas by Pipeline; Reports of Leaks," was published in the **Federal Register**. The 1978 notice proposed to revise the existing gas pipeline incident and annual reporting forms.

Review

In compliance with Executive Order 12291, the Research and Special Programs Administration (RSPA) initiated a regulatory review in 1981 of the leak reporting requirements. RSPA's Regulatory Evaluation [2] showed that the revised regulation which was subsequently proposed would reduce the burden on an estimated 81,000 master meter operators and impose additional incident reporting requirements on less than 2,000 small gas distribution operators for a net benefit overall. Following this review, a new Notice of Proposed Rulemaking (NPRM) was issued as Notice 5 to Docket OPS-49 (48 FR 13450) on March 31, 1983. The new NPRM superseded all open notices in this docket on gas pipeline leak and annual reporting requirements.

Notice of Proposed Rulemaking

The NPRM of March 31, 1983 (Notice 5 to Docket OPS-49), was issued after suggestions for revising the reporting requirements had been solicited in the regulatory review from the NTSB, the American Gas Association (AGA), the American Society of Mechanical Engineers (ASME) Gas Piping Standards Committee, the Interstate Natural Gas Association of America (INGAA), and the Plastic Pipe Institute. The Technical Pipeline Safety Standards Committee (TPSSC) considered results of this regulatory project at its meeting, November 16-17, 1982, and their suggestions are in the public transcript. All suggestions made by the TPSSC have been reviewed, and appropriate proposals have been evaluated and incorporated where practicable.

Discussion of Comments

A total of 75 commenters responded to the NPRM and 81 percent were generally supportive of the changes. The Notice comprised nine distinct major parts consisting of the proposed amendments to 49 CFR Part 191, four separate reporting forms, and four sets of instructions (one for each proposed form). These various parts drew a total of 1,082 comments. The greatest number of comments (60 percent) were directed at the instructions for using the forms.

The NTSB and two other commenters recommended that MTB withdraw the NPRM and re-issue it in another form. The NTSB urged "the MTB to postpone action to revise the industry data reporting forms until it has developed a formal data analysis plan to identify the type and extent of data which should be collected from the several available sources." MTB understands the concern of NTSB and others that the data collected be that required to identify safety problems, but believes that the new criteria and procedures for data collection contained in this final rule will adequately monitor trends and provide indicators of potential problem

[1] 49 CFR Part 192, Amendment No. 192-40, Docket No. PS-59 (47 FR 13818; April 1, 1982).

[2] See RSPA Regulatory Evaluation, Regulatory Review Report, June 3, 1982. This "Regulatory Evaluation" has been placed in the docket file and is available for inspection.

areas. More detailed investigation to pinpoint the specific nature of each safety problem or to support in-depth analysis can follow. In some cases, special studies have been appropriate, such as the AGA study on gas pipeline safety.[3] Such studies, particularly when conducted at the individual operator level, will more accurately determine such accident factors as frequency, severity, and specific causes. A primary purpose of this amendment now is to reduce the nonproductive paperwork burden as Congress mandated in the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) without further delay. At the same time, it will implement the requirements of the Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. 1671 *et seq.*), by continuing to collect safety data on incidents and gas pipeline operators. It is foreseen that once relief is achieved by this amendment, it will be practical to re-examine the issue of concern to NTSB which may result in further amendments to 49 CFR Part 191 and further improve reporting requirements. By mid-1985, MTB plans to initiate such a study of pipeline safety reporting requirements and the uses of the data, and will invite specific input from the public and industry, in addition to NTSB.

Other comments and the changes made, where applicable, are grouped according to the section to which they relate:

Section 191.1 Scope

There were 13 commenters on § 191.1. Several commenters believed that MTB had no jurisdiction over rural gas gathering lines. They also pointed out that the small diameter of rural gathering lines, their usually low operating pressure, and remote location all contribute to their relative safety. It was pointed out that there are over 100,000 miles of rural gas gathering lines operating in remote unpopulated areas presenting no known hazard to persons or property. Nine commenters criticized the requirement for reporting incidents on onshore gas gathering lines as unnecessary or inappropriate. No comments favored the proposal.

There are approximately 23,000 miles of gathering lines in nonrural areas now subject to gas pipeline safety regulations and reporting requirements. Upon review of actual leak reports covering the 1970 to 1982 period, MTB found that gathering lines have a much lower frequency of accidents than other gas pipelines. This review supports the views of the majority of the commenters that rural onshore gas gathering lines cannot be shown to be hazardous to the public.

MTB believes that the Hazardous Materials Transportation Act of 1975 (49 U.S.C. 1801 *et seq.*) provides a sufficient legal basis for extending the reporting requirements to rural onshore gas gathering lines. This is recognized in the legislative history which accompanied the 1979 amendments to the Natural Gas Pipeline Safety Act (H. Rep. No. 201, Part I, 96th Cong., 1st Sess., p. 29).

However, MTB has concluded that rural onshore gas gathering lines are not, at this time, a safety problem. Therefore, the final rule will retain the existing exclusion of rural onshore gas gathering lines from reporting requirements. Wording of the Scope has been revised to clarify that the reporting requirements do apply to offshore gas pipelines, including gathering lines and to be consistent with the Scope of 49 CFR Part 192.

To aid the Department in meeting its responsibilities under the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*), MTB is requiring operators to identify in reports those incidents and leaks repaired, or scheduled for repair on Federal lands. The decision to exclude rural onshore gathering lines from reporting requirements will not prevent the Department from meeting these responsibilities. MTB will be made aware in the future of significant safety problems on many such pipelines on Federal lands by way of the Department of the Interior/Bureau of Land Management (DOI/BLM) reports. Such rural onshore gas gathering lines will continue to report leaks of over 500,000 cubic feet to the DOI/BLM under DOI/BLM "Notice to Lessees (NTL)–3A."

Three commenters objected to the removal of the phrase "that require immediate or scheduled repair." Since the annual report forms ask for the total number of leaks repaired and not just those requiring immediate repair, the phrase "that require immediate or scheduled repair" was removed from the Scope. This helps to clarify the requirements that have been and are part of the annual reporting forms and to help all operators report in a consistent manner. The exception proposed in the NPRM for "planned and controlled release of gas intended by operators" has been deleted from the Scope because it is not needed with the revised definition of "incident" in the final rule.

Section 191.3 Definitions

The largest number of comments on this section had to do with the definition of "incident." The commenters felt that the definition of "incident" as presented in the NPRM was vague and could be construed as any accident occurring on a pipeline facility and not just an event involving a gas pipeline. In both the existing and proposed rule, the criteria for reporting are largely contained in § 191.5(a). Because of comments that both criticized definition of "incident" and the proposed criteria of § 191.5(a) as confusing and producing unintended results, MTB has revised the criteria to more accurately reflect the intent of the rule and has incorporated all of the criteria into the definition of "incident" in this section. For that reason, the majority of comments on the criteria are discussed here.

Two commenters wanted the original wording "caused a death or injury" returned to § 191.5(a)(1) in place of "resulted in death or injury." In discussions during the regulatory review, operators and associations preferred not to relate the "cause" to an incident, but preferred use of the term "resulted in." By use of the word "involves" in defining "incident" in the final rule, MTB has moved away from the unintended implication of the existing rule that a report of a leak that involved a death or injury amounted to a preliminary determination of cause of the death or injury.

The final rule clarifies a requirement of the existing rule, namely that, in computing property damage, the cost of the gas lost must be included. It was apparent from comments made about the reporting from instructions that some operators had never included the cost of gas lost as property damage. An interpretation was issued by the Office of Pipeline Safety in 1972 in order to clarify the instructions that were issued with the first reporting forms. That interpretation stated that "'property damage' will include the cost of gas lost." Many operators have historically included the cost of gas lost, particularly when the incident was caused by outside forces and MTB believes that the same data should continue to be reported.

The majority of commenters favored the increase to $50,000 for the criterion for reporting incidents. A few other commenters suggested figures ranging from the present $5,000 to $25,000 with no two suggesting the same amount. Based on the information from the commenters and data included in the regulatory review, MTB uses the $50,000 criteria for property damage in the final rule as was proposed. It should be noted that State agencies may utilize a lower dollar level criteria for intrastate

[3] "Guide to System Safety Analysis in the Gas Industry," 1975.

pipelines since one of the requirements for completing their annual certification requires a listing of the number of incidents with losses of $5,000 or more as required by the Natural Gas Pipeline Safety Act of 1968, as amended.

Eighteen commenters suggested revisions to the reporting criteria for an LNG facility in § 191.5(a)(4) of the NPRM. The only incident reports required for LNG facilities are telephonic notices. MTB's reason for proposing this requirement was to learn immediately of significant emergencies at LNG facilities so that enforcement personnel of MTB and other Federal and State agencies would be aware of such incidents in order to promptly conduct any needed investigations. Although some commenters noted that the proposed requirement meant that a report would have to be made each time an LNG emergency shutdown control system was activated, MTB intended that the telephonic notice be given when an emergency shutdown of an LNG facility actually occurred. The definition of "incident" in § 191.3 now makes that meaning clear. Some commenters thought that reporting requirements for LNG in Part 191 were redundant since § 193.2011 of 49 CFR requires that "leaks and spills of LNG must be reported in accordance with the requirements of Part 191 * * *" By specifically stating in Part 191 the criteria for reporting an incident at an LNG facility and eliminating the need for a written report for these facilities, the reporting requirements are more clearly stated rather than merely being referenced in § 193.2011. By this action, the reporting requirements of Part 191 for LNG facilities are clarified, and the burden on operators is reduced while MTB will receive the future safety data needed on LNG facilities.

With respect to § 191.5(a)(5) in the NPRM, a significant number of commenters thought that the proposed subparagraph (ii) would create too many unnecessary reports. This was true particularly in light of the proposed definition of "incident" which included a term "probable hazardous." One operator estimated that he would have to report approximately 3,700 leaks a year because of this criterion. The two subparagraphs proposed in § 191.5(a)(5) have been rewritten and incorporated in the definition of "incident" and the term "probable hazardous" has been deleted.

Five commenters suggested other variations for the definition of "master meter system," but the only consistent change suggested was the insertion of "pipeline" before "system." This recommendation was adopted.

Commenters noted that if the word "stations" was left in the definition for "pipeline," it might be read that accidents not related to gas release were apt to be reported. MTB does not believe this is a valid concern based on the new definition of "incident" and the clear meaning in the "pipeline" definition that it applies to "physical facilities through which gas moves." The words "pipeline system" are added in the definition of "pipeline" for clarification that, as used in this part, a "pipeline system" is synonymous with "pipeline."

Section 191.5 Telephonic notice of certain incidents

Forty-one commenters made one or more comments on § 191.5. Several commenters observed that the reduced requirements for making a telephonic notice of an incident would cut reporting costs by, in some instances, as much as 70 percent. For reasons discussed earlier under § 191.3, the criteria for telephonic notice of certain incidents have been modified based upon public comments and are now incorporated in the definition of "incident" in § 191.3 rather than in § 191.5(a). Section 191.5(a) in the final rule requires that all "incidents" as defined in § 191.3 be reported.

Section 191.5(a)(3) proposed in the NPRM (§ 191.5(a)(2) in the present regulation) is deleted. In response to MTB's query in the preamble of the NPRM, eighty percent of the commenters commented that § 191.5(a)(2) in the present rule should be deleted. Section 191.5(a)(3) in the present regulation is also deleted as was proposed. Four commenters favored this action and no negative comments were received. Also deleted is the final paragraph of § 191.5(a) of the present regulation which excepted the reporting of a taking of a segment of transmission line out of service or a leak which involved gas igniting if the leak is in connection with "planned or routine maintenance or construction." MTB has concluded that these regulations do not serve a useful purpose for the safety of gas pipelines and they are therefore deleted.

In response to a suggestion, § 191.5(b)(4) has been modified by inserting "number of" before "fatalities," to eliminate the question as to whether the fatalities should be identified. The remainder of § 191.5(b) is issued as proposed.

Section 191.7—Address for written reports

There were no comments concerning this section which is issued as proposed.

Section 191.9—Distribution system: Incident report

"Pipeline" is inserted following "distribution" for clarification. (The reporting form is discussed later.)

Section 191.11—Distribution system: Annual report

Three changes are made for clarification. "Pipeline" is inserted following "distribution" and "for that system" is inserted after report in the first sentence. In the second sentence of § 191.11(a), the words "each year" have been inserted after "submitted." (The reporting form is discussed later.)

Section 191.13—Distribution systems reporting transmission pipelines; Transmission or gathering systems reporting distribution pipelines

Several commenters suggested rewording to clarify this section. These comments have been used to develop the final wording of this section.

Section 191.15—Transmission and gathering system: Incident report

In the NPRM, MTB asked for specific comments regarding the feasibility and reasonableness of reporting test failures occurring subsequent to a transmission or gathering line being placed in initial service. MTB proposed to eliminate the requirement for the reporting of test failures. Twenty-three commenters concurred with MTB's dropping this requirement. The majority of the commenters were of the opinion that the requirements of § 191.5 would adequately take care of any serious incidents involving this type of failure. MTB concurs and, therefore, the final rule does not contain a requirement for the reporting to test failures.

Subparagraph (c) is made consistent with the "Scope" as regards rural onshore gas gathering lines. (The reporting form is discussed later.)

Section 191.17—Transmission and gathering systems: Annual report

For clarification "pipeline" was inserted following "gathering" and "for that system" added after "report" in § 191.17(a). The words "each year" were also added after "submitted" in the last sentence as was also done in § 191.11(a). Subparagraph (b) is made consistent with the "Scope" as regards rural onshore gas gathering lines. (The reporting form is discussed below.)

Comments on Reporting Forms

Most of the comments on the reporting forms were supportive and helpful, consisting mostly of requests for editorial changes of wording for

clarification. A change common to all forms is the removal of a place for the address label, since the transfer type labels contemplated will not be available. The "Report Sequence Number" has been put in the title box as this number is assigned by MTB's computer.

Minor changes in Part 1.2.e of the transmission form were made in response to comments. For both incident forms, Part 1.5 was changed to "elapsed time until area was made safe" since some commenters stated they did not always know the actual detection time. Also, Part 1.7.c was changed on both forms to allow the option of using 49 CFR 192.619(a)(3) as the method by which the MAOP was established. In Part 1.3 on the transmission incident form, "shear fracture" and "cleavage fracture" have been removed from the form to eliminate the controversial "types of rupture" which were a holdover from the 1970 form. Part 2 of both incident forms now are comparable. The editorial change for Part 3 was at the suggestion of commenters. Part 6 of the distribution incident form and Part 7 of the transmission incident form have had the signature block reworked since the preparer and the person affixing the signature may not necessarily be the same for some operators. Many commenters suggested the revised wording for Part B of both forms and pointed out that damage is not always done by equipment. Except for minor clarifications in wording, there were no other changes made on the incident reporting forms.

The major change made on the annual reporting forms with the final rule that differs from the forms as proposed is in Parts C and D. To help avoid confusion as to precisely which leaks must be reported, the words "eliminated/repaired" and "scheduled for repair" have been added in an appropriate manner.

Some commenters preferred to have a numerical classification for leaks as suggested in Section 5.2 of Appendix G–11 of the 1980 ASME "Guide for Gas Transmission and Distribution Piping Systems." With the exception of a leak designated "Grade 3," a numbering system, similar to this, was suggested in Notice No. 69–1, Docket No. OPS–2, July 8, 1969, for Part 191. As noted in the preamble to the final rule for that docket, published in the Federal Register, January 8, 1970, there were several objections to a numbering system. MTB feels that the assignment of a numbering system, for the purpose of designating leaks, was beyond the scope of the NPRM and raises the same objections received 14 years ago.

Diameters of services were changed on the distribution annual report form to make the column headings more realistic. Some commenters objected to use of the term "average service length." Many operators erroneously have continued to list "miles" or "feet" of services. When the average length of the service line is provided, MTB will be able to estimate the number of services for those operators erroneously reporting "miles" or "feet" of service line.

The "year ending" date for reporting the unaccounted-for gas percentage is "6/30" as on the present forms.

The heading on "Part D" has been changed on both annual report forms to include leaks "Repaired or Scheduled for Repair" for the same reason that Part C was changed.

The signature blocks were changed for the same reason they were changed on the incident forms.

Some commenters objected to having to designate those leaks repaired on Federal lands. MTB is requiring this designation, which some operators have been doing, to facilitate processing this information for reporting to Congress in accordance with the Mineral Leasing Act.

An objection to having to make an "estimate," if actual figures are not available, was made by several commenters. For most incidents, by the end of the 30 day reporting period a very good estimate, if not an actual figure, is available. This is particularly true when the fire department is involved. MTB's data processor can hold estimates aside until supplemented reports can supply a more accurate figure. Totals and grand totals were omitted as part of the burden reduction. Totalizing will be done automatically by MTB's data processor.

Comments on the Instructions for the Forms

The comments on the instructions were numerous. Most of the comments on the instructions are incorporated with this publication. The instructions should be considered merely as guides to completing the forms and subject to change from time to time. If and when MTB's Information Systems Manager finds that there are problems with a particular form or part of a form, or operators propose other future changes, the instructions will be changed accordingly.

Benefits

The anticipated benefits that would be derived from the use of these revised reporting forms are as follows:

1. Collect additional or revised statistical information necessary to assemble facts that will enable the Department of define safety problems and to devise regulatory solutions more effectively.

2. Provide information necessary to comply with the additional statutory responsibilities assigned to DOT since the reporting regulations were promulgated in 1970.

3. Delete information which has been determined unnecessary after 12 years of data collection experience.

4. Make it easier for operations to submit requested information since the burden for unnecessarily detailed reporting is reduced substantially.

5. Provide improved and easier to understand instructions and clarification of terms needed for the appropriate completion of the forms.

6. Save the government and industry an estimated $5 million [2] annually of the present cost of comply with reporting regulations for pipeline incidents.

Classification

This final rule is considered to be nonmajor under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). A final regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected and copied at the Dockets Branch, Room 8421, Materials Transportation Bureau, Department of Transportation, 400 Seventh Street SW., Washington, D.C., from 8:30 a.m. to 5:00 p.m., Monday through Friday.

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 final rule will not have a significant economic impact on a substantial number of small entities because the final rule will reduce the burden on an estimated 81,000 master meter operators and impose additional incident reporting requirements on fewer than 2,000 small gas distribution operators for small net benefits overall.

This rule contains information collection requirements. Those requirements are contained in 49 CFR Part 191, §§ 191.5, 191.9, 191.11, 191.13, 191.15, and 191.17. These items have been submitted to OMB for review under the Paperwork Reduction Act (44

U.S.C. 3501, *et seq.*), and OMB approval numbers have been assigned.

List of Subjects in 49 CFR Part 191

Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, MTB amends Part 191 of Title 49 of the Code of Federal Regulations as follows:

1. The part leading is revised to read as follows:

PART 191—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE; ANNUAL REPORTS AND INCIDENT REPORTS

2. The statement of authority is revised to read as follows:

Authority: 49 U.S.C. 1681(b) and 1808(b); 49 CFR 1.53, and Appendix A of Part 1.

3. Section 191.1 is revised to read as follows:

§ 191.1 Scope

(a) This part prescribes requirements for the reporting of incidents and annual pipeline summary data by operators of gas pipeline facilities located in the United States or Puerto Rico, including pipelines within the limits of the Outer Continental Shelf as that term is defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331).

(b) This part does not apply to—

(1) Offshore gathering of gas upstream from the outlet flange of each facility on the Outer Continental Shelf where hydrocarbons are produced or where produced hydrocarbons are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream; or

(2) Onshore gathering of gas outside of the following areas:

(i) An area within the limits of any incorporated or unincorporated city, town, or village.

(ii) Any designated residential or commercial area such as a subdivision, business or shipping center, or community development.

4. In § 191.3, the introductory text is revised, the definitions of "Pipeline facilities," "System," and "Test failure" are removed, and the following new definitions are added:

§ 191.3 Definitions.

As used in this part and the RSPA Forms referenced in this part—

* * * * *

"Incident" means any of the following events:

(1) An event that involves a release of gas from a pipeline or of liquefied natural gas or gas from an LNG facility and

(i) A death, or personal injury necessitating in-patient hospitalization; or

(ii) Estimated property damage, including cost of gas lost, of the operator or others, or both, of $50,000 or more.

(2) An event that results in an emergency shutdown of an LNG facility.

(3) An event that is significant, in the judgement of the operator, even though it did not meet the criteria of paragraphs (1) or (2).

"LNG facility" means a liquefied natural gas facility as defined in § 193.2007 of Part 193 of this Chapter;

"Master Meter System" means a pipeline system for distributing gas within, but not limited to, a definable area, such as a mobile home park, housing project, or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. The gas distribution pipeline system supplies the ultimate consumer who either purchases the gas directly through a meter or by other means, such as by rents;

* * * * *

"Offshore" means beyond the line of ordinary low water along that portion of the coast of the United States that is in direct contact with the open seas and beyond the line marking the seaward limit of inland waters;

* * * * *

"Pipeline" or "Pipeline System" means all parts of those physical facilities through which gas moves in transportation, including, but not limited to, pipe, valves, and other appurtenance attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies.

* * * * *

5. Section 191.5 is amended by revising paragraphs (a) and (b) (1) through (5) to read as follows:

§ 191.5 Telephonic notice of certain incidents.

(a) At the earliest practicable moment following discovery, each operator shall give notice in accordance with paragraph (b) of this section of each incident as defined in § 191.3.

(b) * * *

(1) Names of operator and person making report and their telephone numbers.

(2) The location of the incident.

(3) The time of the incident.

(4) The number of fatalities and personal injuries, if any.

(5) All other significant facts that are known by the operator that are revelant to the cause of the incident or extent of the damages.

6. Section 191.7 is revised to read as follows:

§ 191.7 Addressee for written reports.

Each written report required by this part must be made to the Information Systems Manager, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590. However, reports for intrastate pipelines subject to the jurisdiction of a State agency pursuant to certification under section 5(a) of the Natural Gas Pipeline Safety Act of 1968 may be submitted in duplicate to the State agency if the regulations of that agency require submission of these reports and provide for further transmittal of one copy, within 10 days of receipt for incident reports and not later than March 15 for annual reports, to the Information Systems Manager, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590.

7. Section 191.9 is revised to read as follows:

§ 191.9 Distribution system: Incident report.

(a) Except as provided in paragraph (c) of this section, each operator of a distribution pipeline system shall submit Department of Transportation Form RSPA F 7100.1 as soon as practicable but not more than 30 days after detection of an incident required to be reported under § 191.5.

(b) When additional relevant information is obtained after the report is submitted under paragraph (a) of this section, the operator shall make supplementary reports as deemed necessary with a clear reference by date and subject to the original report.

(c) The incident report required by this section need not be submitted with respect to master meter systems or LNG facilities.

8. Section 191.11 is revised to read as follows:

§ 191.11 Distribution system: Annual report.

(a) Except as provided in paragraph (b) of this section, each operator of a distribution pipeline system shall submit an annual report for that system on Department of Transportation Form RSPA F 7100.1–1. This report must be submitted each year, not later than March 15, for the preceding calendar year.

(b) The annual report required by this section need not be submitted with respect to:

(1) Petroleum gas systems which serve fewer than 100 customers from a single source;

(2) Master meter systems; or

(3) LNG facilities.

9. Section 191.13 is revised to read as follows:

§ 191.13 Distribution systems reporting transmission pipelines; transmission or gathering systems reporting distribution pipelines.

Each operator, primarily engaged in gas distribution, who also operates gas transmission or gathering pipelines shall submit separate reports for these pipelines as required by §§ 191.15 and 191.17. Each operator, primarily engaged in gas transmission or gathering, who also operates gas distribution pipelines shall submit separate reports for these pipelines as required by §§ 191.9 and 191.11.

10. Paragraphs (a) and (c) of § 191.15 are revised to read as follows:

§ 191.15 Transmission and gathering systems: Incident report.

(a) Except as provided in paragraph (c) of this section, each operator of a transmission or a gathering pipeline system shall submit Department of Transportation Form RSPA F 7100.2 as soon as practicable but not more than 30 days after detection of an incident required to be reported under § 191.5.

(b) * * *

(c) The incident report required by paragraph (a) of this section need not be submitted with respect to LNG facilities.

11. Section 191.17 is revised to read as follows:

§ 191.17 Transmission and gathering systems: Annual report.

(a) Except as provided in paragraph (b) of this section, each operator of a transmission or a gathering pipeline system shall submit an annual report for that system on Department of Transportation Form RSPA 7100.2–1. This report must be submitted each year, not later than March 15, for the preceding calendar year.

(b) The annual report required by paragraph (a) of this section need not be submitted with respect to LNG facilities.

* * * * *

12. A new § 191.21 is added to read as follows:

§ 191.21 OMB control number assigned to information collection.

This section displays the control number assigned by the Office of Management and Budget (OMB) to the gas pipeline information collection requirements of the Materials Transportation Bureau pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. It is the intent of this section to comply with the requirements of Section 3507(f) of the Paperwork Reduction Act which requires that agencies display a current control number assigned by the Director of OMB for each agency information collection requirement.

OMB Control Number 2137–0522 (approved through March 31, 1986)

Section of 49 CFR Part 191 where identified	Form No.
191.5	Telephonic.
191.9	RSPA 7100.1
191.11	RSPA 7100.1–1
191.15	RSPA 7100.2
191.17	RSPA 7100.2–1.

(49 U.S.C. 1681(b) and 1808(b); 49 CFR 1.53, and Appendix A of Part 1)

Issued in Washington, D.C., on April 27, 1984.

L. D. Santman,

Director, Materials Transportation Bureau.

BILLING CODE 4910-60-M

NOTICE: This report is required by 49 CFR Part 191. Failure to report can result in a civil penalty not to exceed $1,000 for each violation for each day that such violation persists except that the maximum civil penalty shall not exceed $200,000 as provided in 49 USC 1678. Form Approved OMB No. 2137-0522

U.S. Department of Transportation
Research and Special Programs Administration

INCIDENT REPORT – GAS DISTRIBUTION SYSTEM

Report Date _____
No. _____ (RSPA)

PART 1 – GENERAL REPORT INFORMATION

SEE INSTRUCTIONS

1. a. Operator's 5 digit Identification No. /_/_/_/_/_/
   b. Name of Operator _____
   c. _____ Number and Street
   d. _____ City, County, State and Zip Code
2. Location of Incident
   a. _____ Number and Street
   b. _____ City and County
   c. _____ State and Zip Code
   d. Class Location ☐ 1 ☐ 2 ☐ 3 ☐ 4
   e. Incident on Federal Land ☐ Yes ☐ No
3. Time and Date of Incident
   /_/_/_/_/ hour /_/_/ mo /_/_/ day /_/_/ yr
4. Reason for Reporting
   ☐ Fatality Number /_/_/ persons
   ☐ Injury requiring inpatient hospitalization Number /_/_/ persons
   ☐ Property damage/loss Estimate $ _____
   ☐ Operator Judgment/Emergency Action
   ☐ Supplemental Report
5. Elapsed time until area was made safe /_/_/ hr /_/_/ mn
6. Telephonic Report:
   /_/_/ mo /_/_/ day /_/_/ yr
7. a. Estimated pressure at point and time of incident *(PSIG)* _____
   b. Maximum allowable operating pressure *(MAOP) (PSIG)* _____
   c. MAOP established by:
      (1) Test pressure _____ *(PSIG)*
      (2) 49 CFR §192.619(a)(3) ☐

PART 2 – APPARENT CAUSE

☐ Corrosion *(Continue in Part A)*
☐ Damage by Outside Forces *(Continue in Part B)*
☐ Construction/Operating Error *(Continue in Part C)*
☐ Other _____
☐ Accidently caused by operator *(Continue in Parts B and/or C)*

PART 3 – NARRATIVE DESCRIPTION OF FACTORS CONTRIBUTING TO THE INCIDENT

(Attach additional sheet(s) as necessary)

PART 4 – ORIGIN OF THE INCIDENT

1. Part of System Where Incident Occurred
   ☐ Main ☐ Meter Set Assembly
   ☐ Service Line ☐ Other _____
3. Material Involved:
   ☐ Steel ☐ Cast iron
   ☐ Polyethylene plastic ☐ Other plastic: _____
   ☐ Other _____
   NPS *(Nominal Pipe Size)* /_/_/_/_/ in. Wall Thickness /_/_/_/_/ in.
4. Specification _____ Manufacturer _____ Year Manufactured /_/_/_/_/ Year Installed /_/_/_/_/
2. Component Which Failed
   a. Part
   ☐ Body of Pipe ☐ Valve
   ☐ Joint, type _____ ☐ Regulator/meter
   ☐ Fitting ☐ Weld, specify _____ girth, longitudinal, fillet
   ☐ Drip/Riser ☐ Other _____

PART 5 – ENVIRONMENT

Area of Incident
☐ Within/Under Building ☐ Under Pavement ☐ Above Ground ☐ Under Ground or Under Water ☐ Other _____

PART 6 – PREPARER AND AUTHORIZED SIGNATURE

_____ (type or print) Preparer's Name and Title
_____ Telephone Number
_____ Authorized Signature and Date
_____ Telephone Number

Form RSPA F 7100.1 (3-84)

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PART A – CORROSION

1. Where did the corrosion occur?
   - ☐ Internally
   - ☐ Externally

2. Visual Description
   - ☐ Localized Pitting
   - ☐ General Corrosion
   - ☐ Other _____

3. Cause
   - ☐ Galvanic
   - ☐ Other _____

4. Pipe Coating Information
   - ☐ Bare ☐ Coated

5. Was corroded part of pipeline considered to be under cathodic protection prior to discovering incident?
   - ☐ Yes Year protection started /_/_/_/_/
   - ☐ No

6. Additional Information

PART B – DAMAGE BY OUTSIDE FORCES

1. Primary Cause of Incident
   - ☐ Damage resulted from action of operator or his agent
   - ☐ Damage resulted from action by outside party/third party
   - ☐ Damage by earth movement
     - ☐ Subsidence
     - ☐ Landslide/Washout
     - ☐ Frost
     - ☐ Other _____
   - ☐ Damage by lightning or fire

2. Locating information (for damage resulting from action of outside party/third party)
   a. Did operator get prior notification that equipment would be used in the area?
      - ☐ Yes Date received /_/_/ mo /_/_/ day /_/_/ yr
      - ☐ No
   b. Was pipeline location marked either as a result of notification or by markers already in place?
      - ☐ Yes ☐ Permanent Markers ☐ Temporary Stakes ☐ Other _____
      - ☐ No
   c. Does Statute or ordinance require the outside party to determine whether underground facility(ies) exist?
      - ☐ Yes
      - ☐ No

3. Additional Information

PART C – CONSTRUCTION DEFECT

1. Cause
   - ☐ Poor Workmanship during Construction
   - ☐ Physical Damage During Construction
   - ☐ Operating Procedure Inappropriate
   - ☐ Other _____
   - ☐ Error in Operating Procedure Application

2. Additional Information

PART D – OTHER

Brief Description:

NOTICE: This report is required by 49 CFR Part 191. Failure to report can result in a civil penalty not to exceed $1,000 for each violation for each day that such violation persists except that the maximum civil penalty shall not exceed $200,000 as provided in 49 USC 1678. Form Approved OMB No. 2137-0522

U.S. Department of Transportation
Research and Special Programs Administration

INCIDENT REPORT – GAS TRANSMISSION AND GATHERING SYSTEMS

Report Date _____
No. _____ (RSPA)

PART 1 – GENERAL REPORT INFORMATION

*SEE INSTRUCTIONS**

1 a. Operator's 5 digit identification no. /_/_/_/_/_/
b. Name of Operator _____
c. _____ Number and Street
d. _____ City, County, State and Zip Code

2 Location of Incident
a. _____ City and County
b. _____ State and Zip Code
c. Mile Post/Valve Stat. _____
d. Survey Station No. _____
e. Class Location
Onshore ☐ 1 ☐ 2 ☐ 3 ☐ 4
Offshore ☐ _____ area _____ block number
State _____ or Outer Continental Shelf _____
f. Incident on Federal Land other than Outer Continental Shelf
☐ Yes ☐ No

3. Incident Type
☐ Leak ☐ Rupture ☐ Other
Rupture Length *(feet)* _____

4. Reason for Reporting
☐ Fatality Number /_/_/_/ persons
☐ Injury requiring inpatient hospitalization Number /_/_/_/ persons
☐ Property damage/loss Estimated $ _____
☐ Operator Judgment
☐ Supplemental Report

5. Elapsed time until area was made safe
/_/_/ hr /_/_/ mn

6. Telephonic Report
/_/_/ mo /_/_/ day /_/_/ yr

7. a. Estimated Pressure at Point and Time of Incident *(PSIG)* _____
b. Maximum allowable operating pressure *(MAOP) (PSIG)* _____
c. MAOP established by:
(1) Test pressure _____ *(PSIG)*
(2) 49 CFR §192.619(a)(3) ☐

8. Time and Date of the Incident
/_/_/_/_/ hour /_/_/ mo /_/_/ day /_/_/ yr

PART 2 – APPARENT CAUSE

☐ Corrosion *(Continue in Part A)* ☐ Damage by Outside Forces *(Continue in Part B)* ☐ Construction/Material Defect *(Continue in Part C)* ☐ Other _____

PART 3 – NARRATIVE DESCRIPTION OF FACTORS CONTRIBUTING TO THE INCIDENT *(Attach additional sheet(s) as necessary)*

PART 4 – ORIGIN OF THE INCIDENT

1. Incident Occurred On:
☐ Transmission System ☐ Gathering System
☐ Transmission Line of Distribution System

2. Failure Occurred On:
☐ Body of Pipe ☐ Fitting, Specify _____
☐ Mechanical Joint ☐ Other, Specify _____
☐ Valve ☐ Weld, Specify _____ *(girth, longitudinal, fillet)*

3. Material Involved:
☐ Steel ☐ Other, Specify _____

4. Part of System Involved in Incident
a. Part
☐ Pipeline ☐ Regulator/Metering System
☐ Compressor Station ☐ Other _____
b. Year installed /_/_/_/_/

PART 5 – MATERIAL SPECIFICATION

1. Nominal Pipe Size /_/_/_/_/ in.
2. Wall Thickness /_/_/_/_/ in.
3. Specification _____ SMYS /_/_/_/_/
4. Seam Type _____
5. Valve, Type _____
6. Manufactured by _____ in year /_/_/_/_/

PART 6 – ENVIRONMENT

Area of Incident
☐ Under Pavement ☐ Above Ground
☐ Under Ground ☐ Under Water
☐ Other _____

PART 7 – PREPARER AND AUTHORIZED SIGNATURE

_____ *(type or print)* Preparer's Name and Title _____ / Telephone Number

_____ Authorized Signature and Date _____ / Telephone Number

Form RSPA F 7100.2 (3-84)

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PART A – CORROSION

1. Where did corrosion occur?
   - ☐ Internally
   - ☐ Externally
2. Visual Description
   - ☐ Localized Pitting
   - ☐ General Corrosion
   - ☐ Other _____
3. Cause
   - ☐ Galvanic
   - ☐ Other _____
4. Pipe Coating Information
   - ☐ Bare ☐ Coated
5. Was corroded part of pipeline considered to be under cathodic protection prior to discovering incident?
   - ☐ Yes Year Protection Started / / / /
   - ☐ No
6. Additional Information

PART B – DAMAGE BY OUTSIDE FORCES

1. Primary Cause of Incident
   - ☐ Damage resulted from action of operator or his agent
   - ☐ Damage resulted from action by outside party/third party
   - ☐ Damage by earth movement
     - ☐ Subsidence
     - ☐ Landslide/Washout
     - ☐ Frost
     - ☐ Other _____
2. Locating information *(for damage resulting from action of outside party/third party)*
   a. Did operator get prior notification that equipment would be used in the area?
      - ☐ Yes Date received / / mo / / day / / yr
      - ☐ No
   b. Was pipeline location marked either as a result of notification or by markers already in place?
      - ☐ Yes Specify type of marking: _____
      - ☐ No
   c. Does Statute or ordinance require the outside party to determine whether underground facility(ies) exist?
      - ☐ Yes
      - ☐ No
3. Additional Information

PART C – CONSTRUCTION OR MATERIAL DEFECT

1. Cause of Defect
   - ☐ Construction ☐ Material *(describe in C.4 below)*
2. Description of Component Other than Pipe
3. Latest Test Data
   a. Was part which leaked pressure tested before incident occurred?
      - ☐ Yes Date of Test / / mo / / day / / yr
      - ☐ No
   b. Test Medium ☐ Water ☐ Gas ☐ Other _____
   c. Time held at test pressure / / hr
   d. Estimated test pressure at point of incident *(psig)* _____
4. Additional Information

NOTICE: This report is required by 49 CFR Part 191. Failure to report can result in a civil penalty not to exceed $1,000 for each violation for each day that such violation persists except that the maximum civil penalty shall not exceed $700,000 as provided in 49 USC 1678. Form Approved OMB No. 2137-0522

U.S. Department of Transportation
Research and Special Programs Administration

ANNUAL REPORT FOR CALENDAR YEAR 19___ GAS DISTRIBUTION SYSTEM

INITIAL REPORT ☐
SUPPLEMENTAL REPORT ☐

PART A – OPERATOR INFORMATION

DOT USE ONLY

1. NAME OF COMPANY OR ESTABLISHMENT

2 LOCATION OF OFFICE WHERE ADDITIONAL INFORMATION MAY BE OBTAINED

Number and Street

City and County

State and Zip Code

3 OPERATOR'S 5 DIGIT IDENTIFICATION NUMBER

4 HEADQUARTERS NAME & ADDRESS IF DIFFERENT

5. STATES IN WHICH SYSTEM OPERATES

PART B – SYSTEM DESCRIPTION

1. GENERAL

	STEEL				PLASTIC	CAST/ WROUGHT IRON	DUCTILE IRON	COPPER	OTHER	OTHER
	UNPROTECTED		CATHODICALLY PROTECTED							
	BARE	COATED	BARE	COATED						
MILES OF MAINS										
NO. OF SERVICES										

2. MILES OF MAINS IN SYSTEM AT END OF YEAR

MATERIAL	UNKNOWN	2" OR LESS	OVER 2" THRU 4"	OVER 4" THRU 8"	OVER 8" THRU 12"	OVER 12"
STEEL						
DUCTILE IRON						
COPPER						
CAST/WROUGHT IRON						
PLASTIC 1. PVC						
2. PE						
3. ABS						
OTHER						
OTHER						
SYSTEM TOTALS						

3. NUMBER OF SERVICES IN SYSTEM AT END OF YEAR AVERAGE SERVICE LENGTH_____ FEET

MATERIAL	UNKNOWN	1" OR LESS	OVER 1" THRU 2"	OVER 2" THRU 4"	OVER 4" THRU 8"	OVER 8"
STEEL						
DUCTILE IRON						
COPPER						
CAST/WROUGHT IRON						
PLASTIC 1. PVC						
2. PE						
3. ABS						
OTHER						
OTHER						
SYSTEM TOTALS						

Form RSPA F 7100.1-1 (3-84)

Reproduction of this form is permitted.

PART C – TOTAL LEAKS

CAUSE	ELIMINATED/REPAIRED Mains	Services
CORROSION		
THIRD PARTY		
OUTSIDE FORCE		
CONSTRUCTION DEFECT		
MATERIAL DEFECT		
OTHER		

NUMBER OF KNOWN SYSTEM LEAKS AT END OF YEAR SCHEDULED FOR REPAIR _____

PART D – TOTAL NUMBER OF LEAKS ON FEDERAL LAND REPAIRED OR SCHEDULED FOR REPAIR

_____

PART E – PERCENT OF UNACCOUNTED FOR GAS

Unaccounted for gas as a percent of total input for year ending 6/30 ____ %

PART F – ADDITIONAL INFORMATION

PART G – PREPARER AND AUTHORIZED SIGNATURE

_____ / _____

Prepared by (type/print) telephone

_____ / _____

Name and Title of Person Signing telephone Authorized Signature

U.S. Department of Transportation
Research and Special Programs Administration
400 Seventh St. SW
Washington, DC 20590

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DOT 513

U.S. MAIL

Information Systems Manager
Materials Transportation Bureau, DMT-63
400 Seventh Street, S.W.
Washington, D.C. 20590

NOTICE: This report is required by 49 CFR Part 191. Failure to report can result in a civil penalty not to exceed $1,000 for each violation for each day that such violation persists except that the maximum civil penalty shall not exceed $200,000 as provided in 49 USC 1678. Form Approved OMB No. 2137-0522

U.S. Department of Transportation
Research and Special Programs Administration

ANNUAL REPORT FOR CALENDAR YEAR 19___ GAS TRANSMISSION & GATHERING SYSTEMS

INITIAL REPORT ☐
SUPPLEMENTAL REPORT ☐

PART A – OPERATOR INFORMATION

DOT USE ONLY | | | | | | | | |

1. NAME OF COMPANY OR ESTABLISHMENT

_____

2. LOCATION OF OFFICE WHERE ADDITIONAL INFORMATION MAY BE OBTAINED

_____
Number & Street

_____
City & County

_____
State & Zip Code

4. OPERATOR'S 5 DIGIT IDENTIFICATION NUMBER

/ / / / /

5. HEADQUARTERS NAME & ADDRESS, IF DIFFERENT

_____

_____

_____

3. STATES IN WHICH SYSTEM OPERATES _____

PART B – SYSTEM DESCRIPTION

1. GENERAL – MILES OF PIPE

	STEEL				CAST IRON WROUGHT IRON PIPE UNPROTECTED	PLASTIC PIPE	OTHER PIPE
	CATHODICALLY PROTECTED		UNPROTECTED				
	BARE	COATED	BARE	COATED			
TRANSMISSION							
ONSHORE							
OFFSHORE							
GATHERING							
ONSHORE							
OFFSHORE							

2. MILES OF PIPE BY NOMINAL SIZE

	UNKNOWN	4" OR LESS	OVER 4" THRU 10"	OVER 10" THRU 20"	OVER 20" THRU 28"	OVER 28"
TRANSMISSION						
ONSHORE						
OFFSHORE						
GATHERING						
ONSHORE						
OFFSHORE						
SYSTEM TOTALS						

PART C – TOTAL LEAKS ELIMINATED/REPAIRED

ITEMS	TRANSMISSION		GATHERING	
	ONSHORE	OFFSHORE	ONSHORE	OFFSHORE
CORROSION				
OUTSIDE FORCES				
CONST./MAT. DEFECTS				
OTHER				

PART D – TOTAL NUMBER OF LEAKS ON FEDERAL LAND OR OCS REPAIRED OR SCHEDULED FOR REPAIR

1. TRANSMISSION
   ONSHORE _____
   OFFSHORE _____
   OUTER CONTINENTAL SHELF _____
2. GATHERING
   ONSHORE _____
   OFFSHORE _____
   OUTER CONTINENTAL SHELF _____

PART E – NUMBER OF KNOWN SYSTEM LEAKS AT END OF YEAR SCHEDULED FOR REPAIR

1. TRANSMISSION _____
2. GATHERING _____

PART F – PREPARER AND AUTHORIZED SIGNATURE

_____ /
Prepared by (type/print) telephone

_____ /
Name and Title Telephone Number Authorized Signature

Form RSPA F 7100.2-1 (3-84)

Reproduction of this form is permitted.

BILLING CODE 4910-60-C

The following instructions for completing the incident and annual reporting forms required by 49 CFR Part 191 are included here as guides to completing the forms. These instructions are not a part of the regulation and are subject to modification and change as necessity dictates.

INSTRUCTIONS FOR COMPLETING FORM RSPA F 7100.1 INCIDENT REPORT—GAS DISTRIBUTION SYSTEM

General Instructions

Each operator of a gas distribution system, except those exempted in § 191.9(c), shall file Form RSPA 7100.1 for any incident which meets the criteria specified in § 191.5 as soon as practicable but not more than 30 days following the occurrence of the incident.

Reports should be made to the: Information Systems Manager (DMT–63), Materials Transportation Bureau, Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590. However, reports for intrastate pipelines subject to the jurisdiction of a State agency pursuant to certification under Section 5(a) of the Natural Gas Pipeline Safety Act of 1968 may be submitted in duplicate to the State agency if the regulations of that agency require submission of these reports and provide for further transmittal of one copy within 10 days of receipt after the incident has occurred to the: Information Systems Manager (DMT–63), Materials Transportation Bureau.

Type or print the operator name and address data in the appropriate location, including the name of the branch or subsidiary, if different, where the incident occurred.

If you have any questions concerning this report or these instructions, or if you need copies of Form RSPA F 7100.1 or the instructions, please write or call the Information Systems Manager (DMT–63), Materials Transportation Bureau, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590, telephone number (202) 472–1024.

For the purpose of completing Form RSPA F 7100.1, the following definitions of terms are to be used when filing Form RSPA F 7100.1 in conjunction with these instructions:

1. Gas distribution line—A pipeline other than a gathering or transmission line.
2. Pipeline—All parts of those physical facilities through which gas moves in transportation, including pipe, valves, and other appurtenance attached to the pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies.
3. Operator—A person who engages in the transportation of gas.

Special Instructions

An entry should be made in each block for which data are available. In blocks requiring numbers, all blocks should be filled in using zeroes when appropriate. When decimal points are required, the decimal point should be placed in a separate block.

Examples: (Part 4.3) Nominal Pipe Size /0/0/2/4/ inches; /1/./2/5/ inches.

Wall Thickness /./5/0/0/ inches; /./1/4/5/ inches.

Avoid "Unknown" entries if possible. Estimated data are preferable to unknown data. If "Unknown" or estimated data entries are made, a supplemental report should follow if the data should become known by the operator.

If "Other" is checked in any part of the report, include an explanation or description on the line adjacent to the item checked.

Specific Instructions

Part 1

The operator's five digit identification number will be assigned by RSPA. If the identification number is not available to the person completing the report, this information should be omitted. Address in Part 1.1.C is address of office originating incident report.

Data on the location of the incident should be as complete as possible, including the nearest city or town, the county or parish, township, borough, etc. Use data that would help orientation with a map and provide such other location information as may be available. The class location should be the class location at the incident site following as closely as possible these designations as excerpted from § 192.5 of the gas pipeline safety standards.

§ 192.5 Class locations.

(a) Offshore is Class 1 location. The Class location onshore is determined by applying the criteria set forth in this section: The class location unit is an area that extends 220 yards on either side of the centerline of any continuous 1-mile length of pipeline. Except as provided in paragraphs (d)(2) and (f) of this section, the class location is determined by the buildings in the class location unit. For the purposes of this section, each separate dwelling unit in a multiple dwelling unit building is counted as a separate building intended for human occupancy.

(b) A Class 1 location is any class location unit that has 10 or less buildings intended for human occupancy.

(c) A Class 2 location is any class location unit that has more than 10 but less than 46 buildings intended for human occupancy.

(d) A Class 3 location is—

(1) Any class location unit that has 46 or more buildings intended for human occupancy; or

(2) An area where the pipeline lies within 100 yards of any of the following:

(i) A building that is occupied by 20 or more persons during normal use.

(ii) A small, well-defined outside area that is occupied by 20 or more persons during normal use, such as a playground, recreation area, outdoor theater, or other place of public assembly.

(e) A Class 4 location is any class location unit where buildings with four or more stories above ground are prevalent.

1.3

The time of the incident should be indicated in reference to a 24-hour clock.

Examples:

1. (0000)=midnight=/0/0/0/0/.
2. (0800)=8:00 a.m.=/0/8/0/0/.
3. (1200)=Noon=/1/2/0/0/.
4. (1715)=5:15 p.m.=/1/7/1/5/.
5. (2200)=10:00 p.m.=/2/2/0/0/.

1.4

In-patient hospitalization means admission and confinement in a hospital beyond treatment administered in an emergency room or out-patient clinic in which confinement does not occur. The property damage/loss estimate is the estimate of total property damage or loss to the operator's property, the property of others, or the combination of both. Loss of gas is a property loss.

Check "Supplemental Report" if this is a follow-up report with additional or corrected information. Do not fill in any previously submitted information with the exception of "report date," "operator's name," "address," and "preparer." Submit only amended, revised, or added information.

1.5

Elapsed time until the area was made safe means the elapsed time from the time of the occurrence of the incident until the incident is brought under control so that it does not present a significant threat to public safety. This does not necessarily mean that the flow of gas has been stopped completely. If the time of occurrence is unknown, the time when the operator is first notified or made aware of the incident may be utilized.

Part 2

Definition of Causes

1. *Corrosion*—Escape of gas resulting from a hole in the pipeline or component caused by galvanic, stray current, or other corrosive action.

2. *Outside Force-Third Party/Outside Party*—Damage directly attributed to the striking of a gas pipeline facility caused by earth moving equipment, other equipment, tools, vehicles, vandalism, etc. Damage is by personnel other than those working for the operator or the contractor working for the operator.

3. *Outside Force-Natural Forces*—Damage resulting from earth movement not caused by man, including earthquakes, washouts, land slides, frost, etc. Also included is damage by lighting, ice, snow, etc.

4. *Accidentally Caused by Operator*—Damage resulting from an inappropriate procedure, or a wrong application of a procedure by the operator's employee or the employee of a contractor working for the operator.

5. *Construction Defect/Operating Error*—A "construction defect" is one resulting from failure of original sound material that is due to outside force being applied during field construction which caused a dent, gouge, excessive stress, or other defect which resulted in subsequent failure. Also include faulty wrinkle bends, faulty field welds, and damage sustained in transportation to the construction or fabrication site.

6. *Other*—A cause that cannot be identified clearly as belonging in one of the above categories.

If the "Other" block is checked, the narrative in Part 3 should describe the incident in detail, including the known or presumed cause.

Part 3

The narrative is needed only when it is useful to clarify or explain unusual conditions. It should be a concise description of the incident, including the probable cause and conditions which the operator believes may have contributed either directly or indirectly to the cause of the incident. Explanations of estimated data also may be included in the narrative.

Part 4

4.1

Meter Set Assembly is the piping installed to connect the inlet side of the meter to the gas service line and to connect the outlet side of the meter to the customer's fuel line. A service regulator should be included under "2. Component which failed."

4.2

Insert type of joint (other than a weld), such as mechanical, compression, threaded, or fusion.

For a weld joint, check "weld" and specify type.

4.3

For "other," state copper, aluminum, wrought iron, etc.

4.4

This applies to all items in 4.3 and, where appropriate, to items in 4.2. In the event that more than one item has failed, so that origin is not clear, use Part D to complete 4.4 for the additional item(s).

The specification, when known, is the specification to which the pipe or component was manufactured, such as API 5L, ASTM A106, ANSI A21.9, etc. A list of referenced specifications is shown in the Appendix to 49 CFR Part 192. If the pipe or component predates 49 CFR Part 192, and was manufactured under a specification not listed in 49 CFR Part 192, put in, when known, the specification to which the pipe or component was manufactured.

Answer all questions for all pipe or components. If not available, mark "N/A."

Year installed means the year of installation at incident location.

Part 5

More than one box can be checked with an indication as to which box is the most appropriate environmental description.

"Under pavement" includes under streets, sidewalks, paved roads, parking lots, shopping centers, etc.

Part 6

"Preparer" is the name of the person most knowledgeable about the information submitted in the report or the person to be contacted for additional information.

"Authorized Signature" may be the "preparer" or an officer or other person whom the operator has designated to review and sign reports of this nature.

Part A

A.5

"Under cathodic protection" means cathodic protection in accordance with the requirements for Part 192 as determined by the criteria in Part 192, Appendix D. If the operator determines the cause of the corrosion to be bacterial or chemical action or stray current, check "Other" in item 3, and indicate the cause.

For the purpose of this report, galvanized pipe with no dielectric coating is to be considered "bare."

Part B

B.1

"Outside Party" (third party) means other than the operator or his agent. Acts of vandalism should be included here.

B.2.a

"Prior notification" means that the operator had been notified that excavation or construction work was to be done in the vicinity of the pipeline prior to the time the incident occurred.

B.3

Additional information, if any, should include a description of other steps taken by the operator to protect the facility against damage by outside forces. A description of an act of vandalism may be included here.

Part C

Definitions:

1. *Poor Workmanship—During Construction*—Wrong mechanical application of the correct procedure.

2. *Operating Procedure Inappropriate*—Wrong procedure was used for this application.

3. *Error in Procedure Application*—Misinterpretation of procedure during field application.

4. *Physical Damage During Construction*—Construction activity damage to existing or newly installed facilities, such as a gouge or dent, misalignment, or improper support, caused by the operator's personnel or the operator's contractor.

INSTRUCTIONS FOR COMPLETING FORM RSPA F 7100.2 INCIDENT REPORT—GAS TRANSMISSION AND GATHERING SYSTEMS

General Instructions

Each operator of a gas transmission or gathering system, except those exempted in § 191.15(c), shall file Form RSPA F 7100.2 for any incident which meets the criteria specified in § 191.5 as soon as practicable but not more than 30 days following the occurrence of the incident.

Reports should be made to the: Information Systems Manager (DMT–63), Materials Transportation Bureau, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. However, reports for intrastate pipelines subject to the jurisdiction of a State agency pursuant to certification under Section 5(a) of the Natural Gas Pipeline Safety Act of 1968 may be submitted in duplicate to the State agency if the regulations of that agency require submission of these reports and provide for further transmittal of one copy within 10 days of receipt after the incident has occurred to the: Information Systems Manager (DMT–63), Materials Transportation Bureau.

Type or print the operator name and address data in the appropriate location, including the name of the branch or subsidiary, if different, where the incident occurred.

If you have any questions concerning this report or these instructions, or if you need copies of Form RSPA F 7100.2 or the instructions, please write or call the Information Systems Manager (DMT–63), Materials Transportation Bureau, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590, telephone number (202) 472–1024.

For the purpose of completing Form RSPA F 7100.2, the following definitions apply:

1. Gathering line—A pipeline that transports gas from a current production facility to a transmission line or main.

2. Transmission line—A pipeline, other than a gathering line, that:

a. Transports gas from a gathering line or storage facility to a distribution center or storage facility;

b. Operates at a hoop stress of 20 percent of more of SMYS; or

c. Transports gas within a storage field.

3. Transmission line of distribution system—A pipeline within a distribution system that operates at a hoop stress of 20 percent or more of SMYS.

4. Pipeline—All parts of those physical facilities through which gas moves in transportation, including pipe, valves, and other appurtenance attached to the pipe, compressor units, metering stations, regulator stations, holders, delivery stations, and fabricated assemblies.

5. Leak—An unintentional escape of gas from the pipeline. The source of the leak may be:

a. Holes.

b. Cracks—which include propagating and nonpropagating, longitudinal, and circumferential.

c. Separation or pull-out.

d. Loose connections.

6. Ruptures—A complete failure of any portion of the pipeline.

7. Propagation—The extension of the original opening in the pipeline in an area of nominal wall thickness resulting from the internal/external forces on the pipeline.

8. Tear—An extension of the original opening in the pipeline resulting from an externally applied force or forces, i.e., a bulldozer, backhoe, grader, etc.

Special Instructions

An entry should be made in each block for which data are available. In blocks requiring numbers, all blocks should be filled in using zeros when appropriate. When decimal points are required, the decimal point should be placed in a separate block.

Examples: (Part 5) Nominal Pipe Size /0/0/ 2/4/ inches; /1/. /5/0/ inches.

Wall Thickness /. /5/0/0/ inches; /1/. /2/ 5/ inches.

Avoid "Unknown" entries if possible. Estimated data are preferable to unknown data. If "Unknown" or estimated data entries are made, a supplemental report should follow if the data should become known by the operator.

If "Other" is checked in any part of the report, include an explanation or description on the line adjacent to the item checked.

Specific Instructions

Part 1

1.1

The operator's five digit identification number will be assigned by RSPA. If the identification number is not available to the person completing the report, this information should be left blank.

Address in 1.1.C is address of office originating incident report.

1.2

Data on the location of the incident should be as complete as possible. Use your normal designation for location or any combination of designations as available or appropriate, including the nearest city or town, the county or parish, township, borough, etc. Use data that would help orientation with a map. Offshore incident identification should be located by State or outer continental shelf identification and block identification. Provide such other location information as may be available. The class location should be the class location at the incident site following as closely as possible these designations as excerpted from 49 CFR 192.5.

§ 192.5 Class locations.

(a) Offshore is Class 1 location. The Class location onshore is determined by applying the criteria set forth in this section: The class location unit is an area that extends 220 yards on either side of the centerline of any continuous 1-mile length of pipeline. Except as provided in paragraphs (d)(2) and (f) of this section, the class location is determined by the buildings in the class location unit. For the purposes of this section, each separate dwelling unit in a multiple dwelling unit building is counted as a separate building intended for human occupancy.

(b) A Class 1 location is any class location unit that has 10 or less buildings intended for human occupancy.

(c) A Class 2 location is any class location unit that has more than 10 but less than 46 buildings intended for human occupancy.

(d) A Class 3 location is—

(1) Any class location unit that has 46 or more buildings intended for human occupancy; or

(2) An area where the pipeline lies within 100 yards of any of the following:

(i) A building that is occupied by 20 or more persons during normal use.

(ii) A small, well-defined outside area that is occupied by 20 or more persons during normal use, such as a playground, recreation area, outdoor theater, or other place of public assembly.

(e) A Class 4 location is any class location unit where buildings with four or more stories above ground are prevalent.

1.3

Refer to the definitions in the General Instructions to classify the incident as a leak, rupture, or other.

1.4

"In-patient hospitalization" means admission and confinement in a hospital beyond treatment administered in an emergency room or out-patient clinic in which confinement does not occur. The property damage/loss estimate is the estimate of total property damage or loss to the operator's property, the property of others, or the combination of both. Loss of gas is a property loss.

Check "Supplemental Report" if this is a follow-up report with additional or corrected information. Do not fill in any previously submitted information with the exception of "report date," "operator's name," "address," and "preparer." Submit only amended, revised, or added information.

1.5

Elapsed time until the area was made safe means the elapsed time from the time of the occurrence of the incident until the incident is brought under control so that it does not present a significant threat to public safety. This does not necessarily mean that the flow of gas has been stopped completely. If the time of occurrence is unknown, the time when the operator is first notified or made aware of the incident may be utilized.

1.8

The time of the incident should be indicated in reference to a 24-hour clock.

Examples:

1. (0000) = midnight.
2. (0800) = 8:00 a.m.
3. (1200) = Noon.
4. (1715) = 5:15 p.m.
5. (2200) = 10:00 p.m.

Part 2

(See instructions for Part A, B, and C.)

Part 3

The narrative is needed only when it is useful to clarify or explain unusual conditions. It should be a concise description of the incident, including the probable cause and conditions which the operator believes may have contributed either directly or indirectly to the cause of the incident. Explanations of estimated data also may be included in the narrative. If the "Other" block is checked, the narrative in Part 3 should describe the incident in detail, including the known or presumed cause.

Part 4

4.4.b

Year installed means the year of installation at incident location.

Part 5

5.1

Nominal pipe size is the diameter normally used to describe the pipe size, i.e, 2 inch, 4 inch, 8 inch, 12 inch, 30 inch, etc.

5.3

This applies to all items in 4.3 and, where appropriate, to items in 4.2. In the event that more than one item has failed, so that origin is not clear, use Part C.4 to complete 4.4 for the additional item(s).

The specification, when known, is the specification to which the pipe or component was manufactured, such as API 5L, ASTM A106, ANSI A21.9, etc. A list of referenced specifications is shown in the Appendix to 49 CFR Part 192. If the pipe or component predates 49 CFR Part 192, and was manufactured under a specification not listed in 49 CFR Part 192, put in, when known, the specification to which the pipe or component was manufactured.

Answer all questions for all pipe or components. If not available, mark "N/A."

Part 6

"Under pavement" includes under streets, sidewalks, paved roads, parking lots, shopping centers, etc.

Part 7

"Preparer" is the name of the person most knowledgeable about the information submitted in the report of the person to be contacted for additional information.

"Authorized Signature" may be the "preparer," or an officer, or other person whom the operator has designated to review and sign reports of this nature.

Part A

A.5

"Under cathodic protection" means cathodic protection in accordance with the requirements for Part 192 as determined by the criteria in Part 192, Appendix D. If the operator determines the cause of the corrosion to be bacterial or chemical action or stray current, check "Other" in item 3, and indicate the cause.

For the purpose of this report, galvanized pipe with no dielectric coating is to be considered "bare."

Part B

B.1

"Outside Party" (third party) means other than the operator, or his agent. Acts of vandalism should be included here.

B.2.a

"Prior notification" means that the operator had been notified that excavation or construction work was to be done in the vicinity of the pipeline prior to the time the incident occurred.

B.3

Additional information, if any, should include a description of other steps taken by the operator to protect the facility against damage by outside forces. A description of an act of vandalism may be included here.

Part C

C.1

A "construction defect" is one resulting from failure of original sound material that is due to outside force being applied during field construction which caused a dent, gouge, excessive stress, or other defect which resulted in subsequent failure. Also included would be faulty wrinkle bends, faulty field welds, and damage sustained in transportation to the construction or fabrication site.

A "material defect" is one resulting from a defect within the material of the pipe or component or the longitudinal weld/seam that is due to faulty manufacturing procedures.

INSTRUCTIONS FOR COMPLETING FORM RSPA F 7100.1–1 ANNUAL REPORT FOR CALENDAR YEAR 19— GAS DISTRIBUTION SYSTEM

General Instructions

Each operator of a distribution system, except those exempted in § 191.11(b), is required to file an annual report. Definitions are as follows:

1. "Distribution line" means a pipeline other than a gathering or transmission line.

2. "Gathering line" means a pipeline that transports gas from a current production facility to a transmission line or main.

* 3. "Transmission line" means a pipeline other than a gathering line that:

a. Transports gas from a gathering line or storage facility to a distribution center or storage facility;

b. Operates at a hoop stress of 20 percent or more of SMYS; or

c. Transports gas within a storage field.

4. "Operator" means a person who engages in the transportation of gas.

The reporting requirements are contained in Part 191 of Title 49 of the Code of Federal Regulations, "Transportation of Natural and Other Gas by Pipeline: Annual Reports and Incident Reports." Except as provided in § 191.11(b), each operator of a distribution system must submit an annual report Form RSPA F 7100.1–1 for the preceding calendar year not later than March 15.

Reports should be sent to the: Information Systems Manager (DMT–63), Materials Transportation Bureau, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. However, reports for intrastate pipelines subject to the jurisdiction of a State agency pursuant to certification under Section 5(a) of the Natural Gas Pipeline Safety Act may be submitted in duplicate to the State agency if the regulations of that agency require the submission of these reports and provide for further transmittal of one copy to the: Information Systems Manager (DMT–63), Materials Transportation Bureau. The operator filing this report should ensure that the regulations of the State agency provide for further transmittal of one copy of the report to MTB, as specified to be received by March 15 of each year.

Type or print the operator name and address data in the appropriate location.

The annual reporting period is on a calendar basis, beginning January 1 and ending on December 31 of each year.

It is preferred that each independent subsidiary or affiliate operation be reported separately. Satellite divisions that have independent operations and distribution systems should continue to be reported as separate distribution systems even though, through mergers and consolidations, they no longer are separate companies and function as a unified operation under a single corporate headquarters.

If you have any questions concerning this report or these instructions, or if you need copies of Form RSPA F 7100.1–1 or the instructions, please write or call the Information Systems Manager (DMT–63), Materials Transportation Bureau, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590, telephone number (202) 472–1024.

Specific Instructions

An entry should be made in each block for which data are available. All figures are to be reported as whole numbers. *Do Not Use Decimals or Fractions.* Decimals or fractions should be rounded to the nearest whole number—½ or .5 should be rounded up. Be careful to use "miles" of mains and not "feet;" use "number" of services rather than miles. The "number" of services is the number of service lines and *not* the number of customers served.

Check "Supplemental Report" if this is a follow-up report with additional or corrected information. Do not fill in any previously submitted information with the exception of "report date," "operator's name," "address," and "preparer." Submit only amended, revised, or added information.

Avoid "Unknown" entries if possible. Estimated data are preferable to unknown data.

Part A

The address shown should be the address where information regarding this report can be obtained.

The operator's five digit identification number will be assigned by RSPA. If the identification number is not available to the person completing the report, this information may be omitted. If the pipeline system being reported on is located in more than one State, indicate all States in which this system operates.

Part B

"Coated" means pipe coated with any effective hot or cold applied dielectric coating or wrapper.

"PVC" means polyvinyl chloride plastic.

"PE" means polyethylene plastic.

"ABS" means acrylonitrile-butadiene-styrene plastic.

"Cathodically protected" applies to both "bare" and "coated."

"Other Pipe" means a pipe of any material not specifically designated on the form. An explanation should be included in Part F if "Other Pipe" is marked. If an operator has, in the past, kept records which have consolidated wrought iron pipe with steel pipe, then he may continue to do so.

"Number of services" is the number of service lines and *not* the number of customers served.

Part C

This section includes all reportable incidents and nonreportable leaks (not reported in accordance with § 191.5) repaired or eliminated during the one calendar year which is indicated by the operator on the "Annual Report" form.

Leaks are defined as follows; An unintentional escape of gas from the pipeline.

A reportable incident is one which meets the specific criteria of § 191.5. Leaks/incidents are classified as follows:

"Corrosion"—escape of gas resulting from a hole in the pipeline or component caused by galvanic, bacterial, chemical, stray current, or other corrosive action.

"Third Party"—outside force damage directly attributed to the striking of gas pipeline facilities by earth moving equipment, other equipment, tools, vehicles, vandalism, etc. Damage is by personnel other than the operator or the contractor working for the operator.

"Outside Force"—damage resulting from earth movement not caused by man, including earthquakes, washouts, land slides, frost, etc. Also included is damage by lightning, ice, snow, etc.

A "Construction Defect" is one resulting from failure of original sound material that is due to external force being applied during field construction which caused a dent, gouge, excessive stress, or other defect which resulted in subsequent failure. Also included are faulty wrinkle bends, faulty field welds, and damage sustained in transportation to the construction or fabrication site.

A "Material Defect" is one resulting from a defect within the material of the pipe or component or the longitudinal weld/seam that is due to faulty manufacturing procedures.

"Other" would be the result of any other cause, such as equipment operating malfunction, failure of mechanical joints, or connections not attributable to any of the above.

Indicate all leaks eliminated during the reporting year, including those reported on Form RSPA F 7100.1, "Incident Report, Distribution Systems." Do not include test failures.

Include all leaks eliminated by repair or by replacement of the pipe or other component.

Part D

Federal lands—

For the purposes of completing Form RSPA F 7100.1–1, indicate only those leaks repaired, eliminated, or scheduled for repair during the reporting year, incuding those incidents reported on Form RSPA F 7100.1.

Part E

State the amount of unaccounted for gas as a percent of total input for the 12 months ending June 30 of the reporting year. (purchased gas + produced gas) minus (customer use + company use) divided by (purchased gas + produced gas) equals percent unaccounted for.

Part F

Include any additional information which will assist in clarifying or classifying data included in this report.

Part G

"Preparer" is the name of the person most knowledgeable about the information submitted in the report or the person to be contacted for additional information.

"Authorized Signature" may be the "preparer" or an officer or other person whom the operator has designated to review and sign reports on this nature.

* If the operator determines that he has pipelines that fall under definition 3, he should refer to the instructions for completing Form RSPA F 7100.2–1 for transmission and gathering systems.

INSTRUCTIONS FOR COMPLETING FORM RSPA F 7100.2–1, ANNUAL REPORT FOR CALENDAR YEAR 19— GAS TRANSMISSION AND GATHERING SYSTEMS

General Instructions

Each operator of a gathering system in a *nonrural* area, or of a transmission system, is required to file an annual report. Definitions are as follows:

1. "Gathering line" means a pipeline that transports gas from a current production facility to a transmission line or main.

2. "Transmission line" means a pipeline other than a gathering line that:

a. Transports gas from a gathering line or storage facility to a distribution center or storage facility;

b. Operates at a hoop stress of 20 percent or more of SMYS; or

c. Transports gas within a storage field.

*"Distribution line" means a pipeline other than a gathering or transmission line.

4. "Offshore" means beyond the line of ordinary low water along that portion of the coast of the United States that is in direct contact with the open seas and beyond the line marking the seaward limit of inland waters.

The reporting requirements are contained in Part 191 of Title 49 of the Code of Federal Regulations, "Transportation of Natural and Other Gas by Pipeline: Annual Reports and Incident Reports." Each operator of a nonrural gathering system or of a transmission system must submit an annual report Form RSPA F 7100.2–1 for the preceding calendar year not later than March 15.

Reports should be sent to the: Information Systems Manager (DMT–63), Materials Transportation Bureau, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. However, reports for intrastate pipelines subject to the jurisdiction of a State agency pursuant to certification under Section 5(a) of the Natural Gas Pipeline Safety Act may be submitted in duplicate to the State agency if the regulations of that agency require the submission of these reports and provide for further transmittal of one copy to the: Information Systems Manager (DMT–63), Materials Transportation Bureau. The operator filing this report should ensure that the regulations of the State agency provide for further transmittal of one copy of the report to MTB, as specified to be received by March 15 of each year.

Type or print the operator name and address data in the appropriate location.

The annual reporting period is on a calendar basis, beginning January 1 and ending on December 31 of each year.

*If the operator determines that he has pipelines that fall under this definition, he should refer to the instructions for completing Form RSPA F 7100.1–1 for distribution lines.

It is preferred that each independent subsidiary or affiliate operation be reported separately. Satellite divisions that have independent operations and transmission or gathering systems should continue to be reported as separate systems even though, through mergers and consolidations, they no longer are separate companies and function as a unified operation under a single corporate headquarters.

If you have any questions concerning this report or these instructions, or if you need copies of Form RSPA F 7100.2–1 or the instructions, please write or call the Information Systems Manager (DMT–63), Materials Transportation Bureau, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590, telephone number (202) 472–1024.

Specific Instructions

An entry should be made in each block for which data are available. All figures are to be reported as whole numbers. *Do Not Use Decimals Or Fractions.* Decimals or fractions should be rounded to the nearest whole number—½ or .5 should be rounded up. Be careful to use "miles" of pipeline and not "feet."

Avoid "Unknown" entries if possible. Estimated data are preferable to unknown data.

Check "Supplemental Report" if this is a follow-up report with additional or corrected information. Do not fill in any previously submitted information with the exception of "report date," "operator's name," "address," and "preparer." Submit only amended, revised, or added information.

Part A

The address shown should be the address where information regarding this report can be obtained.

The operator's five digit identification number will be assigned by RSPA. If the identification number is not available to the person completing the report, this information may be omitted. If the pipeline system being reported on is located in more than one State, indicate all States in which this system operates.

Part B

"Coated" means pipe coated with any effective hot or cold applied dielectric coating or wrapper.

"Other Pipe" means a pipe or any material not specifically designated on the form, such as copper, aluminum, etc. An explanation should be included with the form if "Other Pipe" is marked.

Part C

This section includes all reportable incidents and nonreportable leaks repaired or eliminated during the calendar year which is indicated by the operator on the "Annual Report" form.

Leaks are defined as follows: An unintentional escape of gas from the pipeline.

A reportable incident is one which meets the specific criteria of § 191.5.

"Corrosion" is the escape of gas resulting from a hole in the pipe or other component caused by galvanic, bacterial, chemical, stray current, or other corrosive action.

"Outside Forces" is damage resulting from contact of the pipeline with earth moving or other equipment, tools, vehicles, or movement of the earth surrounding the pipeline, such as landslides. Also included are incidents caused by fire or lightning, and deliberate or willful acts, such as vandalism.

A "Construction Defect" is one resulting from failure of original sound material that is due to outside force being applied during field construction which caused a dent, gouge, excessive stress, or other defect which resulted in subsequent failure. Also included are faulty wrinkle bends, faulty field welds, and damage sustained in transportation to the construction or fabrication site.

A "Material Defect" is one resulting from a defect within the material of the pipe or component or the longitudinal weld/seam that is due to faulty manufacturing procedures.

"Other" would be the result of any other cause, such as equipment operating malfunction, failure of mechanical joints, or connections not attributable to any of the above.

Indicate all leaks repaired or eliminated during the reporting year, including those reported on Form RSPA F 7100.2, "Incident Report, Transmission and Gathering Systems." Do not include test failures.

Include all leaks eliminated by repair or by replacement of the pipe or other component.

Part D

Federal lands—

For the purpose of completing Form RSPA F 7100.2–1, indicate all leaks repaired, eliminated, or scheduled for repair during the reporting year, including those incidents reported on Form RSPA F 7100.2.

Part E

Include all known leaks scheduled for elimination by repair or by replacement of the pipe or other component.

Part F

"Preparer" is the name of the person most knowledgeable about the information submitted in the report or the person to be contacted for additional information.

"Authorized Signature" may be the "preparer" or an officer or other person whom the operator had designated to review and sign reports of this nature.

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May 3, 1984

Part III

Department of Labor

Employment Standards Administration

20 CFR Part 10

Claims for Compensation Under the Federal Employees' Compensation Act; Final Rule

DEPARTMENT OF LABOR

Employment Standards Administration

20 CFR Part 10

Claims for Compensation Under the Federal Employees' Compensation Act

AGENCY: Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor is revising the regulations governing the administration of the Federal Employees' Compensation Act (FECA) to: (1) clarify the procedure injured Federal employees and the employing agencies should follow in seeking and obtaining authorized medical treatment for job-related injuries; (2) specificially define which physicians, hospitals, etc., may be authorized under the FECA to provide and obtain payment from the Government for medical care and services to injured Federal employees; and (3) establish a procedure for excluding physicians, hospitals, etc., from participating in the program and for denying payment to such persons out of the Employees' Compensation Fund.

EFFECTIVE DATE: July 2, 1984.

FOR FURTHER INFORMATION CONTACT: Thomas M. Markey, Deputy Associate Director for Federal Employees' Compensation, Employment Standards Administration, U.S. Department of Labor, Room S-3229, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, D.C. 20210; Telephone (202) 523-7552.

SUPPLEMENTARY INFORMATION: Proposed regulations were published in the **Federal Register** on October 18, 1983 (48 FR 48249-55) and provided a 45-day period for public comment. During this period, the Department of Labor received seventeen written comments, including six comments from labor organizations which represent Federal employees, nine comments from Federal agencies (including three from within the Department of Labor), and two comments from private citizens.

The Department's analysis of the comments received are set forth below.

The vast majority of comments fully supported the Department's efforts to ensure that Federal employees receive quality medical care for work related injuries and that benefits paid from the Employees' Compensation Fund are paid for legitimate, suitable medical treatment. The six labor organizations, however, questioned the need for regulations establishing criteria and procedures for excluding physicians, etc., from participating in the FECA program. Of particular concern to these organizations was the potential impact, if any, such regulations would have on their members' ability to find medical providers who are willing to treat FECA beneficiaries. The Department is convinced that these regulations will benefit all injured Federal employees and their employing agencies by providing an effective means of ensuring that the required medical reports are complete and submitted in a timely manner. This, in turn, will permit the Office of Workers' Compensation Programs (OWCP) to issue more accurate decisions with respect to claims while at the same time authorizing the exclusion of those providers who fail or refuse to carry out their obligations under the Act. The Department is convinced that these regulations will not adversely affect any injured Federal worker.

The proposed amendment to § 10.137 of the regulations would exclude final decisions of the Office on the nature and extent of medical services, from review by the Employees' Compensation Appeals Board (ECAB). Responding to comments from labor organizations that this exclusion is too broad, the final regulation has been changed to exclude from ECAB review only the Office's final decisions on the amounts payable for medical services and decisions concerning exclusion and reinstatement of medical providers. The Department agrees that questions relating to the nature and extent of medical treatment to which an injured employee may be entitled under the Act are proper issues for review by the ECAB since they involve a basic question of entitlement to benefits under 5 U.S.C. 8103. However, issues concerning the amount payable out of the Employees' Compensation Fund for such services and whether a medical provider is duly qualified and therefore eligible to provide services for which the Fund will be liable are questions more properly reserved for final decision by the Director, OWCP.

One commenter suggested that § 10.400(e) be further revised to expressly state that questionable X-ray readings by chiropractors will be subject to orthopedic confirmation. This suggestion was not accepted because the Office already has the authority to refer questionable X-ray readings or medical reports to specialists for further evaluation or confirmation.

Section 10.401(a) has been modified as the result of a suggestion from a Federal agency, to make it clear that a claimant is entitled to reimbursement of necessary and reasonable transportation expenses incident to obtaining authorized medical services, appliances and supplies. The deletion of this phrase in the proposal was not intentional.

One Federal agency suggested that the term "designated agency official" be substituted for the term "employing agency" in § 10.401(b) and elsewhere. The Department agrees that such change is appropriate since it will permit agencies to determine which person or persons should be responsible for authorizing medical treatment. A new subparagraph (i) defining that term has been added to § 10.400.

In response to two suggestions from Federal agencies concerned with medical care, the availability of U.S. Public Health Service (PHS) medical facilities has been restricted in § 10.401(c) because most PHS hospitals and outpatient clinics have been closed. Limited PHS facilities of a special nature are available in isolated areas and these may be available in particular cases.

Section 10.401(e) of the proposed regulations states that nothing in the FECA or its regulations affects any authority the employing agency may have to require the employee to undergo a medical examination to determine whether he or she is able to perform the position previously held or is able to meet physical requirements of such position. The six labor organizations which commented recommended that this section be changed entirely, to forbid or severely limit the right of employing agencies to have their employees examined. The Office's authority in this matter is strictly limited. The Act does not permit the Office to interfere in internal personnel matters of employing agencies.

The wording of § 10.401(e) has been modified to show that any agency-required examination or related activities shall not interfere with issuance of Form CA-16, with the employee's initial free choice of physician or with any authorized examination or treatment. The Office of Personnel Management (OPM) regulates agency-sponsored medical examinations of employees. Amended regulations were issued by OPM on January 11, 1984, and will be found, with supplemental information, at 49 FR 1321-1332.

Section 10.402(a) requires the employing agency to authorize treatment by furnishing the employee with a properly executed Form CA-16. Two suggestions were received to require the employee to pay the medical expense of treatment authorized on Form CA-16 if the condition requiring treatment is subsequently found to be non-

compensable. The suggestions were not adopted for several reasons. First, Form CA–16 represents an obligation on the part of the Government to pay for the services authorized. The Employees' Compensation Appeals Board has upheld this obligation.

Moreover, the expense of initial examination and treatment in those cases which are later found to be non-compensable under the FECA is far outweighed by the need to furnish prompt and proper medical care to injured employees and to obtain detailed medical reports of examinations conducted as near to the time of a reported injury as possible. Such a timely medical report constitutes valuable evidence in adjudicating the merits of a claim. If authorization on Form CA–16 were not binding, physicians would be reluctant to see injured employees, creating serious problems in obtaining medical care when needed.

Three labor organizations felt that the 60-day limit at § 10.402(b) on treatment authorized by Form CA–16 is impractical and should be raised to six months. The reasons for increasing the period of authorization were carefully considered, and it was decided to retain the 60-day period as consistent with the Office's obligations and needs in the medical management of cases. The function of Form CA–16 is to provide a means for the designated agency official to authorize initial necessary medical attention without the need to contact the Office for routine approval. Form CA–16 authorization is issued in the absence of a decision by the Office regarding compensability of the medical condition claimed, and is not a substitute for monitoring the medical aspects of the case by the Office's claims examiners and medical advisors. In the past, the Form CA–16 did not have a time limit and, thus, the Fund remained liable for the payment for medical services provided to the injured worker until the authorization was formally revoked. This has not been satisfactory from the point of view of effective case management.

By limiting the obligation to 60 days, the Government accepts a limited, short term liability in the absence of proof of compensability, in exchange for the aforementioned benefits of arranging prompt medical care and obtaining medical reports of such timely examinations. With a shorter limit on the period of treatment authorized, the attending physician is encouraged to report his findings to the Office without delay, if treatment is to be extended. This speeds adjudication of the case and results in desirably tighter control.

Section 10.402(a), as proposed, requires that the employing agency promptly give authorization for treatment. The six labor organizations and one major Federal employer noted the inexactness of the word "promptly." The section has been modified to show that Form CA–16 must be furnished within four hours, which is consistent with current practice.

Three labor organizations remarked that § 10.404, in discussing emergency treatment, eliminates mention of dog bites and eye injuries which appear in the existing § 10.403 covering emergency treatment. The commenters construe this omission as narrowing the circumstances which constitute an emergency, and wish the amended regulations to retain specific mention of dog bites and eye injuries. However, there was no intent to restrict or limit what constitutes an emergency. By eliminating mention of specific medical conditions, the section is subject to broader interpretation, which is the desired effect of the change.

Three labor organizations also commented that the amended § 10.407 (a) fails to include the penalty for the claimant's failure to submit to a required medical examination, and fails to require that the claimant be informed of the penalty for such failure. The penalty appears at § 10.407 (b), and this section is being amended to require that the claimant be notified of the penalty to facilitate recovery of overpayments of compensation created by a claimant's refusal or obstruction of a required examination. Although such a requirement was not set forth in the proposed amended § 10.407, the OWCP did intend to require that such notice be given to claimants.

One Federal agency pointed out that in describing grounds for exclusion of a medical provider, § 10.450(f) used the word "persistently," which is vague and subject to interpretation. We agree. Accordingly, the wording of that section has been changed to state that "three or more" deficient reports or failures to respond to the Office's requests for additional information within a one year period will form a proper basis for possible exclusion.

In response to comments received from a Federal agency, several minor changes have been made to those sections relating to procedures to be followed in conducting hearings, issuing decisions, and providing for appeals in cases involving the exclusion of physicians, etc., from the program. Thus § 10.454(e) has been revised to delete the reference to a "recommended decision" and to eliminate the requirement that decisions be served by certified mail. Further, § 10.455 has been revised to provide for a discretionary review by the Director, OWCP, of a final administrative law judge decision. A petition for discretionary review must be filed with the Director no later than 30 days after the ALJ's decision is issued (§ 10.455 (a)), the grounds upon which review may be sought are specified (§ 10.455 (c) and (d)), and provision is made for the automatic denial of the petition unless the Director agrees to review the decision within 20 days after receipt of the petition (§ 10.455(g)). These procedures will fully protect the rights of affected persons while at the same time streamlining the process and avoiding unnecessary utilization of Departmental resources.

Four labor organizations noted that an employee may be deprived of his or her initial free choice of physician if that physician becomes excluded from rendering services under FECA or was at the time of the selection, unknown by the employee to be excluded. To fully protect the rights of injured workers, (§ 10.456(c) has been added to provide for another free choice of physician if the originally selected physician is or becomes excluded.

Classification—Executive Order 12291

The Department of Labor does not believe that the regulatory proposal constitutes a "major rule" under Executive Order 12291, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in cost 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 the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory analysis is required.

Paperwork Reduction Act

The Office of Management and Budget has previously approved the record keeping requirements at 20 CFR 10.410(a); OMB Control No. 1215–0133. The proposed revision to § 10.410(a) contained in this document does not impose any new record keeping requirements.

Regulatory Flexibility Act

The Department believes that the rule will have "no significant economic

impact upon a substantial number of small enitities" within the meaning of section 3(a) of the Regulatory Flexibility Act. Pub. L. No. 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)).

Although this rule will be applicable to small entities it should not result in or cause a significant economic impact to any small entity subject to its provisions. This conclusion is reached because the application of the exclusion procedures proposed by these rules will not reduce the amount of money paid to duly qualified medical providers for the medical services rendered to FECA beneficiaries but rather will permit the Department to determine which providers should participate in the program. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory impact analysis is required.

List of Subjects in 20 CFR Part 10

Claims, Government employees, Archives and records, Health records, Freedom of Information, Privacy, Penalties, Health professions, Workers' compensation, Employment, Administrative practices and procedures, Wages, Health facilities, Dental health, Medical devices, Health care, Lawyers, Legal services, Student, X-rays, Labor, Insurance, Kidney diseases, Lung diseases, and Tort claims.

PART 10—[AMENDED]

Accordingly, 20 CFR Part 10 is amended as set forth below.

Authority: (5 U.S.C. 301); Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; (5 U.S.C. 8145, 8149); Secretary of Labor's Order No. 16–75, 40 FR 55913 Employment Standards' Order No. 78–1, FR 51469.

1. By revising § 10.137 to read as follows:

§ 10.137 Review by the Employee's Compensation Appeals Board.

Final decisions of the Office, except decisions concerning the amounts payable for medical services, and decisions concerning exclusion and reinstatement of medical providers, are subject to review by the Employees Compensation Appeals Board (ECAB), U.S. Department of Labor, under rules of procedure set forth in Part 501 of this title.

2. By redesignating § 10.401 as § 10.400 and revising it to read as follows:

§ 10.400 Physician and medical services, etc. defined.

(a) The term "physician" as used in subparts E and F of this part includes physicians (M.D. and D.O.), surgeons, podiatrists, dentists, clinical psychologists, optometrists, and chiropractors, within the scope of their practice as defined by State Law. The term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist. A physician whose license to practice medicine has been suspended or revoked by a State licensing or regulatory authority is not a physician within the meaning of this section during the period of such suspension or revocation.

(b) The term "duly qualified physician" as used in Subparts E and F of this part includes any physician, as defined by paragraph (a) of this section, who has not been excluded under the provisions of subpart F of this part. Except as otherwise provided by regulation, a duly qualified physician shall be deemed to be designated or approved by the Office.

(c) The term "duly qualified hospital" as used in subparts E and F of this part includes any hospital licensed as such under State law which has not been excluded under the provisions of subpart F of this part. Except as otherwise provided by regulation, a duly qualified hospital shall be deemed to be designated or approved by the Office.

(d) The term "duly qualified provider of medical support services or supplies" as used in Subparts E and F of this part includes any person, other than a physician or a hospital, who provides services, drugs, supplies, and appliances for which the Office makes payment who possesses any applicable licenses required under State law and who has not been excluded under the provisions of subpart F of this part.

(e) The term "medical services" as used in subparts E and F of this part includes services and supplies provided by or under the supervision of physicans (M.D. and D.O.), surgeons, podiatrists, dentists, clinical psychologists, optometrists, and chiropractors, within the scope of their practices as defined by State law. Reimbursable chiropractic services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist. Also included for payment or reimbursement are physical examinations (and related laboratory tests) and X-rays performed by or required by a chiropractor to diagnose a subluxation of the spinal column. A chiropractor may interpret his or her X-rays to the same extent as any other physician defined in this section.

(f) The term "hospital services" as used in subparts E and F of this part includes services and supplies provided by hospitals within the scope of their practice as defined by State law.

(g) The term "medical support services and supplies" as used in subparts E and F of this part includes services, drugs, supplies, and appliances provided by a person other than a physican or hospital.

(h) The term "job-related injury" as used in Subparts E and F of this part includes injuries sustained while in the performance of duty and diseases proximately caused by the conditions of employment.

(i) The term "designated agency official" means the individual delegated responsibility by an employing agency for authorizing medical treatment for the injured employee.

3. By redesignating § 10.400 as § 10.401 and revising it to read as follows:

§ 10.401 Medical treatment, hospital services, transportation, etc.

(a) A claimant shall be entitled to receive all medical services, appliances or supplies which are prescribed or recommended by a duly qualified physician and which the Office considers necessary for the treatment of a job-related injury, whether or not the claimant is disabled. Such services, appliances and supplies may be furnished by, or on the order or recommendation of, either United States medical officers or hospitals, or, at the claimant's option as provided in paragraph (b) of this section, any other duly qualified physician or duly qualified hospital. Medical support services and supplies not furnished by a duly qualified physician or a duly qualified hospital shall be furnished by a duly qualified provider of medical support services or supplies. A claimant shall also be entitled to reimbursement of reasonable and necessary expenses, including transportation incident to obtaining authorized medical services, appliances or supplies.

(b) A claimant has an initial choice of physicians. The designated agency official shall give the claimant an opportunity to select a duly qualified physician, after advising the claimant of those physicians excluded under the provisions of this part. An employee who wishes to change physicians must submit a written request to the Office fully explaining the reasons for the request. The Office may approve the

request in its discretion if sufficient justification is shown for the request. Any duly qualified physician shall be authorized to provide necessary treatment of a job-related injury in an emergency. See also § 10.456(c).

(c) The medical facilities of the U.S. Public Health Service, Army, Navy, Air Force, and Veterans Administration may be used when previous arrangements have been made on a case-by-case basis with the director of the facility.

(d) Federal health service units or other occupational health service facilities established under the provisions of the Act of August 8, 1946, as amended (U.S.C. 7901), are not United States medical hospitals as used in this part, nor are the staff of these facilities United States medical officers as used in this part.

Under criteria established by the Bureau of the Budget (now the Office of Management and Budget) in Circular No. A–72 of June 18, 1965, these health service units or occupational health service facilities shall only provide emergency diagnosis and treatment of injury or illness such as are necessary during working hours and are within the competence of the professional staff of the health service unit or facility. Any medical treatments by these units or facilities other than emergency treatment must be specifically authorized by the Office and given under the supervision of a duly qualified physician.

(e) Nothing in the Act or in these regulations affects any authority which the employing agency may have to require the employee to undergo a medical examination to determine whether the employee meets the mandatory medical requirements of the position held, or is able to perform the duties of the position held. Any agency-required examination or related activity shall not interfere with issuance of Form CA–16, with the employee's initial free choice of physician or with any authorized examination or treatment.

(f) In emergency cases or those involving unusual considerations affecting the quality of medical care, the Office may authorize treatment or approve payment of medical expenses in a matter other than that provided in this subpart.

4. By revising § 10.402 to read to follows:

§ 10.402 Official authorization for treatment.

(a) When an employee sustains a job-related injury which may require medical treatment, the designated agency official shall promptly authorize such treatment by giving the employee a properly executed CA–16 within 4 hours. Form CA–16 shall be used primarily for traumatic injuries. It may also be used to authorize examination and treatment for disease or illness, but only if the designated agency official has obtained prior permission from the Office.

(b) To be valid, a Form CA–16 must give the full name and address of the duly qualified physician or duly qualified medical facility authorized to provide service, and must be signed and dated by the authorizing official, and must show his or her title. Except as provided in § 10.404. Form CA–16 may not be issued for past medical care. The period for which treatment is authorized by a correctly issued Form CA–16 is limited to 60 days from the date of issuance, unless terminated earlier by the Office. Further, in view of the provisions of § 10.401(b), the employing agency may not use Form CA–16 to authorize a change of physicians.

(c) In determining the use of medical facilities, consideration must be given to their availability, the employee's condition, and the method and means of transportation. Generally, 25 miles from the place of injury, the employing agency, or the employee's home, is a reasonable distance to travel, but other pertinent factors must also be taken into consideration.

5. By redesignating § 10.405 as § 10.403 and revising to read as follows:

§ 10.403 Medical treatment in doubtful cases.

Cases of doubtful nature, so far as compensability is concerned, shall be referred by the designated agency official to a United States medical official or hospital, or at the employee's option, to a duly qualified private physician or a duly qualified hospital designated or approved by the Office, or as otherwise provided in this part, using a Form CA–16 for medical services as indicated in 6B of the form. This authorizes the necessary diagnostic studies and emergency treatment pending receipt of advice from the Office. A statement of all pertinent facts relating to the particular case shall also be forwarded immediately to the Office for consideration. If the medical examination or other information received subsequent to the issuance of authorization for treatment discloses that the condition for which treatment was rendered is not due to an injury, the person issuing the authorization shall immediately notify the employee and the physician or hospital that no further treatment shall be rendered at the expense of the Office. In cases of an emergency or cases involving unusual circumstances, the Office may, in the exercise of its discretion, authorize treatment otherwise than as provided for in this part, or it may approve payment for medical expenses incurred otherwise than as authorized in this section. No authority for examination or for medical or other treatment shall be given by the designated agency official in any case already disallowed by the Office.

6. By redesignating § 10.403 as § 10.404 and revising it to read as follows:

§ 10.404 Emergency treatment.

In cases of traumatic injury where emergency treatment is necessary, any duly qualified physician may render initial treatment. If oral authorization for such treatment is given by the designated agency official, a Form CA–16 shall be issued within 48 hours thereafter. If further treatment is necessary, authorization therefor shall be requested as soon as practicable in accordance with § 10.402 of this part. It is the duty of the designated agency official to authorize initial medical treatment for acute injuries, exclusive of disease or illness, and to transfer the employee at the employee's option to the care of a local U.S. medical officer or hospital or to a duly qualified private physician or a duly qualified hospital designated or approved by the Office for any subsequent treatment needed. If unable to comply promptly with this requirement, the designated agency official shall communicate with the Office for instructions.

7. By redesignating § 10.404 as § 10.405 and revising it to read as follows:

§ 10.405 Medical treatment if symptoms or disability recur.

If, after having been discharged from medical treatment, an injured employee again has symptoms or disability under circumstances from which it may reasonably be inferred that such symptoms or disability are the result of an injury previously recognized as compensable by the Office, and the place of employment is the same as at the time of injury, Form CA–16 may be issued at the discretion of the designated agency official. Form CA–16 shall not be used by the designated agency official if more than six months have elapsed since the empoyee last returned to work. In any case in which there may be doubt that the symptoms or disability are the result of the injury,

or in which it has been more than six months since the last return to work, the designated agency official shall communicate with the Office and request instructions, stating all the pertinent facts. In all other cases, the employee shall communicate with the Office and request such treatment.

8. By revising § 10.406 to read as follows:

§10.406 Authority for dental treatment.

All necessary dental treatment, including repairs to natural teeth, false teeth, and other prosthetic dental devices, needed to repair damage or loss caused by an employment related injury shall be obtained at the employee's option from a U.S. Medical Officer or hospital, or from a duly qualified private dentist, a duly qualified physician, or a duly qualified hospital, upon authorization obtained in advance from the Office.

9. By revising § 10.407 to read as follows:

§10.407 Medical examinations.

(a) An injured employee shall be required to submit to examination by a U.S. Medical Officer or by a qualified private physician approved by the Office as frequently and at such times and places as in the opinion of the Office may be reasonably necessary. The injured employee may have a duly qualified physician, paid by him or her, present at the time of such examination. For any examination required by the Office, an injured employee shall be paid all expenses incident to such examination which, in the opinion of the Office, are necessary and reasonable, including transportation and actual loss of wages incurred in order to submit to the examination authorized by the Office.

(b) If the employee refuses to submit himself or herself for or in any way obstructs any examination required by the Office pursuant to paragraph (a) of this section, the employee's right to compensation under the Act shall be suspended until such refusal or obstruction ceases. Compensation otherwise paid or payable under the Act and this part for the period of the refusal or obstruction is forfeited and, where already paid, is subject to recovery pursuant to 5 U.S.C. 8129. When notifying an employee of an examination required under paragraph (a) of this section, the Office shall inform the employee of the penalty for refusing or obstructing the examination.

10. By revising § 10.409 to read as follows:

§ 10.409 Furnishing of orthopedic and prosthetic appliances, and dental work.

When a job-related injury results in the need for an orthopedic or prosthetic appliance, such as an artificial limb, eye, or denture, as recommended by the duly qualified attending physician, written application for authority to purchase such appliance may be made to the Office. The application must include a statement from the attending physician regarding the need for the appliance, a brief description thereof, and the approximate cost.

11. By revising § 10.410(a) to read as follows:

§ 10.410 Recording and submission of medical reports.

(a) Medical officers and private physicians and hospitals shall keep adequate records of all cases treated by them under the Act so as to be able to supply the Office with a history of the employee's accident, the exact description, nature, location, and extent of injury, the X-ray findings or other studies, if X-ray examination or other studies have been made, the nature of the treatment rendered, and the degree of impairment arising from the injury.

* * * * *

12. By adding a new Subpart F as follows:

Subpart F—Exclusion of Physicians and Other Providers of Medical Services and Supplies

Sec.

Subpart F—Exclusion of Physicians and Other Providers of Medical Services and Supplies

Authority: (5 U.S.C. 301); Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; (5 U.S.C. 8145, 8149); Secretary of Labor's Order No. 16–75, 40 FR 55913; Employment Standards' Order No. 78–1, 43 FR 51469.

§ 10.450 Exclusion for fraud and abuse: Grounds.

A physician, hospital, or provider of medical support services or supplies shall be excluded from payment under the Act if such physician, hospital or provider has:

(a) Been convicted under any criminal statute for fraudulent activities in connection with any Federal or State program for which payments are made to providers for similar medical, surgical or hospital services, appliances or supplies;

(b) Been excluded or suspended, or has resigned in lieu of exclusion or suspension, from participation in any Federal or State program referred to in paragraph (a) of this section.

(c) Knowingly made or caused to be made, any false statement or misrepresentation of a material fact in connection with a determination of the right to reimbursement under the Act, or in connection with a request for payment;

(d) Submitted, or caused to be submitted, three or more bills or requests for payment within a twelve-month period under this chapter containing charges which the Secretary finds to be substantially in excess of such provider's customary charges, unless the Secretary finds there is good cause for the bills or requests containing such charges;

(e) Knowingly failed to timely reimburse claimants for treatment, services or supplies furnished under this chapter paid by the Government;

(f) Failed, neglected or refused on three or more occasions during a twelve month period, to submit full and accurate medical reports, or to respond to requests by the Office for additional reports or information, as required by the Act and § 10.410 of this part;

(g) Knowingly furnished treatment, services or supplies which are substantially in excess of the claimant's needs, or of a quality which fails to meet professionally recognized standards.

§ 10.451 Automatic exclusion.

A physician, hospital, or provider of medical support services or supplies has been convicted of a crime described in subparagraph (a) of § 10.450, or excluded or suspended, or has resigned in lieu of exclusion or suspension, from participation in any program as described in subparagraph (b) of § 10.450, shall be automatically excluded from participating in the program and from seeking payment under the Act for services performed after the date of the entry of the judgment of conviction or order of exclusion, suspension or resignation, as the case may be, by the court or agency concerned. Proof of the conviction, exclusion, suspension or resignation may be by a copy thereof authenticated by the seal of the court or agency concerned. See § 10.457(a)

§ 10.452 Initiation of exclusion procedures.

(a) *General provision.* Upon receipt of information indicating that a physician,

hospital or provider of medical support services or supplies (hereinafter the provider) has engaged in activities enumerated in subparagraphs (c) through (g) of § 10.450, the Assistant Regional Administrator, after completion of inquiries he/she deems appropriate, may initiate procedures to exclude the provider from participation in the FECA program. For the purposes of this section, "Assistant Regional Administrator" may include any officer designated to act on his or her behalf.

(b) *Letter of intent.* The exclusion procedure shall be initiated by sending a letter, signed by the Assistant Regional Administrator, stating his or her intention to commence proceedings to exclude the provider. The letter shall be sent by certified mail, return receipt requested and shall contain the following:

(1) A concise statement of the grounds upon which exclusion shall be based;

(2) A summary of the information, with supporting documentation, upon which the Assistant Regional Administrator has relied in reaching an initial decision that exclusion proceedings should be commenced;

(3) An invitation to the provider to:

(i) Resign voluntarily from participation in the FECA program without admitting or denying the allegations presented in the letter; or

(ii) Request that the decision on exclusion be based upon the existing record and any additional documentary information the provider may wish to provide;

(4) A notice of the provider's right, in the event of an adverse ruling by the Assistant Regional Administrator, to request a formal hearing before an administrative law judge;

(5) A notice that should the provider fail to answer (as described below) the letter of intent within 30 calendar days of receipt, the Assistant Regional Administrator may deem the allegations made therein to be true and may order exclusion of the provider without conducting any further proceedings; and

(6) The name and address of the official representative of the Office who shall be responsible for receiving the answer from the respondent.

(c) *Answer to the letter of intent.* The provider's answer shall be in writing and shall include an answer to the Office's invitation to resign voluntarily. If the provider does not offer to resign, he or she shall request that a determination be made upon the existing record and any additional information provided.

(d) *Failure to answer.* Should the provider fail to answer the letter of intent within 30 calendar days of receipt, the Assistant Regional Administrator may deem the allegations made therein to be true and may order exclusion of the provider.

(e) *Inspection of the record.* By arrangement with the official representative, the provider may inspect or request copies of information in the record at any time prior to the Assistant Regional Administrator's decision.

(f) *Decision.* The Assistant Regional Administrator shall issue his or her decision in writing, and shall send a copy of the decision to the provider by certificated mail, return receipt requested. The decision shall advise the provider of his or her right to request, within 30 days of the date of the adverse decision, a formal hearing before an administrative law judge under the procedures set forth below. The filing of a request for a hearing within the time specified shall operate to stay the effectiveness of the decision to exclude.

§ 10.453 Requests for a hearing.

(a) A Request For Hearing shall be sent to the official representative (see § 10.452(b)(6)) and contain:

(1) A concise notice of the issues on which the provider desires to give evidence at the hearing.

(2) Any request for a more definite statement by the Office.

(3) Any request for the presentation of oral argument or evidence.

(4) Any request for a certification of questions concerning professional medical standards, medical ethics or medical regulation for an advisory opinion from a competent recognized professional organization or Federal, State or Local regulatory body.

(b) If a Request For Hearing is timely received by the designated official representative, the official representative shall refer the matter to the Chief Administrative Law Judge of the Department of Labor, who shall assign it for an expedited hearing. The administrative law judge assigned to the matter shall consider the Request for Hearing, act on all requests therein, and issue a Notice of Hearing and Hearing Schedule for the conduct of the hearing. A copy of the hearing notice shall be served on the provider by certified mail, return receipt requested. The Notice of Hearing and Hearing Schedule shall include:

(1) A ruling on each item raised in the Request For Hearing.

(2) A schedule for the prompt disposition of all preliminary matters including requests for more definite statements and for the certification of questions to advisory bodies.

(3) A scheduled hearing date not less than thirty days after the date the schedule is issued, and not less than fifteen days after the scheduled conclusion of preliminary matters, provided that the specific time and place of the hearing may be set on ten days notice.

(c) The purpose of the designation of issues is to provide for an effective hearing process. The provider is entitled to be heard on any matter placed in issue by his or her response to the Notice of Intent to Exclude, and may designate "all issues" for purposes of hearing. However a specific designation of issues is required if the provider wishes to interpose affirmative defenses, or request the issuance of subpoenas or the certification of questions for an advisory opinion.

(d) The provider may make application for the issuance of subpoenas upon a showing of good cause therefore to the administrative law judge.

(e) A certification of the request for an advisory opinion concerning professional medical standards, medical ethics or medical regulation to a competent recognized or professional organization or Federal, State or local regulatory agency may be made:

(1) As to an issue properly designated by the provider, in the sound discretion of the administrative law judge, provided that the request will not unduly delay the proceedings;

(2) By the Office on its own motion either before or after the institution of proceedings, and the results thereof shall be made available to the provider at the time that proceedings are instituted or, if after the proceedings are instituted, within a reasonable time after receipt: provided, that the opinion, if rendered by the organization or agency, is advisory only and not binding on the administrator law judge.

§ 10.454 Hearings and recommended decision.

(a) To the extent appropriate proceedings before the administrative law judge shall be governed by 29 CFR Part 18 (promulgated July 15, 1983, at 48 FR 32538).

(b) The administrative law judge shall receive such relevant evidence as may be adduced at the hearing. Evidence shall be presented under oath, orally or in the form of written statements. The administrative law judge shall consider the Notice and Response, including all pertinent documents accompanying them, and may also consider any evidence which refers to the provider or to any claim with respect to which the provider has provided medical services, hospital services, or medical support

services and supplies, and such other evidence as the administrative law judge may determine to be necessary or useful in evaluating the matter.

(c) All hearings shall be recorded and the original of the complete transcript shall become a permanent part of the official record of the proceedings.

(d) Pursuant to 5 U.S.C. 8126, the administrative law judge may:

(1) Issue subpoenas for and compel the attendance of witnesses within a radius of 100 miles;

(2) Administer oaths;

(3) Examine witnesses; and

(4) Require the production of books papers, documents, and other evidence with respect to the proceedings.

(e) At the conclusion of the hearing, the Administrative Law Judge shall issue a written decision and cause it to be served on all parties to the proceeding, their representatives and the Director.

§ 10.455 Review by Director.

(a) *Procedure.* Any party adversely affected or aggrieved by the decision of the Administrative Law Judge may file a petition for discretionary review with the Director within 30 days after issuance of the decision. The Judge's decision, however, shall be effective on the date issued and shall not be stayed except upon order of the Director.

(b) *Review discretionary.* Review by the Director shall not be a matter of right but of the sound discretion of the Secretary.

(c) *Grounds.* Petitions for discretionary review shall be filed only upon one or more of the following grounds:

(1) A finding or conclusion of material fact is not supported by substantial evidence;

(2) A necessary legal conclusion is erroneous;

(3) The decision is contrary to law or to the duly promulgated rules or decisions of the Director;

(4) A substantial question of law, policy, or discretion is involved; or

(5) A prejudicial error of procedure was committed.

(d) *Requirement.* Each issue shall be separately numbered and plainly and concisely stated, and shall be supported by detailed citations to the record when assignments of error are based on the record, and by statutes, regulations, or principal authorities relied upon. Except for good cause shown, no assignment of error by any party shall rely on any question of fact or law upon which the Judge had not been afforded an opportunity to pass.

(e) *Statement in opposition.* A statement in opposition to the petition for discretionary review may be filed, but such filing shall in no way delay action on the petition.

(f) *Scope of review.* If a petition is granted, review shall be limited to the questions raised by the petition.

(g) *Denial of petition.* A petition not granted within 20 days after receipt of the petition is deemed denied.

(h) The decision of the Director shall be final with respect to the provider's participation in the program, and shall not be subject to further review by any court or agency.

§ 10.456 Effects of exclusion.

(a) The Office shall give notice of the exclusion of a physician, hospital, or provider of medical support services or supplies to:

(1) All OWCP district offices;

(2) All employing Federal agencies;

(3) The Health Care Financing Administration;

(4) The State of Local authority responsible for licensing or certifying the excluded party;

(5) All claimants who are known to have had treatment, services or supplies from the excluded person within the six month period immediately preceding the order of exclusion.

(b) Notwithstanding any exclusion of a physician, hospital, or provider of medical support survices or supplies under this subpart, the Office shall not refuse a claimant reimbursement for any otherwise reimbursable medical treatment, service or supply if:

(1) Such treatment, service or supply was rendered in an emergency by an excluded physician; or

(2) Claimant could not reasonably have been expected to have known of such exclusion.

(c) A claimant who is notified that his or her attending physician has been excluded shall have a new right to select a duly qualified physician. See § 10.401(b)

§ 10.457 Reinstatement

(a) If a physician, hospital, or provider of medical support services or supplies has been automatically excluded pursuant to § 10.451, the person excluded will automatically be reinstated upon notice to the Office that the conviction or exclusion which formed the basis of the automatic exclusion has been reversed or withdrawn. However, an automatic reinstatement shall not preclude the Office from instituting exclusion proceedings based upon the underlying facts of the matter.

(b) A physician, hospital, or provider of medical support services or supplies excluded from participation as a result of an order issued pursuant to this subpart may apply for reinstatement one year after the entry of the order of exclusion, unless the order expressly provides for a shorter period. An application for reinstatement shall be addressed to the Associate Director for Federal Employees' Compensation, and shall contain a concise statement of the basis for the application. The application should be accompanied by supporting documents and affidavits.

(c) A request for reinstatement may be accompanied by a request for oral argument. Oral argument will be allowed only in unusual circumstances where it will materially aid the decisional process.

(d) The Associate Director shall order reinstatement only in instances where such reinstatement is clearly consistent with the ultimate goal of this subpart which is to protect the FECA program against fraud and abuse. To satisfy this requirement the provider must provide reasonable assurances that the basis for the exclusion will not be repeated.

Signed at Washington D.C., this 27th day of April 1984.

Raymond J. Donovan,

Secretary of Labor.

[FR Doc. 84-11919 Filed 5-2-84; 8:45 am]

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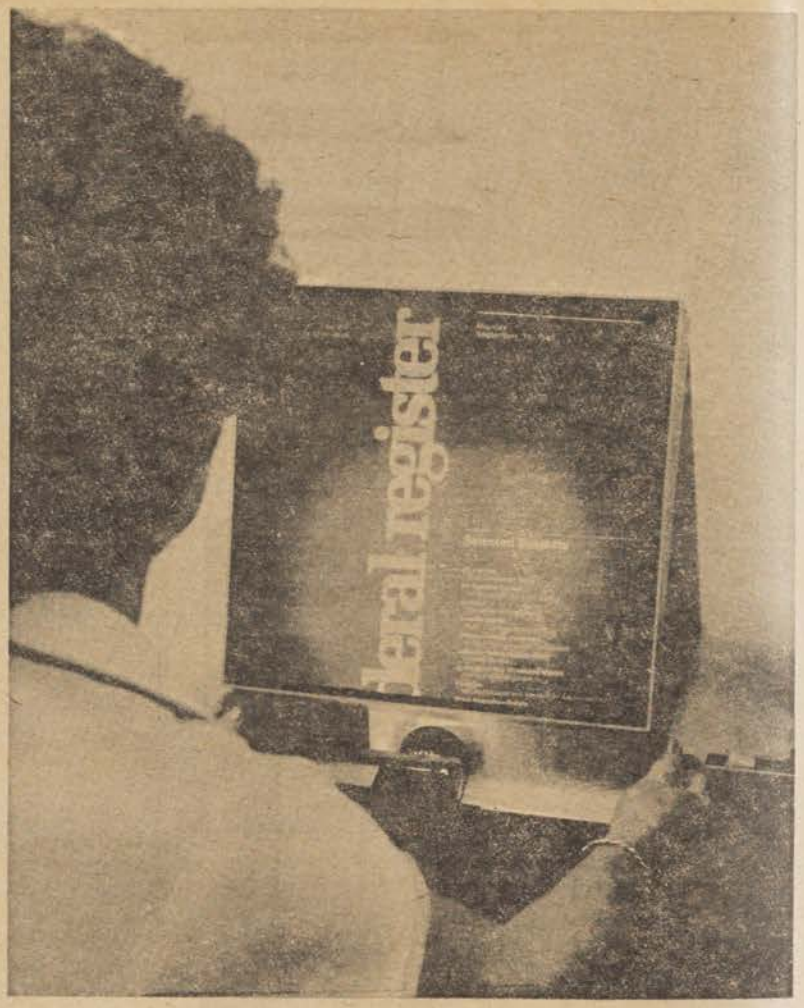

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