AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

5-21-84
Vol. 49 No. 99
Pages 21293–21504

federal register

Monday
May 21, 1984

G.S.A.
452.926
10 Vols

Selected Subjects

Administrative Practice and Procedure
Federal Energy Regulatory Commission

Animal Biologics
Animal and Plant Health Inspection Service

Animal Drugs
Food and Drug Administration

Aviation Safety
Federal Aviation Administration

Communications Common Carriers
Federal Communications Commission

Endangered and Threatened Species
Fish and Wildlife Service

Estate and Gift Taxes
Internal Revenue Service

Freedom of Information
Postal Service

Government Employees
Personnel Management Office

Iran
Foreign Assets Control Office

Legal Services
Legal Services Corporation

Mortgage Insurance
Housing and Urban Development Department

CONTINUED INSIDE

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

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

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for six months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402.

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

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

Selected Subjects

Nuclear Materials
Energy Department

Nuclear Power Plants and Reactors
Nuclear Regulatory Commission

Public Housing
Housing and Urban Development Department

Radio Broadcasting
Federal Communications Commission

Contents

Federal Register
Vol. 49, No. 99
Monday, May 21, 1984

Agriculture Department
See also Animal and Plant Health Inspection Service; Food and Nutrition Service; Human Nutrition Information Service; Soil Conservation Service.
RULES
21293 Practice rules governing formal adjudicatory proceedings; correction

Animal and Plant Health Inspection Service
PROPOSED RULES
Viruses, serums, toxins, etc.:
21339 Feline calicivirus and feline rhinotracheitis vaccines, etc.; standard requirements

Arts and Humanities, National Foundation
NOTICES
21443 Agency information collection activities under OMB review

Civil Aeronautics Board
NOTICES
21457 Meetings; Sunshine Act

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
21390 Nevada; time and place change

Commerce Department
See International Trade Administration; National Oceanic and Atmospheric Administration; Patent and Trademark Office.

Consumer Product Safety Commission
NOTICES
21457 Meetings; Sunshine Act

Customs Service
NOTICES
21453 Trademarks; articles manufactured aboard; importation; inquiry

Education Department
NOTICES
21458 Meetings; Sunshine Act

Energy Department
See also Energy Information Administration; Federal Energy Regulatory Commission.
RULES
21472 Extraordinary nuclear occurrences
NOTICES
International atomic energy agreements; civil uses; subsequent arrangements:
21396 European Atomic Energy Community (2 documents)
21396 Japan (2 documents)
Meetings:
21397 National Petroleum Council (2 documents)

Energy Information Administration
NOTICES
21397 Natural gas, high cost; alternative fuel price ceilings and incremental price threshold

Environmental Protection Agency
PROPOSED RULES
Toxic substances:
21371 Methylolurea and urea-formaldehyde resins; advance notice
Water pollution control; State underground injection control programs:
21370 South Dakota
NOTICES
21404 Agency information collection activities under OMB review
Grants; State and local assistance:
21462 Advanced treatment projects
Toxic and hazardous substances control:
21411 Interagency Testing Committee; responses, etc.; calcium, cobalt, and lead naphthenates
21407 Interagency Testing Committee; responses, etc.; 2-phenoxyethanol
Water pollution; discharge of pollutants (NPDES):
21418 Alaska; extension of time
Water pollution control; sole source aquifer designations:
21406 Nebraska

Farm Credit Administration
NOTICES
21457 Meetings; Sunshine Act

Federal Aviation Administration
RULES
Airworthiness directives:
21310 DeHavilland
21309 Messerschmitt-Bolkow-Blohm GmbH
21311, 21312 Transition areas (3 documents)
PROPOSED RULES
Airworthiness directives:
21345 Boeing
21346 British Aerospace
21349 Cessna
21348 Fokker

Federal Communications Commission
RULES
Common carrier services:
21335 Jurisdictional Separations Manual; interpretations
21333 Telephone companies; provision of lines for cable television service, etc.
Radio broadcasting:
21337 AM broadcasting by daytime-only stations; petitions for reconsideration dismissed
PROPOSED RULES
Common carrier services:
21375 Telephone companies, uniform system of accounts; cost of removal, gross salvage and reusable plant

21377 Telephone companies; uniform system of accounts; generally accepted accounting principles
Radio stations; table of assignments:
21336 Florida
NOTICES
21419 Agency information collection activities under OMB review
World Administrative Radio Conference:
21419 1985 Space WARC Conference; inquiry
21419 1986 Space WARC Conference; inquiry

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
21429 Alabama
21429, 21430 Georgia (2 documents)
21430 Louisiana

Federal Energy Regulatory Commission
RULES
Practice and procedure:
21312 Wholesale electric rate cases; reconsideration of decisions
NOTICES
Hearings, etc.:
21402 Bonneville Power Administration
21399 Canal Electric Co.
21399 Caribou Four Corners, Inc.
21400 DiValentino, L. Mario
21400 Idaho Power Co.
21402 McBennett, Robert J.
21400 Mississippi River Transmission Corp.
21401 Monterey Pipeline Co. et al.
21402 Northwest Pipeline Corp.
21402 Transcontinental Gas Pipe Line Corp.
Small power production and cogeneration facilities; qualifying status; certification applications, etc.:
21399 Cogenic Energy Systems, Inc.

Federal Highway Administration
PROPOSED RULES
Engineering and traffic operations:
21350 Forest highways; funds allocation; extension of time; correction
NOTICES
Meetings:
21453 National Motor Carrier Advisory Committee

Federal Maritime Commission
NOTICES
21430 Agreements filed, etc.
Freight forwarder licenses:
21431 Denn World Transport, Inc.
21431 Ord, Brough & Collins, Inc.
21457 Meetings; Sunshine Act

Federal Mine Safety and Health Review Commission
NOTICES
21457 Meetings; Sunshine Act

Federal Reserve System
NOTICES
Bank holding company applications, etc.:
21431 Colorado Springs Banking Corp. et al.
21432 Key Bancshares of West Virginia, Inc., et al.
21432 United Counties Bancorporation

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
21383 Warner sucker

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
21317 Armour Pharmaceutical Co.; sponsor entry removed
Biological products:
21317 Tests; equivalent methods and processes; correction
PROPOSED RULES
Human drugs:
21350 Antacid and antiflatulent drug products (OTC); correction

Food and Nutrition Service
NOTICES
Food stamp program:
21388 Income eligibility standards; adjustment

Foreign Assets Control Office
RULES
21321 Iranian assets control regulations; tangible property of Iran having potential military application

Health and Human Services Department
See Food and Drug Administration; Health Care Financing Administration.

Health Care Financing Administration
PROPOSED RULES
Medicaid and Medicare;
21375 Home health agency costs per visit; schedule of limits; correction

Housing and Urban Development Department
RULES
Mortgage and loan insurance programs:
21320 Interest rate changes
21317 Single family programs; programmatic and administrative changes
Public and Indian housing:
21476 Definition of income, income limits, rent calculation, and reexamination of family income
NOTICES
Grants; availability, etc.:
21433 Project self-sufficiency, eligible communities

Human Nutrition Information Service
NOTICES
Meetings:
21388 Joint Nutrition Monitoring Evaluation Committee

Interior Department
See also Fish and Wildlife Service; Land Management Bureau; Minerals Management Service; Reclamation Bureau.
NOTICES
Meetings:
21440 National Strategic Materials Program Advisory Committee
21437 National Environmental Policy Act; implementation

Internal Revenue Service
PROPOSED RULES
Estate and gift taxes:
21350 Marital deductions; limitations

International Trade Administration
NOTICES
Antidumping:
21390 Calcium hypochlorite from Japan
21391 Fireplace mesh panels from Taiwan
Imports and national security; investigations:
21391 Ferroalloy

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
21442 PLM Railcar Maintenance Co.
21442 Soo Line Railroad Co.

Justice Department
See Juvenile Justice and Delinquency Prevention Office.

Juvenile Justice and Delinquency Prevention Office
NOTICES
Meetings:
21442 Coordinating Council

Labor Department
See Labor Management Services Administration; Mine Safety and Health Administration.

Labor-Management Services Administration
RULES
21499 Airline employee protection program; effective date notice withdrawn

Land Management Bureau
NOTICES
Survey plat filings:
21440, 21441 California (3 documents)

Legal Services Corporation
RULES
21327 Definitions
21328 Private attorney involvement
21331 Recipient fund balances

Mine Safety and Health Administration
PROPOSED RULES
Metal and nonmetal mine safety:
21494 Machinery and equipment and ground control safety standards; hearings

Minerals Management Service
NOTICES
Meetings:
21441 Outer Continental Shelf Advisory Board (2 documents)

National Aeronautics and Space Administration
NOTICES
Meetings:
21443 Space and Earth Science Advisory Committee

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
21386 Atlantic groundfish; hearing

Nuclear Regulatory Commission
RULES
21293 License fee schedules; revision
NOTICES
Meetings:
21444, 21445 Reactor Safeguards Advisory Committee (3 documents)
21443 Reactor Safeguards Advisory Committee; proposed schedule

Patent and Trademark Office
NOTICES
21453 Trademarks; articles manufactured aboard; importation; inquiry

Personnel Management Office
RULES
21503 Reduction in force (RIF), performance management, Fair Labor Standards Act

Postal Service
RULES
21322 Freedom of Information Act; fee waiver policy for providing customer addresses to Government agencies

Reclamation Bureau
NOTICES
Floodplain and wetlands protection; environmental review determinations; availability, etc.:
21441 San Juan Pueblo Diversion Project, N. Mex.

Securities and Exchange Commission
NOTICES
Hearings, etc.:
21449 Middle South Utilities, Inc.
21449 New England Electric System et al.
21450 New England Energy Inc.
21450 Prudential Insurance Co. of America
21451 U.S. Air Group, Inc.
21446 Vishay Intertechnology, Inc.
Self-regulatory organizations; proposed rule changes:
21451 Depository Trust Co.
21452 National Association of Securities Dealers, Inc.
21447 New York Stock Exchange, Inc.

Small Business Administration
NOTICES
Meetings:
21452 Presidential Advisory Committee on Women's Business Ownership

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
21389 Dutchman Creek Watershed, N.C.
21389 Harrison Road Ottawa County Roadsides Critical Area Treatment RC&D Measure, Okla.
21389 Northeast Ottawa County Roadsides Critical Area Treatment RC&D Measure, Okla.

Textile Agreements Implementation Committee
NOTICES
Textile consultation; review of trade:
21396 Hong Kong; withdrawn

Trade Representative, Office of United States
NOTICES
Meetings:
21446 Services Policy Advisory Committee
21446 Trade Negotiations Advisory Committee

Transportation Department
See Federal Aviation Administration; Federal Highway Administration.

Treasury Department
See also Customs Service; Foreign Assets Control Office; Internal Revenue Service.
NOTICES
21453 Agency information collection activities under OMB review

---

Separate Parts in This Issue

Part II
21462 Environmental Protection Agency

Part III
21472 Department of Energy

Part IV
21476 Department of Housing and Urban Development, Office of the Assistant Secretary for Public Housing

Part V
21494 Department of Labor, Mine Safety and Health Administration

Part VI
21499 Department of Labor

Part VII
21503 Office of Personnel Management

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

CFR PARTS AFFECTED IN THIS ISSUE

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

5 CFR
300 21503
335 21503
351 21503
430 21503
431 21503
451 21503
531 21503
532 21503
540 21503
551 21503
771 21503

7 CFR
1 21293

9 CFR
Proposed Rules:
113 21339

10 CFR
170 21293
840 21472

14 CFR
39 (2 documents) 21309, 21310
71 (3 documents) 21311, 21312
Proposed Rules:
39 (4 documents) 21345–21349

18 CFR
385 21312

21 CFR
510 21317
610 21317
Proposed Rules:
331 21350
332 21350

23 CFR
Proposed Rules:
660 21350

24 CFR
203 21317
213 21317
220 21317
221 21317
232 21317
234 21317
235 (2 documents) 21317
240 21317
904 21476
905 21476
913 21476
960 21476
965 21476

26 CFR
Proposed Rules:
20 21350
25 21356

29 CFR
220 21499

30 CFR
Proposed Rules:
55 21494
56 21494
57 21494
58 21494

31 CFR
535 21321

39 CFR
265 21322

40 CFR
Proposed Rules:
145 21370
765 21371

42 CFR
Proposed Rules:
405 21375

45 CFR
1600 21327
1614 21328
1628 21331

47 CFR
63 21333
67 21335
73 (2 documents) 21336, 21337
Proposed Rules:
31 (2 documents) 21375–21377
33 21377
42 21377
43 21377

50 CFR
Proposed Rules:
17 21383
651 21386

Rules and Regulations

Federal Register
Vol. 49, No. 99
Monday, May 21, 1984

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

[Docket No.84-323]

Rules of Practice Governing Proceedings Under Certain Acts; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; correction.

SUMMARY: This document corrects the authority citation where it appears in Subpart H of 7 CFR Part 1 "Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary of Agriculture Under Various Statutes".

EFFECTIVE DATE: May 21, 1984.

FOR FURTHER INFORMATION CONTACT: Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-5533.

The authority citation for Subpart H of 7 CFR Part 1 and § 1.131 is corrected to read as follows:

1. In 7 CFR Part 1, the authority citation for Subpart H reading "16 U.S.C. 3406" is corrected to read "16 U.S.C. 3373".

2. In § 1.131, the statutory provision listed as "Lacey Act Amendments of 1981, section 4 (a) and (b) (16 U.S.C. 3403 (a) and (b))" is corrected to read "Lacey Act Amendments of 1981, section 4 (a) and (b) (16 U.S.C. 3373 (a) and (b))."

Done at Washington, D.C., this 15th day of May, 1984.

C. W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 84-13554 Filed 5-18-84; 8:45 am]
BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 170

Revision of License Fee Schedule

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations that include the schedule of fees for inspections and for the review of applications and requests for permits, licenses, approvals, amendments, renewals, and special projects. The revised schedule of fees will more completely recover NRC costs incurred in providing services to identifiable recipients, including both materials and facility applicants and licensees. The revision is based on the costs of providing services in accordance with the Commission's license fee guidelines published on May 2, 1977; subsequent evaluation of costs incurred by the NRC for inspection and review activities; and evaluation of public comments on the proposed revision of the regulations on fees.

EFFECTIVE DATE: June 18, 1984.

FOR FURTHER INFORMATION CONTACT: William O. Miller, License Fee Management Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone: (301) 492-7225.

SUPPLEMENTARY INFORMATION: The Commission published a notice of proposed rulemaking on November 22, 1982 (47 FR 52454-52466), which was corrected on December 17, 1982 (47 FR 56505-56506), revising its fee regulations and schedule of fees for review of applications and requests for permits, licenses, amendments, renewals, approvals, special projects, reactor operator testing and routine and non-routine inspections. The proposed schedule would have removed the ceiling or maximum limits on fees for review of applications or requests for reactor construction permits, licenses, amendments, approvals, and topical reports; inspection of reactor facilities; applications or requests for uranium enrichment plants; major materials fuel cycle activities, including applications and licenses for 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form, receipt and storage of spent fuel, possession and use of source material in recovery operations; applications for licenses for receipt of waste byproduct material, souce material or special nuclear material from other persons for the purpose of commercial disposal by burial by the licensee and licenses authorizing contigency storage of low-level radioactive waste at the site of nuclear power reactors; applications for licenses authorizing the use of byproduct material for field flooding tracer studies; applications or requests for approval of spent fuel casks and packages; and applications or requests for review of standardized spent fuel facilities or special projects.

The notice of proposed rulemaking invited interested persons to submit written comments for consideration in connection with the proposed amendments on or before January 18, 1983. Upon request, the Commission extended the comment period to February 8, 1983.

The Commission placed in its Public Document Room at 1717 H Street, NW., Washington, D.C., data used in developed the proposed rule and revised schedule of fees. In addition, the Commission's staff has been available to answer any questions concerning the notice of proposed rulemaking.

The November 22, 1982 notice of proposed rulemaking set forth the Commission's guidelines for fees under Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (now codified at 31 U.S.C. 9701). These guidelines took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in its decision of *National Cable Television Association, Inc.* v. *United States*, 415 U.S. 336 (1974) and, *Federal Power Commission* v. *New England Power Company*, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered

to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the Independent Offices Appropriation Act of 1952 was further clarified on December 16, 1976, by four decisions of the Court of Appeals for the District of Columbia. *National Cable Television Association* v. *Federal Communications Commission*, 554 F. 2d 1094 (1976); *National Association of Broadcaster* v. *Federal Communications Commission*, 554 F. 2d 1118 (1976); *Electronic Industries Association* v. *Federal Communication Commission*, 554 F. 2d 1109 (1976); and *Capital Cities Commission, Inc.* v. *Federal Communications Commission*, 554 F. 2d 1135 (1976). These decisions of the Courts enabled the Commission to develop fee guidelines that are still used for cost recovery and fee development purposes.

The Commission's fee guidelines were upheld on August 24, 1979, when the U.S. Court of Appeals for the Fifth Circuit held in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission*, 601 F. 2d 223 (1979), cert. denied 44 U.S. 1102 (1980), that (1) the Nuclear Regulatory Commission had the authority to recover the full cost of providing services to identifiable beneficiaries; (2) the NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations; (3) the NRC could charge for costs incurred in conducting environmental reviews required by NEPA; (4) the NRC properly included in the fee schedule the costs of uncontested hearings and of administrative and technical support services; (5) the NRC could assess a fee for renewing a licence to operate a low-level radioactive waste burial site; and (6) the NRC's fees were not arbitrary or capricious.

On July 19, 1982, the U.S. Court of Appeals for the First Circuit decided the *New England Power* v. *NRC*, 683 F. 2nd 12 (1st Cir. 1982) concerning the assessment of fees for withdrawn applications. The Court held that applicants may not be billed for the cost of reviewing withdrawn applications for which the request for withdrawal was filed with the Commission before November 6, 1981, the effective date of the Commission's interpretative rule concerning this matter. The Court further stated that "review work performed by the NRC at the request of an applicant constitutes a sufficiently substantial and particulalrized benefit to the applicant to justify the imposition of fees under the court's reading of the IOAA."

The NRC staff examined the Fiscal Year 1981 costs of providing licensing review and inspection services and determined that the Commission's March 23, 1978 schedule of fees in 10 CFR Part 170 was not adequate to cover the costs of providing the service nor did they meet the intent of Congress as set forth in Title V of the Independent Offices Appropriation Act of 1952. Title V of the Independent Offices Appropriation Act was formerly codified at 31 U.S.C. 483a. With the enactment of Title 31, United States Code, into positive law, Pub. L. 97–258, September 13, 1982, 96 Stat. 1051, the law is now found at 31 U.S.C. 9701, and reads as follows:

Sec. 9701. Fees and charges for Government services and things of value

(a) It is the sense of Congress that each service or thing of value provided by an agency (except a mixed-ownership Government corporation) to a person (except a person on official business of the United States Government) is to be self-sustaining to the extent possible.

(b) The head of each agency (except a mixed-ownership Government corporation) may prescribe regulations establishing the charge for a service or thing of value provided by the agency. Regulations prescribed by the heads of executive agencies are subject to policies prescribed by the President and shall be as uniform as practicable. Each charge shall be—

(1) Fair; and

(2) Based on—

(A) The cost to the Government;

(B) The value of the service or thing to the recipient;

(C) Public policy or interest served; and

(D) Other relevant facts.

(c) This section does not affect a law of the United States—

(1) Prohibiting the determination and collection of charges and the disposition of those charges; and

(2) Prescribing bases for determining charges, but a charge may be determined under this section consistent with the prescribed bases.

(Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 1051)

Commission guidelines (47 FR 52454) were used as the basis for determining whether or not a particular licensing or inspection service rendered by the NRC may be subject to cost recovery under this rule and what the fee may be. The November 22, 1982 notice of proposed rule making and the schedule of fees contained therein contemplated full cost recovery where it was determined to be fair and equitable.

In developing the revised schedule, the staff analyzed the functions performed by each NRC office to determine which activities, if any, provided special benefits to applicants or holders of licenses, permits and approvals. After each service was properly analyzed and categorized, a yearly professional staff rate was developed for the Offices of Nuclear Reactor Regulation (NRR), Nuclear Material Safety and Safeguards (NMSS), and Inspection and Enforcement (IE), and for the Advisory Committee on Reactor Safeguards (ACRS), Atomic Safety and Licensing Board Panel (ASLBP), and Atomic Safety and Licensing Appeal Panel (ASLAP). The rates in § 170.20 were developed using (1) each office's costs of personnel compensation (salaries), personnel benefits, administrative support and travel, (2) the number of professional employees working in each program office (excluding administrative, supervisory and management direction employees), and (3) the overhead support costs based on an analysis of Program Direction and Administration and Program Technical Support provided to NRR, NMSS, IE, ACRS, ASLBP,and ASLAP.

After the analysis, the staff effort and other costs of the Offices of the Secretary (SECY), Controller (CON), and Management and Program Analysis (MPA) now Resource Management, Administration (ADM), Executive Legal Director (ELD), and Executive Director for Operations (EDO) were allocated as overhead support to other NRC offices. These costs of SECY, ELD and EDO were allocated on a percentage basis while the costs of ADM and CON were distributed to all NRC offices on a pro rata basis based on staff complement in each office.

Analysis of Comments Received

One hundred twenty-nine letters were received commenting on the proposed revision to Part 170. Fifty-three letters were from persons concerned with Part 50 facilities and 76 commented on fees for materials licenses. Fifty-two of the 76 letters commenting on materials licenses were concerned with medical programs, eight were concerned with uranium mining or milling interests, and the remaining 16 were concerned with other types of industrial applications. In addition to the 129 letters of comment, 13 letters of inquiry were received from Congressmen. Copies of all comment letters are available for public inspection or copying for a fee at the NRC's Public Document Room, 1717 H Street, NW., Washington, D.C.

The comments ranged from strong opposition to all fees to the argument that the proposed fees were inadequate to recover the NRC's costs of all work

necessary to protect the public health and safety and environment.

Most comments took issue with the proposed amendment in six areas:

(1) The proposed elimination of ceilings on fees; (2) retroactive application of the proposed amendments; (3) charges for certain kinds of exemptions or extensions of time required to comply with a rule; (4) the need for NRC management control over the review and inspection process; (5) charges for non-routine inspections; and (6) proposed fees for medical program licenses.

Elimination of Ceilings

Comments on the proposed elimination of maximum fees asserted this action was inequitable and did not take account of staff inefficiencies and variations in the work product of personnel that exists in the licensing process. Commenters asserted that these variations in staff efficiencies are beyond the control of the applicant and that the applicants should not have to pay for perceived staff deficiencies and inefficiencies in the licensing process.

In legal terms, it is clear that the Commission may charge the full cost of processing an application for which the applicant receives a special benefit not available to the public at large. This is clearly one of the conclusions to be drawn from *Mississippi Power and Light* v. *U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979) where the court approved the fee rule and schedule published in February, 1978. That fee schedule included full cost recovery for several kinds of licensing activities as well as Commission reviews that fell within the category of special projects. In upholding the fee schedule, the court explicitly emphasized the legal authority of the Commission to recover the full cost of providing services to identifiable beneficiaries. *See id.* at 232 and 233.

Although there is not legal objection to full cost recovery, in response to comments received, the final rule has been amended to retain a predetermined ceiling or maximum fee for a majority of applications and licenses where the fees are computed on an individual basis using the professional staff hours and the professional staff rates contained in § 170.20 and contractual services costs expended for the case. The ceilings represent, in most instances, the top of the cost ranges shown in the proposed rule for the various fee categories.

For power reactor operating licenses, McGuire 1 review costs were used as the ceiling for the operating license fee since it was the only full or 100% power operating license issued in FY 1981 for a first unit at a site. The McGuire review did not encompass any unusual review problems and could be considered a normative operating license review. 46,200 professional staff hours were required for the McGuire 1 review and when these hours are multiplied by the appropriate FY 1981 staff rates and the costs of contractual support services are added, the cost is approximately $3.1 million for the operating license.

There is no firm data base that may be used to establish a ceiling for reactor construction permits since the NRC has not completed a construction permit review since January 1979. Only the Hanford/Skagit and Clinch River applications are under review and indications are that the Hanford/Skagit application will be withdrawn. The Clinch River Breeder application is unique and incomplete. At this point, costs incurred in the ongoing review of Skagit 1 are approximately $3 million. Accordingly, no ceiling has been established for construction permit reviews for power reactors.

The NRC has no applications on file for research or test reactor facility construction permits or operating licenses and none are anticipated. Consequently, no ceilings have been established.

On December 17, 1982, the NRC issued a manufacturing license to Offshore Power Systems for eight floating nuclear plants at the preliminary design stage. This is the only reactor facility manufacturing license that the Commission has issued. When the FY 1981 professional staff rates are applied to the professional hours required to complete the review of the preliminary design plus the contractual services costs expended, the cost for the review is approximately $3.2 million. Accordingly, based upon actual experience for this category, the new ceiling for the review of a manufacturing license preliminary design is approximately $3.2 million. The Commission has had no data base to use in developing a ceiling for review of a final design for manufactured reactor facilities.

Ceilings have been established for the review of Part 50 power reactor applications for license amendments and other approvals. The March 1978 rule separated applications for license amendments and other approvals into six classes based on the complexity of the review. In developing a ceiling for this final rule, the Commission examined approximately 200 completed power reactor amendment actions and applied the FY 1981 professional rates (§ 170.20) to the professional hours expended for each of these reviews. The review costs ranged from a few hundred dollars for an administrative type amendment to $164,600 for an amendment authorizing repair of a steam generator. The 1981 amendment authorizing steam generator repair required 2,609 professional hours and $2,800 in contractual support services costs to complete the review. This application was used as the ceiling for power reactor license amendment and other approval fees. A ceiling of $42,100 has been established for test and research reactor facility license amendments based on the upper limit of cost shown in the November 22, 1982 notice.

The Commission has not changed the ceiling of $20,000 on charges for the reviews of topical reports. These reports are normally reviewed independently of any specific application for a construction permit or license and should benefit the NRC licensing process and the utility by reducing the time required to review certain applications. The Commission believes that the upper limit of $20,000 for a topical report review is fair and equitable and should not discourage the submission of such reports. The ceiling applies to all persons filing topical reports for review and is consistent with Commission license fee guidelines as set forth in the Commission's November 22, 1982 notice of proposed rulemaking.

A limit of $147,600 has been established as the ceiling that may be assessed a utility for Part 55 examinations and associated activities conducted for each of its plant site(s) during any one-year period. This ceiling is based on workload data developed by the Office of Nuclear Reactor Regulation (ONRR) which shows that on the average 1.32 professional staff years are expended per site each year to conduct requalification examinations, replacement examinations and reexaminations for reactor operators. Based on the FY 1981 professional staff rates, the NRC's average cost for this service would be $147,600 and this figure has been used as the ceiling which may be assessed during any one-year period per site.

Ceilings have been retained for review of applications for preliminary and final standardized reference design approvals filed by vendors and architect-engineers for reactor facilities. No preliminary design approvals (PDAs) or final design approvals (FDAs) were issued in FY 1981 and the only approval issued in recent years was the FDA for GESSAR II issued July 27, 1983, to General Electric. The review of GESSAR II required 15,176 professional staff-

hours and $468,493 in contractual services costs. Since GESSAR II is the only recent standardized reference design approval completed, it was used as the base to establish a ceiling for review of standardized reference designs filed by vendors or architect-engineers. The ceiling is approximately $1.4 million and was computed by using the professional staff-hours expended for the review multiplied by the staff rates in § 170.20 and the costs of contractual services. The NRC has no recent data to use in developing ceilings for amendments and renewals of preliminary and final design approvals.

Ceilings have been retained on fees for routine inspection of nuclear power reactor facilities (Category 170.21A); test, research and critical facilities (170.21C) and all categories of materials licenses except special nuclear material license categories 170.32 1E, 1F and 1I; source material license category 170.32 2E; and waste disposal license category 170.32 4A. The November 22, 1982 notice of proposed rulemaking would have eliminated ceilings on inspection fees for all Part 50 licenses, fuel cycle licenses, licenses authorizing receipt and burial of radioactive waste and licenses authorizing contingency storage of low-level radioactive waste at nuclear power reactor sites.

The revised ceiling on fees for routine inspections of an operating nuclear power reactor is $300,000, and is based on actual FY 1981 inspection experience. This ceiling is a combined maximum that may be charged for routine safety and safeguards inspections commenced on or after the effective date of this rule and represents the maximum amount that may be charged for each licensed reactor unit during a one-year period. No ceilings have been developed for special nuclear material license categories 170.32 1E, 1F and 1I; source material license category 170.32 2E; and waste disposal license category 170.32 4A because of the limited inspection activity and inspection cost data four these licenses. NRC records show only four category 1E licenses, two 1F licenses, seven 1I licenses, seven 2E licenses and two 4A licenses.

There are no ceilings in the final rule for non-routine or reactive inspections, except for small materials license programs in fee categories 170.32 1J, 1K, 2D, 2F, 2G, 3A–P and 4B through 8A. Ceilings were not established for these licenses because the level of inspection effort required to deal with incidents, or allegations, or required for followup on program deficiencies or implementation of specified safety requirements is determined on the basis of the safety significance and threat to the public health and safety. Fees for non-routine inspections where no ceilings are shown in the rule will be based on full costs.

Ceilings have been retained for review of applications for renewal and amendment of special nuclear material license categories 170.31 1A, 1B, 1D, 1E, 1F and 1G. Fees for new special nuclear material licenses in categories 170.31 1A–1G, 1H1 and 1I will be based on full cost without ceilings because the NRC has no recent data to use in developing ceilings and no new applications are anticipated for these categories. Ceilings are retained for source material license categories 170.31 2A and 2B for new licenses, amendments and renewals and for categories 170.31 2C and 2D for license renewal and amendment only. Ceilings are retained for waste disposal license category 4A for new licenses, renewal and amendment. Ceilings have been retained for transportation certificates of compliance categories 170.31 10A–10E. These ceilings are based on revised estimates of review effort provided by the licensing staff. In instances where the licensing staff estimates exceed the top of the cost range shown in Table 10 of the November 22, 1982 notice, the Commission has decided the upper range of cost shown in Table 10 will be retained as the ceiling.

The ceilings set forth in this final rule represent the maximum an applicant or licensee will pay for NRC services; but in no event will the fee assessed exceed the cost of reviewing an application or conducting an inspection.

Retroactive Application of Fees

Comments regarding "retroactive" application of fees were directed primarily to the question of applying full cost recovery to applications already on file and being processed at the time this rule change would become effective. Since the final rule would now retain ceilings for most major licenses, and the hourly rates established by this rule will apply only to work that occurs after the effective date of the final rule, this particular aspect of the question of "retroactive" application of the amendments is no longer germane. However, the Commission believes that the charge of "retroactive" application of the rule, implied by the commenters to be illegal, should be addressed in detail.

The Commission fails to see an impermissible retroactive application of the rule. For full license fees that are payable in advance on filing of an application, the fees are for future review and there is no retroactive application involved; most materials license applications would be in this grouping. For reactor construction permits and operating licenses, and for some major fuel cycle materials licenses, an initial application fee is charged with the balance of the fee to be paid in installments on a full cost basis as the work progresses until the full fee is reached. In such cases, the hourly rates established by this final rule will apply only to work that takes place on or after the effective date of the final rule. The hourly rates used for the 1978 rule (43 FR 7210) will be applied to work completed prior to the effective date of the final rule. Billing and payment will be for work in progress, and again no element of retroactivity is present.

For construction permit and operating license applications filed before the efective date of this final rule, there is no change in the Commission's position respecting the applicability of the fee schedule. Just as with the fee schedule published February 21, 1978 (43 FR 7210), the Commission's position is that the fee due is that fee in the schedule legally in effect in the codified regulations at the time the full fee becomes payable. This position was expressly stated in the Statement of Considerations to the 1978 rule. *See* 43 FR 7210, 7215. In approving in total the 1978 fee rule, the court in *Mississippi Power and Light* v. *U.S. Nuclear Regulatory Commission, supra,* accepted and ratified this position. The Commission's position was also ratified in *New England Power* v. *U.S. Nuclear Regulatory Commission,* 683 F. 2d 12 (1st Cir. 1982), where the court allowed a new rule charging a fee for withdrawn applications to be applied to applications withdrawn after the effective date of the rule (although not before), regardless of when the application was filed. In this case, it was clear that while no fee was chargeable until the new rule was effective, this fee would be chargeable to all applications withdrawn after its effective date. Thus, for both license fees and fees for withdrawn applications, the controlling cases establish that the fee to be charged is the fee in the rule in effect at the time the license is issued or the application withdrawn. The right of the Government to collect the full fee and the obligation of the applicant to pay are finally fixed at that time, and not before.

The concept of impermissible retroactivity applies only to those cases where a new law or rule is applied to transactions completed in the past, prior to the new rule, where the rights and obligations of the parties already have been fixed. *See Sturges* v. *Carter,* 114 U.S. 511, 519 (1884); *Reynolds* v. *United*

States, 292 U.S. 443 (1934). It is clear from the action of the courts in both *Mississippi Power and Light* v. *U.S. Nuclear Regulatory Commission, supra*, and *New England Power Co.* v. *U.S. Nuclear Regulatory Commission, supra*, that applicants have no antecedent right in any given fee (or absence of a fee) that was not finally due and levied on the applicant before the effective date of a rule enlarging a fee or imposing a new fee.

Commenters, however, cited a few cases to support their characterization of the Commission's proposed rule revision as impermissibly "retroactive." Among those cases cited, *Securities and Exchange Commission* v. *Chenery Corp.*, 332 U.S. (1947), in upholding an alleged "retroactive" administrative order of the SEC, appears to support the Commission's position more than commenters' position. Two other cases cited by commenters, *N.L.R.B.* v. *Majestic Weaving Co.*, 335 F. 2d 854 (2nd Cir. 1966), and *Retail Wholesale and Department Store* v. *N.L.R.B.*, 466 F. 2d 380 (D.C. Cir. 1972), are concerned with a very specialized national labor law case of applying a newly announced rule of decision in an adjudication to other adjudications in which the conduct of the parties predated the new rule and which relied upon a prior rule of decision. As the discussion in *Retail* indicates, even in these cases the answer to the question of permissible or impermissible retroactive application seems to lie in the discretion of the court. *See also, H. and F. Binch Co. Plant of Native Laces, etc.* v. *N.L.R.B.*, 456 F. 2d 357 (2nd Cir. 1972).

One commenter also took issue, on the basis of retroactive application of the fee schedule, with the removal of the ceiling for review of topical reports submitted for review prior to the effective date of these amendments. Two cases cited by this commenter, *Saint Francis Memorial Hospital* v. *Weinberger*, 413 F. Supp. 323 (N.D. Cal. 1976) and *Phillips Petroleum Co.* v. *Department of Energy*, 449 F. Supp. 760 (D. Del. 1978), both illustrate an application of the general principle that a rule cannot be applied retroactively to established antecedent rights in completed transactions. In the first case, an improperly issued rule was applied retroactively by the agency to deny a hospital its medicaid reimbursement for construction interest which it had paid and expensed rather than capitalized as required by the improper rule. In the second case, a rule was applied retroactively by the Department of Energy to deny to an oil refiner passed through, nonproduct cost increases previously allowed under DOE staff practices. These cases are consistent with *New England Power Co.* v. *U.S. Nuclear Regulatory Commission, supra*, where the court disallowed retroactive application of the new rule to applications withdrawn before its effective date; that is, the Commission could not change antecedent financial rights in fully completed transactions.

The Commission's position is that observations with respect to the asserted retroactive application of the new schedule to major licenses would also apply to increasing the ceiling for topical reports were the Commission to do so, however, in view of the fact that the Commission has not changed the ceiling for topical reports there is no need to further address the question. The action would not be retroactive because, under the Commission's rules as ratified by the courts, an applicant has no established antecedent right in the full amount of a fee until there is a fixed obligation to pay the full amount.

Fees for Requests for Exemptions or Extensions

Some reactor licensees expressed concern with the proposal to charge fees for requests for exemption or extensions of time to comply with Commission regulations. The rule published for comment proposed to change the rule on fees for requests for exemptions and extensions of time in two areas. First, the Commission's discretion to waive fees in certain instances would no longer be explicitly stated as done in footnote 2 to 10 CFR 170.22, and applicants and licensees should not depend upon an automatic exercise of Commission discretion in waiving fees. This is reflected in the revised wording of footnote 1 to the new 10 CFR 170.21. Discretionary exemption authority still exists, however, in the unchanged 10 CFR 170.11(b)(1). This change is primarily one of procedure, not substance. Further, amendments resulting directly from orders issued pursuant to 10 CFR 2.204 still remain exempt from fees.

Second, the proposed change would add exemptions from regulations to the list of Commission actions on applications subject to fees, an area not covered in the 1978 rule. In opposing this change, a few commenters cited *Connecticut Light and Power Co.* v. *NRC*, 673 F. 2d 525 (D.C. Cir. 1982) in support of their contention that fees should not be charged for exemptions from regulations. In this case the court, in upholding the NRC rule, stressed that the rule contained built-in flexibility in an exemption procedure under which licensees could show that an alternative to a prescribed requirement provided equivalent safety protection. Because the exemption feature of that rule was intended to be at the option of the licensee (i.e., the licensee could either comply with the rule as written or request an exemption that served, among other things, to allow more time for compliance), a licensee applying for an exemption did so for its own benefit. The review of the exemption request and the issuance of an approval is a service to the applicant that can be legitimately charged for when covered by the rule. It is the view of the Commission that the case is not persuasive on the point of not charging for requested exemptions from regulations.

In issuing its 1978 rule, the Commission exempted from fees certain applications for Commission approvals that had never been subject to fees and which were filed prior to the effective date of the rule. This was done on the grounds of fairness and equity because some applicants had already received approvals on a fee-free basis, while others in the same class had not and, were it not for the Commission's discretionary exemption, would have been subject to payment of a fee (See 43 FR 7210, February 21, 1978).

The final rule will allow the Commission to exercise its discretion in the same manner with respect to those exemption requests not previously subject to fees which were filed with the Commission prior to the effective date of this amendment to 10 CFR Part 170. This would primarily include exemption requests filed under the fire protection rule (10 CFR 50.48) and under 10 CFR 30.11, 40.14, 50.12, 70.14, and 73.5. Request for exemptions filed after the effective date of this amendment will be subject to fees.

Management Oversight

There were several comments that without ceilings on fees NRC management may not exercise adequate control over the review and inspection process to control costs and there would be little or no incentive to conclude license reviews and inspections quickly and use resources efficiently. It was suggested that there may be excessive use of contractor services in licensing and inspection.

The NRC's principal concern under the Atomic Energy Act of 1954, as amended, is public health and safety. While the Commission is committed to the expeditious review of each application and uses all reasonable means of keeping costs as low as feasible, its responsibility for health and

safety and environmental protection cannot be compromised. The Commission's licensing and inspection budgets are based on the need to meet the agency's statutory responsibilities. The Commission exercises management controls to provide that its regulatory responsibilities are efficiently and effectively discharged.

To ensure that applications are processed in a timely and cost-effective manner, each NRC Office in the licensing process develops and works in accordance with an approved operating plan. Upon receipt of applications, schedules are established and resources allocated for each review based on the amount of time and professional staff effort determined necessary to complete the particular type of application or activity. Since the total assigned workload must be completed with limited resources, management is continuously challenged and, indeed, evaluated on its ability to balance workload and assigned resources in the most efficient and effective manner. Similarly, management is expected to adhere to established review schedules and changes are approved only with suitable justification. The staff's performance in meeting schedules is monitored continuously and critically by NRC staff management, the Commission, Congressional oversight committees and by the applicants and licensees.

Commenters suggested that there are factors which affect the cost of reviews and inspections that do not increase value to the recipient of the service; such factors as meetings attended by staff and reassignment of personnel to other projects were most often cited. Management exercises control to ensure that only those staff members who have a need-to-know or something to contribute participate in meetings. In certain instances, reviews may be delayed because project personnel are assigned to a higher priority task. This may occur for a variety of reasons, including applicant/licensee late responses to NRC requests for additional information. In any event, the agency must maintain flexibility in order to balance staff resources and workload efficiently and effectively.

The staff routinely prepares and maintains updated workload forecasts and resource allocation plans to enable management to make early determinations as to the potential need for outside contract assistance. In most instances, where outside assistance is required, the agency will utilize the service of experienced laboratories or commercial contractors.

It was suggested by the uranium milling industry that the NRC should eliminate or greatly reduce the use of outside technical consultants and use its staff with adequate management controls to review applications. Representatives also cited instances where they felt the NRC disregarded the input of consultants.

In reviewing applications, the agency uses existing staff where possible. However, it is sometimes difficult to find and retain qualified experts in all the various disciplines necessary to perform licensing reviews. Also, licensing work is sufficiently varied so that it is not always possible to justify having certain types of full-time experts on the staff to do the occasional reviews demanding their expertise. Consequently, outside technical consultants are used as needed. Thus, the employment of direct staff is not always more cost effective. As to disregarding the advice of consultants, the situation noted by the commenter resulted from experience and knowledge gained by NRC between the time that a draft Environmental Impact Statement (EIS) had been prepared using consultant input and the issuance of the final EIS. Operational difficulties at the first commercial scale mining operation required the staff to consider the site-specific hydrological characteristics in more detail; in effect, the work performed earlier by NRC consultants was overtaken by events.

To better manage contractual efforts, a Technical Assistance Program Manager is assigned to each contract and has an oversight function which includes cost and schedule control. The Program Manager is responsible for the review and approval of all contract costs that are to be included in any license fee. In the case of very large contracts, the NRC uses a full-time dedicated Technical Assistance Program Manager Group to manage, review, and oversee these contract operations.

Charges for Non-Routine Inspections

Several commenters expressed concern about the proposal to charge for non-routine (i.e., unscheduled) inspections. The commenters correctly pointed out that the Commission stated in earlier notices that for policy reasons it chose not to charge fees for non-routine inspections. For example, in the **Federal Register** notice of the current rule, the Commision stated that non-routine inspections would be excluded from fees based upon Commission policy (43 FR 7210, 7213, February 21, 1978), and that non-routine inspections are "considered to be an independent public benefit" (42 FR 22149, 22161, May 21, 1977). The commenters note that the notice does not state the basis for the change in Commission policy. Commenters also imply that it is legally inappropriate to charge a fee for non-routine inspections.

Regarding the first point, the Commission has stated two reasons for deciding to charge for non-routine inspections. Both non-routine inspections and routine inspections deal with the same fundamental issues of safety, health physics, safeguards and physical security of special nuclear materials, and protection of the environment. Since 1978, providing this service of non-routine inspections has become a significant effort for the NRC inspection staff. For these reasons, the Commission is changing its policy on non-routine inspections and accordingly finds it appropriate to recover the costs of these services.

As to the second point, it is clear that even where a service provides a public benefit, if it also provides a special benefit to the recipient of the service, fees may be charged. No allocation of benefits is necessary. *See: Electronics Industries Assoc.* v. *F.C.C.*, 544 F. 2d 1109 (D.C. Cir. 1976).

In non-routine inspections the beneficiary is clearly identified and the specific benefit falls within the Commission's judicially approved fee guidelines. The non-routine inspection is a service necessary to assist a recipient in complying with statutory obligations or obligations under the Commission's regulations as in routine inspections.

No fees will be assessed for investigations conducted by the NRC Office of Investigations. These investigations are outside the definition of inspections. In addition, non-routine inspections that result from third party allegations will not be subject to fees and in computing an inspection fee the hours of the Enforcement Staff, Office of Inspection and Enforcement, involved in the processing and issuance of a notice of violation or civil penalty would be excluded.

Medical Program Fees

The largest block of comments came from physicians, hospitals or their representatives. The majority of these comments expressed the opinion that the proposed increase is excessive and will adversely affect patients' medical costs. It was also mentioned that the Government has cut medicare and medicaid payments. The currently effective schedule of fees was based on fiscal year 1977 costs and the fee for a medical program (except teletherapy) was set at $190 for a new license; $150 for a license renewal; and $40 for an

amendment. Because licenses are issued for five-year periods, the average cost for a new license amounted to less than $40 per year. In the revised schedule, the charge for a new license would be $580, or a little more than $100 per year for all medical licenses except for a new license fee category, the broad scope research and development license issued to some major medical institutions. The license fee for the broad scope license is $1,200 for five years, or an average of $240 per year. If the full cost of license fees was passed on to patients, it would result in a relatively minor increase in cost per patient.

Other Comments

There were comments that the NRC could reduce costs of licensing uranium milling activities by eliminating the requirement for the full National Environmental Policy Act (NEPA) environmental impact statement (EIS) for each application through the use of generic environmental statements supported by experience the NRC has gained to date through the licensing and inspection of uranium mining operations. The NEPA reviews being questioned generally fit into three types: first, new uranium mills; second, renewal of uranium mill licenses; and third, *in-situ* solution mining operations. For the first type, 10 CFR Part 51 of the Commission's regulations requires that an EIS be prepared. The Commission believes these rules are consistent with NEPA and the regulations of the Council on Environmental Quality. As for the second type review, the issue may be moot. Before the issuance of the Generic Environmental Impact Statement on Uranium Milling (GEIS), NRC had committed itself to doing an EIS at the time of the license renewal for existing mills and to continue this practice until the issuance of the GEIS. When the GEIS was issued, essentially all mills had been evaluated and EIS's issued. It has been NRC policy to perform an environmental assessment at the time of license renewal to determine whether a full EIS should be prepared for the renewal. Absent any significant changes, a negative declaration is the usual result. As for the third type of application, *in-situ* mining operations, the matter is currently being considered by the Commission's legal staff to determine if there is any mandatory requirement for an EIS.

One person commented as to why the proposed fee range for review of an application for an *in-situ* mining operation is higher than the applicant's cost to prepare the application. A large part of NRC review costs are incurred in preparation of the EIS. NRC costs for preparation of the EIS are comparable to those of the Corps of Engineers, GSA, EPA and FHA, based on an August 9, 1977 GAO report to the U.S. Senate with figures updated to cover inflation.

Another factor that has a significant impact on licensing costs is the quality of the information and completeness of the application. In fact, there is a direct relationship between costs of review and the completeness and quality of an application, and this is under the control of the applicant.

Several commenters suggested that facilities and major fuel cycle applicants and licensees be billed for licensing services on a more frequent basis than at six-month intervals, e.g., on a monthly or quarterly basis, or alternatively to continue the present procedure of billing when the license or permit is issued. No one billing frequency is satisfactory to all applicants and licensees. Consequently, the billing procedures in this final rule are the same as the procedures described in the proposed rule. Applicants will be billed for review and licensing costs at six-month intervals as the review progresses or when review of the application is completed, whichever is earlier, for those applications where fees are based on full costs. Licensees will be billed at the end of each calendar quarter for completed inspections where fees are based on full costs.

It was suggested that elimination of the present Commission policy whereby payment of standard reference design (nuclear steam supply system or balance of plant) review cost are deferred until the design is referenced in a utility application may serve as a disincentive to standardization of the nuclear industry. Prior to March 1978, the NRC recovered none of these costs. The 1978 rule contained a deferred payment plan where the fee would be collected as the design is referenced in an application filed by a utility. The fee would be paid in five installments as the first five units were referenced. Since 1978, the Commission has recovered none of its costs incurred in review of preliminary and final designs except for application fees. The staff expects that the final design approval for CESSAR–80 will be issued within the next several weeks, and at that time the Commission will recover a portion of its review costs. Under the Independent Offices Appropriation Act of 1952, the Commission has the responsibility to recover its costs of providing special benefits to identifiable recipients and in this instance, the services are rendered at the request of the vendor or architect-engineer.

One person commented that the costs of Part 55 reactor operator examinations should not be charged to the facility licensee since it is the reactor operator who receives the special benefit of the Part 55 license. Part 50 requires that applicants for reactor operating licenses have qualified reactor operators when the licenses are issued and subsequently to have approved requalification programs. The NRC must approve the licensee's initial program for qualifying reactor operators and its requalification/replacement programs. Accordingly, it is the utility which applies for certification and consequently is the beneficiary of the Part 55 licensing action.

Several persons commented that fees should be eliminated for amendments issued for the convenience of the Commission and where amendments are submitted solely to comply with changes in Commission rules and regulations. Fees are not imposed for amendments issued solely for the convenience of the Commission and for which there is no request or application.

On the other hand, applications submitted as a result of Commission rules, regulations, or requests for license amendments that are necessary to protect the public health and safety and environment are subject to fees.

One person said that licensees should not be penalized by fees for requesting an amendment which would exempt them or provide relief from a general Commission rule that may not be applicable to a particular type of facility. If a rule is not applicable to a particular type of facility there is no need to request relief from it. If a request for clarification of the rule's applicability is presented, such a request for clarification would not require a fee.

It was suggested that fees for small materials licensed programs should be based on full cost so that applicants filing well-prepared and complete applications would pay only their full costs. In the final rule the Commission has elected to continue to set fees for these licenses by dividing them into several fee categories based on the type of material, use, complexity of the review, and licensing experience. The alternative of imposing full cost for each review and inspection would impose a significant administrative burden and expense upon the NRC since more than 8,000 individual fee determinations would be required each year. The fee assessed for each category of small Part 30, 40 and 70 programs would continue

to be based on the average cost of providing the service to the recipients.

Several commenters suggested that applicants/licensees be provided with advance estimates of costs for specific applications. It is neither feasible nor practical to anticipate in advance the nature and extent of any problems which may develop during the review of a complex application. Similarly, it is not possible to predict the responsiveness of an applicants/licensee to a request for information. In most instances, however, ceilings have been established for licensing actions and routine inspections based on historical data. In those cases where it is not practical to develop ceilings due to limited experience, an estimate of costs could be made available based on a preliminary review of the application.

Several commenters expressed the idea that applicants/licensees should be able to audit NRC costs. Staff hours used in the review of an application/request are recorded against a docket or other control number assigned to the request. Likewise, inspection effort including preparation time, time on site, and documentation time are charged to an inspection report and recorded. Thus, where fees are to be based on full cost, staff time will be reviewed on a case-by-case basis. Any contractual costs will also be charged against a docket or control number. Therefore, a detailed statement of costs can be provided to an applicant/licensee upon request. Where questions arise on a particular fee, the NRC is prepared to review the disputed charge with the applicant or licensee representative.

Since 1978, the NRC has used professional staff hours and contractual services costs data to bill construction permit, operating license and other major fuel cycle applicants for licensing services. This final rule will also require full cost recovery for inspection of these licensees and for license amendments for facilities up to a specified ceiling or maximum limit.

Summary of Changes Incorporated in Final Rule

1. In most instances, except for non-routine inspections, where fees are based on professional staff hours and contractual services costs expended for the review, a ceiling or maximum has been established for each fee category.

2. Investigations conducted by the Office of Investigations will not be subject to fees.

3. Non-routine inspections that result from third-party allegations will not be subject to fees. In computing an inspection fee the time involved by the Enforcement staff, Office of Inspection and Enforcement, in the processing and issuance of a notice of violation or civil penalty would be excluded.

4. In § 170.21, fee Category B, "Standard Reference Design Review," has been revised to add the terms "Preliminary" and "Final" for clarity. Category D in this section has been revised to be applicable only to "Manufacturing License" applicants and licensees since Category A covers those utility applicants referencing the design.

5. Footnote 2 to § 170.21 has been revised to state how the fee will be determined where an application may cover a one-step licensing process for power reactors, e.g., a combined review of the construction permit and operating license.

6. Section 170.41, "Failure by applicant or licensee to pay prescribed fees," has been revised to incorporate other Commission regulations that are pertinent to this part.

7. The scope of Part 170 has been broadened by adding a new § 170.2(n) that will apply to the requirements of 10 CFR Part 61.

8. Section 170.3 has been revised as follows:

(s) To delete the term "fuel reprocessing facilities," and the language "amendment or renewal of standardized reference design approvals" since these items are covered in § 170.21. The term "special projects" is further defined and additional examples given.

(t) To eliminate investigations conducted by the NRC Office of Investigations.

(v) Revised to emphasize that Part 55 reviews include such things as preparation, review, and grading of examinations and tests.

9. In § 170.31, fee Category 9, "Device, Product or Sealed Source Safety Evaluation," has been expanded to add two fee categories for the review of devices or sealed sources. The categories cover devices and sealed sources not intended for commercial distribution.

10. Several fee categories were re-established in §§ 170.31 and 170.32 to maintain a ceiling or maximum fee as a result of comments received.

11. In most cases, ceilings or maximum fees and billing frequencies have been re-established for the inspection fee schedule in § 170.32.

12. A new § 170.51, "Right to review and appeal of the Prescribed Fees," has been added to address concern about appeal rights relating to the assessment of fees.

Fee Collection

The NRC billing procedure is revised so that applicants pay review and licensing costs (professional staff hours and contractual) as the review progresses for those applications where fees are determined based on the full costs expended for the review. In certain instances full cost fees are limited by a ceiling. Under the revised procedure, charges will be assessed against all applicable applications currently on file with the Commission for permits, licenses, approvals, or special projects, except applications for renewals, amendments, and other required approvals for which fees have already been paid in accordance with the March 23, 1978 fee schedule and complete and acceptable special project applications filed prior to March 23, 1978. Accordingly, for those applications currently on file for which fees are determined based on full review costs, the professional staff hours expended for the review of the application up to the effective date of the revised rule will be determined and the billing for that time period will be based on the professional staff rates established for the March 23, 1978 fee schedule. On or after the effective date of this final rule, the professional rates shown in § 170.20 will be used. For those applications currently on file, the first itemized billing for NRC services based on full costs will be made when this final rule becomes effective and continue every six months thereafter as work progresses or when review of the application is completed, whichever is earlier. For applications filed on or after the effective date of this final rule, itemized billings for NRC services based on full costs will be made at six-month intervals for all costs accumulated on each application. The revised billing procedure will enable the applicant to pay for work as it progresses. Under this rule, all applications that are to be assessed fees on a full cost basis are to be accompanied by the application fee specified in this part. In no event will the fee assessed exceed the full costs of reviewing an application, and in no circumstance will the applicant pay less that the application fee specified in this rule. Fees for applications not subject to full-cost charges will remain payable at the time the applications are filed with the Commission.

For those inspection fees that are to be based on full cost (professional staff hours and contractual), the Commission will bill each licensee at the end of each calendar quarter for completed inspections that were initiated on or

after the effective date of this final rule. Inspection fees based on the average cost method of computation will continue to be due upon notification by the Commission.

Licensees currently billed once a year for inspections (Part 50 power reactor licensees, other production and utilization facility licensees, and possession-only licensees) will be billed under this final rule on a pro-rated basis for any partial year elapsed (less than 365 days) since they were last billed under the 1978 rule. That is, if 20 days have elapsed from the last billing period to the effective date of this final rule, the licensee would be billed 20/365 of the total fee as prescribed in the 1978 rule. Thereafter, those licensees will be billed quarterly based on the rates shown in 10 CFR 170.20 for inspections initiated on or after the effective date of this final rule. These pro-rated billings will be made when this final rule becomes effective. For those licensees who hold licenses that are billed on a per-inspection basis (small materials programs) if the inspection is started before the effective date of this final rule, the licensee will be billed in accordance with the fees established in the 1978 rule.

All revenues collected in fees by the NRC for providing licensing and inspection services to applicants and licensees have been and will continue to be deposited into the U.S. Treasury as miscellaneous receipts, and not used as an offset to the NRC appropriation.

Paperwork Reduction Act Statement

The final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S. 3501 et seq.).

Regulatory Flexibility Certification

In the notice of proposed rulemaking published on November 22, 1982 (47 FR 52454), the Commission determined in its Regulatory Flexibility Certification that, based upon the available information, this rule was not expected to have a significant economic impact upon a substantial number of small entities as defined by the Small Business Act or the Small Business Administration regulations issued pursuant to the Act (13 CFR Part 121). The Commission did, however, invite any licensee who consider itself to be a small entity to provide additional information by responding to four general questions on how the regulation could be modified to take into account the differing needs of small entities. In keeping with its normal practice, the Commission also mailed the proposed rule document to each of its more than 9,000 licensees.

The Commission received 129 comments on the proposed rule, representing less than two percent of all NRC licensees. Of the 129 comments, only one mentioned the Regulatory Flexibility issue directly, recommending that NRC tier its license fees to charge smaller licensees reduced fees for licensing actions.

A total of 15 comments are believed to have come from small entities based upon a review of information contained in their comments. Six of these comments were from small hospitals, six from small radiology firms, one from a small uranium milling company, and two from other small materials licensees.

Each of the small hospitals, small radiology firms and two of the remaining small entities which commented were subsequently contacted by the Commission staff in an effort to obtain further information concerning the economic impact of the revised fee rule on their operation.

The license application fee would represent an increase of approximately $500–$1000 for each of the small hospitals (defined as a hospital with fewer than 150 beds by the Small Business Administration regulations, 13 CFR 121.3–10(d)(5)). When apportioned over the five-year life of the license, this increase would result in an annual increase of $200 or as estimated by one hospital administrator; by about fifty cents for each procedure conducted by the nuclear medicine department. Most hospitals do not, however, have broad medical licenses and the annual increase in application fees would be about $80. Other fees for license amendments and inspections, while not assessed on an annual basis, would occur as needed for amendments and inspections. The increase in fees for a routine inspection, which is generally conducted every one or two years, would be $280.

The license fee revision for the small radiologist groups, most of which are associated with hospitals, are almost identical to those for the small hospitals.

The three remaining comments from various small materials licensees raised a number of concerns not specifically related to the regulatory flexibility issue posed by the Commission in its Certification Statement. A small uranium mine company commented on the lack of a specific upper limit on licensing fees which will be assessed on a full-cost basis for in-situ mining licenses. On the other hand, a small company with a gauging license and another with an irradiator license commented that their license application fees should be based on full costs rather than an average cost established for whole licensing categories. None of these licensees, when contacted, indicated that this revised fee rule would have serious economic implications for their businesses.

Based upon the number of comments received on the proposed rule, analysis of the comments, and the additional information obtained from small entities, the Commission finds, and hereby certifies, that this rule will not have signifcant economic impact upon a substantial number of small entities.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, and Sections 552 and 553 of Title 5 of the United States Code, the following amendments to Title 10, Chapter 1, Code of Federal Regulations, Part 170 are published as a document subject to codification.

List of Subjects in 10 CFR Part 170

Byproduct material, Nuclear materials, Nuclear power plants and reactors, Penalty, Source material, Special nuclear material.

PART 170—FEES FOR FACILITIES AND MATERIALS LICENSES AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for Part 170 is revised to read as follows:

Authority: 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. Section 170.2 is revised to read as follows:

§ 170.2 Scope.

Except for persons who apply for or hold the permits, licenses, or approvals exempted in § 170.11, the regulations in this part apply to a person who is—

(a) An applicant for or holder of a specific byproduct material license issued pursuant to Parts 30 and 32 through 35 of this chapter;

(b) An applicant for or holder of a specific source material license issued pursuant to Part 40 of this chapter;

(c) An applicant for or holder of a specific special nuclear material license issued pursuant to Part 70 of this chapter;

(d) An applicant for or holder of specific approval of spent fuel casks and shipping containers issued pursuant to Part 71 of this chapter;

(e) An applicant for or holder of a specific license to possess power reactor

spent fuel and other radioactive materials associated with spent fuel storage in an independent spent fuel storage installation issued pursuant to Part 72 of this chapter;

(f) An applicant for or holder of a specific approval of sealed sources and devices containing byproduct material, source material, or special nuclear material;

(g) An applicant for or holder of a production or utilization facility construction permit, operating license, or manufacturing license issued pursuant to Part 50 of this chapter;

(h) Required to have examinations and tests performed to qualify or requalify individuals as Part 55 reactor operators;

(i) Required to have routine and non-routine safety and safeguards inspections of activities licensed pursuant to the requirements of this chapter;

(j) Applying for or is holder of an approval of a standard reference design for a nuclear steam supply system of balance of plant;

(k) Applying for or already has applied for review of a facility site prior to the submission of an application for a construction permit;

(l) Applying for or already has applied for review of a standardized spent fuel facility design; or

(m) Applying for or has applied for since March 23, 1978, review of an item under the category of special projects in this chapter that the Commission completes or makes whether or not in conjunction with a license application on file or that may be filed.

(n) An applicant for or holder of a license, approval, determination, or other authorization issued by the Commission pursuant to 10 CFR Part 61.

3. In § 170.3, paragraphs (s), (t), (u), and (v) are revised and new paragraphs (y) and (z) are added to read as follows:

§ 170.3 Definitions.

* * * * *

(s) "Special Projects" means those requests submitted to the Commission for review for which fees are not otherwise specified in this chapter. Examples of special projects include, but are not limited to, topical and other report reviews, early site reviews, waste solidification facilities, route approvals for shipment of radioactive materials, and services provided to certify licensee, vendor, or other private industry personnel as instructors for Part 55 reactor operators.

(t) "Inspections" means—

(1) Routine inspections designed to evaluate the licensee's activities within the context of the licensee having primary responsibility for protection of the public and environment.

(2) Non-routine inspections in response or reaction to an incident, allegation, followup to inspection deficiencies or inspections to determine implementation of safety issues. A non-routine or reactive inspection has the same purpose as the routine inspection.

(u) "Person" as used in this part has the same meaning as found in Parts 30, 40, 50, and 70 of Title 10 of the Code of Federal Regulations.

(v) "Part 55 Reviews" as used in this Part means those services provided by the Commission to administer requalification and replacement examinations and tests for reactor operators licensed pursuant to 10 CFR Part 55 of the Commission's regulations and employed by Part 50 licensees. These services also include related items such as the preparation, review, and grading of the examinations and tests.

* * * * *

(y) "Application" means any request filed with the Commission for a permit, license, approval, exemption, certificate, other permission, or for any other service.

(z) The phrase "review is completed" as used in this Part means that the review has been brought to an end, whether by reason of issuance of a permit, license, approval, certificate, exemption, or other form of permission, or whether the application is denied, withdrawn, suspended, or action on the application is postponed by the applicant.

4. In § 170.11 paragraphs (a) (3) and (4) are revised to read as follows:

§ 170.11 Exemptions.

(a) * * *

(3) A license authorizing the receipt, ownership, possession, use, or production of byproduct material, source material, or special nuclear material incidental to the operation of a production or utilization facility licensed under Part 50 of this chapter, including a license under Part 70 of this chapter that authorizes possession and storage only of special nuclear material at the site of a nuclear reactor for use as fuel in operation of the nuclear reactor or at the site of a spent fuel processing plant for processing at the plant, except for licenses authorizing storage of low-level radioactive waste at nuclear reactor sites.

(4) A construction permit or license applied for by, or issued to, a nonprofit educational institution for a production facility or utilization facility, other than a power reactor, to be used for teaching, training, or medical purposes, except human use, or for byproduct material, source material, or special nuclear material to be used for teaching, training or medical purposes, except human use, or in connection with a facility, other than a power reactor, used for teaching, training, or medical purposes, except human use.

* * * * *

5. In § 170.12, paragraphs (b), (c), (d), (e), (f), (g), and (i) are revised to read as follows:

§ 170.12 Payment of fees.

* * * * *

(b) *License fees.* Fees for review of applications for permits, licenses, and facility standard reference design approvals are payable upon notification by the Commission. For each application on which the review charges are based on full costs and the application has been pending with the Commission for six months or longer, the first bill for accumulated costs will be sent at the time this rule becomes effective and will include all of the applicable review time and contractual costs expended. Thereafter, each applicant will be billed at six-month intervals or when the review is completed, whichever is earlier. Each bill will identify the applications and the costs related to each.

(c) *Amendment fees and other required approvals.* All applications for license amendments, other required approvals and requests for dismantling, decommissioning and termination of licensed activities that are subject to fees based on the full cost of the reviews must be accompanied by an application fee of $150. Fees for amendments, other required approvals and request for dismantling, decommissioning and terminating of licensed activities that are subject to full cost reviews are payable upon notification by the Commission. Each applicant will be billed at six-month intervals for all accumulated costs for each application the applicant has on file for review by the Commission, and each six-month period thereafter or when review is completed, whichever is earlier. Each bill will identify the applications and costs related to each. Amendment fees for materials licenses and approvals not subject to full cost reviews are payable at the time the application is filed.

(d) *Renewal fees.* All applications for renewals subject to fees based on the full cost of the review must be accompanied by an application fee of $150. Fees for renewal of permits and licenses and other required approvals subject to full cost reviews are payable upon notification by the Commission.

Each applicant will be billed at six-month intervals for all accumulated costs on each application that the applicant has on file for review by the Commission, and each six-month period thereafter or when the review is completed, whichever is earlier. Each bill will identify the applications and the costs related to each. Renewal fees for materials licenses and approvals not subject to full cost reviews are payable at the time the application is filed.

(e) *Approval fees.* Applications for spent fuel casks, packages, and shipping container approvals, spent fuel storage facility design approvals, and construction approvals for plutonium fuel processing and fabrication plants must be accompanied by an application fee of $150. Applications for facility standard reference design approvals must be accompanied by an application fee of $50,000. Fees for applications that are subject to full cost reviews are payable upon notification by the Commission. For each application for which the review charges are based on full costs and the application has been pending with the Commission for six months or longer, the first bill for accumulated costs will be sent at the time this rule becomes effective and will include all of the applicable review time and contractual costs expended. Thereafter, each applicant will be billed at six-month intervals or when the review is completed, whichever is earlier. Each bill will identify the applications and the costs related to each.

(f) *Special project fees.* All applications for special projects must be accompanied by an application fee of $150. Fees for special projects are payable upon notification by the Commssion. For each application for which the review charges are based on full costs and the application has been pending with the Commission for six months or longer the first bill for accumulated costs will be sent at the time this rule becomes effective and will include all of the applicable review time and contractual costs expended. Thereafter, each applicant will be billed at six-month intervals or when the review is completed, whichever is earlier. Each bill will identify the applications and the costs related to each. For certification of a licensee, vendor, or other private industry personnel as instructors for Part 55 reactor operators, there is no application fee. The licensee, vendor, or other recipients of the services will be billed at six-month intervals for full costs.

(g) *Inspection fees.* Inspection fees are payable upon notification by the Commission. Inspection costs will include preparation time, time on site and documentation time and any associated contractual service costs but will exclude the time involved by the Enforcement staff, Office of Inspection and Enforcement, in the processing and issuance of a notice of violation or civil penalty.

* * * * *

(i) *Part 55 review fees.* The costs for Part 55 review services will be subject to fees based on NRC time spent in administering the examinations and tests that are generally given at the reactor site and any related contractual costs. The costs also include related items such as preparing, reviewing, and grading of the examinations and tests. The costs will be billed at six-month intervals to the licensee employing the operators.

6. A new § 170.20 is added to read as follows:

§ 170.20 Average cost per professional staff-hour.

(a) Fees for permits, licenses, amendments, renewals, special projects, Part 55 requalification and replacement examinations and tests, or other required approvals under §§ 170.21 and 170.31 will be calculated based upon the full costs for the review using the following applicable professional staff rates:

(1) Office of Nuclear Reactor Regulation—$62 per hour.

(2) Office of Nuclear Material Safety and Safeguards—$58 per hour.

(3) Advisory Committee on Reactor Safeguards—$62 per hour.

(4) Atomic Safety and Licensing Board Panel—$62 per hour.

(5) Atomic Safety and Licensing Appeal Panel—$66 per hour.

(b) Fees for inspections based on full cost under §§ 170.21 and 170.32 will be calculated using the following applicable professional staff rates:

(1) Office of Inspection and Enforcement and NRC Regional Offices—$53 per hour.

7. Section 170.21 is revised to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard reference design approvals, special projects, and inspections.

Applicants for construction permits, manufacturing licenses, operating licenses, approvals of facility standard reference designs, requalification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay the following fees.

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees [1, 2]
A. Power Reactors	
Application—Construction Permit	$125,000.
Construction Permit	Full cost.[4]
Operating License	$3,077,400.
Application for Amendment, Renewal, Other Approvals.	$150.
Amendment, Other Approvals	$164,600.
Renewal, Dismantling-Decommissioning and Termination.	Full cost.[4]
Inspections: [3]	
1. Routine	$300,000.
2. Non-Routine	Full cost.[4]
B. Standard Reference Design Review	
Application—Preliminary	$50,000.
Application—Final	$50,000.
Approvals:	
1. Preliminary	$1,427,100.
2. Final	$1,427,100.
Application for Amendment, Renewal, Other Approvals.	$150.
Amendment, Renewal, Other Approvals	Full cost.[4]
C. Test Facility/Research Reactor/Critical Facility	
Application—Construction Permit	$5,000.
Construction Permit	Full cost.[4]
Operating License	Full cost.[4]
Application for Amendment, Renewal, Other Approvals.	$150.
Amendment, Other Approvals	$42,100.
Renewal, Dismantling, Decommissioning and Termination.	Full cost.[4]
Inspections: [3]	
1. Routine	$3,200.
2. Non-Routine	Full cost.[4]
D. Manufacturing License	
Application	$125,000.
Manufacturing License:	
Preliminary Design Approval	$3,252,300.
Final Design Approval	Full cost.[4]
Application for Amendment, Renewal, Other Approvals.	$150.
Amendment, Renewal, Other Approvals	Full cost.[4]
Inspections: [3]	
1. Routine	Full cost.[4]
2. Non-Routine	Full cost.[4]
E. Uranium Enrichment Plant	
Application—Construction Permit	$125,000.
Construction Permit	Full cost.[4]
Operating License	Full cost.[4]
Application for Amendment, Renewal, Other Approvals.	$150.
Amendment, Renewal, Other Approvals	Full cost.[4]
Inspections: [3]	
1. Routine	Full cost.[4]
2. Non-Routine	Full cost.[4]
F. Advanced Reactors	
Application—Construction Permit	$125,000.
Construction Permit	Full cost.[4]
Operating License	Full cost.[4]
Application for Amendment, Renewal, Other Approvals.	$150.
Amendment, Renewal, Other Approvals	Full cost.[4]
Inspections: [3]	
1. Routine	Full cost.[4]
2. Non-Routine	Full cost.[4]
G. Other Production and Utilization Facility	
Application—Construction Permit	$125,000.
Construction Permit	Full cost.[4]
Operating License	Full cost.[4]
Application for Amendment, Renewal, Other Approvals.	$150.
Amendment, Renewal, Other Approvals	Full cost.[4]
Inspections: [3]	
1. Routine	Full cost.[4]
2. Non-Routine	Full cost.[4]
H. Production or Utilization Facility permanently closed down	
Inspections: [3]	
1. Routine	Full cost.[4]
2. Non-Routine	Full cost.[4]
I. Part 55 Reviews	
Requalification and Replacement Examinations for Reactor Operators.	$147,600.[5]

SCHEDULE OF FACILITY FEES—Continued

[See footnotes at end of table]

Facility categories and type of fees	Fees [1, 2]
J. Special Projects	
Application	$150.
Approvals:	
1. Topical Reports	$20,000.
2. Amendments, Revisions and Supplements to Topical Reports.	$20,000.
3. Licensee, Vendor, and Other Private Industry Personnel Certification as Instructors for Part 55 Reactor Operators.	Full cost.[4]
4. All Other Reports, Special Projects and Amendments except those specified above in 1, 2, and 3.	Full cost.[4]

[1] Fees will not be charged for orders issued by the Commission pursuant to § 2.204 of Part 2 of this chapter nor for amendments resulting specifically from such Commission orders. Fees will be charged for approvals issued pursuant to specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., §§ 50.12, 73.5, and any other such sections now or hereafter in effect regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100% of the facility's full rated power). Thus, if a licensee received a low power license of a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. The ceiling provided in Facility Category A is based on 100% power authorization. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100% of full rated power, the total costs for the license will be at that decided lower operating power level and not at the 100% capacity.

[2] The charge will not exceed the amount specified nor, where applicable, be less than the application fee. The charges will be based on the expenditures for professional staff time and appropriate contractual support services. For those reviews currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined and billings for that time will be at the professional rates established for the March 23, 1978 rule. Any professional hours expended on or after the effective date of this rule will be assessed at the FY 1981 rates shown in § 170.20 of this Part. These rates and any ceilings on fees or charges will be reviewed and adjusted annually as necessary to take into consideration increased or decreased costs to the Commission. Applicants, licensees and others will be given credit for the paid application fee at the time the first bill is issued for that application and on subsequent bills, if necessary, until the full amount of the remitted application fee ahs been credited. In the event a review covers a combination of licensing actions in a one-step licensing process such as a combined construction permit and operating license review (interim, temporary, or other), the fees charged will be the total of the costs for the licensing action.

[3] The amount shown represents the maximum that may be charged for each licensed unit during a one-year period. Inspections covered by this schedule are both routine and nonroutine safety and safeguards inspections performed by NRC for the purposes of reviewing a licensed program, but exclude investigations performed by the NRC Office of Investigations. These inspections are performed throughout the full term of the license to ensure that the authorized activities are being conducted in accordance with the Atomic Energy Act of 1954, as amended, Commission regulations, and the terms and conditions of the license. Non-routine inspections that result from third-party allegations will not be subject to fees.

[4] No ceilings are provided because these areas have not been active review areas to the extent that the Commission has a basis to determine an upper limit, or in the case of nonroutine inspections no ceilings are provided because the level of effort to conduct the inspection is determined on the basis of the safety significance and threat to the public health and safety. Fees assessed will be determined based on professional staff time required to complete the review or conduct the inspection multiplied by the rates shown in § 170.20 of this part, to which any appropriate contractual support services cost incurred will be added.

[5] The amount shown represents the maximum that may be charged for each plant site during a one-year period. The charges will be based on the expenditures for professional staff time and appropriate contractual support services.

§§ 170.22 through 170.24 [Removed]

8. Sections 170.22 through 170.24 are removed.

9. Section 170.31 is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services.

Applicants for materials licenses and other regulatory services and holders of materials licenses shall pay the following fees:

SCHEDULE OF FEES FOR MATERIALS LICENSES AND OTHER REGULATORY SERVICES

Category of materials licenses and type of fee [1]	Fee [2]
1. *Special nuclear material:*	
A. Licenses for possession and use of 5 kg or more of contained uranium 235 in uranium enriched to 20 pct or more, or 2 kg or more of uranium 233, for fuel processing and fabrication:[3]	
Application	$150.
License	Full cost.
Renewal	$140,600.
Amendment	$170,000.
B. Licenses for possession and use of 5 kg or more of contained uranium 235 in uranium enriched to less than 20 pct for fuel processing and fabrication:[3]	
Application	$150.
License	Full cost.
Renewal	$140,600.
Amendment	$138,000.
C. Licenses for possession and use of 2 kg or more of plutonium for fuel processing and fabrication:[3]	
Application	$150.
Construction approval and license	Full cost.
Renewal	Full cost.
Amendment	Full cost.
D. Licenses for possession and use of 5 kg or more of contained uranium 235 in unsealed form, or 2 kg or more of uranium 233, in unsealed form for activities other than fuel processing and fabrication:[3]	
Application	$150.
License	Full cost.
Renewal	$52,200.
Amendment	$63,800.
E. Licenses for possession and use of quantities of plutonium of 2 kg or more in unsealed form for activities other than fuel processing and fabrication:[3]	
Application	$150.
License	Full cost.
Renewal	$52,200.
Amendment	$46,400.
F. Licenses for possession and use of 200 g but less than 2 kg of plutonium in unsealed form:[3]	
Application	$150.
License	Full cost.
Renewal	$52,200.
Amendment	$46,400.
G. Licenses for possession and use of 350 g but less than 5 kg of contained uranium 235 in unsealed form or 200 g but less than 2 kg of uranium 233 in unsealed form:[3]	
Application	$150.
License	Full cost.
Renewal	$20,300.
Amendment	$40,600.
H. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):[3]	
1. License for receipt and storage of spent fuel where the ISFSI is to be located at a new site:	
Application	$150.
License	Full cost.
Renewal	Full cost
Amendment	Full cost.
2. License for receipt and storage of spent fuel where the ISFSI is to be located at the site of an existing nuclear facility:[4]	
Application	$150:
License	$405,200.
Renewal	Full cost
Amendment	Full cost.
I. Applications to terminate fee Category 170.31 1A through 1H licenses and to authorize decommissioning, decontamination, reclamation or site restoration activities as well as licenses authorizing possession only:[3]	
Application	$150.
License	Full cost.
Renewal	Full cost.
Amendment	Full cost.
J. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems:[5]	
Application-New license	$230.
Renewal	$120.
Amendment	$80.
K. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity as defined in § 150.11 of this chapter for which the licensee shall pay the same rate as that for Category 1G:	
Application-New license	$350.
Renewal	$350
Amendment	$120.
2. *Source material:*	
A. Licenses for possession and use of source material and byproduct waste material from milling operations, except in in-situ leaching and heap-leaching operations, ore-buying stations, ion-exchange facilities, and the processing of ores containing source material for extraction of metals:[3]	
Application	$150.
License	$341,000.
Renewal	$105,400.
Amendment	$44,000.
B. Licenses for processing and recovery of source material in in-situ leaching operations or heap-leaching operations and possession of byproduct waste material from in-situ or heap leach operations:[3]	
Production scale activity, except heap leach:	
Application	$150.
License	$258,000.
Renewal	$73,000.
Amendment	$43,000.
In-situ research and development scale activity and heap-leaching operations:	
Application	$150.
License	$54,200.
Renewal	$31,100
Amendment	$22,000
C. Licenses for refining uranium mill concentrates to uranium hexafluoride:[3]	
Application	$150.
License	Full cost.
Renewal	$140,600.
Amendment	$103,200.
D. Licenses for possession and use of source material in ore buying stations, ion-exchange facilities and the processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations:[3]	
Application	$150.
License	Full cost.
Renewal	$22,000
Amendment	$11,000
E. Applications to terminate fee Category 170.31 2A through 2D licenses and to authorize decommissioning, decontamination, reclamation or site restoration activities or the possession and maintenance of a facility in a standby mode:[3]	
Application	$150.

SCHEDULE OF FEES FOR MATERIALS LICENSES AND OTHER REGULATORY SERVICES—Continued

Category of materials licenses and type of fee [1]	Fee [2]
License	Full cost.
Amendment	Full cost.
Renewal	Full cost.
F. Licenses for possession and use of source material for shielding, except as provided for in § 170.11(a)8:	
Application-New license	$60.
Renewal	$60.
Amendment	$60.
G. All other source material licenses:	
Application-New license	$350.
Renewal	$230.
Amendment	$120.
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution to licensees:	
Application-New license	$1,200.
Renewal	$700.
Amendment	$120.
B. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution to licensees:	
Application-New licensees	$460.
Renewal	$460.
Amendment	$120.
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of Part 32 of this chapter authorizing the processing or manufacture and distribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material:	
Application-New license	$1,400.
Renewal	$1,400.
Amendment	$230.
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of Part 32 of this chapter authorizing distribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material:	
Application-New license	$700.
Renewal	$700.
Amendment	$120.
E. Licenses for possession and uses of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):	
Application-New license	$230.
Renewal	$170.
Amendment	$120.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes:	
Application-New license	$580.
Renewal	$350.
Amendment	$230.
G. Licenses for possession and uses of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes:	
Application-New license	$2,300.
Renewal	$930.
Amendment	$230.

SCHEDULE OF FEES FOR MATERIALS LICENSES AND OTHER REGULATORY SERVICES—Continued

Category of materials licenses and type of fee [1]	Fee [2]
H. Licenses issued pursuant to subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:	
Application-New license	$580.
Renewal	$230.
Amendment	$120.
I. Licenses issued pursuant to subpart A of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:	
Application-New license	$290.
Renewal	$230.
Amendment	$60.
J. Licenses issued pursuant to subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Parts 31 or 35 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Parts 31 or 35 of this chapter:	
Application-New license	$1,200.
Renewal	$700.
Amendment	$230.
K. Licenses issued pursuant to subpart B of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 or 35 of this chapter, except for specific licensess authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Parts 31 or 35 of this chapter:.	
Application-New license	$290.
Renewal	$230.
Amendment	$60.
L. License of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:	
Application-New license	$1,200.
Renewal	$700.
Amendment	$120.
M. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for research and development that do not authorize commercial distribution:	
Application-New license	$700.
Renewal	$460.
Amendment	$120.
N. Licenses that authorize services for other licensees, except for leak testing and waste disposal pickup services:	
Application-New license	$930.
Renewal	$930.
Amendment	$120.

SCHEDULE OF FEES FOR MATERIALS LICENSES AND OTHER REGULATORY SERVICES—Continued

Category of materials licenses and type of fee [1]	Fee [2]
O. Licenses for possession and use of byproduct material issued pursuant to Part 34 of this chapter for industrial radiography operations:	
Application-New license	$700.
Renewal	$700.
Amendment	$230.
P. All other specific byproduct material licenses, except those in categories 4A through 9D:	
Application-New license	$230.
Renewal	$120.
Amendment	$60.
4. *Waste disposal:*	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of commercial disposal by land burial by the licensee; or licenses authorizing contingency storage of low level radioactive waste at the site of nuclear power reactors; or licenses for treatment or disposal by incineration, packaging of residues resulting from incineration and transfer of packages to another person authorized to receive or dispose of waste material: [4]	
Application	$150.
License	$803,700.
Renewal	$285,600.
Amendment	$46,400.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application-New license	$1,400.
Renewal	$930.
Amendment	$350.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application-New license	$930.
Renewal	$460.
Amendment	$120.
5. *Well logging:*	
A. Licenses specifically authorizing use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application-New license	$700.
Renewal	$700.
Amendment	$170.
B. Licenses specifically authorizing use of byproduct material for field flooding tracer studies:	
Application	$150.
Licenes	Full cost. [3]
Renewal	Full cost. [3]
Amendment	Full cost. [3]
6. *Nuclear laundries:*	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	
Application-New license	$700.
Renewal	$700.
Amendment	$170.
7. *Human use of byproduct, source, or special nuclear material:*	

SCHEDULE OF FEES FOR MATERIALS LICENSES AND OTHER REGULATORY SERVICES—Continued

Category of materials licenses and type of fee [1]	Fee [2]
A. Licenses issued pursuant to Parts 30, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application-New license	$580.
Renewal	$350.
Amendment	$230.
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to Parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application-New license	$1,200.
Renewal	$700.
Amendment	$120.
C. Other licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application-New license	$580.
Renewal	$580.
Amendment	$120.
8. *Civil defense:*	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:	
Application-New license	$290.
Renewal	$230.
Amendment	$60.
9. *Device, product or sealed source safety evaluation:*	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:	
Application—each device	$1,600.
Amendment—each device	$580.
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by a single applicant, except reactor fuel devices:	
Application—each device	$800.
Amendment—each device	$290.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	
Application—each source	$350.
Amendment—each source	$120.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by a single applicant, except reactor fuel:	
Application—each source	$175.
Amendment—each source	$60.
10 *Transportation of radioactive material*	
A. Evaluation of spent fuel cask equal to or greater than 20 kW decay heat:	
Application	$150.
Approval	$164,000.[3]
Renewal	$1,400.[3]
Amendment	$43,000.[3]
B. Evaluation of spent fuel cask for less than 20 kW decay heat; air shipping package for plutonium; high-level waste casks; and packages containing radioactive material equal to or greater than 2,000 times the type A quantity:[6]	
Application	$150.
Approval	$143,000.[3]
Renewal	$1,400.[3]
Amendment	$43,000.[3]
C. Evaluation of fissile packages containing greater than type A quantities of radioactive material or packages containing radioactive material less than 2,000 times the type A quantity.[6]	
Application	$150.
Approval	$65,000.[3]
Renewal	$900.[3]
Amendment	$32,000.[3]
D. Evaluation of fissile packages containing less than type A quantities of radioactive material or packages containing radioactive material less than 200 times the type A quantity.[6]	
Application	$150.
Approval	$43,000.[3]
Renewal	$900.[3]
Amendment	$16,000.[3]
E. Evaluation of packages containing radioactive material less then 20 times the type A quantity:[6]	
Application	$150.
Approval	$27,000.[3]
Renewal	$900.[3]
Amendment	$16,000.[3]
F. Evaluation of Part 71 Quality Assurance Programs:	
Application	$150.
Approval	Full Cost.[3]
Renewal	Full Cost.[3]
Amendment	Full Cost.[3]
11. Review of standardized spent fuel facilities:	
Application	$150.
Approval	Full Cost.[3]
Amendment	Full Cost.[3]
12. *Special projects:*	
Application	$150.
Approval:	
1. Topical Reports	$20,000.
2. Amendments, Revisions and Supplements to topical reports.	$20,000.
3. Transportation route approvals	Full Cost.[3]
4. All other Reports, Special Projects and Amendments except thos especified in 1, 2, and 3 above.	Full Cost.[3]

[1] *Types of fees*—Separate charges as shown in the schedule will be assessed for applications for new licenses and approvals, issuance of new licenses and approvals, and amendments and renewals to existing licenses and approvals. The following guidelines apply to these charges:

(a) *Application fees*—Applications for materials licenses and approvals must be accompanied by the prescribed application fee for each category, except that applications for licenses covering more than one fee category of special nuclear material (excluding category 1H) or source material to be used at the same location, must be accompanied by the prescribed application fee for the highest fee category. When a license or approval has expired, the application fee for each category shall be due, except for licenses covering more than one fee category of special nuclear material (excluding category 1H) or source material for use at the same location, in which case the application fee for the highest category applies.

(b) *License/approval fees*—For new licenses and approvals issued in fee categories 1A through 1H, 2A through 2E, 4A, 5B, 10A through 10F, 11 and 12, the recipient shall pay the license or approval fee for each category, as determined by the Commission in accordance with § 170.12(b), (e), and (f), except that a license covering more than one fee category of special nuclear material in categories 1A through 1G or source material in fee categories 2A through 2E must pay a license fee for the highest fee category assigned to the license.

(c) *Renewal fees*—Applications for renewal of materials licenses and approvals must be accompanied by the prescribed renewal fee for each category, except that applications for renewal of licenses and approvals in fee categories 1A through 1I, 2A through 2E, 4A, 5B, 10A through 10F, 11, and 12 must be accompanied by an application fee of $150, and the additional renewal fee shall be due upon notification by the Commission in accordance with the procedures specified in § 170.12(d).

(d) *Amendment fees*—Applications for amendments must be accompanied by the prescribed amendment fee for each category, unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply, except that applications for amendment of licenses in fee Categories 1A through 1I, 2A through 2E, 4A, 5B, 10A through 10F, 11, and 12 must be accompanied by an application fee of $150 with the balance due upon notification by the Commission in accordance with § 170.12(c). An application for amendment to a materials license or approval that would place the license or approval in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for the new category, except for an application for amendment to increase the scope of a licensed program in fee Categories 1A through 1I, 2A through 2E, and 10A through 10F, which case the licensee shall pay the application fee of $150, and the license or approval fee for the higher fee category shall be due upon completion of the licensing review.

An application for amendment to a license or approval that would reduce the scope of a licensee's program to a lower fee category must be accompanied by the prescribed amendment fee for the lower fee category, except in fee Categories 1A through 1I, 2A through 2E, and 10A through 10F, in which case the license shall pay an application fee of $150, and the license or approval fee for the lower fee category shall be due upon completion of the licensing review. Applications to terminate licenses authorizing small materials programs, when no dismantling or decontamination procedure is required, shall not be subject to fees.

[2] Fees will not be charged or orders issued by the Commission pursuant to § 2.204 of Part 2 nor for amendments resulting specifically from such Commission orders. However, fees will be charged for approvals issued pursuant to a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., § 30.11, 40.14, 70.14, 73.5, and any other such sections now or hereafter in effect) regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] The amounts shown for new licenses, renewals, amendments, approvals and special projects are the maximum fees that may be assessed for an application. Fees will be determined based on the professional staff time and appropriate contractual support services expended for review of the application. For those reviews currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined and billings for that time will be at the professional rates established for the March 23, 1978 rule. Any professional hours expended on or after the effective date of this rule will be assessed at the FY 1981 rates shown in § 170.20 of this part. These rates will be reviewed and adjusted annually as necessary to take into consideration increased or decreased costs to the Commission. In no event will the total review costs be less than the application fee.

[4] Fees would be applicable only in those instances where a site safety and environmental review had been performed and documented by the Commission for the site at which the storage facility is to be located.

[5] Licensees paying fees under Categories 1A through 1I are not subject to fees under Categories 1J and 1K for sealed sources authorized in the same license except in those instances in which an application deals only with the sealed sources authorized by the license. Applicants for new licenses or renewal of existing licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application or renewal fee for fee Category 1J only.

[6] A type A quantity is defined in § 71.4(q) of 10 CFR Part 71.

10. Section 170.32 is revised to read as follows:

§ 170.32 Schedule of fees for health and safety, and safeguards inspections for materials licenses.

SCHEDULE OF MATERIALS LICENSE INSPECTION FEES

Category of licenses	Type of inspection [1]	Fee [2]	Maximum frequency [3]
1. *Special nuclear material:*			
A. Licenses for possession and use of five (5) kg or more of contained uranium 235 in uranium enriched to 20 pct. or more, or two (2) kg or more of uranium 233, for fuel processing and fabrication.	Routine Nonroutine	$120,000 [4] Full cost [4]	Per year.
B. Licenses for possession and use of five (5) kg or more of contained uranium 235 in uranium enriched to less than 20 pct. for fuel processing and fabrication.	Routine Nonroutine	$35,300 [4] Full cost [4]	Do.
C. Licenses for possession and use of two (2) kg or more of plutonium for fuel processing and fabrication.	Routine Nonroutine	$70,500 [4] Full cost [4]	Do.
D. Licenses for possession and use of five (5) kg or more of contained uranium 235 in unsealed form, or two (2) kg or more of uranium 233 in unsealed form for activities other than fuel processing and fabrication.	Routine Nonroutine	$21,200 [4] Full cost [4]	Do.
E. Licenses for possession and use of quantities of plutonium of two (2) kg or more in unsealed form for activities other than fuel processing and fabrication.	Routine Nonroutine	Full cost [4] Full cost [4]	Do.
F. Licenses for possession and use of 200 g but less than two (2) kg of plutonium in unsealed form.	Routine Nonroutine	Full cost [4] Full cost [4]	Do.
G. Licenses for possession and use of 350 g but less than five (5) kg of contained uranium 235 in unsealed form, or 200 g but less than two (2) kg of uranium 233 in unsealed form.	Routine Nonroutine	$47,200 [4] Full cost [4]	Do.
H. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):			
1. Licenses for receipt and storage of spent fuel where the ISFSI is to be located at a new site.	Routine Nonroutine	$16,500 [4] Full cost [4]	Do.
2. Licenses for receipt and storage of spent fuel where the ISFSI is to be located at the site of an existing nuclear facility.	Routine Nonroutine	$16,500 [4] Full cost [4]	Do.
I. Licenses authorizing decommissioning, decontamination, reclamation or site restoration activities as well as licenses authorizing possession only.	Routine Nonroutine	Full cost [4] Full cost [4]	
J. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems.	Routine Nonroutine	$210 $640	1 per 7 years. Per inspection.
K. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity as defined in § 150.11 of this chapter for which the licensee shall pay the same rate as that for category 1G.	Routine Nonroutine	$320 $370	1 per 2 years. Per inspection.
2. *Source material:*			
A. Licenses for possession and use of source material and possession of byproduct waste material from milling operations, except in in-situ leaching and heap-leaching operations, ore-buying stations, ion-exchanging facilities, and the processing of ores containing source material for extraction of metals.	Routine Nonroutine	$2,300 Full cost [4]	1 per year.
B. Licenses for possession and recovery of source material in in-situ leaching operations or heap-leaching operations, and possession of byproduct waste material from in-situ or heap leach operations.	Routine Nonroutine	$1,000 Full cost [4]	Do.
C. Licenses for refining uranium mill concentrates to uranium hexafluoride.	Routine Nonroutine	$2,300 Full cost [4]	Do.
D. Licenses for possession and use of source material in ore-buying stations, ion-exchange facilities and the processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations.	Routine Nonroutine	$1,300 $650	1 per year. Per inspection.
E. Licenses authorizing decommissioning, decontamination, reclamation or site restoration activities as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	Routine Nonroutine	Full cost [4] Full cost [4]	
F. Licenses for possession and use of source material for shielding, except as provided for in § 170.11(a)8.	Routine Nonroutine	$130 $160	1 per 7 years. Per inspection.
G. All other source material licenses	Routine Nonroutine	$370 $690	Do. Do.
3. *Byproduct material:*			
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution to licensees.	Routine Nonroutine	$950 [5] $1,000 [5]	1 per year. Per inspection.
B. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution to licensees.	Routine Nonroutine	$480 [5] $900 [5]	Do. Do.
C. Licenses issued pursuant to §§ 32.72, 32.73 and/or 32.74 of Part 32 of this chapter authorizing the processing or manufacturing and distribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material.	Routine Nonroutine	$640 $850	1 per 2 years. Per inspection.
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73 and/or 32.74 of Part 32 of this chapter authorizing distribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material.	Routine Nonroutine	$370 $530	Do. Do.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units).	Routine Nonroutine	$210 $320	1 per 3 years. Per inspection.

SCHEDULE OF MATERIALS LICENSE INSPECTION FEES—Continued

Category of licenses	Type of inspection [1]	Fee [2]	Maximum frequency [3]
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes.	Routine	$270	1 per year.
	Nonroutine	$580	Per inspection.
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes.	Routine	$480	Do.
	Nonroutine	$640	Do.
H. Licenses issued pursuant to subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter.	Routine	$320	1 per 3 years.
	Nonroutine	$320	Per inspection.
I. Licenses issued pursuant to subpart A of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter.	Routine	$210	Do.
	Nonroutine	$320	Do.
J. Licenses issued pursuant to subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Parts 31 or 35 of this chapter, except specific licenses authorizing redistribution to persons generally licensed under Parts 31 or 35 of this chapter.	Routine	$320	Do.
	Nonroutine	$320	Do.
K. Licenses issued pursuant to subpart B of Part 32 of this chapter to distribute times containing byproduct material or quantities of byproduct material that do not require sealed source and/ or device review to persons generally licensed under Part 31 or 35 of this chapter, except specific licenses authorizing redistribution to persons generally licensed under Parts 31 and 35 of this chapter.	Routine	$320	Do.
	Non-routine	$320	Do.
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution.	Routine	$420	Do.
	Non-routine	$530	Do.
M. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for research and development that do not authorize commercial distribution.	Routine	$370	Do.
	Non-routine	$420	Do.
N. Licenses that authorize services for other licensees, except for leak testing and waste disposal pickup services.	Routine	$320	1 per 7 years.
	Non-routine	$320	Per inspection.
O. Licenses for possession and use of byproduct material issued pursuant to Part 34 of this chapter for industrial radiography operations.	Routine	$530 [5]	1 per year.
	Non-routine	$1,200 [5]	Per inspection.
P. All other specific by product materaial licenses, except those in categories 4A through 9D.	Routine	$530	1 per 3 years.
	Non-routine	$530	Per inspection.
4. *Waste disposal:*			
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of commercial disposal by land burial by the licensee; or licenses authorizing contingency storage of low-level radioactive wastes at the site of nuclear power reactors; or licenses for treatment or disposal by incineration, packaging of residues, resulting from incineration, and transfer of packages to another person authorized to receive or dispose of waste material.	Routine	Full cost [4]	
	Non-routine	Full cost [4]	
B. Licenses spcifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	Routine	$1,000	1 per year.
	Non-routine	$740	Per inspection.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	Routine	$740	1 per 2 years.
	Non-routine	$950	Per inspection.
5. *Well logging:*			
A. Licenses specifically authorizing use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies.	Routine	$370	1 per 3 years.
	Non-routine	$370	Per inspection.
B. Licenses specifically authorizing use of byproduct material for field flooding tracer studies.	Routine	$320	1 per 2 years.
	Non-routine	$480	Per inspection.
6. *Nuclear laundries:*			
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material.	Routine	$530	1 per 3 years.
	Non-routine	$850	Per inspection.
7. *Human use of byproduct, source, or special nuclear material:*			
A. Licenses issued pursuant to Parts 30, 40, and 70 of this chapter for human use of by product material, source material, or special nuclear material in sealed sources contained in teletherapy devices.	Routine	$530	1 per 2 years.
	Non-routine	$850	Per inspection.

SCHEDULE OF MATERIALS LICENSE INSPECTION FEES—Continued

Category of licenses	Type of inspection [1]	Fee [2]	Maximum frequency [3]
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to Parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices.	Routine	$740	1 per 2 years.
	Non routine	$800	Per inspection.
C. Other licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices.	Routine	$480	1 per 3 years.
	Non routine	$690	Per inspection.
8. *Civil defense:* Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities.	Routine	$320	1 per 7 years.
	Non routine	$320	Per inspection.
9. *Device, product, or sealed source safety evaluation:* Safety evaluation of devices, products or sealed sources containing byproduct, source, or special nuclear material, except reactor fuel.	No inspections conducted		
10. *Transportation of radioactive material:* Evaluation of spent fuel casks, packages, and shipping containers.	do		
11. *Review of standardized spent fuel facilities*	do		
12. *Special projects*	do		

[1] *Types of inspections*—Separate charges as shown in this schedule will be assessed for each routine and non-routine inspection which is performed, except those investigations conducted by the Office of Investigations. Non-routine inspections that result from third-party allegations will not be subject to fees.

[2] If a licensee holds more than one materials license at a single location, a fee equal to the highest fee category covered by the licenses will be assessed if the inspections are conducted at the same time, except in cases when the inspection fees are based on the full cost to conduct the inspection.

[3] The frequency shown in the schedule is the maximum number for each routine inspection for which a fee will be assessed, except for licenses in fee categories 1A through 1D, 1G and 1H for which the fee shown in the schedule will be the maximum fee assessed per year. Fees for non-routine inspections will be assessed on a per inspection basis.

[4] The amounts shown are the maximum charges that may be assessed for inspections conducted. The fees assessed will be determined based on the professional staff time required to conduct the inspection multiplied by the rates shown in § 170.20 of this part, to which any appropriate contractual support service costs incurred will be added. These rates will be reviewed and adjusted annually as necessary to take into consideration increased or decreased costs to the Commission. Where no ceiling is specified the fee assessed will be based on full cost.

[5] For a license authorizing shielded radiographic installations or manufacturing installations at more than one address, a separate fee will be assessed for inspection of each location, except that if the multiple installations are inspected during a single visit, a single inspection fee will be assessed.

11. Section 170.41 is revised to read as follows:

§ 170.41 Failure by applicant or licensee to pay prescribed fees.

In any case where the Commission finds that an applicant or a licensee has failed to pay a prescribed fee required in this part, the Commission will not process any application and may suspend or revoke any license or approval issued to the applicant or licensee or may issue an order with respect to licensed activities as the Commission determines to be appropriate or necessary in order to carry out the provisions of this part, Parts 30, 32 through 35, 40, 50, 61, 70, 71, 72, and 73 of this Chapter, and of the Act.

12. A new § 170.51 is added to read as follows:

§ 170.51 Right to Review and Appeal of Prescribed Fees.

All debtors' requests for review of the fees assessed and appeal or disagreement with the prescribed fee (staff hours and contractual) must be submitted in accordance with the provisions of 10 CFR 51.31, "Disputed Debts," of this title.

Dated at Washington, D.C., this 15th day of May, 1984.

For the Nuclear Regulatory Commission.

Samuel Chilk,

Secretary of the Commission.

[FR Doc. 84-13517 Filed 5-17-84; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-NM-33-AD; Amdt. 39-4864]

Airworthiness Directives; Messerschmitt-Bolkow-Blohm GmbH HFB-320 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to certain HFB-320 airplanes which requires a one-time eddy current inspection of seven areas on both wing upper skins for cracks. In four instances, cracks have been reported at rivet holes in the skin/rib/stringer junctions which would, if allowed to grow, compromise the structural capability of the wing. This action is necessary to maintain the structural integrity of the wing.

EFFECTIVE DATE: May 29, 1984.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to Messerschmitt-Bolkow-Blohm GmbH, Dept. HV 117, Kreetslag 10, D-2103, Hamburg 95, Germany, or may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Foreign Aircraft Certification Branch, ANM-150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Luftfahrt-Bundesamt (LBA), which is the civil airworthiness authority for West Germany, has classified Messerschmitt-Bolkow-Blohm GmbH HFB-320 Service Bulletin 57-19 as mandatory. In four instances, cracks have been reported on the upper wing skin which extended from rivet holes at skin/rib/stringer junctions. The cracks result from fatigue and may compromise the structural integrity of the wing. The service bulletin requires a one-time inspection of both wing upper skins at seven locations using eddy current methods.

This airplane model is manufactured in West Germany and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, the FAA has determined that an AD is necessary which requires the eddy current inspection of the upper wing skin per the service bulletin, and repair if cracks are found.

Further, 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.

List of Subjects

14 CFR Part 39

Aviation safety, Aircraft.

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:

Messerschmitt-Bolkow-Blohm-GmbH: Applies to HFB-320 airplanes as listed in HFB-320 Service Bulletin 57-19 dated February 5, 1982 certificated in all categories. Compliance is required within the next 150 hours time in service or 90 days, whichever occurs first after the effective date of this AD for airplanes with 2400 hours total time in service on the effective date. All others must comply before accumulating 2550 hours time in service, but no later than 90 days after accumulating 2400 hours. To prevent failure of the upper surface wing structure accomplish the following, unless previously accomplished:

A. Perform a one-time inspection of the wing upper skin in accordance with the service bulletin. Repair cracks per the manufacturer's instructions.

B. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective May 29, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and if this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

Issued in Seattle, Washington on May 7, 1984.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 84-13530 Filed 5-18-84; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 83-NM-105-AD; Amdt. 39-4865]

Airworthiness Directives: DeHavilland Aircraft of Canada, Ltd. Model DHC-7

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective to all persons a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain DeHavilland Aircraft of Canada, Ltd. DHC-7 airplanes by individual telegrams. This action was prompted by reports of bonding failures occurring between the honeycomb core and the face skin on the upper surface of the wing fuel tank covers which could result in the loss of the structural integrity of the wing. This AD requires repetitive inspections or replacement with parts of a different design.

DATES: Effective May 29, 1984, this AD was effective earlier to all recipients of telegraphic AD T83-22-51 issued October 27, 1983.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information specified in this AD may be obtained upon request to DeHavilland Aircraft of Canada, Ltd., Downsview, Ontario M3K 1Y5, Canada. A copy of the service information is contained in the Rules Docket located at the FAA, Northwest Mountain Region, Transport Airplane Certification Directorate, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

FOR FURTHER INFORMATION CONTACT: Mr. John Maher, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6680.

SUPPLEMENTARY INFORMATION: On October 27, 1983, telegraphic AD T83-22-51 was issued and made effective immediately to all known U.S. owners and operators of certain DeHavilland DHC-7 series airplanes. The AD required initial and repetitive inspections of the wing fuel tank covers for evidence of bonding failures between the honeycomb core and the face skin. The AD was prompted by reports of bonding failures between the honeycomb core and the face skin of the wing fuel tank covers which could compromise the structural integrity of the wing. 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 telegrams issued October 27, 1983, to all known U.S. owners and operators of certain DeHavilland DHC-7 series airplanes. 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

Aviation safety, Aircraft.

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:

DeHavilland: Applies to DeHavilland Model DHC-7 airplanes Serial Numbers 3 through 27 certificated in all categories fitted with wing fuel tank covers P/N's 75710059-007 thru -014 (Inner) and P/N's 75711708-003 thru -006 (Middle). To detect failure of the bonding which could result in a loss of strength and stiffness of the wing, accomplish the following within the next 10 hours time in service, unless previously accomplished within the past 490 hours and thereafter at intervals not to exceed 500 hours time in service from the last inspection:

A. Inspect the upper surfaces of the wing inner and mid fuel tank covers P/N 75710059-007 thru -014 and P/N 75711708-003 thru -006, respectively, for a bond failure between the skin and honeycomb core by:

1. Using a calibrated portable ultrasonic tester over the total upper surface of each cover; or

2. Conducting a coin test (at approximately one inch intervals) over the total upper surface of each cover. (The coin test detects

unbonded areas by the change in audible response when the surface is systematically tapped with a coin.)

Note.—Tests may be accomplished with covers installed on aircraft.

B. Replace covers found to have unbonded surfaces with serviceable covers prior to further flight.

C. The repetitive inspections required by this AD may be terminated upon the installation of fuel tank covers P/N 7Z4096-001 (Inner) and P/N 7Z4097-001 (Middle).

D. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective May 29, 1984, and was effective earlier to those recipients of telegraphic AD T83-22-51, dated October 27, 1983.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and if this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

Issued in Seattle, Washington on May 7, 1984.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 84-13538 Filed 5-18-84; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 84-ASW-9]

Revocation of Transition Area; Eagle Pass, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will revoke the transition area at Eagle Pass, TX. The intended effect of the amendment is to return controlled airspace for public use no longer required for protection of aircraft. This amendment is necessary since the standard instrument approach procedure (SIAP) has been canceled, thereby eliminating the need for the transition area.

EFFECTIVE DATE: July 5, 1984.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 877-2630.

SUPPLEMENTARY INFORMATION:

History

On March 13, 1984, a notice of proposed rulemaking was published in the **Federal Register** (49 FR 9428) stating that the Federal Aviation Administration proposed to revoke the Eagle Pass, TX, transition area. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Federal Aviation Administration. Comments were received without objections. Except for editorial changes, this amendment is that proposed in the notice.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones and/or transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, by the Administrator, Subpart G of Part 71, § 71.181, of the Federal Aviation Regulations (14 CFR Part 71) as republished in FAA Order 7400.6, Compilation of Regulations, dated January 3, 1984, is amended, effective 0901 GMT, July 5, 1984, as follows:

Eagle Pass, TX—[Revoked]

(Sec. 307(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)); sec. 6(c), 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.61(c)).

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; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Fort Worth, TX, on May 8, 1984.

F. E. Whitfeld,

Acting Director, Southwest Region.

[FR Doc. 84-13537 Filed 5-18-84; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 84-ASW-10]

Alteration of Transition Area; Lake Jackson, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will alter the transition area at Lake Jackson, TX. The intended effect of the amendment is to provide controlled airspace for aircraft executing standard instrument approach procedures (SIAPs) to the Brazoria County Airport. This amendment is necessary since the old Brazoria County Airport has been closed and the VOR decommissioned, therefore reducing the required designated controlled airspace for protection of aircraft.

EFFECTIVE DATE: July 5, 1984.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Forth Worth, TX 76101, telephone (817) 877-2630.

SUPPLEMENTARY INFORMATION:

History

On March 13, 1984, a notice of proposed rulemaking was published in the **Federal Register** (49 FR 9429) stating that the Federal Aviation Administration proposed to alter the Lake Jackson, TX, transition area. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Federal Aviation Administration. Comments were received without objections. Except for editorial changes, this amendment is that proposed in the notice.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones and/or transition areas.

Adoption of the Amendment

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

Subpart G of Part 71, Section 71.181, of the Federal Aviation Regulations (14 CFR Part 71) as republished in FAA Order 7400.6, Compilation of Regulations, dated January 3, 1984, is amended, effective 0901 GMT, July 5, 1984, as follows:

Lake Jackson, TX—[Amended]

That airspace extending upward from 700-feet above the surface within a 6.5-mile radius of the Brazoria County Airport (latitude 29°06'35" N., longitude 95°27'43" W.)

(Sec. 307(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)); Sec. 6(c), 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.61(c))

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; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Fort Worth, TX, on May 8, 1984.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 84-13536 Filed 5-18-84; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 84-ASW-12]

Designation of Transition Area; Fairfield, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will designate a transition area at Fairfield, TX. The intended effect of the amendment is to provide controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the Pyramid Ranch Airport. This amendment is necessary since the airport owner plans to install a nondirectional radio beacon (NDB) on the airport and an SIAP will be developed for the approach. Coincident with this action, the airport is changed from visual flight rules (VFR) to instrument flight rules (IFR).

EFFECTIVE DATE: July 5, 1984.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 877-2630.

SUPPLEMENTARY INFORMATION:

History

On March 15, 1984, a notice of proposed rulemaking was published in the **Federal Register** (49 FR 9742) stating that the Federal Aviation Administration proposed to designate the Fairfield, TX, transition area. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Federal Aviation Administration. Comments were received without objections. Except for editorial changes, this amendment is that proposed in the notice.

List of Subjects in 14 CFR Part 71

Control zones, Transition areas, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, by the Administrator, Subpart G of Part 71, § 71.181, of the Federal Aviation Regulations (14 CFR Part 71) as republished in the FAA Order 7400.6, Compilation of Regulations, dated January 3, 1984, is amended, effective 0901 GMT, July 5, 1984, as follows:

Fairfield, TX—New

That airspace extending upwards from 700 feet above the surface within a 6.5-mile radius of the Pyramid Ranch Airport (latitude 31°51'45" N., longitude 96° 11'50" W.) and within 3 miles each side of the 039 degree bearing of the NDB (latitude 31°51'45" N., longitude 96°11'43" W.) extending from the 6.5-mile radius area to 8.5 miles northeast.

(Sec. 307(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)); Sec. 6(c), 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.61(c))

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; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Fort Worth, TX, on May 8, 1984.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 84-13535 Filed 5-18-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 385

[Docket No. RM83-1-000; Order No. 375]

Rules of Practice and Procedure; Reconsideration of Initial Decisions

Issued: May 16, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its Rules of Practice and Procedure to require, in designated wholesale electric rate cases, the filing of motions for reconsideration of initial decisions as a prerequisite for seeking Commission review of those decisions. The rule is intended to improve the quality and timeliness of the Commission's decisionmaking process in two ways. First, the Administrative Law Judges (ALJs) will have a chance to revise their initial decisions after the parties have reviewed them. Second, the Commission will be able to summarily adopt initial decisions in routine electric rate cases. This new procedures is designed to save time and expense for both the parties to the designated cases and the ratepaying public.

EFFECTIVE DATE: This rule will become effective June 20, 1984.

FOR FURTHER INFORMATION CONTACT: Karen Hurwitz, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, J. David Hughes, A. G. Sousa and Oliver G. Richard III.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its Rules of Practice and Procedure to require the filing of motions for reconsideration of initial decisions in designated wholesale electric rate cases

as a prerequisite for seeking Commission review of those decisions. This rule is designed to improve the quality and timeliness of the Commission's decisionmaking process. The objective of the rule is to provide the Commission with initial decisions that can be summarily adopted. If the Commission can adopt initial decisions in their entirety, it can avoid much of the time involved in drafting Commission opinions. This time savings will shorten the decisional process for electric rate cases.

II. Background

The notion that the Commission's decisional process in electric rate cases would be significantly improved by requiring participants, who are dissatisfied with an initial decision, to seek reconsideration of that decision before Commission review is not a new idea. In a report to Congress, issued on January 23, 1980, a former Chairman of the Commission stated:

> The Commission can affirm its administrative law judges summarily. But it rarely does so * * *.
>
> I therefore intend to propose to the Commission new procedures that will, I believe, make for speedier decisions in wholesale electric rate cases. First, I will recommend changing the regulations to permit the parties to seek rehearing of judges *intial* decisions in order to improve the accuracy, clarity and general quality of those decisions. This proposal is intended to make the second, more significant step more feasible. The second proposal is that the Commission affirm initial decisions summarily much more often than it now does.[1]

The report noted several benefits that could be realized from such a rule. First, a presiding officer would have an opportunity to correct any errors in an initial decision which are pointed out by the parties. Under the present regulations, a presiding officer does not have this opportunity. Second, a presiding officer could clarify or possibly eliminate any areas in the initial decision which lack clarity or are not well-founded on the hearing record. Finally, a presiding officer would be able to change his or her mind if compelling arguments to do so were advanced in a motion for reconsideration. These factors would help to ensure that initial decisions were as well-considered as possible.

As noted in the Congressional report, the changes established by this rule should allow the Commission to place greater reliance on initial decisions in the more routine electric rate cases. The Commission can, therefore, devote its resources and energies to ratemaking policy questions of general significance.

[1] Curtis, *Report to Congress—Decisional Delay in Wholesale Electric Rate Increase Cases: Causes, Consequences and Possible Remedies*, 73–74 (1980) (hereinafter, *Report to Congress*).

III. Mechanics of the Rule

This final rule adds a new Rule 717, 18 CFR 385.717, to the Rules of Practice and Procedure. The Commission or the Chief Administrative Law Judge (ALJ) will designate which electric rate cases will be subject to the reconsideration procedures in Rule 717. Rule 717 provides that participants in designated cases may seek, within 30 days after issuance of an initial decision, reconsideration of the initial decision before filing exceptions with the Commission. The rule provides for replies to a motion for reconsideration to be submitted within 20 days after the last date for filing a motion for reconsideration. The presiding officer will be required to rule upon the motion for reconsideration within 30 days after the last pleading is filed, unless the Chief ALJ specifically authorizes an extension of time due to exceptional circumstances. It is expected that such extensions will be infrequent.

Under Rule 717, if a participant is still not satisfied with the ALJ's revised initial decision, he has 20 days from the date the ALJ issues a revised initial decision to file a brief on exceptions. A participant has 10 days from the last date for filing a brief or exceptions to file a brief opposing exceptions. Further, a participant should not include in its brief on exceptions any matters not previously raised in its motion for reconsideration or in its reply to such a motion except where the revised initial decision contains new findings.

IV. Comment Summary and Analysis

A. Time and Expense Involved

A number of commenters claimed that the rule will both lengthen the decisional process and increase the costs of a hearings.

In his *Report to Congress*, Chairman Curtis explained:

> A proposal to shorten electric rate cases by *adding* yet another procedural step to the multiplicity of steps that we already have sounds bizarre on its face. But that new step will make substantial net savings in time if it improves the quality of the initial decisions and thus enables the Commission to dispense with an opinion of its own in a statistically significant number of cases.[2]

[2] *Report to Congress* at 74.

The Commission believes that any added time and expense resulting from this rule will be outweighed by the reduction in the number of cases that will require extensive treatment by the Commission. In effect, the revised initial decision should be able to withstand appellate review. The reduction in time and expense resulting from this new procedure will lead to an overall savings for the Commission, the parties, and the ratepaying public. Furthermore, while the time and expense required to litigate a designated case may increase at the reconsideration stage, this will occur only if a participant wants to challenge the initial decision by way of filing exceptions to the Commission.

One commenter contended that the motions for reconsideration would impose an additional burden on the Administrative Law Judges (ALJs). The commenter suggested that because the burden would be so great the ALJs would not be able to act promptly on reconsideration, thus adding additional delay to the decisional process.

The Commission is committed to taking all feasible steps to reduce delay in processing electric rate cases. This rule is part of that commitment. The ultimate goal is to provide a workable framework for resolving rate cases within one year from the time the case is set for hearing. The rule explains that the ALJ will issue a decision within 30 days from the last day allowed for filing replies to the motion for reconsideration unless the Chief ALJ authorizes an exception.

The Commission expects there will be few exceptions to this 30-day time limit and thus that the delays anticipated by the commenter will not materialize.

B. Time Periods for Briefs

Under the NOPR the participant had 20 days from the date of issuance of an initial decision to prepare a motion for reconsideration. A respondent had 10 days to prepare a reply to a filed motion. A number of commenters argued that these time periods were to short. Furthermore, some commenters contrasted these time limits with the 30- and 20-day time limits given to parties for preparing briefs on exceptions and replies thereto, respectively.

The Commission is persuaded by the commenters that more time will be needed on reconsideration. The purpose of the motion for reconsideration is to give the ALJ a chance to correct any mistakes that may have been made, to address any issues that were not sufficiently discussed in the initial decision, and to revise the decision when convinced to do so. Ultimately,

this should enable the Commission to summarily affirm the ALJ's decisions. For the parties to adequately present all of their arguments on the initial decision, a full brief will likely be necessary. Thus, it makes sense to give the parties the longer time periods at the reconsideration step. In contrast, should the parties not be satisfied with the ALJ's revised initial decision, the parties will need less time to prepare a brief on or opposing exceptions because the arguments for and against what the ALJ has done will have been thought out on reconsideration. Therefore, participants subject to new Rule 717 will have 20 days from the date the ALJ issues or declines to issue a revised initial decision to file briefs on exceptions. Participants will have 10 days from the last date for filing a brief on exceptions to file briefs opposing exceptions.

C. Restrictive Effects

The NOPR provided that a participant who filed a motion for reconsideration or a reply thereto could not include in its exceptions to the Commission any matter of fact, law, or policy that was omitted from that participant's motion for reconsideration or reply thereto. Several commenters contended that this provision was too restrictive.

The purpose of this provision was to encourage parties to raise their objections to the ALJ's initial decision as early as possible. This way, the Commission could review a decision that had been thoroughly analyzed by the ALJ, rather than hear new objections that had not been raised before the ALJ. This would allow the Commission to act more promptly. While the provision is still included, it has been modified. Instead of the phrase any matter of "fact, law, or policy", the final rule contains the word "issue". In other words, the parties are expected to raise all issues to the ALJ that they would want to preserve for exceptions. This modification should remove the restrictive effect the parties anticipated.

One of the commenters contended that this provision was in violation of the Federal Power Act (FPA) because that Act says that to preserve arguments for appeal to the courts, a party must raise the argument to the Commission at the rehearing stage. As noted above, the Commission has modified its rule to ensure that it is not in any way in violation of the FPA as interpreted by *Villages of Chatham* v. *FERC*, 662 F.2d 23 (D.C. Cir. 1981). A party is still expected to raise all issues in its motion for reconsideration that it wants to preserve for exceptions. Nothing in the FPA or in *Villages of Chatham* specifically prohibits the Commission from designing its internal procedures to streamline case processing wherever possible, consistent with accepted due process concepts. It is important to remember that a party is not foreclosed from raising any issue on exceptions to the Commission so long as the procedures are followed. Further, nothing in this rule precludes a party from raising a new argument on rehearing in keeping with the decision in *Villages of Chatham*.

Finally, one commenter claimed the rule should allow new arguments to be raised in a participant's exceptions to the Commission if the revised initial decision contains any new findings. The Commission believes this argument to be sound, and is modifying § 385.717(e)(2). To the extent that the revised initial decision contains new findings, the parties may raise new issues on exceptions to the Commission.

D. Standards for Applicability of Reconsideration Procedures

The final rule provides for a screening process by which the Commission or the Chief ALJ will determine at the outset of a proceeding whether the case is likely to involve only routine issues or whether it will involve major policy issues or other major issues such as anti-competitive practice or price squeeze. If a case or any phase thereof is determined to be routine, the case or phase will be designated as subject to reconsideration procedures. If the case or phase contains major policy issues or issues such as anti-competitive practice, or price squeeze, it will not be subject to this additional step. In addition to those cases that are designated subject to reconsideration at the time the case is set for hearing, the Chief ALJ will also review those electric rate cases that are currently pending before the ALJs to determine whether they are routine and should be subject to reconsideration. This will enable the Commission to have as many cases as possible by which to judge the efficacy of this rule before the sunset date two years hence.

A number of commenters claimed that the designation process was too vague, and that at the early stages of a case it was difficult to ascertain the real issues. Several commenters suggested that the designation should occur after an initial decision is made. Other commenters preferred the motion for reconsideration be a permissive step.

The Commission strongly believes that to achieve its goal of summarily adopting initial decisions, the motion for reconsideration must be a mandatory step for those cases designated as "routine." As for which cases will be designated, the Commission believes that it can determine at the outset of a case whether or not a case or a phase of a case will be routine. Furthermore, it will benefit both the parties and the ALJ to know beforehand whether the case is subject to a motion for reconsideration, as this will enable the parties to more effectively plan their time and resources. Finally, by having only the Commission or the Chief ALJ responsible for making these designations, consistency in the designation can be realized.

Finally, one commenter suggested that all rate cases be required to proceed through a motion for reconsideration before going to the Commission so that all cases receive the benefit of the presiding officer's reconsideration. The Commission has decided that rate cases or phases of rate cases involving major policy issues or, for example, anti-competitive or price squeeze issues should not be subject to reconsideration procedures. Those cases or phases of cases are complex and necessarily take more time both at the hearing step as well as before the Commission. Furthermore, the Commission is likely to want to fully develop its findings and rational in its opinions in these types of cases. So, there is much less likelihood of summary affirmance by the Commission of an initial decision, and the underlying thrust of this rule would be inapplicable.

E. Reconsideration by the ALJs

A number of commenters argued that the ALJs would not change their opinions if they were given an opportunity to do so. The commenters also said that the parties would simply raise every issue they might possibly want to raise to the Commission in their motion for reconsideration.

To prejudge whether the ALJs will revise their initial decisions is inappropriate. This will be strictly a case-by-case matter about which generalizations are not convincing. However, the Commission believes that in the face of reasonably compelling arguments to do so, the ALJs will modify an initial decision just as any reasonable decisionmaker would do. The motion for reconsideration should highlight the main areas of contention in the case, allow the ALJ to reevaluate those issues.

The Commission also views this additional step as a means to achieving its goal of issuing final Commission opinions in shorter time periods. The new procedure will enable the Commission to review an ALJ's opinion with much more certitude that all the issues have been fully considered by the ALJ.

IV. Regulatory Flexibility Act Certification

When an agency promulgates a final rule under section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, after being required to publish a notice of proposed rulemaking, either a final regulatory flexibility analysis or a negative certification may be appropriate under the Regulatory Flexibility Act of 1980. One commenter contended, without much explanation, that the Commission's initial regulatory flexibility certification was inadequate.

In this preamble, the Commission has already stated the need for this rule, summarized the issues raised by the public comments and the Commission's responses to those comments, and described variations of the rule that were suggested. In addition, the Commission has indicated its objectives and the legal basis for this rulemaking. As discussed, the rule establishes a new procedure to shorten the hearing process in designated rate cases involving electric utilities, their customers, and other interested parties. The rule adds only minor procedural requirements in designated electric rate cases in order to reduce the overall time and expense incurred by both the parties and the Commission. The Commission expects these savings to be realized by all entities, large and small, that participate in the designated electric rate cases. Ultimately, the ratepaying public will receive the benefit of these savings.

This rule affects electric utilities and other entities. There are approximately 217 public utilities in the United States. The Small Business Administration's (SBA) regulations do not establish size standards for electric utilities.[3] Most utilities, however, are large businesses. Only about 20 percent of these utilities could possibly be classified as small entities.[4] Thus, while this rule may have some degree of economic impact on a minor number of small electric utilities, there is no reason to expect that this impact will be significant for a substantial number of those small utilities.

As explained in the NOPR, the rule does not affect the ability of any participant to receive an initial decision. The rule affects the course of a designated case only if a participant elects to use the Commission's review process to challenge an initial decision. Thus, any potential economic impact of this rule is not automatically incurred, but is tied to a participant's choice to appeal an initial decision. Also, the rule will apply only where prescreening reveals that the case should be designated as subject to the rule. This will reduce the number of entities within the scope of the rule.

For the foregoing reasons, the Commission finds that this rule will not have a significant economic impact on a substantial number of small entities.

V. Paperwork Reduction Act Statement, Effective Date and Sunset Provision

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3520 (1982), and the Office of Management and Budget's (OMB) regulations, 5 CFR 1320.12 (1983), require that OMB approve certain information collection requirements imposed by agency rule. This final rule does not include information collection requirements within the meaning of the PRA and OMB's regulations, and therefore is not subject to OMB review or approval.

In accordance with section 553(d) of the Administrative Procedure Act, 5 U.S.C 553(d) (1982), the final rule set forth below will become effective June 18, 1984. The rule will be effective for two years. At the end of the two years, the rule will automatically expire unless the Commission takes affirmative action to continue its effectiveness. This two-year sunset provision is intended to enable the Commission to review the efficacy of this rule after a reasonable time to ensure that the objectives of this rulemaking are being met satisfactorily.

List of Subjects in 18 CFR Part 385

Administrative practice and procedure.

In consideration of the foregoing, the Commission is amending Part 385, Subchapter X, Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 385—[AMENDED]

1. The authority citation for Part 385 continues to read as follows:

Authority: Administrative Procedure Act, 5 U.S.C. 551–557; Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12009, 3 CFR 142 (1978); Federal Power Act, 16 U.S.C. 791–828c, as amended; Natural Gas Act, 15 U.S.C. 717–717z, as amended; Natural Gas Policy Act, 15 U.S.C. 3301–3432; Public Utilities Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645; Interstate Commerce Act, 49 U.S.C. 1, *et seq.*

2. In § 385.504, paragraph (a)(5) is revised, paragraph (b)(19) is redesignated as paragraph (b)(20), and a new paragraph (b)(19) is added to read as follows:

§ 385.504 Duties and powers of presiding officers (Rule 540).

* * * * *

(a) * * *

(5) The presiding officer will prepare and certify an initial decision or a revised initial decision, whichever is appropriate, to the Commission as provided in Subpart G of this part.

(b) * * *

(19) Rule on motions for reconsideration of an initial decision as provided in Rule 717;

* * * * *

3. In § 385.702, paragraph (b) is redesignated as paragraph (c) and a new paragraph (b) is added to read as follows:

§ 385.702 Definitions (Rule 702).

* * * * *

(b) "Revised initial decision" means any initial decision as revised by a presiding officer in accordance with Rule 717;

* * * * *

4. In § 385.708, paragraphs (b), (c), and (d) are revised to read as follows:

§ 385.708 Initial and revised initial decisions by presiding officers (Rule 708).

* * * * *

(b) *General rule.* (1) Except as otherwise ordered by the Commission or provided in paragraph (b)(2) of this section, the presiding officer will prepare a written initial decision and, if appropriate under Rule 717, a written revised initial decision.

(2)(i) If time and circumstances require, the presiding officer may issue an order stating that an oral initial or oral revised initial decision will be issued.

(ii) An oral decision is considered served upon all participants when the decision is issued orally on the record. Promptly after service of the oral decision, the presiding officer will prepare the oral initial decision contained in the transcript in the format of a written initial decision.

(3) Any initial decision or, if appropriate under Rule 717, any revised initial decision prepared under paragraph (b)(1) or (b)(2) of this section will be certified to the Commission by

---

[3] 5 U.S.C. 601(3) *citing to* section 3 of the Small Business Act, 15 U.S.C. 632 (Supp. V 1981). Section 3 of the Small Business Act defines "small-business concern" as a business which is independently owned and operated and which is not dominant in its field or operation. *See also* SBA's Small Business Size Standards, 13 CFR Part 121 (1983).

[4] For this analysis, small entities are those classified as Class C or Class D utilities, that is, utilities with operating revenues of $25,000 or more per year, but less than $1,000,000. (See 18 CFR Part 104, Uniform System of Accounts Prescribed for Public Utilities and Licenses Subject to the Provisions of the Federal Power Act.)

the presiding officer with a copy of the record in the proceeding.

(4) Not later than 35 days after the certification of an initial or revised initial decision, as appropriate, under paragraph (b)(3) of this section, the presiding officer, after notifying the participants and receiving no objection from them, may make technical corrections to the initial or revised initial decision.

(c) *Initial and revised initial decision prepared and certified by presiding officer.* (1) The presiding officer who presides over the reception of evidence will prepare and certify the initial decision, if any, or, if appropriate, the revised initial decision unless the officer is unavailable or the Commission provides otherwise in accordance with 5 U.S.C. 557(b).

(2) If the presiding officer who presided over the reception of evidence becomes unavailable, the Chief Administrative Law Judge may issue an order designating another qualified presiding officer to prepare and certify the initial or revised initial decision.

(d) *Finality of initial and revised initial decision.* For purposes of requests for rehearing under Rule 713, an initial decision or, if appropriate under Rule 717, a revised initial decision becomes a final Commission decision 10 days after exceptions are due under Rule 711 unless:

(1) Exceptions are timely filed under Rule 711; or

(2) The Commission issues an order staying the effectiveness of the decision pending review under Rule 712.

5. In § 385.711, paragraph (a)(1)(i) is revised to read as follows:

§ 385.711 Exceptions and briefs on and opposing exceptions after initial or revised initial decision (Rule 711).

(a) *Exceptions.* (1)(i) In proceedings not subject to Rule 717, any participant may file with the Commission exceptions to the initial decision in a brief on exceptions not later than 30 days after service of the initial decision.

* * * * *

6. In § 385.712, paragraph (a) is revised to read as follows:

§ 385.712 Commission review of initial and revised initial decisions in the absence of exceptions (Rule 712).

(a) *General rule.* If no briefs on exceptions to an initial or revised initial decision are filed within the time established by rule or order under Rule 711, the Commission may, within 10 days after the expiration of such time, issue an order staying the effectiveness of the decision pending Commission review.

* * * * *

7. In § 385.713, paragraphs (a)(2) (i) and (iv) and (a)(3) are revised to read as follows:

§ 385.713 Request for rehearing (Rule 713).

(a) * * *

(2) * * *

(i) On exceptions taken by participants to an initial decision or, if appropriate under Rules 717 and 711, to a revised initial decision;

* * * * *

(iv) On review of an initial or revised initial decision without exceptions under Rule 712; and

* * * * *

(3) For the purposes of rehearing under this section, any initial decision under Rule 709 or any revised initial decision under Rule 717 is a final Commission decision after the time provided for Commission review under Rule 712, if there are no exceptions filed to the decision and no review of the decision is initiated under Rule 712.

* * * * *

8. In § 385.716, paragraph (c) is revised to read as follows:

§ 385.716 Reopening (Rule 716).

* * * * *

(c) *By action of the presiding officer or the Commission.* If the presiding officer or the Commission, as appropriate, has reason to believe that reopening of a proceeding is warranted by any changes in conditions of fact or of law or by the public interest, the record in the proceeding may be reopened by the presiding officer before the initial or revised initial decision is served or by the Commission after the initial decision or, if appropriate, the revised initial decision is served.

9. In § 385.2007, paragraph (c)(2) is revised to read as follows:

Subpart T—Formal Requirements for Filings in Proceedings Before the Commission

* * * * *

§ 385.2007 Time (Rule 2007).

* * * * *

(c) *Effective date of Commission rules or orders.* * * *

(2) Any initial or revised initial decision issued by a presiding officer is effective when the initial or revised initial decision is final under Rule 708(d).

10. Part 385 is amended by adding a new § 385.717 to read as follows:

§ 385.717 Reconsideration of initial decision (Rule 717).

(a) *Scope.* This section governs the filing, disposition, and effects of motions for reconsideration of initial decisions in wholesale electric rate cases designated according to this section.

(b) *Designation of proceedings subject to this section.*

(1) The Commission or the Chief Administrative Law Judge may designate any wholesale electric rate case, or phase thereof, to be subject to the procedures established in this section.

(2) Any designation of a proceeding, or phase thereof, as subject to the procedures established in this section will be included in either:

(i) The notice or order issued under Rule 502 initiating the hearing;

(ii) The Chief Administrative Law Judge's designation of a presiding office for the hearing; or

(iii) An order issued by the Chief Administrative Law Judge in any case pending, at the time the rule becomes effective, before a presiding officer and prior to the rendering of an initial decision by the presiding officer in that case.

(c) *Filing of motions for reconsideration and replies.* Within 30 days after service of an initial decision, a participant may file with the presiding officer a motion for reconsideration of the initial decision. Any other participants may file a reply to the motion within 20 days after the last date for filing a motion for reconsideration. No other pleading may be filed with respect to the motion or any reply to the motion except by leave of the presiding officer.

(d) *Disposition of motion for reconsideration.* Unless otherwise authorized by the Chief Administrative Law Judge for exceptional circumstances, the presiding officer will issue a revised initial decision or a denial of the motion for reconsideration, in whole or in part, within 30 days from the last day allowed for filing replies to the motion for reconsideration. If a revised initial decision is issued, the presiding officer shall specifically indicate those portions of the original initial decisions, if any, which are to be treated as part of the revised initial decision.

(e) *Effect of motions for reconsideration.* (1) A participant shall file a motion for reconsideration of an initial decision or a reply to a motion for reconsideration in accordance with this section before filing exceptions to the initial or revised initial decision.

(2) A participant who files a motion for reconsideration or a reply to a motion for reconsideration of an initial decision in accordance with this section should not include in that participant's exceptions to the initial or revised initial decision, or any brief or reply brief thereon, any issue that was omitted from that participant's motion for reconsideration or reply to a motion for reconsideration except where the revised initial decision contains new findings.

(f) *Time limits.* (1) If a motion for reconsideration of the initial decision or a reply to that motion is filed under this section by a participant, that participant may file with the Commission exceptions to the revised initial decision or, if the motion for reconsideration is wholly denied, to the initial decision in a brief on exceptions not later than 20 days after service of the presiding officer's disposition of the motion for reconsideration.

(2) Subject to the restrictions in paragraph (e)(2) and not later than 10 days after the latest date for filing a brief on exceptions under paragraph (f)(1), any participant may file a brief opposing exceptions in response to a brief on exceptions.

(3) The time limits in Rule 711(a)(1) (i) and (ii) do not apply to participants subject to the procedures in this section.

(g) *Expiration date.* This rule will be in effect until May 21, 1986.

[FR Doc. 84-13525 Filed 5-18-84; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Sponsors of Approved Applications

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove the sponsor entry for Armour Pharmaceutical Co. The firm, no longer the sponsor of an approved new animal drug application (NADA), had not been previously removed from the list of sponsors of approved NADA's.

EFFECTIVE DATE: May 21, 1984.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (formerly Bureau of Veterinary Medicine) (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6243.

SUPPLEMENTARY INFORMATION: Armour Pharmaceutical Co., P.O. Box 3113, Omaha, NE 68103, was sponsor of NADA 12-330 Kymar Aqueous (chymotrypsin injection) for dogs, cats, and horses, approval of which was withdrawn March 31, 1980. This was the only approved NADA held by Armour. Inadvertently, the entries in 21 CFR 510.600 were not removed when the approval was withdrawn. This document removes those entries.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting requirements.

PART 510—NEW ANIMAL DRUGS

§ 510.600 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), § 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) by removing the entry for "Armour Pharmaceutical Co." and in paragraph (c)(2) by removing the entry for "000053."

Effective date. May 21, 1984.

(Sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e)))

Dated: May 14, 1984.

William B. Bixler,

Associate Director for Surveillance and Compliance, Center for Veterinary Medicine.

[FR Doc. 84-13542 Filed 5-18-84; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 610

[Docket No. 83N-0235]

General Biological Products Standards; Equivalent Methods; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting an address in the final rule that amended the biologics regulations to allow manufacturers of any licensed biological product to use modified test methods or manufacturing processes that are found by the Director, Office of Biologics Research and Review, Center for Drugs and Biologics, to be equal or superior to the test methods or manufacturing processes specified in the regulations under 21 CFR Parts 610 through 680 (49 FR 15188; April 18, 1984).

EFFECTIVE DATE: May 18, 1984.

FOR FURTHER INFORMATION CONTACT: Michael Hooton, Center for Drugs and Biologics (formerly National Center for Drugs and Biologics) (HFN-368), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1306.

SUPPLEMENTARY INFORMATION: In FR Doc. 84-10298 appearing at page 15186 in the issue for Wednesday, April 18, 1984, the following correction is made on page 15187 in the center column:

§ 610.9 [Corrected]

In § 610.9 *Equivalent methods and processes*, paragraph (b) is corrected by changing "5600 Fishers Lane, Rockville, MD 20857" to read "8800 Rockville Pike, Bethesda, MD 20205."

Dated: May 14, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-13541 Filed 5-18-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203, 213, 220, 221, 234, 235, and 240

[Docket No. R-84-1015; FR-1623]

Single Family Mortgage Insurance Programs

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

ACTION: Final rule.

SUMMARY: This final rule makes the following programmatic and administrative changes in HUD's single family mortgage insurance programs: (1) Permits the insurance of mortgages covering a leasehold if the lease has a period of not less than 10 years to run beyond the maturity date of the mortgage; (2) authorizes insuring a mortgage on a property without clear title in communities with outstanding claims to ownership of land by an American Indian tribe if class litigation on the subject involving at least 50 defendants were filed before April 1, 1980; (3) removes the "remaining economic life" restriction on the

mortgage term; (4) permits the mortgagee to foreclose on a defaulted rehabilitation first lien loan under the same terms and conditions that apply to the basic insured mortgage loan; (5) permits a mortgage insured under the section 235 program to exceed the maximum mortgage limits by up to 10 percent if the increase is needed to make the dwelling accessible to, or usable for, a physically handicapped owner-occupant; and (6) eliminates a redundant requirement for an FHA or VA inspection contained in the regulations dealing with mortgage insurance in urban renewal and concentrated development areas.

EFFECTIVE DATE: June 28, 1984.

FOR FURTHER INFORMATION CONTACT: John J. Coonts, Director, Single Family Development Division, Department of Housing and Urban Development, Room 9270, 451 Seventh Street, SW., Washington, D.C., 20410, (202) 755–6720 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On September 30, 1983 the Department published a proposed rule (48 FR 44847) to make programmatic and administrative changes in HUD's single family mortgage insurance programs. Those changes reflected miscellaneous amendments to the National Housing Act made by the Housing and Community Development Act of 1980.

No public comments were received on the proposed rule. Accordingly, this final rule, with the exception of minor editorial and stylistic changes, is identical to the rule as proposed.

Insurance of Mortgages Covering Leaseholds

Before enactment of the Housing and Community Development Act of 1980 (HCD Act of 1980), single family mortgages covering a leasehold could be insured under the National Housing Act only if the lease had a period of not less than 50 years to run from the date the of mortgage was executed. Section 306 of the HCD Act of 1980 authorizes insurance where the lease has a period of not less than 10 years to run beyond the maturity date of the mortgage. This change is incorporated in §§ 203.37 (basic home mortgage insurance), 213.525 (individual properties released from a cooperative project mortgage) and 234.65 (insurance of one-family condominium units).

Deletion of Remaining Economic Life as Underwriting Test

Section 333 of the HCD Act of 1980 deletes, from certain single family insuring authorities in the National Housing Act, references to the use of three-fourths of the "remaining economic life" as one of the underwriting criteria for determining the maximum term of an insurable mortgage. This final rule implements this provision by removing the term "remaining economic life" from 24 CFR 203.17 (basic home mortgage insurance), 220.101 (home mortgage insurance in urban renewal and concentrated development areas), 221.30 (home mortgage insurance for low and moderate income families), 221.65 (conversion to family unit ownership in low and moderate income housing projects), 234.25 (insurance of one-family condominium units), 235.22 (home ownership for lower-income families) and 240.16 (homeownership purchases of fee simple title). The Department, consistent with the direction of the conferees (see H.R. Rep. No. 1420, 96th Cong., 2d Sess. 136 (1980)) would continue to use "remaining economic life" as a factor in determining the value of the property.

In addition to deleting the reference to "remaining economic life," § 221.30 is amended to delete the express requirement for an FHA or VA inspection since inspection is a prerequisite to approval for mortgage insurance and § 221.30(b) (as revised by this rule) contains approval for mortgage insurance before construction as a condition for extending the mortgage maturity to 35 or 40 years.

Foreclosure of Loans Under Section 203(k)

Section 321 of the HCD Act of 1980 made a technical amendment to permit mortgagees to foreclose upon defaulted section 203(k) rehabilitation loans which are secured by a first mortgage, in the same manner as is authorized for foreclosures under the FHA's basic section 203(b) home insurance program. Under prior law, only HUD could foreclose on these loans. Procedures under prior law for the settlement of claims on section 203(k) loans secured by other than a first mortgage are not changed. The amendments to §§ 203.473, 203.474, 203.476 and 203.477 (insurance of rehabilitation loans) implement section 321.

Title Insurance Relief

Section 328 of the HCD Act of 1980 authorizes the Secretary, notwithstanding any other provision of Title II of the National Housing Act, to insure under section 203(b) (as modified by this special provision added as section 203(p)) a mortgage which meets both the requirements of this provision and such criteria as the Secretary may prescribe to further the provision's purpose. The authority may be used only in communities where the Secretary determines that:

(1) Temporary adverse economic conditions exist throughout the community as a direct and primary result of outstanding claims to ownership of land in the community by an American Indian tribe, band, group or Nation;

(2) These ownership claims are reasonably likely to be settled, by court action or otherwise; and

(3) 50 or more individual homeowners were joined as parties defendant or were members of a defendant class prior to April 1, 1980, in litigation involving Indian claims to ownership of land in the community under the Articles of Confederation, the Trade and Intercourse Action of 1790 or any similar State or Federal law.

(4) The defect or potential defect in title is a direct and primary result of outstanding claims to ownership of land in the community by an American Indian tribe, band, group or Nation.

Insurance would be available without regard to the limitations in Title II of the National Housing Act relating to marketability of title, and without regard to any other statutory restriction which the Secretary determines to be contrary to the purpose of this authority, but only if the mortgagor is an owner-occupant of a home in a community specified above. These mortgages are obligations of the Special Risk Insurance Fund.

This new insurance authority is implemented by adding a new § 203.43g.

Special Section 235 Mortgage Limits for the Physically Handicapped

Section 206(a)(4) of the HCD Act of 1980 permits the Secretary to insure a mortgage under section 235 which involves a principal obligation which exceeds, by up to 10 percent, the maximum limits specified under section 235, if the mortgage relates to a dwelling unit to be occupied by a physically handicapped person and the Secretary determines that this action is necessary to reflect the cost of making the dwelling accessible to and usable by that person. This rule adds new §§ 235.32 (homeownership) and 235.331 (cooperative units) to implement section 206(a)(4).

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant

Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the address set forth above.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule was listed at 48 FR 47433 as H–44–81 in the Department's Semiannual Agenda of Regulations, published on October 17, 1983 pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The following numbers identify the programs, as listed in the Catalog of Federal Domestic Assistance, affected by this regulation change: 14.117, Mortgage Insurance-Homes; 14.118, Mortgage Insurance-Homes for Certified Veterans; 14.108, Rehabilitation Mortgage Insurance; 14.132, Mortgage Insurance-Purchase of Sales-Type Cooperative Housing Units; 14.122, Mortgage Insurance-Homes in Urban Renewal Areas; 14.120, Mortgage Insurance-Homes for Low and Moderate Income Families; 14.166, Mortgage Insurance-Servicemen; 14.133, Mortgage Insurance-Purchase of Units in Condominiums; 14.105, Interest Reduction-Homes for Lower Income Families; and 14.130, Mortgage Insurance-Purchase by Homeowners of the Fee Simple Title from Lessors.

Information collection requirements contained in this regulation (§ 203.476) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control number 2502–0051.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule makes changes which should be beneficial to all program participants including small entities.

List of Subjects

24 CFR Part 203

Home improvement, Loan programs-housing and community development, Mortgage insurance, Solar energy.

24 CFR Part 213

Mortgage insurance, Cooperatives.

24 CFR Part 220

Home improvement, Mortgage insurance, Urban renewal, Rental housing, Loan programs-housing and community development, Projects.

24 CFR Part 221

Condominiums, Low and moderate income housing, Mortgage insurance, Displaced families, Single family housing, Projects, Cooperatives.

24 CFR Part 234

Condominiums, Mortgage insurance, Homeownership, Projects, Units.

24 CFR Part 235

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, Grant program-housing and community development.

24 CFR Part 240

Mortgage insurance, Fee title purchase.

Accordingly, 24 CFR Parts 203, 213, 220, 221, 234, 235, and 240 are amended as follows:

PART 203—[AMENDED]

§ 203.17 [Amended]

1. In § 203.17, paragraph (e) is removed.

2. Section 203.37 is revised to read as follows:

§ 203.37 Nature of title to realty.

A mortgage, to be eligible for insurance, must be on real estate held in fee simple, or on leasehold under a lease for not less than 99 years which is renewable, or under a lease having a period of not less than 10 years to run beyond the maturity date of the mortgage.

3. In Part 203, a new § 203.43g is added to read as follows:

§ 203.43g Eligibility of mortgages in certain communities.

(a) A mortgage which meets the requirements of this subpart shall be eligible for insurance without regard to the limitation in this part relating to marketability of title under the following conditions:

(1) The mortgagor is an owner-occupant of the property.

(2) The defect or potential defect in title is a direct and primary result of outstanding claims to ownership of land in the community by an American Indian tribe, band, group or Nation.

(3) Fifty or more individual owners were joined as parties defendant or were members of a defendant class before April 1, 1980 in litigation involving claims to ownership of land in the community in which the property is located by an American Indian tribe, band, group or Nation pursuant to a dispute involving the Articles of Confederation, the Trade and Intercourse Act of 1790 or any similar State or Federal law.

(4) Such ownership claims are reasonably likely to be settled by court action or otherwise.

(5) Temporary adverse economic conditions exist throughout the community as a direct and primary result of such claims.

(b) Mortgages complying with the requirements of this subpart as modified by this section shall be the obligation of the Special Risk Insurance Fund.

4. Section 203.473 is revised to read as follows:

§ 203.473 Claim procedure.

(a) A claim for insurance benefits on a loan secured by a first mortgage shall be made, and insurance benefits shall be paid, as provided in §§ 203.350 through 203.404.

(b) A claim for insurance benefits on a loan secured by other than a first mortgage shall be made, and insurance benefits shall be paid, as provided in §§ 203.474 through 203.478. However, the lender may not, except with the approval of the Commissioner, proceed against the security and also make claim under the contract of insurance, but shall elect which method it desires to pursue.

5. Section 203.474 is revised to read as follows:

§ 203.474 Maximum claim period.

A claim for insurance benefits on a loan secured by other than a first mortgage shall be filed within one year from the date of default, or within such additional period of time as may be approved by the Commissioner.

6. In § 203.476 the introductory paragraph is revised and a new sentence is added to the end of the section, to read as follows:

§ 203.476 Claim application and items to be filed.

The claim for reimbursement on a loan secured by other than a first mortgage shall be made upon an

application form prescribed by the Commissioner. The application shall be accompanied by:

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2502-0051.)

7. In § 203.477, paragraph (c) is revised to read as follows:

§ 203.477 Certification by lender when loan assigned.

* * * * *

(c) The mortgage transaction did not involve a first mortgage and the mortgage is prior to all mechanics' and materialmen's liens filed of record, regardless of when such liens attach, and prior to all liens and encumbrances other than a first mortgage, or defects which may arise except such liens or other matters as may have been approved by the Commissioner.

* * * * *

PART 213—[AMENDED]

8. Section 213.525 is revised to read as follows:

§ 213.525 Nature of title to realty.

A mortgage, to be eligible for insurance, must be on real estate held in fee simple, or on leasehold under a lease for not less than 99 years which is renewable, or under a lease having a period of not less than 10 years to run beyond the maturity date of the mortgage.

PART 220—[AMENDED]

9. In § 220.101, paragraph (c) is revised to read as follows:

§ 220.101 Mortgage provisions.

* * * * *

(c) The loan shall have a maturity satisfactory to the Commissioner not less than five nor more than 20 years from the date of the beginning of amortization.

PART 221—[AMENDED]

10. Section 221.30 is revised to read as follows:

§ 221.30 Maturity of mortgage.

The mortgage shall provide for complete amortization not to exceed 30 years from the date of the beginning of amortization of the mortgage, except that such maturity may be 35 or 40 years in the following instances:

(a) In the case of a displaced family, if it is determined by the Commissioner that the mortgagor is not able to make the required payments under a mortgage having a shorter amortization period.

(b) In the case of any other mortgagor, if it is determined by the Commissioner that the mortgagor is an owner-occupant of the property and is not able to make the required payments under a mortgage having a shorter amortization period, and the dwelling was approved for mortgage insurance by the Commissioner before the beginning of construction, or approved for guaranty, insurance, or direct loan by the Administrator of Veterans Affairs before such construction.

11. In § 221.65, paragraph (d)(3) is revised to read as follows:

§ 221.65 Eligibility requirements for low- and moderate-income purchaser of family unit in condominium.

* * * * *

(d) * * *

(3) It shall provide for complete amortization within 40 years from the beginning of amortization.

* * * * *

PART 234—[AMENDED]

12. In § 234.25, paragraph (c)(2) is revised to read as follows:

§ 234.25 Mortgage provisions.

* * * * *

(c) * * *

(2) Have a maturity satisfactory to the Commissioner of not more than 30 years from the date of the beginning of amortization, except that the term may be up to 35 years from the date of the beginning of amortization in either of the following instances:

* * * * *

13. Section 234.65 is revised to read as follows:

§ 234.65 Nature of title.

A mortgage, to be eligible for insurance, shall be on a fee interest in, or on a leasehold interest in, a one-family unit in a project including an undivided interest in the common areas and facilities, and such restricted common areas and facilities as may be designated. To be eligible, a leasehold interest shall be under a lease for not less than 99 years which is renewable, or under a lease having a period of not less than 10 years to run beyond the maturity date of the mortgage.

PART 235—[AMENDED]

14. In § 235.22, paragraph (d) is revised to read as follows:

§ 235.22 Mortgage provisions.

* * * * *

(d) *Maturity.* The mortgage shall provide for complete amortization not to exceed 30 years from the date of the beginning of amortization of the mortgage.

15. A new § 235.32 is added to read as follows:

§ 235.32 Increased maximum mortgage amount for physically handicapped persons.

If the mortgate relates to a dwelling to be occupied by a handicapped person as defined in § 235.5(c)(2), the dollar amount limitation under § 235.25 or § 235.30 may be increased in such amount as may be necessary to reflect the cost of making the dwelling accessible to and usable by such person, but not to exceed 10 percent of such limitation.

16. A new § 235.331 is added to read as follows:

§ 235.331 Increased maximum mortgage amount for physically handicapped persons.

If the mortgage relates to a dwelling unit to be occupied by a handicapped person as defined in § 235.5(c)(2), the otherwise applicable dollar amount limitation under § 235.330 may be increased in such amount as may be necessary to reflect the cost of making the dwelling unit accessible to and usable by such person, but not to exceed 10 percent of such limitation.

PART 240—[AMENDED]

17. In § 240.16, paragraph (c) is revised to read as follows:

§ 240.16 Mortgage provisions.

* * * * *

(c) *Maturity of mortgage.* The mortgage shall have a maturity satisfactory to the Commissioner but not less than five nor more than 20 years from the date of the beginning of amortization.

Authority: Sec. 211 of the National Housing Act (12 U.S.C. 1715b), Sec. 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)).

Dated: May 9, 1984.

Maurice L. Barksdale,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 84-13524 Filed 5-18-84; 8:45 am]

BILLING CODE 4210-27-M

---

24 CFR Parts 232 and 235

[Docket No. R-84-1172; FR-1995]

Mortgage Insurance; Changes in Interest Rates

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

ACTION: Final rule.

SUMMARY: This change in the regulations increases the maximum allowable interest rate on Section 232 (Mortgage Insurance for Nursing Homes) and on Section 235 (Homeownership for Lower Income Families) insured loans. This final rule is intended to bring the maximum permissible financing charges for these programs into line with competitive market rates and help assure an adequate supply of and demand for FHA financing.

EFFECTIVE DATE: May 8, 1984.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Chief, Mortgage and Capital Market Analysis Branch, Office of Financial Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone (202) 755–7270. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The following amendments to 24 CFR Chapter II have been made to increase the maximum interest rate which may be charged on loans insured by this Department under section 232 (fire safety equipment) and section 235 of the National Housing Act. The maximum interest rate on the HUD/FHA section 232 (fire safety equipment) and section 235 insurance programs has been raised from 13.00 percent to 13.50 percent.

The Secretary has determined that this change is immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change, in accordance with his authority contained in 12 U.S.C. 1709–1.

As a matter of policy the Department submits most of its rulemaking to public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this final rule effective immediately.

HUD regulations published at 47 FR 56266 (1982), amending 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the amendments made by this rule fall within the categorical exclusions set forth in paragraph (*1*) of § 50.20, the preparation of an Environmental Impact Statement or Finding of No Significant Impact is not required for this rule.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local governmental agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for a small increase in the mortgage interest rate in programs of limited applicability, and thus of minimal effect on small entities.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 19, 1984 (49 FR 15902) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.108, 14.117, and 14.120.

List of Subjects

21 CFR Part 235

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, Grant programs: housing and community development.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs: Health, Loan programs: Housing and community development, Mortgage insurance, Nursing homes, Intermediate care facilities.

Accordingly, the Department amends 24 CFR Parts 232 and 235 as follows:

PART 232—NURSING HOMES AND INTERMEDIATE CARE FACILITIES MORTGAGE INSURANCE

1. In § 232.560, paragraph (a) is revised to read as follows:

§ 232.560 Maximum interest rate.

(a) The loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 13.50 percent per annum with respect to loans insured on or after May 8, 1984.

* * * * *

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

2. In § 235.9, paragraph (a) is revised to read as follows:

§ 235.9 Maximum interest rate.

(a) The mortgate shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 13.50 percent per annum with respect to mortgages insured on or after May 8, 1984.

* * * * *

3. In § 235.540, paragraph (a) is revised to read as follows:

§ 235.540 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 13.50 percent per annum with respect to mortgages insured on or after May 8, 1984.

* * * * *

Authority: Sec. 3(a), 82 Stat. 113; (12 U.S.C. 1709–1); sec. 7 of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 7, 1984.

Maurice L. Barksdale,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 84-13571 Filed 5-18-84; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 535

Iranian Assets Control Regulations; Tangible Property of Iran Having Potential Military Application

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control is amending § 535.215 of the Iranian Assets Control Regulations to prohibit any transfer, except under license from the Office of Foreign Assets Control, of blocked tangible property in which Iran has any interest whatsoever, the export of which requires the issuance of any license under U.S. law.

There are currently properties in the United States in which Iran has an interest that require issuance of a license for export under U.S. law. The purpose of this regulation is to assure compliance with these licensing requirements, particularly, but not only,

with respect to properties having potential military application. For some Iranian properties, export licenses are being issued. For other items (for example, munitions covered by the Arms Export Control Act, 22 U.S.C. App. 2751, *et seq.*), export licenses are not being issued.

EFFECTIVE DATE: May 21, 1984.

FOR FURTHER INFORMATION CONTACT: Raymond W. Konan, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, 202/376-0236.

SUPPLEMENTARY INFORMATION: Since the regulation involves a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for the rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply. Because the amendment is being issued with respect to a foreign affairs function, it is not subject to Executive Order 12291 of February 19, 1981, dealing with Federal regulations. This regulation is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 31 CFR Part 535

Iran.

PART 535—[AMENDED]

31 C.F.R. Part 535 is amended as follows:

§ 535.215 [Amended]

1. Section 535.215(a) is amended by adding the following language at the beginning of that section: "Except as provided in paragraphs (b) and (c) of this section,* * *".

2. New § 535.215(c) is added as follows:

* * * * *

(c) Notwithstanding paragraph (a) of this section, persons subject to the jurisdiction of the United States, including agencies, instrumentalities and entities controlled by the Government of Iran, who have possession, custody or control of blocked tangible property covered by § 535.201, shall not transfer such property without a specific Treasury license, if the export of such property requires a specific license or authorization pursuant to the provisions of any of the following acts, as amended, or regulations in force with respect to them: the Export Administration Act, 50 U.S.C. App. 2403, *et seq.*, the Aims Export Control Act, 22 U.S.C. 2751, *et seq.*, the Atomic Energy Act, 42 U.S.C. 2011, *et seq.*, or any other act prohibiting the export of such property, except as licensed.

(Secs. 201–207, 91 Stat. 1626, 50 U.S.C. 1701–1706; E.O. No. 12170, 44 FR 65729)

Dated: May 11, 1984.

Dennis M. O'Connell,

Director, Office of Foreign Assets Control.

Approved:

John M. Walker, Jr.,

Assistant Secretary (Enforcement & Operations).

[FR Doc. 84-13726 Filed 5-17-84; 4:33 am]

BILLING CODE 4810-25-M

POSTAL SERVICE

39 CFR Part 265

Fee Waiver Policy for Providing Customer Addresses to Government Agency Requesters

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: Effective January 1, 1985, the Postal Service will charge, with certain limited exceptions, a $1 fee when it provides information about a postal customer's address to Federal, State, or local Government agency requesters. However, the Postal Service will continue its current policy of waiving the $1 fee for all Government agency requests for address information received before January 1, 1985. This new requirement is adopted as a part of the Postal Service's Release of Information regulations (39 CFR Part 265).

The Postal Service will also require Government agency requesters to use a standard format when submitting their requests to post offices. The required format and certain other procedures for submitting requests are set forth in the Supplementary Information section below. These requirements go into effect on August 1, 1984.

EFFECTIVE DATES: Janaury 1, 1985, for payment of the fee, § 265.8(d)(4) and (e)(8); August 1, 1984, for use of the standard request format, § 265.6(d)(7).

FOR FURTHER INFORMATION CONTACT: John Gunnels, Records Office, U.S. Postal Service, (202) 245-4797.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 22, 1983 (48 FR 28481), the Postal Service proposed to begin charging, with certain limited exceptions, the regular $1 fee for providing address information to Federal, State, and local Government agency requesters.[1] In response to this proposal, the Postal Service received comments from five Federal and twelve State agencies. The majority of these comments came from agencies that administer child support enforcement programs. Several commenters suggested that the Postal Service exempt these agencies from payment of the fee. Almost all of the agencies stated that the address information provided by the Postal Service is vital to the effective administration of their programs and also expressed concern that payment of the fees would impose a financial burden on their programs.

The Postal Service estimates that it processes approximately 2.5 million address information requests a year from Government agencies. That estimate is supported by figures supplied in the comments. In responding to these requests, the Postal Service expends considerable time and effort for which it is not being reimbursed. There are no statutes prohibiting the Postal Service from requiring reimbursement from Government agencies for this service. In fact, the statute that establishes the Parent Locator Service, section 453(e)(2) of the Social Security Act (42 U.S.C. 653(e)(2)), states that agencies supplying address information to child support enforcement agencies (for the purpose of locating absent parents) shall be reimbursed for the costs of providing that information.

Two commenters questioned the reasonableness of the $1.00 fee, in comparison to the lower $.25 address correction fee, and the even lower $.13 fee for each name on a mailing list to be corrected. The low cost of the latter services is attributable to the fact that post offices operate automated address forwarding units to handle mail that cannot be delivered to the address on the envelope because the person has relocated. Address verification requests, however, are more costly to process, since they must be opened in the administrative section of the post office and directed to the carrier whose route serves that address. The carrier must determine whether or not mail for the named person is currently being delivered to the address given. While the carrier does not go to the address

[1] For purposes of this regulations, "address information" means either the new mailing address of a specific postal customer or a verification of a customer's current address. "Verification" means advising an agency whether or not its address for a postal customer is one at which mail for that customer is currently being delivered. "Verification" does not mean or imply knowledge on the part of the Postal Service as to the actual residence of the customer or the actual receipt by the customer of mail delivered to that address.

and verify that the person lives there, he does verify that mail for the addressee is being delivered to that address and is not being returned. The additional work of processing such request increases the cost and, therefore, causes the fee to be higher.

Several agencies involved in child support or parent locator services suggested that the fee requirement be waived for agencies involved in such services. A waiver of fees was warranted, the agencies suggested, because the general public might, in the long run, benefit from the services performed by the agencies, and because the program budgets of some of these agencies would be strained if the Postal Service were to charge the proposed fees. While the Postal Service is quite sympathetic to the concerns expressed by these agencies, it is, however, subject to the Congressional mandate to charge such fees for its services "so that the total estimated income and appropriations to the Postal Service will equal as nearly as practicable [the] total estimated costs of the Postal Service." 39 U.S.C. 3621. In keeping with this mandate, the Postal Service has adopted the general policy of requiring those who use a particular service to pay a reasonable fee in order to defray the cost of providing the service. Charging Government agencies a reasonable fee for providing address information in the manner hereby adopted is thus consistent with this general policy of the Postal Service.

In light of the foregoing, the Postal Service hereby adopts as a final rule the requirement that, except in those circumstances described below, Government agencies will be charged a $1 fee when the Postal Service provides address information about a postal customer in response to an agency's written request. In order to allow agencies sufficient lead time for budgeting purposes, the Postal Service will not require the payment of the fee until January 1, 1985. However, the requirement that all agencies use a standard format when submitting requests will become effective on August 1, 1984. That will allow agencies adequate time to notify their affected organizations and to make the format available for their use.

This final rule modifies the provisions in 39 CFR 265.8(e)(8) by revoking the waiver of the fee for providing address information to most Federal, State, and local Government agencies. Specifically, after January 1, 1985, the fee will be waived only for requests from: (1) Local Government *law enforcement officers* whose primary functions are the investigation of crimes, or the apprehension or detention of persons suspected or convicted of violations of the criminal laws of the applicable jurisdiction; (2) Federal and State *law enforcement officers* who confirm that the information is needed during the course of a *criminal investigation;* (3) *Court officials* such as judges, clerks, or jury commissioners, upon prior written request, when requesting the mailing address of any customer sought in connection with jury service; (4) Federal, State, and local *public health officials* for the purpose of locating persons who are infected with or have been exposed to contagious diseases. Within the context of this regulation, the fee will *not* be waived for child support enforcement purposes whether the information is requested at the Federal, State, or local level.

This final rule also deletes the provision at 265.8(e)(8)(i) that waives the fee for telegraph companies when the U.S Government is the sender of the telegram and adds the provision for waiving the fee for any individual in a compelling emergency. The final rule does not affect the fee waiver for postage meter manufacturers when they are attempting to locate a missing meter.

Payment of Fee

As of January 1, 1985, Government agencies (except in those circumstances described above) will be required to pay a $1 fee for each address information request. At that time, Government agencies may use the following options to pay the fee: (1) The fee may be paid by penalty mail stamps—Federal Agencies Only; (2) the fee may be paid by regular postage stamps; (3) the fee may be paid by postage meter strip; (4) the fee may be paid by Government check, cash, or money order accompanying each request; (5) if the anticipated volume warrants, an advance deposit account may be set up at the requester's serving post office and the fees deducted from that account. For further information on the use of any of these options, Federal agencies should contact the Manager, Government Revenue and Examination Branch, U.S. Postal Service Headquarters (202) 245–5001; State and local Government agencies should contact their Customer Services Representatives at their serving post offices.

Standard Request Format

The Postal Service has determined that a large part of the administrative burden on post offices answering address information requests can be eased by requiring Government agencies to use a standard request format. Although Government agencies will be charged the same $1 fee that the public is charged for change-of-address information, agencies may also obtain verification of customer addresses. The Postal Service incurs significant additional administrative costs in verifying addresses since each request must be handled by the carrier whose route serves the address in question. Standardization of the incoming requests is seen as an effective way to minimize these costs.

The current situation in which each agency submits its own unique request form causes substantial delays in processing. Some requests contain a preaddressed return envelope; others do not. Some requests contain the agency's certification of official need; others do not. Some requests have blocks for the carrier's responses; others do not. With such a tremendous volume of requests being submitted each year, standardization is imperative for more efficient processing.

Submission of Requests

Effective August 1, 1984 all Federal, State, and local Government agencies, when requesting address information from the Postal Service, will be required to use the standard request format specified herein, printed on agency letterhead. Agencies' formats must substantially conform to the example shown below. This particular example is intended for use by those agencies that, as of January 1, 1985, will pay the fee by penalty mail stamps, postage stamps, or postage meter strips. Agencies paying the fee by Government check, cash, or money order must replace the last sentence (regarding fee payment) with the statement that a Government check, cash or money order (specify) is enclosed in payment of the fee. Agencies using an advance deposit account must replace the last sentence with a statement that the serving post office should deduct the fee from that account. Those categories of agency requesters for whom a waiver of the fee will continue to apply even after January 1, 1985, will need to modify their request format to specifically claim the appropriate waiver.

Agencies are expected to use the standard request format for all request submitted after August 1, 1984. Individual postmasters may, at their discretion, continue to accept requests in other formats for a limited period of time depending upon local circumstances.

Instructions for Completing Requests:

1. Address the request to the postmaster at the post office of last known address.

2. Use the "Agency Control Number" (at the agency's option), to uniquely identify the individual whose address is being requested.

3. On the lines provided, gives the name and last known address, including ZIP Code, of the individual. Do not include any other identifying information such as race, date of birth, social security number, etc.

4. Until January 1, 1985, when the requirement to pay fees becomes effective, either line through or do not include the statement "The stamps or meter strip in payment of the fee are affixed. After January 1, 1985, affix penalty mail stamp(s), postage stamp(s), or meter strip totaling $1 in value to the space at the left of the agency official's signature.

5. The Postal Service provides the service of address verification to Government agencies only. For this reason, the Postal Service requires the signature and title of an agency official to certify that the address information reqested is required in the performance of the agency's official duties.[2] This agency official should be, if possible, the chief of the office requesting the information. In the interests of efficiency, however, an original signature is not required on each request; it may be preprinted or rubber stamped.

6. Type of stamp the agency's return mailing address in the space provided at the bottom of the request. Then mail the request to the postmaster at the post office of last known address.

Processing of Requests

Upon receipt of the request, the postmaster will check to see that: (1) All required information has been supplied, (2) after January 1, 1985, that the fee is paid (or that the requester is eligible for a waiver of the fee), and (3) that the request has been sent to the correct post office. If the request lacks any of the required information or lacks the fee (if required) or if the request has been sent to the wrong post office, the postmaster will return the request to the agency, specifying the deficiency.

In answering a Government agency request for address information, postmasters will provide one of the following responses:

Mail is Delivered to Address Given—meaning that the address which the agency has provided is verified as one to which mail for that customer is currently being delivered.

Not Known at Address Given—meaning that mail for that customer is *not* currently being delivered to the address given.

Moved, Left No Forwarding Address—meaning that the addressee is believed to have moved and has not provided the post office with a change-of-address order. The address is verified as one to which mail for that customer is *not* currently being delivered.

No such address—meaning that the address given is nonexistent.

Other (Specify)—as appropriate, postmasters will provide other responses, e.g., that the addressee is deceased, the address given is incomplete or insufficient, or that the change of address order has expired and is no longer available.

New Address—if the addressee has submitted a change-of-address order, the new forwarding address will be provided.

Boxholder Street Address—if the last known address is a post office box and the agency requires the street address, it will be provided from the Form 1093, *Application for Post Office Box or Caller Number*, that the individual submitted at the time the post office box was rented.

After processing, the postmaster will return the request letter in a penalty window envelope to the agency's address shown at the bottom of the request.

Address Correction Service

The Postal Service emphasizes and recommends that Government agencies should, whenever possible, use the address correction service as the preferred alternative for routinely obtaining current address information for the individuals with whom they wish to correspond.

This service [*Domestic Mail Manual (DMM)* 159.3] provides an individual's new address (if known by the Postal Service) or the reason for the nondelivery of mail to any mailer when mail is undeliverable as addressed and the mail is endorsed "Address Correction Requested." The information provided comes from the same source used to respond to requests for change-of-address information. The fee is 25 cents for each address correction or notification of reason for nondelivery. Payment for address correction notices furnished to *Federal* agencies is made under the official mail reimbursement program (DMM 945.154).

The use of the address correction service will provide agencies with current address information quickly and at relatively little cost. Since most undeliverable-as-addressed mail is now being processed by an automated mail forwarding system, mailers requesting address correction are notified of the new address more quickly than they are when post offices must manually process and answer individual address information requests. In addition, agencies incur less cost not only in terms of the fee itself, but also by avoiding the administrative costs associated with having their own personnel fill out and submit individual requests.

To alleviate any confusion about the 25-cent fee, it should be understood that the fee is not charged for *every* letter that carries the endorsement "Address Correction Requested," but only for those that contain an incorrect or incomplete address. If a letter is deliverable as addressed, no address correction is required and no fee is charged. For this reason, most mailers using this service routinely have the endorsement preprinted on their envelopes.

One commenter stated that the address correction service will not work for his agency because the agency's files are indexed by patient ID number and the address correction notice would show only the patient's name and new address. Without the patient ID number, it was stated, the agency would have no way to match up the patient's new address with the patient's file.

Actually, agencies have two options in such a situation: (1) They may show the agency's identifier for the addressee on the face of the letter (and it will be included in the address correction notice). (2) They may endorse the letter "Address Correction Requested—Do Not Forward." Mail that is undeliverable-as-addressed and bears this endorsement will be returned to the sender along with the new address, if known.

In the interest of economy, agencies should limit their use of the address information/verification service to those situations in which it is actually essential, such as when the verification of an individual's current address is required by law or regulation, or when the agency needs to verify the residence address of an individual without the individual being aware of it.

Accordingly, 39 CFR is amended as follows:

List of Subjects in 39 CFR Part 265

Release of information, Postal Service.

[2] Agencies will no longer be required to certify that all other known sources for obtaining the address have been exhausted.

PART 265—RELEASE OF INFORMATION

1. In § 265.6, paragraph (d)(7) is redesignated as paragraph (d)(8) and new paragraph (d)(7) is added reading as follows:

§ 265.6 Availability of records.

* * * * *

(d) * * *

(7) The address of a postal customer will be verified at the request of a Federal, State, or local government agency upon written certification that the information is required for the performance of the agency's duties. "Verification" means advising such an agency whether or not its address for a postal customer is one at which mail for that customer is currently being delivered. "Verification" neither means nor implies knowledge on the part of the Postal Service as to the actual residence of the customer or as to the actual receipt by the customer of mail delivered to that address. The following format, printed on agency letterhead, will be used when a government agency requests from the Postal Service the verification of a customer's current address or a customer's new mailing address. Government agencies eligible for a waiver of the fee in accordance with § 265.8(e)(8) are required to modify the request format so that it will indicate the appropriate waiver.

BILLING CODE 7710-12-M

(AGENCY LETTERHEAD)

To: Postmaster

Agency Control No. _____

_____

Date: _____

ADDRESS INFORMATION REQUEST

Please furnish this agency with the new address, if available, for the following individual or verify whether or not the address given below is one at which mail for this individual is currently being delivered. If the following address is a post office box, please furnish the street address as recorded on the boxholder's application form.

Name: _____

Last Known
Address: _____

I certify that the address information for this individual is required for the performance of this agency's official duties. The stamps or meter strip in payment of the fee are affixed.

_____
(Signature of Agency Official)

(Affix stamps or meter strip here.)

_____
(Title)

FOR POST OFFICE USE ONLY

[ ] MAIL IS DELIVERED TO ADDRESS GIVEN

[ ] NOT KNOWN AT ADDRESS GIVEN

[ ] MOVED, LEFT NO FORWARDING ADDRESS

[ ] NO SUCH ADDRESS

[ ] OTHER (SPECIFY): _____

_____

NEW ADDRESS

_____

_____

BOXHOLDER'S STREET ADDRESS

_____

_____

_____
Agency return address

Postmark/Date Stamp

BILLING CODE 7710-12-C

2. In § 265.8, new paragraph (d)(4), which will become effective January 1, 1985, is added as follows and paragraph (e)(8) is revised to read as follows:

§ 265.8 Schedule of fees.

* * * * *

(d) * * *

(4) *Verification of address.* The fee for verifying a postal customer's current address to a Government agency in accordance with § 265.6(d)(7) is $1.00 per request. The fee is not refundable, but may be waived in accordance with § 265.8(e)(8).

(e) * * *

(8) *Waiver of fee for changes of address and address verification.* The fee prescribed by § 265.8 (d)(3) and (d)(4) is waived when address information is provided to:

(i) Local government law enforcement officers;

(ii) Federal and State law enforcement officers who confirm that the information is needed during the course of a criminal investigation;

(iii) Court officials such as judges, clerks, or jury commissioners upon prior written request when requesting the mailing address of any customer sought in connection with jury service;

(iv) Federal, State, and local public health officials for the purpose of locating persons who are infected with or who have been exposed to contagious diseases;

(v) Any individual in a compelling emergency; and,

(vi) Manufacturers of postage meters attempting to locate a missing meter.

For the purposes of this provision, a law enforcement officer is any employee of the Federal government, or of any State or local government, whose primary functions are the investigation of crimes, or the apprehension or detention of persons suspected or convicted of violations of the criminal laws of the applicable jurisdiction.

(39 U.S.C. 401; 5 U.S.C. 552)

Harold J. Hughes,

Acting General Counsel.

[FR Doc. 84-13630 Filed 5-18-84; 8:45 am]

BILLING CODE 7710-12-M

LEGAL SERVICES CORPORATION

45 CFR Part 1600

Definitions

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule revises certain of the definitions of terms used in the Corporation's regulations and adds certain terms not previously defined to bring the definitions into conformance with more recent legislative changes and increasingly complex relationships within the national legal services program.

EFFECTIVE DATE: June 20, 1984.

FOR FURTHER INFORMATION CONTACT: Richard N. Bagenstos, Assistant General Counsel, Office of General Counsel, (202) 272-4010.

SUPPLEMENTARY INFORMATION: On February 28, 1984, the Legal Services Corporation published in the **Federal Register** (49 FR 7255) a proposed rule containing new and revised definitions pursuant to the Legal Services Corporation Act, as amended. Interested parties were given thirty days, until March 29, 1984 to submit comments on the proposed rule. Thirty comments were received and given full consideration. The final rule contains modifications made in response to these comments.

The definitions issued pursuant to the Act have not been revised since they were published on May 5, 1976. The Corporation and recipient relationships have grown dramatically in complexity since that time. Thus, the definitions are no longer as explanatory as they should be, nor do they reflect changes in authorizing legislation or clarification of Congressional intent.

These definitions clarify the previously issued regulations in three general ways: (1) They refer to the reauthorization legislation which was adopted in 1977; (2) they acknowledge additional legislative direction given through continuing resolutions and appropriations language by referring to "other applicable law"; and (3) they acknowledge the complex organizational nature of legal services grantees by specifically including additional descriptive designations such as "subrecipients".

In addition, the proposed regulation are consistent stylistically with other regulations, and conform to clear language in the Act. Terms which are included in the proposed definitions and which were not previously defined in either the Act or the regulations are "financial assistance", and "political".

The definition of "eligible client" was modified in response to comments to delete the words "financially unable to afford legal assistance and". The Corporation's eligibility regulations, 45 CFR Part 1611, set the standards which must be met by a client to determine eligibility. The deleted words were redundant, and might have created a mistaken impression that a separate, additional standard was thereby being imposed. The words "these regulations" were added to indicate that eligibility standards are stated elsewhere in the regulations.

A number of comments expressed the opinion that the Corporation's new definition of "financial assistance" was unduly restrictive in limiting that term to funding granted under section 1006(a)(1)(A) of the Act. They argued that it should apply to all LSC grants or contracts relating to the provision of legal assistance. After careful consideration of the matter, the Corporation has determined that the use of that term in the Act itself justifies the interpretation given in the definition. This definition will be retained.

The definition of the term "lobbying" was deleted on the basis of comments, and due to the fact that, with one minor exception, the term is used only in Part 1612 of the regulations.

On the basis of comments received, the definition of the term "political" was modified by deleting of the words "policy positions", and adding the words "ballot measures" after the phrase "public office". The deletion was made because comments indicated that the inclusion of that term would appear to prohibit testimony before legislative and administrative bodies. The addition was made to bring the language into conformance with the appropriations rider.

A number of comments were received concerning the proposed definition of "public funds". The major objection arose from the language in the definition which appeared to make funds received indirectly from other governmental agencies, such as under Title III of the Older Americans Act, susceptible to the Corporation's requlations. Therefore, to clarify that such a result was not intended, the words "directly from" after the words "from the Corporation or" have been deleted.

Finally, in response to comments, the definition of "recipient" has been modified in the final rules by deletion of the words "qualifying to receive and", to make it clear that no separate and distinct standard was implied.

List of Subjects in 45 CFR Part 1600

Legal services.

For the reasons set out in the preamble, 45 CFR Part 1600 is revised as follows:

PART 1600—DEFINITIONS

§ 1600.1 Definitions.

As used in these regulations, Chapter XVI, unless otherwise indicated, the term—

"Act" means the Legal Services Corporation Act, Pub. L. 93–355 (1974), as amended, Pub. L. 95–222 (1977), 42 U.S.C. 2996–29961.

"Appeal" means any appellate proceeding in a civil action as defined by law or usage in the jurisdiction in which the action is filed.

"Attorney" means a person who provides legal assistance to eligible clients and who is authorized to practice law in the jurisdiction where assistance is rendered.

"Corporation" means the Legal Services Corporation established under the Act.

"Director of a recipient" means a person directly employed by a recipient in an executive capacity who has overall day-to-day responsibility for management of operations by a recipient.

"Eligible client" means any person determined to be eligible for legal assistance under the Act, these regulations or other applicable law.

"Employee" means a person employed by the Corporation or by a recipient, or a person employed by a subrecipient whose salary is paid in whole or in major part with funds provided by the Corporation.

"Fee generating case" means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client from public funds or from an opposing party.

"Financial assistance" means annualized funding from the Corporation granted under 1006(a)(1)(A) for the direct delivery of legal assistance to eligible clients.

"Legal assistance" means the provisions of any legal services consistent with the purposes and provisions of the Act or other applicable law.

"Outside practice of law" means the provisions of legal assistance to a client who is not eligible to receive legal assistance from the employer of the attorney rendering assistance, but does not include, among other activities, teaching, consulting, or performing evaluations.

"Political" means that which relates to engendering public support for or opposition to candidates for public office, ballot measures, or political parties, and would include publicity or propaganda used for that purpose.

"President" means the President of the Corporation.

"Public funds" means the funds received directly or indirectly from the Corporation or a Federal, State, or local government or instrumentality of a government.

"Recipient" means any grantee or contractor receiving financial assistance from the Corporation under Section 1006(a)(1)(A) of the Act.

"Staff attorney" means an attorney more than one half of whose annual professional income is derived from the proceeds of a grant from the Legal Services Corporation or is received from a recipient, subrecipient, grantee, or contractor that limits its activities to providing legal assistance to clients eligible for assistance under the Act.

"Tribal funds" means funds received from an Indian tribe or from a private foundation for the benefit of an Indian tribe.

(Pub. L. 93–355, 88 Stat. 378, 42 U.S.C. 2996–2996)

Dated: May 15, 1984.

Alan R. Swendiman,

General Counsel.

[FR Doc. 84–13604 Filed 5–18–84; 8:45 am]

BILLING CODE 6820–35–M

45 CFR Part 1614

Private Attorney Involvement

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This rule substantially adopts as a Corporation regulation Instruction 83–6: Attorney Involvement by Recipients of Funding, published in the **Federal Register** on November 29, 1983. This instruction provided direction to recipients of Legal Services Corporation funding on allocating amounts of the recipient's financial support from the Corporation to provide the opportunity for involvement of private attorneys in the delivery of legal assistance to eligible clients. The rule formalizes the structures and procedures of the continued Corporation interest in private attorney involvement.

EFFECTIVE DATE: June 20, 1984.

FOR FURTHER INFORMATION CONTACT: Richard N. Bagenstos, Assistant General Counsel, Office of the General Counsel, (202) 272–4010.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation published a proposed rule setting forth the policy adopted by the Board of Directors on October 2, 1981, requiring that a substantial amount of recipient funds be made available to provide opportunities for involvement of private attorneys to deliver legal assistance to eligible clients. The proposed rule appeared in the **Federal Register** on March 23, 1984 (49 FR 10950). Interested parties were given until April 23, 1984, to submit comments on the proposed rule. Seventy-seven comments were received and fully considered including 34 from programs, 20 from bar associations, 8 from support programs, 1 from Congress, 9 from private parties and 6 others.

Section 1614.1 adopts a previous Board resolution defining "substantial amount" as at least twelve and one-half percent (12½%) of the recipient's Legal Services Corporation annualized basic field award. In response to comments, a waiver provision has been added to permit a recipient to request relief from the requirement when "the nature of the population served, and the available attorney population" make compliance impossible. Recipients of migrant or Native American funding are to use their best efforts to meet the requirements or the Corporation must be satisfied that private legal involvement is not feasible.

Research demonstrates that there are several effective and economical ways in which to involve private attorneys, on either a voluntary or a partially-compensated basis, in the delivery of legal services to eligible clients. Over the years, it has become clear that mixed delivery systems provide for effective and economical delivery service.

Section 1614.1(c) is a newly added subsection, transferred from § 1614.4(c), and rewritten to indicate that it represents a statement of purpose, and not an absolute mandate. The purpose of the Corporation's policy of involving the private bar is to make the most of the limited resources available for legal assistance to eligible clients.

Section 1614.2(b) is modified by making the 12.5% requirement applicable to national and state support programs effective January 1, 1985.

Some comments suggested the removal of the language "subject to review and evaluation by the Corporation" from § 1614.2(c) on the grounds that all activities of recipients are subject to such review and evaluation, and therefore the quoted language is either redundant or implies additional review. No additional review is implied, and the Corporation retains the language cited, which was previously published in the Instruction.

The regulation defines a wide range of activities permitted to involve the private bar in the delivery of legal assistance to eligible clients. The primary consideration is, of course, that the highest quality of civil legal services be provided to the clients in an effective and economical manner. In response to comments, § 1614.3(a)(1) has been

modified to clarify that modified *pro bono* programs are considered permissible in fulfilling the PAI requirement. The regulation outlines specific methods to be undertaken by recipients to involve private attorneys in providing such legal assistance and states the components various systems should include.

Specific financial considerations and procedures which the recipient must utilize to account for costs allowable for private attorney involvement are set out in detail in § 1614.3(d). In response to comments, subsection (d)(5)(iii) has been modified to allow programs to use program-wide staff directives or inclusion in collective bargaining agreements as well as job descriptions for assignment of responsibility for PAI activities. Subsection (d)(6) has been modified on the basis of comments received to exclude secretaries, intake persons, and receptionists from the keeping of timesheets.

Section 1614.3(d)(9) provides that grants for private attorney involvement shall be accounted for by recipients on a cost-reimbursable basis. This means that, at the end of a grant period, funds transferred for private attorney involvement activities to a sub-grantee must be returned to the recipient if not actually expended for private attorney involvement activities. It does not mean that costs must first be incurred by a sub-grantee and reimbursement sought from the recipient.

Section 1614.3(d)(10) no longer contains the requirement in the Instruction for interim billing. While such a practice would maximize efficient management and promote cash flow controls for recipients, numerous comments requested deletion of that requirement.

The regulation maintains the procedural measures implemented in Instruction 83–6 and 1984 Grant Applications. The recipient must develop a specific plan and a budget which shall be a part of the recipient's refunding application or initial grant application. In response to comments on the Instruction, the annual requirement that each program certify that it is spending the sums necessary to comply with this Part has been removed.

The regulation concludes that the Office of Field Services will not endorse or approve revolving litigation fund systems, whose purpose is to encourage the acceptance of fee-generating cases which are discouraged by the Act and 45 CFR Part 1609. This prohibition, however, does not prevent payment of costs or reimbursement of expenses incurred by private attorneys in normal situations where litigation might result in attorney fees. Examples of such situations would be case assignments through a judicare or *pro bono* panel.

List of Subjects in 45 CFR Part 1614

Legal services, Private attorneys.

For the reasons set out above, a new 45 CFR Part 1614 is added as follows:

PART 1614—PRIVATE ATTORNEY INVOLVEMENT

Sec.

1614.1 Purpose.
1614.2 General policy.
1614.3 Range of activities.
1614.4 Procedure.
1614.5 Prohibition of revolving litigation funds.

Authority: Sec. 1007(a)(2)(C) and Sec. 1007(a)(3); 42 U.S.C. 2996f(a)(2)(C) and 42 U.S.C. 2996f(a)(3).

§ 1614.1 Purpose.

(a) This part is designed to provide direction to recipients of Legal Services Corporation funding on allocating a substantial amount of the recipient's financial support from the Legal Services Corporation to encourage the involvement of private attorneys in the delivery of legal assistance to eligible clients. At least twelve and one-half percent (12½%) of the recipient's LSC annualized basic field award shall be devoted to the involvement of private attorneys in such activities. Funds received from the Corporation as one-time special grants shall not be considered in determining the private bar involvement requirement. The Corporation may in exceptional circumstances grant a waiver from the 12½% requirement upon application by a recipient and a demonstration to the satisfaction of the Office of Field Services that, because of the nature of the population served, and the available attorney population, the recipient is unable to comply with the requirement.

(b) Recipients of Native American or migrant funding shall provide the opportunity for involvement in the delivery of services by the private bar in a manner which is generally open to broad participation in those activities undertaken with those funds, or shall demonstrate to the satisfaction of the Corporation that such involvement is not feasible.

(c) Because the Corporation's PAI requirement is based upon an effort to generate the most possible legal services for eligible clients from available, but limited, resources, recipients should attempt to assure that the market value of PAI activities substantially exceeds the direct and indirect costs being allocated to meet the requirements of this Part.

§ 1614.2 General policy.

(a) This Part implements the policy adopted by the Board of Directors of the Corporation on October 2, 1981, and ratified and modified by the Board on November 21, 1983, requiring that a substantial amount of funds be made available to encourage the involvement of private attorneys in the delivery of legal assistance to eligible clients through both *pro bono* and compensated mechanisms, and that such funds be expended in an economical and efficient manner.

(b) Effective Janary 1, 1985, recipients of national and state support grant awards shall apply the percentage requirement to that portion of their programs related to any direct advocacy activities on behalf of eligible clients.

(c) Private attorney involvement (PAI) shall be an integral part of a total local program undertaken within the established priorities of that program in a manner that furthers the statutory requirement of high quality, economical and effective client-centered legal assistance to eligible clients. Decisions concerning implementation of the substantial involvement requirement rest with the recipient through its governing body, subject to review and evaluation by the Corporation

§ 1614.3 Range of activities.

(a) Activities undertaken by the recipient to meet the requirements of this Part might include, but are not limited to:

(1) Direct delivery of legal assistance to eligible clients through organized *pro bono*, reduced fee plans, judicare panels, private attorney contracts, and those modified *pro bono* plans which provide for the payment of nominal fees by eligible clients and/or organized referral systems; except that "revolving litigation fund" systems, as described in Section 1614.5 of this Part, shall neither be used nor funded under this Part nor funded with any LSC support;

(2) Support provided by private attorneys to the recipient in its delivery of legal assistance to eligible clients on either a reduced fee or *pro bono* basis through the provision of community legal education, training, technical assistance, research, advice and counsel; co-counseling arrangements; or the use of private law firm facilities, libraries, computer-assisted legal research systems or other resources; and

(3) Support provided by the recipient in furtherance of activities undertaken pursuant to this Section including the provision of training, technical assistance, research, advice and counsel; or the use of recipient facilities,

libraries, computer-assisted legal research systems or other resources.

(b) The specific methods to be undertaken by a recipient to involve private attorneys in the provision of legal assistance to eligible clients will be determined by the recipient taking into account the following factors:

(1) The priorities established pursuant to Part 1620 of these regulations;

(2) The effective and economical delivery of legal assistance to eligible clients;

(3) The linguistic and cultural barriers to effective advocacy;

(4) The actual or potential conflicts of interest between specific participating attorneys and individual eligible clients; and

(5) The substantive and practical expertise, skills, and willingness to undertake new or unique areas of the law of participating attorneys.

(c) Systems designed to provide direct services to eligible clients by private attorneys on either *pro bono* or reduced fee basis, shall include at a minimum, the following components:

(1) Intake and case acceptance procedures consistent with the recipient's established priorities in meeting the legal needs of eligible clients;

(2) Case assignments which ensure the referral of cases according to the nature of the legal problems involved and the skills, expertise, and substantive experience of the participating attorney;

(3) Case oversight and follow-up procedures to ensure the timely disposition of cases to achieve, if possible, the result desired by the client and the efficient and economical utilization of recipient resources; and

(4) Support and technical assistance procedures which are appropriate and, to the extent feasible, provide access for participating attorneys to materials, training opportunities, and back-up on substantive law and practice considerations.

(d) The recipient shall utilize financial systems and procedures to account for costs allowable in meeting this Part. Such systems shall have the following characteristics:

(1) They shall meet the requirements of the Corporation's *Audit and Accounting Guide for Recipients and Auditors:*

(2) They shall accurately identify and account for:

(i) The recipient's administrative, overhead, staff, and support costs related to private attorney involvement activities;

(ii) Payments to private attorneys for support or direct client services rendered;

(iii) Contractual payments to individuals or organizations which will undertake administrative, support, and/or direct services to eligible clients on behalf of the recipient consistent with the provisions of this Part; and

(iv) Other such actual costs as may be incurred by the recipient in this regard.

(3) Income and expenses relating to the PAI effort must be reported separately in the year-end audit. This may be done by establishing a separate fund or by providing a separate supplemental schedule of income and expenses related to the PAI effort as part of the audit.

(4) Auditors will be required to perform sufficient audit tests to enable them to render an opinion on the recipient's compliance with the requirements of this Part.

(5) Programs must maintain the internal records necessary to demonstrate that funds have been utilized for private attorney involvement consistent with this Part. Internal records should include:

(i) Contracts on file which set forth payment systems, hourly rates, maximum allowable fees, etc;

(ii) Bills/invoices which are submitted before payments are made;

(iii) Job descriptions, program directives or provisions included in collective bargaining agreements which set forth specific program staff PAI requirements; and

(iv) Staff time records.

(6) If any direct or indirect time of staff attorneys or paralegals is to be allocated as a cost to private attorney involvement, such costs must be documented by detailed timesheets accounting for all of those employees' time, not just the time spent on private attorney involvement activities. This time-keeping requirement does not apply to such employees as receptionists, secretaries, in-take persons or bookkeepers.

(7) Direct payments to private attorneys shall be supported by invoices and internal procedures performed by the program to ensure that the services billed have actually been delivered.

(8) Non-personnel costs shall be allocated on the basis of reasonable operating data. All methods of allocating funds shall be clearly documented.

(9) Contracts concerning transfer of LSC funds for PAI activities shall indicated that such funds will be accounted for by the recipient in accordance with LSC guidelines. The organization receiving funds will be considered a sub-recipient or sub-grantee and will be bound by all accounting and audit requirements of the *Audit Guide* and 45 CFR Part 1627. These grants shall be accounted for on a cost-reimbursable basis so that the primary recipient will be responsible for unspent funds. This part does not pertain to contracts with individual lawyers or law fims who only provide legal services directly to eligible clients.

(10) Each recipient which utilizes a compensated private bar mechanism, whether judicare, contract, or some other form, shall develop a system which includes:

(i) A schedule of uniform encumbrances for similar cases;

(ii) A procedure to determine net encumbrances;

(iii) A mechanism to relate specific encumbrances to specific cases; and

(iv) a way to determine whether encumberances assigned are an accurate estimate of actual costs incurred.

(11) Encumbrances shall not be included in the calculation of whether a program has met the requirements of this Part, nor should they be recorded as an expense for audit purposes. Only actual expenditures or those amounts shown as accounts payable or accrued liabilities according to generally accepted accounting principles at the end of the fiscal period may be utilized to determine whether or not the program has met the requirements of this Part.

(12) In private attorney models, attorneys may be reimbursed for actual costs and expense, but attorney fees may not be paid at a rate which exceeds 50 percent of the local prevailing market rate for that type of service.

§ 1614.4 Procedure.

(a) The recipient shall incorporate the plan and budget required by Instruction 83–6 to meet the requirements of this Part which shall be part of the refunding application or initial grant application. The budget shall be modified as necessary to fulfill this Part. That plan shall take into consideration:

(1) The legal needs of eligible clients in the geographical area served by the recipient and the relative importance of those needs consistent with the priorities established pursuant to Section 1007(a)(2)(C) of the Legal Services Corporation Act (42 U.S.C. 2996f(a)(2)) and Part 1620 of the Regulations (45 CFR Part 1620) adopted pursuant thereto;

(2) The delivery mechanisms potentially available to provide the opportunity for private attorneys to meet the established priority legal needs of eligible clients in an economical and effective manner; and

(3) The results of the consultation as required below.

(b) The recipient shall consult with significant segments of the client community, private attorneys, and bar associations, including minority and women's bar associations, in the recipient's service area in the development of its annual plan to provide for the involvement of private attorneys in the provision of legal assistance to eligible clients.

§1614.5 Prohibition of revolving litigation funds.

(a) The Office of Field Services shall not endorse or approve revolving litigation fund systems which systematically encourage the acceptance of fee-generating cases by advancing funds to private attorneys for costs, expenses and/or attorney fees.

(b) This prohibition does not prevent reimbursement or payment of costs and expenses incurred by private attorneys in normal situations in which litigation may result in attorney fees, such as case assignments through a judicare or *pro bono* panel.

Dated: May 15, 1984.

[FR Doc. 84-13803 Filed 5-18-84; 8:45 am]
BILLING CODE 6820-35-M

---

45 CFR Part 1628

Procedures Governing Recipient Fund Balances

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This rule substantially adopts as a Corporation regulation Instruction 83-4: Recipient Fund Balances, published in the **Federal Register** on October 27, 1983, which requires Corporation approval of the disposition of any recipient fund balances that exceed specified limits. Certain technical amendments have been incorporated into this regulation to address this issue more fully. This rule also requires the prior written approval of the Corporation where a recipient seeks to use current year grant funds to liquidate operating fund balance deficits from a preceding period(s).

EFFECTIVE DATE: June 20, 1984.

FOR FURTHER INFORMATION CONTACT: Richard N. Bagenstos, Assistant General Counsel, Office of the General Counsel, (202) 272-4010.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation published in the **Federal Register** a proposed rule concerning recipient fund balances on March 23, 1984 (49 FR 10953). Interested parties were given 30 days, until April 23, 1984, to submit comments on the proposed rule. Twenty-seven (27) comments, 18 of which were from programs, and 2 from support centers, were received and thoroughly considered. The rule as published is substantially similar to Corporation Instruction 83-4, Recipient Fund Balances, published in the **Federal Register** on October 27, 1983, (49 FR 49710), with the exception that the proposed rule contained a section, not previously published, concerning deficits.

Severe criticism has been leveled at Corporation management because of the accumulation by some recipients of significant fund balances. Specifically, the GAO in its *Review of Legal Services Corporation Activities Concerning Program Evaluation and Expansion,* issued on August 28, 1980 stated: "We recommend that the President of the Legal Services Corporation require regional offices to closely monitor the expenditures of funds by grantees to minimize year end fund carryovers and adjust subsequent year funding of grantees with excess fund balances."

Corporate directives, thereafter, were issued by internal memoranda dated December 18, 1980, and March 18, 1982, formalizing and expanding upon existing policies. On October 30, 1982, the Board instructed staff to take appropriate action consistent with its Resolution on Fund Balance Policy. A grant condition was attached to the 1983 refunding grants requiring adherence to the Fund Balance Instruction, 83-1, published in the **Federal Register** for comment on November 29, 1982 (47 FR 53805), and published as a final Instruction on January 5, 1983 (48 FR 560). The Corporation subsequently redrafted the Instruction, which was published in the **Federal Register** on October 27, 1983, as Instruction 83-4: Recipient Fund Balances.

Corporation policy regarding fund balances has remained substantially consistent since the aforementioned memoranda. The regulation continues to define an excess fund balance as a total fund balance amount in excess of 10% of the recipient's annual funding level.

Section 1628.2(a)(3) has been modified in response to comments received to clarify that the Corporation seeks to regulate by this section only those funds which are provided by the Corporation or flow from funds provided by the Corporation.

Minor changes have been made in §1628.3(a) to indicate that the waiver of the 10% excess fund balance and repayment plan shall be determined by the Director, Office of Field Services, as the Corporation employee empowered to grant such a waiver.

Section 1628.3(d) has been rewritten to indicate that "attorney fees" mentioned in that section mean direct payments to attorneys by programs under their PAI program. Further, the waiver language with reference to programs with compensated private bar components has been clarified, without substantive change.

Sections 1628.4 (a) and (b) have been changed to indicate that the appropriate Corporation employee to whom a fund balance statement and application for a waiver is to be submitted is the Director, Office of Field Services.

Section 1628.4(b)(5) has been modified in response to comments by the addition of illustrative examples to provide guidance regarding the meaning of the term "extraordinary circumstances."

Section 1628.4(d) has been rewritten without substantive change to conform the language of this subsection with the section on Private Attorney Involvement. Subsection 1628.4(d)(3) has been added in response to comments which sought clarification of the criteria that the Corporation would consider when reviewing a request for a waiver submitted pursuant to this regulation.

The final section of this regulation includes explicit language with regard to deficit fund balances, a subject which was not addressed in the Instruction. Deficits may constitute a serious violation of the recipient's responsibility to safeguard and manage Corporation funds, often indicative of serious problems which can have a long-lasting impact on program operations and clients.

The heading of § 1628.5 has been changed from "Operating Deficits" to "Fund Balance Deficits" to clarify that the section deals with fund balance deficits.

A recipient is permitted to reduce a fund balance deficit incurred in one grant period by fund balance amounts qualifying under the regulation for carryover into a subsequent grant period(s), except those amounts which were carried over by a recipient under a specific waiver from the Corporation. A recipient may not, however unilaterally offset that deficit against funds awarded by LSC for a succeeding period. Legal Services Corporation awards grants for a twelve month period. These grants are not intended nor should they be expected to absorb the burden of prior costs. The Corporation, therefore, will require specific prior written approval for the carryover of those costs.

Section 168.5(a) is modified in the final rule in response to comments to

clarify the fact that the regulation deals with deficit fund balances in LSC funds and the use of LCS grant awards. A similar modification in the language of 1628.5(b) and 1628.5(d) was made for the same reason.

Section 1628.5(c) was modified to remove a redundant reference to the Standard Operating Procedure for Questioned Costs. Because the expediture of current year LSC funds to liquidate a deficit from prior year without approval of the Corporation will be identified as a questioned cost, no further reference to such procedure is necessary.

In Section 1628.5(d), a technical amendment was made, changing "Board of Directors" to "governing body" to conform the section with Part 1607 of the regulations.

The Corporation is issuing the regulation pursuant to its mandate to ensure the delivery of high quality legal services in an effective and economical manner. Recovered fund balance amounts will be reprogrammed for the direct provision of legal services to eligible clients.

List of Subjects in 45 CFR Part 1628

Legal services, Fund balances.

For the reasons set out above a new 45 CFR Part 1628 is added as follows:

PART 1628—RECIPIENT FUND BALANCES

Sec.

1628.1 Purpose.
1628.2 Definitions.
1628.3 Policy.
1628.4 Procedure.
1628.5 Fund balance deficits.

Authority: Sections 1006(b)(1)(A), 1007(a)(3); 42 U.S.C. 2996e(b)(1)(A), 42 U.S.C. 2996f(a)(3).

§ 1628.1 Purpose.

(a) This part is designed to ensure the timely allocation of Legal Services Corporation (LSC) funds for the effective and economical provision of high quality legal assistance to eligible clients. To that end, recipients will be permitted to maintain and re-program from year to year fund balances of no more than 10% of their annualized LSC support.

(b) A waiver of this policy up to a maximum of 25% of the recipient's annualized grant amount may be obtained under certain conditions as described in § 1628.3(d). Funds carried over in excess of 10% or above the level permitted by a specific waiver will be recovered as set forth in Section 1628.3(a).

§ 1628.2 Definitions.

(a) LSC "support" for the reporting period shall be defined as the sum of: (1) The annualized LSC grant award(s); (2) any additional income derived from an LSC grant (interest, rents, etc.); and (3) that proportion of any reimbursement or recovery of direct payment to attorneys, proceeds from the sale of assets, or other compensation or income attributable to any Corporation grant.

(b) The LSC "fund balance amount" shall be determined solely by reference to the recipient's annual audit. (The fund balance reported in the recipient's annual audit is subject to review and approval by the Corporation's Audit Division. Noncompliance with provisions of the Corporation's *Audit and Accounting Guide for Recipients and Auditors* may result in an increase or decrease in the fund balance as reported in the audit.)

(c) The "fund balance percentage" shall be determined by expressing the fund balance amount as a percentage of the recipient's LSC support for the reporting period.

(d) "Recipient" as used in this Part, means any recipient as defined in section 1002(6) of the LSC Act and any grantee or contractor receiving funds from the Corporation under section 1006(a)(1) or 1006(a)(3) of the Act.

§ 1628.3 Policy.

(a) In the absence of a waiver from the Director, Office of Field Services, any fund balance amount in excess of 10% of LSC support shall be repaid to the Corporation in a lump sum or by pro rata deductions from the recipient's grant checks for a specific number of months. The Office of Field Services shall determine which of the specified methods of repayment is reasonable and appropriate in each case after consultation with the recipient.

(b) After the Corporation's receipt and review of the recipient's annual audit, the Corporation shall provide written notice to the recipient of the fund balance amount due and payable to the Corporation as well as the method for repayment 30 days prior to the effective date for repayment either to occur or to commence in accordance with § 1628.3(a).

(c) In no way shall any such reduction and/or deduction in LSC support be construed to affect permanently the annualized funding level of the recipient, nor shall any such reduction and/or deduction in LSC support be considered to be a termination or denial of refunding under 45 CFR 1606 and 1625 respectively.

(d) A waiver of the 10% ceiling may be granted at the discretion of the Corporation in extraordinary circumstances; such a waiver may be granted by the Corporation to extend the ceiling for fund balance amounts established under this regulation to a maximum of 25% of LSC support. Further, in addition to the established 10% ceiling, the Corporation shall grant a waiver up to 25% of direct payment to attorneys in the last audit to recipients who operate compensated private bar programs or components to be utilized exclusively to fund a cash reserve or encumbrance system for direct payment to attorneys. Such recipients must submit a timely written request to the Office of Field Services to obtain this waiver. However, under no circumstances will a recipient be allowed to retain a fund balance in excess of 25% of support.

(e) All one-time or special purpose grants awarded by the Corporation shall have an effective date and termination date. Such grants are not subject to this fund balance policy. Revenue and expenses relating to such grants must be reflected separately in the audit report submitted to the Corporation. This may be done by establishing a separate fund or by providing a separate supplemental schedule of revenue and expenses related to such grants as a part of the audit report. No funds provided under a one-time or special purpose grant may be expended subsequent to the termination date of the grant without the prior written approval of the Corporation. All unexpended funds under such grants shall be returned to the Corporation.

§ 1628.4 Procedure.

(a) Any recipient whose audited fund balance exceeds the ceiling set forth in Section 1628.1 shall submit to the Director, Office of Field Services, within 120 days after the close of the recipient's fiscal year, a statement of the fund balance which occurred according to the annual audit required by section 1009(c)(1) of the Legal Services Corporation Act, as amended. The funds will be recovered as set forth in § 1628.3, unless excluded by a specific waiver.

(b) The recipient may, within 120 days after the close of its fiscal year, apply to the Director, Office of Field Services for a waiver of the 10% ceiling. Such application must specify:

(1) The fund balance amount according to the recipient's annual audit;

(2) The reasons such fund balance has been attained;

(3) The recipient's plan for the disposition or reserve of such fund balance amount within the current grant period;

(4) The amount of fund balance projected to be carried forward at the close of the recipient's then current fiscal year; and,

(5) The extraordinary circumstances justifying the retention of the fund balance which include windfall receipts for which a recipient cannot reasonably plan, such as proceeds from the sale of property, receipt of direct payment to attorneys, and collection of insurance proceeds.

(c) Excess fund balance amounts shall not be expended by the recipient prior to approval of the waiver application by the Corporation.

(d) The decision of the Corporation regarding the granting of a waiver (other then the automatically granted waiver for a cash reserve for compensated bar programs) shall be guided by the statutory mandate requiring the recipient to provide high quality legal services in an effective and economical manner. In addition, the Corporation shall give special consideration to the following factors in reviewing a waiver request submitted pursuant to this regulation:

(1) Emergencies, unusual occurrences, or other extraordinary circumstances giving rise to the existence of a fund balance in excess of 10%, and the special needs of clients, and

(2) The recipient's financial management record.

(e) Excess fund balance amounts approved for expenditure must be separately reported in the current fiscal year audit. This may be done by establishing a separate fund or by providing a separate supplemental schedule as part of the audit report.

§ 1628.5 Fund balance deficits.

(a) Sound financial management practices such as those established in LSC's "Fundamental Criteria of an Accounting and Financial Reporting System," should preclude deficit spending. Use of current year LSC grant funds to liquidate deficit balances in the LSC fund from a preceding period(s) requires the prior written approval of the Corporation.

(b) The recipient may, within 120 days of the close of its fiscal year, apply to the Corporation for approval of the costs associated with the liquidation of the deficit balances in the LSC fund.

(c) In the absence of approval by the Corporation, expenditures of current year LSC grant funds to liquidate a deficit from a prior year shall be identified as questioned costs.

(d) The recipient's request must specify the same information relative to the deficit LSC fund balance as that set forth in sections 1628.4(b) (1), (2), (3), and (4). Additionally, the recipient must develop and submit a plan approved by its governing body describing the measures which will be implemented to prevent a recurrence of a deficit balance in the LSC fund. The Corporation reserves the right to require changes in the submitted plan.

(e) The decision of the Corporation regarding acceptance of these deficit-related costs shall be guided by the statutory mandate requiring the recipient to provide high quality legal services performed in an effective and economical manner. Special consideration will be given for emergencies, unusual occurrences, or other extraordinary circumstances giving rise to this situation.

Dated: May 15, 1984.

Alan R. Swendiman,

General Counsel.

[FR Doc. 84-13805 Filed 5-18-84; 8:45 am]

BILLING CODE 6820-35-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[CC Docket No. 84-28; FCC 84-198]

Blanket Section 214 Authorization for Provision by a Telephone Common Carrier of Lines for Its Cable Television and Other Non-Common Carrier Services Outside Its Telephone Service Area

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Report and Order eliminates the Section 214 filing requirement for certain non-common carrier offerings. This action decreases unnecessary regulatory burdens and increases competition.

DATE: Effective June 25, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Warren Lavey, Common Carrier Bureau, (202) 632-6910.

List of Subjects in 47 CFR Part 63

Cable television, Communications common carriers, Extension of lines.

Report and Order; Proceeding Terminated

In the matter of blanket Section 214 authorization for provision by a telephone common carrier of lines for its Cable Television and other Non-Common Carrier Services outside its telephone service area; CC Docket No. 84-28.

Adopted: May 10, 1984.

Released: May 17, 1984.

By the Commission.

I. Introduction

1. The Notice of Proposed Rulemaking in this proceeding [1] discussed the costs and benefits of having common carriers or their affiliates file applications for certain lines under section 214 of the Communications Act of 1934, 47 U.S.C. 214. Broadly interpreted, this section requires common carriers and their affiliates to obtain Commission authorization prior to construction, acquisition, or operation of any line. The *Notice* tentatively concluded that separate, individual applications under section 214 are not in the public interest for lines provided by a telephone common carrier or its affiliate outside of the carrier's telephone service area which are (a) channels used for its own cable television service, or (b) used to provide non-common carrier services. The Commission proposed to eliminate the section 214 filing requirement for these lines.

2. Fifteen parties filed comments on the proposal.[2] Thirteen parties, including the U.S. Department of Justice and the National Telecommunications and Information Administration, support the proposal. These parties view section 214 applications for these lines as unnecessary regulatory burdens which can impair competition, delay service to consumers, and increase costs. One other party, National Cable Television Association, does not oppose the proposal, recognizing that the dangers of exclusionary conduct and cross-subsidization are low when a telephone company operates a cable system outside its telephone service area. Finally, California Cable Television Association would support the proposal only if the commission adopts structural

[1] 49 FR 3213 (January 26, 1984).

[2] Parties filing comments are the U.S. Department of Justice; National Telecommunications and Information Administration; United States Telephone Association; Rural Telephone Coalition; National Cable Television Association; California Cable Television Association; Centel Corp.; Michigan Public Service Commission; The Bell Telephone Company of Pennsylvania, The Chesapeake and Potomac Telephone Companies, The Diamond State Telephone Company, Nevada Bell, New England Telephone and Telegraph Company, New Jersey Bell Telephone Company, New York Telephone Company, Pacific Bell, South Central Bell Telephone Company, Southern Bell Telephone and Telegraph Company, and Southwestern Bell Telephone Company; The Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company; Telephone and Data Systems; Schaller Telephone Company; CP National Corp.; Century Telephone Enterprises, Inc., and Continental Telecom Inc. Reply comments were filed by the U.S. Department of Justice, various Bell Operating Companies, Rural Telephone Coalition, National Cable Television Association, Telephone and Data Systems, and California Cable Television Association.

safeguards to protect ratepayers. None of the commenters challenges our legal authority to eliminate any requirement of separate, individual section 214 applications for the lines covered by the proposal. *See* Competitive Carrier Rulemaking, 85 FCC 2d 1, 41–42 (1980) (First Report).

II. Discussion

3. We do not restate the analysis presented in the *Notice*. We address five issues raised in the comments in connection with eliminating the section 214 filing requirement for these lines. First, the U.S. Department of Justice recommended care in defining "telephone common carrier" and "telephone exchange area." This order distinguishes exchange telephone common carriers from other telephone common carriers. First, this order eliminates, to the extent that elimination is necessary, the section 214 filing requirement when an *exchange telephone common carrier* or its affiliate provides three categories of lines in a domestic area where that carrier and all its affiliates do not provide exchange telephone service. The categories of lines are: (1) Lines for its own cable television service; (2) lines which it uses solely to provide non-common carrier services; and (3) lines which it sells to an unaffiliated party.[3] A specific section 214 application would not be required when an exchange telephone common carrier or its affiliate seeks to construct such lines in an area where none of its affiliates provides exchange telephone service but some affiliate provides a service other than exchange telephone service, *e.g.*, interexchange service. Second, we also eliminate, to the extent that elimination is necessary, the section 214 filing requirement when a *nondominant carrier*[4] (or its affiliate) *not affiliated with an exchange telephone common carrier* provides any of these three categories of lines between any domestic points. Provision of such lines by these carriers does not create the concerns about exclusionary conduct that underlie the cross-ownership rules, 47 CFR 63.54–63.56. The language in the attached rule reflects these clarifications.

4. Second, the National Cable Television Association recommended that we clarify the definition and implications of affiliation. For purposes of the rule adopted in this order, we define affiliate as in 47 CFR 63.54. An affiliate is any entity "owned by, operated by, controlled by, or under common control with the telephone common carrier," 47 CFR 63.54(a), and includes "any financial or business relationship whatsoever by contract or otherwise." 47 CFR 63.54 Note 1(a). At this time, we view as affiliates Bell Operating Companies in the same regional holding company; but, Bell Operating Companies in different regional holding companies do not appear to have the financial or business relationship necessary to make them affiliates for purposes of this rule. This rule does not eliminate any requirement for an affiliate of an exchange telephone common carrier to obtain section 214 authorization for lines within the exchange telephone service area of that carrier. For example, the attached rule should allow Illinois Bell or its affiliate to construct lines for its own cable television system without a specific section 214 application in an exchange area served by New York Telephone, but not in one served by Indiana Bell.[5] As another illustration, the attached rule does not eliminate the section 214 application requirement for any exchange carrier owned, in whole or part, by General Telephone and Electronics Corp. or any other GTE subsidiary to construct lines for its cable television system in an exchange area served by General Telephone of California.

5. Third, the Rural Telephone Coalition stated that the elimination of section 214 applications should include filings that might be required to "discontinue, reduce or impair service" via lines covered by the proposed rule. If such applications are currently required, delay in approving such discontinuances would impose costs on the supplier of the lines and, thereby, on consumers. Regulation of such discontinuances does not promote the goal of widespread availability of telephone service, 47 U.S.C. 151. Nor do we require applications for such discontinuances by cable television systems or other suppliers of lines not affiliated with a common carrier. Finally, requiring applications for such discontinuances when an exchange carrier owns a cable television system in its exchange telephone service area does not promote the goals of the cross-ownership rules, i.e., limiting cross-subsidies and increasing competition, 47 CFR 63.54. For these reasons, we adopt the attached rule provision which eliminates, to the extent that elimination is necessary, any requirement of section 214 applications for discontinuances for any cable television systems.

6. Fourth, Telephone and Data Systems requested that the Commission grant section 214 authority for all existing cable television channels and other lines for non-common carrier services provided by a common carrier or its affiliate outside of the carrier's exchange telephone service area. Apparently, some carriers or their affiliates relied on an interpretation of section 214 as not applying to such lines. Because we affirm our tentative finding that all such lines serve the public convenience and necessity, we do not believe that the public interest would be promoted by determining in which cases section 214 applications should have been filed and then imposing cease-and-desist orders, penalties, or forfeitures on those carriers for providing lines without section 214 certificates. 47 U.S.C. 214(c), 501–503. In *General Telephone Co. of California*, 13 FCC 2d 448, 467 (1968), *aff'd sub nom. General Telephone Co. of California* v. *Federal Communications Commission*, 413 F. 2d 390 (D.C. Cir), *cert. denied*, 396 U.S. 888 (1969), we permitted each channel distribution facility completed and in operation on or before release of that decision to continue in operation provided a section 214 application was filed within twenty days with certain supporting data. As in

[3] This Order does not affect the scope of non-common carrier services or sales. *See, e.g.*, FCC v. Midwest Video, 440 U.S. 689, 701 (1979); National Association of Regulatory Utility Commissioners v. FCC, 525 F. 2d 630, 642 (D.C. Cir.), *cert. denied*, 425 U.S. 999 (1976); Domestic Fixed-Satellite Transponder Sales, 90 FCC 2d 1238, 1257 (1982), *appeal pending sub nom.* Wold Communications, Inc. v. FCC, D.C. Cir. No. 82–2054 (appeal filed September 10, 1982); Special Construction of Lines and Special Service Arrangements Provided by Common Carriers, FCC 84–369 (adopted April 11, 1984). Nor does this Order affect the requirement for a section 214 filing when an exchange carrier provides lines on a common carrier or non-common carrier basis in its exchange service area. Finally, we do not hereby modify in any way state and local regulation of cable television systems.

[4] We found that certain classes of carriers are nondominant in the Competitive Carrier Rulemaking, 77 FCC 2d 308 (1979) (Notice), 85 FCC 2d 1 (1980) (First Report), 84 FCC 2d 445 (1981) (Further Notice), 91 FCC 2d 59 (1982) (Second Report), *reconsid.*, 93 FCC 2d 54 (1983), 48 FR 46791 (October 14, 1983) (Third Report), 48 FR 52452 (November 18, 1983) (Fourth Report). We granted nondominant carriers blanket section 214 authority in that proceeding. Any carrier found nondominant in the future also would be covered by this treatment. Because American Telephone and Telegraph Co. (AT&T) is currently treated as a dominant carrier, this order does not affect the section 214 filing requirements of this carrier. We are developing information on the costs and benefits of the section 214 filing requirements on AT&T in Long-Run Regulation of AT&T's Basic Domestic Interstate Services, 48 FR 51340 (november 8, 1983). We did not address possible section 214 authority for AT&T to construct cable television systems in the *Notice*. We will consider including such a proposal in a future *Notice* of Proposed Rulemaking.

[5] This Order involves no judgment as to the ability of the Bell Operating Companies to provide the three types of lines covered by this Order consistent with the Modification of Final Judgment, *United States* v. *AT&T*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *united States*, 103 S. Ct. 1240 (1983).

that case, there does not appear to be a flagrant violation of the Communications Act by the construction of lines considered here and "grandfathering" seems warranted. In view of our decision here to eliminate any need for section 214 applications for such lines, we do not believe that section 214 applications for existing lines considered here would serve the public interest.

7. Finally, California Cable Television Association urges the Commission to adopt structural separation between an exchange telephone carrier's telephone and cable television operations along with eliminating certain section 214 applications. We reject this suggestion. We have not required such separation when we approved section 214 applications for exchange telephone carriers to provide cable television channels outside of their telephone exchange service areas. *See, e.g., Eagle Telecommunications*, FCC 83-459 (released November 7, 1983). We see no reason why a rule eliminating any requirement for such applications should engender the need for structural separation. However, as we have done in cases of cable television systems owned by exchange telephone common carriers and some other non-common carrier offerings by common carrier, we require that common carriers record the costs of providing the non-common carriers offerings covered by this Order on books of account separate from those of its common carrier services.[6] Moreover, the costs on the separate books must at minimum cover the direct, indirect and overhead expenditures incurred for such offerings. The attached rule includes this requirement.

III. Regulatory Flexibility Act Analysis

8. We conclude that the attached rule will have a positive economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b) (1982). This rule will extend the Commission's deregulatory program. The rule will apply equally to all telephone common carriers and their affiliates—small business entities as well as large corporations—and should aid all carriers by eliminating costs and delay in the certification process. No alternative that could be considered would be less burdensome. The legal basis for this action is shown in para. 9 *infra*.

IV. Conclusion

9. We find that, to the extent that section 214 authorization is required, it is in the public interest that common carriers construct, acquire, or operate any of the lines covered by the attached rule. Pursuant to sections 4(i), 4(j), 214 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 4(i), 4(j), 214, and 403, this Order and the attached rule are adopted. The rule change will become effective on June 25, 1984.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Attachment

PART 63—[AMENDED]

Part 63 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended by adding § 63.08 as follows:

§ 63.08 Lines outside of a carrier's exchange telephone service area.

(a) An exchange telephone common carrier or its affiliate is not required to file for authority pursuant to 47 U.S.C. 214 and 47 CFR 63.10 to provide lines, or for existing lines, outside of the exchange telephone service area of that carrier and any of its affiliates when the lines are (i) for its own cable television service; (ii) for its non-common carrier services; or (iii) sold to an unaffiliated party. "Affiliate" is defined as in 47 CFR 63.54.

(b) If a nondominant common carrier and its affiliates are not affiliated with an exchange telephone common carrier, the nondominant carrier or its affiliate is not required to file for authority pursuant to 47 U.S.C. 214 and 47 CFR 63.01 to provide lines, or for existing lines, of the types described in paragraph (a) of this section between any domestic points. "Affiliate" is defined as in 47 CFR 63.54 and "nondominant" is defined as in 47 CFR 61.15a.

(c) A common carrier or its affiliate is not required to file for authority pursuant to 47 U.S.C. 214 and 47 CFR 63.01 to discontinue, reduce, or impair its own cable television service or any other non-common carrier service.

(d) A common carrier's costs of providing lines for non-common carrier offerings and costs of providing such offerings must be entered on books of account separate from those for its common carrier services.

[FR Doc. 84-13589 Filed 5-18-84; 8:45 am]

BILLING CODE 6712-01-M

[6] *See* Concord Telephone Exchange, 78 FCC 2d 676, 682 (1980) (requiring that books of account for an exchange carrier's CATV operation separate from books of account for the exchange telephone services be maintained to prevent any construction and operation of the CATV system from being subsidized by, or from burdening, common carrier services); *Second Computer Inquiry*, 77 FCC 2d 384, 476, *reconsid.*, 84 FCC 2d 50 (1980), *further reconsid.*, 88 FCC 2d 512 (1981), *aff'd sub nom.* Computer and Communications Indus. Ass'n. v. FCC, 693 F. 2d 198 (D.C. Cir. 1982), *cert. denied*, 103 S. Ct. 2109 (1983) (requiring separate books of account for common carriers' offering of customer-premises equipment and enhanced services).

---

47 CFR Part 67

Response to Request for Interpretation of Jurisdictional Separations Manual

AGENCY: Federal Communications Commission.

ACTION: Response to Request for Interpretation of Separations Manual.

SUMMARY: Under delegated authority the Common Carrier Bureau, in response to a request by AT&T, has provided several interpretations as set forth below of the *FCC-NARUC Jurisdictional Separations Manual*, Part 67 of the FCC Rules and Regulations. The issues concern the jurisdictional separation of public telephone equipment and related expenses, Account 235 and Account 607 of the Uniform System of Accounts for Class A and Class B Telephone Companies, Part 31 of the FCC Rules and Regulations.

FOR FURTHER INFORMATION CONTACT: Michael E. Wilson, Audits Branch, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554, Telephone No. (202) 634-1965.

William J. Tricarico,

Secretary, Federal Communications Commission.

Federal Communications Commission

Washington, D.C. 20554

May 9, 1984.

Mr. T. J. Berry, Jr.,

Executive Assistant, American Telephone and Telegraph Company, Room 29-2623, 550 Madison Avenue, New York, New York 10022

Dear Mr. Berry: This is in response to two letters from dated December 22, 1983, on separate issues related to the jurisdictional separations of public telephone equipment and related expenses recorded, respectively, in Account 235, "Public telephone equipment," and Account 607, "Repairs of public telephone equipment."

This first issue concerns clarification of the separations treatment of Accounts 235 and 607 created in Docket 82-681 for which no specific provision had been made in the *Separations Manual (Manual)*. You argue that the Commission's reclassification of public telephone equipment and related expenses was not intended to change separations in any way and that, pending

action by the Federal/State Joint Board, separation of these items should be continued in the traditional manner using the frozen subscriber plant factor (SPF).

In the *Decision and Order* in Docket 80-286 released February 15, 1984, the Commission adopted several changes to the *Manual*. One of these changes was the addition of the new accounts for pay telephones referred to in your letter. These changes are now scheduled to become effective June 13, 1984 (at the same time as the access tariffs), and provide procedures for the separation of the investment in pay telephones and related expenses from that time forward.

As for the interim, we concur with your basic assumption—that the reclassification of public telephone equipment and related expenses by the Commission was not intended to affect the separations treatment of these items. Before the reclassification of pay telephones and related expenses in Docket 82-681, they were apportioned on the basis of frozen SPF, and the new changes effective June 13, 1984, provide for a continuation of this basis. It is obvious, therefore, that frozen SPF should be used for the interim as well. Accordinlgy, until the *Manual* changes released by the Commission on February 15 become effective, the public telephone equipment recorded in Account 235 and related expenses in Account 607 are to be treated for separations purposes in the same manner that would have been applied absent the reclassification in FCC Docket 82-681.

The second issue concerns a new situation brought about by divestiture involving the jurisdictional separation of the cost of coinless public telephones to be installed in 1984 by AT&T Communications. This investment and related expenses will be recorded in Accounts 235 and 607, respectivley, and as indicated above separation of these accounts requires the use of SPF. However, you argue that it would not be correct to apportion AT&T's investment in this equipment using SPF because it will have virtually no subscriber plant in 1984. Therefore, you propose to apportion these costs between the state and interstate jurisdictions on the basis of the relative use of this plant.

We recognize that this somewhat unique situation presents a problem for AT&T Communications. First, there is no SPF for AT&T Communications. Second, use of a surrogate SPF, such as that for the local company involved , could produce anomalous results since the AT&T Communications' rate schedules will not be suitable for the fair recovery of the intrastate allocations. In light of this, we are of the opinion that the *Manual* does not provide a specific workable separations procedure for the subject plant and related expenses. As a result, you must look to the general guidelines in the *Manual*, Section 11.2, Fundamental Principles Underlying Procedures. In Paragraph 11.211 of this section the requirement stated is that separations are to be "made on the 'acctual use' basis, which gives consideration to relative occupancy and relative time measurements."

Accordingly, we concur with your proposal to apportion the investment in, and related expenses of, AT&T's new coinless pay telephones installed in 1984 on the basis of the relative use of this plant. However, this concurrence is for an interim period only, pending further action by the Joint Board and the Commission which will be considering this question later this year. Further, we request that you submit to Michael Wilson, Chief, Audits Branch, within thirty days from the date of this letter, a more detailed explanation of the factors and procedures to be applied in the apportionment of this plant.

If you have any questions concerning this response, please contact Michael Wilson on (202) 634-1965.

Sincerely,

Gerald P. Vaughan,

Chief, Accounting and Audits Division.

cc; Merlin Jensen
Bell Communications Research, Inc.

[FR Doc. 84-13595 Filed 5-18-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 81-487; RM-3915 MM Docket No. 81-818; RM-3960; RM-4033]

FM Broadcast Stations in Marco, Florida/FM Broadcast Stations in Naples and Key West, Florida; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action denies a Petition for Reconsideration filed by Rogers Media Service of the *Report and Order* which substituted FM channel 276A for Channel 249A at Naples, Florida, instead of assigning Channel 276A to Naples as its fifth FM channel.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Memorandum Opinion and Order

In the matter of amendment of § 73.202(b), table of assignments, FM broadcast stations. (Marco, Florida; Naples and Key West, Florida) BC Docket No. 81-487; RM-3915; BC Docket No. 81-818; RM-3960; RM-4033; RM-4034.

Adopted: May 1, 1984.
Released: May 4, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it the Petition for Reconsideration filed by Rogers Media Service ("Rogers") of the *Report and Order*, 48 FR 19879 published May 3, 1983, which substituted FM Channel 276A for Channel 249A at Naples, Florida, and modified the license of Sterling Communications Corporation for Station WSGL, Naples to specify operation on Channel 276A. This action was taken in response to a petition filed by WRMF, Inc., ("WRMF") licensee of Station WRMF (AM and FM), Palm Beach, Florida. In the same proceeding the Commission also modified the license of Station WFYN-FM, Key West, Florida, to specify operation on Channel 222 rather than Channel 223 in order to permit the assignment of Channel 224A to Marco, Florida, in response to a petition filed by Sunshine Broadcasting, Inc.[1] Opposing comments to the Petition for Reconsideration were submitted by WRMF. Rogers submitted Reply comments.

2. Originally WRMF requested the substitution of Channel 276A for 249A at Naples, Florida, on which WSGL (FM) operates, to allow WRMF to relocate its transmitter to a site which would otherwise be short spaced to WSGL. By *Report and Order, supra.*, the Commission *inter alia*, approved this substitution rather than assign Channel 276A to Naples as a 5th local FM station, citing existing Commission priorities for resolving conflicting FM channel assignments.[2] The Commission found that by substituting channels at Naples and thereby allowing the Palm Beach site change, WRMF could provide a first FM service to an area of 329 square miles and a second FM service to an area of 88 square miles. We noted that WRMF had not provided us with population estimate, and conceded that our analysis was inconclusive. However, we did notice evidence of some population and stated that the provision of service to this population segment outweighed the request for an additional service to Naples. We also considered the fact that Naples is well served by four existing and one pending (Channel 288A) stations. Consequently, we found that it would be in the public interest to prefer the Palm Beach site change over an additional station at Naples.

3. In its petition, Rogers alleges that (1) consideration of "first FM service" is contrary to Commission policy, (2) the

[1] Rogers only requests reconsideration of that portion of the Commission's decision which substituted FM Channel 276A for Channel 249A at Naples, Florida.

[2] *Second Report and Order, Revision of FM Assignment Policies and Procedures*, 90 F.C.C. 2d 88 (1982).

Commission's decision to substitute Channel 249A for Channel 276A without knowing whether there exists any population within the alleged first FM service area constituted speculation, rather than fact, and (3) the Commission failed to consider that the assignment of Channel 276A to Naples would provide additional FM service to over 140,000 persons.

4. Specifically, Rogers argues that the provision of First FM service is not one of the four allocations guidelines specified in Docket 80–130. The relevant factor is first aural service which was not demonstrated here. Furthermore the record failed to establish that first FM service would in fact be provided. Rogers states that its consultants have surveyed the alleged first FM service area and found that the area is composed principally of swampland. A Seminole Indian reservation is partially located within the western border of the area along with evidence of temporary lodging facilities, Rogers contends that 80% of the first service area is Florida Everglades swamp.

5. In opposition, WRMF argues that based on the priorities set forth in the Docket 80–130, *supra*, the Commission correctly concluded that the substitution of Channel 276A for Channel 249A was the proposal that best adhered to the needs and interests of the public. WRMF further argues that while neither proposal satisfied a specific priority, the Division's Chief belief that WRMF's proposal to provide 1st FM service to an area best answered the needs of the public and was a valid assignment criterion. WRMF reiterates that the new FM service that could be provided by the site change is in the public's interest.

6. Concerning the population of the proposed first FM service area, WRMF notes that according to its consulting engineer there is evidence of small farming and ranching populations scattered throughout the area, along with roads, canals, and airstrips. Additionally, evidence of planned development and residential expansion also exists. Contrary to Rogers' argument, WRMF asserts that a fifth FM assignment to Naples is not within the public interest since existing stations already adequately serve Naples. Further WRMF states that additional service to 140,000 persons, that is claimed, is not proven and there is no evidence of an available transmitter site.

7. In Docket 80–130, *Revision of FM Assignment Policies and Procedures, supra*, the Commission adopted the following priorities in assigning new FM channels: (1) First fulltime aural service, (2) second fulltime aural service, or first local service and (3) other public interest factors. The third category includes, but is not limited to, such considerations as number of reception services, population and location.

8. In the *Report and Order*, we stated that none of the proposals provided a first fulltime aural service. However, based on the information submitted, we found that WRMF's proposal would provide a "first FM service" to an area of 329 square miles and a second FM service to an area 88 square miles. While we were not provided with a population estimate for this area, we did note the existence of some populated areas. Although there was no showing of significant numbers in the unserved areas proposed to be reached by WRMF's proposal, we found the potential growth of the existing population, albeit small, to be a factor.

9. We concede that the provision of first FM service to a community is not a specified assignment priority. While this category relates to the earlier FM priorities set out in the *Third Report, Memorandum Opinion and Order*, (40 F.C.C. 747 (1963)), the decision in *Docket 80–130*, did not intend to eliminate this factor from consideration. Here in making the comparison between first FM reception or an additional local service our earlier policy would clearly favor the provision of a first FM reception service. *St. George, S.C.*, 33 RR 2d 295 (1975). Under the provisions set forth in Docket 80–130 we believe it is appropriate to consider first FM service under the third category of other public interest factors. As stated in the *Report and Order*, we have traditionally placed a high priority on the provision of such service.

10. Notwithstanding the above, a further comparison can be made under the third category based on the respective populations to be served. Rogers claims that 146,000 people would receive additional service if Naples received a fifth assignment. Rogers previously asserted a fifth FM assignment to Naples would reflect the continued and rapid growth of Naples and Collier County over the past 10 years. In the *Report and Order*, we found that 864,617 persons would receive an additional service from the Palm Beach site change based on the substitution of Channel 276A for Channel 249A at Naples. This figure has not been challenged in the reconsideration. Consequently, on the basis of greater additional service, and the provision of a "first FM service," we reaffirm our preference for the Naples substitution over the addition of a fifth assignment in Naples.

11. In view of the above, it is ordered, That the Petition for Reconsideration, filed herein by Rogers Media Services, is denied.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–12879 Filed 5–18–84; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[Docket No. 17562; Docket No. 18023]

Pre-Sunrise Operations by Class II Stations Under Pre-Sunrise Service Authorizations on U.S. I–A Clear Channels; and Amendment of the Commission's Rules Concerning Pre-Sunrise Service Authorizations To Specify 6 a.m. Local Time; Order Dismissing Petitions for Reconsideration

AGENCY: Federal Communications Commission.

ACTION: Final rule; dismissal of petitions for reconsideration.

SUMMARY: By Order, petitions for the reconsideration of rule amendments relating to daytime-only AM stations were dismissed.

The rule amendments in question were adopted in 1979, and the subject rules have since then undergone extensive revision. Thus the matters raised by petitioners are no longer in the context of the current rules.

In the circumstances, the petitions for reconsideration were dismissed, and the proceedings terminated.

FOR FURTHER INFORMATION CONTACT: Louis C. Stephens of the FCC Mass Media Bureau (202) 632–7792.

Order

In the matter of Pre-Sunrise Operations by Class II Stations under Pre-Sunrise Service Authorizations on U.S. I–A Clear Channels and amendment of § 73.99 of the Commission's Rules (Pre-Sunrise Service Authorizations to Specify 6 a.m. Local Time; Docket No. 17562; Docket No. 18023.

Adopted: April 12, 1984.
Released: April 16, 1984.
By the Chief, Mass Media Bureau.

It appearing that both the captioned proceedings were terminated by *Report and Order*, adopted July 29, 1969, 34 FR 12702, 18 F.C.C. 2d 705; and

It further appearing that subsequently filed petitions for reconsideration of the Commission's actions in these proceedings address rules governing extended hours of broadcasting by

daytime-only stations that have since undergone extensive revision;

It is ordered that the still-pending petitions for reconsideration of the Commission's *Report and Order* in the above-captioned proceedings, *supra*, are dismissed without prejudice to the right of the petitioner to seek relief to which they may feel entitled, by filing updated petitions or other requests that address the rules and operational facts as they now stand.; and

It is further ordered that, pursuant to sections 4(j), 303(r) and 405 of the Communications Act of 1934, as amended, the above-captioned dockets again are terminated.

James C. McKinney,

Chief, Mass Media Bureau.

[FR Doc. 84-13590 Filed 5-18-84; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 49, No. 99
Monday, May 21, 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

Animal and Plant Health Inspection Service

9 CFR Part 113

[Docket No. 83-108]

Viruses, Serums, Toxins, and Analogous Products; Standard Requirements for Feline Calicivirus Vaccine, Feline Rhinotracheitis Vaccine, Bursal Disease Vaccine, Pseudorabies Vaccines, Parvovirus Vaccines, Canine Parainfluenza Vaccine, and Tenosynovitis Vaccine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: These proposed amendments would codify in the regulations the Standard Requirements for evaluating Feline Calicivirus Vaccine, Feline Rhinotracheitis Vaccine, Bursal Disease Vaccine, Pseudorabies Vaccines, Parvovirus Vaccines, Canine Parainfluenza Vaccine, and Tenosynovitis Vaccine for purity, safety, potency, and efficacy. Such codification assures uniformity and general availability of such Standard Requirements to all licenses, applicants, and to the general public.

DATE: Comments must be received on or before July 20, 1984.

ADDRESS: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building, 8 a.m to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Senior Staff Veternarian, Veterinary Biologics Staff, VS, APHIS, USDA, Room 829, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8245.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

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

Executive Order 12291

This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512-1 to implement Executive Order 12291 and has been classified as a "Nonmajor Rule."

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

Certification Under the Regulatory Flexibility Act

Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action would not result in an adverse economic impact on a substantial number of small entities. Small entities are defined as independently owned firms not dominant in the field of veterinary biologics manufacturing.

Background

Standard Requirements consist of test methods, procedures, and criteria established by Veterinary Services for evaluating biological products for purity, safety, potency, and efficiency. Until such Standard Requirements are developed by Veterinary Services and are codified in the regulations (9 CFR Part 113), the test methods, procedures, and criteria to be used in the evaluation of a product are developed by the licensees and are written into the applicable Outlines of Production which are required to be filed with Veterinary Services.

When Standard Requirements for a biological product have been developed by Veterinary Services, they are proposed for codification in the regulations.

Development of these standards is accomplished through cooperative efforts involving academic institutions, research organizations, licensees and applicants, and the National Veterinary Services Laboratories.

Each of the test methods proposed in the amendments has been used for evaluation of at least two currently licensed products.

Such codification assures uniformity and general availability of such Standard Requirements to all licensees, applicants, and to the general public.

These proposed amendments contain the Standard Requirements for all licensed products containing live and modified live canine parainfluenza virus or tenosynovitis virus; live, modified live; and killed pseudorabies virus or parvovirus; and killed feline calicivirus, feline rhinotracheitis virus, or bursal disease virus.

Lisit of Subjects in 9 CFR Part 113

Animal biologics.

PART 113—STANDARD REQUIREMENTS

1. Part 113 would be amended by adding §§ 113.130–113.134, 113.151–113.153, and 113.167 to read:

§ 113.130 Feline calicivirus vaccine, killed virus.

Feline Calicivirus Vaccine, Killed Virus, shall be prepared from virus-bearing cell culture fluids. Only Master Seed which has been established as pure, safe, and immunogenic shall be used for preparing seeds for vaccine production. All serials of vaccine shall be prepared from the first through the fifth passage from the Master Seed.

(a) The Master Seed shall meet the applicable general requirements prescribed in § 113.120.

(b) The Master Seed shall be tested for chlamydial agents as prescribed in § 113.43.

(c) The immunogenicity of vaccine prepared from the Master Seed in accordance with the Outline of Production shall be established by a method acceptable to Veterinary Services. Vaccine used for this test shall be at the highest passage from the Master Seed and prepared at the

minimum preinactivation titer specified in the Outline of Production.

(d) *Test requirements for release.* Each serial and subserial shall meet the applicable general requirements prescribed in § 113.120 and the special requirements provided in this paragraph. Any serial or subserial found unsatisfactory by a prescribed test shall not be released.

(1) *Safety.* Vaccinates used in the potency test in paragraph (d)(2) of this section shall be observed each day during the prechallenge period. If unfavorable reactions occur, including oral lesions, which are attributable to the vaccine, the serial is unsatisfactory. If unfavorable reactions occur which are not attributable to the vaccine, the test is inconclusive and may be repeated. If the test is not repeated, the serial is unsatisfactory.

(2) *Potency.* Bulk or final container samples of completed product shall be tested for potency as follows:

(i) Eight feline calicivirus susceptible cats (five vaccinates and three controls) shall be used as test animals. Throat and nasal swabs shall be collected from each cat and individually tested on susceptable cell cultures for the presence of feline calicivirus. Blood samples shall be drawn and individual serum samples tested for neutralizing antibody. The cats shall be considered suitable for use if all swabs are negative for virus isolation and all serums are negative for calicivirus antibody at the 1:2 final dilution in a 50 percent plaque reduction test or other test of equal sensitivity.

(ii) The five cats used as vaccinates shall be administered one dose of vaccine by the method recommended on the label. If two doses are recommended, the second dose shall be given after the interval recommended on the label.

(iii) Twenty-one or more days after the final dose of vaccine, the vaccinates and controls shall each be challenged intranasally with virulent feline calicivirus furnished or approved by Veterinary Services and observed each day for 14 days postchallenge. The rectal temperature of each animal shall be taken and the presence or absence of clinical signs, particularly lesions on the oral mucosa, noted and recorded each day.

(iv) If three of three controls do not show clinical signs of feline calicivirus infection other than fever, the test is inconclusive and may be repeated.

(v) If a significant difference in clinical signs cannot be demonstrated between vaccinates and controls using a scoring system approved by Veterinary Services and prescribed in the Outline of Production, the serial is unsatisfactory.

§ 113.131 Feline rhinotracheitis vaccine, killed virus.

Feline Rhinotracheitis Vaccine, Killed Virus, shall be prepared from virus-bearing cell culture fluids. Only Master Seed which has been established as pure, safe, and immunogenic shall be used for preparing seeds for vaccine production. All serials of vaccine shall be prepared from the first through the fifth passage from the Master Seed.

(a) The Master Seed shall meet the applicable general requirements prescribed in § 113.120.

(b) The Master Seed shall be tested for chlamydial agents as prescribed in § 113.43.

(c) The immunogenicity of vaccine prepared from the Master Seed in accordance with the Outline of Production shall be established by a method acceptable to Veterinary Services. Vaccine used for this test shall be at the highest passage from the Master Seed and prepared at the minimum preinactivation titer specified in the Outline of Production.

(d) *Test requirements for release.* Each serial and subserial shall meet the applicable general requirements prescribed in § 113.120 and the special requirements provided in this paragraph. Any serial or subserial found unsatisfactory by a prescribed test shall not be released.

(1) *Safety test.* Vaccinates used in the potency test in paragraphs (d)(2) of this section shall be observed each day during the prechallenge period. If unfavorable reactions occur which are attributable to the vaccine, the serial is unsatisfactory. If unfavorable reactions occur which are not attributable to the vaccine, the test is inconclusive and may be repeated. If the test is not repeated, the serial is unsatisfactory.

(2) *Potency test.* Bulk or final container samples of completed product shall be tested for potency as follows:

(i) Eight feline rhinotracheitis susceptible cats (five vaccinates and three controls) shall be used as test animals. Throat and nasal swabs shall be collected from each cat and individually tested on susceptible cell cultures for the presence of feline rhinotracheitis virus. Blood samples shall be drawn and individual serum samples tested for neutralizing antibody. The cats shall be considered suitable for use if all swabs are negative for virus isolation and all serums are negative for rhinotracheitis virus antibody at the 1:2 final dilution in a 50 percent plaque reduction test or other test of equal sensitivity.

(ii) The five cats used as vaccinates shall be administered one dose of vaccine by the method recommended on the label. If two doses are recommended, the second dose shall be given after the interval recommended on the label.

(iii) Twenty-one or more days after the final dose of vaccine, the vaccinates and controls shall each be challenged intranasally with virulent feline rhinotracheitis virus furnished or approved by Veterinary Services and observed each day for 14 days postchallenge. The rectal temperature of each animal shall be taken and the presence or absence of clinical signs noted and recorded each day.

(iv) If three of three controls do not show clinical signs of feline rhinotracheitis virus infection other than fever, the test is inconclusive and may be repeated.

(v) If significant difference in clinical signs cannot be demonstrated between vaccinates and controls using a scoring system approved by Veterinary Services and prescribed in the Outline of Production, the serial is unsatisfactory.

§ 113.132 Bursal disease vaccine, killed virus.

Bursal Disease Vaccine, Killed Virus, shall be prepared from virus-bearing cell culture fluids or embryonated chicken eggs. Only Master Seed which has been established as pure, safe, and immunogenic shall be used for preparing seeds for vaccine production. All serials shall be prepared from the first through the fifth passage from the Master Seed.

(a) The Master Seed shall meet the applicable requirements prescribed in § 113.120.

(b) Each lot of Master Seed shall be tested for pathogens by the chicken embryo inoculation test prescribed in § 113.37, except that, if the test is inconclusive because of vaccine virus override, the chicken inoculation test prescribed in § 113.36 may be conducted and the virus judged accordingly.

(c) The immunogenicity of vaccine prepared in accordance with the Outline of Production shall be established by a method acceptable to Veterinary Services. Vaccine used for this test shall be at the highest passage from the Master Seed and prepared at the minimum preinactivation titer specified in the Outline of Production. The test shall establish that the vaccine, when used as recommended on the label, is capable of inducing an immune response in dams of sufficient magnitude to provide significant protection to offspring.

(d) *Test requirements for release.* Each serial and subserial shall meet the applicable general requirements prescribed in § 113.120 and the special requirements in this paragraph. Any serial or subserial found unsatisfactory by a prescribed test shall not be released.

(1) *Safety.* Vaccinates used in the potency test in paragraph (d)(2) of this section shall be observed each day during the prechallenge period. If unfavorable reactions attributable to the vaccine occur, the serial is unsatisfactory. If unfavorable reactions which are not attributable to the vaccine occur, the test is inconclusive and may be repeated. If the test is not repeated, the serial is unsatisfactory.

(2) *Potency.* Bulk or final container samples of completed product from each serial shall be tested for potency using the two-stage potency test provided in this paragraph.

(i) *Vaccinates.* Inject each of 21 susceptible chickens 14 to 28 days of age, properly identified and obtained from the same source and hatch, with one dose of vaccine by the route recommended on the label and observe for at least 21 days.

(ii) *Controls.* Retain at least 10 additional chickens from the same source and hatch as the vaccinates as unvaccinated controls.

(iii) *Challenges.* Twenty-one to 28 days postvaccination, challenge 20 vaccinates and 10 controls by eyedrop with a virulent infectious bursal disease virus furnished or approved by Veterinary Services.

(iv) *Postchallenge period.* Four days postchallenge, necropsy all chickens and examine each for gross lesions of bursal disease. For purposes of this test, gross lesions shall include peribursal edema and/or edema and/or macroscopic hemorrhage in the bursal tissue. Vaccinated chickens showing gross lesions shall be counted as failures. If at least 80 percent of the controls do not have gross lesions of bursal disease in a stage of the test, that stage is considered inconclusive and may be repeated. In a valid test, the results shall be evaluated according to the following table:

Stage	Number of vaccinates	Cumulative number of vaccinates	Cumulative total number of failures for—	
			Satisfactory serial	Unsatisfactory serial
1	20	20	3 or less	6 or more.
2	20	40	8 or less	9 or more.

(v) If four or five vaccinates show lesions of bursal disease in the first stage, the second stage may be conducted in a manner identical to the first stage. If the second stage is not conducted, the serial is unsatisfactory.

(vi) If the second stage is used, each serial shall be evaluated according to the second part of the table on the basis of cumulative results.

§ 113.133 Pseudorabies vaccine, killed virus.

Pseudorabies Vaccine, Killed Virus, shall be prepared from virus bearing cell culture fluids. Only Master Seed which has been established as pure, safe, and immunogenic shall be used for preparing seeds for vaccine production. All serials of vaccine shall be prepared from the first through the fifth passage from the Master Seed.

(a) The Master Seed shall meet the applicable general requirements prescribed in § 133.120.

(b) The immunogenicity of vaccine prepared from the Master Seed in accordance with the Outline of Production shall be established by a method acceptable to Veterinary Services. Vaccine used for this test shall be at the highest passage from the Master Seed and at the minimum preinactivation titer provided in the Outline of Production.

(c) *Test requirements for release.* Each serial and subserial shall meet the applicable general requirements prescribed in § 113.120 and the special requirements provided in this paragraph. Any serial or subserial found unsatisfactory by a prescribed test shall not be released.

(1) *Safety.* Vaccinates used in the potency test in paragraph (c)(2) of this section shall be observed each day during the prechallenge period. If unfavorable reactions occur, including neurological signs, which are attributable to the vaccine, the serial is unsatisfactory. If unfavorable reactions occur which are not attributable to the vaccine, the test is inconclusive and may be repeated. If the test is not repeated, the serial is unsatisfactory.

(2) *Potency.* Bulk or final container samples of completed product shall be tested for potency as follows:

(i) Ten pseudorabies susceptible pigs (five vaccinates and five controls) shall be used as test animals. The animals shall be at the minimal age recommended for vaccination. Blood samples shall be drawn and individual serum samples inactivated and tested for neutralizing antibody.

(ii) A constant virus-varying serum neutralization test in cell culture using 100 to 300 $TCID_{50}$ of virus shall be used. Pigs shall be considered susceptible if there is no neutralization at 1:2 final serum dilution. Other tests of equal sensitivity acceptable to Veterinary Services may be used.

(iii) The five pigs used as vaccinates shall be administered one dose of vaccine as recommended on the label. If two doses are recommended, the second dose shall be given after the interval recommended on the label.

(iv) Fourteen days or more after vaccination, blood samples shall be drawn and individual serum samples inactivated and tested for pseudorabies virus neutralizing antibody by the method used to determine susceptibility.

(v) *Test interpretation.* If the controls have not remained seronegative at 1:2, the test is inconclusive and may be repeated. If at least four of the five vaccinates in a valid test have not developed titers of at least 1:8, and the remaining vaccinate has not developed a titer of at least 1:4, the serial is unsatisfactory, except as provided in paragraph (c)(2)(vi) of this section.

(vi) *Virus challenge test.* If the results of a valid serum neutralization test are unsatisfactory, the vaccinates and controls may be challenged with virulent pseudorabies virus furnished or approved by Veterinary Services. The animals shall be observed each day for 14 days postchallenge. If four of five controls do not develop central nervous system signs or die, the test is inconclusive and may be repeated. In a valid test, if two or more of the vaccinates develop clinical signs or die, the serial is unsatisfactory.

§ 113.134 Parvovirus Vaccine, Killed Virus (Canine).

Parvovirus Vaccine, Killed Virus, recommended for use in dogs, shall be prepared from virus-bearing cell culture fluids. Only Master Seed which has been established as pure, safe, and immunogenic shall be used for vaccine production. All serials of vaccine shall be prepared from the first through the fifth passage from the Master Seed.

(a) The Master Seed shall meet the applicable general requirements prescribed in § 113.120.

(b) The immunogenicity of vaccine prepared in accordance with the Outline of Production shall be established as follows:

(1) Twenty-five parvovirus susceptible dogs (20 vaccinates and 5 controls) shall be used as test animals. Blood samples drawn from each dog shall be individually tested for neutralizing antibody against canine parvovirus to determine susceptibility. A constant virus-varying serum neutralization test in cell culture using 100 to 300 $TCID_{50}$ of virus shall be used. Dogs shall be considered susceptible if there is no

neutralization at a 1:2 final serum dilution. Other tests of equal sensitivity acceptable to Veterinary Services may be used.

(2) A viral hemagglutination test or another test acceptable to Veterinary Services shall be used to measure the antigenic content of vaccine produced at the highest passage from the Master Seed before the immunogenicity test is conducted. The 20 dogs used as vaccinates shall be injected with a predetermined dose of vaccine by the method recommended on the label. To confirm the dosage calculations, five replicate tests shall be conducted on a sample of the vaccine used. If two doses are used, five replicate confirming tests shall be conducted on each dose.

(3) Fourteen days or more after the final dose of vacine, the vaccinates and the controls shall be challenged with virulent canine parvovirus furnished or approved by Veterinary Services and the dogs observed each day for 14 days. Rectal temperature, blood lymphocyte count, and feces for viral detection shall be taken from each dog each day for at least 10 days postchallenge and the presence or absence of clinical signs noted and recorded each day.

(i) The immunogenicity of the vaccine shall be evaluated on the following criteria of infection: temperature >103.4° F; lymphopenia of >50 percent of prechallenge normal; clinical signs such as diarrhea, mucus in feces, or blood in feces; and: viral hemagglutinins at a level of >1:64 in a 1:5 dilution of feces. If at least 80 percent of the controls do not show at least three of the four criteria of infection during the observation period, the test is inconclusive and may be repeated.

(ii) If at least 19 of the 20 vaccinates do not survive the observation period without showing any more than one criterion of infection described in paragraph (b)(3)(i), of this section, the Master Seed is unsatisfactory.

(4) The Master Seed shall be retested for immunogenicity in 3 years unless use of the lot previously tested is discontinued. Only five susceptible dogs (four vaccinates and one control) need to be used in the retest. Susceptibility shall be determined in the manner provided in paragraph (b)(1) of this section.

(i) Each vaccinate shall be injected with a predetermined quantity of vaccine virus as provided in paragraph (b)(2) of this section.

(ii) Fourteen to 21 days after the last vaccination, a second serum sample shall be drawn from each dog and tested for neutralizing antibody to canine parvovirus in the same manner used to determine susceptibility.

(iii) If the control has not remained seronegative at 1:2, the test is inconclusive and may be repeated.

(iv) If three of the four vaccinates in a valid test do not develop titers based upon final serum dilution of at least 1:16, and the remaining vaccinate does not develop a titer of at least 1:8, the Master Seed is unsatisfactory, except as provided in (b)(4)(v) of this section.

(v) If the results of a valid SN test are unsatisfactory, the vaccinates and the control may be challenged as provided in paragraph (b)(3) of this section. If at least three of the four criteria of infection are not shown, the test is inconclusive and may be repeated, except that if any of the vaccinates show more than one criterion of infection, the Master Seed is unsatisfactory.

(5) An Outline of Production change shall be made before authority for use of new lot of Master Seed shall be granted by Veterinary Services.

(c) *Test requirements for release.* Each serial and subserial shall meet the requirements prescribed in § 113.120 and in this paragraph. Any serial or subserial found unsatisfactory by a prescribed test shall not be released

(1) *Safety.* The mouse safety test prescribed in § 113.33(b) shall be conducted.

(2) *Potency.* Bulk or final container samples of completed product shall be tested for antigenic content using the method used in paragraph (b)(2) of this section. To be eligible for release, each serial and each subserial shall have an antigenic content sufficiently greater than that used in the immunogenicity test to assure that, when tested at any time within the expiration period, each serial and subserial shall have an antigenic content equal to the amount used in such immunogenicity test.

(3) *Virus identity.* Bulk or final container samples shall be tested for virus identity by conducting a hemagglutination test using duplicate samples and pretreating one with specific canine parvovirus antibody. If there is not at least a sixteenfold reduction in hemagglutinating activity, the hemagglutination is considered to be nonspecific and the serial is unsatisfactory.

§ 113.151 Canine Parainfluenza Vaccine.

Canine Parainfluenza Vaccine shall be prepared from virus-bearing cell culture fluids. Only Master Seed which has been established as pure, safe, and immunogenic shall be used for preparing seeds for vaccine production. All serials of vaccine shall be prepared from the first through the fifth passage from the Master Seed.

(a) The Master Seed shall meet the applicable general requirements prescribed in § 113.135 and the requirements in this section.

(b) Each lot of Master Seed shall be tested for immunogenicity. The selected virus dose shall be established as follows:

(1) Twenty-five canine parainfluenza susceptible dogs (20 vaccinates and 5 controls) shall be used as test animals. Nasal swabs shall be collected from each dog on the day the first dose of vaccine is administered and individually tested on susceptible cell cultures for the presence of canine parainfluenza virus. Blood samples shall also be drawn and individual serum samples tested for neutralizing antibody. Dogs shall be considered susceptible if all swabs are negative for virus isolation and if all serums are negative for canine parainfluenza antibody at a 1 : 2 final dilution is a constant virus-varying serum neutralization test using less than 500 $TCID_{50}$ of canine parainfluenza virus.

(2) A geometric mean titer of vaccine produced at the highest passage from the Master Seed shall be established before the immunogenicity test is conducted. The 20 dogs used as vaccinates shall be administered a predetermined quantity of vaccine virus. Five replicate virus titrations shall be conducted on a sample of the vaccine virus dilution used to confirm the dosage administered. If two doses are used, five replicate confirming titrations shall be conducted on each dose.

(3) Three to 4 weeks after the final dose of vaccine, all dogs shall be bled for serum antibodies and nasal swabs shall be collected for canine parainfluenza virus isolation. On the same day, all vaccinates and controls shall be challenged with canine parainfluenza virus furnished or approved by Veterinary Services.

(4) The rectal temperature of each dog shall be taken and the presence of respiratory or other clinical signs of canine parainfluenza virus infection noted and recorded each day for 14 consecutive days postchallenge. Nasal swabs shall be collected from each dog each day for at least 10 consecutive days postchallenge. Individual swabs shall be tested for virus isolation by culture in canine parainfluenza virus susceptible cells for at least 7 days. Results shall be evaluated according to the following criteria:

(i) If five of five controls have not remained seronegative at a final serum dilution of 1 : 2 during the prechallenge period, the test is inconclusive and may be repeated.

(ii) If more than one vaccinate shows febrille response, respiratory or other clinical signs of canine parainfluenza

virus infection; or, if less than 19 of 20 vaccinates show serum neutralization titers of 1 : 4 or greater; or, if there is not a significant reduction in virus isolation rate in vaccinates when compared with controls, the Master Seed is unsatisfactory.

(5) The Master Seed shall be retested for immunogenicity in 3 years unless use of the lot previously tested is discontinued. Only five vaccinates and five controls need to be used in the retest: *Provided,* That five of five vaccinates and five of five controls shall meet the criteria prescribed in paragraph (b)(4) of this section.

(6) An Outline of Production change shall be made before authority for use of a new lot of Master Seed shall be granted by Veterinary Services.

(c) *Test requirements for release.* Each serial and subserial shall meet the applicable general requirements prescribed in § 113.135 and the requirements in this paragraph. Any serial or subserial found unsatisfactory by a prescribed test shall not be released.

(1) *Safety.* The mouse safety test prescribed in § 113.33(a) and the dog safety test prescribed in § 113.40 shall be conducted.

(2) *Virus titer requirements.* Final container samples of completed product shall be tested for virus titer using the titration method used in paragraph (b)(2) of this section. To be eligible for release, each serial and each subserial shall have a virus titer sufficiently greater than the titer of vaccine virus used in the immunogenicity test prescribed in paragraph (b) of this section to assure that, when tested at any time within the expiration period, each serial and subserial shall have a virus titer at least $10^{0.7}$ greater than that used in the immunogenicity test but not less than $10^{2.5}$ $TCID_{50}$ per dose.

§ 113.152 Parvovirus vaccine (canine).

Parvovirus Vaccine recommended for use in dogs shall be prepared from virus-bearing cell culture fluids. Only Master Seed which has been established as pure, safe, and immunogenic shall be used for preparing seeds for vaccine production. All serials of vaccine shall be prepared from the first through the fifth passage from the Master Seed.

(a) The Master Seed shall meet the applicable general requirements prescribed in § 113.135 and the requirements in this section.

(b) The Master Seed shall be tested for reversion to virulence in dogs using a methods acceptable to Veterinary Services. If a significant increase in virulence is seen within five backpassages, the Master Seed is unsatisfactory.

(c) Each lot of Master Seed shall be tested for immunogenicity. The selected virus dose shall be established as follows:

(1) Twenty-five canine parvovirus susceptible dogs (20 vaccinates and 5 controls) shall be used as test animals. Blood samples drawn from each dog shall be individually tested for neutralizing antibody against canine parvovirus to determine susceptibility. Dogs shall be considered susceptible if there is no neutralization at a 1:2 final serum dilution in a constant virus-varying serum neutralization test in cell culture using 100 to 300 $TCID_{50}$ of canine parvovirus.

(2) A geometric mean titer of the vaccine produced at the highest passage from the Master Seed shall be established before the immunogenicity test is conducted. The 20 dogs used as vaccinates shall be administered a predetermined quantity of vaccine virus by the method recommended on the label. To confirm the dosage calculations, five replicate virus titrations shall be conducted on a sample of the vaccine virus dilution used. If two doses are used, five replicate confirming titrations shall be conducted on each dose.

(3) Fourteen days or more after the final dose of vaccine the vaccinates and the controls shall be challenged with virulent canine parvovirus furnished or approved by Veterinary Services and the dogs observed each day for 14 days. Rectal temperature, blood lymphocyte count, and feces for viral detection shall be taken from each dog each day for at least 10 days postchallenge and the presence or absence of clinical signs noted and recorded each day.

(i) The immunogenicity of the Master Seed shall be evaluated on the following criteria of infection: temperature $\geq$103.4° F; lymphopenia of $\geq$50 percent of prechallenge normal; clinical signs such as diarrhea, mucus in feces, or blood in feces; and viral hemagglutinins at a level of $\geq$1:64 in a 1:5 dilution of feces. If at least 80 percent of the controls do not show at least three of the four criteria of infection during the observation period, the test is inconclusive and may be repeated.

(ii) If at least 19 of the 20 vaccinates do not survive the observation period without showing more than one criterion of infection described in paragraph (c)(3)(i), of this section, the Master Seed is unsatisfactory.

(4) The Master Seed shall be retested for immunogenicity in 3 years unless use of the lot previously tested is discontinued. Five susceptible dogs (four vaccinates and one control) may be used in the retest. Susceptibility shall be determined in the manner provided in paragraph (c)(1) of this section.

(i) Each vaccinate shall be administered a predetermined quantity of vaccine virus as provided in paragraph (c)(2) of this section.

(ii) Fourteen to 21 days after the last vaccination, a second serum sample shall be drawn from each dog and tested for neutralizing antibody to canine parvovirus in the same manner used to determine susceptibility.

(iii) If the control has not remained seronegative at 1:2, the test is inconclusive and may be repeated.

(iv) If three of the four vaccinates in a valid test do not develop titers of at least 1:16 final serum dilution, and the remaining vaccinate does not develop a titer of at least 1:8, the Master Seed is unsatisfactory, except as provided in paragraph (c)(4)(v) of this section.

(v) If the results of a valid SN test are unsatisfactory, the vaccinates and the control may be challenged as provided in paragraph (c)(3) of this section. If at least three of the four criteria of infection are not shown in the control dog, the test is inconclusive and may be repeated, except that if any of the vaccinates show more than one criterion of infection, the Master Seed is unsatisfactory.

(5) An Outline of Production change shall be made before authority for use of a new lot of Master Seed shall be granted by Veterinary Services.

(d) *Test requirements for release.* Each serial and subserial shall meet the applicable general requirements prescribed in § 113.135 and the requirements in this paragraph. Any serial or subserial found unsatisfactory by a prescribed test shall not be released.

(1) *Safety.* The mouse safety test prescribed in § 113.33(a) and the dog safety test prescribed in § 113.40 shall be conducted.

(2) *Virus titer requirements.* Final container samples of completed product shall be tested for virus titer using the titration method used in paragraph (c)(2) of this section. To be eligible for release, each serial and each subserial shall have a virus titer sufficiently greater than the titer of vaccine used in the immunogenicity test in paragraph (c) of this section to assure that, when tested at any time within the expiration period, each serial and subserial shall have a virus titer of $10^{0.7}$ greater than that used in the immunogenicity test, but not less than $10^{2.5}$ ID_{50} per dose.

§ 113.153 Pseudorabies Vaccine.

Pseudorabies Vaccine shall be prepared from virus-bearing cell culture fluids. Only Master Seed which has been established as pure, safe, and immunogenic shall be used for preparing seeds for vaccine production. All serials of vaccine shall be prepared from the first through the fifth passage from the Master Seed.

(a) The Master Seed shall meet the applicable general requirements prescribed in § 113.135 and the requirements in this section.

(b) Each lot of Master Seed shall be tested for immunogenicity. The selected virus dose shall be established as follows:

(1) Twenty-five pseudorabies susceptible pigs (20 vaccinates and 5 controls) of the youngest age for which the vaccine is recommended, shall be used as test animals. Blood samples shall be taken from each pig and the serums inactivated and individually tested for neutralizing antibody against pseudorabies virus. Pigs shall be considered susceptible if there is no neutralization at a 1:2 final serum dilution in a constant virus-varying serum neutralization test using 100 to 300 $TCID_{50}$ pseudorabies virus.

(2) A geometric mean titer of the vaccine produced at the highest passage from the Master Seed shall be established before the immunogenicity test is conducted. The 20 pigs used as vaccinates shall be administered a predetermined quantity of vaccine virus by the method recommended on the label. To confirm the dosage administered, five replicate virus titrations shall be conducted on a sample of the vaccine virus dilution used.

(3) Fourteen to 28 days postvaccination, the vaccinates and controls shall be challenged with virulent pseudorabies virus furnished or approved by Veterinary Services and observed each day for 14 days.

(i) If at least four of the five controls do not develop severe central nervous system signs or die, the test is inconclusive and may be repeated.

(ii) If at least 19 of the 20 vaccinates in a valid test do not remain free of signs of pseudorabies, the Master Seed is unsatisfactory.

(4) The Master Seed shall be retested for immunogenicity in 3 years unless use of the lot is discontinued. Only five vaccinates and five controls need to be used in the retest. Susceptibility and age requirements shall be as provided in paragraph (b)(1) of this section.

(i) Each vaccinate shall be administered a predetermined quantity of vaccine as provided in paragraph (b)(2) of this section.

(ii) Fourteen to 28 days postvaccination, a blood sample shall be taken from each pig and the serum inactivated and tested for neutralizing antibody to pseudorabies virus by the same method used to determine susceptibility.

(iii) If the five controls have not remained seronegative at 1:2, the test is inconclusive and may be repeated.

(iv) If at least four of the five vaccinates in a valid test have not developed titers of 1:8 final serum dilution or greater and the remaining vaccinate a titer of 1:4 or greater, the Master Seed is unsatisfactory, except as provided in paragraph (b)(4)(v).

(v) If the results of a valid neutralization test are unsatisfactory, the vaccinates and controls may be challenged as provided in paragraph (b)(3) of this section. If at least four of five controls do not develop severe central nervous system signs or die, the test is inconclusive and may be repeated. If all five of the vaccinates in a valid test do not remain free of signs of pseudorabies, the Master Seed is unsatisfactory.

(5) An outline of Production change shall be made before authority for use of a new lot of Master Seed shall be granted by Veterinary Services

(c) *Test requirements for release.* Each serial and subserial shall meet the applicable general requirements prescribed in § 113.135 and the requirements in this paragraph.

(1) *Safety.*) Final container samples of completed product from each serial or first subserial shall be tested for safety as prescribed in § 113.44.

(2) *Virus titer reqirements.* Final container samples of completed product shall be titrated by the method used in paragraph (b)(2) of this section. To be eligible for release, each serial and subserial shall have a virus titer sufficiently greater than the titer of the vaccine used in the immunogenicity test prescribed in paragraph (b) of this section to assure that, when tested at any time within the expiration period, each serial and subserial shall have a virus titer at least $10^{0.7}$ greater than that used in the immunogenicity test, but not less than $10^{2.5}$ $TCID_{50}$ per dose.

§ 113.167 Tenosynovitis vaccine.

Tenosynovitis Vaccine shall be prepared from virus-bearing cell culture fluids or embryonated chicken eggs. Only Master Seed which has been established as pure, safe, and immunogenic shall be used for preparing seeds for vaccine production. All serials of vaccine shall be prepared from the first through the fifth passage from the Master Seed.

(a) The Master Seed shall meet the applicable general requirements prescribed in § 113.135, except (a)(3)(ii) and (c), and the special requirements in this section.

(b) Each of Master Seed shall be tested for:

(1) Pathogens by the chicken innoculation test prescribed in § 113.36.

(2) Lymphoid leukosis virus contamination as follows:

(i) Each of at least 10 3-week-old or older lymphoid leukosis free chickens from the same source and hatch shall be injected intramuscularly with an amount of Master Seed equal to 100 label doses of vaccine. At least 15 chickens of the same source and hatch shall be used as controls; 5 or more shall be unvaccinated and serve as negative controls 5 or more shall be injected with subgroup A lymphoid leukosis virus; and 5 or more with subgroup B lymphoid leukosis virus. Each group of control chickens shall be held isolated from each other and from the vaccinates.

(ii) Twenty-one to 28 days postinoculation, blood samples shall be taken from each chicken and the serum separated using a technique conducive to virus preservation. These serums shall be used as inocula in the complement fixation for avian lymphoid leukosis (COFAL) test prescribed in § 113.31.

(iii) Serums from the vaccinates shall be tested separately, but serums within each control group may be pooled. A valid test shall have positive COFAL reactions from each virus inoculated group and negative reactions from the uninoculated controls. If any of the chickens injected with the Master Seed have positive COFAL test reactions in a valid test, the Master Seed is unsatisfactory.

(3) Identify using the following agar gel immunodiffusion test. The undiluted Master Seed may be used as test antigen or the Master Seed may be inoculated onto the chorio-allantoic membrane (CAM) of fully susceptible chicken embryos and the infectd CAMs ground and used as antigen. A known tenosynovitis antiserum and a known tenosynovitis antigen shall be used in the test. A precipitin line shall form between the test antigen and the known antiserum in the center well which shows identity with the line formed between the antiserum and the known antigen, or the Master Seed is unsatisfactory.

(4) Safety using the following chicken test:

(i) For vaccines intended for use in chickens less than 14 days of age, Master Seed equal to 10 label doses shall be administered subcutaneously to each of 25 1-day-old tenosynovitis susceptible chickens.

(ii) For vaccines intended for use in chickens 14 days of age or older, Master Seed equal to 10 label doses shall be administered subcutaneously to each of 25 4-week-old or older tenosynovitis susceptible chickens.

(iii) The vaccinates shall be observed each day for 21 days. If unfavorable reactions occur which are attributable to the vaccine, the Master Seed is unsatisfactory. If unfavorable reactions occur which are not attributable to the vaccine, the test is inconclusive and may be repeated.

(c) Each lot of Master Seed shall be tested for immunogenicity. The selected virus dose shall be established as follows:

(1) Tenosynovitis susceptible chickens, of the same age and from the same source shall be used as test birds. Vaccines intended for use in very young chickens shall be administered to chickens of the youngest age for which the vaccine is recommended. Vaccines intended for use in older chickens shall be administered to 4-week-old or older chickens. Twenty or more vaccinates shall be used for each method of administration recommended on the label. Ten or more chickens shall be held as unvaccinated controls.

(2) A geometric mean titer of the vaccine produced at the highest passage from the Master Seed shall be established using a method acceptable to Veterinary Services before the immunogenicity test is conducted. A predetermined quanity of vaccine virus shall be administered to each vaccinate. Five replicate virus titrations shall be conducted on an aliquot of the vaccine virus to conform the dose.

(3) Twenty-one to 28 days postvaccination, each vaccinate and control shall be challenged by injecting virulent virus furnished or approved by Veterinary Services into one foot pad. The vaccinates and controls shall be observed each day for 21 days. If at least 90 percent of the controls do not develop swelling and discoloration in the phalangeal joint area of the injected foot pad typical of infection with tenosynovitis virus, the test is inconclusive and may be repeated. If at least 19 of 20, 27 of 30, or 36 of 40 vaccinates do not remain free from these signs, disregarding transient swelling which subsides within 5 days postchallenge, the Master Seed is unsatisfactory.

(4) The Master Seed shall be retested for immunogenicity in 3 years unless use of the lot is discontinued. Only one method of administration recommended on the label need be used in the retest. The vaccinates and controls shall meet the criteria prescribed in paragraph (c)(3) of this section.

(5) An Outline of Production change shall be made before authority for use of a new lot of Master Seed shall be granted by Veterinary Services.

(d) *Test requirements for release.* Each serial and subserial shall meet the applicable general requirements prescribed in § 113.135, except (c), and the requirements in this paragraph.

(1) *Purity.* Final container samples of completed product from each serial shall be tested for pathogens by the chicken inoculation test prescribed in § 113.6.

(2) *Safety.*

(i) Final container samples of completed product from each serial shall be safety tested as follows:

(A) For vaccines intended for use in very young chickens, each of 25 1-day-old tenosynovitis susceptible chickens shall be vaccinated with the equivalent of 10 doses by one method recommended on the label.

(B) For vaccines intended for use in older chickens, each of 25 4-week-old or older tenosynovitis susceptible chickens shall be vaccinated with the equivalent of 10 doses by one method recommended on the label.

(ii) The vaccinates shall be observed each day for 21 days. If unfavorable reactions occur which are attributable to the product, the serial is unsatisfactory. If unfavorable reactions occur in more than two vaccinates which are not attributable to the product, the test is inconclusive and may be repeated. If the test is not repeated, the serial is unsatisfactory.

(3) *Virus titer requirements.* Final container samples of completed product shall be titrated by the method used in paragraph (c)(2) of this section. To be eligible for release, each serial and subserial shall have a virus titer sufficiently greater than the titer of the vaccine virus used in the immunogenicity test prescribed in paragraph (c) of this section to assure that, when tested at any time within the expiration period, each serial and subserial shall have a virus titer $10^{0.7}$ greater than that used in the immunogenicity test, but not less than log $10^{2.0}$ titration units (PFU or ID_{50}) per dose.

(4) *Identity.* Bulk of final container samples of completed product from each serial shall be tested for identity as prescribed in paragraph (b)(3) of this section and shall meet the criteria stated therein.

(37 Stat. 832–833 (21 U.S.C. 151–158))

Done at Washington, D.C., this 15th day of May 1984.

K. R. Hook,

Acting Deputy Administrator Veterinary Services.

[FR Doc. 84-13489 Filed 5-18-84; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-NM-25-AD]

Airworthiness Directives; Boeing Model 737 Airplanes Equipped With Boeing Autopilot Accessory Units, Part Numbers 65-52812-201, -203, -206, -207, -210, -211, -214, and -216

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) which would require modification of the Autopilot Accessory Units installed in certain Boeing Model 737 airplanes. This action is necessary because certain automatic stabilizer trim runaway faults can result in sink rates at touch down that could result in structural damage to the airplane and injuries to its occupants.

DATES: Comments must be received or or before July 6, 1984.

ADDRESSES: The applicable service information may be obtained from: Boeing Commercial Airplane Co., Attention: R. C. Curtiss, Manager, Renton Division Airworthiness, P.O. Box 3707, Seattle, Washington 98124. This information may also be examined at the address below.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory J. Holt, Systems and Equipment Branch, ANM-130S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 431-2938. Mailing address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the rules docket.

Availability of NPRMS

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Directive Rules Docket No. 84–NM–25–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

Analysis and simulation of the automatic stabilizer trim function on the Model 737–200 have shown that during a dual channel autopilot approach, a nose down autopilot stabilizer trim runaway condition may cause the autopilot to disconnect without prior warning from the stabilizer out-of-trim light. In the existing configuration, a nose down runaway trim condition from the "first up" flight control computer during an automatic approach could introduce up to 6 degrees of elevator trim accompanied by an autopilot disconnect and an unexpected nose down pitch change. If the disconnect occurs below 80 feet above ground level, simulator studies show there may not be sufficient time for the pilot to take appropriate action. The touch down sink rate could be in excess of 13 feet/sec and may result in structural damage to the airplane and injuries to its occupants.

Since this condition is likely to exist on all airplanes equipped with Autopilot Accessory Units with part numbers 65–52812–201, –203, –206, –207, –210, –211, –214, and –216, this NPRM proposes modification of the Autopilot Accessory Units in accordance with Boeing Service Bulletin 737–22–1062, to enable the autopilot to disconnect at a point before the nose down trim condition becomes critical. With the modification the disconnect will occur with approximately neutral control feel and minimum pitch change making it possible for the pilot to take corrective action for a runaway stabilizer during an automatic landing.

It is estimated that U.S. operators have 13 airplanes that would be affected by this AD and that it will take approximately 6 manhours to complete the modifications. Based on these figures and a $50.00 per hour labor cost, the maximum cost of this AD is estimated to be $3,900.

For these reasons the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Boeing: Applies to Boeing Model 737–200 series airplanes equipped with Boeing Autopilot Accessory Units, part numbers 65–52812–201, –203, –206, –207, –210, –211, –214, and –216 certificated in all categories. Compliance required as indicated, unless previously accomplished.

To preclude the possibility of a hard landing due to runaway stabilizer trim, accomplish the following:

A. Prior to December 31, 1984, modify the Autopilot Accessory Units listed above in accordance with Boeing Service Bulletin 737–22–1062 dated September 16, 1983, or later FAA approved revisions.

B. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, Seattle, Washington.

All persons affected by this proposal who have not already received this document from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Company, Attention: R. C. Curtiss, Manager, Renton Division Airworthiness, P.O. Box 3707, Seattle, Washington 98124. This document may also be examined at the FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

(Secs. 313(a), 314(a), and 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble: the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory evaluation has been prepared and has been placed in the public docket.

Issued in Seattle, Washington, on May 7, 1984.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 84–13531 Filed 5–18–84; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 39

[Docket No. 84–NM–27–AD]

Airworthiness Directives; British Aerospace Model DH/HS/BH 125 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD) that would require inspections, modifications, or replacements, as necessary, of certain landing gear components on British Aerospace Model DH/HS/BH 125 airplanes. Cracks in the attachment lugs of the main landing gear jack cylinder head and in components of the landing gear emergency selector shaft assembly have been reported. Also, certain brake control valves have not been fitted with new knife edges during overhaul. These conditions have the potential of leading to landing gear or brake failure.

DATES: Comments must be received no later than June 25, 1984.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Inc., Box 17414, Dulles International Airport, Washington, D.C. 20041, or may also be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Foreign Aircraft Certification Branch, ANM–150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 431–2979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway

South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84–NM–27–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The Civil Aviation Authority of the United Kingdom (CAA) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of service difficulties reported on the Model DH/HS/BH 125 airplane landing gear and brakes, as follows:

A. Certain components of the landing gear emergency selector shaft assembly developed cracks during service. This condition could preclude the deployment of the landing gear during an emergency when the main operating system for the landing gear has failed. A modification is prescribed which incorporates a splined lever and shaft instead of the keyed arrangement. [Reference: British Aerospace HS 125 Service Bulletin 32–59–(1714).]

B. Some brake control valves have not been fitted with new knife edges when overhauled by Dunlop Aviation, Incorporated (California). Although the brake control valve is an "on condition" item, the knife edges are restricted to a finite life and some knife edges could exceed this restriction. This has the potential of leading to brake failure. The affected brake control valves must be fitted with new knife edges. (Reference: British Aerospace HS 125 Service Bulletin 32–193.)

C. Cracks in the attachment lugs of the main landing gear jack cylinder head have occurred on aircraft in service. These cracks develop in a high stress area and could lead to landing gear failure. Visual inspections of these components are prescribed and, if cracks are found, the gear jacks must be replaced with serviceable parts. (Reference: British Aerospace HS 125 Service Bulletin 32–A197.)

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require the inspections and modifications or replacements, as indicated above.

It is estimated that 70 airplanes would have to incorporate modification No. 251714 [S.B. 32–59–(1714)]; it would take 10 manhours per airplane to accomplish the work, and repair parts are estimated at $1123 per airplane. It is estimated that 50 airplanes would have to replace the knife edges (S.B. 32–193); it would take 5 manhours to accomplish the work and repair parts are estimated at $250 per airplane. It is estimated that 270 airplanes would require inspections of the attachment lugs (S.B. 32–A197); it would take 1 manhour to accomplish the inspection and repair parts, if needed, are estimated at $2700 per airplane. The average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the proposed AD to U.S. operators is estimated to be $868,910. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities with the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

British Aerospace: Applies to Model DH/HS/BH 125 airplanes, series and serial numbers listed in the Planning Information of the service bulletins referenced below, certificated in all categories. Compliance is required as indicated, unless previously accomplished.

To prevent landing gear and brake failure, within the next 90 days after the effective date of this AD, accomplish the following:

A. Incorporate British Aerospace modification No. 251714 to the landing gear emergency selector shaft assembly in accordance with the instructions of British Aerospace HS 125 Service Bulletin 32–59–(1714), Revision 3, dated June 23, 1983.

B. Replace the knife edges of the brake control valves that have been overhauled by Dunlop Aviation, Incorporated (California) with new parts in accordance with the instructions of British Aerospace HS 125 Service Bulletin 32–193, Revision 1, dated July 26, 1983.

C. Inspect the main landing gear jacks for cracks, and replace if necessary, in accordance with the instructions of British Aerospace HS 125 Service Bulletin 32–A197, dated August 29, 1983.

D. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model DH/HS/BH 125 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption **FOR FURTHER INFORMATION CONTACT.**

Issued in Seattle, Washington on May 11, 1984.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 84–13533 Filed 5–18–84; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 84-NM-31-AD]

Airworthiness Directives; Fokker B.V. Model F27 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD) that would require inspection of various systems and equipment components on certain Fokker F27 series airplanes and modification or repair as necessary to correct unsafe conditions which may exist. This action is necessary to ensure proper operation of portable fire extinguishers, to ensure proper materials were used in fuel tank vent system sleeves, and to prevent leakage in the main and nose landing gear actuating rams.

DATE: Comments must be received no later than July 9, 1984.

ADDRESS: The applicable service information may be obtained from the Manager, Maintenance and Engineering, Fokker B.V., Product Support, P.O. Box 7600, 1117ZJ Schiphol Oost, The Netherlands, or may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Roger D. Anderson, Foreign Aircraft Certification Branch, ANM-150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 431-2978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-NM-31-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Netherlands Civil Aviation Department (RLD) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of a number of unsafe conditions that may exist on certain Fokker F27 airplanes. These may be corrected by incorporating four (4) separate service bulletins. The unsafe conditions and corrective action are described as follows:

A. Several portable fire extinguisher cartridge holders have been found to be out of internal dimensional tolerances. This could prevent activation of the fire extinguisher. All cartridge holders must be inspected to ensure they are within acceptable dimensional tolerances. (Reference Fokker Service Bulletin F27/26-18 and Walter Kidde Service Bulletin 26-20-240.)

B. Some rubber sleeves made of a nonfuel resistant material may have been delivered to operators as replacements for sleeves in the fuel vent system. To determine if sleeves made of an improper material are installed, a one-time inspection of the drain tubing to vent float and sniffle valves must be accomplished; replacement of sleeves made of improper material is required to ensure proper fuel venting. (Reference Fokker Service Bulletin F27/28-55.)

C. The main nose landing gear actuating rams, introduced by Fokker Service Bulletin F27/32-134, have fluid dampers which leak. The leaks are believed to result from nitrile rubber sealing rings which shrink when in contact with silicone fluid. It is necessary to modify the actuating rams by installing natural rubber seals to prevent leakage. (Reference Fokker Service Bulletin F27/32-143.)

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, and AD is proposed that would require the incorporation of the previously mentioned corrective actions.

It is estimated that 10 airplanes would be affected by this Ad and that it would take approximately 25 manhours per airplane to accomplish the required action. The average labor cost would be $40 per manhour. Repair parts are estimated at $1,000 per airplane. Based on these figures, the total cost impact of this AD is estimated to be $20,000. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Fokker B.V.: Applies to Model F27 airplanes as indicated in the applicability statement of each service bulletin listed below. Compliance is required within the time interval specified in each of the following paragraphs unless already accomplished:

A. To assure proper operation of the portable fire extinguishers, within 90 days after the effective date of this AD, inspect the cartridge holders in accordance with Fokker Service Bulletin F27/26-18 dated September 28, 1981 (Reference Walter Kidde Service Bulletin 26-20-240 Revised April 28, 1981).

B. To assure that proper rubber sleeves have been installed in the fuel vent system, within 90 days after the effective date of this AD, inspect the fuel tank ventilation system in accordance with Fokker Service Bulletin F27/28-55 dated April 15, 1981. Replace unsatisfactory parts in accordance with the service bulletin.

C. To eliminate leakage from the fluid dampers in the main and nose landing gear actuating rams, within 180 days after the effective date of this AD, modify the actuating rams in accordance with Fokker Service Bulletin F27/32-143 dated May 22, 1981.

D. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, Jan. 12, 1983); and 14 CFR 11.85)

Note:—For the reasons discussed earlier in the preamble, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model F27 airplanes are operated by small entites. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption **FOR FURTHER INFORMATION CONTACT.**

Issued in Seattle, Washington, on May 10, 1984.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 84-13532 Filed 5-18-84; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 84-CE-13-AD]

Airworthiness Directives; Cessna 402C, 404, 414A, 421C, 425, and 441 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to Cessna Models 402C, 404, 414A, 421C, 425 and 441 airplanes. This AD would require replacement of nose landing gear actuator rod ends which may be understrenght. Failure of these rod ends has resulted in nose gear collapse accidents and airplane damage. Replacement of these rods with stronger parts will prevent these occurrences.

DATES: Comments must be received on or before July 23, 1984.

Compliance: As prescribed in the body of the proposed AD.

ADDRESS: Cessna Multi-engine Customer Care Service Information Letter ME 84-10 dated March 9, 1984, pertaining to this subject on Models 402C, 404, 414A and 421C airplanes and applicable to this AD may be obtained from Cessna Aircraft Company, Piston Aircraft Marketing Division, Wichita, Kansas 66201; Telephone (316) 685-9111. Cessna Conquest Customer Care Service Information Letter PJ 84-10 dated March 2, 1984, pertaining to this subject on Models 425 and 441 airplanes and applicable to this AD may be obtained from Cessna Aircraft Company, Conquest Marketing Division, Wichita, Kansas 67277; Telephone (316) 946-7550.

Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 84-CE-13-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Lawrence S. Abbott, Aerospace Engineer, Aircraft Certification Office, Room 238, Terminal Building 2299, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 269-7005.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-CE-13-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

Six field reports have been received of nose gear actuator rod ends failing on Cessna Models 402C, 421C and 414A airplanes causing nose gear collapse, loss of aircraft control and aircraft damage. The cause is suspected to be high stress-low cycle fatigue, aggravated by faulty rod ends manufactured by one vendor, Nippon Micro Bearing, Ltd (NMB). The rod ends (MS 21242S-4K) made by NMB fail to incorporate a critical dimension from the Military Standard Data Sheet, which results in an undersized area of the bearing housing, at the most highly loaded section of the rod end. Cessna canvassed their affected fleet asking that the ten highest time-in-service airplanes have the MS 21242S-4K rod end removed and replaced in the P/N 9910139 nose landing gear retraction actuator. All ten were found to be NMB rod ends, of which one was cracked in this undersized area. Cessna has issued two Service Information Letters: PJ 84-10 for Models 441 and 425 airplanes and ME 84-10 for Models 421C, 414A, 404 and 402C airplanes. These Service Information Letters recommend replacement of the rod ends on P/N 9910139 actuators on all airplanes. Only MIL-B-81935 rod ends made by New Hamshire Bearing, Inc. (NHB) under their P/N ADNE 4JW would be acceptable as replacement. This increased strength/service life rod end will assure the continued structural integrity of the nose gear extend/retract system thereby precluding a gear collapse that could result in loss of airplane control during ground operation with possible aircraft damage and occupant injury. Since the condition described above is likely to exist or develop in other Cessna 400 series airplanes of the same type design, the AD would require replacement of existing rod end bearings with increased strength parts per Cessna Service Information Letters PJ 84-10 or ME 84-10 as applicable on certain Cessna Model 441, 425, 421C, 414A, 404 and 402C airplanes. There are approximately 2,727 airplanes affected by the proposed AD. Labor and down time for ½ hour plus material cost of the proposed AD is estimated to be $157.00 per airplane for a total cost of $423,039.00 to the private sector. This cost precludes the AD from having a sigificant economic impact on any small entity under the criteria of the Regulatory Flexibility Act.

List of Subject in 14 CFR Part 39:

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new Airworthiness Directive:

Cessna: Applies to Models 402C (S/Ns 402C0001 thru 402C0802); 404 (S/Ns 404-0001 thru 404-0859); 414A (S/Ns 414A0001 thru 414A1003); 421C (S/Ns 421C0001 thru 421C1402); 425 (S/Ns 425-002 thru 425-0190); (S/Ns 441-0001 thru 441-0333) airplanes certificated in any category.

Compliance: Required within the next 200 hours time-in-service after the effective date of this AD, unless already accomplished. To preclude collapse of the nose landing gear:

(a) Replace the nose landing gear actuator rod end on Models 425 and 441 airplanes in accordance with Cessna Service Information Letter (CSIL) PJ 84–10 dated March 2, 1984, and on Models 402C, 404, 414A and 421C airplanes in accordance with CSIL ME 84–10 dated March 9, 1984.

(b) The aircraft may be flown in accordance with Federal Aviation Regulation 21.197 to a location this AD can be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Office, Federal Aviation Administration, Room 238, Terminal Building 2299, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 269–7000.

(Secs. 313(a), 601 and 603 of the 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, January 12, 1983); and § 11.85 of the Federal Aviation Regulations (14 CFR 11.85))

Note.—For reasons discussed earlier in the preamble: the FAA has determined that this document: (1) Involves a proposed regulation that is not major under the provisions of Executive Order 12291, (2) is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) in addition, I certify that under the criteria of the Regulatory Flexibility Act this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A draft regulatory evaluation has been prepared and has been placed in the public docket.

Issued in Kansas City, Missouri, on May 8, 1984.

Murray E. Smith,

Director, Central Region.

[FR Doc. 84–13534 Filed 5–18–84; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 331 and 332

[Docket No. 84N–0144]

Antacid Drug Products and Antiflatulent Drug Products for Over-the-Counter Human Use; Proposed Amendment to the Monographs; Correction

AGENCY: Food and Drug Administration.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the docket number of a notice of proposed rulemaking, which published in the **Federal Register** of April 13, 1984 (49 FR 14908).

FOR FURTHER INFORMATION CONTACT: Agnes B. Black, Federal Register Writer's Office (HFC–11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

SUPPLEMENTARY INFORMATION: In FR Doc. 84–9904 appearing at page 14908 in the **Federal Register** of Friday, April 13, 1984, the following correction is made in the heading of the document on page 14908 in the first column; "[Docket No. 75N–0357]" is changed to read "[Docket No. 84N–0144]."

Dated: May 14, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–13540 Filed 5–18–84; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 660

[FHWA Docket No. 84–2]

Forest Highways; Construction and Maintenance; Allocation of Funds; Correction

Correction

In the issue of Tuesday, May 15, 1984, in the document beginning on page 20517 in the third column, make the following corrections:

1. On page 20517, in the third column, the date line was inaccurate and should have read as follows: "Comments must be received on or before June 15, 1984."

2. On page 20518, first column, in the FR docket line, "84–19244" should have read "84–12944."

BILLING CODE 1505–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 20 and 25

[LR–211–76]

Change in Limitations on Gift and Estate tax Marital Deductions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the regulations relating to the estate tax and gift tax marital deductions. Changes to the applicable tax law were made by the Tax Reform Act of 1976, the Revenue Act of 1978, the Economic Recovery Tax Act of 1981 and the Techincal Corrections Act of 1982. These amendments, if adopted, will provide the public with the guidance needed to comply with those Acts.

DATES: Written comments and requests for a public hearing must be delivered or mailed by July 20, 1984. The amendments necessitated by the Tax Reform Act of 1976 and the Revenue Act of 1978 are generally proposed to be effective with respect to transfers by gift occurring after December 31, 1976, and to estates of decedents dying after December 31, 1976. The amendments necessitated by the Economic Recovery Tax Act of 1981 are proposed to be effective with respect to transfers by gift occurring after December 31, 1981, and to estates of decedents dying after December 31, 1981.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224; Attention: CC:LR:T, LR–211–76.

FOR FURTHER INFORMATION CONTACT: Robert B. Coplan of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224; Attention: CC:LR:T, LR–211–76, Telephone 202–566–3287 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Estate Tax Regulations (26 CFR Part 20) and the Gift Tax Regulations (26 CFR Part 25). The affected regulations are primarily under sections 2044, 2056, 2207A, 2519, 2523, and 6019 of the Internal Revenue Code of 1954 (Code); conforming changes are proposed for regulations under other sections of the Code. These amendments are proposed to conform the estate and gift tax regulations to the amendments of the Code made by sections 2002 (a), (b), and (d) and section 2006(a) of the Tax Reform Act of 1976 (Pub. L. 94–455; 90 Stat. 1854–56, 1880); section 702(g) of the Revenue Act of 1978 (Pub. L. 95–600, 92 Stat. 2930); sections 403 (a), (b), (c)(3)(B), (d) and (e) of the Economic Recovery Tax Act of 1981 (Pub. L. 97–34; 95 Stat. 301–05); and section 104(a) of the Technical Corrections Act of 1982 (Pub. L. 97–448; 96 Stat. 2379–81). The proposed amendments, if adopted, will be issued under the authority contained in section 7805 of the Code (68A Stat. 917; 26 U.S.C. 7805).

Gift Tax for Gifts Prior to 1982

For interspousal gifts occurring after December 31, 1976, and before January 1, 1982, the Tax Reform Act of 1976 (the 1976 Act) provides for an unlimited gift tax marital deduction until the aggregate marital deduction equals $100,000. Thereafter, no deduction is allowed for the next $100,000 of post-1976 interspousal gifts and a 50 percent deduction is allowed for any additional interspousal gifts.

The 1976 Act did not change the effect of section 2524. Thus, although a marital deduction may be allowed under section 2523, section 2524 provides that a marital deduction may be taken only to the extent interspousal gifts exceed the exclusion for gifts under section 2503(b). For example, if a taxpayer's first post-1976 interspousal gift is a gift of $10,000 cash made during 1977, the marital deduction allowable under section 2523 is $10,000 (100% of $10,000); however, because the section 2503(b) exclusion is $3,000, section 2524 further limits the marital deduction which may be taken to $7,000.

Estate Tax for Estates of Decedents Dying After 1976 and Before 1982

For estates of decedents dying after December 31, 1976, and before January 1, 1982, the 1976 Act increases the maximum allowable estate tax marital deduction to the greater of $250,000 or one-half the decedent's adjusted gross estate. It also provides for two adjustments to the deduction. First, the maximum allowable estate tax marital deduction is reduced by the amount by which the aggregate gift tax marital deductions for post-1976 interspousal gifts exceed 50 percent of the value of those gifts. Second, the $250,000 limitation is adjusted downward where the decedent owned community property at death. This adjustment is like the preexisting adjustments to the 50 percent limitation in the sense that it maintains the parity between common law property states and community property states.

Many wills in existence before the 1976 Act provided for bequests to a surviving spouse in an amount determined by reference to the maximum martial deduction allowed by Federal law. Because Congress was concerned that many testators using such formula clauses may not have wanted their spouses to receive more than one-half of the adjusted gross estate (the maximum allowable deduction under prior law), the 1976 Act provides for a 2-year transitional rule applicable to property passing under certain formula provisions. The marital deduction for property passing under a maximum marital deduction formula provision in a will executed or trust created before December 31, 1976, cannot exceed 50 percent of the adjusted gross estate unless (1) the formula provision of the will is amended after December 31, 1976, (2) the decedent dies after December 31, 1978, or (3) a Status statute is enacted that construes the formula provision as referring to the maximum marital deduction available after the amendments made by the Tax Reform Act of 1976.

The 1976 Act imposed a tax on certain generation-skipping transfers. When a decedent is the "deemed transferor" of a generation-skipping transfer occurring at or after the decedent's death, that decedent's marginal estate tax rate is used to determine the generation-skipping transfer tax; however, the tax is imposed on the generation-skipping transfer rather than on the decedent's estate. Congress intended the tax on generation-skipping transfers to be substantially equivalent to the estate tax which would have been imposed if the property were actually transferred outright to successive generations. To accomplish this result, Congress provided for an adjustment to the maximum allowable martial deduction. When a decedent is the "deemed transferor" of a generation-skipping transfer occurring at the same time as or within 9 months after the decedent's death, the marital deduction is calculated by including in the decedent's gross estate the amount of the generation-skipping transfer. Thus, the alternative limitation on the marital deduction of 50 percent of the decedent's adjusted gross estate may be increased.

The Revenue Act of 1978 provides two clarifications regarding the adjustment for post-1976 interspousal gifts. First, because any benefit derived from a gift tax marital deduction is negated if the property is required to be included in the gross estate, the 1978 Act provides that no reduction of the maximum allowable marital deduction is required with respect to property included in the decedent's estate solely by reason of section 2035 of the Code (gifts within 3 years of death). Second, in order to relieve executors of the administrative difficulty of determining the amount of small gifts, the 1978 Act provides that gifts not required to be included in a gift tax return will have no effect on the adjustment to the maximum allowable estate tax marital deduction.

Gift Tax and Estate Tax After 1981

For transfers by gift occurring after December 31, 1981, and for estates of decedents dying after December 31, 1981, the Economic Recovery Tax Act of 1981 (the 1981 Act) generally provides a 100 percent marital deduction for the value of interspousal transfers, including transfers of community property. Under prior law, gifts or bequests of community property did not qualify for the marital deduction.

Many wills which were in existence prior to the 1981 Act provided for bequests to a surviving spouse in an amount determined by reference to the maximum deduction allowed by Federal law. Because Congress was concerned that many testators may not have wanted their spouse to receive an unlimited amount, the 1981 Act provides that the pre-1982 quantitative limitations on the deduction (the greater of $250,000 or 50 percent of the adjusted gross estate) shall apply for property passing under a maximum marital deduction formula provision in a will executed or trust created before September 12, 1981, unless either (1) the formula provision of the will (or trust) is amended after September 11, 1981, or (2) a State statute is enacted that construes the formula provision as referring to the maximum marital deduction available after the amendments made by the 1981 Act.

Under prior law, the marital deduction was available only with respect to property passing outright to the spouse or in specified forms which gave the spouse control over the transferred property. These limitations are referred to as the qualitative limitations. Because the surviving spouse had to be given control over the property, the decedent could not insure that the property would pass to the decedent's children or other persons after the spouse's death. For gifts made after 1981 and estates of decedents dying after 1981, Congress made several changes to the qualitative limitations on the marital deduction. These changes allow the decedent to control the disposition of the property after the spouse's death.

For transfers to a charitable remainder annuity trust or a charitable remainder unitrust of which the donee spouse is the only noncharitable beneficiary (other than a donor), sections 2056(b)(8) and 2523(g) provide that the terminable interest rules (in sections 2056(b)(1) and 2523(b)) do not apply to the donee spouse's interest. The donor will receive a charitable deduction for the value of the remainder interest passing to the charity and a marital deduction for the value of the

annuity or unitrust interest passing to the spouse. Consequently, no transfer tax is imposed on such transfers.

In addition, the 1981 Act adopts the qualified terminable interest exception to the terminable interest rules. This new exception provides that if certain conditions are met, a life interest granted to one's spouse, either by gift or bequest, will be treated as a transfer to the spouse of the entire value of the property (not just the value of the life interest) and no interest will be treated as passing to any person other than the spouse. Accordingly, the entire value of such property will qualify for the marital deduction. The conditions which must be met are (1) the donor (or decedent's executor) must elect qualified terminable interest treatment, (2) the spouse must be entitled to all the income from the property for life, payable annually or at more frequent intervals, and (3) no person may have the power to appoint any part of the qualifying property to any person other than the spouse during the spouse's lifetime.

Income interests granted for a term of years or life estates subject to termination upon the occurrence of a specified event during the spouse's lifetime are not interests for life, and thus do not qualify for the qualified terminable interest exception. The spouse's interest need not be in trust to qualify. However, for purposes of determining whether the spouse's income interest meets the income entitlement requirement of section 2056(b)(7)(B)(ii)(I), the regulations adopt the principles contained in § 20.2056(b)–5(f). These principles apply to property in trust and property not in trust, thus clarifying that the type of rights to income which qualify, in the case of property not in trust, are equivalent to the rights to income which would qualify if the property were in trust. Accordingly, the spouse's interest must be substantially that degree of beneficial enjoyment of the property during the spouse's life which the principles of the law of trusts accord to a person who is unqualifiedly designated as the life beneficiary of a trust. Under the proposed regulations, the spouse's exclusive and unrestricted right to the use of residence for life satisfies the income entitlement requirement.

In determining the application of the rules relating to qualified terminable interest property, any "specific portion" (as defined in § 20.2056(b)–5(c)) of property is treated as separate property. Thus, for example, if the spouse is given an interest in only 50 percent of the trust income, 50 percent of the entire interest in the property may be treated as qualified terminable interest property. Amendments are proposed to the definition of the term "specific portion" to conform that definition to the rule set forth by the Supreme Court in *Northeastern Pennsylvania National Bank and Trust Co.* v. *United States*, 387 U.S. 213 (1967).

The proposed regulation also makes it clear that the election to treat property as qualified terminable interest property may be made with respect to a fraction or percentage of property. However, a partial election is permitted only if it relates to a fractional or percentile share of property. The fraction or percentage may be determined by means of a formula.

Qualified terminable interest treatment delays the imposition of transfer taxes only so long as the property remains in a marital unit. Qualified terminable interest property is subject to transfer taxes at the earlier of (1) the date on which the spouse disposes (either by gift, sale or otherwise) of all or part of the qualifying income interest or (2) the spouse's death.

If the qualified terminable interest property is ultimately subject to tax as a result of the spouse's lifetime transfer of the qualifying income interest, the full value of the entire property subject to the spouse's income interest, less amounts received or retained by the spouse upon the disposition and less amounts which the spouse is entitled to recover under section 2207A (relating to the recovery of taxes paid), will be treated as a taxable gift under Code sections 2511 and 2519. (Any subsequent failure by the donor spouse to recover amounts to which the donor spouse is entitled under section 2207A will be treated as a separate taxable gift, as discussed below.) When the spouse makes a gift of the qualifying income interest, the value of the income interest will be eligible for the annual exclusion under section 2503(b). However, no section 2503(b) annual gift tax exclusion will be permitted for the imputed transfer of the remainder interest unless the transfer of the income interest is to a remainderman who holds full title to the property immediately after the transfer.

If the donee spouse is not treated as having made a complete transfer of the property subject to the qualifying income interest prior to the donee spouse's death, the fair market value of the property subject to the qualifying income interest determined as of the date of the donee spouse's death (or the alternate valuation date, if elected) will be included in the donee spouse's gross estate pursuant to Code section 2044.

Pursuant to Code section 2207A, the spouse is granted a right to recover any gift tax paid on the value of the remainder interests in qualified terminable interest property. The spouse's estate is also granted a right to recover any estate tax paid as a result of including property in the spouse's estate. For purposes of this recovery provision, use of all or part of the spouse's unified credit is not treated as the payment of tax. Proposed regulation § 25.2207A–1 clarifies that under section 2511, the spouse's failure to exercise the right under section 2207A(b) to recover gift taxes paid upon the lifetime disposition of qualified terminable interest property is treated as a taxable transfer of the amount of the unrecovered taxes to the persons from whom such recovery could have been obtained.

If property is includible in a spouse's estate under section 2044, section 2207A gives the spouse's estate the right to recover the estate tax attributable to such property. The full value of the qualified terminable interest property is includible in the spouse's gross estate under section 2044 without reduction for the amount recoverable by the spouse's estate under section 2207A. Thus, proposed regulation § 20.2207A–1 clarifies that the amount of estate tax recoverable by the spouse's gross estate under section 2207A is not an amount includible in the spouse's estate under section 2041 (relating to property subject to a general power of appointment).

Consistent with certain provisions of the Technical Corrections Act of 1982, these proposed regulations provide that property deemed to be transferred by a spouse under section 2044 shall be deemed to have passed from that spouse for purposes of section 1014 and chapters 11 and 13 of the Code. Thus, the provisions contained in section 1014 (regarding step-up in basis), section 2055 (regarding charitable deductions) and section 2032A (regarding special use valuation) are applicable to qualified terminable interest property included in a spouse's gross estate under section 2044.

Because an unlimited marital deduction is permitted for interspousal transfers after 1981, the 1981 Act generally exempts from the gift tax filing requirements all such transfers eligible for the marital deduction other than transfers of qualified terminable interest property. Property transferred by gift may be treated as qualified terminable interest property only if an election is made with respect to the property on the transferor's gift tax return on or before the first April 15th after the calendar

year in which the property was transferred.

Executive Order 12291 and Regulatory Flexibility Act

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. The Internal Revenue Service has concluded that although this document is a notice of proposed rulemaking that solicits public comment, the regulations proposed herein are interpretative and the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, no Regulatory Flexibility Analysis is required for this rule.

Comments and Requests 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 time and place will be published in the **Federal Register**.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Office for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Drafting Information

The principal authors of these proposed regulations are John R. Harman and Robert B. Coplan 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, both on matters of substance and style.

List of Subjects

26 CFR Part 20

Estate taxes.

26 CFR Part 25

Gift taxes

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Parts 20 and 25 are as follows:

PART 20—[Amended]

§ 20.0–1 (b)(1) [Amended]

Paragraph 1. The last sentence of § 20.0–1(b)(1) is amended by substituting "20.2056(d)–1" for "20.2056(e)–3".

Par. 2. Section 20.2012–1 is amended as follows:

a. The first sentence of paragraph (a) is revised to read as set forth below.

b. The fourth and fifth sentences of paragraph (d)(2)(ii) are removed.

c. Paragraph (d)(3) is removed.

§ 20.2012–1 Credit for gift tax.

(a) *In general.* With respect to gifts made before 1977, a credit is allowed under section 2012 against the Federal estate tax for gift tax paid under chapter 12 of the Internal Revenue Code, or corresponding provisions of prior law, on a gift by the decedent of property subsequently included in the decedent's gross estate. * * *

* * * * *

§ 20.2013–4 [Amended]

Par. 3. Paragraph (b)(3)(ii) of § 20.2013–4 is amended by substituting "20.2056(c)–2A" for "20.20056(c)–2".

Par. 4. Section 20.2014–3. is amended as follows:

a. The flush material immediately following paragraph (b)(2) is revised to read as set forth below.

b. The second sentence of subdivision (ii) of example (3) in paragraph (c) is revised to read as set forth below.

§ 20.2014–3 "Second limitation".

* * * * *

(b) * * *

Any reduction described in subparagraph (1) or (2) of this paragraph (b) on account of the material deduction must proportionately take into account, if applicable, the limitation on the aggregate amount of the material deduction contained in §§ 20.2056 (c)–1A and (c)–2A. See example (3) of paragraph (c) of this section.

(c) * * *

Example (3). * * *

(ii) * * * Assume that the limitation imposed by section 2056(c), as it existed before 1982, is applicable so that the aggregate material deduction allowed to the estate is limited to one-half the adjusted gross estate, or $400,000 (which is 50% of $800,000).* * *

Par. 5. Section 20.2044–1 is redesignated as § 20.2045–1 and a new § 20.2044–1 is added immediately following § 20.2043–1, to read as set forth below.

§ 20.2044–1 Certain property for which marital deduction was previously allowed.

(a) *In general.* The value of the gross estate shall include under section 2044 the value of property in which the decedent had a "qualifying income interest for life" (as defined in § 20.2056(b)–7(c) or § 25.2523(f)–1(c)) if—

(1) A deduction was taken under section 2056(b)(7) or under section 2523(f) upon the transfer that created the decedent's qualifying income interest for life in that property, and

(2) That property was not treated as transferred under section 2519 (relating to dispositions of certain life estates).

The value of the property included in the gross estate under section 2044 shall not be reduced by any section 2503(b) exclusion that may have been taken for the transfer creating the interest. If any income from such property for the period between the date of the transfer that created the decedent's qualifying income interest for life and the date of the decedent's death has not been distributed before the decedent's death, then the gross estate also shall include such undistributed income. See section 2207A in regard to the estate's right to recover the estate tax attributable to such property from persons receiving the property.

(b) *Passed from.* For purposes of section 1014 and chapters 11 and 13 of Subtitle B of the Code, property included in a decedent's gross estate under section 2044 shall be considered to have been acquired from or to have passed from the decedent to the person receiving the property upon the decedent's death. Thus, the property will be treated as passing from the decedent for purposes of determining the availability of current use valuation under section 2032A, the availability of the charitable deduction under section 2055, and the availability of the marital deduction under section 2056. In order to qualify for special use valuation under section 2032A, the property must pass to a person who is a "qualified heir" (described in section 2032A(e)(1)) of the decedent.

(c) *Presumption.* If the decedent has a qualifying income interest for life in any property, it shall be presumed that a deduction was taken under section

2056(b)(7) or section 2523(f) upon the transfer which created the decedent's interest. In order to avoid the inclusion of property in the decedent's gross estate under this section, the executor must establish that a deduction was not taken for the transfer of property which created the qualifying income interest.

(d) *Amount included.* If the executor establishes that upon the transfer of property that created the decedent's qualifying income interest for life, a deduction was taken under section 2056(b)(7) or section 2523(f) for a fractional or percentile share of the entire interest in the property, then the amount includible in the decedent's gross estate under this section (assuming section 2519 has not applied) is equal to the fair market value of the entire interest in the property on the date of the decedent's death (or the alternate valuation date, if applicable) multiplied by such fractional or percentile share. However, such share shall be appropriately reduced if—

(1) The decedent's interest is in a trust and appointments of principal have been made to the decedent, and

(2) The trust provides that the appointments are to be made from the qualified terminable interest share of the trust, and

(3) The executor can establish to the satisfaction of the district director the reduction in that share based on the fair market value of the trust assets at the time of each appointment.

See example (4) of paragraph (e) of this section. If the decedent's interest is in a trust consisting of only qualified terminable interest property, and such trust had been severed (in compliance with § 20.2056(b)–7(b) or § 25.2523(f)–1(b), whichever is applicable) from a trust which also contained property which was not qualified terminable interest property, then only the value of the property in the severed portion of the trust is includible in the decedent's gross estate. If an executor establishes that upon the transfer of property (including an annuity contract) that created the decedent's lifetime annuity or other income interest, a deduction was taken under section 2056(b)(7) or section 2523(f) for an amount less than the fair market value of the entire property at the time of such transfer, then only a portion of the value of the property is includible in the decedent's gross estate under this section. The includible amount (assuming section 2519 has not applied) is equal to the fair market value of the entire property on the date of the decedent's death (or the alternate valuation date, if applicable) multiplied by a fraction, the numerator of which is the amount of the deductible interest determined under § 20.2056(b)–(7)(c)(2) or § 25.2523(f)–1(c)(2), and the denominator of which is the fair market value of the entire property at the time of the transfer creating the decedent's annuity or other income interest. See example (7) of paragraph (e) of this section.

(e) *Examples.* The following examples illustrate the application of principles in paragraphs (a) through (d) of this section.

Example (1). D died during 1982 passing property under a will providing that certain income producing assets valued at $800,000 in D's gross estate (net of debts, expenses, and other charges, including death taxes, payable from the property) were to be put in trust with all the income payable to D's surviving spouse, S, for life. The will provides that the corpus of the trust shall be distributed to D's children upon S's death. D's estate deducted $800,000 under section 2056(b)(7). Assume that S dies during 1984, at which time the value of the trust is $740,000; that S's executor does not elect the alternate valuation date; and that S has made no disposition of "all or part of the property" within the meaning of section 2519. The amount included in S's gross estate pursuant to section 2044 is $740,000.

Example (2). Assume that the facts are the same as in example (1) except that the executor of D's estate elected to deduct, pursuant to section 2056(b)(7), only 50 percent of the value of the trust ($400,000). Consequently, only an equivalent portion of the trust is included in S's gross estate, that is, $370,000 (50 percent of $740,000).

Example (3). Assume that the facts are the same as in example (1) except that S received a lifetime interest in only 20 percent of the income of the trust and that D's executor elected to deduct, pursuant to section 2056(b)(7), only 50 percent of the amount allowable, that is, $80,000 (50 percent of 20 percent of $800,000). Consequently, only an equivalent portion of the trust is included in S's gross estate, that is, $74,000 (50 percent of 20 percent of $740,000).

Example (4). Assume that the facts are the same as in example (1) except that the executor of D's estate elected to deduct, pursuant to section 2056(b)(7), only 50 percent of the value of the trust ($400,000), and that the trustee has the discretion to appoint principal to the surviving spouse. Assume that the trust instrument provides that appointments of principal will be made from the qualified terminable interest share first and that the trustee makes only one appointment of principal, to the spouse of $100,000, during 1983 when the value of the trust was $1,100,000. Immediately prior to the appointment, the qualified terminable interest portion of the trust was 50 percent ($550,000 of the $1,100,000). Immediately after the appointment, the qualified terminable interest portion of the trust was 45 percent ($450,000 divided by $1,000,000). Thus, the amount included in S's gross estate will be $333,000 (45 percent of $740,000) rather than $370,000, provided S's executor can establish to the satisfaction of the district director the facts in this example.

Example (5). Assume that the facts are the same as in example (1) except that, during 1983, S transfers to X the right to 40 percent of the income from the trust, for the life of S. Because S's entire interest (other than the right to the remaining 60 percent of the trust income and the amount of gift tax, if any, recoverable by S under section 2207A) is treated as transferred under section 2519, no part of the trust is included in S's gross estate under section 2044. However, since S retains an income interest in 60 percent of the property (the remainder interest in which is treated pursuant to section 2519 as having been transferred by S for both gift and estate tax purposes), 60 percent of the property is included in S's gross estate under section 2036(a)(1).

Example (6). During 1982 A created a trust for A's spouse, B, with the income payable annually to B for the life of B. The value of the trust on the day of creation was $800,000. The trust provides that upon B's death, $100,000 of corpus shall be paid to X charity and the remainder distributed to A's children. Assume that at the time of B's death the fair market value of the trust is $1,000,000, and that B's executor does not elect the alternate valuation date. If A had taken a deduction under section 2523(f) for the entire transfer, the amount included in B's estate would be the fair market value at B's death of the property in which B had a qualifying income interest for life, that is, $100,000,000. The amount passing to X charity is treated as a transfer by B to X charity for purposes of section 2055. Therefore, B's estate will be allowed a charitable deduction for the $100,000 transferred from the trust to the charity to the same extent that such a deduction would be allowed by section 2055 for a bequest by B to X charity.

Example (7). D died during 1983 passing property under a will providing that income producing assets valued at $500,000 in D's gross estate (net of debts, expenses, and other charges, including death taxes, payable from the property) were to be put in trust, with the trustee required to pay an annuity to D's surviving spouse, S, of $20,000 a year for life. All of the trust income other than amounts paid to S as an annuity are to be accumulated in the trust and may not be distributed during S's lifetime to any person other than S. D's estate deducted $200,000 under section 2056(b)(7) and § 20.2056(b)–7(c)(2). Assume that S dies in 1988, at which time the value of the trust property is $800,000. Also assume that S's executor does not elect the alternate valuation date and that S has made no disposition of "all or part of the property" within the meaning of section 2519. The amount included in S's gross estate pursuant to section 2044 is $320,000 [($200,000/$500,000) x $800,000].

Par. 6. A new § 20.2055–6 is added immediately following § 20.2055–5, to read as set forth below.

§ 20.2055–6 Disallowance of double deduction in the case of terminable interest property.

No deduction shall be allowed from the decedent's estate under section 2055 for property transferred, if a deduction is taken from the decedent's estate with respect to that property by reason of section 2056(b)(7). See section 2056(b)(9).

Par. 7. Section 20.2056(a)–1 is revised to read as set forth below.

§ 20.2056(a)–1 Marital deduction; in general.

(a) A deduction is allowed under section 2056 from the gross estate of a decedent who was a citizen or resident of the United States at the time of the decedent's death for the value of any property interest which passed from the decedent to the decedent's surviving spouse, if the interest is a "deductible interest" as defined in § 20.2056(a)–2. However, with respect to decedents dying in certain years, a deduction is allowed under section 2056 only to the extent that the total of the deductible interests does not exceed the applicable limitations set forth in §§ 20.2056(c)–1A and 20.2056(c)–2A. The deduction allowed under section 2056 is referred to as the "marital deduction." Except as otherwise provided by a death tax convention with a foreign country, the marital deduction is not allowed in the case of an estate of a nonresident who was not a citizen of the United States at the time of death. However, if the decedent was a citizen or resident, the estate is not deprived of its right to the marital deduction by reason of the fact that the decedent's surviving spouse was neither a resident nor a citizen. For convenience, the surviving spouse is generally referred to in the feminine gender, but if the decedent was a woman the reference is to her surviving husband. Sections 20.2056(b)–1 through 20.2056(b)–8 contain miscellaneous rules for determining the amount of "deductible interests"; §§ 20.2056(c)–1A and 20.2056(c)–2A provide limitations on the allowable amount of the marital deduction for decedents dying in certain years; §§ 20.2056(c)–1 through 20.2056(c)–3 define various terms used in the aforementioned section; and § 20.2056(d)–1 provides special rules concerning disclaimers of interests in property.

(b) In order to obtain the marital deduction with respect to any property interest, the executor must establish the following facts:

(1) That the decedent was survived by a spouse (see § 20.2056(c)–2(e));

(2) That the property interest passed from the decedent to the spouse (see §§ 20.2056(b)–5 through 20.2056(b)–7 and 20.2056(c)–1 through 20.2056(c)–3;

(3) That the property interest is a "deductible interest" (see § 20.2056(a)–2; and

(4) The value of the property interest (see § 20.2056(b)–4.

If a limitation on the allowable amount of the marital deduction applies to the estate (see §§ 20.2056(c)–1A and 20.2056(c)–2A), the executor must establish the facts relating to the application of such limitation. The executor must submit such proof as is necessary to establish any fact required by this paragraph (b), including any evidence requested by the district director.

Par. 8. The last sentence of paragraph (a) of § 20.2056(a)–2 is revised to read as set forth below.

§ 20.2056(a)–2 Marital deduction; "deductible interests" and "nondeductible interests."

(a) * * * Subject to the limitations set forth in §§ 20.2056(c)–1A and 20.2056(c)–2A (relating to quantitative limitations on the marital deduction in certain cases), if applicable, the marital deduction is equal in amount to the aggregate value of the "deductible interests."

* * * * *

Par. 9. Section 20.2056(b)–1 is amended as follows:

a. Paragraphs (d)(2) and (d)(3) are revised, and new paragraphs (d)(4) and (d)(5) are added immediately following paragraph (d)(3), to read as set forth below.

b. Paragraph (e)(4) is revised to read as set forth below.

c. The first sentence of paragraph (g) is replaced by the two sentences set forth below.

§ 20.2056(b)–1 Marital deductions; limitation in case of life estate or other "terminable interest."

* * * * *

(d) *Exceptions.* * * *

* * * * *

(2) It is a right to income for life with a general power of appointment, meeting the requirements set forth in § 20.2056(b)–5;

(3) It consists of life insurance or annuity payments held by the insurer with a general power of appointment in the spouse, meeting the requirements set forth in § 20.2056(b)–6;

(4) It is qualified terminable interest property, meeting the requirements set forth in § 20.2056(b)–7; or

(5) It is an interest in a qualified charitable remainder trust of which the spouse is the only noncharitable beneficiary, a provided under § 20.2056(b)–8.

(e) *Miscellaneous principles.* * * *

(4) The terms "passed from the decedent," "passed from the decedent to his surviving spouse" and "passed from the decedent to a person other than his surviving spouse" are defined in §§ 20.2056(c)–1 through 20.2056(c)–3.

* * * * *

(g) *Examples.* The application of this section may be illustrated by the following examples. In each example it is assumed that the executor made no election under section 2056(b)(7), that the property interest which passed from the decedent to a person other than his surviving spouse did not pass for an adequate and full consideration in money or money's worth, and that section 2056(b)(8) is inapplicable.

* * * * *

Par. 10. Paragraph (b) of § 20.2056(b)–4 is amended by revising the reference to "§ 20.2056(c)–2" to read "§ 20.2056(c)–2A".

Par. 11. Section 20.2056(b)–5 is amended as follows:

a. Paragraph (c) is revised to read as set forth below.

b. The heading and first sentence of paragraph (d) are revised to read as set forth below.

§ 20.2056(b)–5 Marital deduction; life estate with power of appointment in surviving spouse.

* * * * *

(c) *Meaning of "specific portion".*—(1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, a partial interest in property is not treated as a specific portion of the entire interest. In addition, any specific portion of an entire interest in property is nondeductible to the extent such specific portion is subject to invasion for the benefit of any person other than the surviving spouse, except in the case of a deduction allowable under section 2056(b)(5), relating to invasions by the surviving spouse in the exercise of a general power of appointment.

(2) A partial interest in property is treated as a specific portion of the entire interest if the rights of the surviving spouse in income and the required rights as to the power (described in § 20.2056(b)–5(a)) constitute a fractional or percentile share of a property interest so that such interest or share in the surviving spouse reflects its proportionate share of the increment or decline in the whole of the property interest to which the income rights and the power relate. Thus, if the right of the spouse to income and the power extend

to a specified fraction or percentage of the property, or the equivalent, the interest is consideed as a specific portion.

(3) A specific sum payable annually or at more frequent intervals out of the property and its income that is not limited by the income of a property will be treated as a right to the income of a specific portion of the property. However, no deduction will be allowable under section 2056(b)(5) except to the extent the surviving spouse has the required power of appointment over a fractional or a percentile share of the property. The deductible interest, for purposes of § 20.2056(a)–1(a), is the specific portion of the property that, assuming the interest rate generally applicable for the valuation of annuities at the time of the decedent's death, would produce income equal to such specific annual payment. However, such specific sum payable to a surviving spouse will not be treated as a right to the income of a specific portion of the property for purposes of this paragraph (c)(3), if any person other than the surviving spouse may receive, during the surviving spouse's lifetime, any distribution of the property or its income out of which the surviving spouse's payments are made. To determine the applciable interest rate, see section 2031 and the regulations under that section.

(4) A partial interest in property is treated as a specific portion of the entire interest if it is shown that the surviving spouse has rights under local law which are identical to those he or she would have acquired had the size of the share been expressed in terms satisfying the requirments of either paragraph (c)(2) or paragraph (c)(3) of this section.

(5) The following examples illustrate the application of paragraphs (a) through (c)(4) of this section.

Example (1). The decedent, D, transferred to a trustee 500 identical shares of X company stock. D provided that during the lifetime of D's surviving spouse, S, the trustee should pay S annually one-half of the trust income or $6,000, whichever is the larger. All of the trust income other than amounts paid to S are to be accumulated in the trust and may not be distributed during S's lifetime to any person other than S. S was also given a general power of appointment exercisable by S's last will over all the trust corpus. For purposes of paragraphs (a) and (b) of this section, S shall be considered as receiving the greater of (i) all the income from one-half of the entire interest in the stock or (ii) the specific portion of the stock which under § 20.2056(b)–5(c)(3) is determined to be the portion required to produce annual income equal to $6,000.

Example (2). Assume that the facts are the same as in example (1) except that S's testamentary general power of appointment is exercisable over only one-fourth of the trust corpus and D's executor does not elect to treat the trust property as qualified terminable interest property under § 20.2056(b)–7. Consequently, the marital deduction is only allowed for one-fourth of the trust (the lesser of the portion determined in example (1) or one-fourth of the trust).

Example (3). Assume that the facts are the same as in example (1) except that S's testamentary general power of appointment is exercisable over the sum of $160,000 and D's executor does not elect to treat the trust property as qualified terminable interest property under § 20.2056(b)–7. Inasmuch as there is no certainty as to what portion of the stock will be valued at $160,000 on S's death, the power of appointment over $160,000 is not considered a power of appointment over a specific portion of the entire interest. Thus, no marital deduction is allowed.

Example (4). The decedent, D, bequeathed to a trustee an office building and 250 identical shares of Y Company stock. D provided that during the lifetime of D's surviving spouse, S, the trustee should pay S annually three-fourths of the trust income. S was given a general power of appointment exercisable by will over the office building and 100 shares of stock. By the terms of D's will, S is given all the income from a definite fraction of the entire interest in the office building and in the stock. However, since the amount of property represented by a single share of stock would be altered if the corporation split its stock, issued stock dividends, made a distribution of capital, etc., a power to appoint 100 shares at the time of S's death is not the same necessarily as a power to appoint 100/250 of the entire interest which the 250 shares represented on the date of D's death. If it is shown in this case that under local law S has a general power to appoint not only the 100 shares designated by D, but also 100/250 of any shares or amounts that are distributed by the corporation and included in the corpus, the requirements of paragraph (c)(2) of this section will be satisfied and S will be considered as having a general power to appoint 100/250 of the entire interest in the 250 shares.

(d) *Meaning of "entire interest."* Since a marital deduction is allowed for each qualifying separate interest in property passing from the decedent to the decedent's surviving spouse (subject to any applicable limitation on the aggregate amount of deductions contained in §§ 20.2056(c)–1A and 20.2056(c)–2A), for purposes of paragraphs (a) and (b) of this section, each property interest with respect to which the surviving spouse received some rights is considered separately in detrmining whether the surviving spouse's rights extend to the entire interest or to a specific portion of the entire interest.* * *

* * * * *

Par. 12. There are added immediately following § 20.2056(b)–6 the following new sections.

§ 20.2056(b)–7 Election with respect to life estate for surviving spouse.

(a) *In general.* A marital deduction is allowed under section 2056(b)(7) with respect to estates of decedents dying after December 31, 1981, for "qualified terminable interest property." All of the property for which as deduction is allowed under this paragraph (a) shall be treated as passing to the surviving spouse (for purposes of § 20.2056(a)–1) and no part of such property shall be treated as passing to any person other than the surviving spouse (for purposes of § 20.2056(b)–1).

(b) *Qualified terminable interest property defined.* For purposes of this section, the term "qualified terminable interest property" means property—

(1) Which passes from the decedent,

(2) In which the surviving spouse has a "qualifying income interest for life" as defined in paragraph (c) of this section, and

(3) Which the executor elected to treat as qualified terminable interest property.

For purposes of this section, the term "property" generally means an "entire interest in property" (within the meaning of § 20.2056(b)–5(d)) or a "specific portion of the entire interest" (within the meaning of § 20.2056(b–5(c)). The election may relate to all or any part of property that meets the requirements of paragraphs (b) (1) and (2) of this section, provided that any partial election shall relate to a fractional or percentile share of the property so that the elective part will reflect its proportionate share of the increment or decline in the whole of the property for purposes of applying sections 2044 or 2519. Thus, if the interest or the surviving spouse in a trust meets the requirements of paragraphs (b) (1) and (2) of this section, the executor may make an election under paragraph (b)(3) with respect to a part of the trust only if the election relates to a defined fraction or percentage of the entire trust or specific portion thereof (within the meaning of § 20.2056(b)–5(c)). The fraction or percentage may be defined by means of a formula. If the interest of the surviving spouse in a trust meets the requirements of paragraphs (b) (1) and (2) of this section, the trust may be divided into separate trusts to reflect a partial election that had been made or is to be made. If a trust is severed, it must be clear, by viture of the duties imposed on the fiduciary either by applicable state law or by the express or implied provisions of the instrument governing the trust, that the fiduciary must divide the trust according to the fair market value of the assets of

the trust at the time of the division. To have a valid election under paragraph (b)(3) of this section, the election shall be made by the executor (defined in section 2203 and the regulations under that section) who is in possession of the qualified terminable interest property and shall be made by such executor on the return of tax imposed by section 2001. For purposes of this paragraph, the term "return of tax imposed by section 2001" means the last estate tax return filed by such executor on or before the due date of the return, or if a timely return is not filed by such executor, the first estate tax return filed by the executor after the due date. The election, once made, is irrevocable. If an executor appointed under state law has made an election with respect to one or more properties, then no subsequent election may be made with respect to other properties in the executor's possession.

(c) *Qualifying income interest for life defined.* (1) *In general.* For purposes of this section, the term "qualifying income interest for life" means—

(i) The surviving spouse is entitled for life to all the income from the property, payable annually or at more frequent intervals, and

(ii) No person (including the surviving spouse) has a power, other than a power the exercise of which takes effect only at or after the surviving spouse's death, to appoint any part of the property to any person other than the surviving spouse.

In general, the principles outlined in § 20.2056(b)–5(f), relating to whether the spouse is entitled for life to all of the income from the entire interest or a specific portion of the entire interest, are applicable in determining whether the surviving spouse is entitled for life to all the income from the property, regardless of whether the interest passing to the spouse is in trust. An income interest granted for a term of years, or a life estate subject to termination upon the occurrence of a specified event (*e. g.*, remarriage), is not a qualifying income interest for life. In addition, an income interest (or life estate) that is contingent upon the executor's election under paragraph (b)(3) of this section is not a qualifying income interest for life, regardless of whether the election is actually made. On the other hand, an income interest will not fail to constitute a qualifying income interest for life solely because income between the last distribution date and the date of the surviving spouse's death is not required to be distributed to the surviving spouse or the surviving spouse's estate. See § 20.2044–1 relating to the inclusion of such undistributed income in the surviving spouse's estate. An income interest in trust will not fail to constitute a qualifying income interest for life solely because the trustee has a power to distribute corpus to or for the benefit of the surviving spouse. Also, the fact that property (*i.e.*, income or corpus) distributed to a surviving spouse may be transferred by the spouse to another person does not result in failure to satisfy the requirement of paragraph (c)(1)(ii) of this section. However, if the governing instrument requires the surviving spouse to transfer the distributed property to another person without full and adequate consideration in money or money's worth, the requirement of paragraph (c)(1)(ii) of this section is not satisfied.

(2) *Annuities.* In general, surviving spouse's lifetime annuity interest shall be treated as a qualifying income interest for life for purposes of section 2056(b)(7)(B)(ii). The deductible interest, for purposes of § 20.2056(a)–1(a), is the specific portion of the property (including an annuity contract) that, assuming the interest rate generally applicable for the valuation of annuities at the time of the decedent's death, would produce income equal to the minimum amount payable annually to the surviving spouse for life. In no case may the value of the deductible interest exceed the value of the property out of which the annuity is paid. If the annual payment may increase, the annuity interest will not be disqualified, but the increased amount shall not be taken into account in valuing the deductible interest. However, an annuity interest will not be treated as a qualifying income interest for life for purposes of section 2056(b)(7)(B)(ii), if any person other than the surviving spouse may receive, during the surviving spouse's lifetime, any distribution of the property or its income (including any distribution under an annuity contract) out of which the annuity is payable. To determine the applicable interest rate for valuing annuities, see section 2031 and regulations under that section. If, assuming such interest rate, the entire property from which the annuity may be satisfied is insufficient to produce income equal to the minimum annual payment, the value of the deductible interest is the entire value of such property.

(d) *Application of local law.* The provision of local law shall be taken into account in determining whether or not the conditions of paragraphs (b) and (c) of this section are satisfied. For example, silence of a trust instrument as to the frequency of payment will not be regarded as a failure to satisfy the condition in paragraph (c) of this section that the income must be payable to the surviving spouse annually or more frequently, unless the applicable law permits payment to be made less frequently than annually.

(e) *Examples.* The following examples illustrate the application of paragraphs (a) through (c) of this section. In each example it is assumed that the decedent dies after 1981.

Example (1). A decedent at the time of death owns a personal residence valued at $250,000 for estate tax purposes. Under the decedent's will, which was executed after September 11, 1981, the exclusive and unrestricted right to use such property (including the right to continue to occupy the property as a personal residence or to rent such property and receive the income) passes to the decedent's surviving spouse, S, for life. After S's death the property passes to the decedent's children. If the executor elects to treat all of such property as qualified terminable interest property, the deductible interest is the value of such property for estate tax purposes, *i.e.*, $250,000.

Example (2). Assume that the facts are the same as in example (1) except that the property is a recently planted tree farm which is not expected to be income producing for 20 years after the decedent's death. In addition, assume that S is 70 years old at the time of the decendent's death, and that applicable local law does not require or permit S to require the conversion of the property into a productive asset within a reasonable time after the decedent's death. S does not have a qualifying income interest for life because the bequest does not give S that degree of beneficial enjoyment during S's life which the principles of the law of trusts accord to a person who is unqualifiedly designated as the life beneficiary of a trust. See § 20.2056(b)–5(f). Therefore, no deduction for the bequest is allowable under section 2056(b)(7).

Example (3). Pursuant to a will executed after September 11, 1981, the decedent establishes a trust that is funded with property valued at $500,000 for estate tax purposes. The assets used to fund the trust include both income producing assets and nonproductive assets. The surviving spouse, S, is given the right exercisable annually to require distribution of all the trust income to himself or herself. There is no power to distribute trust property during S's lifetime to any person other than S. Applicable State law permits S to require that the trustee either make the trust property productive or sell the property and reinvest in productive property within a reasonable time. If the executor elects to treat all of the trust as qualified terminable interest property, the deductible interest is $500,000 If the executor elects to treat only 20 percent of the trust as qualified terminable interest property, the deductible interest is only $100,000, that is, $500,000 multiplied by 20 percent.

Example (4). Assume that the facts are the same as in example (3) except that S is given the right exercisable annually to require

distribution to herself or himself of only 50 percent of the trust income for life. The other 50 percent of the trust income is to be distributed among S and the decedent's children in the trustee's discretion or accumulated. If the executor elects to treat the entire portion of the trust in which S has a qualifying income interest as qualified terminable interest property, the deductible interest is $250,000, which is the value of the trust for estate tax purposes ($500,000) multiplied by the spouse's percentile share of the trust income (50 percent). If the executor elects to treat only 20 percent of the portion of the trust in which S has a qualifying income interest as qualified terminable interest property, the deductible interest is only $50,000, that is, $250,000 multiplied by 20 percent.

Example (5). Assume that the facts are the same as in example (3) except that the trustee is given the power to use annually $5,000 from the trust for the maintenance and support of X. S does not have a qualifying income interest for life in any portion of the trust because the bequest fails to satisfy the condition set forth in § 20.2056(b)–7(c)(2), which is the condition that no person have a power, other than a power the exercise of which takes effect only at or after S's death, to appoint any part of the property to any person other than S. The trust would also be nondeductible under section 2056(b)(7) if S were given the power, rather than the trustee, to appoint a portion of the corpus to X.

Example (6). Assume that the facts are the same as in example (3) except that, upon S's remarriage, S's interest in the trust will pass to X. The trust is not deductible under section 2056(b)(7). S's income interest is not a "qualifying income interest for life" because it is not for life, but rather is terminable upon S's remarriage.

Example (7). Assume that the facts are the same as in example (3) except that S is given the right to require distribution to S of only that percentage of the trust income which the executor elects to treat as qualified terminable interest property. S does not have a qualifying income interest for life in any portion of the trust because the income interest is contingent upon the executor's election. Accordingly, the executor cannot elect qualified terminable interest treatment for any portion of the trust. If the decedent's will gives the surviving spouse a qualifying income interest for life in a specific portion of the trust (such as the minimum portion of the trust that is necessary to reduce Federal estate tax to zero) and such interest is not contingent on the executor's election of qualified terminable interest treatment, the executor can elect qualified terminable interest treatment for the specified portion of the trust.

Example (8). Pursuant to a will executed after September 11, 1981, the decedent, D, establishes a trust funded with the residue of D's estate. Income of the trust is to be paid annually to D's surviving spouse, S, for S's life, and the principal is to be distributed to D's children upon S's death. S has the power to require that all the trust property be made productive. There is no power to distribute trust property during S's lifetime to any person other than S. D's executor elects to deduct under section 2056(b)(7) a fractional share of the residuary estate. The executor provides that the numerator of the fraction is the amount of deduction necessary to reduce the Federal estate taxes to zero (taking into account final estate tax values) and the denominator of the fraction is the final estate tax value of the residuary trust (after taking into account any specific bequests or liabilities of the estate paid out of the residuary estate). The formula election is of a fractional share. The value of such share qualifies for the marital deduction even though the executor's determinations to claim administration expenses as estate or income tax deductions and the final estate tax value will affect the amount of the fractional share.

Example (9). Assume that the facts are the same as in example (8) except that, rather than defining a fraction, the executor's formula states: "I elect that portion of the residuary trust, up to 100 percent, necessary to reduce the Federal estate taxes to zero, after taking into account the available unified credit, final estate tax values and any liabilities paid out of and specific bequests funded out of the residuary estate." The formula election is of a fractional share. The share is equivalent to the fractional share determined in example (8).

Example (10). Assume that the facts are the same as in example (8) except that S is also the life beneficiary of the sixteen remaining annual installments of D's individual retirement account for which the 19 original annual installation began being paid when D reached age 70½. Also assume that each installment is equal to all the income earned on the remaining principal in the account plus a share of the remaining principal equal to $\frac{1}{19}$ in the first year, $\frac{1}{18}$ in the second year, $\frac{1}{17}$ in the third year, etc. Any remaining payment after S's death passes to D's children. S's interest in the account is a qualifying income interest for life. If D's executor makes two separate elections, one as to 100 percent of the retirement account and a second as to the residuary trust in the same manner as example (8), each election qualifies the property subject to the election for the marital deduction.

Example (11). Assume that the facts are the same as in example (8) except that D's will directs the executor to elect qualified terminable interest treatment for the minimum amount of property necessary to reduce estate taxes on D's estate to zero, directs the executor to divide the residuary estate into two separate trusts to reflect the election and directs that any payments of principal to S shall be charged first to the marital deduction trust. S remains the sole life beneficiary of both trusts. The authorization and direction have no effect on the allowance of a marital deduction, and only the property remaining in the marital deduction trust, after payments of principal to S, will be subject to inclusion in S's gross estate (by section 2044) or subject to gift tax (by section 2519). If rather than authorizing the executor to form two separate trusts, D's will directs the executor to form a single trust and reduce the marital deduction share of that trust by any invasions of principal for S, the executor's formula election will be valid. See §§ 20.2044–1(d) and 25.2519–1(d) for the effect of appointments of principal.

Example (12). Pursuant to a will executed after September 11, 1981, the decedent, D, establishes a trust funded with income producing property valuded at $500,000 for estate tax purposes. The trustee is required by the trust instrument to pay $20,000 a year to D's surviving spouse, S, for life. The rest of the income from the trust is to be accumulated in the trust and may not be distributed during S's lifetime to any person other than S. S's lifetime annuity interest is treated as a qualifying income interest for life. If the executor elects to treat the entire portion of the trust in which S has a qualifying income interest as qualified terminable interest property, the value of the deductible interest is $200,000, since such amount would yield an income to S of $20,000 a year (assuming D died in March 1984 and a 10 percent interest rate applies in valuing annuities).

Example (13). Assume the facts as in example (12) except that the trustee is required to pay S $70,000 a year for life. If the executor elects to treat the entire portion of the trust in which S has a qualifying income interest as qualified terminable interest property, the value of the deductible interest is $500,000, which is the lesser of the entire value of the property ($500,000), or the amount of property that (assuming a 10 percent interest rate) would yield an income to S of $70,000 a year ($700,000).

Example (14). Pursuant to a will executed after September 11, 1981, the decedent, D, provides that upon his death, the executor shall purchase a commercial annuity for his surviving spouse S, that will pay S $100,000 a year for life. Based on S's life expectancy at the time of D's death, the cost of the annuity is $700,000. S's annuity interest is treated as a qualifying income interest for life. If the executor elects to treat the entire property in which S has a qualifying income interest for life as qualified terminable interest property, the decuctible interest if the cost of the annuity, or $700,000.

Example (15). Pursuant to a will executed after September 11, 1981, the decedent transfers $200,000 to a pooled income fund, within the meaning of section 642(c)(5), designating his wife as the income beneficiary for her life. If the executor elects to treat the entire $200,000 as qualified terminable interest property, the deductible interest is $200,000. The deduction will not be denied under this section if the decendent's transfer to his wife is conditioned on the payment by the wife of state death taxes attributable to the pooled income fund.

§ 20.2056(b)–8 Special rule for charitable remainder trusts.

With respect to estates of decedents dying after December 31, 1981, section 2056(b)(8) provides that if the surviving spouse of the decedent is the only noncharitable beneficiary of a charitable remainder annuity trust or a charitable remainder unitrust described in section 664 (qualified charitable remainder trust), section 2056(b)(1) shall not apply to any interest in such trust which is transferred to the surviving

spouse. Thus, the estate will receive a charitable deduction under section 2055 for the value of the remainder interest and a marital deduction under section 2056(b)(8) for the value of the annuity or unitrust interest. A martial deduction for the value of the surviving spouse's annuity or unitrust interest in a qualified charitable remainder trust is allowable only under section 2056(b)(8). No marital deduction is allowable for any portion of a qualified charitable remainder trust under section 2056(b)(7). The surviving spouse's interest need not be an interest for life. For purposes of this section, the term "non-charitable beneficiary" means any beneficiary of the qualified charitable remainder trust other than an organization described in section 170(c). A deduction will not be denied under this section by reason of the transfer to the surviving spouse being conditioned on the payment of state death taxes attributable to the qualified charitable remainder trust. See § 20.2056(b)–4(c) for the effect of such a condition on the amount of deduction allowable.

Par. 13. Section 20. 2056(c)–1 is redesignated § 20.2056 (c)–1A is retitled and is amended as follows:

a. Paragraph (a) is revised to read as set forth below.

b. Paragraph (b) is redesignated as paragraph (d) and a new paragraph (b) is inserted in its place to read as set forth below.

c. A new paragraph (c) is added to read as set forth below.

d. Paragraph (d) as redesignated by this document is amended by inserting a new sentence immediately after the second sentence, by revising the reference to "§ 20.2056 (c)–2" to read "§ 20.2056 (c)–2A", and by removing the last sentence of the example and inserting a new sentence in its place, to read as set forth below.

§ 20.2056(c)–1A Marital deduction; limitation on aggregate of deductions for decedents dying in certain years.

(a) *Estates of decedents dying either prior to January 1, 1977, or, in certain cases, after December 31, 1976, and before January 1, 1979.* In general, the allowable marital deduction for estates of decedents dying before January 1, 1977, and the allowable marital deduction for certain decedents dying after December 31, 1976, and before January 1, 1979 (as provided in paragraph) (c)(1) of this section relating to maximum marital deduction formula provisions), is limited to the smaller of the following amounts:

(1) The aggregate value of the "deductible interests" which passed from the decedent to the surviving spouse (see § 20.2056(a)–2(a)); or

(2) Fifty percent of the value of the decedent's "adjusted gross estate."

(b) *Estates of decedents dying either after December 31, 1976, and prior to January 1, 1982, or, in certain cases, after December 31, 1981*—(1) *In general.* Except as provided by paragraphs (b)(2) and (c)(1) of this section, the allowable marital deduction for estates of decedents dying after December 31, 1976, and prior to January 1, 1982, and the allowable marital deduction for certain decedents dying after December 31, 1981 (as provided in paragraph (c)(2) of this section relating to maximum marital deduction formula provisions), is limited to the smaller of the following amounts:

(i) The aggregate value of the "deductible interests" which passed from the decedent to the surviving spouse (see § 20.2056(a)–2(a)); or

(ii) The greater of—

(A) Two hundred fifty thousand dollars (reduced for community property as provided in § 20.2056(c)–2A), or

(B) Fifty percent of the value of the decedent's "adjusted gross estate."

(2) *Adjustment for certain gifts to a spouse*—

(i) *In general.* The limitation provided by paragraph (b)(1)(ii) of this section shall be reduced (but not below zero) by the excess, if any, of—

(A) The aggregate deductions allowed under section 2523 for post-1976 interspousal gifts made by the decedent and not included in the gross estate under section 2035 (gifts within 3 years of death); over

(B) The aggregate deductions which would have been allowable under section 2523 for those gifts if the amount deductible were 50 percent of the aggregate value of the deductible interests in the gifts.

In the case of remarriage, the adjustment required by this paragraph (b)(2)(i) shall be determined on the basis of gifts to all spouses. For purposes of this paragraph (b)(2)(i), a gift shall be treated as included in the gross estate by section 2035 only if it is included in the gross estate solely by reason of section 2035.

(ii) *Determination of post-1976 interspousal gifts.* In general, the term "post-1976 interspousal gifts" shall include all transfers by gift occurring after December 31, 1976, from the decedent to the decedent's spouse. However, the term shall not include gifts that were not required to be included in a gift tax return. See § 25.6019–1(a)(1). Therefore, so long as a particular year's interspousal gifts do not exceed the annual per donee exclusion and do not include a future interest, that year's interspousal gifts are not included in the adjustment set out in paragraph (b)(2)(i) of this section. In years where interspousal gifts are in excess of the annual per donee exclusion or include a future interest, all interspousal gifts transferred during the year are included in the computation.

(iii) *Examples.* The following examples illustrate the reduction required by paragraph (b)(2)(i) of this section. The reduction for post-1976 transfers is equal to the lesser of:

A; or

B − C − 50%(D − E)

where the letters correspond to the following amounts:

A = the limitation on the material deduction before adjustment for interspousal gifts and after the reduction required for community property (paragraph (b) of § 20.2056(c)–2A);

B = the aggregate deductions under section 2523 for post-1976 gifts;

C = the aggregate deductions under section 2523 for post-1976 gifts included in the gross estate solely by reason of section 2035;

D = the sum of deductible interests (within the meaning of § 25.2523(a)–1(b)(2)) in post-1976 interspousal gifts required to be included in a gift tax return; and

E = the sum of deductible interests (within the meaning of § 25.2523(a)–1(b)(2)) in post-1976 interspousal gifts required to be included in the gross estate by reason of section 2035.

Example (1). W died during 1979 having made two gifts to W's spouse after 1976. The first gift was for $103,000 and was made during 1977. With respect to the first gift, W deducted $100,000 under section 2523 and excluded $3,000 from taxable gifts under section 2503(b). The second gift was made during 1978 and was in the amount of $4,000, of which $3,000 was excluded from taxable gifts under section 2503(b) and $1,000 was reported as a taxable gift. W never held property as community property and died with an adjusted gross estate of $300,000 (including $107,000 of previous gifts included in the gross estate by reason of section 2035). The reduction in the marital deduction limitation required as a result of post-1976 gifts is zero, computed as follows:

Lesser of:

$250,000; or

$0,

i.e., $100,000—$100,000—50%($107,000—$107,000).

Example (2). The facts are the same as in example (1) except W dies on Janaury 1, 1981, with an adjusted gross estate of $300,000. Pursuant to section 2035, the adjusted gross estate includes the $4,000 gift made during 1978. W made no gifts to W's spouse other than those in example (1). The reduction in the marital deduction limitation as a result of post-1976 gifts is $48,500, computed as follows:

Lesser of:

$250,000; or

$48,500, *i.e.*, $100,000—$0—50%($107,000—$4,000).

Example (3). The facts are the same as in example (2) except W made a second transfer by gift to W's spouse during 1977. The second gift during 1977 was a gift of a nondeductible terminable interest in property. Therefore, the second gift during 1977 has no effect on the limitation on the marital deduction. The reduction in the marital deduction limitation as a result of post-1976 gifts remains $48,500.

Example (4). The facts are the same as in example (2) except the gift made during 1978 was for $3,000 and therefore was not required to be included in a gift tax return. The reduction in the marital deduction limitation as a result of post-1976 gifts is $48,500, computed as follows:

Lesser or:

$250,000; or

$48,500, *i.e.*, $100,000—$0—50%($103,000—$0).

Example (5). The facts are the same as in example (4) except a portion of W's gross estate includes an interest in community property. Assume for purposes of this example that the maximum allowable marital deduction, after adjustments for community property and prior to adjustments for gifts to the spouse, is $12,500 (see § 50.2056(c)–2A). The reduction in the marital deduction limitation as a result of post-1976 gifts is $12,500, computed as follows:

Lesser or:

$12,500; or

$48,500, *i.e.*, $100,000—$0—50%($103,000—$0).

(c) *Special rules for property passing under a maximum marital deduction formula provision*—(1) *Decedents dying before January 1, 1979.* The allowable marital deduction for property passing to a surviving spouse from a decedent dying after December 31, 1976, but before January 1, 1979, under a maximum marital deduction formula provision (defined in paragraph (c)(3) of this section) in a will executed or trust created before January 1, 1977, is limited to the amount determined under paragraph (a) of this section (*i.e.*, the limitation applicable to estates of decedents dying before January 1, 1977) unless—

(i) The maximum marital deduction formula provision of the will or trust (or another provision of the will or trust that refers to the maximum marital deduction formula provision) is amended after December 31, 1976, and before the decedent's death; or

(ii) A state statute applicable to the estate is enacted which construes the type of formula used as referring to the allowable marital deduction limitation under section 2056 as amended by the Tax Reform Act of 1976.

The marital deduction allowable to an estate to which the rule in this paragraph (c)(1) applies may exceed the paragraph (a) limitation, but only to the extent that the value of property passing outside of the formula provision is in excess of the paragraph (a) limitation.

(2) *Decedents dying after December 31, 1981.* The allowable marital deduction for property passing from a decedent dying after December 31, 1981, to a surviving spouse under a maximum marital deduction formula provision (defined in paragraph (c)(3) of this section) in a will executed or trust created before September 12, 1981, is limited to the amount determined in paragraph (b)(1) of this section (*i.e.*, the limitation applicable to estates of decedents dying after December 31, 1976, and prior to January 1, 1982) unless—

(i) The maximum marital deduction formula provision of the will or trust (or another provision of the will or trust that relates to the maximum marital deduction formula provision) is amended after September 11, 1981, and before the decedent's death to refer specifically to an unlimited marital deduction; or

(ii) A state statute applicable to the estate is enacted which construes the type of formula used a referring to the allowable marital deduction under section 2056 as amended by the Economic Recovery Tax Act of 1981.

The marital deduction allowable to an estate to which the rule in this paragraph (c)(2) applies may exceed the paragraph (b) limitation, but only to the extent that the value of property passing outside of the formula provision is in excess of the paragraph (b) limitation. For purposes of this paragraph (c)(2), the paragraph (b) limitation shall be increased by the value of any interest in property that is deducted from the decedent's gross estate by reason of section 2056 (b)(7) or (b)(8).

(3) *Maximum marital deduction formula provision.* For purposes of this section, the term "maximum marital deduction formula provision" means a will or trust provision expressly providing that the decedent's surviving spouse is to receive an amount or share which is determined with reference to the maximum allowable marital deduction, even though the amount passing under the formula provision may be reduced to insure full usage of the decedent's unified credit or to take into account transfers outside of the formula provision that qualify for the marital deduction. However, the term shall not include any provision in a will or trust where the instrument specifically indicates that the decedent intended to give the surviving spouse additional property if Federal law were changed to increase the allowable marital deduction.

(4) *Examples.* The following examples illustrate the effect of paragraphs (c)(1) through (c)(3) of this section. Unless otherwise specified, in each example it is assumed that sections 2056(b)(7) and (b)(8) are not applicable to the decedent's estate.

Example (1). The decedent died during 1978 with an adjusted gross estate valued at $400,000. All of the decedent's property was disposed of in accordance with a will executed prior to January 1, 1977. It is assumed for purposes of this example that the decedent and the spouse never held any property as community property; that the decedent made no gifts to a spouse after December 31, 1976; that the will was never amended; and that the State did not enact a statute construing the use of maximum marital deduction formula clauses. Although the decedent's will contained a maximum marital deduction formula provision, an aggregate amount of $225,000 passed to the surviving spouse by operation of a specific bequest. The allowable marital deduction is $225,000, because the estate is entitled to the marital deduction allowed for estates of decedents dying after 1976 to the extent property passes outside the maximum marital deduction formula provision (*e.g.*, joint tenancy property, insurance proceeds passing directly to the spouse outside the will, and property passing under provisions of the will other than the marital deduction formula provision).

Example (2). The decedent died after December 31, 1981, passing property under a will executed prior to September 12, 1981, and not amended thereafter. The will contains a formula provision that established a marital deduction trust equal to the maximum amount qualifying for the marital deduction allowable under Federal estate tax law, reduced by transfers outside of the formula provision which qualify for the marital deduction, and further reduced to the extent (if any) necessary to increase the decedent's taxable estate to the largest amount which will result in no Federal estate tax being payable after taking the available unified credit into account. No State statute is enacted to construe the formula provision as referring to the unlimited marital deduction. Pursuant to paragraph (c)(2) of this section, the marital deduction allowable for property passing under the formula provision in this case may not exceed the amount determined in paragraph (b)(1) of this section, reduced by the value of qualifying property interests passing to the spouse outside the formula provision, and further reduced by the available unified credit. Paragraph (c)(2) of this section does not limit the marital deduction allowable for property passing outside the will (*e.g.*, joint tenancy property or insurance proceeds) or property passing under provisions of the will other than the maximum marital deduction formula provision. Thus, if the decedent's adjusted gross estate is $1,500,000, the will makes a specific bequest to the spouse of tangible personal property worth $50,000, and the spouse receives joint bank accounts in the amount of $50,000 outside the will, then the maximum marital deduction allowable for property passing under the formula provision

is $650,000, less any amount by which the formula bequest is reduced to insure full usage of the available unified credit. The total marital deduction allowable to the estate in this case is $750,000 (*i.e.*, the $650,000 deductible amount that may pass under the formula provision plus the $50,000 specific bequest and the $50,000 of joint bank accounts). If the facts are as just stated except that the surviving spouse also receives life insurance proceeds of $750,000 that are includible in the decedent's gross estate but pass to the surviving spouse outside the will, no marital deduction is allowable to the estate for property passing under the formula provision and the total marital deduction allowable to the estate is $850,000 (*i.e.*, the $750,000 of life insurance proceeds plus the $50,000 specific bequest and the $50,000 of joint bank accounts).

Example (3). The decedent died after December 31, 1981, passing property under a trust instrument executed prior to September 12, 1981, and not amended thereafter. The trust instrument establishes a separate marital deduction trust for the decedent's spouse at the decedent's death pursuant to a formula provision similar to the one described in example (2), except that the amount passing to the marital deduction trust is determined with reference to the maximum amount qualifying for the marital deduction allowable "under the Federal estate tax law in effect at [the decedent's] death." In this case the trust instrument specifically indicates that the decedent intended to give the surviving spouse additional property if the Federal estate tax law were changed to increase the allowable marital deduction Accordingly, paragraph (c)(2) of this section does not apply and the marital deduction allowable to the estate is not subject to any quantitative limitation imposed by this section.

Example (4). The decedent died after December 31, 1981, passing property under a will executed prior to September 12, 1981, and not amended thereafter. The will contains a formula provision that establishes a marital deduction trust equal to the maximum amount qualifying for the marital deduction allowable under Federal estate tax law reduced by other property qualifying for the marital deduction and passing to the surviving spouse outside of the formula provision. No State statute is enacted to construe the formula provision as referring to the unlimited marital deduction. The surviving spouse receives no property outside the will. The only other property the surviving spouse receives under the will is (i) an interest in a trust (funded with the residuary of the decedent's estate) that qualifies for qualified terminable interest treatment under section 2056(b)(7) and (ii) an interest in a qualified charitable remainder trust that qualifies for deduction under section 2056(b)(8). The decedent's adjusted gross estate is $1,500,000 and applicable State law provides that the marital deduction trust is funded with one-half the adjusted gross estate. Accordingly, the marital deduction allowable to the estate in this case is $750,000 (one-half the adjusted gross estate of $1,500,000) for the marital deduction trust plus the portion of the residuary trust that the executor elects to treat as qualified terminable interest property plus the value of the spouse's interest in the qualified charitable remainder trust.

(d) *Adjusted gross estate.* * * * However, solely for purposes of determining the allowable marital deduction, the decedent's gross estate is deemed to include the amount of any generation-skipping transfer taxable under section 2601 if—

(1) The decedent is the deemed transferor within the meaning of section 2612, and

(2) The generation-skipping transfer occurs at the same time as, or within 9 months after, the decedent's death.

Example. * * * Assuming the decedent died prior to January 1, 1977, the allowable marital deduction is limited to $85,000 (50 percent of the value of the adjusted gross estate).

Par. 14. Section 20.2056(c)–2 is redesignated § 20.2056(c)–2A, retitled to read as set forth below, and amended as follows:

a. Paragraph (a) is revised to read as set forth below.

b. Paragraph (j) is revised by removing the first nine words of Example (1) and inserting new language in their place, and by adding a new Example (3) immediately after Example (2), to read as set forth below.

§ 20.2056(c)–2A Additional limitation on marital deduction applicable in certain cases involving community property.

(a) This section only affects the marital deduction for estates of decedents for which the limitation imposed by either paragraph (a) or (b) of section 20.2056(c)–1A is applicable.

(1) If the decedent and the decedent's surviving spouse at any time held property as "community property," as defined in this section, the "adjusted gross estate" referred to in § 20.2056(c)–1A is the entire value of the gross estate less the sum of the following values and amounts:

(i) The value of any property included in the gross estate that was at the time of the decedent's death held by the decedent and the decedent's surviving spouse as "community property," as defined in this section.

(ii) The value of any property (to the extent included in the gross estate) transferred by the decedent during the decedents's life, if at the time of such transfer the property was held by the decedent and the decedent's surviving spouse as "community property," as defined in this section.

(iii) The amount (to the extent included in the gross estate) receivable as insurance under policies upon the life of the decedent, to the extent purchased with premiums or other consideration paid out of property then held by the decedent and the decedent's surviving spouse as "community property," as defined in this section.

(iv) An amount that bears the same ratio to the aggaregate amount of the deductions for expenses, indebtedness, taxes and losses allowed by sections 2053 and 2054 as the value of the gross estate, reduced by the aggregate amount subtracted under paragraphs (a) (1)(i), (1)(ii) and (1)(iii) of this section, bears to the entire value of the gross estate. The amount to be subtracted under this paragraph (a)(1)(iv) is:

$$\frac{\text{gross estate, less community property}}{\text{entire gross estate}} \times \text{deductions for expenses, indebtedness, taxes, and losses.}$$

(2) If the decedent and the decedent's surviving spouse at any time held property as "community property," as defined in this section, the limitation on the marital deduction set forth in paragraph (b)(1)(ii)(A) if § 20.2056(c)–1A (the $250,000 limitation) shall be reduced by the sum of the value and amounts in paragraphs (a) (1)(i) through (1)(iv) of this section and increased by the aggregate amount of the deductions for expenses, indebtedness, taxes and losses allowed by sections 2053 and 2054. The amount to be subtracted (from the $250,000 limitation) under this paragraph (a)(2) is:

Community property, less the products of:

$$\frac{\text{gross estate, less community property}}{\text{entire gross estate}} \times \text{deductions for expenses, indebtedness, taxes, and losses.}$$

* * * * *

(j)* * *

Example (1). The decedent, A, died prior to January 1, 1977, with a gross estate having a value of $300,000, * * *

* * * * *

Example (3). The facts are the same as in example (1) except that the decedent dies after December 31, 1976, and before January 1, 1982. It is assumed for the purpose of this example that no property passed to the surviving spouse by operation of a maximum marital deduction formula provision in a well

executed or trust created before January 1, 1977, and that the decedent made no gifts to a spouse after December 31, 1976. The alternative limitation on the marital deduction set forth in § 20.2056(c)-1 A (b)(1)(ii)(A) is computed as follows:

Maximum limitation on the marital deduction	$250,000
Reduction under paragraph (a) of this section: $100,000, less the product of: $\frac{\$100,000}{\$300,000} \times \$45,000$	85,000
Limitation adjusted for community property	165,000

The marital deduction will be $165,000 (the greater of one-half the adjusted gross estate ($85,000, see computation in example (1) above) or the limitation set forth in § 20.2056(c)-1A (b)(1)(ii)(A)) if the aggregate value of the deductible interests passing from the decedent to the decedent's surviving spouse equals or exceeds the amount.

Par. 15. Section 20.2056(e)-1 is redesignated 20.2056(c)-1, inserted in the appropriate place, and amended by revising the reference to "§ 20.2056(c)-2" in paragraph (b) to read "§ 20.2056(c)-2A".

Par. 16. Section 20.2056(e)-2 is redesignated 20.2056(c)-2, inserted in the appropriate place, and amended as follows:

a. The first sentence of paragraph (a) is amended by revising the reference to "§ 20.2056(e)-1" to read "§ 20.2056(c)-1".

b. Paragraphs (a)(2) through (a)(5) are redesignated as paragraphs (a)(3) through (a)(6), respectively, and a new paragraph (a)(2) is inserted in the appropriate place to read as set forth below.

c. The first sentence in the flush material following redesignated paragraph (a)(6) is revised to read as set forth below.

d. Paragraphs (b)(1)(iv), (b)(2)(iii) and (b)(3)(v) are amended by revising references to "§ 20.2056(b)-5" and "section 2056(b)(5)" to read "§§ 20.2056(b)-5 or 20.2056(b)-7".

§ 20.2056(c)-2 Marital deduction; definition of "passed from the decedent to his surviving spouse".

(a) *In general.* * * *

(2) In the case of certain interests with income for life to the surviving spouse which the executor elects to treat as qualified terminable interest property (see § 20.2056(b)-7);

* * * * *

(6) * * *

A property interest is considered as passing to the surviving spouse only if it passed to her as beneficial owner, except to the extent otherwise provided in §§ 20.2056(b)-5 through 20.2056(b)-7.

* * * * *

§ 20.2056(e)-3 [Redesignated as § 20.2056(c)-3 and amended]

Par. 17. Section 20.2056(e)-3 is redesignated § 20.2056(c)-3, inserted in the appropriate place, and amended by revising the references therein to "§ 20.2056(e)-1" and "§ 20.2056(e)-2" to read "§ 20.2056(c)-1" and "§ 20.2056(c)-2", respectively.

Par. 18. A new section is added immediately following § 20.2207-1, to read as set forth below.

§ 20.2207A-1 Right of recovery of estate taxes in the case of certain marital deduction property.

(a) *In general.* If the gross estate includes property the value of which is includable in the gross estate by reason of section 2044 (relating to property received by the decedent as qualified terminable interest property under section 2056(b)(7) or 2523(f)), such estate shall be entitled to recover from the "person receiving the property" (as defined in paragraph (d) of this section) the amount of estate tax attributable to that property. There shall be no right of recovery from any person for the portion of property received by that person for which a deduction was allowed from the gross estate, because no tax is attributable to such portion. Failure of an estate to exercise a right of recovery provided by section 2207A upon a transfer subject to section 2044 is treated as a transfer for Federal gift tax purposes of the unrecovered amounts from the persons who would benefit from such transfer to the persons from whom such recovery could have been obtained. See § 25.2511-1. Such transfer is considered as made when such right to recovery is no longer enforceable and is treated as a gift even if recovery is impossible. This paragraph (a) shall not apply to the extent that the decedent's will provides that a recovery shall not be made.

(b) *Amount of estate tax attributable to all such properties.* The amount of estate tax that is attributable to all such properties includable in the gross estate is the amount by which—

(1) The total estate tax (including penalties and interest attributable to the tax) under chapter 11 of the Code which has been paid exceeds

(2) The total estate tax (including penalties and interest attributable to the tax) under chapter 11 of the Code which would have been payable if the value of the properties includable in the gross estate by reason of section 2044 had not been included.

(c) *Amount of estate tax attributable to a particular property.* An estate's right of recovery with respect to a particular property is an amount equal to the amount determined in paragraph (b) of this section multiplied by a fraction. The numerator of the fraction is the value of the particular property included in the gross estate by reason of section 2044 less any deduction allowed for such property. The denominator of the fraction is the total value of all properties included in the gross estate by reason of section 2044 less any deductions allowed with respect to those properties.

(d) *Definition of "person receiving the property."* If the property is in a trust at the time of the decedent's death, the "person receiving the property" is—

(1) The trustee, and

(2) Any person who has received a distribution of the property if the property does not remain in trust.

This paragraph (d) shall not affect the right, if any, under local law, of any person with an interest in property to reimbursement or contribution from another person with an interest in such property.

(e) *Example.* The following example illustrates the application of paragraphs (a) through (d) of this section.

Example. H died in 1982. H's will created a trust funded with certain income producing assets valued in H's estate of $1,000,000. The trust provides that all the income is payable to H's wife, W, for life, remainder to be divided equally among their four children, 25 percent to each. In computing H's gross estate, H's executor deducted, pursuant to section 2056(b)(7), $1,000,000. Assume that W received no other property from H, that W made no section 2519 disposition of the property, that the property was included in W's gross estate during 1983 at a value of $1,080,000, and that W's will contained no provision regarding section 2207A(a). The tax attributable to the property is equal to the amount by which the total estate tax (including penalties and interest) paid for W's estate exceeds the estate tax (including penalties and interest) which would have been paid if W's gross estate had been reduced by $1,080,000. That amount of tax may be recovered by W's estate from the trust. If at the time W's estate seeks reimbursement the trust has been distributed to the four children, W's estate is also entitled to recover the tax from the children.

§ 20.618-3 [Amended]

Par. 19. Paragraph (a) of § 20.6018-3 is amended by substituting "20.2056 (d)-1" for "20.2056 (e)-3" in the second sentence.

PART 25—[AMENDED]

Par. 20. A new § 25.2207A-1 is added under the heading "Determination of Tax Liability" immediately before § 25.2501-1, to read as set forth below.

§ 25.2207A-1 Right of recovery of gift taxes in the case of certain marital deduction property.

(a) *In general.* If a person is treated as transferring an interest in property by reason of section 2519, such person or such person's estate shall be entitled to recover from the "person receiving the property" (as defined in paragraph (d) of this section) the amount of gift tax attributable to that property. The value of property to which this paragraph (a) applies is the value of all interests in such property other than the qualifying income interest. There shall be no right of recovery from any person for the portion of property received by that person for which a deduction was allowed from the total amount of gifts, because no tax is attributable to such portion. Failure of a person to exercise a right of recovery provided by section 2207A upon a lifetime transfer subject to section 2519 is treated as a transfer for Federal gift tax purposes of the unrecovered amounts to the persons from whom such recovery could have been obtained. See § 25.2511-1. Such a transfer is considered as made when such right to recovery is no longer enforceable and is treated as gift even if recovery is impossible. Any delay in the exercise of such right of recovery shall be treated as an interest-free loan with the appropriate gift tax consequences.

(b) *Amount of gift tax attributable to all such properties.* The amount of gift tax that is attributable to all such properties includable in the total amount of gifts made during the calendar year is the amount by which—

(1) The total gift tax for the calendar year (including penalties and interest attributable to the tax) under chapter 12 of the Code which has been paid exceeds

(2) The total gift tax for the calendar year (including penalties and interest attributable to the tax) under chapter 12 of the Code which would have been payable if the value of the properties includable in the total amount of gifts by reason of section 2519 had not been included.

(c) *Amount of gift tax attributable to a particular property.* A person's right of recovery with respect to a particular property is an amount equal to the amount determined in paragraph (b) of this section multiplied by a fraction. The numerator of the fraction is the value of the particular property included in the total amount of gifts made during the calendar year by reason of section 2519 less any deduction allowed for such property. The denominator of the fraction is the total value of all properties included in the total amount of gifts made during the calendar year by reasons of section 2519 less any deductions allowed with respect to those properties.

(d) *Definition of "persons receiving the property."* If the property is in a trust at the time of the transfer, the "person receiving the property" is—

(1) The trustee, and

(2) Any person who has received a distribution of the property if the property does not remain in trust.

This paragraph (d) shall not affect the right, if any, under local law, of any person with an interest in property to reimbursement or contribution from another person with an interest in such property.

(e) *Example.* The following example illustrates the application of paragraphs (a) through (d) of this section.

Example. Assume that H created an inter vivos trust during 1982 with certain income producing assets valued at $1,000,000. The trust provides that all the income is payable to H's wife, W, for life, with the remainder at W's death to be divided equally among their four children, 25 percent to each. In computing taxable gifts during calendar year 1982, H deducted, pursuant to section 2523(f), $1,000,000 from the total amount of gifts made. In addition, assume that W received no other transfer from H and that W made a gift during 1983 of the entire life interest to one of the children, at which time the value of trust assets was $1,080,000 and the value of W's life interest was $200,000. Although the entire value of the trust assets ($1,080,000) is, pursuant to sections 2511 and 2519, included in the total amount of W's gifts for calendar year 1983, W is only entitled to reimbursement for the tax attributable to the value of the remainder interest, that is, the tax attributable to $880,000 ($1,080,000 less $200,000). The tax attributable to $880,000 is equal to the amount by which the total gift tax (including penalties and interest) paid for the calendar year exceeds the gift tax (including penalties and interest) which would have been paid if the total amount of gifts during 1983 had been reduced by $880,000. That amount of tax may be recovered by W from the trust.

Par. 21. Section 25.2515-1 is amended by redesignating paragraph (a) as paragraph (a)(2) and adding a new paragraph (a)(1) as set forth below:

§ 25.2515-1 Tenancies by the entirety; in general.

(a)(1) *Scope.* This section and §§ 25.2515-2 through 25.2515-4 shall have no effect on the creation of a tenancy by the entirety occurring after December 31, 1981, and do not reflect changes made to the Code by sections 702(k)(1)(A) of the Revenue Act of 1978 or section 2002(c)(2) of the Tax Reform Act of 1976.

(2) *Nature of.* * * *

* * * * *

Par. 22. A new § 25.2519-1 is added under the heading "Transfers" immediately following § 25.2517-1, to read as set forth below.

§ 25.2519-1 Dispositions of certain life estates.

(a) *In general.* If a person ("the donee spouse") makes a disposition of all or part of a qualifying income interest for life in any property for which a deduction was allowed under section 2056(b)(7) or section 2523(f) for the transfer creating the qualifying income interest, the donee spouse shall be treated for purposes of chapters 11 and 12 of Subtitle B of the Code as transferring all interests in such property other than the qualifying income interest. For example, if the donee spouse makes a disposition of part of a qualifying income interest for life, such spouse will be treated for purposes of section 2036 as having transferred the portion of the property to which the retained income interest is attributable. The amount treated as a transfer under this section upon a disposition of all or part of a qualifying income interest for life in qualified terminable interest property is equal to the full value of the property subject to the qualifying income interest on the date of the disposition (including any accumulated income and unreduced by any section 2503(b) exclusion that may have been taken for the transfer creating the interest), less the value of the qualifying income interest in such property on the date of the disposition and less the amounts that the spouse is entitled to recover under section 2207A (relating to the right to recover taxes attributable to the remainder interest). If the spouse is entitled to recover taxes under section 2207A, the determination of the amount of taxes recoverable and thus also the determination of the value of the remainder interest treated as transferred under section 2519 are made by using the same interrelated computation applicable for other transfers in which the transferee assumes the gift tax liability (commonly referred to as "net gifts"). The gift tax consequences of the disposition of the qualifying income interest are determined separately under §§ 25.2511-2 and 25.2514-1(b)(2).

(b) *Presumption.* If a donee spouse has a qualifying income interest for life in any property, it shall be presumed that a deduction was taken under section 2056(b)(7) or section 2523(f) upon the transfer which created the donee spouse's interest. To avoid the application of section 2519 upon a transfer of the donee spouse's income

interest, the donee spouse must establish that a deduction was not taken for the transfer of property which created the qualifying income interest.

(c) *Amount treated as a transfer.* If the donee spouse established that upon the transfer of property that created such spouse's qualifying income interest for life, a deduction was taken under section 2056(b)(7) or section 2523(f) for a fractional or percentile share of the entire interest in the property, the amount treated as a transfer by the donee spouse under this section is equal to the fair market value of the entire interest in the property on the date of the disposition multiplied by such fractional or percentile share. However, such share shall be appropriately reduced if—

(1) The donee spouse's interest is in a trust and appointments of principal have been made to the donee spouse, and

(2) The trust provides that the appointments are made from the qualified terminable interest share of the trust, and

(3) The donee spouse can establish to the satisfaction of the district director the reduction in that share based on the fair market value of the trust assets at the time of each appointment.

See example (5) of paragraph (h) of this section. If the donee spouse's interest is in a trust consisting of only qualified terminable interest property, and such trust had been severed (in compliance with § 20.2056(b)–7(b) or § 25.2523(f)–1(b), whichever is applicable) from a trust which also contained property which was not qualified terminable interest property, then only the value of the property in the severed portion of the trust at the time of the disposition shall be treated as transferred under this section. If the donee spouse establishes that upon the transfer of property (including an annuity contract) that created such spouse's lifetime annuity or other income interest, a deduction was taken under section 2056(b)(7) or section 2523(f) for an amount less than the fair market value of the entire property at the time of such transfer, then the amount treated as a transfer by the donee spouse under this section is equal to the fair market value of the entire property (other than the qualifying income interest) on the date of the disposition multiplied by a fraction, the numerator of which is the amount of the deductible interest determined under § 20.2056(b)–7(c)(2) or § 25.2523(f)–1(c)(2), and the denominator of which is the fair market value of the entire property at the time of the transfer creating the donee spouse's annuity or other income interest. See example (6) of paragraph (h) of this section.

(d) *Identification of property transferred.* If only part of the property in which a donee spouse has a qualifying income interest for life is qualified terminable interest property, then the donee spouse shall, in the case of a disposition of the income interest within the meaning of section 2519, be deemed to have transferred a pro rata portion of the property that is qualified terminable interest property. If consideration is received in exchange for the income interest, see section 2512(b) for the determination of the amount of the gift.

(e) *Exercise of power of appointment.* A reduction in the value of the qualified terminable interest property by reason of an exercise by any person of a power to appoint property to a donee spouse is not treated as a disposition under section 2519, even though the donee spouse subsequently disposes of the appointed property.

(f) *Conversion of qualified terminable interest property.* The conversion of property that is qualified terminable interest property into other property in which the donee spouse has a qualifying income interest for life shall not, for purposes of this § 25.2519–1, be treated as a disposition of the qualifying income interest. Thus, the sale and reinvestment of assets of a trust which meets the requirements of qualified terminable interest property will not be considered a disposition of the qualifying income interest, provided that the donee spouse continues to have a qualifying income interest for life in the trust after the sale and reinvestment. Similarly, the sale of real property which meets the requirements of qualified terminable interest property, followed by the transfer of the proceeds into a trust which also meets the requirements of qualified terminable interest property, or by the reinvestment of the proceeds in income producing property in which the donee spouse has a qualifying income interest for life, will not be considered a disposition of the qualifying income interest. On the other hand, the sale of such real property, followed by the payment to the donee spouse of a portion of the proceeds equal to the value of the donee spouse's income interest, will be considered a disposition of the qualifying income interest.

(g) *Right to recover certain taxes paid.* See section 2207A and the regulations under that section for the right of the donee spouse to recover the gift taxes (attributable to a disposition subject to this section) from persons receiving the qualified terminable interest property.

(h) *Examples.* The following examples illustrate the application of principles contained in paragraphs (a) through (g) of this section. Except as provided otherwise, it is assumed in each example that the full amount of the section 2503(b) exclusion has already been utilized for each year with respect to the donee in question; that section 2503 (e) is not applicable to the amount deemed transferred; and that the gift taxes for the amount treated as transferred under section 2519 are offset by the donee spouse's unified credit.

Example (1). Assume that a decedent, D, owned at the time of death a personal residence valued at $250,000 for estate tax purposes; that such property passed under D's will to D's surviving spouse, S, for life and after S's death to D's children; and that D's executor elected to treat that property as qualified terminable interest property on the estate tax return for D's estate. During 1988, S makes a gift of all of S's interest in the property to D's children, at which time the fair market value of the property is $300,000 and the value of S's life interest in the property is $100,000. Pursuant to section 2519, S is treated as making a gift in the amount of $200,000 (which is the fair market value of the qualified terminable interest property less the fair market value of the life interest in such property). In addition, S is treated pursuant to section 2511 as making a gift of $100,000 (which is the fair market value of S's income interest in the property). See §§ 25.2511–2 and 25.2514–1(b)(2).

Example (2). Assume that the facts are the same as in example (1) except that, during 1988, S sells S's interest in the property to D's children for $100,000. Pursuant to section 2519, S is treated as making a gift in the amount of $200,000. S is not treated as making a gift under section 2511, since the consideration received for S's income interest is equal to the value of the income interest.

Example (3). Assume that the will of a decedent, D, established a trust value for estate tax purposes at $500,000, all of the income of which is payable annually to D's surviving spouse, S, for life. After S's death, the corpus of the trust is to be distributed to D's children. Assume that only 50 percent of the trust was treated as qualified terminable interest property. During 1984, S makes a gift of all of S's interest in the trust to D's children, at which time the fair market value of the trust is $400,000 and the fair market value of S's life income interest in the trust is $100,000. Pursuant to section 2519, S is treated as making a gift of $150,000 (which is the fair market value of the qualified terminable interest property, 50 percent of $400,000, less the $50,000 income interest in the qualified terminable interest property). S is also treated pursuant to section 2511 as making a gift of $100,000 (which is the fair market value of S's a life income interest).

Example (4). Assume that the facts are the same as in example (3) except that S makes a gift of only 40 percent of S's interest in the trust. S is treated pursuant to section 2519 as making a gift of $150,000 (which is the fair

market value of the qualified terminable interest property, 50 percent of $400,000, less the $50,000 value of the income interest in the qualified terminable interest property). S is also treated pursuant to section 2511 as making a gift of $40,000 (which is the fair market value of 40 percent of S's life income interest). In addition, under § 25.2519–1(d), S's disposition of 40 percent of the income interest is deemed to have been a transfer of a pro rata portion of the property that is qualified terminable interest property. Thus, 30 percent (60 percent of 50 percent) of the trust property will be included in S's gross estate under section 2036.

Example (5). Assume that the facts are the same as in example (4) except that D's will gives the trustee the authority to appoint principal to the surviving spouse and provides that the appointments of principal will be made from the qualified terminable interest share first. Assume that the trustee makes only one appointment of principal to the spouse in the amount of $50,000 during 1983 when the value of the trust was $550,000. Immediately prior to the appointment, the qualified terminable interest portion of the trust was 50 percent ($275,000 of the $550,000). As in example (4), assume that the value of the trust at the time of S's 1984 disposition is $400,000 and the fair market value of S's income interest is $100,000. Provided S can establish to the satisfaction of the district director the above facts, the qualified terminable interest portion of the trust immediately after the appointment became 45 percent ($225,000 divided by $500,000). Thus, when S makes the disposition during 1984, S would be treated pursuant to section 2519 as making a gift of $135,000 (which is the fair market value of the qualified terminable interest property, 45 percent of $400,000, less the value of the income interest in the qualified terminable interest property, $45,000). S is also treated pursuant to section 2511 as making a gift of $40,000 (which is the fair market value of 40 percent of S's income interest). In addition, under § 25.2519–1(d), S's disposition of 40 percent of the income interest is deemed to have been a transfer of a pro rate portion of the property that is qualified terminable interest property. Thus, 27 percent (60 percent of 45 percent) of the trust property will be included in S's gross estate under section 2036.

Example (6). D died in 1983. D's will established a trust valued for estate tax purposes at $500,000. The trust instrument required the trustee to pay an annuity to D's surviving spouse, S, of $20,000 a year for life. All of the trust income other than the amounts paid to S as an annuity are to be accumulated in the trust and may not be distributed during S's lifetime to any person other than S. After S's death, the corpus of the trust is to be distributed to D's children. Under § 20.2056(b)–7(c)(2), 40 percent of the property, or $200,000 was treated as the deductible interest. During 1988, S makes a gift of the annuity interest to D's children at which time the fair market value of the trust is $800,000, and the fair market value of S's annuity interest in the trust is $100,000. Pursuant to section 2519, S is treated as making a gift of $220,000 (which is the fair market value of the qualified terminable interest property, 40 percent of $800,000, less the $100,000 annuity interest in the qualified terminable interest property). S is also treated pursuant to section 2511 as making a gift of $100,000 (which is the fair market value of S's annuity interest).

Par. 23. A new § 25.2522(c)–4 is added immediately following § 25.2522(c)–3, to read as set forth below.

§ 25.2522(c)–4 Disallowance of double deduction in the case of terminable interest property.

No deduction shall be allowed for property under section 2522 if a deduction is taken from the "total amount of gifts" with respect to that property by reason of section 2523(f). See section 2523(h).

Par. 24. Section 25.2523(a)–1 is amended as follows:

a. The first sentence of paragraph (a) is revised to read as set forth below.

b. The first sentence of paragraph (b)(3)(ii) is revised to read as set forth below.

c. Paragraphs (c) and (d) are redesignated as paragraphs (d) and (e), respectively, and a new paragraph (c) is added to read as set forth below.

d. Paragraph (d) as redesignated by this document is amended by removing the heading thereof and inserting in its place the heading "*Examples.*", by removing the first three sentences and inserting a new sentence in their place to read as set forth below, and by adding a new example (8), immediately after example (7), to read as set forth below.

e. Paragraph (e) as redesignated by this document is amended by revising the first sentence to read as set forth below.

§ 25.2523(a)–1 Gift to spouse; in general.

(a) *In general.* In determining the amount of taxable gifts for the calendar quarter (with respect to gifts made after December 31, 1970, and before January 1, 1982), or calendar year (with respect to gifts made before January 1, 1971, or after December 31, 1981), a donor who was a citizen or resident of the United States at the time the gift was made, may deduct the value of any property interest transferred by gift to a donee who at the time of the gift was the donor's spouse, except as limited by paragraphs (b) and (c) of this section. * * *

(b) *"Deductible interests" and "nondeductible interests"* * * *

(3) *"Nondeductible interests".* * * *

(ii) Any property interest transferred by a donor to the donor's spouse is a "nondeductible interest" to the extent it is not required to be included in a gift tax return for a calendar quarter (for gifts made after December 31, 1970, and before January 1, 1982) or calendar year (for gifts made before January 1, 1971, or after December 31, 1981). * * *

(c) *Computation*—(1) *In general.* The amount of the marital deduction will depend upon when the interspousal gifts are made, whether the gifts are terminable interests, whether the limitations of § 25.2523(f)–1A (relating to gifts of community property) are applicable, and whether § 25.2523(f)–1 (relating to the election with respect to life estates) is applicable.

(2) *Gifts prior to January 1, 1977.* Generally, with respect to gifts made during a calendar quarter prior to January 1, 1977, the marital deduction allowable under section 2523 is 50 percent of the aggregate value of the deductible interests. But see section 2524 for an additional limitation on the amount of the deduction which may be taken.

(3) *Gifts after December 31, 1976, and before January 1, 1982.* Generally, with respect to gifts transferred during a calendar quarter beginning after December 31, 1976, and ending prior to January 1, 1982, the marital deduction allowable under section 2523 is computed as a percentage of the deductible interest in those gifts. If the aggregate amount of deductions for such gifts is $100,000 or less, the deduction is 100 percent. The deduction is zero percent of the next $100,000 of deductible interests in such gifts and 50 percent thereafter. If a donor remarries, the computations in this paragraph (c)(3) shall be made on the basis of aggregate gifts to all persons who at the time of such gifts were the donor's spouse. See section 2524 for an additional limitation on the amount of deduction which may be taken.

(4) *Gifts after December 31, 1981.* Generally, with respect to gifts transferred during a calendar year beginning after December 31, 1981, the marital deduction allowable under section 2523 shall be 100 percent of the aggregate value of the deductible interests. See section 2524 for an additional limitation on the amount of deductions which may be taken.

(d) *Examples.* The following examples (in which it is assumed that the donors have previously utilized any specific exemptions provided by section 2521 for gifts prior to January 1, 1977) illustrate the application of paragraph (c) of this section and the interrelationship of sections 2523 and 2503.

* * * * *

Example (8). A donor made a transfer by gift to the donor's spouse of $200,000 cash on

January 1, 1982. The donor made no other transfers during 1982. For calendar year 1982, the amount excluded under section 2503(b) is $10,000; the marital deduction is $190,000; and the amount of taxable gifts is zero ($200,000 − $10,000 (annual exclusion) − $190,000 (marital deduction)).

(e) *Valuation.* If the income from property is made payable to the donor or another individual for life, or for a term of years, with remainder absolutely to the donor's spouse or to the estate of the donor's spouse, the marital deduction shall be computed (pursuant to § 25.2523(a)–1(c)) with respect to the present value of the remainder. * * *

Par. 25. Section 25.2523(b)–1 is amended as follows:

a. Paragraph (a)(1) is revised to read as set forth below.

b. Paragraph (b)(3) is amended by substituting "§ 25.2523(e)–1 or 25.2523(f)–1" for "§ 25.2523(e)–1" in the first sentence thereof, and by revising the fifth sentence (the sentence immediately before the examples) to read as set forth below.

c. The second sentence of paragraph (b)(6), which is the sentence immediately prior to the examples, is revised to read as set forth below.

d. The second sentence of paragraph (c)(2), which is the sentence immediately prior to the example, is revised to read as set forth below.

§ 25.2523(b)–1 Life estate or other terminable interest.

(a) *In general.*—(1) The provisions of section 2523(b) generally prevent the allowance of the marital deduction with respect to certain property interests (referred to generally as "terminable interests" and defined in paragraph (a)(3) of this section) transferred to the donee spouse under the circumstances described in paragraph (a)(2) of this section, unless the transfer comes within one of the exceptions set forth in § 25.2523(d)–1, relating to certain joint interests; § 25.2523(e)–1. relating to certain life estates with powers of appointment; § 25.2523(f)–1, relating to certain qualified terminable interest property; or § 25.2523(g)–1. relating o certain qualified charitable remainder trusts.

* * * * *

(b) *Interest in property which another donee may posssess or enjoy.* * * *

(3) * * * The following examples, in which it is assumed that the donor did not make an election under sections 2523 (f)(2)(c) and (f)(4), illustrate the application of the provisions of this paragraph (b)(3).

* * * * *

(6) * * * In each example it is assumed that the donor made no election under section 2523 (f)(2)(C) and (f)(4) and that the property interest which the donor transferred to a person other than the donee spouse was not transferred for an adequate and full consideration in money or money's worth:

* * * * *

(c) *Interest in property which the donor may possess or enjoy.* * * *

(2) * * * The application of this paragraph may be further illustrated by the following example, in which it is assumed that the donor made no election under sections 2523 (f)(2)(C) and (f)(4).

* * * * *

Par. 26. The first sentence of paragraph (c) of § 25.2523(c)–1 is removed and three new sentences are inserted in its place, to read as set forth below.

§ 25.2523(c)–(1) Interest in unidentified assets.

* * * * *

(c) If both the circumstances in paragraph (b) of this section exist, only a portion of the property interest passing to the spouse is a deductible interest. The portion qualifying as a deductible interest is an amount equal to the excess, if any, of the value of the property interest passing to the spouse over the aggregate value of the asset (or assets) which if transferred to the spouse would not qualify for the marital deduction. See paragraph (c) of § 25.2523(a)–1 to determine the percentage of the deductible interest allowable as a marital deduction. * * *

Par. 27. The third sentence of § 25.2523(d)–1 is revised to read as set forth below.

§ 25.2523(d)–1 Joint interests.

* * * Thus, if the donor purchased real property in the name of the donor and donor's spouse as tenants by the entirety, or as joint tenants with rights of survivorship and, pursuant to the provisions of section 2515(c), elected to treat such transaction as a completed gift, a marital deduction is allowable with respect to the value of the interest of the donee spouse in such property (subject to the limitations set forth in § 25.2523(a)–1).* * *

Par. 28. Paragraph (c) of § 25.2523 (e)–1 is revised to read as set forth below.

§ 25.2523(e)–1 Martial deduction; life estate with power of appointment in donee spouse.

* * * * *

(c) *Meaning of "specific portion"*—(1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, a partial interest in property is not treated as a specific portion of the entire interest. In addition, any specific portion of an entire interest in property is nondeductible to the extent such specific portion is subject to invasion for the benefit of any person other than the donee spouse, except in the case of a deduction allowable under section 2523(e), relating to invasions by the donee spouse in the exercise of a general power of appointment.

(2) A partial interest in property is treated as a specific portion of the entire interest if the rights of the donee spouse in income and the required rights as to the power described in § 25.2523(e)–1(a) constitute a fractional or percentile share of a property interest so that such interest or share in the donee spouse reflects its proportionate share of the increment or decline in the whole of the property interest to which the income rights and the power relate. Thus, if the right of the spouse to income and the power extend to a specified fraction or percentage of the property, or the equivalent, the interest is considered as a specific portion.

(3) a specific sum payable annually or at more frequent intervals out of the property and its income that is not limited by the income of the property will be treated as a right to the income of a specific portion of the property. However, no deduction will be allowable under section 2523(e) except to the extent the donee spouse has the required power of appointment over a fractional or percentile share of the property. The deductible interest, for purposes of § 25.2523 (a)–1 (b)(2), is the specific portion of property that, assuming the interest rate generally applicable for the valuation of annuities at the time of the transfer to the donee spouse, would produce income equal to such specific annual payment. However, such specific sum payable to a donee spouse will not be treated as a right to the income of a specific portion of the property for purposes of this paragraph (c) (3), if any person other than the donee spouse may receive, during the donee spouse's lifetime, and distribution of the property or its income out of which the donee spouse's payments are made. To determine the applicable interest rate, see section 2031 and the regulations under that section.

(4) A partial interest in propety is treated as a specific portion of the entire interest if it is shown that the donee spouse has rights under local law which are identical to those he or she would have acquired had the size of the share been expressed in terms satisfying the

requirements of either paragraph (c)(2) or paragraph (c)(3) of this section.

(5) The following examples illustrate the application of paragraphs (a) through (c)(4) of this section.

Example (1). The donor, D, transferred to a trustee 500 identical shares of X company stock. D provided that during the lifetime of D's spouse, S, the trustee should pay S annually one-half of the trust income or $6,000, whichever is the larger. All of the trust income other than amounts paid to S are to be accumulated in the trust and may not be distributed during S's lifetime to any person other than S. S was also given a general power of appointment exercisable by S's last will over all the trust corpus. For purposes of paragraphs (a) and (b) of this section, S shall be considered as receiving the greater of (i) all the income from one-half of the entire interest in the stock or (ii) the specific portion of the stock which under §25.2523 (e)–1 (c)(3) is determined to be the portion required to produce annual income equal to $6,000.

Example (2). Assume that the facts are the same as in example (1) except that S's testamentary general power of appointment is exercisable over only one-fourth of the trust corpus and D does not elect to treat the trust property as qualified terminable interest property under § 25.2523 (f)–1 (b). Consequently, the marital deduction is only allowed for one-fourth of the trust (the lesser of the portion determined in example (1) or one-fourth of the trust).

Example (3). Assume that the facts are the same as in example (1) except that S's testamentary general power of appointment is exercisable over the sum of $160,000 and D does not elect to treat the trust property as qualified terminable interest property under § 25.2523 (f)–1 (b). Inasmuch as there is no certainty as to what portion of the stock will be valued at $160,000 on S's death, the power of appointment over $160,000 is not considered as a power of appointment over a specific portion of the entire interest. Thus, no marital deduction is allowed.

Example (4). The donor, D, transferred by gift to a trustee an office building and 250 identical shares of Y company stock. D provided that during the lifetime of D's spouse, S, the trustee should pay S annually three-fourths of the trust income. S was given a general power of appointment exercisable by will over the office building and 100 shares of stock. By the terms of D's gift, S is given all the income from a definite fraction of the entire interest in the office building and in the stock. However, since the amount of property represented by a single share of stock would be altered if the corporation split its stock, issued stock dividends, made a distribution of capital, etc., a power to appoint 100 shares at the time of S's death is not the same necessarily as a power to appoint 100/250 of the entire interest which the 250 shares represented on the date of D's gift. If it is shown in this case that under local law S has a general power to appoint not only the 100 shares designated by D, but also 100/250 of any shares or amounts that are distributed by the corporation and included in the corpus, the requirements of paragraph (c)(2) of this section will be satisfied and S will be considered as having a general power to appoint 100/250 of the entire interest in the 250 shares.

* * * * *

Par. 29. Section 25.2523(f)–1 is redesignated as § 25.2523(f)–1A and amended as follows:

a. The heading of the redesignated section is revised to read as set forth below.

b. The first sentence of paragraph (a) is revised to read as set forth below.

§ 25.2523(f)–1A Special rule applicable to community property transferred prior to January 1, 1982.

(a) *In general.* With respect to gifts made prior to January 1, 1982, the marital deduction is allowable with respect to any transfer by a donor to the donor's spouse only to the extent that the transfer can be shown to represent a gift or property which was not, at the time of the gift, held as "community property," as defined in paragraph (b) of this section. * * *

* * * * * *

Par. 30. New §§ 25.2523(f)–1 and 25.2523(g)–1 are added to read as follows:

§ 25.2523(f)–1 Election with respect to life estate for donee spouse.

(a) *In general.* With respect to gifts made after December 31, 1981, section 2523(f) provides that a marital deduction is allowed under section 2523(a) for "qualified terminable interest property," subject to the condition set forth in section 2523(b)(2). That is, if the donor retains a power described in section 2523(b)(2) to appoint an interest in qualified terminable interest property, a deduction shall not be allowed under section 2523 (a) for such qualified terminable interest property. All of the property for which a deduction is allowed under this paragraph (a) shall be treated as passing to the donee spouse (for purposes of § 25.2523(a)–1) and no part of such property shall be treated as passing to any person other than the donee spouse (for purposes of § 25.2523(b)–1(b)).

(b) *Qualified terminable interest property defined.* For purposes of this section, the term "qualified terminable interest property" means property—

(1) Which is transferred by the donor spouse,

(2) In which the donee spouse has a "qualifying income interest for life" as defined in paragraph (c) of this seciton, and

(3) Which the donor spouse elects to treat as qualified terminable interest property.

For purposes of this section, the term "property" generally means an "entire interest in property" (within the meaning of § 25.2523(e)–1(d)) or a "specific portion of the entire interest" (within the meaning of § 25.2523(e)–1(c)). To have a valid election under paragraph (b)(3) of this section, the election shall be made on the return of tax imposed by section 2501 for the calendar year in which the interest was transferred and shall be made no later than the first April 15th following the calendar year during which the interest was transferred. For purposes of this paragraph (b), the term "return of tax imposed by section 2501" means the last gift tax return filed on or before the due date of the return. The election, once made, is irrevocable. The election may relate to all or any part of property that meets the requirements of paragraphs (b) (1) and (2) of this section, provided that any partial election shall relate to a fractional or percentile share of the property so that the elective part will reflect its proportionate share of the increment or decline in the whole of the property for purposes of applying sections 2044 or 2519. Thus, if the interest of the donee spouse in a trust (or other property in which the spouse has a life estate) meets the requirements of paragraphs (b) (1) and (2) of this section, the election may be made under paragraph (b)(3) with respect to a part of the trust (or other property) only if the election relates to a defined fraction or percentage of the entire trust (or other property) or specific portion thereof within the meaning of § 20.2056(b)–5(c). The fraction or percentage may be defined by means of a formula. If the interest of the donee spouse in a trust meets the requirements of paragraphs (b) (1) and (2) of this section, the trust may be divided into separate trusts to reflect a partial election that has been made or is to be made. If a trust is severed, it must be clear, by virtue of the duties imposed on the fiduciary either by applicable state law or by the express or implied provisions of the instrument governing the trust, that the fiduciary must divide the trust according to the fair market value of the assets of the trust at the time of the division.

(c) *Qualifying income interest for life defined*—(1) *In general.* For purposes of this section, the trem "qualifying income interest for life" means—

(i) The donee spouse is entitled for life to all the income form the property, payable annually or at more frequent intervals, and

(ii) No person (including the donee spouse) has a power, other than a power the exercise of which takes effect only at or after the donee spouse's death, to

appoint any part of the property to any person other than the donee spouse.

In general, the principal outlined in § 25.2523(e)–1(f), relating to whether the spouse is entitled for life to all of the income from the entire interest or a specific portion of the entire interest, are applicable in determining whether the donee spouse is entitled for life to all the income from the property, regardless of whether the interest passing to the donee spouse is in trust. An income interest granted for a term of years, or a life estate subject to termination upon the occurence of a specified event (*e.g.*, divorce), is not a qualifying income interest for life. On the other hand, an income interest will not fail to constitute a qualifying income interest for life solely because income for the period between the last distribution date and the date of the donee spouse's death is not required to be distributed to the donee spouse's estate. See § 20.2044–1 relating to the inclusion of such undistributed income in the donee spouse's gross estate. The fact that property (income or corpus) distributed to a spouse may be transferred by such spouse to another person does not result in a failure to satisfy the requirement of paragraph (c)(1)(ii) of this section. However, if the governing instrument requires the donee spouse to transfer the distributed property to another person without full and adequate consideration in money or money's worth, the requirement of paragraph (c)(1)(ii) of this section is not satisfied.

(2) *Annuities.* In general, a donee spouse's lifetime annuity interest shall be treated as a qualifying income interest for life for purposes of section 2523(f)(3). The deductible interest, for purposes of § 25.2523(a)–1(c)(4), is the specific portion of the property (including an annuity contract) that, assuming the interest rate generally applicable for the valuation of annuities at the time of the transfer creating the annuity interest, would produce income equal to the minimum amount payable annually to the donee spouse for life. In no case may the value of the deductible interest exceed the value of the property out of which the annuity is paid. If the annual payment may increase, the annuity interest will not be disqualified, but the increased amount shall not be taken into account in valuing the deductible interest. However, an annuity interest will not be treated as a qualifying income interest for life for purposes of section 2523(f)(3), if any person other than the donee spouse may receive, during the donee spouse's lifetime, any distribution of the property or its income (including any distribution under an annuity contract) out of which the annuity is payable. To determine the applicable interest rate for valuing annuities, see section 2031 and regulations under that section. If, assuming such interest rate, the entire property from which the annuity may be satisfied is insufficient to produce income equal to the minimum annual payment, the value of the deductible interest is the entire value of such property.

(d) *Treatment of interest retained by the donor spouse*—(1) *In general.* In the case of any retained interest in qualified terminable interest property, such property shall not be includable in the gross estate of the donor spouse, and any subsequent transfer by the donor spouse of an interest in such property shall not be treated as a transfer for gift tax purposes.

(2) *Exception.* Paragraph (d)(1) of this section shall not apply with respect to any property after the donee spouse is treated as having transferred such property under section 2519, or after such property is includable in the donee spouse's gross estate under section 2044.

(3) *Application of local law.* The provisions of local law shall be taken into account in determining whether or not the conditions of paragraphs (b) and (c) of this section are satisfied. For example, silence of a trust instrument as to the frequency of payment will not be regarded as a failure to satisfy the condition in paragraph (c) of this section that the income must be payable to the donee spouse annually or more frequently, unless the applicable law permits payment to be made less frequently than annually.

(f) *Examples.* The following examples illustrate the application of paragraphs (a) through (c) of this section.

Example (1). A owns a personal residence valued at $250,000 for gift tax purposes. On January 1, 1982 A transfers the residence by gift to A's spouse, S, and A's children. The exclusive and unrestricted right to use such property (including the right to continue to occupy the property as a personal residence or rent such property and receive the income) is transferred to A's spouse, S, for life. After S's death the property is to pass to A's children. If A elects to treat all of such property as qualified terminable interest property, the deductible interest is the value of such property for gift tax purposes, $250,000.

Example (2). Assume that the facts are the same as in example (1) except that the property is a recently planted tree farm which is not expected to be income producing for 20 years. In addition, assume that S is 70 years old at the time of the transfer, and that applicable local law does not require or permit S to require the conversion of the property into a productive asset within a reasonable time after the transfer. S does not have a qualifying income interest for life because the gift does not give S that degree of beneficial enjoyment during S's life which the principles of the law of trusts accord to a person who is unqualifiedly designated as the life beneficiary of a trust. See § 25.2523(e)–1(f). Therefore, no deduction for the bequest is allowable under section 2523 (f).

Example (3). Assume that A establishes a trust which is funded on January 1, 1982, with property valued at $500,000 for gift tax purposes. The assets used to fund the trust include both income producing assets and nonproductive assets. A's spouse, S, is given the right exercisable annually to require distribution of all the trust income to S. There is no power to distribute trust property during S's lifetime to any person other than S. Applicable State law permits S to require that the trustee either make the trust property productive or sell the property and reinvest in productive property within a reasonable time. If A elects to treat all of the trust as qualifed terminable interest property, the deductible interest is $500,000. If A elects to treat only 20 percent of the trust as qualified terminable interest property, the deductible interest is only $100,000, that is, $500,000 multiplied by 20 percent.

Example (4). Assume that the facts are the same as in example (3) except that S is given the right exercisable annually to require distribution to herself or himself of only 50 percent of the trust income for life. The other 50 percent of the trust income is to be distributed among S and A's children in the trustee's discretion or accumulated. If A elects to treat the entire portion of the trust in which S has a qualifying income interest as qualified terminable interest property, the deductible interest is $250,000, which is the value of the trust for gift tax purposes ($500,000) multiplied by the spouse's percentile share of the trust income (50 percent). If A elects to treat only 20 percent of the portion of the trust in which S has a qualifying income interest as qualified terminable interest property, the deductible interest is only $50,000, that is, $250,000 multiplied by 20 percent.

Example (5). Assume that the facts are the same as in example (3) except that the trustee is given the power to use annually $5,000 from the trust for the maintenance and support of X. S does not have a qualifying income interest for life in any portion of the trust because the gift fails to satisfy the condition set forth in § 25.2523(f)–1(c)(1)(ii), which is the condition that no person have a power, other than a power the exercise of which takes effect only at or after S's death, to appoint any part of the property to any person other than S. The trust would also be nondeductible under section 2523(f) if S, rather than the trustee, were given the power to appoint a portion of the corpus to X.

Example (6). Assume that the facts are the same as in example (3) except that, upon divorce, S's interest in the trust will pass to X. The trust is not deductible under section 2523(f). S's income interest is not a "qualifying income interest for life" because it is not for life, but rather is terminable upon S's divorce.

Example (7). Assume that B establishes a trust which is funded on January 1, 1984, with income producing property valued at $800,000 for gift tax purposes. The trustee is required by the trust instrument to pay $40,000 a year to B's wife, S, for life. The rest of the income from the trust is to be accumulated in the trust and may not be distributed during S's lifetime to any person other than S. S's lifetime annuity interest is treated as a qualifying income interest for life. If B elects to treat the entire portion of the trust in which S has a qualifying income interest as qualified terminable interest property, the value of the deductible interest is $400,000, since such amount would yield an income to S of $40,000 a year (assuming a 10 percent interest rate applies in valuing annuities).

Example (8). Assume the same facts as in example (7), except that the trustee is required to pay S $100,000 a year for life. If B elects to treat the entire portion of the trust in which S has a qualifying income interest for life as qualified terminable interest property, the value of the deductible interest is $800,000, which is the lesser of the entire value of the property ($800,000), or the amount of property that (assuming a 10 percent interest rate) would yield an income to S of $100,000 a year ($1,000,000).

Example (9). Assume that A transfers $200,000 on January 1, 1982, to a pooled income fund, within the meaning of section 642(c)(5), designating his wife as the income beneficiary for her life. If A elects to treat the entire $200,000 as qualified terminable interest property, the deductible interest is $200,000.

§ 25.2523(g)-1 Special rule for charitable remainder trusts.

With respect to gifts made after December 31, 1981, section 2523(g) provides that if the spouse of the donor is the only noncharitable beneficiary (other than the donor) of a charitable remainder annuity trust or charitable remainder unitrust described in section 664 (qualified charitable remainder trust), section 2523(b) shall not apply to any interest in such trust which is transferred to the donee spouse. Thus, the donor will receive a charitable deduction under section 2522 for the value of the remainder interest and a marital deduction under section 2523(g) for the value of the annuity or unitrust interest. A marital deduction for the value of the donee spouse's annuity or unitrust interest in a qualified charitable remainder trust is allowable only under section 2523(g). No marital deduction is allowable for any portion of a qualified charitable remainder trust under section 2523(f). The donee spouse's interest need not be an interest for life. For purposes of this section, the term "noncharitable beneficiary" means any beneficiary of the qualified charitable remainder trust other than an organization described in section 170(c). A deduction will not be denied under this section by reason of the transfer to the donee spouse being conditioned on the payment of state taxes, if any, attributable to the qualified charitable remainder trust.

Par. 31. Section 25.6019–1 is amended as follows:

a. The first 7 sentences of paragraph (a) are removed and six new sentences are added in their place, to read as set forth below.

b. The last sentence of paragraph (a) is removed.

c. Paragraph (b) is removed.

d. Paragraphs (c) and (d) are redesignated as paragraphs (b) and (c), respectively.

§ 25.6019–1 Persons required to file returns.

(a) In *general.* Any individual citizen or resident of the United States who in any calendar year beginning after December 31, 1981, makes any transfer by gift other than—

(1) A transfer which under section 2503 (b) or (e) (relating, respectively, to certain gifts of $10,000 per donee and the exclusion for educational and medical expenses) is not to be included in the total amount of gifts for such year, or

(2) A transfer of an interest with respect to which a marital deduction is allowed for the value of the entire interest under section 2523 (other than a marital deduction allowed by reason of section 2523(f) regarding qualified terminable interest property).

shall file a gift tax return on Form 709 for such year. Any individual citizen or resident of the United States who makes a transfer by gift within any calendar year beginning after December 31, 1976, and before January 1, 1982, must file a gift tax return on Form 709 for any calendar quarter in which the sum of the taxable gifts made during such calendar quarter plus all other taxable gifts made during the year (for which a return has not yet been required to be filed) exceeds $25,000. For all transfers made in a calendar year after 1976, and before 1982, which are subject to the gift tax filing requirements but when aggregated do not exceed $25,000 in taxable gifts, a return need only be filed by the filing date for gifts made in the fourth quarter of such calendar year. Any individual citizen or resident of the United States who makes a transfer by gift within any calendar year beginning after December 31, 1970, and before January 1, 1977, must file a gift tax return on Form 709 for the calendar quarter in which any portion of the value of the gift or any portion of the sum of the values of the gifts to such donee during that calendar year is not excluded from the total amount of taxable gifts for such year, and for any subsequent quarter within the same taxable year in which any additional gift is made to the same donee. The rules contained in this section also apply to a nonresident not a citizen of the United States provided that under § 25.2511–3 the transfer is subject to the gift tax. The return is required even though because of the deduction authorized by section 2522 (charitable, etc., deduction) no tax may be payable. * * *

* * * * *

Par. 32. Section 25.6019–2 is revised to read as set forth below.

§ 25.6019–2 Returns required in case of consent under section 2513.

Except as otherwise provided in this section, the provisions of § 25.6019–1 are applicable with respect to the filing of a gift tax return or returns in the case of a husband and wife who consent (see § 25.2513–1) to the application of section 2513. In such a case, if both of the consenting spouses are (without regard to the provisions of section 2513) required under the provisions of § 25.6019–1 to file returns, returns must be filed by both spouses. If only one of the consenting spouses is (without regard to the provisions of section 2513) required under § 25.6019–1 to file a return, a return must be filed by that spouse. In the latter case, if after giving effect to the provisions of section 2513 the other spouse is considered to have made any gift not excluded from the total amount of such other spouse's gifts for the taxable year by section 2503 (b) or (e) (relating, respectively, to certain gifts of $10,000 per donee and the exclusion for certain educational or medical expenses), then a return must also be filed by such other spouse. Thus, if during a calendar year beginning after December 31, 1981, the husband made a gift of $18,000 to a son (the gift not being either a future interest in property or an amount excluded under section 2503(e)) and the wife made no gifts, only the husband is required to file a return for such calendar year. However, if the wife had made a gift in excess of $2,000 to the same son during the same calendar year, or if the gift made by the husband had amounted to $21,000, each spouse would be required to file a return if the consent is signified as provided in section 2513.

Par. 33. Section 25.6019–3 is amended as follows:

a. The first sentence in paragraph (a) is revised to read as set forth below.

b. The second sentence in paragraph (b) is revised to read as set forth below.

§ 25.6019–3 Contents of return.

(a) *In general.* The return shall set forth: (1) each gift made during the calendar year (or calendar quarter with respect to gifts made after December 31, 1970 and before January 1, 1982) which under sections 2511 through 2515 is to be included in computing taxable gifts; (2) the deductions claimed and allowable under sections 2521 through 2524; and (3) the taxable gifts made for each of the preceding calendar years (and calendar quarters with respect to gifts made after December 31, 1970, and before January 1, 1982. * * *

(b) *Disclosure of transfers coming within provisions of sections 2516.* * * * In any case where a husband and wife enter into a written agreement of the type contemplated by section 2516, and the final decree of divorce is not granted on or before the due date for the filing of a gift tax return for the calendar year (or calendar quarter with respect to periods beginning after December 31, 1970, and ending before January 1, 1982) in which the agreement became effective (see § 25.6075–1), then except to the extent § 25.6019–1 provides otherwise, the transfer shall be disclosed by the transferor upon a gift tax return filed for the calendar year (or calendar quarter) in which the agreement became effect and a copy of the agreement shall be attached to the return. * * *

Par. 34. The first sentence of § 25.6019–4 is revised to read as set forth below. § 25.6019–1

§ 25.6019–4 Description of property listed in return.

The properties comprising the gifts made during the calendar year (or calendar quarter with respect to gifts made after December 31, 1970, and before January 1, 1982) shall be listed on the return and shall be described in such a manner that they may be readily identified. * * *

Dated: May 11, 1984.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 84–13523 Filed 5–16–84; 12:22 pm]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 145

[WH–FRL–2591–8]

South Dakota Department of Water and Natural Resources Underground Injection Control Primacy Application

AGENCY: Environmental Protection Agency.

ACTION: Notice of Public Comment Period and of Public Hearing.

SUMMARY: The purpose of this notice is to announce that: (1) the Environmental Protection Agency (EPA) has received a complete application from the South Dakota Department of Water and Natural Resources (SDDWNR) requesting primary enforcement responsibility for the Underground Injection Control (UIC) Program; (2) the application is now available for inspection and copying; (3) public comments are requested; and (4) a public hearing will be held.

The proposed comment period will provide EPA the breadth of information and public opinion necessary to approve, disapprove, or approve in part and disapprove in part the application of the SDDWNR to regulate Class II oil and natural gas related injection wells in the State.

DATES: Requests to hold a public hearing and present oral testimony should be filed by June 15, 1984. The Public Hearing will be held on 21 June, 1984 in two sessions: 10:00 a.m. and 7:00 p.m. If sufficient public interest in holding the hearing is not expressed by June 15, 1984, EPA reserves the right to cancel the hearing pursuant to the provisions of 40 CFR 145.31(c). If the hearing is cancelled, those persons having expressed interest in attending the hearing will be notified of the cancellation. Written comments can be made regardless of whether a hearing is held.

ADDRESSES: Comments and requests to testify should be mailed to Patrick A. Crotty, Drinking Water Branch, Environmental Protection Agency, Region VIII, 1860 Lincoln Street, Denver, Colorado 80295. Copies of the application and pertinent material are available between 8:30 a.m. and 4:00 p.m., Monday through Friday at the following locations:

Environmental Protection Agency, Drinking Water Branch, 6th Floor, 1860 Lincoln Street, Denver, Colorado 80295 PH: (303) 837–2731

Western Field Office, South Dakota Oil and Gas Conservation Commission, Oil and Gas Section, 36 East Chicago Avenue, Rapid City, South Dakota 57701 PH: (605) 394–2229

South Dakota Department of Water and Natural Resources, Joe Foss Building, Room 408, Pierre, South Dakota 57501. PH: (605) 773–3754

The hearing will be held in the Sigurd Anderson Building, Game Fish and Parks Conference Room, Pierre, South Dakota.

FOR FURTHER INFORMATION CONTACT: Patrick Crotty or Wes Wilson, Ground Water Section, Drinking Water Branch, Environmental Protection Agency, Region VIII, 1860 Lincoln Street, Denver, Colorado 80295, (303) 837–2731, or Marck Steichen or Garland Erbele, Drinking Water Section, South Dakota Department of Natural Resources, Joe Foss Building, Pierre, South Dakota 57501, (605) 773–3754.

SUPPLEMENTARY INFORMATION: The Underground Injection Control (UIC) program seeks to protect as "underground sources of drinking water" (USDWs) all aquifers capable of yielding a significant amount of water containing less than 10,000 mg/1 of total dissolved solids. This application from the South Dakota Department of Water and Natural Resources is for the regulation of all Class II oil and natural gas related injection wells in the State. Class II injection wells include those which inject fluids: (1) which have been brought to the surface in connection with conventional oil and natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations unless those waters are classified as a hazardous waste at the time of injection; (2) for enhanced recovery of oil or natural gas; and (3) for storage of hydrocarbons which are liquid at standard temperature and pressure. At present, the State of South Dakota has eight Class II wells.

The terms listed below comprise a complete listing of the thesaurus terms associated with 40 CFR Part 145, which sets forth the requirements for a State requesting the authority to operate its own permit program of which the Underground Injection Control program is a part. These terms may not all apply to this particular notice.

List of Subjects in 40 CFR Part 145

Hazardous materials, Indians—lands, Reporting and recordkeeping, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

This application from the South Dakota Department of Water and Natural Resources is for the regulation of all Class II injection wells in the State. The application includes a description of the State Underground Injection Control Program, copies of all applicable statutes and rules, a statement of legal authority and a proposed memorandum of agreement between the South Dakota Department of Water and Natural Resources and the Region VIII office of the Environmental Protection Agency.

Dated: May 15, 1984.

Jack E. Ravan,

Assistant Administrator for Water.

[FR Doc. 84–13563 Filed 5–18–84; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 765

[OPTS-42056; TSH-FLR 2569-5]

Methylolurea and Urea-Formaldehyde Resins; Response to the Interagency Testing Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking (ANPR).

SUMMARY: This ANPR is EPA's response to the Interagency Testing Committee's (ITC) designation of methylolurea for priority consideration for health effects testing. The ITC did not recommend chemical fate or environmental effects testing of methylolurea. EPA has tentatively concluded that health effects testing for urea-formaldehyde (UF) resins is warranted under section 4(a) of the Toxic Substances Control Act (TSCA). EPA believes that testing only methylolurea would not be appropriate because methylolurea is an unisolated intermediate and only one of many related components of UF resins. EPA is issuing this ANPR (1) to solicit data on exposure, environmental releases, health effects, chemical fate and environmental effects of UF resins, (2) to solicit information on the chemical composition of the various UF resins, (3) to seek public comments on the criteria for selection of the test substances, and (4) to obtain comments on the testing EPA is considering proposing, including the feasibility of designing studies which will not be confounded by the presence of formaldehyde.

DATE: All comments should be submitted on or before July 20, 1984.

ADDRESS: Written comments should bear the document control number [OPTS-42056] and should be submitted in triplicate to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room E-108, 401 M St. SW., Washington, D.C. 20460.

The public record supporting this action is available for inspection in Rm. E-107 at the above address from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St. SW., Washington, D.C. 20460, Toll Free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the U.S.A.: (Operator—202-554-1404).

SUPPLEMENTARY INFORMATION: The Interagency Testing Committee, in its Twelfth Report to the Administrator, published in the **Federal Register** of June 1, 1983 (48 FR 24443), recommended that methylolurea be considered for priority health effects testing. The ITC's recommendation, however, apparently was based on the misconception that methylolurea, identified on the TSCA Chemical Inventory, is a monomer used in the production of urea-formaldehyde resins (UF resins) and controlled release fertilizers. Actually, the product "methylolurea" is not the isolated monomer methylolurea, but a UF resin product. Because the ITC actually evaluated a UF resin product and based its recommendation on tests conducted on UF resins, EPA is treating the ITC recommendation as a recommendation to test UF resins. Accordingly, this Notice seeks to obtain public comments and solicit data and information on the Agency's plans to issue a test rule for UF resins under secton 4(a) of TSCA.

I. Background

Section 4(a) of TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*) authorizes the Administrator of EPA to promulgate regulations requiring testing of chemical substances and mixtures in order to develop data relevant to evaluating the risks that such chemicals may present to health and the environment.

Section 4(e) of TSCA established the ITC to recommend to the Administrator of EPA those chemical substances and mixtures that should receive priority consideration for the development of test rules under section 4(a). The ITC may designate up to 50 of its recommendations at any time for priority consideration by EPA. EPA is required to respond within 12 months of the date of designation, either by initiating rulemaking under section 4(a) or publishing in the **Federal Register** reasons for not doing so.

On May 11, 1983, in its Twelfth Report, published in the **Federal Register** of June 1, 1983 (48 FR 24443), the ITC designated methylolurea (CAS No. 1000-82-4) for priority consideration for health effects testing. The ITC's recommendation was based on the positive results observed in two genotoxicity studies which were conducted on a material called UF precondensate (another term for a UF resin). (The ITC referred to this material as "methylolurea," which is a misconception since methylolurea is only one of numerous chemical species present in UF resins.) Accordingly, the ITC recommended a battery of short-term genotoxicity tests be performed on methylolurea. In addition, the ITC recommended that studies be performed to determine the fate of the material in the body. The Committee further recommended that, if these tests and studies increase concern about the potential toxicity additional testing, such as a long-term bioassay, should be conducted.

Chemical fate testing and environmental effects testing of methylolurea were nto recommended because of the predicted low environmental persistence of methylolurea.

Under section 4(a)(1) of TSCA, the Administrator shall by rule require testing of a chemical substance to develop appropriate test data if the Agency finds that:

> (A) (i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,
>
> (ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and
>
> (iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or
>
> (B) (i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,
>
> (ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and
>
> (iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

EPA uses a weight of evidence approach in making a section 4(a)(1)(A)(i) finding in which both exposure and toxicity information are considered to make the finding that the chemical may present an unreasonable risk. For the section 4(a)(1)(B)(i) finding, EPA considers only production, exposure, and release information to determine if there is substantial production and significant or substantial release. Thus, while EPA can require testing for an effect under section 4(a)(1)(A) only if there is a suspicion of a hazard, under section 4(a)(1)(B) EPA can require testing whether or not there are data suggesting adverse effects if the relevant production and exposure or release criteria are met.

For the findings under both section 4(a)(1)(A)(ii) and 4(a)(1)(B)(ii), EPA examines toxicity and fate studies to

determine if existing information is adequate to reasonably determine or predict the effects of human exposure to or environmental release of the chemical. In making the third finding, that testing is necessary, EPA considers whether ongoing or planned testing will satisfy the information needs for the chemical and whether testing that the Agency might require would be capable of developing the necessary information.

EPA's process for determining when these findings can be made is described in detail in EPA's first and second proposed test rules as published in the **Federal Register** of July 18, 1980 (45 FR 48528) and June 5, 1981 (46 FR 30300). The section 4(a)(1)(A) finding is discussed in 45 FR 48528, and the section 4(a)(1)(B) finding is discussed in 46 FR 30300.

II. Response of EPA to the ITC Report

This ANPR is EPA's response to the ITC; EPA has tentatively concluded that health effects testing is warranted for urea-formaldehyde resins under section 4(a) of TSCA. EPA believes that testing should be performed on the UF resin mixtures rather than on the individual components of UF resins, such as methylolurea. This notice also presents a summary of the Agency's preliminary analyses and the major issues that have been identified during the Agency's evaluation to date of methylolurea and urea-formaldehyde resins, which must be resolved before proposing a test rule.

Because of the misconception contained in the ITC report, EPA's focus in responding to the ITC recommendation is to gather information pertinent to the potential toxicity of the monomeric and oligomeric reaction products of urea after reaction with formaldehyde, and not to focus on the specific chemical methylolurea.

EPA has not identified any reports of toxicological testing on resins which have been characterized by chemical composition, and no reports of testing on the specific chemical substance methylolurea or any other single component chemical of UF resins except formaldehyde. Accordingly, EPA has tentatively determined that its response to the ITC needs to encompass the substance commonly known as UF resins, either the syrupy liquid oligomeric mixture or its dried or reconstituted equivalent (CAS #9011–05–6, also 68611–64–3). This need was implicitly recognized by the ITC which focused much of its discussion on UF resins. EPA is specifically not including in its definition of UF resins being considered for testing at this time the cured plastic-like polymeric material which is commonly produced by acid or heat treatment of the UF resin. The information supporting this determination is discussed in Units III and IV of this notice.

EPA has reviewed the ITC report, the data on which their recommendation was based, information obtained from EPA's own information-gathering activities, and materials submitted to the Agency by the public. EPA's search for available information encompassed the entire range of substances which are variously called UF resins, UFC, UF prepolymer, and UF precondensate, as well as the products called "methylolurea." The information gathering rules under section 8(a) (48 FR 28443, June 22, 1983) and 8(d) (48 FR 24366, June 1, 1983) of TSCA were issued only for methylolurea, CAS No. 1000–82–4. The Agency may develop proposed regulations under sections 8(a) and 8(d) of TSCA to require information reporting for manufacture and production or health and safety studies on UF resins if sufficient information is not received in response to this ANPR.

Publication of an ANPR provides an opportunity for public comment on the difficult issues associated with health effects testing of UF resins before the Agency proposes testing for these chemical mixtures. EPA is unable, at this time, to develop an appropriate testing scheme because of the complications caused by the presence of a dynamic equilibrium among the various chemical species in UF resins, and by the presence of formaldehyde in UF resins. This is explained more completely in Unit III.1. "Chemistry." The alternative of testing individual monomeric or oligomeric components of UF resins presents equally difficult choices, because a great number of possible chemical species can be postulated to exist. In Unit III, EPA identifies over ten different chemical species that can be present in varying proportions, and these do not begin to exhaust the possibilities.

Because these complex issues cannot be readily resolved with available information, the Agency has determined that an ANPR is the most appropriate means of seeking additional information to assist in determining what tests and test materials are appropriate. (see Unit V.) Proceeding with the development of a proposed rule prior to receiving such input could result in needless expenditure of the Agency's resources and considerable delay in promulgating a final rule. This would especially be true if public comments necessitated modification of the criteria which might be proposed for test material selection or reconsideration of the bases for requiring testing to the extent that reproposal would be necessary.

III. General Information

1. *Chemistry.* Urea-formaldehyde (UF) resins are the products which result when urea and formaldehyde are combined in aqueous solution. The components of UF resins are the monomeric and oligomeric reaction products of urea and formaldehyde. Methylolurea is the first and simplest of many reaction products formed, all of which coexist in a dynamic equilibrium. Some of the other reaction products are di- and trimethylolurea, methylenediurea and its mono- and dimethylol derivatives, uron and methyloluron, and oxydi(methyleneurea) and its mono- and dimethylol derivatives. Complete chemical characterization of UF resin components has not been performed; molecular weights of the reaction products range from 200–500 daltons, and oligomers contain up to 5 to 7 urea units.

The characteristics of the UF resins vary according to the pH of the solution and the ratio of formaldehyde to urea as well as the total solute concentration of the material. Unless dehydrated, UF resins are viscous, clear liquids. Polymerization or curing of UF resins is effected by either heat or acid or both to yield a plastic-like material which is non-reactive.

2. *Production.* Slightly over one billion lbs of UF resins are produced yearly (Ref. 1). The public portion of the TSCA Inventory lists total production of 467 million to 2.3 billion lbs of urea-formaldehyde products produced at 137 plant sites for the year 1977. Two producers reported to the TSCA Inventory combined production of 31 to 161 million lbs of "methylolurea", a product which is also called UF monomer or precondensate.

Although the ITC Report gives specific data for the chemical species methylolurea ($C_2H_6N_2O_2$), the CAS No. (1000–82–4) given refers to material which is a reaction product of urea and formaldehyde, and not the chemical species. This "methylolurea" product is indistinguishable from other UF resins. At a September 13, 1983 public meeting to discuss EPA's consideration of how to respond to the ITC recommendation to test methylolurea, a representative of one of these companies which reported manufacturing methylolurea to the TSCA Inventory (Georgia-Pacific Corporation) stated that the particular product it reported to the TSCA Inventory as "methylolurea" does not contain analytically detectable levels of the chemical species methylolurea, and that "methylolurea" was a sales term for certain UF resins.

UF resins are manufactured in closed systems, either in batches or continuously. If drying is performed, closed systems are used. Some UF resins are used on-site as they are manufactured; others are used off-site. Many have other substances added before use to impart specific desirable properties. UF resins may be dried and packaged for shipment, to be reconstituted at time of use, or they may be shipped in liquid form. Liquid UF resins are not stable on long-term storage, whereas the dried UF resin is relatively stable.

3. *Uses.* The primary use of UF resins is as an adhesive in the manufacture of hardwood plywood and pressed wood products. This use accounts for about 80–85 percent of UF resins produced (Ref. 2).

Particleboard production is a highly automated process; wood chips are mixed with UF resin, formed into mats and hot pressed to the desired thickness. Curing of the UF resin occurs at the pressing stage, then cooled boards are cut, trimmed, sanded, and, sometimes, finished with a UF resin-based coating.

Hardwood plywood is formed by gluing layers of wood veneer together. The UF resin adhesive is most often applied by roller spreaders, although sometimes curtain coating or spray coating is used. Either hot or cold pressing, or radio frequency heat curing, is used to cure the UF resins.

Other significant uses of UF resins are as thermosetting plastics (molding compounds), slow-release fertilizers, fabric finishes, paint additives, and paper finishes (Ref. 3). UF resins are also used in the manufacture of furniture, as adhesives and finishing material, and for many other relatively minor uses.

4. *Occupational exposure.* EPA estimates that approximately 140,000 persons are potentially exposed to UF resins in occupational environments both during manufacture and use. The manufacture of pressed-wood and paper products, and paints and coatings are the major industries where UF resins are used. Other industries which use some resins but primarily use products which were made using UF resins are manufacturers of wood furniture and building components (pre-fabricated wood products).

The major route of exposure to UF resins is believed to be by dermal contact with the liquid resin; inhalation of dust during handling of dried resins or of aerosols from spray applications and subsequent ingestion may also occur. While exposures have not been quantified, EPA believes that some processes, such as plywood manufacture, may expose workers to fairly large amounts of UF resins. Other processes, such as application of UF resin-based paints, may expose workers to much smaller amounts.

5. *Consumer exposure.* EPA expects that few, if any, consumers will be exposed to uncured UF resins. In finished products, the UF resin has been polymerized by some curing process, and EPA does not expect the cured polymeric material to be reactive to any measurable extent. Formaldehyde off-gassing occurs to varying degrees from "cured" products such as pressed-wood products, textile finishes or UF foam; the heavier monomeric and oligomeric components of UF resins are not expected to volatilize under ambient conditions.

6. *Environmental exposure.* The available information concerning manufacturer and use of UF resins indicates that environmental exposures will be of less concern than occupational exposures. The major release of UF resins into the environment is expected to be in wastewater, which would be treated at either wastewater treatment units or surface impoundments.

Additionally, a considerable amount of waste containing 1–10 percent UF resin occurs in the form of semi-solid or solid sludges, which are often disposed in landfills. Accidental spills during transportation are considered to be the next most likely source of environmental exposure. Occasional small releases of aerosols in various manufacturing processes are also possible, as are minor releases of powdered polymer in routine handling.

Controlled-release fertilizers constitute an intentional release to the environment. Their degradation provides a continuous supply of nitrogen to the plants growing in the treated soil. Different formulations degrade at different rates, depending on the degree of polymerization. Longer, more complex chains take more time to be totally mineralized.

7. *Health effects.* EPA has found minimal information concerning health effects for either methylolurea or urea-formaldehyde resins. Those studies which have been located are incomplete because either the test material is not characterized, dose levels are uncertain, or the results are incompletely described.

An in vitro study of *N,N'*-bis(hydroxymethyl) urea characterized cross-linking reactions with tyrosine residues in wool and proposed a similar reaction with nucleic acids (Ref. 4). Another study demonstrated inhibition of mammalian cell growth in culture (Ref. 5). No metabolism, pharmacokinetic, or material balance and distribution studies on any UF resins or component chemicals have been located.

A few studies of acute toxicity of components of UF resins were located. Oral LD_{50} values for *N,N'*-bis(hydroxymethyl) urea are 1,795 mg/kg for mice, 3,400 mg/kg for rats, and 3,200 mg/kg for rabbits (Ref. 6). From another study where mice were pre-treated with 2 g/kg methylolurea prior to dosing with formaldehyde, the oral LD_{50} for methylolurea in mice is likely greater than 2 g/kg (Reg. 7).

On other report concerns dermal application to guinea pigs of two resins characterized only by formaldehyde content (Ref. 8). Erythema, skin dryness, desquamation, and sensitization were noted.

Minimal information concerning subchronic effects was located. Continuous exposure of rats, from birth, to an atmosphere containing volatile material from resin-impregnated wood shavings impaired normal function of six organ systems, including the nervous system, and inhibited growth and development (Ref. 9).

A summary translation to English of a Russian paper describes several different types of toxicological investigations of two resins containing urea, formaldehyde and polyethylenepolyamine. The paucity of details and presence of an additional component in these studies precludes EPA's reliance on this study for the purpose of this evaluation (Ref. 10).

Several feeding studies wherein uncured commercial UF resins were fed to test animals at various doses demonstrate no toxic effects (Refs. 11 and 12). Numerous studies wherein large animals were administered treated feed are available (Ref. 13); may of these were apparently conducted in support of a petition to the Food and Drug Administration to permit use of UF resins in food packaging materials.

Only two mutagenicity studies have been located and both demonstrate positive effects (Refs. 14 and 15); as with other types of studies, the materials tested were not chemically characterized.

N,N'-bis(hydroxymethyl) urea was tested for antitumor activity and found ineffective (Ref. 16).

No definitive studies on the reproductive, teratologic, or nervous system effects of UF resins have been located.

Numerous reports of eczema, dermatitis, and other toxic effects in humans occupationally exposed to UF

resins were located in the literature, but the extent of exposure and composition of resin are not specified in any report. Furthermore, there are no epidemiological studies concerning the human health effects of UF resins.

IV. Tentative EPA Decisions

1. *Preliminary findings.* EPA has determined that UF resins should be the subject of the Agency's further test rules consideration. EPA has tentatively concluded that there is substantial production of, and human exposure to, UF resins, as summarized in Unit III. Furthermore, the Agency tentatively believes that there are insufficient data and experience upon which the health effects of UF resin can reasonably be determined or predicted, and that testing is necessary to develop such data. Therefore, EPA believes that UF resins meet the criteria for requiring that testing be conducted under TSCA section 4(a)(1)(B).

2. *Tentative conclusions on testing.* EPA believes that exposure, when it occurs, is to the entire range of chemicals which collectively comprise UF resins. Therefore, EPA believes that testing of the UF resins themselves is the appropriate means to determine the health effects of UF resins. EPA has tentatively concluded that a full battery of toxicological testing should be conducted, consisting of mutagenicity, acute, subchronic, neurotoxicity, teratology and reproductive effects, and possibly chronic studies. EPA tentatively believes that testing several substances (encompassing the range of UF resins) in the short-term tests and fewer substances in the long-term tests would likely provide sufficient information to evaluate the health effects of UF resins, but the Agency has not yet developed criteria for selection of test materials at this time. However, the Agency believes that thorough characterization of the materials being tested is essential.

3. *Economic impact.* EPA is still assessing the potential economic impact of the type of testing program described above. Since the Agency is considering extensive testing, the total costs could be substantial, depending on the number of tests required for each resin and the total number of resins that must be tested. The Agency will examine testing needs carefully with respect to UF resins, and seeks public comment on the best way to obtain needed data while not depriving society of the benefits of these chemicals.

V. Issues

EPA solicits comment from the affected industries and the general public on all aspects of its evaluation of UF resins, its tentative decision to require testing, and, in particular, on what substances to test. Specific issues are listed below.

1. *Exposure to UF resins.* EPA is requesting information which will allow it to ascertain when, where, and how occupational, consumer, and environmental exposures occur, and what quantities of UF resins are associated with these exposures.

2. *Health effects of UF resins.* EPA seeks to obtain copies of any toxicological studies which might have been performed on any UF resins. Studies where the composition and physical characteristics of the test material has been or can be established will be particularly valuable.

3. *Chemical composition of the various UF resins.* EPA solicits definitive information on the relative and absolute quantities of the specific chemical species which exist in UF resins and also on the physical and chemical characteristics of individual UF resins, such as pH, urea-to-formaldehyde ratio, and total solute concentration. More specifically, are resins having certain physical and chemical characteristics best suited for different processes? Which ones? How does the chemical composition vary with different physical characteristics?

4. *Environmental releases and exposures.* EPA has determined that UF resins are sometimes discharged into waste water systems or disposed in landfills. The Agency requests information concerning the quantities of UF resins discharged through wastewater facilities and disposed in landfills or released to the environment through other processes.

5. *Chemical fate and environmental effects of UF resins.* The Agency requests data on chemical fate and environmental effects of UF resins to determine if sufficient data exists to reasonably determine or predict the chemical fate and environmental effects of UF resins.

6. *The testing which EPA is considering proposing.* EPA will consider all comments concerning which tests should be conducted to determine the health effects of UF resins. The Agency is particularly concerned that interpretation of any toxicological tests will be confounded by the presence of a dynamic equilibrium among the chemical species, or by the presence of formaldehyde in the test material. Can studies be designed which would avoid such confounding factors? Would it be preferable to attempt metabolic and pharmacokinetic studies which might confirm or negate the role of formaldehyde in UF resin toxicity? How might EPA design a tiered testing scheme which performs a limited amount of testing on a wider range of UF resins and higher tier, long-term testing on fewer materials? Should EPA consider testing the degradability of cured UF resin under ambient conditions? Under high temperature and humidity?

7. *Criteria for selection of test materials.* The Agency solicits comment on whether synthetic mixtures having certain specific characteristics or actual commercial products should be tested. EPA also invites comments on whether it might be more effective to test specific chemical components of UF resins rather than mixtures which are expected to contain variable quantities of individual chemical species. How many different resins, or how many individual chemicals, would be necessary to adequately represent the full range of possible test substances?

EPA would also welcome comments on how best to characterize the test substances, and the extent to which such characterization should be performed.

VI. References

(1) Chemical and Engineering News. (June 14). Production by the U.S. Chemical Industry. Plastics, Synthetic Rubber. p. 37. 1982.

(2) Chemical Economics Handbook. Stanford Research Institute, Menlo Park, CA: SRI International. Section 535.8000–8001. Cited in Information Review. "Methylolureas and their Oligomers", IR 257. Working draft, prepared under EPA contract #68–01–6650 for TSCA Interagency Testing Committee by CRCS, Inc.

(3) Meyer, Beat. "Ureaformaldehyde Resins". Addison-Wesley Publishing Company, Reading, Mass. Chapter 6, 7, 8. 1979.

(4) Friedman, M. Chemical basis for biological effects for wool finishing treatments. Proceedings of the Quinquennial International Wool Textile Research Conference, Pretoria. Sixth 5:323–348. 1980.

(5) Yoneda, M., Inuyama, Y., Itagaki, A., Gobara, F. Studies on mammalian cell culture method for toxicity (I). Cytotoxicity of plastic materials. Shokuhin Eiseigaku Zasshi 15(6):451–455. (In Japanese; English translation) 1974.

(6) NIOSH. National Institute for Occupational Safety and Health. Computer

printout: RTECS (Registry of Toxic Effects of Chemical Substances) data base. Retrieved August 2, 1983. Cincinnati, OH: NIOSH. 1983.

(7) Horiguchi, Y., Shimuzi, H., Satoh, S. *et al.* Hygienic study on packaging and vessel made of synthetic resin (III). Effects of urea compounds on the toxicity of formaldehyde. Shokuhin Eiseigaku Zasshi 15:440–445. (In Japanese; English abstract) 1974.

(8) El-Sayad, I.A. Effect produced by formaldehyde-containing resins on the skin. Gig Truda Prof Zabol 16(8):46–68. (In Russian; English translation) 1972.

(9) Kaisina, O.V., Krasnikova, I.I., Gadalina, I.D. Features of the age-related sensitivity of white rats to the effects of chemical factors. Gigiena i Sanitariya 7:59–62. (In Russian; English translation) 1978.

(10) Brodaskaya, B. Y., Rodnikov, A. V., Golokova, T. V., Kalinina, Z. S., Nikitina, L. A. Hygienic substantiation of maximum permissible concentration of urea resins in reservoir water. Gigiena i Sanitariya 5:71–72 (In Russian; English translation) 1980.

(11) Anderson, G. C., McLaren, G. A., Welch, J. A., Campbell, C. D., Smith G. S. Comparative effects of urea, Uramite, biuret, soybean protein, and creatine on digestion and nitrogen metabolism in lambs. Journal of Animal Science 18:134–140. 1959.

(12) Galibin, G. P., Action of hardened synthetic resins on animal systems. Toksikologiya Novykh Promyshlennykh Khimi Cheskikh Veshchestv 5:45–50. (In Russian) 1963.

(13) Hall, D. "Use of Urea-Formaldehyde Resin as a Feed Supplement for Cattle." Georgia-Pacific Knowledge Reference Service. 1983.

(14) Erkis, F. B., Ratman, M. M. A cytogenetic study of the mutagenic activity of formaldehyde resins. Tsitol Genet 7(6):543–544. (In Russian; English translation) 1973.

(15) Morin, N. C., Kubinski, H. Potential toxicity of materials used for home insulation. Ecotoxicology and Environmental Safety 2:133–141. 1978.

(16) Tarnowski, G. S., Cappuccino, J. G., Schmid, F. A. Effect of 1,3-diallylurea and related compounds on growth of transplanted animal tumors. Cancer Research 27(1):1092–1095. 1967.

VII. Development of Rulemaking

After an analysis of the public comments on the ITC report and review of the available data, EPA tentatively believes that there is reason to proceed with development of a proposed rule for testing of UF resins.

By publishing this ANPR, EPA hopes to receive early comment on the issues set forth, prior to proceeding with rulemaking.

The Agency will analyze all comments, production and use patterns, available data, and other relevant issues raised in comments on this ANPR. The Agency also will consider any testing plans proposed for its review and comment. Any testing plans submitted for the Agency's consideration in the ANPR comments need not be in final form, but they should include formal protocols for proper review.

VIII. Public Record

EPA has established a public record for this ANPR, docket number [OPTS–42056]. The record includes the following information:

(1) **Federal Register** notice containing the designation of methylolurea to the priority list and all comments on methylolurea received in response to that notice.

(2) Communications (public).

(a) Letters.

(b) Contact reports of telephone conversations.

(c) Meeting summaries.

(3) Published and unpublished data.

(4) Technical Support Document, and copies of those references in it which are specifically referred to in this notice.

This record includes basic information considered by the Agency in developing this notice, and is available in the OPTS Reading Rm. E–107, from 8:00 a.m., to 4:00 p.m. on working days (401 M St., SW., Washington, D.C. 20460). The Agency will supplement the record periodically with additional relevant information received.

(Sec. 4, Pub. L. 94–469, 90 Stat. 2003; (15 U.S.C. 2061))

Dated: May 11, 1984.

Alvin L. Alm,

Acting Administrator.

[FR Doc. 84–13564 Filed 5–18–84; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BERC–228–P]

Medicare and Medicaid Programs; Schedule of Limits on Home Health Agency Costs per Visit for Cost Reporting Periods Beginning on or after July 1, 1984

Correction

In FR Doc. 84–11550 beginning on page 20616 in the issue of Tuesday, May 15, 1984, a signature and approval date were inadvertently omitted. On page 20629, immediately below the title for Carolyne K. Davis, add the following:

Approved: May 8, 1984.

Margaret M. Heckler,

Secretary.

BILLING CODE 1505–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 31

[CC Docket No. 84–468; FCC 84–199]

Amendment of the Commission's Rules To Revise the Accounting Provisions for Cost of Removal, Gross Salvage, and Reusable Plant

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: The Commission is seeking comments regarding the advisability of amending Part 31, Uniform System of Accounts for Class A and Class B Telephone Companies, to revise the existing accounting for cost of removal, salvage value and reusable material. These comments are being sought to determine whether the Commission should change its rules in these areas in line with recommendations made by the Telecommunications Industry Advisory Group.

DATE: Comments are due by June 15, 1984 and replies by July 2, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Gerald P. Vaughan, Chief, Accounting and Audits Division, Common Carrier Bureau, (202) 634–1861.

List of Subjects in 47 CFR Part 31

Communications common carriers, Telephone, Uniform system of accounts.

Notice of Inquiry

In the matter of amendment of Part 31, Uniform System of accounts for Class A and Class B Telephone Companies, to revise the accounting provisions for cost of removal, gross salvage, and reusable plant; CC Docket No. 84–468.

Adopted: May 10, 1984.

Released: May 16, 1984.

By the Commission.

I. Introduction

1. This Notice of Inquiry (NOI) solicits comments on recommendations by the Telecommunications Industry Advisory Group (TIAG) that we revise the accounting currently prescribed in the Uniform System of Accounts for Class A and Class B Telephone Companies (47 CFR Part 31) for gross salvage value, cost of removal, and reusable material related to plant in service. The TIAG made its recommendations in a report which was submitted to the Secretary of this Commission on January 9, 1984 (see Attachment A). The TIAG also submitted a dissenting report by The National Association of Regulatory

Utility Commissioners (NARUC) arguing that several questions should be answered before the TIAG proposal is adopted (see Attachment B).

II. Background

2. In its Second Supplemental Notice of Proposed Rulemaking and Order in Docket 78–196, *Rewrite of the Uniform System of Accounts for Class A and Class B Telephone Companies* (USOA), 88 FCC 2d 83 (1981), the Commission established the TIAG for the purpose of developing and recommending a new USOA. The TIAG is composed of representatives of telephone companies, state regulators, industry associations, manufacturers, public accounting, FCC staff and consumers.

3. The TIAG is reviewing all aspects of the existing USOA. One area it has reviewed and questioned is the existing accounting relating to cost of removal, gross salvage, and reusable material, all of which affect our depreciation process. The TIAG addressed these subjects in some detail, holding meetings on the subjects, issuing a staff position paper, and ultimately issuing the Committee Report. The Report was issued in partial fulfillment of the TIAG's responsibilities under Docket 78–196 to recommend to the Commission those areas where the existing Uniform System of Accounts should be changed to meet the needs of the Commission for the regulation of telephone common carriers. The TIAG recommended that the Commission institute a separate proceeding to address this matter outside the context of Docket 78–196 so that the issues of accounting design would not become clouded with issues relating to revenue impact. Generally, the TIAG believes that our current accounting treatment for these items distorts depreciation expense during the life of an asset and results in costs associated with retired assets being carried forward to future years. A more detailed discussion of the problems in each of these areas and the TIAG recommendations and alternatives appear below.

III. Discussion

Gross Salvage Value

4. Gross salvage value is the amount received from sale of an asset upon its disposition. The TIAG recommends that we revise our rules and procedures to ignore salvage value in computing depreciation rates and to treat salvage value as income when it is realized upon disposition, instead. Our current rules provide for the deduction of estimated salvage from original cost in determining the cost to be recovered through depreciation charges over the life of the assest. Upon retirement, the original cost of the asset is removed from the asset account and charged to the depreciation reserve, and actual salvage realized is credited to the depreciation reserve. Therefore, if the estimated salvage value used in computing depreciation was inaccurate, the difference is, under group depreciation, recovered through depreciation charges is future periods over the life of the remaining assets.

5. The TIAG finds that estimating future gross salvage is inordinately complex, time consuming and speculative. For example, it involves the estimation of future junk prices that are affected by future worldwide metal markets. Errors in estimating result in under-accrual or over-accrual of the depreciation expense. It is because of this high potential for error that the TIAG recommends that we change our rules to provide for the recognition of gross salvage as income upon retirement. The major advantages to this approach are that it removes a potential for error from the depreciation process and ensures that salvage is accounted for upon the retirement of the asset with no part of it being attributed to future periods. The major disadvantage is that it recognizes the total salvage in the year of receipt and makes no attempt to spread its effect over the life of the asset.

6. Respondents should address the merits of the TIAG's proposal to change our rules to provide for recognition of gross salvage as income upon retirement. They should specifically address whether such a change should be hinged on any limitations such as the distortive effect of the change and whether state approval should be required. All responses should address the questions raised by NARUC in this area. See Attachment B, pp. 2, 3. They should also propose any alternative that they believe would be preferable. All carriers responding should include the effects of the TIAG proposal or of any alternate proposal upon their revenue requirements and should address the tax consequences of such changes.

Cost of Removal

7. Cost of removal is the cost of dismantling and removing an asset from service. The problems that the TIAG addressed were basically the same as those surrounding gross salvage, i.e., the problems associated with estimating cost of removal in computing depreciation over the life of the asset. Under our current rules the estimated cost of removal is added to the original cost in determining the cost to be recovered through depreciation rates over the life of the asset. Upon retirement, the actual cost of removal is charged to the depreciation reserve. As in the case of salvage value, if the estimated accrual is accurate, there is no problem. If the estimated accrual is in error, however, the under-accrual or over-accrual resulting from the error is passed on to future periods over the life of the remaining assets.

8. Unlike salvage value, however, the TIAG recommends that we continue to accrue for cost of removal because it believes that estimating cost of removal is less speculative then estimating salvage. The TIAG claims that cost of removal can be estimated with greater certainty than salvage because the major component of cost of removal is labor which can be estimated using indices. It also argues that the accural for cost of removal when coupled with current period recognition of salvage as income accommodates the accounting principle of conservatism which calls for anticipating all losses but recognizing no gains prior to their fruition. In the final analysis, however, it appears that the TIAG considers current period recognition of salvage to be the more important of the two proposals. It states, therefore, that it would prefer current period recognition of both cost of removal and salvage over the current practice of accruing for both cost of removal and salvage.

9. Respondents should address the merits of the TIAG proposal to continue accruing for cost of removal as a part of the depreciation process. They should also address the advantages and disadvantages of adopting current period recognition of cost of removal when incurred. Further, the respondents should address whether or not that proposal, if adopted, should be applied across the board to all carriers, or whether the change should be limited to instances where it is not distortive and where state approval has been obtained. Respondents should also consider the merits of a bifurcated approach wherein the cost of removal for some of a company's plant categories would be accounted for on an accrual basis while current period recognition would be afforded the remainder. Respondents should address the questions raised by NARUC (Attachment B, p. 2), and should address any other alternatives they prefer. Finally, all carriers should include the tax consequences and revenue impacts of the proposals.

Reusable Material

10. The TIAG recommends that we revise our existing rules for reusable material. These are assets removed from

plant in service for which there is a plan for reuse. Under our rules when plant is removed from service at a location, the original cost of the plant is removed from the plant account and charged to the depreciation reserve. If all or a part of the plant is designated for reuse, however, the original cost of the materials [1] removed is recorded in Account 122, "Material and supplies," with a credit to the depreciation reserve. Upon reuse it returns to plant in service at original cost as a new vintage along with any installation costs. Recording reusable material in the material and supplies inventory at original cost assumes that the original material cost is the gross salvage value of the plant, and it is treated as such in estimating depreciation rates. This, in effect, defers all depreciation on reusable material to future periods. It is this failure to take any depreciation on reusable plant at its initial location which leads the TIAG to recommend that we change our rules.

11. The TIAG recommends that we continue to transfer reusable plant to account 122, but that the transfer be made at net book material cost (original material cost less depreciation reserve). It contends that this approach would recognize depreciation at the first location without the recordkeeping costs associated with other alternative solutions. The other alternative considered by the TIAG was, assuming a plan for reuse, to leave the initial costs (material and labor) of the material being held for reuse in account 100.1, "Telephone plant in service," for up to two years. Depreciation would continue for the two years and the plant would return to its new location as the original vintage. Any installation costs would be expensed. After review, however, the TIAG concluded that the cost and time of recordkeeping necessary to implement this change to track the original vintage could more than offset the benefits. Accordingly, it recommends, as indicated above, that we continue to record reusable material in account 122, but that we do so at net book material cost.

12. We are requesting respondents to comment in detail on the merits of the TIAG recommendation and the alternative as well as any alternatives they may prefer. Respondents should also specifically address the questions raised by NARUC (see Attachment B, p. 3). Carriers commenting should include the revenue impacts and address the tax consequences of their proposals. Further, so that we may fully address the magnitude of the problem, carriers should include the amount of reused material by account or plant category recorded in account 122 for the period 1979–1983, and indicate the extent to which it comprises actual salvage amounts discussed in paragraphs 4–6 above.

Other Issues

13. In considering the proposed changes, a question arises as to the treatment of the embedded reserve components for cost of removal and gross salvage value. The TIAG recommends that if we adopt current period recognition of both cost of removal and salvage, either an embedded net salvage reserve or individual embedded reserves for cost of removal and salvage be established and eliminated by recording actual cost of removal and actual salvage against them until they are gone. For its preferred approach of current period recognition of salvage as revenue and the continued accrual of cost of removal over the estimated life of the asset, the TIAG recommends the establishment of an embedded reserve component for cost of removal which would be carried forward, and the establishment of an embedded reserve component for salvage which would be eliminated as actual salvage was received. After the elimination of the salvage reserve balances current period recognition would begin.

14. Respondents should address the merits of the TIAG's recommendations for disposing of the embedded reserve relating to the cost of removal and salvage, as well as any other alternatives which they may prefer. All carriers responding should include the effects of the proposals on their revenue requirements and should address the tax consequences of such changes.

IV. Other Matters

15. Copies of Attachment A and Attachment B may be obtained from the Commission's contractor for public records duplication, International Transcription Services, Inc., 4006 University Drive, Fairfax, Virginia 22111, telephone (703) 352–2400.

V. Ordering Clauses

16. This Inquiry is instituted pursuant to sections 4(i), 4(j), 220 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 220 and 403.

17. Pursuant to the procedures set forth in §§ 1.430 and 1.415 of the Commission's Rules and Regulations, 47 CFR 1.430 and 1.415, interested persons may file comments either on or before June 15, 1984, and reply comments either on or before July 2, 1984. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information or is noted in the Report and Order.

18. Pursuant to §§ 1.430 and 1.419 of the Commission's Rules and Regulations, 47 CFR 1.430 and 1.419, an original and five copies of all comments and other materials shall be furnished to the commission. Participants wishing each Commissioner to have a personal copy of their comments should file an original and eleven copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

19. Pursuant to section 220(i) of the Communications Act of 1934, as amended, 47 U.S.C. 220(i), the Secretary of the Federal Communications Commission shall cause a copy of this *Notice of Inquiry* to be served on each state commission.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84–13501 Filed 5–18–84; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Parts 31, 33, 42, and 43

CC Docket No. 84–469; FCC 84–200]

Revision of the Uniform System of Accounts for Telephone Companies To Accommodate Generally Accepted Accounting Principles

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing to revise the uniform system of accounts for telephone companies to accommodate generally accepted accounting principles.

DATE: Comments are due by June 25, 1984 and replies by July 10, 1984.

[1] In some cases average cost is acceptable in place of original cost. Also, for minor items replacement cost new is acceptable.

ADDRESS: Federal Communications Commission Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Gerald P. Vaughan, Chief, Accounting and Audits Division, Common Carrier Bureau, (202) 634–1861.

List of Subjects in 47 CFR Parts 31, 33, 42, 43

Communications common carriers, Telephone, Uniform system of accounts.

Notice of Proposed Rulemaking

In the matter of revision of the Uniform System of accounts for telephone companies to accommodate generally accepted accounting principles (Parts 31, 33, 42, and 43 of the FCC's Rules); CC Docket No. 84–469.

Adopted: May 10, 1984.

Released: May 18, 1984.

By the Commission.

I. Background

1. In July 1978 the Commission issued a *Notice of Proposed Rulemaking (Notice)*, 70 FCC 2d 719 (1978), in CC Docket 78–196, *Uniform System of Accounts for Telephone Companies*. We stated at that time that our vision of a revised USOA was a regulatory information system that will meet all the ordinary needs of the Commission for the regulation of telephone common carriers. We recognized the necessity of revising the USOA because the system adopted in 1935 no longer properly serves a massively more complex and competitive, technological and economic environment. To keep pace with these changes, and at the same time to maintain our responsibility to regulate carrier rates in the public interest, it became essential that we develop and implement a revised system of accounts for the (currently) 61 common carriers which are required to file annual reports (Form M) with this Commission.

2. The *Notice* envisioned an accounting system that would constitute a single data base which would serve several functions. These were stated to be:

(1) It will form the basis for financial reports including both balance sheet and income statement reporting.

(2) It will serve as a data base and a foundation for managerial decision-making and internal management reports by the carriers.

(3) It will provide sufficiently detailed disaggregated cost and revenue information for derivation of costs and revenues of individual services and rate elements, for pricing decisions and other managerial decision-making by the carriers.

(4) It similarly will provide detailed disaggregated cost and revenue information for derivation of costs and revenues of individual services and rate elements, for rate review and continuing surveillance purposes of the Commission (and other regulatory bodies which adopt the revisions) and provide a basis for rate prescription, where appropriate.

(5) It will facilitate the breakdown of costs between interstate and intrastate jurisdictions ("jurisdictional separations").

(6) It will permit analysis of facility and plant utilization, including studies of the causes for each category of expenditure and review of service quality and service efficiency.

(7) It will be structured so as to allow for regulatory and independent auditing and tracing of questioned entries.

3. On August 9, 1979, the Commission released a *First Supplemental Notice of Proposed Rulemaking (Supplemental Notice)* FCC 79–479. In this Supplemental Notice, the Commission sought further comment on several costing and regulatory accounting issues raised by the comments to the original Notice. Among these issues was the extent to which the revised USOA should accommodate generally accepted accounting principles (GAAP).[1]

4. Thereafter, in October 1981, the Commission issued a *Second Supplemental Notice of Proposed Rulemaking and Order (Order)*, 88 FCC 2d 83 (1981), in Docket No. 78–196. In that Order, we established a federal advisory committee, the Telecommunications Industry Advisory Group (TIAG), and charged it with developing and recommending a revised USOA based generally on finacial principles and capable of supporting separate, parallel costing and separations[2] subsystems. Among other things, the TIAG was to develop a recommendation on the extent to which GAAP should be used in a revised USOA.[3]

5. In response to its mandate, on January 20, 1984, the TIAG filed with the Commission its report entitled "Discussion Paper on Application of Generally Accepted Accounting Principles in a Revised Uniform System of Accounts" (Report). Included as a part of the Report are additional comments on the subject by the National Association of Regulatory Utility Commissioners (NARUC) which is an active participant in TIAG activities. The Report is incorporated by reference as Appendix A to this Notice of Proposed Rulemaking.

6. In general, the Report recommends that the USOA provide for compliance with GAAP, although not irrespective of economic effects of regulation; that the USOA provide for automatic adoption of future changes in GAAP, absent Commission notice to the contrary; that the effects of differing accounting and rate-making practices adopted by various regulatory authorities with respect to the same cost of service components be summarized in the general books of account; and that the nonregulated activities, in which a regulated telephone company may be involved, be subject to GAAP consistent with nonregulated enterprises.

7. Additionally, the Report has identified 21 areas where the current USOA differs from GAAP, but only three of these areas—accounting for income taxes; capitalized leases; and compensated absences—would result in more than an insignificant revenue requirement impact if adopted.[4] Due to the impacts involved, the Report further recommends that the Commission initiate a separate rulemaking proceeding to address the full adoption of GAAP in the revised USOA.

8. In our opinion, the Report satisfies our request in the Order for information on GAAP and evidences a great deal of research and thought in its preparation. This is not to imply however that we necessarily agree with every point raised or with every recommendation made. We do, however, concur with the TIAG that, because of the potential for revenue requirement impacts that may

[1] Generally accepted accounting principles (GAAP) is that common set of accounting concepts, standards, procedures, and conventions which are recognized by the accounting profession as a whole and upon which most nonregulated enterprises base their external financial statements and reports.

[2] Separations refers to the procedures contained in Part 67 of the Commission's Rules, 47 CFR Part 67, for dividing telephone company investment, expenses, and revenues between the interstate and intrastate jurisdictions.

[3] Paragraph 52 of the *Order* reads, in part:"* * * [The TIAG] shall also specify any divergences from GAAP for nonregulated entities, indicating the approach that GAAP would take as well as an estimate of the revenue requirement impact if the Commission were to follow GAAP rather than present rate-making practices. The report should also identify any areas for which special comment from the public may be appropriate."

[4] The remaining 18 areas are: early extinguishment of debt; investment in plant; account 232—station connections—(inside wiring); valuation of inventories held for resale; variable payment contracts; directory revenues and expenses; sales of embedded terminal equipment; investment in common stock of affiliates; pension cost and deferred compensation arrangements; prior period adjustments; extraordinary items; convertible debt and debt issued with stock purchase warrants; business combinations; treasury stock; accounting for contingencies; security investments other than common stock of affiliates; investment tax credits; and capitalizing interest during construction.

result from the adoption of certain of the Report's recommendations, these recommendations should be considered separately from Docket 78–196. In this way, that proceeding need address only those issues relating to accounting system design and will not be unnecessarily burdened or delayed with issues having direct rate-making implications. Thus, we are initiating this proceeding to address the Report's recommendations on GAAP.[5]

9. The remainder of this Notice is organized much along the lines of the Report itself. Section II addresses the major conceptual issues identified, specifically the overall concept of adopting GAAP (including the question of materiality); accounting for jurisdictional differences; and the applicability of GAAP to nonregulated activities. Section III focuses on those specific recommended changes which will cause a slight (if any) impact on revenue requirements and isolates several issues where additional comments are warranted. Section IV discusses those recommended changes with ratemaking implications.

II. Conceptual Issues

10. *Adoption of GAAP.* In general, we agree with the TIAG that the revised USOA should provide for compliance with GAAP but that such compliance should not disregard the economic effects of regulation (Report, paragraph III C, pages 8–12). For example, the situation may often arise in which GAAP would require that a certain type of cost be accounted for in current operations as an expense of the accounting period, whereas ratemaking practice or theory would hold that the cost be deferred and charged to expense ratably over a representative number of years. The TIAG recommendation acknowledges the possibility of such instances and the responsibilities of regulatory oversight in choosing between the alternatives. This recommendation is in consonance with the accounting system concept we expressed in the *Order* and goes to the heart of many of the comments filed in that proceeding. Our formal adoption of such a policy, however, must be tempered with caution.

11. Under the statutory mandates of the Communications Act of 1934, as amended, as well as through the historic policy-setting mechanisms of the rate-making process, the Commission is bound and committed to a certain course in discharging its public trust. We may not surrender a portion of our rate-making authority to an outside standard setting body, be it governmental (e.g., Securities and Exchange Commission (SEC)) or not (e.g., Financial Accounting Standards Board (FASB)). FASB Opinion 71 "Accounting for the Effects of Certain Types of Regulation" recognizes regulatory ratemaking practices as proper in determining acceptable accounting for purposes of complying with GAAP. Parties should comment on the consideration that FASB Opinion 71 should receive in shaping our resolution of the issues raised by the Report.

12. Thus, we propose that the revised USOA indeed embrace the concept of GAAP as a whole but that added emphasis be brought to bear on the question of economic effects of regulation. Individual aspects of GAAP should be analyzed on a case by case basis in light of their impacts on the regulatory process to form a basis for adoption or rejection by this Commission. The underlying criteria for such action would rest, therefore, not with the requirements of the accounting profession for good accounting in the absence of public utility regulation, but rather with full consideration of the regulatory process wherein the public interest is of paramount concern.

13. This added emphasis on the economic affects of regulation also bears directly on our view of the Report's recommendation for subsequent adoption of a change in GAAP. The Report recommends that the revised USOA provide for essentially automatic adoption of any changes, provided that the carrier notify the Commission of its intention to adopt the change 90 days in advance and provided further that the Commission not issue notice to the contrary (Report, paragraph III D, pages 12–17).

14. In principle, we agree that a provision for some degree of automatic adoption is desirable both to facilitate compliance with GAAP and to relieve the potential administrative burden which unnecessary rulemaking proceedings can impose on all parties. However, we emphasize again that the economic affects of regulation must not go unheeded. In proposing the adoption of this recommendation, we do so on the condition that (1) any carrier's notification of intention include detailed anaylses of the potential ratemaking impact of adopting the change in GAAP; and (2) notwithstandng these analyses, if there remains any question on the Commission's part as to the regulatory impact of the proposed change (be it a question of ratemaking significance or industry uniformity), the Commission will stay implementation of the change pending further proceedings. In this regard, we would delegate to the Chief, Common Carrier Bureau, the authority to determine whether a change in GAAP would have sufficient impact on rate-making to require a proceeding to decide on its adoption, or if its adoption could be affected without formal notice and comment. Commenting parties should address criteria to be applied in this determination. We further propose that, as an administrative convenience to the industry, the recommended 90-day period be broken down into a 60-day period during which the Commission would have "veto" powers and a 30-day pre-implementation period to provide the carriers with sufficient lead time to accomplish whatever internal reprogramming may be necessary to accommodate the change.

15. *Materiality.* Throughout the Report, reference is made to the concept of "materiality" as a principal determinant in opting for any particular type of accounting treatment for a given transaction.[6] Materiality is a cornerstone to the whole concept of GAAP; however, we are concerned that nowhere in the entire body of GAAP is materiality, defined in objective or measurable terms. Its measurement, rather, has always been left to the judgment of management or independent public accountants in accordance with practice in nonregulated industries. Through the wholesale adoption of GAAP (as written) in a regulatory accounting scheme, there may be a real danger in leaving too much to the discretion of parties not bound by our public interest responsibilities.[7]

[5] The Report also recommends that annual reports to the Commission include schedules showing the extent to which revenues and costs which would be recognized in the noregulated sector have not been allowed by regulation, and vice versa (Report at page 11). While we see merit in this recommendation, in our opinion it raises an issue not germane to the instant issue of whether, or to what extent, GAAP should be adopted. Rather, this appears to be a purely reporting-related question, and thus we would defer addressing it to a Further Notice of Proposed Rulemaking in CC Docket 78–196.

[6] These references are located in the Report at: page 14, item 3a, line 22; page 15, line 3; page 16, item 4, line 32; page 17, item (g), line 9; page 51, item 16, line 34; page 54, Note (A), line 20; page 55, item (6), line 20; page 65, line 5; page 98, item 14b, line 24; page 117, item 3, lines 5 and 7; and page 119, line 19.

[7] GAAP defines materiality as: "The magnitude of an omission or misstatement of accounting information that, in light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would have been changed or influenced by the omission or misstatement." AICPA Professional Standards, AC 1220.171.

16. This same concern was addressed by the Securities and Exchange Commission (SEC) in its statement of policy regarding the Foreign Corrupt Practices Act (46 FR 11546, February 9, 1981). While the context of this statement focused on internal control systems, the underlying logic and principles are no less applicable to our regulatory oversight,[8] wherein we have often had to address issues, the magnitude of which possibly would not have been material in the GAAP sense, but which, nevertheless, were of significant public concern.

17. It is our intent, then, that in adopting any recommendations of the Report wherein materiality is a determinant, any references thereto will be deleted or modified as necessary. We propose instead that provisions be included in the revised USOA to the effect that, when circumstances indicate that a GAAP-related accounting decision may have unanticipated ratemaking implications, the accounting therefor be referred to the Commission for its scrutiny. Through this proposal, we are in no way attempting to usurp management's authority in the internal decision-making process. We intend, rather, only to retain sufficient control over the revised USOA to ensure that it will function as a viable, responsive regulatory tool. To this end, we solicit comments on possible definitions of "materiality" as would be both relevant in the regulatory context and identifiable in their applications by carrier management, independent auditors, and this Commission.

18. *Jurisdictional Differences.* The Report recommends establishing in the revised USOA three accounts [9] to record the deferred charges and credits and the net income effects arising from differing accounting and ratemaking practices adopted by various regulatory authorities with respect to the same cost of service components (Report, paragraph III E, pages 17–49). This recommendation is consistent with our desire that the revised USOA reflect economic reality and encompass GAAP to the maximum practicable extent. It also furthers the single accounting system concept which underpins the current efforts in CC Docket 78–196.

19. Thus, we propose that the revised USOA incorporate fully the Report's recommendation for accounting for differences between regulatory authorities as noted above. Commenting parties are asked to address the actual or potential problems of implementation and coordination of GAAP between this Commission and the various state commissions, as well as the overall desirability of adopting the proposal.

20. *Nonregulated Activities.* The Report addresses, as the final area of its conceptual issues, the subject of how accounting principles should be applied to nonregulated activities in which regulated telephone companies may be involved. Its conclusion is that those activities not subject to rate regulation would apply GAAP consistent with its application for nonregulated enterprises (Report, paragraph III F, page 49). We believe that accounting for these activities is solely within the purview of carrier management as long as those management decisions do not have the potential to affect future regulatory decisions, e.g., asset transfers between regulated and non-regulated activities. Thus, we neither endorse nor reject this conclusion. Any party who considers rules on this matter to be essential should specify the rules desired and the criteria that would be used to implement them.

III. Recommendations With Negligible Impact

21. The Report discusses in detail 21 specific areas where the USOA (in its current form) should be modified to accommodate or facilitate compliance with GAAP and recommends change in all of these areas. Only three of these recommendations (discussed in part IV below) were found to significantly impact on ratemaking, with the remaining 18 consisting principally of clarifying instructions or changes in terminology necessary to update existing provisions. Because there appears to be no ratemaking impact of consequence attendant to the 18 recommended changes, we propose that they be incorporated into the revised USOA; [10] however, there are certain aspects of some of these recommendations which we believe warrant further scrutiny.

22. *Interest During Construction.* One identified difference for which only clarifying change was recommended is in the area of capitalizing interest during construction. The current USOA permits capitalization of imputed interest on equity funds, in addition to interest on debt, whereas GAAP for a nonregulated enterprise would permit capitalization of interest on the debt component only. The Report notes, however, that FASB Statement No. 71 "Accounting for the Effects of Certain Types of Regulation," would look upon current USOA treatment as GAAP for a regulated entity, and, thus, no recommendation was made to conform this accounting to that followed by nonregulated enterprises (Report, paragraph IV B5, pages 69–70). If such a recommendation had been made, however, there would have resulted a corresponding ratemaking impact. While it is our understanding that the TIAG is preparing additional data on the potential ratemaking impact such a recommendation would have, we nevertheless ask that parties commenting on this item include with their comments related revenue impact studies to assist us in evaluating fully the consequences of this recommendation.

23. *Pension Costs.* In the area of accounting for pension costs and deferred compensation arrangements, the Report recommends that the USOA be revised to *require* accruals of pension expenses which are actuarially determined, even if such amounts are *not* funded (Report, paragraph IV B12, pages 91–95).[11] (The current USOA requires such accrual only if the amounts *are* funded.) The Report states that this recommendation would not have a significant impact on revenue requirements since most of the major telephone companies are funding the minimum provision for pension costs and are, thus, already accruing as required both by the USOA and by GAAP. We request that any commenting parties who would be affected by this recommendation include with their

[8] The SEC statement reads, in part: Materiality, while appropriate as a threshold standard to determine the necessity for disclosure to investors, is totally inadequate as a standard for an internal control system. It is too narrow—and thus too insensitive—an index. For a particular expenditure to be material in the context of a public corporation's financial statements—and therefore in the context of the size of the company—it would need to be, in many instances, in the millions of dollars. Such a threshold, of course, would not be a realistic standard. Procedures designed only to uncover deficiencies in amounts material for financial statement purposes would be useless for internal control purposes. Systems which tolerated omissions or errors of many thousands or even millions of dollars would not represent, by any accepted standard, adequate records and controls. The off-book expenditures, slush funds, and questionable payments that alarmed the public and caused Congress to act, it should be remembered, were in most instances of far lesser magnitude than that which would constitute financial statement materiality * * *.

[9] The three accounts are: an asset account entitled "Other jurisdictional assets-Net;" a liability account entitled "Other jurisdictional liabilities and deferred credits-Net;" and an income account entitled "Income effect of jurisdictional ratemaking differences-Net."

[10] Any responding parties disagreeing with this proposal should specify the rationale for their disagreement and the extent to which the proposal should or should not be adopted.

[11] A "funded" plan is one in which the carrier has contracted to pay benefits and has established a separate fund to accumulate the funds for this purpose. In other words, a cash, or cash equivalent transaction has occurred to secure the obligation.

comments related revenue impact studies disclosing the actual extent to which revenue requirements would be affected in implementing this accrual.

24. *Unusual Items.* With respect to the Report's recommendations on accounting for prior period adjustments (Report, paragraph IV B13, pages 95–98), and extroardinary items (Report, paragraph IV B14, pages 98–101), we believe that, because such transactions would by definition be significant and out of the ordinary, our regulatory oversight should be accorded more weight than is implied by the Report.

25. Prior period adjustments are entries made directly to Retained Earnings (i.e., not reflected in current operations) which arise chiefly as a result of the discovery of an error which actually occurred during a prior accounting period. The magnitude of the adjustment is such that, if it were included in current operations, it would significantly distort the results of those operations. Extraordinary items, as GAAP defines them, are unusual in nature, occur infrequently, and are material in relation to income. Under GAAP, both prior period adjustments and extraordinary items are segregated from the normal operations of the accounting entity even if (in the case of prior period adjustments especially) they were related directly to the operations of the entity.

26. Given this type of accounting treatment, we perceive a potential for the misrepresentation of these amounts for ratemaking purposes and a corresponding danger that certain otherwise allowable costs of the carrier might go unrecovered through rates, or conversely that deserved gains or other credits might not accrue to the benefit of ratepayers. Thus, we would expand these recommendations to require that all such transactions receive the prior review and approval of this Commission. Carriers would be required to submit copies of their journal entries, together with necessary supporting detail, to permit the Commission to assess fully the nature and impact of the amounts involved.

27. *Contingencies.* Finally, the report recommends that contingent liabilities be recognized under certain limited conditions (Report, paragraph IV B18, pages 107–108).[12] Because this represents in certain instances a significant departure (although not necessarily in terms of revenue requirements) from current practice, we ask that commenting parties direct particular attention to this item.

[12] These conditions are: (1) Information available prior to issuance of financial statements indicates that it is probable that an asset has been impaired or a liability has been incurred at the date of the financial statements; and (2) the amount of the loss can be reasonably estimated.

IV. Recommendations With Ratemaking Implications

28. As noted in paragraph 7 above, the three recommended changes identified in the Report as having an impact on ratemaking involve accounting for income taxes; capitalized leases; and compensated absences. Of these, the issue of accounting for income taxes (normalizing book and tax timing differences) has by far the most significant impact from a ratemaking perspective.

29. *Normalization Accounting.* Currently, the USOA permits, with some exceptions, normalization of tax timing differences arising only from a carrier's use of accelerated depreciation procedures for income tax purposes. It does not generally permit this same treatment for differences due to interest, pension or other tax charges which are capitalized for book purposes but expensed for income tax purposes. The Report recommends that this disparate treatment be ended and that the USOA permit normalization accounting for *all* tax timing differences to comply with GAAP (Report, paragraph IV B3, pages 59–68). The Report (page 64) justifies this recommendation as follows:

(a) The change would put regulated companies on the same accounting basis as all nonregulated enterprises in the competitive sector;

(b) The change will facilitate better accounting for capital recovery as property related deferred income taxes reflect consumption of part of the value of related plant and equipment;

(c) Full interperiod tax allocation will provide a basis for a better assignment of cost of service to "cost causing" customers; and

(d) Full interperiod tax allocation will result in lower absolute long-run revenue requirements.

30. Expanding on this last justification (lower absolute long-run revenue requirements), the Report (page 67) presents the following table of estimated revenue requirement changes based on consolidated AT&T (pre-divestiture) data (of which approximately 30% would fall in interstate service):

Year	Additional tax provision	Rate base reduction from additional accumulated deferred tax balances	Revenue requirement
1985	$367,471,000	$376,471,000	$690,672,000
1986	371,868,000	739,339,000	619,504,000
1987	381,622,000	1,120,961,000	557,711,000
1988	388,729,000	1,509,690,000	488,591,000
1989	297,788,000	1,907,478,000	421,568,000
1990	408,944,000	2,316,472,000	356,639,000
1991	422,564,000	2,739,036,000	293,794,000
1992	417,649,000	2,156,685,000	193,184,000
1993	436,830,000	3,593,515,000	139,010,000
1994	458,851,000	4,052,366,000	85,967,000
1995	483,885,000	4,536,251,000	33,907,000
1996	511,000,000	5,047,251,000	0

The Report indicates that, within 12 years from adoption of the proposed change, the reduced absolute revenue requirement associated with the reduced rate base more than offsets the increased absolute revenue requirement associated with higher provisions for income taxes. It goes on to conclude that, from that point forward, customers would be required to pay less for service than if the present treatment is continued.

31. The substance of the above justifications appears to us reasonable and prompts us to propose adoption of this recommendation in the revised USOA. We do seek, however, additional comments on the perceived benefits or disadvantages to be derived from this accounting treatment as well as on possible alternatives to minimize the resulting revenue requirement impact.

32. *Leases.* The second of the three recommendations having ratemaking implications involves the capitalization of certain long-term leases (Report, paragraph IV B11, pages 80–91). Under current USOA accounting, all leases, regardless of contract provisions, are treated as operating leases. That is, all lease payments are treated an expense in the period in which they are made. Under GAAP, however, if a lease agreement meets one of four conditions generally understood to convey ownership-type benefits to the lessee, then the leased property is treated as a capital asset acquired under a long-term obligation.[13]

[13] GAAP requires that a lease be classified as a capital lease if it meets any one of the following conditions: (1) By the end of the lease term, ownership of the leased property is transferred to the lessee; (2) the lease contains an option to buy the leased property at a bargain price; (3) the lease term is equal to or greater than 75% of the estimated economic life of the leased property; or (4) at the inception of the lease, the present value of the minimum lease payments, with certain adjustments, is 90% or more of the fair value of the leased property less any investment tax credit retained by the lessor. All other leases are operating leases.

33. The report implies that implementation of this recommendation would produce only minimal revenue requirement impacts, but no supporting study is presented. Based on the mathematical underpinnings for capitalizing leases, however, it appears to us that the revenue requirements associated with the resulting asset and long-term liability would amount to an essentially even trade-off with those associated with our present practice of expensing the lease payments directly. Thus, we propose adoption of this recommendation in the revised USOA but ask that commenting parties provide relevant revenue impact studies to give us a basis for assessing the actual ratemaking implications of this proposal. We also ask that comments address the potential for increased activity in the leasing area and the consequent revenue impact of such increased activity.

34. *Compensated Absences.* In the area of accounting for compensated absences, the Report notes that the current USOA is merely silent (Report, paragraph IV B19, pages 109–113). Under GAAP, companies accrue compensated absences (vacation, sick leave, etc.) in the year in which these benefits are earned rather than when they are paid. The Report notes that, in practice, substantially all carriers *except* AT&T (pre-divestiture) currently account for compensated absences on the accrual basis in accordance with GAAP, whereas AT&T (pre-divestiture) recognizes this expense only when paid.

35. The Report (page 113) presents the following table illustrating the revenue requirement impact which the accrual of compensated absences would have based on consolidated AT&T (pre-divestiture) data:

Year	Additional recorded compensated absences expense	Year-end rate base reduction from additional accrued compensated absences, less accumulated deferred tax balances	Revenue requirement increase (decrease)
1985	$1,803,000,000	$906,950,000	$1,704,530,000
1986	150,000,000	982,380,000	(54,540,000)
1987	150,000,000	1,057,820,000	(70,460,000)
1988	150,000,000	1,133,250,000	(86,800,000)
1989	150,000,000	1,208,750,000	(103,100,000)
1990	150,000,000	1,284,180,000	(119,390,000)
1991	150,000,000	1,359,610,000	(135,710,000)
1992	150,000,000	1,435,040,000	(152,030,000)
1993	150,000,000	1,510,540,000	(168,300,000)
1994	150,000,000	1,585,970,000	(184,630,000)
1995	150,000,000	1,661,140,000	(200,910,000)

The disproportionately large increase in the first year is attributable almost totally to the initial "catch-up" entry that must be made to recognize the liability for compensated absences which exists but is not recorded currently on the carriers' books.

36. To promote uniformity, we propose that the revised USOA require the accrual of compensated absences as recommended in the Report. However, to minimize the initial revenue requirement impact that would result from the "catch up" entry necessitated to implement this recommendation, we further propose that such costs be treated as a deferred charge and spread ratably over a representative number of years. Comments should address any alternatives available under this proposal.

V. Conclusion

37. In summary, then, we are proposing the following:

(a) As discussed in Section II above, adopt the Report's recommendation on conceptual issues surrounding GAAP (with added emphasis to be placed on the economic effects of regulation);

(b) Leave the final determination of materiality to the Commission;

(c) Adopt the Report's 18 recommendations identified as having no or negligible ratemaking impact, subject to the additional comments sought on interest during construction; pension costs; prior period adjustments and extraordinary items; and contingencies; and

(d) Adopt the Report's 3 recommendations on normalization, capitalized leases, and compensated absences identified as having a real or potential ratemaking impact, subject to the satisfactory resolution of the issues and questions surrounding these impacts.

38. In all instances, implementation of the above proposals, if adopted, will be deferred until such time as the revised USOA being developed in CC Docket 78–196 becomes effective (currently anticipated to be Janaury 1, 1986).

39. Copies of Appendix A may be obtained from the Commission's contractor for public records duplication, International Transcription Services, Inc., 4006 University Drive, Fairfax, Virginia 22111, telephone (703) 352–2400.

40. In compliance with the provisions of section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), we believe the above discussion sets forth the purpose of the proposals. We certify that these accounting changes can be readily implemented by all carriers subject to Part 31 without significant economic impact on their operations.

41. For purposes of this nonrestricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments or pleading and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff, which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any written comments previously filed in the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each such *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state the docket number of the proceeding to which it relates. *See generally*, Section 1.1231 of the Commission's rules, 47 CFR 1.1231. A summary of these Commission procedures governing *ex parte* presentations in informal rulemaking is available from the Commission's Consumer Assistance Office, FCC, Washington, D.C. 20554.

42. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and providing that the fact of the Commission's reliance on such information is noted in the Report and Order.

VI. Ordering Clauses

43. Accordingly it is ordered, pursuant to the Provision of sections 4(i) and 220(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 220(a), that there is hereby instituted a notice of proposed rulemaking into the foregoing matters.

44. It is further ordered, That interested persons may file comments on the specific proposals discussed in this Notice on or before June 25, 1984.

Reply comments shall be filed on or before July 10, 1984. In accordance with the provisions of § 1.419 of the Commission's Rules and Regulations, 47 CFR 1.419, an original and five (5) copies of all comments shall be furnished to the Commission. Copies of the comments will be available for public inspection in the Commission's Docket Reference Room, 1919 M Street, NW., Washington, D.C.

45. It is further ordered, pursuant to section 220(i) of the Communications Act of 1934, as amended, 47 U.S.C. 220(i), that the Secretary shall serve a copy of this Notice on each state commission.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84-13592 Filed 5-18-84; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status and Critical Habitat for the Warner Sucker (Catostomus warnerensis)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine the Warner sucker to be a threatened species. This action is being taken because: (1) The range and numbers of the species have been reduced substantially; (2) instream water diversions and artificial barriers are restricting movement and migration of suckers within and among streams; and (3) the species continues to survive precariously in what remains of its native habitat. The Warner sucker occurs in several lakes and their tributary streams in the Warner Valley of south-central Oregon. Critical habitat in Lake County, Oregon, is included in this proposed rule. Special rules are proposed to allow take of the Warner Sucker for certain purposes in accordance with Oregon State laws and regulations. If finalized, the rule would provide protection to the remaining populations of this species. The Service seeks data and comments from the public, State, local, and Federal agencies on this proposal.

DATES: Comments from all interested parties must be received by July 20, 1984. Public hearing requests must be received by July 5, 1984.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE., Multnomah Street, Portland, Oregon 97232. Comments and materials relating to this rule are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Sanford R. Wilbur, Endangered Species Coordinator, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE., Multnomah Street, Portland, Oregon 97232 (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

The Warner sucker, a species endemic to the Warner Basin in south-central Oregon, occurs in several lakes and tributary streams in the basin. It was first described by Snyder in 1908. This species is particularly interesting in that it is part of a relict fauna isolated in remaining waters of a large Pleistocene lake that previously covered much of the basin floor. Residents of the area recall when the suckers (and trout) were very abundant and would ascend the creeks in the spring for spawning. Cope (1883) noted the great abundance of fishes and fish-eating birds in Warner Basin. The Warner sucker is known to occur in portions of Crump and Hart Lakes, the spillway canal north of Hart Lake, and Snyder, Honey, Twentymile, and Twelvemile Creeks (Andreasen 1975, Coombs *et al.* 1979, Swenson 1978). Substantial stream and lake habitat modification has resulted from the attempt to pump Hart Lake dry to allow farming of the bottom. The introduction of exotic fish species and the modification of stream flows into lakes of the Warner Valley by diversion structures have also modified the habitat. All these actions have contributed to the decline in Warner sucker populations (Bond 1974, Coombs *et al.* 1979, Kobetich 1977). The diversion structures are especially significant in that they prevent this obligatory stream-spawning sucker from reaching its spawning and rearing areas. Water pollution and siltation of gravel beds needed by the fish for spawning are also adversely affecting the lake and stream habitats in the basin. This species apparently prefers pools and slow sections of creeks for spawning. Gravel-bottomed sections are especially important.

The Warner sucker is listed as endangered in Bond's 1974 publication, "Endangered Plants and Animals of Oregon: I. Fishes." The species is also list as endangered by Deacon *et al.* (1979). However, recent work of Coombs *et al.* (1979) documented continued, although reduced, spawning of this species and recommended a threatened classification.

The Warner sucker was included in the Service's Vertebrate Notice of Review published December 30, 1982 (47 FR 58454-58460). On April 12, 1983, the Desert Fishes Council petitioned the Fish and Wildlife Service to add the Warner sucker to the List of Endangered and Threatened Wildlife. After evaluation of the petition, the Service published a notice on June 14, 1983 (48 FR 27273-27274), which found that substantial information was presented in the petition to indicate that an action may be warranted to list the species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate 1982 Amendments—see proposal at 48 FR 36062, August 8, 1983) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Warner sucker (*Catostomus warnerensis*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Warner sucker is endemic to the Warner valley in south-central Oregon. It inhabits portions of Crump and Hart Lakes, the spillway north of Hart Lake, and some sections of Snyder, Honey, Twentymile, and Twelvemile Creeks (Andreasen 1975, Coombs *et al.* 1979, Swenson 1978). The species typically ascends streams tributary to lakes in the Warner Basin to spawn. However, instream barriers and diversion structures have often prohibited the movement of suckers into spawning streams during recent years. During years with high precipitation, enough water flows by the diversions so that the suckers can utilize limited reaches of the streams for spawning. However, during periods of low flows, all water is often diverted, thereby eliminating any chance for the fish to spawn. If suckers are successful in ascending the barriers, spawned-out fish

and progeny are likely to be restricted to small areas of streams because of instream barriers, or sometimes diverted into agricultural fields where they die. Habitat modification to streams and lakes in the basin has been substantial. Water diversion, used to promote farming activities, exists on all streams occupied by this species. Such water barriers and diversions are particularly detrimental to this obligatory stream-spawning species. Based on requirements of other species in the genus *Catostomus*, necessary spawning habitat probably consists of silt-free gravel bars and moderate, clean water flows. Postlarval and young-of-the-year Warner suckers utilize shallow backwater pools and stream margins where current is slight or nonexistent.

In addition to diversions, channelization of streams and overgrazing have disturbed soils in the watershed and degraded streams even further by allowing siltation of gravel beds where spawning would normally occur. Runoff and leachates containing fertilizers and pesticides from certain agricultural and ranching activities in the Warner Valley watershed put further stress on water quality of the lakes and streams.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no evidence to suggest overutilization for any of these purposes.

C. *Disease or predation.* Exotic centrarchid (sunfishes and freshwater basses) and ictalurid (catfishes) fishes have been stocked into lakes in the Warner Basin. Large adult centrarchids are capable of preying on all sizes of Warner sucker while the ictalurids can prey upon juvenile suckers. Exotic fishes also may introduce new parasites and disease organisms to which the sucker might be susceptible. Exotic salmonid fishes (trouts) introduced into the streams may also exert predation pressures.

D. *The inadequacy of existing regulatory mechanisms.* Oregon State law provides protection against taking of the Warner sucker by requiring a collecting permit but has no provisions for the protection of habitat.

E. *Other natural or manmade factors affecting its continued existence.* Any prolonged drought will hasten the demise of the Warner sucker if all or most of the water in the streams is diverted. The reduced numbers of populations and individuals make this species more susceptible to any natural or manmade factors that adversely affect it.

The Service has carefully assessed the best scientific information available regarding the past, present and future threats faced by this species in deciding to propose this rule. Based on this evaluation, the proposed action is to list the Warner sucker as threatened. The range and numbers of the species have been reduced substantially and alteration of habitat (e.g., instream water diversions and artificial barriers) continues. Proper and adequate management could prevent the species from becoming endangered. Recent status information has provided essential habitat data and indicates that overcollecting is not a major threat. Hence, it appears prudent to propose critical habitat.

Critical Habitat

Critical habitat as defined by Section 3 of the Act means: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat is being proposed for the Warner sucker to include the following streams in Lake County, Oregon, and 50 feet on either side of the streams: 4.0 stream miles of Twelvemile Creek, 3.5 stream miles of Twentymile Creek, 1.5 stream miles of the spillway north of Hart Lake, 2.5 stream miles of Snyder Creek and 14.5 stream miles of Honey Creek. The 50 foot riparian zone on each side of the stream is included to protect the integrity of the stream ecosystem. The Service determines that the maintenance of this riparian zone is essential to the conservation of the Warner sucker. Riparian vegetation helps prevent siltation and run-off of other pollutants. Shading from small trees and shrubs in the riparian zone helps maintain suitable water temperature and dissolved oxygen levels in the streams. These stream areas include adequate spawning and rearing habitat for the species. The areas proposed do not include the entire historic or present habitat of this fish and modifications to critical habitat descriptions may be proposed in the future.

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) which may adversely modify such habitat or which may be affected by such designation. Such activities are identified for this species as follows:

1. Overgrazing by livestock, which would eliminate riparian vegetation and lead to streambank erosion and subsequent siltation of the stream and lake environment.
2. Introduction of exotic fishes into streams or lakes of the Warner Valley that might compete with or prey on Warner suckers.
3. Construction of additional diversion dams on streams inhabited by the Warner sucker.
4. Channelization or diversion of streams inhabited by the Warner sucker.
5. Pollution of streams and lakes in the Warner Valley inhabited by the Warner sucker.

No activities involving Federal agencies are presently known which directly impact on the habitat of the Warner sucker.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service will consider the critical habitat designation in light of all additional relevant information obtained at the time the final rule is prepared.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, required Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see

proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to informally confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. When a species is actually listed, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

The Act and its implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of prohibitions that generally apply to all threatened fish or wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that had been taken illegally. Certain exceptions would apply to agents of the Service and State conservation agencies.

The above discussion generally applies to threatened species of fish or wildlife. However, the Secretary has discretion under Section 4(d) of the Act to issue such special regulations as are necessary and advisable for the conservation of a threatened species. The Warner sucker is threatened primarily by habitat disturbance or alteration, not by intentional, direct taking of the species or by commercialization. Given this fact and the fact that the State of Oregon regulates direct taking of the species through the requirement of State collecting permits, the Service has concluded that the State's collecting permit system is more than adequate to protect the species from excessive taking, so long as such take is limited to: educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, or other conservation purposes consistent with the Endangered Species Act. A separate Federal permit system is not required to address the current threats to the species. Therefore, the special rule allows take to occur for the above-stated purposes with the need for a Federal permit if a State collection permit is obtained and all other State wildlife conservation laws and regulations are satisfied. The special rule also acknowledges the fact that incidental take of the species by State-licensed recreational fishermen is not a significant threat to the species. Therefore, under this special rule such incidental take would not be a violation of that Act if the fisherman immediately returns the individual fish taken to its habitat. It should be recognized that any activities involving the taking of this species not otherwise enumerated in the special rule are prohibited. Without this special rule all of the prohibitions under 50 CFR 17.31 would apply. The Service believes that this special rule will allow for more efficient management of the species, thereby facilitating its conservation. For these reasons, the Service has concluded that this regulatory proposal is necessary and advisable for the conservation of the Warner sucker.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Warner sucker;

(2) The location of any additional populations of the Warner sucker and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species;

(4) Current or planned activities in the subject area and their probable impacts on the Warner sucker; and

(5) Any foreseeable economic and other impacts resulting from the proposed designation of critical habitat.

Final promulgation of the regulations on the Warner sucker will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 N.E. Multnomah Street, Portland, Oregon 97232.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Andreasen, J.K. 1975. Systematics and status of the family Catostomidae in southern Oregon. Ph.D. Dissertation. Oregon State Univ. 76 pp.

Bond, C.E. 1974. Endangered plants and animals of Oregon. I. Fishes. Oregon State Univ. Agricultural Experimental Station Special Report 205 (revised). 9 pp.

Coombs, C.I., C.E. Bond, and S.F. Drohan. 1979. Spawning and early life history of the Warner sucker (*Catostomus warnerensis*). Report to U.S. Fish and Wildlife Service, Sacramento, California. 52 pp.

Cope, E.D. 1883. On the fishes of the Recent and Pliocene lakes of the western part of the Great Basin, and the Idaho Pliocene Lake. Proc. Acad. Nat. Sci. Philadelphia. 1883:134–166.

Deacon, J.E., G. Kobetich, J.D. Williams, S. Contreras *et al.* 1979. Fishes of North America endangered, threatened, or of special concern: 1979. Fisheries. 4:29–44.

Kobetich, G.C. 1977. Report on survey of Warner Valley lakes for Warner suckers, *Catostomus warnerensis*. Report to U.S. Fish and Wildlife Service, Sacramento, California. 6pp.

Snyder, J.O. 1908. Relationships of the fish fauna of the lakes of southeastern Oregon. Bull. Bur. Fisheries. 27(for 1907): 69–102.

Swenson, S.C. 1978. Report on investigations on *Catostomus warnerensis* during spring 1978. Unpublished report. 6 pp.

Authors

The primary authors of this rule are Dr. Jack E. Williams and Dr. Kathleen E. Franzreb, Endangered Species Office, U.S. Fish and Wildlife Service, 1230 "N" Street, 14th Floor, Sacramento, California 95814 (916/440–2791).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below.

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 [16 U.S.C. 1531 *et seq.*].

2. It is proposed to amend § 17.11(h) by adding the following in alphabetical order under Fishes to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vetebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Fishes							
*	*	*	*	*	*	*	*
Sucker, Warner	Catostomus warnerensis.	U.S.A. (OR)	Entire	T		17.95(e)	17.44
*	*	*	*	*	*	*	*

3. It is further proposed to add the following new paragraph (h) as a special rule to Section 17.44:

§ 17.44 Special rules—fishes.

* * * * *

(h) Warner sucker (*Castostomus warnerensis*)

(1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances: (i) For educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act; (ii) incidental to State-permitted recreational fishing activities, provided that the individual fish taken is immediately returned to its habitat.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species will also be a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State fish and wildlife laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (1) through (3) above.

* * * * *

4. It is further proposed to amend § 17.95(e) by adding critical habitat of the Warner sucker as follows: The position of this entry under § 17.95(e) determined at final rule time (follows the same sequence as the specifies occurs in § 17.11).

§ 17.95 Critical habitat—fish and wildlife.

(e) *Fishes*

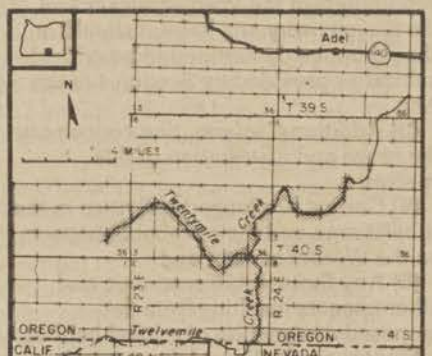
* * * * *

Warner Sucker *(Castostomus warnerensis)*

Oregon: Lake County.

1. *Twelvemile Creek*—4.0 stream miles and 50 feet on either side of the stream commencing from the confluence of Twelvemile Creek and Twentymile Creek upstream including those portions of Twelvemile Creek in T40S, R23E, Section 35; T41S, R23E, Sections 1, 2, 12, 13, 23, and 24.

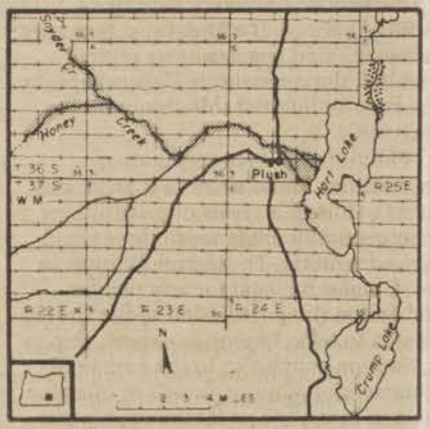
2. *Twentymile Creek*—approximately 18 stream miles and 50 feet on either side of the stream commencing from about 9 miles upstream of the junction of Twelvemile and Twentymile Creeks to a point about 9 miles downsteam of the junction including those portions of Twentymile Creek in T40S, R22E, Sections 25, 35, and 36; T40S, R23E, Sections 19, 20, 24, 25, 28, 29, 30, 33, 34, 35, and 36; T40S, R24E, Sections 15, 16, 19, 20, 21, 22, 28, 29, 30; T41S, R23E, Sections 2 and 3.



3. *Spillway north of Hart Lake.*—2 stream miles and 50 feet on either side of the waterway commencing from its confluence with Hart Lake to a point 2 miles downstream including those portions of the waterway in T36S, R24E, Sections 7, 18, and 19.

4. *Snyder Creek*—3 stream miles and 50 feet on either side of the stream commencing from the confluence of Snyder Creek and Honey Creek to a point 3 miles upstream on Snyder Creek including those portions of Snyder Creek in T36S, R22E, Sections 1 and 12; T36S, R23E, Sections 7, 17, and 18.

5. *Honey Creek*—approximately 16 stream miles and 50 feet on either side of the stream commencing from the confluence of Honey Creek and Hart Lake to a point 16 miles upstream on Honey Creek including those portions of Honey Creek in T36S, R24E, Sections 19, 20, 27, 28, 29, 30, 33, 34, and 35; T36S, R23E, Sections 17, 18, 20, 21, 22, 23, 24, 26, 27, and 28; T36S, R22E, Sections 13, 14, 22, and 23.



Constituent elements of all areas proposed as critical habitat include streams 15 feet to 60 feet wide with gravel-bottom shoal and riffle areas with intervening pools. Streams should have clean, unpolluted flowing water and a stable riparian zone. The streams should support a variety of aquatic insects, crustaceans, and other small invertebrates for food.

* * * * *

Dated: May 7, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-13567 Filed 5-18-84; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

Atlantic Groundfish (Cod, Haddock, and Yellowtail Flounder); Public Hearing

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

ACTION: Notice of public hearings.

SUMMARY: NOAA is holding five public hearings and is providing a comment period to solicit comments on a proposal to allow only 5½ inch mesh cod ends on board a vessel in the large mesh area for groundfish. This action is necessary to

correct abuses to the minimum mesh size regulation of the Interim Plan for Atlantic Groundfish (Interim Plan). This proposal is intended to improve the enforcement and conservation effectiveness of the mesh size measures. NOAA welcomes any comments on alternatives to this proposal which might be equally or more effective.

DATES: Comments on the proposal must be received by June 20, 1984. See Supplementary Information for dates and locations of public meetings.

ADDRESSES: Send comments to Richard H. Schaefer, Acting Regional Director, National Marine Fisheries Service, State Fish Pier, Gloucester, Massachusetts, 01930–3799. Write "MESH" on the outside of the envelope.

FOR FURTHER INFORMATION CONTACT: Peter D. Colosi, Jr., National Marine Fisheries Service, Management Division, Plan Administration Branch, State Fish Pier, Gloucester, Massachusetts, 01930–3097, (phone) 617–281–3600, ext. 272.

SUPPLEMENTARY INFORMATION: The New England Fishery Management Council (Council) has determined that a specific problem exists that detracts from the effectiveness of the 5½ inch minimum requirement for cod end mesh size in the groundfish fishery. Solving this problem is critical to the integrity of the Interim Plan, since mesh size is one of only three conservation measures in the management program. The problem arises from a mesh size regulation that is hard to enforce, because it allows any size cod end to be carried onboard a vessel while in the groundfish large mesh area. This creates an opportunity to use small mesh cod ends to take cod, haddock, and yellowtail flounder. This situation is counter to the intent to implement effective mesh size regulations for groundfish. The practice is wasteful because small, non-marketable fish are killed and discarded at sea; furthermore, enforcement is difficult. Currently, abusers can be issued a violation only if found actually fishing with small mesh.

NOAA proposes to resolve this problem and establish firmly the Council's initial management intent by amending the groundfish regulations. It proposes to allow only 5½ inch mesh cod ends to be carried onboard vessels within the large mesh area. This proposal will improve the effectiveness of at-sea enforcement because it provides a deterrent against mesh size abuses, in that possession of small mesh onboard will constitute a violation.

NOAA also intends to drop the requirement in the regulations to measure nets wet after use. The trend toward exclusive use of synthetic poly-twines today and the decline in the use of nylon net materials makes the requirement to measure wet after use unnecessary.

The National Marine Fisheries Service, on behalf of the New England Council, will conduct a series of public meetings to gather comments on this proposal and solicit suggestions from the public. The public hearing schedule is as follows:

Location	Date and time
Holiday Inn, Jcts. Rt 1 and 128, Peabody, MA.	May 21 at 7:30 pm.
Holiday Inn, Rt. 25, Exit 72, Long Island Expressway, Riverhead, Long Island, NY.	May 22 at 7:30 pm.
Holiday Inn, Jcts. Rt. 1 and 138 W., South Kingstown, RI.	May 23 at 7:30 pm.
Skipper Motor Inn, 110 Middle Street, Fairhaven, MA.	May 24 at 7:30 pm.
Holiday Inn, 81 Riverside Street, Exit 9, Maine Turnpike, U.S. 95, Portland, ME.	May 29 at 7:30 pm.

Dated: May 16, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84–13694 Filed 5–17–84; 2:53 pm]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 49, No. 99
Monday, May 21, 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

Food and Nutrition Service

Food Stamp Program; Adjustment of Income Eligibility Standards

AGENCY: Food and Nutrition Service, USDA.

ACTION: General notice.

SUMMARY: The Department is adjusting the limits on gross and net income which a household may have and still be eligible for food stamps. The Food Stamp Act of 1977, as amended, requires the Department to make this adjustment each year. By adjusting the income eligibility limits, the Program takes into account changes in the cost of living.

EFFECTIVE DATE: July 1, 1984.

FOR FURTHER INFORMATION CONTACT: Thomas O'Connor, Supervisor, Issuance and Benefit Delivery Section, Program Design and Rulemaking Branch, Program Planning, Development and Support Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia, 22302, (703) 756–3461.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

The Department has reviewed this action under Executive Order 12291 and Secretary's Memorandum No. 1512–1. The action will affect the economy by less than $100 million a year. The action will not significantly raise costs or prices for consumers, industries, government agencies or geographic regions. There will not be significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the Department has classified the action as "not major".

Publication

State agencies must implement the new standards on July 1, 1984, and these offices need adequate advance notice of the new standards to carry out all steps necessary for them to meet the implementation deadline. Based on regulations published at 47 FR 46485–46487 (October 19, 1982) annual statutory adjustments to the gross and net monthly income eligibility standards are issued by General Notices published in the **Federal Register** and not through rulemaking procedures.

Regulatory Flexibility Act

The Administrator of the Food and Nutrition Service has certified that this action will not have a significant economic impact on the substantial number of small entities. The action will primarily affect State and local welfare agencies and future food stamp applicants. The effect upon the welfare agencies is not significant.

Paperwork Reduction

This rule does not contain report or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB).

Background

The Food Stamp Act requires that the gross (130 percent of poverty line) and net (equal to proverty line) income eligibility standards take into account the annual adjustments of the poverty guidelines issued by the Department of Health and Human Services. Section 3(i) of the Act provides that elderly individuals (and their spouses) unable to prepare meals because of permanent disability may be considered separate households even if the individuals are living and eating within another household. The Act limits this exception to those individuals who meet both of the following requirements: (1) The individuals' income may not exceed the net income eligibility standards, and (2) the income of those with whom the individuals reside does not exceed 165 percent of the poverty line. Since the gross, net and elderly disabled income eligibility standards are based on the poverty line, each is adjusted as set forth in the following tables:

GROSS MONTHLY INCOME ELIGIBILITY STANDARDS (130%)

Household size	48 States [1]	Alaska	Hawaii
1	540	676	621
2	728	912	838
3	917	1,147	1,055
4	1,105	1,382	1,271
5	1,294	1,617	1,488
6	1,482	1,852	1,705
7	1,671	2,087	1,921
8	1,859	2,322	2,138
Each additional member	+ 189	+ 236	+ 217

[1] Includes District of Columbia, Guam and Virgin Islands.

NET MONTHLY INCOME ELIGIBILITY STANDARDS (100%)

Household size	48 States [1]	Alaska	Hawaii
1	415	520	478
2	560	701	645
3	705	882	811
4	850	1,063	978
5	995	1,244	1,145
6	1,140	1,425	1,311
7	1,285	1,605	1,478
8	1,430	1,786	1,645
Each additional member	+ 145	+ 181	+ 167

[1] Includes District of Columbia, Guam and Virgin Islands.

GROSS MONTHLY INCOME ELIGIBILITY STANDARDS FOR HOUSEHOLDS WHERE ELDERLY DISABLED AS A SEPARATE HOUSEHOLD (165%)

Household size	48 States [1]	Alaska	Hawaii
1	685	858	788
2	924	1,157	1,063
3	1,164	1,455	1,338
4	1,403	1,754	1,613
5	1,642	2,052	1,888
6	1,881	2,350	2,163
7	2,121	2,649	2,438
8	2,360	2,947	2,713
Each additional member	+ 240	+ 299	+ 275

[1] Includes District of Columbia, Guam and Virgin Islands.

(91 Stat. 958 (7 U.S.C. 2011–2029))

(Catalogue of Federal Domestic Assistance, No. 10.551, Food Stamps)

Dated: May 14, 1984.

Robert E. Leard,

Administrator.

[FR Doc. 84-13555 Filed 5-18-84; 8:45 am]

BILLING CODE 3410-30-M

Human Nutrition Information Service

Joint Nutrition Monitoring Evaluation 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: Joint Nutrition Monitoring Evaluation Committee.

Date: June 14 and 15, 1984.

Place: Conference Room 643A, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

Time: June 14, 1:00 p.m. to 5 p.m.; and June 15, 9:00 a.m. to 5:00 p.m.

Purpose: To evaluate the findings of the Nationwide Food Consumption Survey (NFCS), the National Health and Nutrition Examination Survey (NHANES), and other Federal nutrition monitoring efforts and develop a report on the nutritional status of the U.S. population.

Agenda: The agenda for the fourth meeting will include the following items: review final copies of tables and charts to be included in the report: review first draft of text completed to date; and plan future work.

The meeting is open to the public. There is a limited amount of space available for public attendance. Written statements or comments of concern to the committee may be submitted to Isabel D. Wolf, Administrator, Human Nutrition Information Service, 6505 Belcrest Road, Room 360, Hyattsville, MD 20782.

Done at Washington, D.C., this 14th day of May 1984.

Isabel D. Wolf,

Administrator.

[FR Doc. 84–13550 Filed 5–18–84; 8:45 am]

BILLING CODE 3410–KE–M

Soil Conservation Service

Harrison Road Ottawa County Roadsides CAT RC&D Measure, Oklahoma

AGENCY: Soil Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Purusant 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 enviromental impact statement is not being prepared for the Harrison Road Ottawa County Roadsides Critical Area Treatment RC&D Measure, Ottawa County, Oklahoma.

FOR FURTHER INFORMATION CONTACT: Roland R. Willis, State Conservationist, Soil Conservation Service, USDA Agricultural Center Building, Stillwater, Oklahoma, 74074, telephone (405) 624–4360.

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, Roland R. Willis, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure will stabilize the eroding area and reduce the amount of sedimentation in streams and lakes. The planned works of improvement include the construction of vegetated waterways on each side of the county road.

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. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Roland R. Willis.

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. 10.901, Resource Conservation and Development Program. 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: May 14, 1984.

Donald R. Vandersypen,

Assistant State Conservationist (WR).

[FR Doc. 84–13577 Filed 5–18–84; 8:45 am]

BILLING CODE 3410–16–M

Northeast Ottawa County Roadsides CAT RC&D Measure, Oklahoma

AGENCY: Soil Conservation Service.

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); and the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Northeast Ottawa County Roadsides Critical Area Treatment RC&D Measure, Ottawa County, Oklahoma.

FOR FURTHER INFORMATION CONTACT: Roland R. Willis, State Conservationist, Soil Conservation Service, USDA Agricultural Center Building, Stillwater, Oklahoma, 74074, telephone (405) 624–4360.

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, Roland R. Willis, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure will stabilize the erosion along the county roadside and reduce the amount of sedimentation in streams and lakes. The planned works of improvement include shaping the eroded road ditch, constructing a concrete channel liner, and placing sod mulch along side the liner.

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 request at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Roland R. Willis.

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. 10.901 Resource Conservation and Development Program. 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: May 14, 1984.

Donald R. Vandersypen,

Assistant State Conservationist (WR).

[FR Doc. 84–13578 Filed 5–18–84; 8:45 am]

BILLING CODE 3410–16–M

Dutchman Creek Watershed, North Carolina

AGENCY: Soil Conservation Service.

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 not being prepared for the Dutchman Creek Watershed, Davie, Yadkin, and Iredell Counties, North Carolina.

FOR FURTHER INFORMATION CONTACT: Coy A. Garrett, State Conservationist, Soil Conservation Service, 310 New Bern Avenue, Room 535, Federal Building, Raleigh, North Carolina, 27601, telephone 919–755–4210.

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, Coy A. Garrett, 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 control and watershed protection. The planned works of improvement include ten floodwater retarding dams and 38.7 miles of channel clearing and snagging and accelerated technical assistance for land treatment.

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. Basic data developed during the environmental assessment are on file and may be reviewed by contact Coy A. Garrett.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

Coy A. Garrett,

State Conservationist.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. North Carolina Intergovernmental Review Process, effective October 1, 1983, regarding state and local clearinghouse review of federal and federally assisted programs and projects is applicable.

Dated: May 14, 1984.

[FR Doc. 84–13553 Filed 5–18–84; 8:45am]

BILLING CODE 3410–16–M

CIVIL RIGHTS COMMISSION

Nevada Advisory Committee; Amendment

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a meeting of the Advisory Committee to the Commission scheduled for May 26, 1984, at Las Vegas, Nevada (FR Doc 84–12004 on page 49 FR 19088, May 4, 1984) has a new convening time and place.

The meeting will convene at 12:00 noon and will end at 3:00 p.m., at the Caesar's Palace, 3570 Las Vegas Boulevard, Las Vegas, Nevada 89109. The date will remain the same.

Dated at Washington, D.C., May 16, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84–13585 Filed 5–18–84; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–401]

Calcium Hypochlorite From Japan; Initiation of Antidumping Investigation

AGENY: International Trade Administration, Import Administration Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping investigation to determine whether calcium hypochlorite from Japan is being, or is likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of the merchandise are materially injuring, or threatening to materially injure, a U.S. industry. The allegation of sales at less than fair value includes an allegation of critical circumstances under section 773(e) of the Tariff Act of 1930, as amended (19 U.S.C. 1673) (the Act). If our investigation proceeds normally, the ITC will make its preliminary determination on or before June 11, 1984, and we will make ours on or before October 2, 1984.

EFFECTIVE DATE: May 21, 1984.

FOR FURTHER INFORMATION CONTACT: Steven Lim or Paul Tambakis, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 377–1776 or 377–0186.

SUPPLEMENTARY INFORMATION:

Petition

On April 25, 1984, we received a petition filed in proper form from counsel for Olin Corporation, on behalf of the U.S. industry producing calcium hypochlorite. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (19 U.S.C. 1673) (the Act), and that these imports are materially injuring, or threatening to materially injure, a U.S. industry. Petitioner calculated United States price based on the F.A.S. values for imports of the subject merchandise (as reported by the U.S. Department of Commerce, Bureau of Census). Since the petitioner was unable to secure home market or third country prices for the merchandise subject to this investigation, foreign market value was based on United States producers' costs for the merchandise adjusted for cost differences in Japan. Using this comparison, petitioner showed dumping margins of approximately 27.00 to 43.00 percent. Also, critical circumstances have been alleged under section 733(e) of the Act.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether a petition sets forth the allegations necessary for the initiation of an antidumping investigation and whether it contains information reasonably available to the petitioner supporting the allegation of sales at less than fair value. We have examined the petition on calcium hypochlorite and we have found that the petition meets those requirements. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping investigation to determine whether calcium hypochlorite from Japan is being, or is likely to be, sold at less than fair value in the United States. We will also determine whether "critical circumstances" exist in this case. If our investigation proceeds normally, the ITC will make its preliminary determination by June 11, 1984, and we will make ours on or before October 2, 1984.

Scope of the Investigation

The merchandise covered by this investigation is "Calcium Hypochlorite", provided for in item 418.2200 of the Tariff Schedules of the United States.

Notification to ITC

Section 732(d) of the Act requires us to notify the U.S. International Trade Commission of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all non-privileged and non-confidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by June 11, 1984, whether there is a reasonable indication that imports of calcium hypochlorite from Japan are materially injuring, or threatening to materially injure, a U.S. industry. If that determination is negative, the investigation will terminate; otherwise, the investigation will proceed according to the statutory procedures.

Dated: May 15, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-13617 Filed 5-18-84; 8:45 am]

BILLING CODE 3510-05-M

Fireplace Mesh Panels From Taiwan; Preliminary Results of Administrative Review of Antidumping Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of antidumping duty order.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping duty order on fireplace mesh panels from Taiwan. The review covers 11 of the 15 known manufacturers and/or exporters of this merchandise to the United States and the period June 1, 1982 through May 31, 1983.

As a result of the review, because all of the nine shipping firms did not respond to the Department's qestionnaire or provided inadequate responses to the Department's questionnaire, the Department has preliminarily determined to assess dumping duties on those firms' sales during the period using the best information available.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 21, 1984.

FOR FURTHER INFORMATION CONTACT: Ron Nichols or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-5255/3601.

SUPPLEMENTARY INFORMATION: .

Backgound

On July 7, 1983 the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 31279) the final results of its last administrative review of the antidumping duty order on fireplace mesh panels from Taiwan (47 FR 24616, June 7, 1982) and announced its intent to conduct the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of fireplace mesh panels. Such panels are defined as precut, flexible mesh panels, both finished and unfinished, which are constructed of interlocking spirals of steel wire and are of a kind used in the manufacture of safety screening for fireplaces. Fireplace mesh panels are currently classifiable under items 642.8700 and 654.0045 of the Tariff Schedules of the United States Annotated.

The review covers 11 of the 15 known manufacturers and/or exporters of Taiwanese fireplace mesh panels to the United States and the period June 1, 1982 through May 31, 1983.

Nine firms either did not respond to our questionnaire of provided inadequate responses to our questionnaire. For those non-responisve firms, we used the best information available for assessment and estimated antidumping duties cash deposit purposes. The best information available is the most recent rate for each firm. For the two other firms, both with no shipments, the cash deposit rate will be the most recent rate for each firm.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist for the period June 1, 1982 through May 31, 1983:

Manufacturer/exporter	Margin (percent)
Chung Yi Factory/Taipoly Industries Ltd. (a.k.a. Taiwan Fita Industries)	6.4
Foremost Industries Corp.	[1]6.4
Fuan Da Industrial Co., Ltd.	[1]6.4
Kent & J.M. Enterprise	6.4
Mao Shing Enterprises Co., Ltd.	6.4
Taiwan Urano Metalware Co	6.4
Teh We Steel Industrial Co., Ltd.	6.4
United Jacob (a.k.a. Jackson Industrial Inc.)	6.4
Ya Seng Manufacturing Co. (a.k.a. Yeh Sheng Wire Mesh & Screen Co., Ltd)/Tah Chung Iron of Superior Quality Co., Ltd.	6.4

[1] No shipments during the period.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date or publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments of hearing.

The Department shall determine, and the U.S. Customs Service shall assess, dumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties of 6.4 percent shall be required on all shipments of Taiwanese fireplace mesh panels entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administratve review.

This administrative review and notice are in accordance with section 751(a) (1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: May, 10, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-13637 Filed 5-18-84; 8:45 am]

BILLING CODE 3510-DS-M

Presidential Decision on the Impact of Ferroalloy Imports on the National Security

AGENCY: Office of Industrial Resource Administration, International Trade Administration, Commerce.

ACTION: Notice of Presidential decision regarding the Department of Commerce's investigation to determine the impact of ferroalloy imports on the national security pursuant to section 232 of the Trade Expansion Act of 1962, as amended.

SUMMARY: The President has determined that ferroalloy imports do not threaten to impair the U.S. national security. This decision follows the submission of a report by the Department of Commerce on its investigation under section 232 of the Trade Expansion Act into the effect on the national security of imports of ferroalloys, which are used extensively in the making of steel and specialty steel. The investigation was initiated following the filing of a petition by the Ferroalloy Association requesting such an investigation.

Underlying the President's decision are two actions on ferroalloys taken by the Administration since the section 232 petition was filed. In December 1982, the President authorized a stockpile upgrade program for the conversion by domestic companies of stockpile ores into high carbon ferrochrome and high carbon ferromanganese. The Administration also removed Generalized System of Preferences (GSP) eligibility for high carbon ferromanganese. These actions are effectively enhancing our industrial mobilization preparedness.

This Notice contains the Executive Summary of the section 232 report and a Stockpile Upgrade Assessment, both prepared by the Department of Commerce.

FOR FURTHER INFORMATION CONTACT: John A. Richards, Director, Office of Industrial Resource Administration, U.S. Department of Commerce, Room 3876, Washington, D.C. 20230, (202) 377–4506.

SUPPLEMENTARY INFORMATION: This Notice contains the Executive Summary of the report; the entire report is available for inspection at the International Trade Administration Records Inspection Facility, Room 4001–B, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230. Information about the inspection and copying of records at the facility may be obtained from Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377–3031.

Executive Summary of Section 232 Investigation

I. Background of National Security Investigations per Section 232 Trade Expansion Act of 1962, as Amended

A. *Purpose of an investigation.* An import impact investigation is conducted to determine the effect of the import of any article, good or commodity on the national security. An investigation includes examination of the effects of imports on all phases of U.S. productive capacity necessary to meet a selected emergency scenario, as well as other factors related to national security.

Based on this report, the Secretary of Commerce will present the findings and recommendation to the President, who will determine what action, if any, is necessary to adjust the import of these products so that they do not threaten the national security.

B. *Legal authority.*—1. *The law.* Under section 232 of the Trade Expansion Act of 1962, as amended (19 USC 1862) the Secretary of Commerce, in consultation with the Secretary of Defense and other appropriate agencies, has the responsibility to conduct an investigation to determine the effect on the national security of imports of any article which may be the subject of a specific request by the head of any department or agency, by request of an interested party, or upon his own motion.

This function was transferred to the Secretary of Commerce from the Secretary of Treasury by Reorganization Plan No. 3 of 1979 (44 FR 69273) and as provided by Executive Order 12188 of January 2, 1980. The effective date of the transfer was January 2, 1980.

2. *The regulations.* To properly administer the responsibilities under the statute, regulations were promulgated prescribing procedures to be followed by the Department of Commerce to commence and conduct an investigation to determine the effect on the national security of the imports of any article. These regulations are found in Title 15, Code of Federal Regulations, Part 359, "Effects of Imported Articles on the National Security."

The regulations include requirements for the initiation of the ivestigation, the criteria for determining the effects of imports of the article on the national security, guidance to applicants as to the filing and content of requests and applications for investigations, the conduct of an investigation, the Secretary's report to the President, and the public availability of the record of the investigation.

C. *Critical factors of an investigation.* The regulations require that certain criteria be used to determine the effect of imports on the national security. They include:

(a) Requirements of the direct defense, indirect defense and essential civilian sectors;

(b) Domestic production needed for projected national defense needs;

(c) Capacity of domestic industries to meet projected national defene needs:

(d) Existing and anticipated availability of labor (skilled and unskilled), raw materials, products, production equipment and facilities, and other supplies and services essential to the national defense;

(e) Growth requirements of domestic industries to meet national defense requirements;

(f) Quantity, quality and availability of imports;

(g) Impact of foreign competition on the economic welfare of the essential domestic industry;

(h) Serious effects of imports on the possible displacement of domestic products, unemployment, decrease in revenues to the government, loss of investments, loss of specialized skills and loss of productive capacity;

(i) Any other relevant factors that may weaken our national economy; and

(j) Other factors relevant to national security in light of the peculiarities of each case.

Further, each criterion is applied within the limits of a selected scenario approved by the National Security Council. Details of the emergency mobilization levels established by the scenario (classified) provide the Secretary of Commerce with specific industry requirements based on industrial data acquired by other agencies.

In addition, the total impact of the proposed action or inaction must be investigated. This includes foreign policy considerations, international trade policy, and procurement agreements. Finally, it should be understood that the purpose of a section 232 investigation is to safeguard the security of the nation, not the economic welfare of a company or an industry, except as that welfare may affect the national security.

D. *Conduct of an Investigation.* When an application to request an investigation is received by the Department of Commerce from another agency or department, or from an interested party, the regulations (15 CFR Part 359) require that the Department shall consult with the Department of Defense and other appropriate officers of the U.S. to determine the effect on the national security of the imports of the article in question. The Department may afford the public an opportunity to comment and present information and advice relevant to the application, if appropriate.

From that point forward, the Department will convene an interagency panel for detailed consultations and prepare a report to the President following the guidelines in the regulations and the statutes. A final report will be published in the **Federal Register** upon disposition of each request for an investigation.

II. Background of the Investigation of the Ferroalloy Industry

On August 18, 1981, The Ferroalloys Association, located in Washington, D.C., representing all U.S. ferroalloy producers in the U.S., filed an application with the Department of Commerce requesting an investigation to determine the effect on the national security of the imports of chromium, manganese and silicon ferroalloys and related materials.

Ferroalloys impart distinctive qualities to steel and cast irons or serve important functions during the production cycle. The characteristics of metals are dependent upon their alloying materials.

The demand for ferroalloys is governed to a large extent by the requirements of the iron and steel industry for castings, mill shapes and forms of various combinations of strength and corrosion resistance, qualities that are affected by chemical composition. Basic to producing variations in both strength and corrosion resistance is the deliberate adjustment of the carbon content and the addition of other metals. These other metals, when combined with iron, are commonly referred to as ferroalloys. Ferroalloys are necessary in the production of steel for military and essential civilian needs.

The investigation focused on the following types of ferroalloys:

Low carbon ferrochromium
High carbon ferrochromium
Ferrochromium silicon
Chromium metal
Low carbon ferromanganese
Medium carbon ferromanganese
High carbon ferromanganese
Ferrosilicon manganese
Manganese metal
Ferrosilicon 8–60%
Ferrosilicon 60–80% (commonly known as 75% ferrosilicon)
Ferrosilicon 80–96%
Silicon metal

III. Methodology Used in This Investigation

To address the critical factors of a 232 investigation for the ferroalloys industry, the Department of Commerce followed this procedure:

1. National security policy determinations and mobilization planning documents were examined for guidance in developing a framework for the investigation. It was determined that the National Security Council (NSC)-approved mobilization scenario, used as basis for stockpiling and other mobilization planning, is suitable in this investigation as a basis for examining the national security effects of imports of the materials in question.

2. The National Security Council approved mobilization scenario was selected and the criteria for determining the effect of imports on national security were identified in the scenario as that necessary to support expanded U.S. military activity and essential general civilian requirements. The scenario assumes that mobilization commences prior to the beginning of hostilities.

3. Mobilization requirements for the ferroalloys under investigation were calculated based on national security considerations and the selected scenario. To measure the total mobilization requirements (three years of conflict plus one year of mobilization) for each type of ferroalloy subject to this investigation, it was necessary to calculate the requirements under conditions of the assumed scenario for defense production and civilian production (which includes the materials content of essential consumer products and industry expansion projects) needs.

The Federal Emergency Management Agency (FEMA) calculated the requirements for defense production for each ferroalloy from defense mobilization expenditure levels provided by the Department of Defense. The defense mobilization expenditure levels were translated by an econometric input-output model into specific defense production ferroalloy requirements. These expenditure levels were projected based on this Administration's national security policy guidance. FEMA also projected ferroalloy requirements for essential civilian production based on the projected defense expenditures, assumed GNP estimates, plus austere personnel consumption, private investment, foreign trade and civilian government purchases, less imports.

4. Data were collected about the ferroalloy industry and the specific products under investigation to determine whether or not: (a) The domestic capability to produce these products was threatened, and (b) whether imports were causal in such cases.

5. Projections were made of the supply of ferroalloys that would be available from domestic production, imports, and national defense stockpiles during a national emergency.

6. Finally, a two-step analysis was conducted for each product under investigation to determine whether or not imports of that product pose a threat to national security. First, projected mobilization requirements for the individual ferroalloys were compared with the total anticipated supply for each product including what could be supplied from domestic production and reliable imports. If total anticipated supply was insufficient to satisfy the projected requirements during each of the three conflict years, the shortfall in supply was assumed to be a threat to national security.

The second step was to assess the relationship of imports to the projected shortfall in supply. This assessment included an analysis of the 12 year trend (1970–1981) of domestic production, imports, consumption, domestic capacity utilization, and the price differentials between quoted domestic and import, prices for these products. A time lag analysis of quoted domestic prices and import prices was calculated. A regression of price changes was calculated by lagging quoted prices of both imports and domestic products. Market penetration by imported products was studied by plotting the ratio of imports to apparent consumption over the 12 year period. Utilization of domestic production capacity of each ferroalloy was compared to the change in U.S. market share of the domestic ferroalloy producers.

In making a finding that imports posed a threat to national security, an evaluation was made of changing consumption patterns of each product, declines in domestic production for each product, increased reliance on imports, and limitations to industry growth due to import penetration and low capacity utilization of domestic production facilities. Where it was determined that the shortfall of anticipated supply to mobilization requirements was the result of a declining domestic production base, or limitation on expanding domestic production capacity due to import penetration, a positive finding was made.

IV. Analysis and Findings

The investigation has found that imports of two products do pose a threat to national security. They are:

High carbon ferrochromium
High carbon ferromanganese

These products have been subject to foreign price pressure for mroe than 10 years. The investigation found a domestic industry of high technological efficiency able to meet foreign competition were it not for high labor, energy and environmental costs associated with domestic production. Action is deemed necessary to remedy the current situation for these two products.

High Carbon Ferrochromium

• The Federal Emergency Management Agency (FEMA) report indicated a mobilization shortfall of ** of high carbon ferrochromium. The mobilization shortfall was calculated as the difference between projected requirements of ** and the total anticipated supply of ** of domestic production plus 387,200 short tons (ST) of imports. The National Defense Stockpile inventory of 402,696 ST of high carbon ferrochromium can meet only ** percent of this shortfall; **.

• Although demand (apparent consumption) for high carbon ferrochromium has increased over ** percent between 1970 and 1980, domestic production has fluctuated from 1970 to the present (it averaged approximately 169,700 ST yearly), and has declined over the past two years. Production in 1981 of 143,500 ST was approximately the same as in 1970.

• The decline in production has led to a reduction in overall capacity for ferrochrome. With a current capacity utilization rate of only 34 percent for high carbon ferrochromium, there is a clear danger that the industrial base for producing this product will continue to shrink.

• Imports of high carbon ferrochromium have ranged from eight percent of apparent consumption in 1970 (12,333 ST) to 75.2 percent of apparent consumption in 1981 (381,146 ST (p***)), averaging 61 percent between 1976–1981.

• Pricing data shows that quoted prices of imported high carbon ferrochromium were consistently lower than that of the domestic product. A recent ITC decision indicates that high carbon ". . . ferrochromium is being imported into the U.S. in such quantities as to be a substantial cause of serious injury to the domestic industry producing an article like or directly competitive with the imported article."

• Although actual transaction prices were not available for analysis, analysis of quoted prices suggests that lower-priced imports have forced domestic prices downward, and thus have adversely affected U.S. producers' profitability. A time lag analysis indicates that lower import prices consistently led domestic prices. These prices were quoted prices and may differ from transaction prices. A comparison of these prices gives a correlation coefficient of .900. When import prices were lagged one month, the correlation coefficient increased to .920. It should be noted in considering this information that, in part, price differences may represent differing pricing strategies.

• The retrenchment of the industry, seen in terms of shrinking capacity utilization over the past decade, raises legitimate questions about its ability to adequately supply the defense industrial base with high carbon ferrochromium under the mobilization scenario.

High Carbon Ferromanganese

• FEMA reports a mobilization shortfall of ** of high carbon ferromanganese. The mobilization shortfall was calculated as the difference between projected requirements of ** and the total anticipated supply of ** of domestic production plus ** of imports. The National Defense Stockpile inventory of this product is 599,978 ST, or ** percent of the reported shortfall.

• Domestic production of high carbon ferromanganese has declined by ** percent (from 789,700 ST to **) during the 1970–1981 period of this study.

• Current production capacity utilization is at ** percent for all ferromanganese. ****.

• In spite of a decline in ferromanganese consumption caused by conservation and technical improvements on the part of steelmakers and the reduced output of the U.S. steel industry, imports have increased dramatically. In 1981, imports totalled 636,067 (p) ST, compared to 268,000 ST in 1970. As U.S. production and consumption have declined over the period of the study, imports of high carbon ferromanganese have grown from 25.5 percent of consumpton in 1970 to 89.8 percent in 1981.

• Based on quoted prices, the price of imported high carbon ferromanganese has been consistently lower than the domestic price between 1972 and 1982 in all calendar quarters but five. The time lag analysis indicates that lower import prices consistently led domestic prices.

These prices were quoted prices and may differ from transaction prices. A comparison of these prices gives a correlation coefficient of .900. When import prices were lagged one month, the correlation coefficient increased to .932. In considering this information, it should be noted that, in part, price differences may represent differing pricing strategies.

• The imports of high carbon ferromanganese, increasing concurrently with the decline in U.S. production, have resulted in the elimination of seven furnaces with an annual capacity of 207,600 ST, and the shutdown of 14 others, with an annual capacity of 526,200 ST. Retrenchment of the industry threatens its ability to produce adequately for the defense industrial base under the mobilizaton scenario.

Other Ferroalloys

The investigation did not find that imports of other ferroalloys and related materials pose a threat to the national security. These products are:

Low carbon ferrochromium
Ferrochromium silicon
Chromium metal
Low carbon ferromanganese
Medium carbon ferromanganese
Silicon manganese
Manganese metal
Ferrosilicon 8–60%
Ferrosilicon 60–80%
Ferrosilicon 80–96%
Silicon metal

V. Options and Recommendations

In developing a recommendation based on the remedies which are listed below, the following criteria were used:

(1) The primary purpose of a remedy must be to alleviate shortfalls in projected available supply of ferroalloys (as calculated from available imports, domestic production, and National Defense Stockpile inventories, if any) to meet national security needs (as defined by national security policy);

(2) To maintain domestic production capacity to the extent that imports and National Defense Stockpile inventories would be insufficient to meet national security needs;

(3) The selected remedy must incorporate, to the maximum extent possible, U.S. trade policy goals;

(4) The selected remedy must be one in which the *direct* and *indirect* costs of taking such action are minimized; and

(5) The selected remedy must be feasible.

Options

The remedies that were considered are:

1. *Upgrade the National Defense Stockpile (NDS) of Chromite and Manganese Ore into High Carbon Ferrochromium and High Carbon Ferromanganese to Eliminate the Mobilization Shortfalls*
2. *Impose Quotas on Certain Ferroalloy Imports*
3. *Impose a Breakpoint Tariff on Certain Ferroalloy Imports*
4. *Impose an Import Duty on Ferroalloys*
5. *Remove High Carbon Ferromanganese from Duty-Free*

**Portions of the report have been deleted because they are based on or contain company confidential or classified information.

***Preliminary data.

**** High carbon ferromanganse represents 75 percent of all ferromanganese production.

Treatment Under the Generalized System of Preferences (GSP)

6. *Take No Action to Remedy National Security Threat Imposed by Ferroalloy Imports*

Recommendations

Having found that in the case of two of the ferroalloys investigated the national security is threatened by imports of these products, various remedies to redress this problem were analyzed. The primary consideration for policy intervention under Section 232 is to ensure the domestic availability of certain products for national defense purposes at the lowest possible cost and by methods consistent with overall U.S. trade objectives.

The option of upgrading the NDS of chromite and manganese ore into high carbon products would best accomplish the goals of alleviating shortfalls in projected available supplies of these products to meet national security needs; and maintaining domestic production capacity to the extent that imports and NDS inventories would be insufficient to meet national security needs. In addition, this option would not conflict with current U.S. trade policy. However, there would be an on-budget cost of $33 million per year associated with this remedy.

The remedy should be implemented immediately. With one major producer already in Chapter XI proceedings, the industry cannot wait for relief.

Adjustment of the NDS should be accomplished using the independent authority of the Strategic and Critical Materials Stock Piling Act.

In addition to upgrading the NDS, removal from the GSP of high carbon ferromanganese is another action which is deemed appropriate as a result of these findings.

Shipments of high carbon ferromanganese from countries which benefit from the Generalized System of Preferences (GSP) totalled 120,504 ST and represented 19 percent of all such material imported into the U.S. in 1981. Mexico was the largest GSP supplier of high carbon ferromanganese in 1981, followed by Portugal, South Korea, Yugoslavia, and Brazil.

Requests to modify the GSP are considerd within the interagency Trade Policy Committee (TPC) framework, and any removal of high carbon ferromanganese from the GSP under section 232 could be accomplished through the TPC. In reviewing a proposed modification, the key issue is its impact on the relevant domestic industry. Other factors considered include trends in consumption and domestic employment as well as the effect duty-free treatment of a product would have on the domestic consumer. Recent requests to include some ferroalloys on which negative findings have been made in the Section 232 investigation in the GSP were rejected by the TPC on the basis that granting GSP eligiblity for these ferroalloys would likely result in a significant adverse impact on domestic producers. Any reduction in import prices could force U.S. producers to reduce their prices and/or could decrease their sales volume.

Therefore, it is entirely consistent with the findings that high carbon ferromanganese be removed from GSP treatment because an impact on national security has been established due to the effect of imports on the domestic industry.

If the President indicates that the action of withdrawing GSP status for this material were taken for the purpose of adjusting imports to remove a threat to the national security caused by imports, such action could be considered an action "to adjust imports" within the meaning of section 232.

Stockpile Upgrade Assessment

Introduction

On November 29, 1982, the President directed the General Services Administration to begin a program to process stockpiled manganese and chromium ores into approximately 577,000 short tons of high-carbon ferromanganese and 519,000 short tons of high carbon ferrochromium during the next ten years. This stockpile upgrading program was designed to meet two objectives: 1) to decrease the amount of stockpile ore requiring conversion to ferroalloy form in time of national emergency, and 2) to help maintain domestic ferroalloy furnace and processing capacity.

The President's action, taken under the Strategic and Critical Materials Stockpiling Act of 1979, followed from concerns raised by the Commerce Department's report to the President on a ferroalloy investigation conducted under section 232 of the Trade Expansion Act of 1962. The Commerce Department had prepared the report pursuant to a petition filed by the Ferroalloy Association in August 1981 requesting an investigation, under the statute, of the impact of ferroalloy imports on the national security.

Stockpile Upgrade Program

On December 30, 1983, GSA awarded two contracts for converting ore into ferroalloy products. Elkem Metals Company of Marietta, Ohio was awarded a contract for the upgrading of 48,000 short tons of manganese ore. The Macalloy Corporation of Charleston, SC was awarded a contract to process 121,000 short tons of chromite ore. Processing of this ore is expected to be completed by the end of 1984. GSA is currently preparing solicitations for the next phase of the upgrading program.

Impact on Stockpile

Based on a processing program allotted equally over ten years, the program objective for the first year would have been approximately 58,000 tons of high carbon ferrochrome (HcFeCr) and 52,000 tons of high-carbon ferromanganese (HcFeMn). GSA received acceptable bids for approximately 90% and 47%, respectively, of these first year program objectives. The first-year contracts awarded will therefore add about 50,000 tons of HcFeCr and about 24,000 tons of HcFeMn to the stockpile inventory. GSA may be in a position to increase next year's contract bids for HcFeMn to compensate for this year's shortfall in meeting annual input to the stockpile.

Impact on Domestic Capacity

When the President directed that this program be initiated, domestic capacity utilization for HcFeCr was about 34% and for HcFeMn, about 22–27%. Since that time, capacity utilization has dropped to zero for HcFeCr and to 11% for HcFeMn. The GSA upgrade program will increase capacaity utilization to 20% for HcFeCr and to 19% for HcFeMn.

The contract awarded to the Macalloy Corporation will enable it to reactivate one of its two furnaces for a full year. In addition, Macalloy executives have stated that Macalloy, which is currently in Chapter 11 bankruptcy proceedings, will use the $23 million GSA contract as a basis for the company's reorganization plan. Consequently, the contract may prove instrumental in preserving Macalloy as a viable ferroalloy processing company. Elkem Metals has advised us that its ferromanganese processing contract will either fully utilize the capacity of a 24,000 ton furnace for the full contract term, or will enable Elkem to keep in operation for six months a 55,000 ton furnace that otherwise would be shut down during the year.

Conclusion

The stockpile program will lessen the amount of ore needing conversion for an emergency mobilization. It is meeting its objective with regard to the HcFeCr. It is behind schedule for HcFeMn. The program will keep Macalloy in business

and thereby help preserve some domestic capacity. The stockpile program will also increase capacity utilization. However, given the current depressed state of the industry, utilization will be at a lower level than at the time the stockpile program was initiated.

Dated: May 17, 1984.

Walter J. Olson,

Deputy Assistant Secretary for Export Administration International Trade Administration.

[FR Doc. 84-13663 Filed 5-17-84; 12:22 pm]

BILLING CODE 3510-DT-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Withdrawal of Call on Category 637 (Man-Made Fiber Playsuits) from Hong Kong

May 16, 1984.

On March 8, 1984 a notice was published in the **Federal Register** (49 FR 8660) announcing that, on February 27, 1984, the Government of the United States had requested the Government of Hong Kong to enter into consultations concerning exports to the United States of textile products in Category 637 (playsuits of man-made fibers), produced or manufactured in Hong Kong. The purpose of this notice is to announce that the United States Government has concluded that there is no need to establish a limit for textile products in Category 637 at this time. Should it become necessary to discuss this category further with the Government of Hong Kong at a later date, notice will be published in the **Federal Register.**

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-13636 Filed 5-18-84; 8:45 am]

BILLIG CODE 3510-DR-M

DEPARTMENT OF ENERGY

Office of the Secretary

Civil Uses of Atomic Energy; Proposed Subsequent Arrangement; U.S. and EURATOM

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 for the return of 20 kilograms of highly enriched research reactor fuel of United States origin for reprocessing and storage at the Department of Energy facility in Idaho. The material has been irradiated in the FRJ-1 reactor 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 this subsequent arrangement will not be inimical to the common defense and security. The return of U.S. origin highly enriched uranium (HEU) is consistent with U.S. non-proliferation policy in that it serves to reduce the amount of HEU abroad.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: May 16, 1984.

For the Department of Energy.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-13633 Filed 5-18-84; 8:45 am]

BILLING CODE 6450-01-M

Civil Uses of Atomic Energy; Proposed Subsequent Arrangement; U.S. and EURATOM

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 the supply of the following material:

Contract Number WC-EU-271, with Produktgruppenlieter, Fr. Kammerer Gmbh, the Federal Republic of Germany, 992 grams of uranium, containing 0.2% U-235, in the form of metal plates, for coating. The material will then be returned to the United States for corrosion testing.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement 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.

Dated: May 16, 1984.

For the Department of Energy.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-13634 Filed 5-18-84; 8:45 am]

BILLING CODE 6450-01-M

Civil Uses of Atomic Energy; Proposed Subsequent Arrangement; U.S. and Japan

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 Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the return of 22 kilograms of U.S. origin irradiated research reactor fuel from the JMTR reactor, and 20 kilograms from the JRR reactor, for reprocessing and storage at the Department of Energy Idaho facility.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security. The return of U.S. origin highly enriched uranium (HEU) to the U.S. is consistant with U.S. nonproliferation policy in that it tends to reduce the amount of HEU abroad.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: May 16, 1984.

For the Department of Energy.

George J. Bradley,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-13632 Filed 5-18-84; 8:45 am]

BILLING CODE 6450-01-M

Civil Uses of Atomic Energy; Proposed Subsequent Arrangement; U.S. and Japan

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 Agreement for Cooperation Between the Government of the United

States of America and the Government of Japan Concerning Civil 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–JA–341, to Japan Nuclear Fuel Conversion Co., Ltd., Tokyo, Japan, 890.4 grams of natural uranium, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement 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.

Dated: May 16, 1984.

For the Department of Energy.

George J. Bradley, Jr.

Deputy Assistant Secretary for International Affairs.

[FR Doc. 84–13635 Filed 5–18–84; 8:45 am]

BILLING CODE 6450–01–M

National Petroleum Council, Marine Task Group of the Committee on the Strategic Petroleum Reserve; Meeting

Notice is hereby given that the Marine Task Group of the Committee on the Strategic Petroleum Reserve will meet in May 1984. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on the Strategic Petroleum Reserve will address various aspects of the Strategic Petroleum Reserve and the long-term availability and movement patterns of tankers worldwide. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The Marine Task Group will hold its second meeting on Wednesday, May 23, 1984, starting at 9:00 a.m., in room 4409 of the Atlantic Richfield Company, 515 South Flower Street, Arco Plaza, Los Angeles, California.

The tentative agenda for the Marine Task Group meeting follows:

1. Opening remarks by Chairman and Government Cochairman.
2. Review progress of Marine Task Group assignments.
3. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Marine Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Marine Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Gerald J. Parker, Office of Oil, Gas and Shale Technology, Fossil Energy, 301/353/3032, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on May 11, 1984.

William A. Vaughan,

Assistant Secretary, Fossil Energy.

[FR Doc. 84–13631 Filed 5–18–84; 8:45 am]

BILLING CODE 6450–01–M

National Petroleum Council, Refineries Task Group of the Committee on the Strategic Petroleum Reserve; Meeting

Notice is hereby given that the Refineries Task Group of the Committee on the Strategic Petroleum Reserve will meet in June 1984. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on the Strategic Petroleum Reserve will address various aspects of the Strategic Petroleum Reserve and the long-term availability and movement patterns of tankers worldwide. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The Refineries Task Group will hold its second meeting on Tuesday, June 5, 1984, starting at 8:30 a.m., in Room Three, Amoco Oil Company, Third Floor, 200 East Randolph Drive, Chicago, Illinois.

The tentative agenda for the Refineries Task Group meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Review the availability of EIA data.
3. Define refinery centers.
4. Develop Refinery Task Group methodology.
5. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Refineries Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Refineries Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Gerald J. Parker, Office of Oil, Gas and Shale Technology, Fossil Energy, 301/353–3032, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on May 11, 1984.

William A. Vaughan,

Assistant Secretary, Fossil Energy.

[FR Doc. 84–13544 Filed 5–18–84; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Publication of Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas

The Natural Gas Policy Act of 1978 (NGPA) (Pub. L. 95–621) signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. In general, under Title II of the NGPA, interstate natural gas piepline companies are required to pass through certain portions of their acquisition costs for natural gas to industrial users in the form of a surcharge. The statute requires that the ultimate costs of gas to the industrial facility should not exceed the cost of the fuel oil which the facility could use as an alternative.

Pursuant to Title II of the NGPA, Section 204(e), the Energy Information Administration (EIA) herewith publishes for the Federal Energy Regulatory Commission (FERC) computed natural gas ceiling prices and the high cost gas incremental pricing threshold which are to be effective June 1, 1984. These prices are based on the prices of alternative fuels.

For further information contact: Leroy Brown, Jr., Energy Information Administration, 1000 Independence Avenue, SW, Room BE–034, Washington, D.C. 20585. Telephone: (202) 252–6077.

Section I

As required by FERC Order No. 50, computed prices are shown for the 48 contiguous States. The District of Columbia's ceiling is included with the ceiling for the State of Maryland. FERC, by an Interim Rule issued on March 2, 1981, in Docket No. RM79–21, revised the methodology for calculating the monthly alternative fuel price ceilings for State regions. Under the revised methodology, the applicable alternative fuel price ceiling published for each of the contiguous States shall be the lower of the alternative fuel price ceiling for the State or the alternative fuel price ceiling for the multistate region in which the State is located.

The price ceiling is expressed in dollars per million British Thermal Units (BTU's). The method used to determine the price ceilings is described in Section III.

State	Dollars per million Btu's
Alabama	4.06
Arizona [1]	4.04
Arkansas [1]	4.02
California	4.00
Colorado [2]	4.04
Connecticut	4.40
Delaware [1]	4.42
Florida	3.95
Georgia [1]	4.26
Idaho [2]	4.04
Illinois [1]	4.18
Indiana	4.03
Iowa [1]	4.11
Kansas [1]	4.11
Kentucky [1]	4.18
Louisiana [1]	4.02
Maine [1]	4.45
Maryland [1]	4.42
Massachusetts	4.34
Michigan [1]	4.18
Minnesota [1]	4.11
Mississippi [1]	4.26
Missouri	4.09
Montana [2]	4.04
Nebraska [1]	4.11
Nevada [1]	4.04
New Hampshire [1]	4.45
New Jersey	4.21
New Mexico	3.74
New York [1]	4.42
North Carolina [1]	4.26
North Dakota [1]	4.11
Ohio	4.15
Oklahoma [1]	4.02
Oregon [1]	4.04
Pennsylvania	4.38
Rhode Island [1]	4.45
South Carolina [1]	4.26
South Dakota [1]	4.11
Tennessee [1]	4.26
Texas	3.83
Utah [2]	4.04
Vermont [1]	4.45
Virginia [1]	4.26
Washington [2]	4.04
West Virginia [1]	4.18
Wisconsin [1]	4.18
Wyoming [2]	4.04

[1] Region based price as required by FERC Interim Rule, issued on March 2, 1981, in Docket No. RM–79–21.

[2] Region based price computed as the weighted average price of Regions E, F, G, and H.

Section II. Incremental Pricing Threshold for High Cost Natural Gas

The EIA has determined that the volume-weighted average price for No. 2 distillate fuel oil landed in the greater New York City Metropolitan area during March 1984 was $34.24 per barrel. In order to establish the incremental pricing threshold for high cost natural gas, as identified in the NGPA, Title II, Section 203(a)(7), this price was multiplied by 1.3 and converted to its equivalent in millions of BTU's by dividing by 5.8. Therefore, the incremental pricing threshold for high cost natural gas, effective June 1, 1984, is $7.67 per million BTU's.

Section III. Method Used to Compute Price Ceilings

The FERC, by Order No. 50, issued on September 29, 1979, in Docket No. RM79–21, established the basis for determining the price ceilings required by the NGPA. FERC also, by Order No. 167, issued in Docket No. RM81–27 on July 24, 1981, made permanent the rule that established that only the price paid for No. 6 high sulfur content residual fuel oil would be used to determine the price ceilings. In addition, the FERC, by Order No. 181, issued on October 6, 1981, in docket No. RM81–28, established that price ceilings should be published for only the 48 contiguous States on a permanent basis.

A. Data Collected

The following data were required from all companies identified by the EIA as sellers of No. 6 high sulfur content (greater than 1 percent sulfur content by weight) residual fuel oil: For each selling price, the number of gallons sold to large industrial users in the months of January 1984, February 1984, and March 1984.[3] All reports of volume sold and price were identified by the State into which the oil was sold.

B. Method Used to Determine Alternative Price Ceilings

(1) *Calculation of Volume-Weighted Average Price.* The prices which will become effective June 1, 1984 (shown in Section I) are based on the reported price of No. 6 high sulfur content residual fuel oil, for each of the 48 contiguous States, for each of the 3 months, January 1984, February 1984, and March 1984. Reported prices for sales in January 1984 were adjusted by the percent change in the nationwide volume-weighted average price from January 1984 to March 1984. Prices for February 1984 were similarly adjusted by the percent change in the nationwide volume-weighted average price from February 1984 to March 1984. The volume-weighted 3-month average of the adjusted January 1984 and February 1984, and the reported March 1984 prices were then computed for each State.

(2) *Adjustment for Price Variation.* States were grouped into the regions identified by the FERC (see Section III.C.). Using the adjusted prices and associated volumes reported in a region during the 3-month period, the volume-weighted standard deviation of prices was calculated for each region. The volume-weighted 3-month average price (as calculated in Section III.B.(1) above) for each State was adjusted downward by two times this standard deviation for the region to form the adjusted weighted average price for the State.

(3) *Calculation of Ceiling Price.* The lowest selling price within the State was determined for each month of the 3-month period (after adjusting up or down by the percent change in oil prices at the national level as discussed in Section III.B.(1) above). The products of the adjusted low price for each month times the State's total reported sales volume for each month were summed over the 3-month period for each State and divided by the State's total sales volume during the 3 months to determine the State's average low price. The adjusted weighted average price (as calculated in Section III.B.(2)) was compared to this average low price, and the higher of the values was selected as the base for determining the alternative fuel price ceiling for each State. For those States which had no reported sales during one or more months of the 3-month period, the appropriate regional volume-weighted alternative fuel price was computed and used in combination with the available State data to calculate the State alternative fuel price ceiling base. The State's alternative fuel price ceiling base was compared to the alternative fuel price ceiling base for the multistate region in which the State is located and the lower of these two prices was selected as the final alternative fuel price ceiling base for the State. The appropriate lag adjustment factor (as discussed in in Section III.B.(4)) was then applied to the alternative fuel price ceiling base. The alternative fuel price (expressed in dollars per gallon) was multiplied by 42 and divided by 6.3 to estimate the

[3] Large Industrial User—A person/firm which purchases No. 6 fuel oil in quantities of 4,000 gallons or greater for consumption in a business, including the space heating of the business premises. Electric utilities, governmental bodies (Federal, State, or Local), and the military are excluded.

alternative fuel price ceiling for the State (expressed in dollars per million Btu's).

There were insufficient sales reported in Region G for the months of January 1984, February 1984, and March 1984. The alternative fuel price ceilings for the States in Region G were determined by calculating the volume-weighted average price ceilings for Region E, Region F, Region G, and Region H.

(4) *Lag adjustment.* The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which ceiling prices become effective. It was determined that *Platt's Oilgram Price Report* publication provides timely information relative to the subject. The prices found in *Platt's Oilgram Price Report* publication are given for each trading day in the form of high and low prices for No. 6 residual oil in 20 cities throughout the Unites States. The low posted prices for No. 6 residual oil in these cities were used to calculate a national and a regional lag adjustment factor. The national lag adjustment factor was obtained by calculating a weighted average price for No. 6 high sulfur residual fuel oil for the ten trading days ending May 14, 1984, and dividing that price by the corresponding weighted average price computed from prices published by Platt's for the month of March 1984. A regional lag adjustment factor was simiarly calculated for four regions. These are: One for FERC Regions A and B combined; one for FERC Region C; one for FERC Regions D, E, and G combined; and one for FERC Regions F and H combined. The lower of the national or regional lag factor was then applied to the alternative fuel price ceiling for each State in a given region as calculated in Section III.B(3).

Listing of States by Region

States were grouped by the FERC to form eight distinct regions as follows:

Region A	*Region B*
Connecticut	Delaware
Maine	Maryland
Massachusetts	New Jersey
New Hampshire	New York
Rhode Island	Pennsylvania
Vermont	

Region C	*Region D*
Alabama	Illinois
Florida	Indiana
Georgia	Kentucky
Mississippi	Michigan
North Carolina	Ohio
South Carolina	West Virginia
Tennessee	Wisconsin
Virginia	

Region E	*Region F*
Iowa	Arkansas
Kansas	Louisiana
Missouri	New Mexico
Minnesota	Oklahoma
Nebraska	Texas
North Dakota	
South Dakota	

Region G	*Region H*
Colorado	Arizona
Idaho	California
Montana	Nevada
Utah	Oregon
Wyoming	Washington

Issued in Washington, D.C., May 17, 1984.

J. Erich Evered,

Administrator Energy Information Administration.

[FR Doc. 84-13747 Filed 5-18-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER84-74-002]

Canal Electric Co.; Compliance Filing

May 16, 1984.

Take notice that on April 3, 1984, Canal Electric Company, submitted for filing its compliance report pursuant to the Commission Order dated March 5, 1984.

The above order required Canal to refile its "Schedule C" and any other supporting statements to reflect the actual gross-of-tax method used by Canal in computing its AFUDC. In response to such requirements, Canal states that only the revisions to its filing of November 8, 1983 are to Schedule C. Canal further states that all other supporting statements reflect the gross-of-tax method but is otherwise unchanged as filed by Canal on November 8, 1983.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before May 23, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-13616 Filed 5-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RA84-2-000]

Caribou Four Corners, Inc.; Filing of Petition for Review Under 42 U.S.C. 7194

May 16, 1984.

Take notice that Caribou Four Corners, Inc., on May 9, 1984, filed a Petition for Review under 42 U.S.C. 7194(b) from an order of the Scretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceeding before the Secretary may be a participant in the proceeding before the Commission without filing a motion to intervene. However, any such person wishing to be a participant must file a notice of participation on or before June 1, 1984 with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a motion to intervene on or before June 1, 1984, in accordance with the Commision's Rules of Practice and Procedure (18 CFR 385.214 and 385.1005(c)).

A notice of participation or motion to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through the Office of General Counsel, the Assistant General Counsel for Regulatory Litigation, Department of Energy, Room 6H-025, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-13615 Filed 5-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-303-000]

Cogenic Energy Systems, Inc.—Grosvenor Inn, Application for Commission Certification of Qualifying Status of a Cogeneration Facility

May 16, 1984.

On May 2, 1984, Cogenic Energy Systems, Inc. (Applicant), 9353 Activity Road, Suite D, San Diego, California 92126 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Grosvenor Inn, 3145 Sports Arena Blvd., San Diego, California. The primary energy source will be natural gas. The electric power production capacity will be 100 kilowatts. The facility will consist of an internal combustion engine with waste heat recovery of jacket water and exhaust gases to supply hot water and hot water heating for the Inn.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protest must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-13614 Filed 5-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES84-45-000]

Idaho Power Co.; Application

May 16, 1984.

Take notice that on May 3, 1984, Idaho Power Company (Applicant) filed an Application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, seeking an Amended Order authorizing the Applicant to: (a) Finance the construction of the Applicant's 50% undivided interest in certain pollution control facilities at the North Valmy Generating Station Units Nos. 1 and 2 through an amended loan agreement with Humboldt County, Nevada (the "County") which provides for the issuance by the County of not to exceed $55,000,000 aggregate principal amount outstanding of pollution control revenue notes (which shall include $10,100,000 of Pollution Control Revenue Notes issued to refund the County's Pollution Control Revenue Bonds issued to finance pollution control facilities at the North Valmy Generating Station Unit No. 1), the loan of the proceeds to Applicant in return for the issuance of a note of the Applicant to the County, and (b) the assumption of liability as guarantor of the principal of and interest on the notes of Humboldt County, issued in an amount not to exceed $55,000,000 and having maturities not later than May 15, 1990.

Any person desiring to be heard or to make any protest with reference to said Amendment Application should, on or before June 1, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). The Amendment Application is on file and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-13613 Filed 5-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2102-000]

L. Mario DiValentino; Application

May 16, 1984.

The filing individual submits the following:

Take notice that on May 10, 1984, L. Mario DiValentino filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Assistant Treasurer—Orange and Rockland Utilities, Inc.
Assistant Treasurer—Rockland Electric Company
Assistant Treasurer—Pike County Light & Power Company

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 31, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-13612 Filed 5-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-362-000]

Mississippi River Transmission Corp.; Application

May 16, 1984.

Take notice that on April 24, 1984, Mississippi River Transmission Corporation (Applicant), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP84-362-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a tap and sales meter for delivery of direct sale gas to the Texas and Missouri Pacific Railroad Company (Railroad) in Jefferson County, Missouri, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it had owned a conference facility in Festus, Jefferson County, Missouri, but that the facility is now owned and maintained by Railroad. Therefore, Applicant indicates, it is now appropriate for it to seek certificate authority so that gas service can continue at the subject facility pursuant to a gas sale service contract between Applicant and Railroad dated February 17, 1984.

Applicant states that presently gas is delivered off of a 12-inch pipeline, owned and operated by Applicant, into a 2-inch pipeline, owned and maintained by Railroad. It is also indicated that a substantial portion of Railroad's pipeline is on property owned by the River Cement Company (River Cement), which desires to engage in new quarrying activities on land which is presently traversed by such pipeline. Therefore, Applicant proposes that it deliver its gas to Railroad at a new location off of an existing 6-inch pipeline owned and operated by Applicant on River Cement's property. It is further indicated that such pipeline provides direct sale gas service to River Cement and that, therefore, Applicant's delivery and sale of gas through the proposed tap and meter facilities would be into a new section of the 2-inch pipeline, to be constructed, owned and maintained by Railroad. Applicant indicates that the existing 2-inch pipeline is not a jurisdictional facility, so its removal and the construction of a new 2-inch pipeline would not require Commission authorization.

Therefore, Applicant proposes to construct and operate a tap and metering facility off its existing 6-inch pipeline on River Cement property in Jefferson County, Missouri, in order to continue gas service to the subject

conference facility, owned and operated by Railroad, which would become a direct sale customer of Applicant. It is indicated that the total cost for the proposed facilities is estimated to be $9,000 and that these costs would be financed with funds on hand. Applicant states that the daily contract demand volume for the proposed facility would be 50 Mcf per day and that such sales would not adversely affect Applicant's ability to service its existing customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 6, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-13611 Filed 5-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST81-207-002, et al.]

Monterey Pipeline Co., et al.; Extension Reports

May 16, 1984.

The companies listed below have filed extension reports pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. Three other symobls are used for transactions pursuant to a blanket certificate issued under Section 284.222 of the Commission's Regulations. A "G(HS)" indicates transportation, sale or assignments by a Hinshaw pipeline; A "G(LT)"indicates transportation by a local distribution company, and a "G(LS)" indicates sales or assignments by a local distribution company.

Any person desiring to be heard or to make any protests with reference to said extension report should on or before June 11, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or protest in accordance with, the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No.	Transporter and seller	Recipient	Dated filed	Part 284 subpart	Effective date
ST81-207-022 [1]	Monterey Pipeline Co., 821 Gravier St., New Orleans, LA 70112	Southern Natural Gas Co	04-16-84	C	04-04-84
ST81-416-002	Panhandle Eastern Pipe Line Co., P.O. Box 1642, Houston, TX 77001	Delhi Gas Pipeline Corp	04-16-84	B	07-15-84
ST82-306-001 [1]	Delta Natural Gas Co., Inc., Route 1, Box 30-A, Winchester, KY 40391	Columbia Gas Transmission Corp	04-23-84	G(HT)	05-24-84
ST82-379-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	United Gas Pipe Line Co	04-20-84	G	07-23-84
ST82-380-001	Transcontinental Gas Pipe Line Corp., P.O. Box 1396, Houston, TX 77251	Sugar Bowl Gas Corp	04-16-84	B	07-15-84
ST82-389-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Mid Louisiana Gas Co	04-26-84	G	07-26-84
ST82-396-001 [1]	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Louisiana Intrastate Pipeline Corp	04-30-84	B	07-28-84
ST82-402-001	Transcontinental Gas Pipe Line Corp., P.O. Box 1396, Houston, TX 77251	El Paso Natural Gas Co	04-23-84	G	07-28-84
ST82-408-001	Transcontinental Gas Pipe Line Corp., P.O. Box 1396, Houston, TX 77251	ANR Pipe Line Co	04-25-84	G	07-29-84
ST82-409-001	PGC Pipeline, 950 One Energy Square, Dallas, TX 75206	Texas Gas Transmission Corp	04-27-84	C	08-20-84
ST82-411-001	Colorado Interstate Gas Co., P.O. Box 1087, Colorado Springs, CO 80944	United Gas Pipe Line Co	04-16-84	G	07-15-84
ST82-427-001	Natural Gas Pipeline Co. of America, P.O. Box 1208, Lombard, IL 60148	Esperanza Transmission Co	04-26-84	B	07-28-84
ST82-428-001	Natural Gas Pipeline Co. of America, P.O. Box 1208, Lombard, IL 60148	El Paso Natural Gas Co	04-27-84	G	07-28-84
ST82-430-001	Black Marlin Pipeline Co., 1200 Travis, Box 1188, Houston, TX 77001	Lone Star Gas Co	04-27-84	B	07-27-84
ST82-431-001	Houston Pipe Line Co., 1200 Travis, Box 1188, Houston, TX 77001	Northern Natural Gas Co	04-27-84	C	08-06-84
ST82-432-001	Oasis Pipe Line Co., 1200 Travis, Box 1188, Houston, TX 77001	Northern Natural Gas Co	04-27-84	C	08-06-84
ST82-435-001	ANR Pipeline Co., 500 Renaissance Center, Detroit, MI 48243	Southern Natural Gas Co	04-27-84	G	07-28-84
ST82-438-001	Houston Pipe Line Co., 1200 Travis, Box 1188, Houston, TX 77001	United Gas Pipe Line Co	04-27-84	C	08-02-84
ST82-439-001	Oasis Pipe Line Co., 1200 Travis, Box 1188, Houston, TX 77001	United Gas Pipe Line Co	04-27-84	C	08-02-84
ST82-441-002	Delhi Gas Pipeline Corp., 1700 Pacific Ave., Dallas, TX 75201	United Gas Pipe Line Co	04-25-84	C	08-02-84
ST82-442-002	Red River Pipeline, 1700 Pacific Ave., Dallas, TX 75201	United Gas Pipe Line Co	04-26-84	C	08-03-84
ST83-17-001 [1]	Pantera Energy Crop., 1616 Glenarm St., Denver, CO 80202	Northern Natural Gas Co	04-16-84	C	05-27-84
ST83-18-001	Columbia Gulf Tansmission Co., P.O. Box 683, Houston, TX 77001	Louisiana Intrastate Gas Crop	04-23-84	B	07-22-84
ST83-21-001	Seagull Energy Corp., 1100 Louisiana, Houston, TX 7702	Northern Natural Gas Co	04-30-84	C	08-06-84

[1] These extension reports were filed after the date specified by the Commission's Regulation , and shall be the subject of a further Commission order.

Note.—The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.

[FR Doc 84-13610 Filed 5-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA84-2-37-000, et al.]

Northwest Pipeline Corp.; Compliance Filing

May 15, 1984.

Take notice that on April 27, 1984, Northwest Pipeline Corporation (Northwest), in compliance with Ordering Paragraph (E) of the Federal Energy Regulatory Commission's (Commission) March 30, 1984, Order, tendered for filing Exhibits A and B in support of the calculation of the proposed special surcharge subject to Article 16, "Purchased Gas Cost Adjustment Provision" (PGA) of its FERC Gas Tariff, First Revised Volume No. 1. The March 30, 1984, Order accepted the proposed special surcharge, subject to refund, to be effective April 1, 1984.

Exhibit A contains schedules detailing the calculation of the Canadian Minimum Annual Bill and the derivation of the volumetric deficiency applicable thereto. The calculation of the Minimum Annual Bill is made pursuant to the terms of the contract (Fourth Service Agreement dated October 10, 1969) with Westcoast Transmission Company, Limited. The applicable portions of the contract with Westcoast are attached as Exhibit B.

Northwest states that it has served copies of this filing on all parties of record in Docket No. RP72-154, upon all jurisdictional customers and affected state regulatory commissions, and upon all intervenors in Docket No. TA84-2-37-000.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before May 22, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-13609 Filed 5-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-1774-000]

Robert J. McBennett; Application

May 16, 1984.

The filing individual submits the following:

Take notice that on May 7, 1984, Robert J. McBennett filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Treasurer—Orange and Rockland Utilities, Inc.
Treasurer—Rockland Electric Company
Treasurer—Pike County Light & Power Company

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before the May 30, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-13608 Filed 5-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-337-000]

Transcontinental Gas Pipe Line Corp., Request Under Blanket Authorization

May 16, 1984.

Take notice that on April 9, 1984, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP84-337-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Transco proposes to construct and operate certain pipeline and appurtenant facilities under the authorization issued in Docket No. CP82-426-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Transco proposes to construct and operate 1.89 miles of 20-inch pipeline which would connect a proposed Cities Service Oil and Gas Corporation (Cities Service) production platform B in Brazos Area, South Addition, Block A-133 to Cities Service's existing production platform A also in Block A-133, together with a meter and regulator station production platform B, all in offshore Texas. It is stated that production platform A is connected to Transco's Central Texas Gathering System. It is also stated that production from platform B would be 150,000 Mcf per day.

The estimated cost of the facilities is $6,011,700, which, it is indicated, would be financed initially through revolving credit arrangements, short-term loans or funds on hand, with permanent financing being undertaken as a part of an overall long-term financing program at a later date.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-13607 Filed 5-18-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. EF84-2011-001 and EF84-2011-006]

U.S. Department of Energy—Bonneville Power Adminstration; Order Denying Summary Disposition, Denying Intervention, Setting Matters for Hearing and Establishing Procedures

Issued: May 15, 1984.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, J. David Hughes, A. G. Sousa and Oliver G. Richard III.

By order dated October 26, 1983, 25 FERC ¶ 61,140, the Commission granted interim approval of the Bonneville Power Administration's (BPA or Bonneville) proposed wholesale power rates. These rates were filed on October 3, 1983, pursuant to section 7(i)(6) of the Pacific Northwest Electric Power

Planning and Conservation Act (Regional Act or Act), and the Commission's Rules for the Confirmation and Approval of the Rates of the Bonneville Power Administration, 18 CFR Part 300. Because of the limited time available for parties to submit comments on BPA's filing prior to the time required for Commission action, that order provided all parties with an additional comment period on any issues related to final confirmation and approval of BPA's rates. Further, the order specifically invited the parties to delineate in their comments any issues that they believed should properly be set for hearing under section 7(k) of the Act [1] in light of the Commission's interpretation of the Act set forth in our September 1, 1982 order resolving the scope of the Commission's jurisdiction (20 FERC ¶ 61,292).[2] At the request of BPA, an additional period for cross-comments on these matters was later provided by order of January 27, 1984, 26 FERC ¶ 61,096.

Several parties have filed comments and cross-comments in this proceeding. With respect to determining whether Bonneville's overall rate level is in compliance with the standards set forth in section 7(a)(2) of the Regional Act, the Commission is presently in the process of reviewing these matters for purposes of final confirmation and approval, or disapproval. There are currently a number of data requests to BPA outstanding in Docket No. EF84–2011–000. Action on Bonneville's wheeling rates must also await Bonneville's response to the Commission's order to establish separate financial accounting for its generation and transmission systems. Until this review process is completed, we cannot determine whether Bonneville's overall rates will produce revenues sufficient to recover the costs of the Federal investment in the Bonneville projects. We see no reason, however, to delay initiation of procedures to review the section 7(k) rates pending a determination on Bonneville's overall rate level. Our discussion at this time will, therefore, be limited to those pleadings which address the necessity for and scope of a hearing pursuant to section 7(k) of the Act.[3] There are, however, two matters related to the regional rates which we shall dispose of at this time as well.

Late Filed Motion to Intervene

On November 25, 1983, Cascade Natural Gas Corporation, Intermountain Gas Company, Northwest Natural Gas Company and Washington Natural Gas Company (Gas Distributors) filed a motion to intervene out-of-time.[4] According to the Gas Distributors, late intervention has been requested because of our denial, without prejudice, of the California Utilities' (CU) motion for partial summary rejection of BPA's NF–83 rates. The Gas Distributors also claim that the CU's pleading failed to address "serious intra-regional issues" of which they did not become aware until after the issuance of the Administrator's Record of Decision. Motion at 2. Thus, the Gas Distributors believe that neither the CU nor any other existing party can adequately represent their interests with regard to the intra-regional effects of the NF–83 rate. This interest stems from the NF–83 Displacement rate, designed to displace end-user alternate fuel sources such as natural gas.

Three parties filed objections to the Gas Distributors' motion to intervene: The Public Power Council (PPC), the Association of Public Agency Customers (APAC), and BPA. BPA contends that the Commission lacks jurisdiction to grant the relief requested by the Gas Distributors, *i.e.*, rejection of the NF–83 rate. Citing our order resolving the scope of our jurisdiction, as affirmed in *Central Lincoln Peoples' Utility District, et al.* v. *Johnson*, No. 81–7622, *et al.* (9th Cir., February 9, 1984), BPA contends that the Gas Distributors' arguments raise questions of rate design which the Commission has determined not to review under section 7(a)(2) of the Act. Further, according to BPA, the Gas Distributors cannot seek relief under section 7(k) because they are regional parties and Congress only intended to protect non-regional customers under that provision. We see no need to reach these questions of statutory interpretation, as we are persuaded on the facts that the Gas Distributors should be denied late intervention.

The objecting parties point out that the Gas Distributors did not participate in the section 7(i) proceedings, although they had notice of these proceedings and had an opportunity to participate. PPC and BPA contend that the Gas Distributors have failed to show good cause for their untimeliness. We agree.

We have stated previously that "parties should not be allowed to sit back and make no case in the section 7(i) proceeding and to then make their case before this Commission." 23 FERC ¶ 61,469 at 62,024. That is precisely what the Gas Distributors have proposed to do.

Further, they have provided no reason for the untimeliness of their request. As aptly pointed out by the PPC, if the CU's pleading did not adequately represent the Gas Distributors' interests, the denial of the CU motion should not have affected their decision to intervene. As also pointed out by PPC, all parties faced the tight time constraints referenced by the Gas Distributors; yet, the other parties were able to meet the requisite filing dates. We see no reason to provide special treatment in this instance and the motion for late intervention will be denied.

Motion To Reject Errata

On December 9, 1983, BPA filed a pleading styled an "Errata" to its October 3, 1983 wholesale and transmission rate filing. BPA described this filing as comprising corrections of typographical, grammatical, and computational errors. Included with this filing was an "Addendum to Errata" in the "Errata to Rate Schedules" which changed the forecasted operating demands for six Direct Service Industries (DSI) customers. These changes increased the demand figures for ARCO Metals Company (ARCO) and decreasd the figures for the other five DSIs. On January 31, 1984, ARCO filed a motion requesting that the Commission reject that portion of the "Addendum to Errata' which increases ARCO's forecasted operating demand.

On February 27, 1984, BPA filed a response to ARCO's motion. On April 12, 1984, Pennwalt Corporation (Pennwalt) filed a motion for leave to intervene and respond to ARCO's motion. Pennwalt is one of the five DSIs whose forecasted operating demand was decreased under BPA's errata. If ARCO's motion is granted, Pennwalt seeks to limit rejection of the adjusted figures to those applicable to ARCO so as to preserve Pennwalt's potentially lower customer charges.

ARCO contends that automatic incorporation of the errata figures into the BPA rate schedules would increase ARCO's rates retroactively in violation of the filed rate doctrine. ARCO also contends that these new figures constitute a new rate which cannot be approved on an interim basis until BPA complies with the procedural requirements of section 7(i) of the

[1] Section 7(k) of the Regional Act only concerns non-firm sales to non-regional customers.

[2] That order was subsequently affirmed in *Central Lincoln Peoples' Utility District et al.* v. *Johnson*, No. 81–7622, *et al.*, slip op. at 23 (9th Cir. February 9, 1984).

[3] Docket No. EF84–2011–006 is the designated docket for the section 7(k) proceeding. Docket No. EF84–2011–001 is the designated docket for final action on the regional rates.

[4] Notice of BPA's filing was published in the **Federal Register**, with comments due on or before October 20, 1983.

Regional Act. Without this opportunity to comment or respond to these changes, ARCO concludes that it will be denied due process of law.

BPA's proposed IP–83 rate includes a customer charge which is based on the greater of the actual operating level or 89.4 percent of the forecasted operating demand figure determined in the rate proceeding. According to the Administrator in his Record of Decision (ROD), the purpose of this customer charge is to enhance revenue stability by insuring BPA's collection of the net costs of the exchange with the DSIs. ROD at 245. During the BPA hearings, the DSIs opposed the customer charge as well as the basis for its calculation.[5]

In our view, these changes concern rate design and cost allocation questions which we will not review outside the context of a section 7(k) proceeding. As noted above, the court affirmed our analysis and conclusions regarding the proper scope of our review of regional rates in the *Central Lincoln* case, *supra*. Specifically, the court agreed that our review is limited to the three findings set forth in section 7(a)(2) of the Regional Act. *Central Lincoln, supra* at 16. In reviewing the legislative history of the Regional Act, the court concluded "that Congress, by selectively enumerating the findings that FERC was required to make, did not intend FERC review for compliance with all governing statutes and that Congress thus withdrew issues of rate design and cost allocation." *Id.* at 27.

BPA's errata states that the original forecasted operating demand figures contained errors due to rounding and, in the case of ARCO, a transcription error. According to the Administrator in the ROD, the forecasted operating demand for each DSI is based on a computer simulation model developed through technical sessions open to all parties, using data publicly available, and preented in BPA's evidentiary rate hearing in accordance with section 7(i) of the Regional Act. Thus, the ROD appears to contain sufficient information to permit us to determine whether the overall rate level meets the relevant statutory requirements. Since our only proper concern is in having sufficient information to meet our statutory review responsibilities, which do not include review of rate design questions for non-section 7(k) rates, we need not address the issues raised by ARCO and, therefore, we shall deny its request for summary disposition. For good cause shown, Pennwalt's motion for leave to intervene shall be granted, but, in light of our ruling on ARCO's motion, we need not address Pennwalt's concerns.

[5] ARCO and other DSIs are currently challenging BPA's statutory authority to impose the customer charge in *Atlantic Richfield Company, et al.* v. *Bonneville Power Administration, et al.* (9th Cir. No. 83–7971). ARCO has also challenged BPA's authority to impose a customer charge under ARCO's power sales contracts in *Aluminum Company of America, et al.* v. *United States* (Claims Court No. 761–83C).

Need for 7(k) Hearing

Nine parties filed comments which wholly or in part deal with the section 7(k) hearing issues.[6] Four parties filed cross-comments on this matter: The DSIs, BPA, the California Parties,[7] and Public Generating Pool (PGP).

Under section 7(k) of the Act, the Commission is required to determine whether BPA's rates for service to its non-regional, non-firm customers served within the United States ("export rates") comport with the standards set forth in the Bonneville Project Act of 1937,[8] the Flood Control Act of 1944,[9] and the Federal Columbia River Transmission System Act.[10] To assure that BPA's non-firm export rates meet these standards, section 7(k) further requires that the parties be afforded an opportunity to be heard by the Commission with regard to these rates.

In their pleadings, the parties have raised numerous concerns regarding BPA's non-firm export rates. These concerns relate to Bonneville's NF–83 rate applicable to non-firm energy sold both in and out of the Pacific Northwest region, as well as outside the United States. Within the NF–83 schedule are four market rates and a contract rate. The market rates are the Standard rate, Spill rate, Displacement rate, and Incremental rate. Many of the issues and concerns raised by the parties are the same as those raised in the current section 7(k) proceeding on Bonneville's 1981 and 1982 export rates. For that reason, several parties believe that an additional hearing in this proceeding is either unnecessary or should be delayed pending the outcome of the pending hearing in Docket Nos. EF81–2011–000 and EF82–2011–000.

Specifically, BPA argues that it is unnecessary for the Commission to hold a 7(k) hearing on these issues because: (1) They have been set for hearing in the pending 7(k) proceeding; and (2) these issues were exhaustively litigated before the BPA Administrator. Similarly, the DSIs and PGP see an overlap of issues between the pending section 7(k) proceeding and this case. Rather than setting the export rate issues in this case for hearing, the DSIs request "that the Commission take *early action* on the 1981 and 1982 export rates (with an informal eye on the 1983 rates) . . ." (emphasis in original). DSI comments at 11, filed November 29, 1983. The DSIs suggest that the Commission conclude its review in the earlier case prior to July 1, 1984, and prior to formal consideration of the 1983 export rates, in order for the effects of the Commission's decision to be reflected in BPA's next rate proposal, which is presently scheduled for publication on July 29, 1984.

The principle issues raised by the California Parties with respect to the NF–83 rate schedule are: (1) Possible discriminatory and anticompetitive effects of the Spill and Displacement rates; (2) the implementation criteria for these rates; and (3) the appropriate cost basis for the rates. Since the California Utilities' (CU) motion for summary disapproval of these rates was denied, without prejudice, in our October 26, 1983 order, the CUs believe that their motion is still pending. If the present rates are not found to be facially invalid, as requested, the California Parties seek an evidentiary hearing on all of the above issues.[11]

Contrary to the position of the other parties, the California Parties see no reason to delay setting these matters for hearing pending the resolution of the 1981 and 1982 export rates. According to the California Parties, the earlier proceeding will not resolve all issues involved here since the Displacement

[6] Comments relevant to the7(k) issues were received from the following parties: California Energy Commission, Public Utilities Commission of the State of California, California Utilities, Public Generating Pool, Pacific Power and Light Company, Portland General Electric, Associated Public Agency Customers, Direct Service Industries, and Public Power Counsel.

[7] The California Parties filed cross-comments as a group. They are: Southern California Edison Company, Pacific Gas and Electric Company, Department of Water and Power of the City of Los Angeles, Public Service Department of the City of Glendale, Public Service Department of the City of Burbank, Water and Power Department of the City of Pasadena, San Diego Gas & Electric Company, the California Energy Commission, and the Public Utilities Commission of the State of California.

[8] 16 U.S.C. 832.

[9] 16 U.S.C. 825.

[10] 16 U.S.C. 838.

[11] The Public Utilities Commission of the State of California (CPUC) has also sought a hearing on BPA's surplus firm power and energy rates, "notwithstanding the distinction sought to be drawn by the Commission" in our order of April 29, 1983 (23 FERC ¶61,161). There we determined that it would be inappropriate to set these rate schedules in the 1981 and 1982 filings for hearing under section 7(k) because it did not appear that energy sold under these rates would be non-firm. On rehearing, we reiterated our position that section 7(k) of the Act only applies to sales of non-firm energy sold outside the region. 24 FERC ¶61,243 (1983). We see no reason to revisit this question and we adhere to our earlier ruling. The CPUC's request for a hearing on the surplus energy rates will be denied.

rate is a newly designed rate and the cost data for the respective cases also differ. They point out that Commission review of BPA's rates was intended by Congress to be prompt and state that there is no indication that the 1981 and 1982 case will be resolved soon.

In addition to the overlapping of issues, BPA opposes setting the NF–83 rates for hearing on the ground that conducting concurrent proceedings would unnecessarily burden BPA's and the Commission's resources.

As noted above, the applicable standard for our review of BPA's non-regional rates is set forth in the three statutes enumerated in section 7(k) of the Act. Taken together, those statutes require BPA to design these rates:

1. Having regard to the recovery of the cost of generation and transmission of such electric energy;

2. So as to encourage the most widespread use of Bonneville power;

3. To provide the lowest possible rates to consumers consistent with sound business principles; and

4. In a manner which protects the interests of the United States in amortizing its investments in the projects within a reasonable period. *U.S. Secretary of Energy, Bonneville Power Administration,* Docket No. EF80–2011, 13 FERC ¶61,157 at 61,338 (1980); *See also, U.S. Secretary of Energy, Bonneville Power Administration,* Docket No. EF81–2011–000, *supra* at 61,558 (1982), where we explained this standard of review for non-regional rates under section 7(k) of the Act.

The California Energy Commission (CEC) contends that the NF–83 rates fail to comply with the Flood Control Act of 1944 in that Bonneville has not made power available to the non-regional customers on "fair and reasonable terms and conditions." Although not explicitly included in our list of considerations above, this question is also part of our inquiry in reviewing non-regional rates.

With respect to the NF–83 rate schedule, we find that significant questions have been raised by the parties regarding whether these schedules meet the appropirate applicable standard. Based on the record presented, we cannot make a determination as to whether the revenue level proposed to be collected or the bases upon which the rate schedules have been designed meet the application standards. We shall therefore set these matters for hearing.

In setting the 1981 and 1982 export rates for hearing we were particularly sensitive to BPA's concerns with respect to duplication of its evidentiary record developed during prior section 7(i) hearings. In our order on rehearing, we expressly stated, "[w]e agree with BPA that this hearing should not be duplicative of the BPA record." 23 FERC ¶61,469 at 62,024. We also agree with BPA that conducting concurrent section 7(k) proceedings may be extremely burdensome on all the affected parties, not just BPA and the Commission staff.

In light of these concerns, and in recognition of the fact that ther is some overlap of issues between this proceeding and the 1981 and 1982 cases, we shall limit the scope of the hearing to those issues which will not be resolved by the outcome of Docket Nos. EF81–2011–000 and EF82–2011–000. Those issues which are common to both proceedings will be governed by the final resolution of the 1981 and 1982 dockets.

Specifically, the pending section 7(k) proceeding will resolve the question of how BPA's non-firm energy rates should be determined. If a straight cost of service method is used, the pending proceeding will further resolve what BPA cost elements are includable in its non-firm rates to non-regional customers. Accordingly, these issues shall not be litigated in this docket and shall be governed by the outcome of Docket Nos. EF81–2011–000 and EF82–2011–000.

The California Parties have, however, raised new questions unique to this proceeding with respect to the implementation criteria of the NF–83 rates, including the Displacement rate. Although we do not find these rates to be facially invalid, we find that the BPA record may be inadequate on this question. We shall accordingly deny the California Parties' request for summary disapproval and set this matter for hearing. The California Parties have also claimed procedural deficiencies in the manner in which the Administration developed these rates. They claimed that they have been denied a meaningful opportunity to comment on these rates and that the rates should, therefore, be remanded for further evaluation at the BPA hearing level. Since the California Parties will now be provided an additional hearing on this issue we consider the question to be moot.

Accordingly, the presiding administrative law judge is instructed to consider whether the implementation criteria and their application as well as the Displacement rate comply with the applicable power marketing statutes referenced above.

In establishing the procedural schedule for this limited hearing, the presiding judge is directed to give due consideration to the progress of the on-going proceeding. The schedule in the instant docket should not impede the progress of the on-going case.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by the Pacific Northwest Electric Power Planning and Conservation Act, 16, U.S.C. 839e, particularly section 7(k) thereof, Bonneville's NF–83 rates applicable to sale of non-firm electric power within the United States, but ouside the Pacific Northwest region, are hereby set for hearing. The hearing shall be conducted in accordance with the procedures established for ratemaking by the Commission pursuant to the Federal Power Act as limited in the body of this order.

(B) CPUC's request for a hearing pursuant to section 7(k) regarding Bonneville's surplus firm energy and power rates is hereby denied.

(C) The California Utilities' motion for summary disapproval of the NF–83 rate is hereby denied.

(D) The late-filed motion to intervene of the Gas Distributors is hereby denied.

(E) ARCO's motion for lease disposition is hereby denied.

(F) Pennwalt's motion for leave to intervene and respond to ARCO's motion is hereby granted.

(G) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately twenty (20) days from the date of this order in a hearing room of the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(H) The Secretary shall promptly publish this order in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–13606 Filed 5–18–84; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE–FRL 2591–4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget for review. The ICR describes the nature of the solicitation and the expected impact, and, where appropriate, includes the actual data collection instrument. The following ICRs are available to the public for review and comment.

FOR FURTHER INFORMATION CONTACT: David Bowers; Office of Standards and Regulations; Information Management Section (PM–223); U.S. Environmental Protection Agency; 401 M Street, SW.; Washington, D.C. 20460; telephone (202) 382–2742 or FTS 382–2742.

SUPPLEMENTARY INFORMATION:

General Programs

Title: Questionnaire to Obtain Bidding and Contractual Data Under EPA Construction Grants (EPA #1169).

Abstract: State and local governments will supply EPA with data on construction grants via this questionnaire. The Agency will use the information to review bidding and contractual practices under its construction grants program.

Respondents: State and local governments.

Agency PRA Clearance Requests Completed by OMB

EPA #1146, Pesticide Usage Survey of Non-Farm Food Establishments, was approved 28 March 1984 (OMB #2070–0031).

EPA #1172, Survey of the New Source Performance Standards (NSPS). Information Requirements, was approved 30 April 1984 (OMB #2060–0065).

Comments on all parts of this notice should be sent to:

David Bowers (PM–223), U.S. Environmental Protection Agency, Office of Standards and Regulations, 401 M Street, SW., Washington, D.C. 20460;

and

Carlos Tellez, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, D.C. 20503.

Dated: May 14, 1984.

Daniel J. Fiorino,

Acting Director, Regulation and Information Management Division.

[FR Doc. 84–13450 Filed 5–18–84; 8:45 am]

BILLING CODE 6560–50–M

[WH–FRL–2591–6]

Underground Injection Control Program; Aquifer Exemption Proposal; Nebraska

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce that (1) the Environmental Protection Agency (EPA) has received an aquifer exemption application from the State of Nebraska for concurrence in the State approval of exemption of a portion of the Chadron Aquifer in Dawes County, Nebraska, for the purposes of Class III injection wells; (2) the application is now available for inspection; (3) public comments are requested; and (4) a public hearing will be held.

The proposed comment period will provide EPA the breadth of information and public opinion necessary to approve the application for aquifer exemption.

DATES: Request to present oral testimony should be filed by June 11, 1984. The public hearing will be held on June 21, 1984, at 10:00 a.m. and will continue until the end of the testimony. Written comments must be received by July 5, 1984, at which time the comment period will end. EPA reserves the right to cancel the hearing should be no significant public interest. Those informing EPA of their intention to testify will be notified of cancellation.

ADDRESSES: Comments and request to testify should be mailed to Angela Ludwig, Environmental Protection Agency, 324 East Eleventh Street, Kansas City, Missouri 64106. Copies of the application and the order of the Director, Nebraska Department of Environmental Control, approving the exemption, are available for inspectoin between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following locations:

Environmental Protection Agency, Region VIII, 13th Floor, Room 1320, 324 East 11th Street, Kansas City, Missouri 64106, Phone: (816) 374–6514

Nebraska Department of Environmental Control, 301 Centennial Mall, South, Lincoln, Nebraska 68509, Phone: (402) 471–2186

Nebraska Oil and Gas Conservation Commission, Post Office Box 399, Sidney, Nebraska 69162, Phone: (308) 254–4595

The hearing will be held in the Howard M. Dodd Hall, Highway 20, P.O. Box 392, Ft. Robinson, Nebraska.

FOR FURTHER INFORMATION CONTACT: Angela Ludwig, Environmental Protection Agency, Region VII, 324 Eaast Eleventh Street, Kansas City, Missouri 64106, phone (816) 374–6514. Comments should also be sent to this address.

SUPPLEMENTARY INFORMATION: The following portion of the Chadron aquifer in Dawes County, Nebraska, is being proposed for exemption for Class III injection well activities (involving mineral production) in accordance with the provisions of subsections 144.7 and 146.4 of this Chapter I, Title 40, Code of Federal Regulations:

Legal Description of the Exempted Aquifer

T. 31 N., R. 52 W.,
Sec. 11, S/2NE/4; NW/4SE/4; E/2SE/4.
T. 31 N., R. 52 W.,
Sec. 12, S/2NW/4; SW/4; S/2SE/4; NW/4SE/4.
T. 31 N., R. 52 W.,
Sec. 14, NE/4NE/4.
T. 31 N., R. 52 W.,
Sec. 13, NW/4; NE/4; SE/4; NE/4SW/4.
T. 31 N., R. 51 W.,
Sec. 17, SW/4SW/4.
T. 31 N., R. 51 W.,
Sec. 18, lots 1, 2, 3, 4; SE/4NW/4; S/2SE/4; NW/4SE/4; E/2SW/4.
T. 31 N., R. 51 W.,
Sec. 19, all.
T. 31 N., R. 51 W.,
Sec. 20, W/2NW/4; SW/4.
T. 31 N., R. 52 W.,
Sec. 24, E/2NE/4; NE/4SE/4.
T. 31 N., R. 51 W.,
Sec. 29, W/2.
T. 31 N., R. 51 W.,
Sec. 30, NE/4NW/4; NE/4; NE/4SE/4.

The exemption covers an area of approximately 3,000 acres (4.7 square miles). A one-quarter mile buffer zone has been included beyond the estimated mineralized zone, and the exemption boundary was then squared to the nearest quarter-quarter section. Vertically, the exempted area includes the Basal and Middle Members of the Chadron Formation. The bottom of the exempted aquifer ranges from a depth of approximately 850 feet in the southern part of the exempted area to 350 feet in the northern part. The vertical thickness of the Chadron Formation included in the exemption ranges from approximately 110 feet to 140 feet. The Middle Chadron is included in the aquifer exemption since there is a possibility that the lower part of the Member may be affected by mining fluids.

That portion of the Chadron Aquifer was approved by the Director, Nebraska Department of Environmental Control, on March 23, 1984. EPA is considering concurrence in such approval of the exemption in anticipation of EPA approval of the Nebraska Underground Injection Control (UIC) program. The Nebraska Department of Environmental Control is in the process of seeking primacy, but has not received approval at this time. This notice serves as a program revision to the State's UIC program and the exemption request will become part of the State's program.

Dated: May 14, 1984.

Jack E. Ravan,

Assistant Administrator for Water.

[FR Doc. 84-13562 Filed 5-18-84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-42057; TSH-FRL 2569-4]

2-Phenoxyethanol; Response to the Interagency Testing Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Decision Not to Initiate Rulemaking.

SUMMARY: The Twelfth Report of the Interagency Testing Committee (ITC) designated the chemical 2-phenoxyethanol (2-PE) for priority consideration of health effects testing. After publication of the ITC report, the domestic producers of 2-phenoxyethanol formed an *ad hoc* group and began a program for testing the chemical. The Agency has concluded that the data being generated from this program, combined with the existing data, will enable EPA to reasonably determine or predict the potential health effects of 2-PE which were of concern to the ITC. Therefore, at this time, EPA is not initiating rulemaking under section 4(a) of the Toxic Substances Control Act (TSCA). This notice constitutes the Agency's response to the ITC's designation of 2-PE, as mandated by section 4(e) of TSCA.

FOR FURTHER INFORMATION CONTACT: Edward A Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., S.W., Washington, D.C. 20460, Toll Free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator 202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Background

Section 4(a) of the Toxic Substances Control Act (TSCA) (Pub. L. 94-469, 90 Stat. 2003 *et seq.;* 15 U.S.C. 2601 *et seq.*) authorizes EPA to promulgate regulations which require manufacturers and processors to test chemical substances and mixtures. Data developed through these test programs are used by EPA to determine the risks that these chemicals may present to human health and the environment. Section 4(e) of TSCA established an Interagency Testing Committee (ITC) to recommend to EPA a list of chemicals to be considered for the promulgation of testing rules under section 4(a) of the Act. The ITC may designate, at any one time, up to 50 of the chemical entries on its list for priority consideration by EPA. EPA is required to respond within 12 months of the date of designation, either by initiating rulemaking under TSCA section 4(a) or publishing in the **Federal Register** reasons for not doing so.

On May 11, 1983, the Administrator of EPA received the Twelfth Report of the ITC which designated 2-phenoxyethanol (2-PE) for priority testing consideration (Ref. 25). Testing was recommended for teratogenicity, short-term genotoxicity, reproductive, and subchronic effects. The rationale developed by the ITC was based on: (1) Consumer and worker exposure from the use of 2-PE in consumer products and industrial solvents, (2) the structural similarity of 2-PE to the alkyl glycol ethers (i.e., 2-methoxyethanol and 2-ethoxyethanol) that have demonstrated teratogenic, reproductive, and mutagenic effects in various test systems, and (3) lack of data on chronic effects.

After publication of the ITC Report, the producers of 2-PE submitted market information, exposure estimates, and health effects data to EPA and formed an *ad hoc* group to address the ITC's concerns (Refs. 6 through 10, 12, and 19). They also submitted to EPA a testing program designed to develop data to characterize the potential health effects of 2-PE for which there are not adequate data. Most of the data citing production levels and consumption patterns were claimed to be confidential business information (CBI). Nonconfidential summaries of this information have been prepared and are included in the public record. EPA has considered these data and additional data reported by manufacturers under TSCA sections 8(a) and 8(d) in conjunction with other information in making its decision on 2-PE.

II. Assessment of Exposure and Health Effects

A. Production, Use, and Exposure

2-Phenoxyethanol (CAS No. 122-99-6) or 2-PE, is a viscous, colorless liquid with a slight roselike odor. It is an aromatic glycol ether with a high boiling point (245° C at 760 mm Hg), high solubility in organic solvents, moderate solubility in water (2ml/100ml) and low volatility (Refs. 3, 4, and 13. The maximum attainable saturation concentration of 2-PE vapor is 40 ppm by weight (Ref. 6).

2-PE is commercially manufactured by catalytically reacting phenol with ethylene oxide using a batch process (Ref. 14). Total annual production has been estimated to be about five million pounds (Ref. 14).

Over 90 percent of the annual production of 2-PE is used as a coalescing agent in latex paints where a high boiling point, solvency for latex polymers, low affinity for water and slow volatility characteristics are desired (Refs. 4, 6, 14, and 20). 2-PE is added at its minimum level for coalescence; i.e., about 0.6 percent by weight, to prevent adverse effects on paint stability and performance (Refs. 4 and 6). Smaller quantities of 2-PE are used as a solvent in paint removers and inks, as a dye carrier, and as an intermediate; 5-10 percent is used as a cosmetic preservative (antimicrobial) and/or fragrance (Refs. 6 and 10).

The ITC expressed concern for the potential widespread occupational and consumer exposure to 2-PE. Data from the National Occupational Hazard Survey (NOHS) conducted by the National Institute for Occupational Safety and Health estimated that 9,560 workers are potentially exposed to 2-PE (Ref. 17). Machine operators, sewers and stitchers, and pressmen and printers accounted for the bulk of the exposures.

Data supplied by the manufacturers and estimates based on studies by NIOSH and the Occupational Safety and Health Administration (OSHA) indicate generally low exposure levels during 2-PE production and processing (Refs. 7, 16, 17, 21, and 24). While no recommended threshold limit values (TLV's) exist for 2-PE, indirect control is expected during the production process which requires closed process equipment, spot ventilation, gloves and goggles to comply with the OSHA limits on phenol (5 ppm) and ethylene oxide (50 ppm; 1 ppm proposed) (Refs. 22 and 24). In a survey conducted by Dow Chemical Company of employee exposure to 2-PE as DOWANOL® EPh, 8-hour time-weighted averages (TWA) ranged from 0.02 ppm (lower limit of detection) to 0.9 ppm. (Ref. 7). Results of area sampling and personal breathing zone sampling of one CBI-classified operation found air concentrations of 2-PE ranging from 0.5 to 14.5 ppm.

When NIOSH estimated the concentration of paint mists in the breathing zone of paint spraying operations they found that the mean 8-hour TWA concentration of total paint mist did not exceed 5 mg/m³ when OSHA requirements were met (Refs. 16 and 20). Based on this figure of 5 mg/m³, spray painting with a latex paint containing 1 percent 2-PE by weight of paint solids would product an estimated airborne concentration of 50 μg/m³ (9.0 ppb) 2-PE within the employee's breathing zone. This represents less than 0.025 percent of the maximum air saturation (i.e., 40 ppm) for 2/PE (Ref. 2).

Consumer exposure to 2-PE may result from its use in latex paints, paint removers, and inks (Ref. 6). In its major use as a coalescing aid, 2-PE is added at the rate of 6–7 pounds per 100 gallons of paint or about 0.6 percent by weight. The coalescing aid functions as a potential solvent or plasticizer for the latex polymer to allow the polymer particles to coalesce more readily. Thus, 2-PE is partially dissolved in the polymer and would be released very slowly and incompletely from the finished paint film. Its release would depend on its rate of migration from the polymer and its volatility. Release of 2-PE is expected to occur during its application and also during the subsequent drying and curing of the paint. Worst case exposure estimates modeling release of 2-PE were submitted to EPA from the 2-PE *ad hoc* producers group (Ref. 6). Both dermal absorption and inhalation potential were considered. When using latex paints containing 2-PE, it was estimated that dermal absorption of the paint would result in a daily maximum dose of 3.9 mg/kg. This is based on an average daily use of 4 gallons of paint containing 0.6 percent weight/volume 2-PE per gallon (or 30 g 2-PE per gallon); a 70-kg. person getting 1 percent of the paint on 23 percent of exposed skin; and 100 percent absorption. The 2-PE *ad hoc* producers group did not estimate the concentration of 2-PE in air over a paint film but stated that the partial pressure would be extremely low suggesting insignificant inhalation exposures (Ref. 5). The low vapor pressure (.03 mm Hg), low evaporation rate, and low saturation concentration of 2-PE (40 ppm) support this conclusion.

In an independent effort for EPA, Dynamac Corporation determined that the maximum total dose of inhaled 2-PE absorbed by a 70-kg male over one week would be 1.9 mg/kg (Ref. 2). This is based on an adult male painting his 9 x 12 x 8 foot room in two hours with a roller brush, using 1 gallon of latex paint containing 0.7 percent 2-PE. The exposure model used by Dynamac was based on actual evaporation data generated from a latex paint containing a coalescent with properties similar to 2-PE. Thus, there is a potential for widespread human exposure to 2-PE in latex paints. However, as shown, the levels of exposure are expected to be low.

Estimates of exposure to 2-PE from other minor TSCA uses, i.e, paint removers, inks, and dye applications suggest that these exposures do not result in substantial exposure (Ref. 6). The small fraction of 2-PE production that goes into these uses and the small amount of 2-PE used in typical product formulations further limits the exposure potential (Refs. 6 and 7). While there is no estimate of the number of people exposed to 2-PE from these and other consumer uses, the potential for widespread human exposure through the use of products containing 2-PE, albeit at low levels, does exist.

B. Health Effects Data

2-PE is moderately toxic by the dermal and oral routes; it causes mild irritation to the eyes and skin. Based on acute dermal LD_{50} values of 2.0–13.0 g/kg in laboratory animals, it is not likely to be acutely toxic through this route of exposure (Refs. 5, 12, 18, and 23). The acute oral LD_{50} values in rodents range from 1.2 to 2.3 gm/kg of body weight (Refs. 1, 12, 18, and 23); oral doses of greater than 3 g/kg caused 100 percent lethality in rats (Ref. 7). Ocular irritation was reported to be mild in dilutions of up to 5 percent 2-PE (Refs. 2, 12, and 18); however, severe eye irritation was seen in rabbits when undiluted chemical was used (Ref. 5).

When tested in the *Salmonella typhimurium*/mammalian microsomal assay (Ames) at doses up to 5 mg/plate both with and without metabolic activation, 2-PE gave no signs of toxicity or mutagenicity in any of the tester strains (Ref. 18). Negative results were also obtained in the mouse micronucleus test when 2-PE was tested at 300, 600, and 1,200 mg/kg (Ref. 18). It was concluded from these results that 2-PE failed to show any evidence of mutagenic potential.

Adequate data exist to characterize the subchronic oral toxicity of 2-PE. An oral 13-week study was performed with Phenoxetol® (99 percent pure 2-PE) in 15 CD rats/sex at doses of 0, 80, 400, and 2,000 mg/kg/day (Ref. 18). The no-observed-effect level reported in the study was 80 mg/kg. Increases in thyroid, hematological and renal abnormalities were seen at the highest dose levels, the male animals being the most sensitive to the effects of the chemical. In the 2,000 mg/kg group the relative organ weights of the liver, kidneys, and thyroid were significantly increased in both sexes. These changes were accompanied by histopathological changes in the kidney and thyroid. While cellular necrosis in the liver was not reported, significant increases in blood chemistries indicated that either cellular injury and/or significant adaptative processes occurred. Kidney pathology, expressed as prominent groups of distended tubules and chronic inflammatory cell infiltration, was seen in both sexes. Similar kidney effects also occurred in a dose related manner in some male animals exposed to 400 mg/kg 2-PE. The only effect seen in any of the reproductive organs was an increased incidence (4 of 15 high dose compared to 1 of 15 controls) of minimal to moderate tubular atrophy of the testes in male animals at 2,000 mg/kg. No statistically significant changes in either the relative weights or the absolute weights of the uterus, ovary or testes were seen at any dose; minimal histopathological changes were observed in the tissues examined. There are no data available to determine whether the thyroid, hematological, renal, or testicular abnormalities detected in the oral subchronic study at the highest dose would also be observed after dermal application of 2-PE, an expected route of exposure in humans.

Available data suggest little basis for concern for reproductive toxicity associated with exposure to 2-PE. Nagano et at. (Ref. 15) found that testicular atrophy, assessed in terms of testicular weight and histopathology, was not significant when oral doses of 2-PE were given to male mice at doses of 500, 1,000, or 2,000 mg/kg for 5 weeks. In the 2,000 mg/kg dose group, there was 100 percent mortality. Although testicular atrophy was observed in one of five animals at 1,000 mg/kg, concern is mitigated by the fact that this dose is one-half the oral LD_{100} dose, an as such is expected to be similar to the LD_{50} in rodents. Thus, the changes observed are of questionable toxicological significance (Refs. 1, 12, 18, and 23). Additionally, as cited above from the oral subchronic study (Ref. 18), no statistically significant effects occurred in any reproductive organ at doses as high as 2,000 mg/kg in male or female rats.

Because the ITC recommended that 2-PE be considered for reproductive and teratogenic effects testing based on the structural similarity of 2-PE to the alkyl glycol ethers, EPA considered the available data on these compounds

when assessing the testing needs of 2-PE. Salient points are discussed below.

In sharp contrast to the data on 2-PE, the existing experimental data recently reviewed by Hardin (Ref. 11) on the alkyl glycol ethers 2-methoxyethanol (2-ME) and 2-ethoxyethanol (2-EE) and their acetate esters, indicates that testicular damage and fetotoxic effects occur at previously presumed no-effect levels. While the blood, liver, kidney, central nervous system, and reproductive effects of these chemicals have been well recognized, these recent studies demonstrate specific reproductive effects at exposure levels much lower than those at which other toxic effects are seen. The reproductive effects seen in male animals are expressed as marked testicular atrophy, histologic changes, and accompanying infertility. The histological effect seen was degeneration of the germinal epithelium of the testes. It was observed that the histopathological changes gave a more accurate picture of testicular toxicity than did other observations, such as reduced fertility. Similar testicular effects have been observed in dermal, oral, and inhalation studies in mice, rats, and rabbits; rabbits have been the most sensitive species tested to date (Ref. 11). It can reasonably be assumed, in light of these data on the alkyl glycol ethers, that if 2-PE were a similar reproductive hazard, the subacute study in mice and/or the subchronic studies in rats would have detected it.

The alkyl glycol ethers cited above also induced fetotoxic effects (fetal deaths or malformations) in rats, mice or rabbits after inhalation or dermal exposure (Ref. 11). The Agency, however, could find no data to assess the potential of 2-PE to cause these effects.

III. Ongoing and Planned Testing

The *ad hoc* group of 2-PE producers has initiated a testing program designed to characterize the potential health effects of 2-PE for which there are not adequate data, thereby addressing the concerns identified by the ITC and the Agency. Because of the diversity and resulting market sensitivity of the various production/end-use patterns of the chemical (intermediate, paint products, non-TSCA cosmetic uses) the producers group initiated a two-phase testing program as follows.

In order to assess the teratogenic potential of 2-PE, the producers group initiated a dermal teratology study in rabbits. The low volatility of this chemical precludes a study by the inhalation route. The New Zealand white rabbit was chosen as the test species based on historical use within the testing lab, the acceptability of methods to apply the test chemical by the dermal route, and the known sensitivity of this species to the fetotoxicity of other glycol ethers. The dose levels chosen were based on the results of a probe study done to determine maximum tolerated dose levels. The protocols for these studies have been reviewed by EPA scientists and are acceptable. They are also available for examination in the public record of this proceeding.

Further, upon completion of the teratology study, the *ad hoc* group of producers has agreed to meet with EPA scientists to discuss the interpretation of the test results. The members of the *ad hoc* group of 2-PE producers believed that the potential teratogenicity of the chemical would play a major role in their individual decisions to continue producing and marketing 2-PE. Therefore, when the results of this study are available in December of 1984, the producers will be able to evaluate the appropriateness of the known uses and applications of 2-PE in light of the new test data and existing data. After evaluation of the teratology data EPA will review the need to develop additional data in this area, which could include metabolic and pharmacokinetic studies and/or additional teratology testing in another species.

Also, if the results of the teratology study are clearly negative, the industry group will conduct a dermal subchronic study and mutagenicity studies. A dermal subchronic study will be done using male and female rabbits to assess 2-PE's potential to cause toxic effects of the type seen in the oral gavage study, and to clarify the doses at which 2-PE causes toxic effects after repeated exposure to intact skin. Special attention will be given to the reproductive organs; complete histopathological examinations will be carried out to insure that 2-PE does not induce testicular changes in rabbits of the types seen with some alkyl glycol ethers.

To characterize further the mutagenic potential of 2-PE, the *ad hoc* group of producers will perform a test for gene mutation in mammalian cells in culture and an *in vitro* cytogenetics assay. The proposed mutagenicity tests would complement the existing *Salmonella typhimurium*/mammalian microsome assay and the mouse micronucleus assay, and complete the first tier base set tests EPA normally requires in a test rule. The combined results of these tests should provide the type of screening data the ITC recommended obtaining for 2-PE. Following a review of the results from these tests by industry and EPA personnel, a determination will be made if further studies are necessary. Pending further evaluation, a chronic bioassay and/or additional mutagenicity testing may also need to be considered. If EPA cannot come to an agreement with the industry group to do the additional testing, a test rule may be promulgated under section 4(a) of TSCA.

The *ad hoc* group of 2-PE producers has agreed to perform the testing according to a prescribed schedule. The rabbit dermal teratology probe study began in April, 1984. Thus the full teratology study should begin in June, 1984. Preliminary data from the teratology study is expected to be delivered to the Agency by September, 1984. The final report should be completed by December, 1984.

Protocols for the dermal subchronic study and the mutagenicity studies will be submitted for Agency review prior to initiation of testing. If industry does not make a good faith effort to adhere to the proposed schedule, the Agency will consider initiating the rulemaking process. It can reasonabley be anticipated that, presuming the individual producers will continue to market 2-PE, the subchronic and mutagenicity study should begin within 60 days after completion of the final report on the teratology study. Final results should be in the Agency's hands by middle or late 1985.

The Agency has concluded that the proposed testing plan is sufficient to provide the initial information necesary to assess the potential health hazards of 2-PE which the ITC identified in their report. Also, because testing is already underway the industry-sponsored program will permit EPA to evaluate the potential effects of 2-PE more readily than if the Agency initiated rulemaking.

The *ad hoc* group has informed EPA that the tests being conducted will be done by the Toxicology Research Laboratory, Health and Environmental Sciences USA, Dow Chemical Co., Midland, Michigan. The *ad hoc* group has agreed to adhere to the TSCA Good Laboratory Practice Standards issued by the EPA as published in the **Federal Register** of November 29, 1983 (48 FR 53922). This agreement includes the inspection of testing facilities. The *ad hoc* group also understands that the Agency plans to publish quarterly in the **Federal Register** a notice of the receipt of any test data submitted under this testing program. Subject to TSCA section 14, the notice will provide information similar to that described in TSCA section 4(d). Except as otherwise provided in TSCA section 14, any data

submitted will be made available by EPA for examination by any person. Finally, the *ad hoc* group understands that failure to follow Good Laboratory Practice procedures may invalidate the test. In such cases, a data gap may still exist, and the Agency may decide to require testing.

IV. Decision Not To Initiate Rulemaking

EPA believes that the testing program already initiated by the *ad hoc* group of producers of 2-PE, coupled with the existing data, will provide sufficient data to reasonably determine or predict the potential teratogenic, mutagenic, reproductive, and subchronic effects of 2-PE which were of concern to the ITC. Hence, the Agency is not initiating rulemaking under section 4(a) of TSCA to require testing of 2-PE at this time.

The Agency reached this decision after a careful evaluation of the existing data and a review of the structural analogy developed by the ITC comparing 2-PE to the short-chain alkyl glycol ethers 2-methoxyethanol and 2-ethoxyethanol and their acetates. Existing data show that the presence of both an aromatic and aliphatic moiety in the 2-PE molecule results in a compound which exhibits a high boiling point, high organic solubility, and low water solubility. In contrast, most aliphatic glycol ethers have comparatively low boiling points, high aqueous solubilities, and can be expected to have very different end-uses and biological end-points, as indicated in Unit II, and in recent review by Leaf (Ref. 13) and Hardin (Ref. 11).

EPA believes that the two-phase testing program proposed by the *ad hoc* producers group, together with the existing data, will provide the type of data needed to evaluate the potential health effects of 2-PE and resolve any lingering doubts about a structure-activity relationship of 2-PE to the alkyl glycol ethers. As noted in Unite III, the dermal teratology study in rabbits, considered by the ITC and EPA to be the most critical issue, will initiate the program. Because of the known sensitivity of the rabbit to the fetotoxic effects of other glycol ethers, the acceptability of methods for dermal testing in rabbits, and the knowledge that 2-PE is absorbed through the skin, EPA believes that a negative finding in the rabbit teratology study on 2-PE would be sufficient in this case to remove concern for teratology.

Also, as noted in Unit III, negative results in the teratology study would trigger a dermal subchronic study to characterize 2-PE's potential to cause toxic effects by dermal absorption and to screen for potential testicular effects in rabbits. EPA could find no data to support the finding that 2-PE is a potential reproductive hazard either of the degree or type of that seen with the alkyl glycol ethers 2-ME, 2-EE, or their acetates. As noted in Unit II.B., few indications of testicular changes were seen in two rodent species exposed orally to 2-PE. However, since the types of testicular effects seen with these compounds can be identified by histopathological techniques, specific attention will be given to the reproductive organs, to insure that 2-PE does not induce these changes in a nonrodent species.

Finally, 2-PE will be tested for its ability to induce gene mutation in cells in culture and chromosomal aberrations in an *in vitro* assay. 2-PE has been tested and found negative in both an *in vitro* gene mutation assay (Ames test) and an *in vivo* chromosomal aberration assay (micronucleus test). EPA believes, at this time, that the combined results of these base set tests should provide sufficient data to reasonably predict the mutagenic potential of 2-PE.

The Agency has concluded, at this time, that the data being generated from this program will be sufficient to determine or reasonably predict the health effects of concern to the ITC. Thus, the Agency currently believes that testing is not necessary. When data are available upon completion of the testing planned by the *ad hoc* producers group, a complete assessment of further testing needs for 2-PE will be made. For these reasons, EPA has decided not to initiate rulemaking under section 4(a) of TSCA to require testing of 2-PE at this time.

V. References

(1) American Cyanamid Company. Toxicity data: Phenoxyethanol. Report 66–79. Environmental Health Laboratory, Central Medical Department, Wayne, NJ 07470. 1966.

(2) Capitol Systems Group, Inc. and Dynamac Corp. Final Technical Support Document: 2-Phenoxyethanol. Washington, D.C. Office of Pesticides and Toxic Substances. U.S. Environmental Protection Agency. EPA 68–01–6530. 1983.

(3) Dow Chemical U.S.A. Technical data: Organic chemicals/developmental products. DOWANOL® EPh in the textile industry. Oxides and Intermediates, TS & D Laboratory, Organic Chemicals Department, 1710 Building, Midland, MI 48640. (n.d.).

(4) Dow Chemical Company. Technical data: Organic chemicals/oxides and intermediates. DOWANOL® EPh ethylene glycol phenyl ether. Organic Chemicals Department, 9008 Building, Midland, MI 48640. 1981.

(5) Dow Chemical Company. Health and Environmental Sciences, Chemicals and Plastics Regulations, 1803 Building, Midland, MI 48640. Information on 2-phenoxyethanol. Letter from Carlos M. Bowman to Martin Greif, Toxic Substances Control Act Interagency Testing Committee, 401 M Street, Washington, DC 20460. 1982.

(6) Dow Chemical Company. Exposure potential of 2-phenoxyethanol. Prepared with Emery Industries on behalf of *ad hoc* producers group. Midland, MI 48640. 1983.

(7) Dow Chemical Company. Product information. B-phenoxy ethanol and DOWANOL®. EPh Dow reports D–1129, D–1130, D–1131, D–1132, D–1133, D–1134, D–1135, D–1138. Midland, MI 48640. 1983.

(8) Dow Chemical Company. Midland, MI 48640. Economic data on 2-phenoxyethanol. Letter from R. L. Hagerman to S. Newburg-Rinn, U.S. Environmental Protection Agency, Washington, DC 20460. 1983.

(9) Emery Industries, Inc. Corporate Offices, 1300 Carew Tower, Cincinnati, OH 45202. Information on Emeressence™ 1160-Rose Ether (phenoxyethanol). Letter with attachments from J. C. Bertrand to W. W. Perry, Dynamac Corporation, 11140 Rockville Pike, Rockville, MD 20852. 1982.

(10) Emery Industries, Inc. 1300 Carew Tower, Cincinnati, OH. 45202. 2-Phenoxyethanol—economic data. Letter from J. C. Bertrand to S. Ng, Regulatory Impact Branch, U.S. Environmental Protection Agency, Washington, DC 20460. 1983.

(11) Hardin, B. D., "Reproductive toxicity of the Glycol Ethers". Toxicology 27: 91–102. 1983.

(12) Hill Top Research, Inc. Acute oral and acute dermal toxicity, and acute eye irritation potential of sample 2219–93. Hill Top Report No. 80–479–21. Cincinnati, OH: Emery Industries, Inc. 1980.

(13) Leaf D, A,. "Glycol Ethers and Acetates: Uses and Substitutes". Draft Report. Economics and Technology Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Washington, DC 20460. 1983.

(14) Mathtech, Inc. Level 1 Economic Evaluation: 2-Phenoxy ethanol. *Draft* Report. Arlington, VA. Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency. EPA–68–01–6287. 1983.

(15) Nagano, K., Nakayama, E., Koyano, M. Oobayashi, H. Adachi, H. and Yamada T. "Mouse Testicular Atrophy Induced by Ethylene Glycol Monoalkyl Ethers. Jpn J Ind Health 21:29–35. (In Japanese; English translation). 1979.

(16) NIOSH. National Institute for Occupational Safety and Health. An evaluation of engineering control technology for spray painting. Cincinnati, OH: NIOSH. PB82–162264. 1981.

(17) NIOSH. National Institute for Occupational Safety and Health. Computer printout: National Occupational Hazard Survey. NIOSH Trade-name Ingredient Data Base. Retrieved May 17, 1983. Cincinnati, OH: Hazard Section, Surveillance Branch, NIOSH. 1983.

(18) NIPA Laboratories, Inc. 104 Hadley Building, Wilmington, DEL. 19810. Comments on 2-Phenoxy ethanol. Nonconfidential summary of toxicology data on phenoxetol. Letter from Gary R. Kramzer to TSCA Document Control Officer, Office of Pesticides and Toxic Substances, USEPA, Washington, D. C. 1983.

(19) NPCA. National Paint and Coatings Association, Toxic Substances Task Force. Coatings polymers—general properties and uses. Washington, DC: NPCA. 1981.

(20) NPCA. National Paint and Coatings Association. 2-Phenoxyethanol as a coalescing agent in the manufacture of latex paint. Report. Washington, DC: NPCA. 1983.

(21) OSHA. Occupational Safety and Health Administration, U.S. Department of Labor. Spray finishing operations. (29 CFR 1910.94). 1981.

(22) OSHA. Occupational Safety and Health Administration, U.S. Department of Labor. Occupational exposure to ethylene oxide; proposed rule. (48 FR 17284). 1983.

(23) RIFM. Research Institute for Fragrance Materials, Inc. beta-phenoxyethyl alcohol. Monograph. Englewood Cliffs, NJ: RIFM. 1983.

(24) Rohm and Hass Company. Information package on 2-phenoxyethanol (CAS No. 122-99-66) for submittal to the ITC. Government and Regulatory Affairs Department, Independence Mall West, Philadelphia, PA 19105. 1982.

(25) USEPA. Twelfth Report of the Interagency Testing Committee: Receipt of the report and requests for comments regarding priority list chemicals. **Federal Register** June 1, 1983 (48 FR 24443). 1983.

VI. Public Record

The EPA has established a public record of this testing decision (docket number OPTS-42057). This record includes:

(1) **Federal Register** notice designating 2-PE to the priority list and comments received thereon.

(2) Communications before industry testing proposal consisting of letters, contact reports of telephone conversations, meeting summaries.

(3) Testing proposals and protocols.

(4) Published and unpublished data, including the references cited above.

(5) Nonconfidential summaries of market data.

The record, containing the basic information considered by the Agency in developing the decision, is available for inspection from 8:00 a.m. to 4:00 p.m. Monday through Friday, except legal holidays, in Rm. E-107, 401 M St., SW., Washington, DC 20460. The Agency will supplement this record periodically with additional relevant information received. (Sec. 4, 90 Stat. 2003; 15 U.S.C. 2601).

Dated: May 14, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84-13565 Filed 5-18-84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-42058; TSH-FRL 2571-5]

Calcium, Cobalt, and Lead Naphthenates; Response to the Interagency Testing Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice is EPA's response to the Interagency Testing Committee's (ITC's) recommendation that EPA consider chemical fate, health effects, and environmental effect testing of calcium, cobalt, and lead naphthenates under section 4(a) of the Toxic Substances Control Act (TSCA). EPA is not initiating rulemaking under section 4(a) to require such testing at this time. The Agency has determined that data being developed in ongoing testing, in conjunction with available health effects information, should provide sufficient information to reasonably determine or predict the risks of those health effects recommended for testing by the ITC for each of the three metal naphthenates. At present, EPA does not believe that there is a sufficient basis to find that these substances may present an unreasonable risk to the environment nor that there is or may be substantial environmental release, and therefore does not plan to seek testing for chemical fate or environmental effects.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Pesticides and Toxic Substances, Rm. E-543, Environmental Protection Agency, 401 M St. SW., Washington, D.C. (554-1404), 20460, Toll Free: (800-424-9065), In Washington, D.C.: Outside the U.S.A.: (Operator—202-554-1404).

SUPPLEMENTARY INFORMATION: EPA is not initiating rulemaking at this time under section 4(a) to require chemical fate, health effects, or environmental effects testing of calcium, cobalt, and lead naphthenates as designated by the ITC in its Twelfth Report.

I. Introduction

Section 4(a) of the Toxic Substances Control Act (TSCA) or the Act (Pub. L. 94-469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*) authorizes EPA to promulgate regulations which require manufacturers and processors to test chemical substances and mixtures. Data developed through these test programs are used by EPA in assessing the risks that the tested chemicals may present to health and the environment. Section 4(e) of TSCA established an Interagency Testing Committee (ITC) to recommend to EPA a list of chemicals to be considered for the promulgation of testing rules under section 4(a) of the Act. The ITC may designate up to 50 of its recommendations at any one time for priority consideration by EPA. EPA is required to respond within 12 months of the date of designation, either by initiating rulemaking under section 4(a) or by publishing in the **Federal Register** reasons for not doing so.

On May 11, 1983, the ITC designated the three metal naphthenates for priority consideration in its Twelfth Report published in the **Federal Register** of June 1, 1983 (48 FR 24443). The Committee recommended that these substances be considered for testing for the following: (1) Chemical fate, abiotic/biotic persistence including dissociation, and chemical transport including soil mobility; (2) health effects, specifically carcinogenicity, mutagenicity, teratogenicity, toxicokinetics and reproductive effects; and (3) ecological effects (depending on the results of chemical fate tests), specifically acute toxicity to fish and aquatic invertebrates, toxicity to plants, and bioconcentration.

The ITC's testing recommendations for the designated substances were based on: (1) Potential release to the aquatic environment because of the amount produced and a wide variety of uses; (2) consumer and worker exposure from use in paints, varnishes and printing inks; (3) potential for health effects due to known toxic properties of calcium, cobalt, and lead salts; and (4) insufficient information to properly characterize the overall toxicological properties of the naphthenate salts of these three metals.

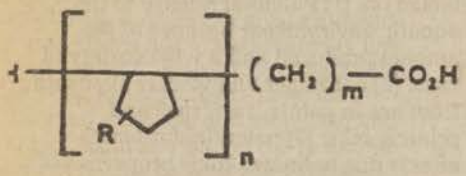
In evaluating the ITC's testing recommendations for the three metal naphthenates, EPA considered all relevant information, including the following: (1) Information presented in the ITC's Twelfth Report; (2) publicly available production volume, use, and exposure information for each of the three metal naphthenates; (3) other published and unpublished data available to the Agency, including data submitted under TSCA sections 8 (a) and (d); and (4) material relating to various ongoing testing programs. Based on its evaluation, as discussed in Units II and III, EPA is not initiating rulemaking at this time under section 4(a) of TSCA to require the testing recommended by the ITC for the three metal naphthenates. (See Units II.D and III of this Notice for the Agency's findings in this regard.)

II. Assessment of Production, Use, Exposure, and Release

A. Production

These three metal naphthenates belong to a general group of metal soaps. Metal soaps are salts or complexes of metals with lipophilic carboxylic acides. the lipophilic acid moieties make the metal soaps insoluble in water and soluble in nonpolar organic solvents. Thus, metal soaps provide a mechanism of introducing the reactivity of the metals into media to which their inorganic salts normally would not have access.

The specific chemical nature of the lipophilic carboxylate is generally not important and several different types of lipophilic carboxylic acids have been used to make various metal soaps, all of which have similar chemical properties, uses, and exposure potentials. In the cases of calcium, cobalt and lead naphthenates, the lipophilic moiety, i.e., naphthenic acid, is a mixture of compounds primarily defined by the methods used to isolate the acid, via refining, from curde petroleum (Refs. 1 and 2). Naphthenic acides used to make metal soaps can be characterized by the general formula



where n may range from 0 to 5 and m is greater than 1. R is usually a small aliphatic group such as a methyl group. No information on the specific physical/chemical properties of the naphthenic acid or the metal naphthenates was found. However, EPA notes that because they are natural organic components of crude petroleum and because of their insolubility in water and solubility in organic solvents (Ref. 51), they should exhibit a high octanol/water partition coefficient.

Metal naphthenates are generally manufactured in mineral spirits by reaction of either free metal, metal oxide, or metal hydrate with naphthenic acid. The reaction is described as continuing to completion wherein there is no loss of naphthenates to the environment. As a result of production methods, metal naphthenates doe not exist commercially as a pure chemical substance, but instead are available only in a petroleum-based solvent or a mineral spirit solution (Ref. 3).

EPA has determined through available information that in 1982 domestic manufacturers batch-produced approximately 500,000, 1–2,000,000 and 4,000,000 pounds of calcium, cobalt and lead naphthenates, respectively. Only calcium naphthenate has been imported into the United States over the past several years, and in 1982 the volume was approximately 1.2 million pounds, all of which was and continues to be consumed as an additive in marine diesel engine fuels (Ref. 4).

B. Use

Like other metal soaps, the use of naphthenic acid to make a metal soap product and the choices of metal naphthenate for a specific task are probably determined as much by cost, availability, and habit, as by function. Excluding the calcium naphthenate used in marine diesel oils, the predominant uses of these metal naphthenates appear to be as paint driers, and to a lesser extent, ink driers. EPA has found from several sources that the amount of calcium, cobalt, and lead naphthenate in paints is typically less than one percent of the formulation and in a few specialty uses, as high as 5 to 10 percent of calcium and cobalt naphthenates (Refs. 5 through 8). For printing inks, the amount of these substances typically used in a formulation is also much less than one percent (Refs. 5 and 9). Most of the drier used in the printing ink industry have shifted away from naphthenates to tallates or linoleates, thus the use of calcium and cobalt naphthenate driers is described as representing a relatively small portion of the 1.8 million pounds of driers currently used by the ink industry. The use of lead driers has been mostly discontinued (Ref. 10). The estimated current consumption of the metal naphthenates in paint and ink drier uses, however, accounts for a substantial portion of their total production volumes, i.e., over 90 percent for calcium naphthenate, about 50 percent for cobalt naphthenate, and perhaps 30 percent for lead naphthenate (Ref. 11).

As the paint drier market specifically for lead naphthenate has declined, lubricants have become the principal market for this chemical, now accounting for as much as 70 percent of its overall consumption (Ref. 6). Lead naphthenate is used in sulfur-treated fatty acid lubricants intended for extreme-pressure situations and as an anti-corrosion agent (Ref. 1 and 12). Lubricants and greases containing lead naphthenate, at concentrations typically ranging from 1 to 7.5 percent, are used primarily in non-automotive, heavy industrial uses (Ref. 7, 13 through 16). In comparison with substitute organic acids such as oleates, tallates, and stearates, lead naphthenate continues to be the best grease and lubricant additive for some extreme-pressure applications (Ref. 16).

Minor use of cobalt naphthenates, which account for a very small portion of the total production volume, include humidity-resistant urethane adhesives. Cobalt naphthenate has also been reported to be used as a catalyst in the plastics industry (Ref. 6).

In general, production and use of the metal naphthenates has been continually declining at a fluctuating rate, averaging about 15 percent annually over the last several years (Refs. 17 and 18). This is occurring for the following reasons: (1) naphthenic acid metal soap driers are being replaced by cheaper synthetic acides; (2) a sharp disruption of supply in 1979 as a result of recessionary economic conditions encouraged its replacement; and (3) the future availability of naphthenic acid is not assured. Over the long term, market demand favors the use of solventless paints and will probably further reduce the market for naphthenate metal driers in the future.

C. Human Exposure

In assessing the potential for human exposure to these chemical substances EPA considered several routes of potential exposure: absorption and leaching from paints, release incidental to lubricant and grease formulation and use, and exposure during manufacture. EPA's analyses of these paths and its conclusions for human exposure are presented below.

1. *Exposure associated with paints.* Potential for exposure to the metal napthenates may exist from the use of oil-based paints and coatings which contain these chemcials. For some time, quick-cleaning solventless paints (i.e., water-based or latex) have been successfully marketed for general consumer uses (Ref. 19); such paints do not contain naphthenate soaps. In addition, lead soaps have not been used in domestic paints intended for household use (Ref.20) because the permissible lead content imposed by the U.S. Consumer Product Safety Commission was reduced to 0.06 percent by weight in 1978 (Ref. 21). Even where permitted for use, lead soaps generally have been replaced by calcium and zirconium soaps (Ref. 22). Therefore, some potential for general consumer exposure to calcium and cobalt metal naphthenates in oil based-paints does appear to exist. The potential for consumer exposure to lead naphthenates in paints, though may be less because of its regulations.

EPA expects that exposure to oil-based paints containing these three metal naphthenates will occur most frequently with professional painters, who would be most likely to use these products in specific exterior and industrial applications. Both occupational and consumer exposure to the metal naphthenates in paints may occur through several possible routes: (a) Dermal absorption from paint films on the skin, (b) inhalation of respirable particles or aerosols, (c) ingestion of dried flakes.

a. With respect to the dermal route of human exposure, some information is available which indicates that absorption of metals from paints is a viable mens of uptake. One study showed tht when a test-paint product containing enhanced levels of lead naphthenate (i.e., 1.2 and 6 percent in the test paint vs. 0.42 percent in the base paint) was applied to occluded rabbit skin (10 consecutive days for 6 hours per day) blood lead levels were increased. The authors described a dose-response relationship in which the dermal absorption of lead was approximately 1.5 times greater in the 6 percent group than in the group treated with paint containing 1.2 percent lead naphthenate. The study showed that the blood lead levels peaked at about day 5, and once exposure was terminated, leveled off and decreased with time. The results also showed that blood lead levels never exceed 40 μg/100 ml blood (the limit established by the Occupational Safety and Health Administration as a workplace standard for lead in humans) in those animals exposed to the 1.2 percent level and rarely exceeded it in those exposed to 6 percent lead naphthenate paint (Ref. 23).

The Agency believes that this study may be applicable to uptake of cobalt and calcuim metals from wet paint films as well. In general, however, EPA believes that drying of paint films on skin surfaces will render the metal less mobile, and the the lower levels of metal naphthenates in typical paint formulations will further limit the potential for exposure to the metals.

b. Spraying paints containing the three metal naphthenates may also result in potential inhalation exposures. EPA believes that a potential for inhalation exposure exists only with aerosol sprays because the metal naphthenates have not been found to volatilize (Refs. 24 and 25). EPA believes this route of exposure can be controlled by painters utilizing protective masks. However, one study shows that automobile workers, including painters, had blood lead levels that were higher than an unexposed control group (Ref. 26). EPA believes that this finding may be a result in part of other forms of lead present in this type of work environment as well as lead naphthenates, which was also the conclusion of the author.

c. A very limited potential for exposures to the metal naphthenates leaching from ingested dried paint and coatings may also exist. However, EPA expects this would occur only under the most unusual circumstances, and that under such circumstances the small amount of metal or metal naphthenates available for absorption would further reduce this exposure potential.

2. *Exposure associated with lubricants and greases.* EPA believes there exists potential human exposure to calcium and lead naphthenates due to their use in lubricants and greases. The use of lead naphthenate in domestic automotive oils and greases (Refs. 13, 14 and 15) generally is limited to gear lubricants and greases where its extreme pressure properties are needed (Ref. 15). Lead naphthenate lubricants also have application in heavy industrial machinery where the lubricants are frequently pneumatically distributed to the points of application at determined intervals (Ref. 13). Thus, EPA believes that human exposures to lead naphthenate, as a result of its use in lubricants and greases, as well as calcium natphthenate, are primarily occupational, dermal exposures. Three groups of workers are believed to be potentially exposed: workers in grease and lubricant manufacuring or formulating plants, workers in application plants, and maintenance workers (especially mechanics).

Several studies of occupational exposure of mechanics have demonstrated that lead naphthenate in oils and grease may be the most likely potential source of exposure to this compound (Refs. 26, 27, 28 and 29). EPA has information that shows that exposures to greases and lubricants containing lead naphthenate of typical concentrations may lead to absorption of measurable amounts of lead. For example, human subjects who were dermally exposed to a gear oil containing 1.35 percent lead by weight (or approximately 4.5 percent lead naphthenate) twice daily for 4 weeks showed widely fluctuating though increased blood and urine lead concentrations during application, though no obvious pattern was evident among subjects (Ref. 30). The study does demonstrate lead absorption and excretion from a lead naphthenate-containing oil. The study also shows that lead from lead naphthenate, when absorbed through the skin, is in part excreted via the kidneys in urine. In fact, the kidney was found to be the organ with the highest lead concentrations when rats were exposed to lead acetate or lead naphthenate by cuaneous or subcutaneous pathways (Ref. 31). In percutaneous applications of leaded greases on test rabbits (Ref. 32), blood lead values were slightly higher in animals receiving repeated applications when compared to controls. Urinary lead levels were noticeably higher in treated animals and were proportional to the concentration of lead in the lubricants used. Tissue levels (i.e., liver, kidney, bone and brain) of lead were described by the authors as having failed to provide convincing evidence of lead absorption, although a strong suggestion was noted.

A second study, using a 0.24M lead naphthenate solution (ether:ethanol (1:3)) and exposing rats both by dermal application and subcutaneous injection to 500 μl for 5 applications over an 8-day period, showed that animals sacrificed 2 days after the last exposure had increased lead uptake and organ distribution when compared to controls. The study showed that dermally exposed animals had (a) levels of lead in the brain and spleen that were nearly identical to those found in control animals, (b) a 2-fold increase of lead in the liver, and (c) a 4-fold increase of lead in muscle and kidney tissues. Animals given subcutaneous injections of lead naphthenate showed a significantly different distribution of lead; i.e., brain, kidney, liver, spleen and muscle lead levels were approximately 2- , 23- , 11- , 6- and 8- fold greater than controls (Ref. 31).

EPA believes that the results of the dermal application study, described above, are more relevant to the route of exposure to metal naphthenates in occupational situations than those results of the injection studies. They may further indicate that uptake through the skin may be limited, leading to the lower lead tissue levels which were found in the dermal application study. The increased tissue-lead levels found with the subcutaneous injection route may indicate that the body is forced to assimilate all of the available lead compound.

EPA also believes that, in a similar fashion, calcium or calcium naphthenate absorption into the body may take place due to the exposure of calcium naphthenate-containing lubricants and greases.

3. *Exposure during manufacture.* As noted above, the metal naphthenates are, in general, manufactured in mineral

spirits by reaction of either the free metal (e.g., Co), or its oxide (e.g., CaO or PbO) or hydrate (e.g., $Co[OH]_2$) or $Ca[OH]_2$) with naphthenic acid in a closed reactor. During production the naphthenic acid and mineral spirits are charged through feed lines directly from closed storage tanks; the solids (i.e., metal, metal oxides, or metal hydrates) are introduced by means of screw or bucket feeders equipped with dust collectors. Engineering controls are described by the manufacturers as satisfactory to comply with the OSHA standards currently regulating the handling of the raw materials, lead compounds, and the product's base solvent. Worker exposure to the naphthenates is limited in duration, occurring only at sampling, filter changing, and drumming operations (Ref. 3).

The numbers of workers involved in the manufacture of the metal naphthenates is also limited. Currently there are fewer than 100 workers involved in the manufacture of all Ca, Co, and Pb naphthenates in the United States (Ref. 3). In a typical chemical plant, the number of chemical operators immediately involved with the manufacturing operations is two persons per shift. Because these products are usually prepared separately, these same operators prepare all of the soaps in successive batches (Ref. 3).

4. *Conclusion for human exposure.* Though low volatility, low end-use concentrations, and specialized production limit the potential for workplace exposure to the metal naphthenates, the Agency concludes that these factors do not preclude the potential for worker exposure during manufacture and use. Consequently, EPA believes that there may be a low potential for worker exposure to these chemicals, and that it exists principally through dermal exposures to products containing these chemicals.

A presentation of the available health effects information is given in Unit III.

D. Environmental Release

EPA has determined from the available information received in response to the ITC's recommendations that virtually none of these metal naphthenates is lost to the environment during production and that generated wastes from production are disposed of as hazardous wastes due to flammability of the base solvent medium or, in the case of lead naphthenate, because of the lead content. In the case of cobalt naphthenate production, the high cost of the starting materials (i.e., cobalt oxide, etc.) dictates the recycling of cobalt-containing wastes (Ref. 24).

Because of the negligible release during manufacture and the limited uses and the use specifications of these metal naphthenates in paints, lubricants, and greases, EPA believes that spills, leaks, and leaching of the compounds from dried paint films represent the only potential sources of release to the environment. The Agency, therefore, believes that the metal napthenates may reasonably be anticipated not to enter the environment in substantial quantities.

In the aquatic environment, the fate of low concentrations of these complexes may also reasonably be predicted. Because the rate of exchange of water molecules acting as ligands to dissolved metal ions with water is believed to be determined primarily by the nature of the metal (Ref. 33) and related to the metal naphthenate concentration in solution, EPA believes that it can reasonably expect exchange of these metals between naphthenate and hydronium ions to be rapid, and the resulting hydrolysis/dissociation of low concentrations of the metal naphthenates in water to be rapid as well. Additionally, EPA further believes one effect of the dissociation of low concentrations of the metal naphthenate complex in solution will be a variation in the apparent octanol/water partition coefficient as a function of the concentration of the compound. When concentrated in solution, most of the quantity will retain its chemical structural integrity; more of it, however, will tend to partition when the compound is diluted in solution, thereby dissociating into its ions. Consequently, EPA believes the environmental concentrations will be so low that hydrolysis will inevitably occur and the expected high octanol/water partition coefficient will be irrelevant.

Because the metal naphthenates are each a mixture of compounds, no specific octanol/water partition coefficient can be calculated. But, because of their low water solubility and high solubility in organic solvents, the coefficient should be high. Therefore, they may be expected to adsorb onto the organic components of soils, as well as bioconcentrate when in sufficiently high concentrations, which favor non-dissociation.

Also, because these metal naphthenates are high molecular weight complexes, volatility is presumably negligible and there should be little, if any, release to the atmosphere during production, processing or use.

III. Health Effects

The ITC recommended health effects testing for these three metal naphthenates on the basis of known toxicities of the metals, or some complex forms of these metals, and its conclusion that sufficient evidence did not exist to characterize their overall toxicological properties. Although the toxicities of lead, cobalt and calcium are well characterized, there is a paucity of information on these metals complexed with naphthenic acid. However, the available health effects studies on these metal naphthenates are briefly detailed below.

A. Calcium Naphthenate

The oral LD_{50} value in rats for calcium naphthenate is reported as greater than 6.0 g/kg (Ref. 34), thus suggesting that calcium naphthenate has low, if any, acute toxicity.

The results of short-term in vitro tests suggest that calcium naphthenate also has low, if any, mutagenic potential. Mutagenic activity was investigated in *Escherichia coli, Salmonella typhimurium,* and liquid cultures of the yeast, *Saccharomyces cerevisiae* (Ref. 35). Assays were performed both with and without S9 activation. In addition, rat liver cells were incubated in monolayer slide culture for 24 hours in culture medium containing the test substance; cells in metaphase were analyzed for structural chromosome aberrations (Ref. 35). The National Cancer Institute has also performed Ames/*Salmonella typhimurim* tests and reported that calcium naphthenate was not found to be mutagenic (Ref. 36). The *Salmonella* strains included TA 1535, TA 1537, TA 1538, TA 98, and TA 100, tested both without and with S9 activation. The results of these assays indicate that calcium naphthenate does not induce reverse mutations in bacteria, gene conversions in yeast, or chromosomal damage in rat liver cells under the test conditions.

Shell Oil Company reported that there are two on-going health effects studies sponsored by Shell International Chemical Company (Ref. 35). One is a 2-year "carcinogenicity" study in which female mice are treated twice weekly by painting a calcium naphthenate-containing product on shorn skin. The study was initiated in August, 1983. The second study is a reproductive effects study in which male rabbits were treated by painting a calcium naphthenate-containing product on shorn dorsal skin for 10 weeks (total of 50 doses), and were then mated with virgin females. The males' reproductive tracts are being examined by histopathology and females examined for number of corpora lutea, resorption sites, live and dead fetuses. The live

portion of the study was completed in August 1983; the data will become available during the fall of 1984. Protocols for both studies are available in the docket for this action.

EPA has found no data which address the teratogenicity or toxicokinetics of calcium naphthenate.

B. Cobalt Naphthenate

The acute oral toxicity (LD_{50}) of cobalt naphthenate (6 percent cobalt) in rats was reported to be 3.9 g/kg (Refs. 34 and 37), with a range of 3.5 g/kg to 4.4 g/kg. More recently, the acute oral toxicity (LD_{50}) for male and female rats was determined to be 2.8 g/kg (Ref. 38), with a range of 2.5 g/kg to 3.1 g/kg. Signs of toxicity included reduced appetite, reduced activity, weakness, collapse, and death. Gross pathologicial examination revealed slight lung congestion, liver discoloration, and acute gastrointestinal inflammation. The 24-hour acute, dermal-minimal-lethal dose for male and female rabbits was determined to be greater than 1.26 g/kg and less than 2.0 g/kg (Ref. 38).

Cobalt naphthenate was reported to be carcinogenic under the poorly described conditions of test in rabbits (Refs. 39 and 40) and mice (Ref. 41). A group of 12 rabbits each received a solution of 0.2 µl of cobalt naphthenate (containing 1 percent metallic cobalt in an unspecified solvent) 2–4 times per week. Six of these animals received the compound intramusclarly at three different sites, three animals received it intravascularly, two received it intrapleurally, and one received it intrahepatically. The animals were killed at various time periods ranging from 3 to 6 months, presumably, immediately after dosing was initiated. Nine of twelve animals developed cancerous growths at the injection site; the other three animals died. No controls were reported for the experiments, and the compound was not administered with relevance to normal portals of entry.

In a separate but continued portion of this study, cellular changes taking place during progression of tumor development in mice after treatment with cobalt naphthenate was investigated (Ref. 41). A group of 30 mice each received an intramuscular injection (0.02 µl) of the compound (containing 1 percent metallic cobalt in an unspecified solvent) daily for an unspecified period of time; some animals were killed weekly for gross and microscopic examinations. Eight of thirty animals examined developed tumors in cross-striated muscles.

Although tumors were observed at the injection site in rabbit and mouse studies employing cobalt naphthenate (Refs. 39 through 41), EPA concludes that this finding is not indicative of an oncogenic response. EPA also finds that the lack of adequate controls in these studies also precludes an evaluation of whether the induction of neoplasia is attributable to trauma, the solvent, a combination of trauma and solvent or cobalt naphthenate itself. Because the compound was not administered with relevance to normal portals of exposures, because tumors were observed only at the injection site, because it was given in an unspecified solvent, and because no controls were included and the duration of dosing was poorly specified, the Agency concludes that the induction of neoplasia cannot be attributed directly to cobalt naphthenate per se, as suggested by the ITC, and does not clearly suggest that cobalt naphthenate is an oncogen.

Cobalt naphthenate was also tested for mutagenicity using the Ames *Salmonella typhimurium* assay and was found to be negative (Ref. 36). Five dose levels were tested in triplicate using two liver S9 systems (rat and hamster) induced with Aroclor 1254 and without activation. Five tester strains (TA 1535, TA 1537, TA 1538, TA 98, and TA 100) of *Salmonella typhimurium* were used.

At this time the National Cancer Institute Chemical Selection Work Group has nominated cobalt naphthenate, with a moderate to high priority, for testing in the National Toxicology Program (NTP) bioassay testing system (Ref. 42). NTP will begin its study design process for cobalt naphthenate testing shortly and has plans to also test cobalt sulfate, from an earlier recommendation, in their bioassay system as well. EPA also has learned of an ongoing tracheal intubation cobalt (II) oxide 24-month carcinogenicity study in Sprague-Dawley rats being conducted by Bayer AG in West Germany (Ref. 43). Results of this study will be added to the record for this action when received.

On October 31, 1983, the Chemical Manufacturers Association (CMA) Naphthenate Metal Soap Program Panel (the Panel) submitted to EPA a preliminary protocol (Ref. 44) designed to determine whether cobalt is absorbed into the blood of rats after repeated dermal applications of a cobalt naphthenate-containing paint product. The study is also designed such that significant increases in blood-cobalt levels will trigger further metal analyses in tissue(s) determined by EPA to be the target organ(s). The Panel's study protocol is available in the public record for this notice.

C. Lead Naphthenate

Several studies are available on the absorption of lead applied to the skin or ingested as lead naphthenate, and the distribution and excretion of that lead. Studies with animals and humans have shown that lead penetrates into the body when lead naphthenate and products containing the chemical are applied to the skin. There is no direct evidence that the internal lead is in the form of lead naphthenate, but the tissue/organ distribution of lead in the experiments is different from the result obtained when lead acetate is used (Refs. 25 and 29). The biochemical effect (i.e., depression of ALA–D activity) also appears to be greater with lead naphthenate than with lead acetate (Ref. 31). The oral LD_{50} value for lead naphthenate in rats is 5.1 g/kg (Ref. 34). The intraperitoneal LD_{50} value in rats is 0.52 g/kg (Ref. 34). By both routes of administration, gastrointestinal disturbances were observed.

Rats treated orally with 20 doses of lead naphthenate (0.2 µl of a solution containing 1 percent lead) over a period of 30 days did not develop any toxic effects. Body weight, gross appearance, and functions were similar to those of controls. There were no mortalities, and there were no differences in lead content of the liver or histopathology. There was, however, a 3-fold increase in mean lead content of hair over that of controls (1.0 µg/g hair vs 0.295 µg/g hair for controls) (Ref. 34).

Lead naphthenate in the diet (100 ppm lead) and paint containing lead naphthenate (190 ppm lead) fed to male rats for 12 weeks caused no toxic effects (Ref. 45). Growth and food intake were normal, and there were no changes in bone or blood histology.

Lead naphthenate appears to be more toxic when administered to rats subcutaneously in comparison to application on the skin. In two studies rats were treated with lead naphthenate at two concentration levels by these two routes for 2–10 weeks (Refs. 31 and 46). Toxic effects were noticed only in subcutaneously treated animals. Industrial gear oil, grease, and gear lubricants containing lead naphthenate applied to the skin of rabbits did not cause any unusual macroscopic, microscopic, or functional changes (Refs. 30 and 32).

Lead acetate and other lead compounds have not been found to be mutagenic (Refs. 47 and 48). Lead naphthenate was not mutagenic in recent NTP Ames *Salmonella typhimurium* assays (Ref. 36). Five strains of *S. typhimurium* (TA 1535, TA

1537, TA 1538, TA 98 and TA 100) were studied, and they were tested with and without metabolic activation by Aroclor 1254-induced liver enzyme systems.

The carcinogenicity of an engine oil additive and its components (including lead naphthenate) was studied in mice (Refs. 49 and 50). In a pilot study, the clipped dorsal skin of mice was painted with the whole additive, the base oil used to make the additive (a Venezuelan crude oil), a 20 percent solution of the additive concentrate in benzene, or a 20 percent solution of lead naphthenate in benzene. The mice were painted twice weekly for 12 months and observed for a total of 569 days. The incidence for skin tumors for the lead naphthenate or the other engine oil additive components was 11 percent (7 of 59). No controls were mentioned.

In a more detailed report of the carcinogenicity study, the tumors were more thoroughly characterized and organs other than the skin were examined. The authors did not discuss any controls, but they stated: "Neither the whole additive formulation nor the lead naphthenate fraction produced any significant carcinogenic response in mouse skin." Skin papillomata were observed in only 2 mice (4 percent) following skin painting with lead naphthenate, while only a single papilloma developed in mice treated with the whole additive formulation (additive concentrate). However, skin painting with the lead naphthenate fraction induced marked kidney damage, and tubular adenomata were observed in 4 mice while one had a renal carcinoma (Ref. 50).

EPA believes that the carcinogenicity study of an engine oil and its components (Refs. 49 and 50) does not show that lead naphthenate produces skin tumors when applied to the skin.

In a study of human subjects exposed to dermal application of gear oil containing lead naphthenate (Ref. 30), the authors noted that the subjects showed no significant deviations from expected values of objective medical findings (e.g., blood pressure, reflexes, tremor, pulse), and there was no evidence of any physiologic change due to inorganic lead absorption, although lead content in blood and urine were increased. All clinical chemistry values obtained before and after application of the oil were within expected limits. Normal liver and kidney functions were indicated by these tests. Urinary analysis data were normal, including normal coproporphyrin values. Blood did not show any stippling of red cells.

Given the extensive toxicity data base for lead and the limited data for lead naphthenate, the CMA Panel recognized the need to perform additional testing for lead naphthenate in order to be able to correlate these test results with available lead toxicity data. On October 31, 1983, the CMA Panel submitted a preliminary protocol (Ref. 44) to EPA designed to determine whether lead is absorbed into the blood of rats after repeated dermal applications of a lead naphthenate-containing grease product. As with cobalt naphthenate, the study is designed to trigger tissue residue analyses if blood-lead levels are significantly increased. The protocol for this study is available for review in the public record for this notice.

IV. Summary of Decision Not To Initiate Rulemaking

A. Health Effects

EPA believes that there is no basis for requiring health effects testing of these metal naphthenates under TSCA section 4(a)(1)(A) at this time because there is no sound evidence that indicates that these compounds themselves may cause any of the health effects identified by the ITC. The Agency also has found no information that indicates that napthenic acid may present an unreasonable risk to human health. EPA believes that any health effects caused by absorption of the constituent metals contained in these naphthenates can be reasonably predicted from current knowledge of the metals' effects once information about such absorption is available. Industry is conducting testing that should allow EPA to judge the degree to which exposure to typical products containing the naphthenates results in absorption of the metals. The Agency believes, as explained below, that the testing being conducted by industry will permit EPA to determine whether observed effects of these naphthenate salts can be explained by the known toxic effects for the constituent metals, or whether further health effects testing of the metal naphthenates themselves is necessary.

In regard to TSCA section 4(a)(1)(B), the Agency believes that the naphthenates' production volumes are declining, their uses are limited and specialized and are declining in consumer products, and they are used in low concentrations in most products incorporating them. In deciding what testing is appropriate, EPA noted that there is uncertainty as to the extent to which the metal naphthenates are absorbed through the skin and where they may be deposited throughout the body. EPA believes the answers to these questions, as well as to the concern for uptake from available commercial products, should be provided by the industry-sponsored dermal absorption studies now being conducted on cobalt and lead naphthenates.

Furthermore, the Agency believes that because calcium is toxicologically innocuous in moderate amounts, that moderate amounts of both calcium and cobalt are necessary elements for normal human growth and development, and that anticipated exposures to calcium and cobalt naphthenate may lead to minor uptake and distribution of these metals, extensive toxicological testing is not warranted at this time. EPA also believes that the toxicity data base on the three constituent metals is quite extensive and that if toxicity were to be demonstrated through testing of cobalt or lead naphthenate, the toxicity observed would likely be that of the metal. EPA believes that the ongoing testing including the dermal uptake studies, will provide valuable information to evaluate the role of the constituent metals in determining the metal naphthenates' toxicity and should permit the correlation of dermal exposure and metal uptake from the naphthenates. EPA also believes the ongoing testing, espeically that of the Shell International Company and the NTP, will provide information relative to predicting the toxic effects of napthenic acid. If the testing supports the Agency's belief, the available data base on the metals, as well as the being developed for some of the metal naphthenates, is expected to be sufficient to reasonably predict the health effects of exposure to the metal naphthenates. If the Agency's belief is not borne out by the ongoing testing, further studies may be necessary. Nevertheless, without the results from the ongoing work, the Agency believes that it would be premature to require additional testing.

As part of its commitment to conduct the dermal exposure and metal uptake testing, the industry has agreed that if further health effects testing is scientifically warranted they will perform such testing.

If based on its evaluation of the data generated by the industry test program, EPA concludes that further health effects testing of one or more of the metal naphthenates is necessary, and should industry not agree to promptly initiate such testing, EPA will reconsider the need to propose a test rule under TSCA section 4(a) to require that testing.

For these reasons, EPA has decided not to initiate rulemaking to require testing of these metal naphthenates at this time.

B. Chemical Fate and Ecological Effects

From the analysis presented in Unit II. D. above, EPA believes the environmental release of all three metal naphthenates from production is not substantial because of the production processes currently being employed by the manufacturers. Environmental release of all three metal naphthenates during normal use in paints is also not believed to be substantial because of their limited application in oil-based paints and coatings, and because movement of these chemicals out of a dried paint matrix is believed to be insignificant. Releases of lead or calcium naphthenates from industrial specialty lubricants and greases may occur; however, EPA believes they are an insignificant source of environmental contamination by either the metal or the metal naphthenate itself. EPA has also determined that the most likely route of environmental exposure to the designated metal naphthenates is through uncontrolled spills and leakages of greases and paints. However, it is unlikely that substantial amounts of these materials would be released to the environment through such events. Therefore, EPA finds that while there is a limited potential for environmental release, this release is not likely to be in substantial quantities and is not likely to result in substantial environmental concentrations of the three metal naphthenates. EPA also believes that the gradual replacement of naphthenic acids with other more readily available organic acids further reduces the likelihood of environmental risks caused by spills, leaks, or leaching of these metal naphthenates. Accordingly, EPA finds no basis to require chemical fate or ecological effects testing at this time based upon production and release. Furthermore, no data were found which showed that these metal naphthenates may cause any environmental effects. For these reasons too, EPA has decided not to require chemical fate or ecological effects testing of any of these metal naphthenates at this time.

C. Interactive Process and Availability of Test Data

Test data from all study programs described above will became part of the administrative record for this notice and will be available for review as noted above. EPA and the CMA Panel agree that they will meet to discuss the results of the CMA Panel's absorption studies and that EPA reserves the reight to require the analyses of tissues it deems necessary for assessing the health effects of cobalt and lead naphthenate.

The CMA Panel anticipates starting their absorption studies by the time this notice is published and submitting a final report to the record within 3 months of the completion of the animal experiments. The CMA Panel has also agreed to the following stipulations:

1. To furnish EPA with the names and addresses of the Laboratories conducting the tests described above as soon as they are available. The specific test being performed by each laboratory shall be indicated.

2. To adhere to the TSCA Good Laboratory Practice Standards adopted by EPA on November 29, 1983 (48 FR 53922).

3. To permit laboratory inspections and data audits by the EPA or FDA in accordance with authority and procedures outlined in TSCA section 11. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data and that the studies are being conducted according to TSCA Good Laboratory Practices.

4. That all raw data, documentation, records, protocols, specimens, and reports generated as a result of a study and required to be retained by TSCA Good Laboratory Practice Standards will be retained for a period of 10 years after completion of a study and made available to EPA during an inspection, or submitted to EPA if requested by EPA.

5. Finally, failure to conduct the testing according to the specified protocol(s) or failure to follow Good Laboratory Practices as indicated above may invalidate the tests. In such cases, a data gap may still exist and the Agency may decide to require testing through a rule.

V. References

(1) Kirk-Othmer. Kirk-Othmer Encyclopedia of Chemical Technology, 3rd ed. vol. 15. New York: Wiley Interscience, pp. 749–753. 1981.

(2) Hatch, L. E., Matar, S. "From Hydrocarbons to Petrochemicals." Gulf Publications, Houston: pp. 46–47, 1981.

(3) "Comments of the Naphthenate Metal Soap Program Panel on the Interagency Testing Committee's Recommendations on the need for Additional Testing on Calcium, Cobalt, and Lead Naphthenates." August 26, 1983. Chemical Manufacturers Association.

(4) Sepesi, J. P. "Letter Enclosing Additional Information and Comments of Shell Oil Company Regarding Calcium Naphthenate." Shell Oil Company. September 20, 1983.

(5) National Institute for Occupational Safety and Health. "Computer printout: National Occupation Hazard Survey. Trade Name Ingredient Data Base." Retrieved May 17, 1983. National Institute for Occupational Safety and Health, Cincinnati, Ohio: Hazard Section, Surveillance Branch. 1983.

(6) Hurley, R. "Letter Enclosing Additional Information and Comments of Interstate Chemicals Incorporated on Lead and Cobalt Naphthenate." Interstate Chemicals Inc., December 19, 1983.

(7) Scott, M. J. "Letter Enclosing Additional Information and Comments of Mooney Chemicals Incorporated on Lead Naphthenate." Mooney Chemicals Incorporated. January 3, 1984.

(8) Zacharias, K. L. "Letter Enclosing Information from the National Paints and Coatings Association Relative to the 12th ITC Report Involving Naphthenate Metal Salts." National Paints and Coatings Association. August 11, 1983.

(9) Gikis, B. *et al.*, "Industrial Process Profiles to Support PMN Review: Printing Inks." Stanford Research Institute International. p. 137. February 1983.

(10) Renson, J. E. "Letter Providing Information and Comments of the National Association of Printing Ink Manufacturers Regarding Calcium, Cobalt and Lead Naphthenates." National Association of Printing Ink Manufacturers Incorporated. July 1, 1983.

(11) Mathtech, Incorporated. "Draft Economic Evaluation: Naphthenate Salts." Washington, D.C. Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency. Contract No. 68–01–6287.

(12) Kirk-Othmer. Jolly, S. E. "Naphthenic Acids." In: Kirk-Othmer Encyclopedia of Chemical Technology, 2nd ed., vol. 13. New York: Wiley-Interscience. pp. 732–733. 1967.

(13) General Contact Report: Metal Naphthenates. Phone conversation between Philip J. Wirdzek (EPA) and John Fahey (Metal Coat Grease and Oil Company). August 30, 1983.

(14) General Contact Report: Metal Naphthenates. Phone conversation between Philip Wirdzek (EPA) and P. A. Asseff (Lubrizol, Inc.). September 2, 1983.

(15) Scott, M. J. "Letter Enclosing Additional Information and Comment from Mooney Chemicals Incorporated on Use of Lead Naphthenate." Mooney Chemicals, Inc. January 12, 1984.

(16) Quanstrom, R. L. "Letter Providing Information and Comment from Mayco Oil and Chemical Company on Lead Naphthenate." Mayco Oil and Chemical Company. September 13, 1983.

(17) CMR-Price. 1975–1982. Current prices of chemicals and related materials. Chemical Marketing Reporter. Last June issue each year.

(18) USITC–SOC. U.S. International Trade Commission. Synthetic organic chemicals production and sales, 1975–1981. Washington, D.C.: Government Printing Office. (USITC Publication Numbers: 804–1975; 833–1976; 920–1977; 1001–1978; 1099–1979; 1183–1980; and 1292–1981).

(19) Chemical Marketing Reporter. 1979. Chemical profile: naphthenic acid. May 21, 1979.

(20) Kirk-Othmer. Buono, E. J., Feldman, M. L. "Driers and Metallic Soaps." In: Kirk-Othmer Encyclopedia of Chemical Technology, 3rd ed., vol. 8. New York: Wiley-Interscience. pp. 34–49. 1979.

(21) CPSC. "Lead-based Paint." Consumer Product Safety Commission. 41 FR 33636. August 10, 1976.

(22) CPSC. "Final Environmental Impact Statement on Lead Containing Paint." Vol. 1. Washington, DC: Consumer Product Safety Commission, p. III–11. 1977.

(23) Bonczek, R. R. "Letter Enclosing Health and Safety Study: Acute Skin Absorption Test on Rabbits Using Paint Containing Lead Naphthenate." E.I. du Pont de Nemours and Company. August 22, 1983.

(24) Wirdzek, P. J. "Notes of a Public Meeting held on July 7, 1983, on Calcium, Cobalt and Lead Naphthenates." July 21, 1983.

(25) U.S. Environmental Protection Agency. "Summary of Focus Meeting on Calcium, Cobalt and Lead Naphthenates Held on July 20, 1983."

(26) Clausen, J., Rastogi, S. C. Heavy metal pollution among autoworkers. I. Lead. British Journal of Industrial Medicine. 34:208–215. 1977.

(27) Pettinati, L., Rasetti, L., Rubino, G. Intossicazione da naftenato di plombo contuento negli olii lubrificanti per sistemi idropneumatici. Rass Med Ind Ig Lav 28:379–385. (In Italian; English translation). 1959.

(28) Rasetti, L., Cappellaro, E., Gaido, P. Contributo allo studio del saturnismo da olii libricficanti additivati. Rass Med Ind Ig Lav 30:71–75. (In Italian; English translation). 1960.

(29) Van Peteghem, T., De Vos, H. Toxicity study of lead naphthenate. British Journal of Industrial Medicine. 31:233–238. 1974.

(30) Hine, C. H., Cavalli, R. D., and Beltran, S. M. "Percutaneous Absorption of Lead from Industrial Lubricants." Journal Occupational Medicine 11(11):568–575. 1969.

(31) Rastogi, S. C., Clausen, J. Absorption of lead through the skin. Toxicology 6:371–376. 1976.

(32) Eckardt, R.E., and Scala, R.A. "Percutaneous Absorption of Leaded Greases." XVI. International Congress on Occupational Health. Tokyo, Japan. September 22–27, 1969.

(33) Basolo, F., Pearson, R.G. "Mechanisms of Inorganic Reactions." A study of metal complexes in solution, 2nd ed. New York: Wiley, pp. 141–158. 1967.

(34) Rockhold, W.T. "Toxicity of naphthenic Acids and Their Metal Salts." Archives Industrial Health American Medical Association 11(5):477–482. 1955.

(35) Shell Oil Company, Suite 200, 1025 Connecticut Avenue, W.W., Washington, D.C. 20036. TSCA section 8(d) submission 878213841. "Toxicity Studies with Additives, 1982." Washington, D.C.: Office of Toxic Substances, U.S. Environmental Protection Agency. 1983.

(36) Cameron, T.P. 1983. Division of Cancer Cause and Prevention, National Cancer Institute, National Institutes of Health, Bethesda, MD 20205. *"Salmonella Typhimurium* Assay for Naphthenates." Letter to J. Davidson, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. 1983.

(37) National Institute for Occupational Safety and Health. "Registry of Toxic Effects of Chemical Substances." 1980 ed. Vol. 2. Cincinnati, Ohio: NIOSH, Centers for Disease Control, Public Health Service, U.S.Department of Health and Human Services, p. 150. Contract No. 210–78–0050, Tracor-Jitco, Inc. DHHS (NIOSH) pub. 81–116. February, 1982.

(38) Younger Laboratories, Inc. Certificate of analysis, cobalt naphthenate. Monsanto sample No. 18. St. Louis MO: Monsanto Company. Monsanto project No. Y–73–18. 1973.

(39) Nowak, H.F. "The Pathogenesis of Neoplasia in a Rabbit Under the Influence of Polyester Resin Additives." Rocz Akad Med Bialymstoku 7:323–348. (In Polish; English translation). 1961.

(40) Nowak, H.F., Tyszkiewicz, S. "Pulmonary Tumors Induced by Cobalt Naphthenate." Patol Pol Supl 1:404–408. (In Polish) (As reported in Chemical Abstracts 67:6741, 71751q). 1965

(41) Nowak, H.F. "Neoplasia in Mouse Skeletal Muscles Under the Influence of Polyester Resin Activator." Arch Immunol Ther Exp (Engl Transl) 14(6):774–778. 1966.

(42) Stanford Research Institute International. "Minutes of Chemical Selection Working Group Meeting Held December 15, 1983." Received by U.S. Environmental Protection Agency on January 25, 1984.

(43) Schad, P.J. "Letter Enclosing Information and Comments on Existing NTP Testing of Cobalt Compounds and Ongoing Cobalt II Oxide Testing in West Germany." National Toxicology Program. Department of Health and Human Services, December 5, 1983.

(44) Shah, H.C. "Letter Enclosing the CMA Naphthenate Metal Soap Program Panel's Preliminary Study Protocol for Lead and Cobalt Naphthenates." The Chemical Manufacturers Association. October 28, 1983.

(45) Gage, J.C., and Litchfield, M.H. "The Migration of Lead from Paint Films in the Rat Gastro-intestinal Tract." Journal of Oil and Colour Chemistry Association 52:236–243. 1969.

(46) Rastogi, S. C., Clausen, J., Srivastava, K. C. "Selenium and Lead: Mutual Detoxifying Effects." Toxicology 6:377–388. 1976.

(47) Enviro Control, Inc. External review draft for the drinking water creteria document on lead. Washington, DC: U.S. Envoironmental Protection Agency. Contract No. 68–02–3651. 1981.

(48) Dynamac Corporation. Information review. Naphthenate metal soaps. IR–370. Working draft. Washington, DC: TSCA Interagency Testing Committee, U.S. Environemtal Protection Agency. Contract No. 68–01–5789. 1982.

(49) Baldwin, R. W., Cunningham, G. J., and Pratt, D. "Carcinogenic Action of Motor Engine Oil Additives." In: British Empire cancer campaign, thirty-ninth annual report. Part I. The chairman's statement and the accounts of the central organisation. pp. 420–422. 1961.

(50) Baldwin, R. W., Cunningham, G. J., and Pratt, D. "Carcinogenic Action ot Motor Engine Oil Additives. British Journal of Cancer 18(3):503–507, 1964.

(51) Lochte, H. L., Littmann, E. R. "The Petroleum Acids and Bases." New York: Chemical Publishing Co., Inc. 1955.

VI. Public Record

The EPA has established a public record for this testing decision docket number [OPTS–42058]. The record includes the following information:

(1) **Federal Register** notice designating calcium, cobalt, and lead naphthenates to the Priority List and all public comments received thereon.

(2) Communications consisting of letters, contact reports of telephone conversations, and meeting summaries.

(3) Published and unpublished data.

The record, containing the basic information considered by the Agency in developing this decision, is available for inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays, in Rm. E–107, 401 M St., SW., Washington, D.C. 20460. The Agency will supplement this record periodically with additional relevant information received.

(Sec. 4, Pub. L. 94–469, 90 Stat. 2003; (15 U.S.C. 2601))

Dated: May 14, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84–13586 Filed 5–18–84; 8:45 am]

BILLING CODE 6560–50–M

[WH–FRL–2591–7]

Draft General National Pollutant Discharge Elimination System (NPDES) Permit for Log Transfer Facilities in the State of Alaska; Change in Comment Period

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of extension of public comment period.

SUMMARY: The Regional Administrator of Region 10 is today giving notice that the public comment period for the draft general National Pollutant Discharge Elimination System (NPDES) permit for log transfer facilities in the State of Alaska is extended until June 5, 1984. The proposed permit was previously noticed at 49 FR 6788 (February 23, 1984) and 49 FR 11875 (March 28, 1984). EPA is taking this action in response to requests made by several individuals commenting in writing and at the public hearing. EPA is seeking additional comments on the proposed effluent limitations and Best Management Practices (BMPs) in the permit and information on small businesses potentially impacted by the permit. Information submitted during the original comment period, at the public hearing held on April 27, 1984, and in response to this notice will be

considered by the Agency in its final permit decision.

DATES: All written comments on the draft general permit must be received by EPA, Region 10, at the address below no later than June 5, 1984.

Regional Administrator, U.S. Environmental Protection Agency, Region 10, M/S 430, 1200 Sixth Avenue, Seattle, Washington 98101

FOR FURTHER INFORMATION CONTACT:

Mr. William Lawrence, EPA, Alaska Operations Office, Room E 556, Federal Building, 701 C Street, Box 19, Anchorage, Alaska 99513 (907) 271–5083

Ms. Marcia Lagerloef, Ocean Programs Section, M/S 430, U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101 (206) 442–1265

Mr. Ron Kreizenbeck, EPA, Alaska Operations Office, 3200 Hospital Drive, Suite 101, Juneau, Alaska 99811 (907) 586–7619

Mr. Ed Ovsenik, Permits Division (EN–336), EPA Headquarters, 401 M Street, SW., Washington, D.C. 20460 (202) 426–7035

Dated: May 7, 1984.

Robert Burd,

Acting Regional Administrator.

[FR Doc. 84–13561 Filed 5–18–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[GEN Docket 84–467; Report No. 17981]

Inquiry Begun To Prepare for 1986 RARC

The Commission has begun an inquiry looking toward developing United States proposals for the International Telecommunications Union region 2 Administrative Radio Conference (RARC) to plan broadcasting in the 1605–1705 kHz band in the Western Hemisphere.

At the first session, scheduled for 1986, technical criteria and planning method or methods will be developed for submission to the second session in 1988, where the plan for broadcasting use of the 1605–1705 kHz spectrum will be developed.

This conference is a result of the 1979 World Administrative Radio Conference (WARC 79) which allocated the 1605–1705 kHz band to broadcasting in the Western Hemisphere based, in part, on the U.S. proposals to that conference. The allocation permits a number of radio services to continue to operate on a primary basis until such time as decided by the Regional broadcasting planning conference. The allocation would allow some of these services to continue operation after that date, but in a lesser category of use, i.e., permitted or secondary.

The Commission said that to develop the recommended U.S. proposals for the first session of the 1605–1705 kHz RARC, several issues must be explored further regarding broadcasting in this new band, particularly since the operational environment and technical situations are different from those in the lower AM broadcasting band.

It said it needed to examine, in a band not having existing broadcasting operations, such parameters as protection ratios, class and bandwidth of emission; calculation of field strengths and curves to be used and power limitations.

Other items to be examined include definitions, frequency tolerance, time of operation and whether or not the new plan should attempt to give priority to the resolution of incompatibilities still outstanding in the 535–1605 kHz broadcasting band.

Specifically, the Commission asked for comments on:

—Updating the list of requirements as developed for the Rio conference taking into account recent Commission actions;

—Maximum power to be used and whether other powers should be permitted either in steps or on a sliding scale;

—Whether to model protection requirements on Class III stations on regional channels or Class IV stations on local channels, which have limited power and higher interference limits;

—Possible field strength curves for groundwave propagation in the 1605–1705 kHz band as well as skywave propagation aspects;

—How to bring new service about since existing AM receivers do not cover the new band;

—Establishment of an industry advisory committee.

Action by the Commission May 10, 1984, by First Notice in Inquiry (FCC 84–195). Commissioners Fowler (Chairman), Quello, Dawson, Rivera and Patrick.

Comments are due by June 29, 1984 and replies by July 20, 1984.

For further information contact: Lawrence M. Palmer at (202) 653–8102

Dated: May 11, 1984.

Federal Communications Commission.

Williams J. Tricarico,

Secretary.

Note.—Because of the continuing effort to minimize publishing costs, the Notice of Inquiry will not be printed herein. However, copies are available from the International Transcription Service, 1919 M St., NW., Washington, D.C. 20554, Tel.: (202) 296–7322. In addition, a copy is available for public inspection in the FCC Dockets Branch, Rm. 239, and the FCC Library, Rm. 639, both located at 1919 M St., NW., Washington, D.C.

[FR Doc. 84–13586 Filed 5–18–84; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

Copies of the submissions are available from Richard D. Goodfriend, Agency Clearance Officer, (202) 632–7513. Persons wishing to comment on these information collections should contact Marty Wagner, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395–4814.

Title: § 74.703, Interference
Action: Extension
Respondents: Businesses (including small businesses)
Estimated Annual Burden: 274 Respondents; 274 Hours

Title: § 74.751, Modification of Transmission Systems
Action: Extension
Respondents: Businesses (including small businesses)
Estimated Annual Burden: 548 Respondents; 548 Hours

Dated: May 15, 1984.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84–13587 Filed 5–18–84; 8:45 am]

BILLING CODE 6712–01–M

International Telecommunication Union World Administrative Radio Conference; Preparation

Fourth Notice of Inquiry

In the Matter of An Inquiry Relating to Preparation for an International Telecommunication Union World Administrative Radio Conference on the Use of the Geostationary-Satellite Orbit and the Planning of the Space Services Utilizing It; General Docket No. 80–741; FCC–194.

Adopted: May 10, 1984.

Released: May 10, 1984.

By the Commission.

Table of Contents

Part I. Introduction
Part II. Background
Part III. Substantive Issues in This Notice

A. Should We Further Narrow Our Focus on Radio Services and Bands?
B. What Framework Should be Used for a Dialogue on Alternative ITU Arrangements?
C. What Changes Might Be Acceptable As Elements of an Alternative Arrangement?
Part IV. Ancillary WARC–ORB–85 Issues
Part V. Administrative Matters

Appendices

App. A. Comments Filed in Response to the *Third Notice*.
App. B. United States of America, Contribution Relating to Chapter Three, Report by the CCIR to the WARC–ORB–85.
App. C. United States of America, Contribution Relating to Chapter Four, Report by the CCIR to the WARC–ORB–85.
App. D. Response of the United States of America to IFRB Circular Letter 567.

I. Introduction

1. This *Notice* is the fourth in a series issued by the Commission to invite public comment on the policies and proposals being developed for a future international conference dealing with communication satellities in the geostationary-satellite orbit (GSO).[1] The formal title of the conference is the "World Administrative Radio Conference on the Use of the Geostationary—Satellite Orbit and the Planning of Space Services Utilizing It", frequently referred to as the Space WARC. It will meet in two sessions in 1985 and 1988 as an organ of the International Telecommunication Union (ITU), an international organization in which nearly all nations participate to coordinate telecommunications. The ITU short-form reference to the first session is WARC-ORB–85.

2. The purposes of the conference are very broad, including the examination and possible amendment of international arrangements by which all nations coordinate their use of the GSO for satellite radio systems. Notwithstanding the broad agenda of the Conference, the focus is expected to be confined to a few communication satellite frequency bands.[2]

3. This proceeding has been instituted to bring the private-sector into the process of distilling and sorting the relevant Conference issues, an objective that is augmented by our Space WARC Advisory Committee. The primary purpose of this *Fourth Notice* is to address the central WARC–ORB–85 issue deferred in the *Third Notice*—". . . the appropriate mechanisms that give everyone assurance that their needs will be met as they arise."[3] Ancillary Conference matters are also discussed. We have also placed the Advisory Committee First Report in the docket file to obtain any additional comment on their Report. After a review of the response to the *Notice* and reflection on subsequent international events, we expect to issue our *First Report* containing FCC draft United States proposals for the WARC–ORB–85. These draft proposals will be based upon our findings concerning WARC–ORB–85 set forth in this proceeding and coordination with the Department of Commerce's National Telecommunications and Information Administration (NTIA).[4]

II Background

4. Preparation for the WARC–ORB–85 are occurring within a broad range of international and domestic forums and events. The following are some of the more important. Since the adoption of the *Third Notice*, comments and reply comments to that notice were filed. The Space WARC Advisory Committee submitted its First Report. The first session of the World Administrative Radio Conference for the Planning of the HF Bands Allocated to the Broadcasting Service (WARC–HFBC–84) was convened and adopted a "Report to the Second Session of the Conference." Several Inerim Working Parties (IWPs) of the International Radio Consultative Committee (CCIR) were convened and adopted reports relative to the WARC–ORB–85 Conference Preparatory Meeting (CPM). The United States has, together with other countries, prepared and submitted WARC–ORB–85 related contributions to both the IWP meeting and the CPM. In addition, the ITU's International Frequency Registration Board (IFRB) has begun its WARC–ORB–85 preparatory effort, and the United States has submitted a response to the Board's initial inquiry. These developments among others are important and relevant to this proceeding, and each is discussed below.

5. The previous notice in this series, the third, was issued ". . . to explicity establish a few basic positions for ORB–85 to guide our further preparation and dialogue."[5] In that *Notice*, the Commission found that the WARC–ORB–85 agenda item dealing with the "situation prevailing" was an important part of finding a basis for common agreement on the extent of the difficulties that gave rise to the Conference. It also noted that a broad range of alternative arrangements must be considered by the Conference because of a parity that exists among WARC–ORB–85 agenda items 2.2 and 2.5. Radio services other than the Fixed-Satellite or Broadcasting-Satellite Service in appropriate bands below 15 GHz, and the associated Broadcasting-Satellite feeder links above that limit, were found unsuitable for alternative arrangements. And lastly, one extreme outcome of the Conference, i.e., "a detailed *a priori* assignment plan contained in a treaty instrument for any communication satellite service other than broadcasting-satellite" was viewed as an unacceptabe alternative.[6]

6. In response to the *Third Notice*, eleven parties filed comments, two filed late comments, and four filed reply comments. A list of these parties is contained in Appendix A. Generally, the parties supported these findings. Some elaborated on or emphasized specific points. Others offered technical methods that might be used within some potential alternative arrangement, or proffered caveats. All of these comments were useful and are addressed, to the extent applicable, in the discussion of substantive issues below.

7. After more than two years of labor, the Advisory Committee on Space WARC submitted its First Report. As noted by the Committee's chairman in his letter of submittal, "a substantial record of historical, scientific and engineering data was complied, substantial review of related ITU activities was conducted, demand projections and technical projections of future capabilities were developed, and a substantial body of research and interpretative data was studied."[7] Many organizations and individual donated substantial resources and a major offort was made to obtain a wide scope of non-governmental views. The value of

[1] *See Third Notice of Inquiry* [in Docket No. 80–741], FCC 83–452 [public notice published at 48 Fed. Reg. 47069] (adopted 8 October 1983); *Second Notice of Inquiry*, FCC 82–214, 47 FR 24223 (adopted 13 May 1982); *Notice of Inquiry*, FCC 80–697, 45 FR 85126 (adopted 25 November 1980).

[2] *See Second Notice, supra*, at 13.

[3] *Third Notice, supra*, at 15.

[4] This proceeding facilitates coordination with NTIA and the Department of State in the development of Conference proposals and policies. Our draft proposals will be transmitted to the Secretary of State for full consideration in determining the United States submissions, in accordance with Presidential directive. *See* Transfer of Telecommunications Functions, Exec. Order No. 12046, 43 FR 13349, at para. 5–201 (1978) as amended, 47 U.S.C. sec. 303 (Supp. III, 1979). Timely proposals for the Conference must be submitted to the ITU secretariat by 8 December 1984. *See* International Telecommunication Convention, Nairobi, 1982, at no. 355.

[5] *Third Notice, supra*, at 2.

[6] *Id.* at 15.

[7] Letter from Stephen E. Doyle, Chairman, to Dr. Robert S. Powers, Chief Scientist, Federal Communications Commission (22 December 1983).

the Committee to the Space WARC preparatory effort remains significant, and we have amended and extended its charter.[8] Material developed by the Advisory Committee was included to a significant extent in the United States Contributions to CCIR preparatory meetings for the WARC–ORB–85. It has also been utilized in the development of this *Notice*, and its recommendations will be fully considered in the subsequent development of U.S. positions for the Conference.

8. Each ITU organ is undertaking some activities that relate to WARC–ORB–85. These include the Consultative Committees, the IFRB, and the General Secretariat. Within the International Radio Consultative Committee (CCIR), the major event is the Conference Preparatory Meeting (CPM–ORB–85) scheduled to convene 25 June 1984 for four weeks. Its product will be a report providing the technical and operational bases for the Conference.[9] Some of the groups within the CCIR that specialize in communication satellite matters have met during the past six months to assist the CPM by assembling information relating to particular radio services.[10] The product of each of these groups was a report containing material for possible inclusion in the CPM report. The most significant of these meetings was that of IWP 4/1. The Fixed-Satellite Service is expected to be the focus of WARC–ORB–85. The IWP 4/1 meeting was attended by a relatively broad segment of the international community. Significant, comprehensive U.S. documents were submitted and favorably considered by the participants.[11]

9. On 10 January, the World Administrative Radio Conference for the Planning of HF Bands Allocated to the Broadcasting Service (WARC–HFBC–84) was convened for four weeks at Geneva. Like the Space WARC, it was the first session of a two session conference to deal with the ITU arrangements for the identification, harmonization and implementation of radio stations. (Ref. Part III. B, below.) The HF Conference also had its genesis at the WARC–79, growing out of a common developing country concern regarding the existing ITU arrangements.[12] However, the HFBC WARC dealt with a single radio service and set of bands in which the technical and operational parameters are relatively homogeneous. The session produced a Report to the Second Session of the Conference that contains technical criteria and planning principles and method. The provisional ITU arrangement proposed in that Report for adoption by the Second Session of the Conference in 1986 relies on two-levels of requirements identification and an iterative harmonization process.[13]

10. In February/March 1984, the United States submitted to the CCIR Secretariat at Geneva a set of contributions addressing Chapters 3–10, and 12 of the CPM–ORB–85 Report. *See, e.g.*, Appendices B and C to this *Notice*. These Chapters are intended to address succinctly and comprehensively the technical and operational bases of each major agenda item at WARC–ORB–85. This material was thoroughly coordinated within the federal government with substantial assistance provided by the private-sector through the appropriate Department of State public advisory committee (the U.S. Organization for the CCIR). The submission is fully consonant with the *Third Notice*. The perspective embodied in those contributions will be an important component of the United States approach for the Conference.

11. Both Resolution 3 of WARC–79 and the WARC–ORB–85 agenda call for "the IFRB to prepare a report on the operation of the procedures of Articles 11 and 13 including information about difficulties which may be reported to the IFRB by administrations in gaining access to suitable orbital locations and frequencies * * *." On 10 January 1984, the Board issued IFRB Circular-letter No. 567 requesting individual administrations to report any of these difficulties. The U.S. submitted a response indicating that:

> These arrangements have been used for many years by this Administration. During this period, no substantial difficulties have been experienced in meeting our satellite radiocommunications requirements and in gaining access to suitable orbital locations, frequencies, and areas of coverage.
>
> Our experience * * * has been favorable because of the flexibility of these procedures in accommodating needs as they incrementally arise. On those occasions when technical or operational difficulties involving other networks were identified, the affected parties were able to coordinate among themeselves and successfully resolve those difficulties through cooperative efforts and through exchange of detailed information. Each administration was able to gain access to the geostationary-satellite orbit to meet its own communication requiremets. All known requirements were accommodated in a mutually acceptable manner.[14]

III Substantive Issues

12. In the *Third Notice* several substantive issues oriented around the WARC–ORB–85 agenda were addressed. With respect to Conference Agenda Item 2.1, it was found that "* * * the 'situation prevailing' should be construed broadly and be thoroughly examined by the Conference * * *."[15] A number of factors relative to the situation prevailing were discussed. Subsequently, those filing comments strongly supported this approach, and many of the factors were included in the Advisory Committee Report and the U.S. contributions to the CPM–ORB–85. Much of the same material may form the basis for the United States proposals for the WARC–ORB–85, agenda item 2.1. The associated U.S. contribution to the CPM–ORB–85 is included as Appendix B to this *Notice*.

A. Should We Further Narrow Our Focus on Radio Services and Bands?

13. In the *Third Notice*, the Commission found that "[o]nly the fixed-satellite and broadcasting-satellite services in appropriate bands below 15 GHz and the associated feeder-links above that limit should be considered for *any kind of alternative arrangements* at the WARC–ORB–85."[16] We also noted that a futher narrowing appears appropriate, and comments on this matter were solicited.

14. Satellite Business Systems urged that only the 4/6 GHz bands be considered, and specifically that the 12/14 GHz bands be excluded from WARC–ORB–85 consideration for alternative arrangements.[17] Similarly,

---

[8] *See Memorandum Opinion and Order* [in Gen. Docket No. 80–741], FCC 83–383 (adopted 10 August 1983).

[9] *See* CCIR Administrative Circular A.C./254 (22 August 1983).

[10] This includes the Interim Working Party (IWP) 2/2 meeting on 3–7 December at Geneva to consider Space Research and Radioastronomy matters; the 10/11–1 meeting on 24–27 January 1984 at Washington to consider the Broadcasting-Satellite Service; the IWP 8/7 meeting on 23–27 January 1984 at McLean Virginia, to consider the Mobile-Satellite Service; and the IWP 4/1 meeting on 13–22 February 1984 at Geneva to consider the Fixed-Satellite and Inter-Satellite Services.

[11] *See, e.g.*, United States of America, Contribution Relating to Planning Methods, Report by the CCIR to the WARC–ORB–85, Doc. IWP 4/1/1110 (6 Feb. 1984), including Corr. 1 (21 Feb. 1984).

[12] *See* Resolution No. 508, the World Administrative Radio Conference (Geneva, 1979).

[13] *See* Report to the Second Session of the Conference, World Administrative Radio Conference for the Planning of the HF Bands Allocated to the Broadcasting Service, First Session, Geneva, 1984, at 76–84.

[14] Letter from Director, Office of International Communications Policy, Department of State, to A. Berrada, Chairman, IFRB 27 April 1984. Attached as Appendix D to this *Notice*.

[15] *Third Notice, supra*, at 11.

[16] *Id.* at 13.

[17] *See* Comments of Satellite Business Systems (SBS) at 6; Reply Comments of SBS at 2.

AT&T urged that the entire 7/8 GHz bands should be excluded.[18] The same general views were also expressed by the Space WARC Advisory Committee in its First Report. The National Academy of Sciences urged that the 2655–2690 MHz band, in which radio astronomy has a secondary allocation, be excluded.[19] Satellite Television Corporation recommended that the Broadcasting-Satellite Service bands 670–720 MHz, 2500–2690 MHz and "bands that may be allocated to the BSS (Sound)" be excluded.[20]

15. In addition to the above bands, the United States at the recent IWP 4/1 meeting introduced a document noting the considerable difficulties associated with Fixed-Satellite use of some segments of the so-called 4/6 GHz extension bands.[21] These frequency bands include 3400–3700 MHz, 4500–4800 MHz, 5725–5850 MHz, 5850–5925 MHz, and 6425–7075 MHz. The Interdepartment Radio Advisory Committee's (IRAC) specialized preparatory committee for Space WARC (Ad-hoc 178) has also expressed similar concerns for these bands.

16. Except for the 6425–7075 MHz band, each of these extended bands is used to support important government terrestrial requirements. Technical and operational factors for sharing with these terrestrial services would severaly constrain the use of these bands for the Fixed-Satellite Service (FSS).[22] The 6425–7075 MHz band is used to support a broad range of non-government requirements, including local television transmission (6425–6525 MHz), private operational fixed (6525–6875 MHz), and television auxiliary broadcasting (6875–7075 MHz). In the United States, these terrestrial services have extensive operations, in many cases at unspecified locations. There are no antenna pointing restrictions toward the GSO. New regulations and coordination procedures, which would be difficult to devise, would be needed to avoid unacceptable interference.

17. The radio spectrum between 10.7 and 14.5 GHz, generally referred to as the 11/14 or 12/14 GHz bands is a very complex mix if different radio service allocations and restrictions in the various regions of the world.[23] For Region 2 (the Western Hemisphere), there are 10.7–12.2 GHz downlinks and 12.7–13.25 GHz and 14.0–14.5 GHz uplinks for the Fixed-Satellite Service (FSS). FSS use of the 11.7–12.2 GHz band is limited to national and sub-regional systems. Further, in the United States, the bands 10.7–11.7 GHz and 12.75–13.25 GHz are limited to intercontinental systems. Different allocations and restrictions exist for Regions 1 and 3 (i.e., outside the Western Hemisphere). Region 1 has both uplink and downlink allocations in the 10.7–11.7 GHz and 12.5–12.75 GHz bands, with the 10.7–11.7 GHz uplink allocation limited to feeder links to broadcasting-satellites. Region 3 has a downlink allocation 15 12.2–12.75 GHz with the 12.2–12.5 GHz band limited to national and sub-regional systems. There are no FSS allocations in the 11.7–12.2 GHz band in Regions 1 and 3, but the 12.75–13.25 GHz and 14.0–14.5 GHz bands are allocated to uplinks. The complexity of these allocations in the 10.7–14.5 GHz range would create substantial difficulties in the application of any alternative arrangements.

18. In an attempt to assess comprehensively this entire matter relating to which services and bands might be considered for alternative arrangements, the United States recently submitted a CPM–ORB–85 contribution. It is included as Appendix C to this *Notice*. In the submission, six major technical and operational factors are described as bearing on this matter. These include: allocation status, operational status, specialized user community, technology status, operational characteristics, and GSO utilization intensity. These factors are applied to the entire range of services and bands. The conclusion for all services other than Fixed-Satellite is clear: the existing arrangements are satisfactory, and alternative arrangements seem unnecessary. Essentially the same conclusion is reached in the Space WARC Advisory Committee Report. For the Fixed-Satellite Service, the U.S. submission to the CPM–ORB–85 also concludes that a number of important features that are found in the existing arrangements would be required in any acceptable alternative arrangement.

19. We believe the factors and approach taken in the U.S. contribution set forth in Appendix C is a pragmatic means of reaching a decision as to the services and bands suitable for alternative ITU arrangements. Based on those technical and operational factors, the comments filed in response to the *Third Notice*, the First Report of the Space WARC Advisory Committee, and the other materials associated with the U.S. WARC–ORB–85 preparatory process, it is clear that only the Fixed-Satellite Service bands at 3700–4200 MHz and 5925–6425 MHz, and perhaps at 11–12/14 GHz, may be appropriate for the consideration of alternative ITU arrangements. We thus further narrow our finding in this matter. In this regard, we do share the concerns of SBS and the Advisory Committee regarding the impact of alternative arrangements on the development of technological and operational innovation at 11–12/14 GHz. In addition, as discussed in para. 17 above, the very complex mixture of allocations and restrictions in these bands, that vary among the different regions of the world, would seem to require the use of the existing ITU arrangements.

B. What Framework for a Dialogue on Alternative ITU Arrangements?

20. The basic goal of the Space WARC is "to guarantee in practice for all countries equitable access to the geostationary-satellite orbit and the frequency bands allocated to space services."[24] However, equity is intrinsically an abstract concept that can only be achieved on a case-by-case basis. Its pursuit necessarily must rely on an international system of cooperation that in the *Third Notice* we characterized as the appropriate mechanisms that give everyone assurance that their needs will be met as they arise. It is this system of cooperation that is the central WARC–ORB–85 issue and that is conceptually described and substantively explored below. We request comment on the merits of this approach in the pursuit of equitable access.

21. Because WARC–ORB–85 is a conference that is broadly exploratory in nature, the ensuing dialogue among nations is best served by following a conceptual framework for the subject matter of the Conference that all parties can accept. Such a framework should ideally allow the Conference participants great freedom of options and choice, and not polarize or skew the discussions. Additionally it should fully portray the complex and difficult factors that must be balanced.

---

[18] *See* Comments of the American Telephone and Telegraph Company (AT&T) at 4.

[19] *See* Comments of the National Academy of Sciences (NAS) at 5–7.

[20] Satellite Television Corporation (STC) Comments at 2.

[21] *See* United States of America, Contribution to Annex 5 of CPM Report, CCIR Interim Working Party 4/1, Geneva, February 1984, Doc. No. IWP 4/1–1111 (rev. 2).

[22] *Ibid.*

[23] *See* Table of Frequency Allocations, Art. 8, Radio Regulations, Geneva, 1979; Table of Frequency Allocations, sec. 2.106, FCC Rules and Regulations, 47 CFR 2.106 (1982).

[24] Resolution No. 3, The World Administrative Radio Conference (Geneva, 1979).

22. Toward this end, we suggest the consistent use of the terminology "ITU arrangements for the identification, harmonization and implementation of satellite systems" (short form: "ITU arrangements") to describe the process by which nations obtain recognition and protection of satellite networks. This terminology translates well and describes in a meaningful way the subject under consideration. The Convention, Radio Regulations, and Recommendations of the CCIR and other related agreements/procedures constitute the "existing arrangements." These consist of: Articles 11, 13–15, and the associated Appendices of the Radio Regulations, Resolution No. 33 of the WARC–79, and the Final Acts of RARC–SAT–83.

23. All arrangements for promoting orderly and equitable access and use of the GSO invariably proceed through three necessary phases. See Table A. The precise means of accomplishing the required work may differ, but the general process is always necessary. First, proposed satellite networks are identified and announced by administrations in some agreed fashion. Second, harmonization occurs through the application of threshold criteria for identifying potential interference among networks, followed by a process of resolving any incompatibilities discovered. Lastly, near the time a satellite network is brought into use, the network assignment is notified to the IFRB. The Board's confirmation or verification that the assignment conforms to all of the applicable provisions of the Convention and Radio Regulations and provides the basis for network recognition and protection.

TABLE A.—ELEMENTS OF ITU ARRANGEMENTS FOR IDENTIFICATION, HARMONIZATION, AND IMPLEMENTATION OF PROPOSED SATELLITE SYSTEMS

Phase	Elements
Identification of Proposed Use.	● How accomplished. ● When. ● Implementation time period. ● Information provided. ● Participants.
Harmonization [1]	● How accomplished. ● When. ● Threshold criteria. ● Criteria for harmonization. ● Participants.
Implementation	● Permitted amendment. ● How accomplished. ● Time period effective. ● Participants. ● Permitted amendment.

[1] The harmonization phase would vary under some options, depending on whether general or specific information was furnished during the first phase. Reference figure 2.

24. Each of these phases is comprised of several major elements that are also listed in Table A. In some cases, there are several options for each element. These are discussed in sub-part C, below. It is obvious that by selecting any particular combination of options, a rather large array of different ITU arrangements is possible.

25. During the past few years, there has been an attempt in both international and domestic forums to construct complete composite sets of alternative arrangements. In addition to the existing ITU arrangements, the IWP 4/1 has described and evaluated five "planning methods." By varying the constituent processes, as many as thirteen different methods have been described and/or evaluated in materials such as the Report of CCIR IWP4/1, the First Report of the Space WARC Advisory Committee and Appendix E to the *Second Notice*. All of this work has been useful, and from it a common underlying framework can be extracted. The general composition of this framework is shown in Table A, and portrayed in greater detail below. This framework is now guiding our domestic preparations and international dialogue. *See, e.g.*, Appendices B and C to this *Notice*.

Part C. What Changes Might Be Acceptable As Elements of an Alternative Arrangement?

26. The agenda of WARC–ORB–85 does not expressly require the session to devise a particular kind of alternative arrangement for any satellite service. However, if this matter is not decided, the constituent elements are likely to be addressed in considerable detail under several Conference agenda items. We are therefore proceeding along the lines of the ITU arrangement framework, discussing a range of examples under each element, indicating some preliminary views. For each element, we are particularly interested in the views of commentors on the flexibility needed to provide existing and planned services. This includes the consequences, if any, of alternatives that might be necessary to assure equitable access by other Administrations in the future.

The Identification Phase

27. In the identification phase, proposed satellite networks must be identified and announced in some agreed fashion. The elements comprising this phase are depicted in Table B. One of the most basic of these elements is the mechanism for actually identifying and announcing networks. For most satellite services and bands, this has been done by relying on individual administrations to identify their future satellite networks, and to furnish descriptive information to the IFRB which in turn publishes the information in Special Sections annexed to the IFRB Weekly Circulars.[25] Based on our experience, we believe this is the preferable means of identifying satellite requirements. The only exception to this general mechanism involves the Broadcasting-Satellite Service in the 12 GHz band and the associated feeder links. For this one service and band, the identification and publication occurred at an Administrative Radio Conference.[26] For Region 2, the identifications at RARC–SAT–83 were made without prejudice to the right of all administrations in that Region, under stated conditions, to notify satellites with other characteristics made possible by technological advances, so long as the substituted facilities provide no less protection than the Final Acts require.

TABLE B.—ELEMENTS OF IDENTIFICATION PHASE

Element	Examples	Existing arrangements: Arts. 11, 13	Existing arrangements: Art. 15, App 30
How accomplished	● IFRB publication	X	
	● Regional or Subregional ARC.		X.
	● World ARC		
	● Other		
When	● Periodically		X.
	● As requirements arise.	X	
Implementation time period.	● Two to five years	X	
	● Fifteen years		X.
	● Other		
Information provided.	● General		
	● Specific	X	X.
Participants	● Administrations	X	X.
	● Other		

28. There are other means by which the identification phase could be accomplished. Identification of future networks could be done by administrations meeting in different institutional settings that vary both as to jurisdiction (world, regional, and sub-regional) and ITU forum (Administrative Conference, Consultative Committee, intersessional or other special group) or non-ITU multilateral body. Apart from the circumstances mentioned in para. 31, below, it is unlikely most administrations might want to delegate

[25] *See*, Article 11, nos. 1041–45, Radio Regulations, Geneva, 1979; Resolution No. 33, Final Acts of the World Administrative Radio Conference, Geneva, 1979.

[26] *See* Final Acts of the World Administrative Radio Conference for the Planning of the Broadcasting-Satellite Service in Frequency Bands 11.7–12.2 GHz (in Regions 2 and 3) and 11.7–12.5 (in Region 1), Geneva 1977 (WARC–SAT–77); Final Acts of the Regional Administrative Radio Conference for the Planning of the Broadcasting-Satellite Service in Region 2 (RARC–SAT–83).

the identification function to some agent.[27] Some combination of one or more of these mechanisms is also possible. Similarly, the task of assembling and distributing this information could occur at such meetings or subsequently by a separate entity.

29. However, there are many compelling reasons for relying on the intitiative of individual administrations to unilaterly identify and describe their required satellite networks on a case-by-case basis as they arise, using the IFRB to disseminate the information. Perhaps the foremost is that the technical and operational aspects of the design and use of communication facilities are complex, diverse, rapidly changing, and entwined with the different domestic policies of administrations. To gather representatives of every administration together at necesarily large meetings to identify the characteristics of their future newtworks leads inevitably to substantial difficulties such as high costs and the likely overstatement of requirements. It is difficult enough in the present, based on concrete information, to make decisions as to whether a satellite network is warranted and what characteristics it should posses. In the United States, the identification of private-sector network requirements is not initiated by the government, but reflects investment decisions made by the private-sector based on market analysis and opportunities. This is done to foster innovation and the benefits of competition. To the extent the government intervenes, it is to accommodate new services and more entrants, including other countries, or to promote technical or operational efficiencies. The information indentifying the networks and their charateristics is then disseminated through the IFRB. In order for a multilateral process for this phase to be useful in this kind of environment, it must meet almost continuously. Thus, use of an Administrative Radio Conference for identification is generally unacceptable.

30. The Broadcasting-Satellite Service at 12 GHz and its associated feeder links represent a unique exception among satellite radio services and bands with respect to collective identification of future networks. Indeed, it has historically been only the Broadcasting Service and some worldwide Mobile Services for which large international conferences have ever been found marginally satisfactory to identify needs. This amenablity results from the requirement that such stations deliver service directly to a very large user population at diverse locations. This has necessitated a substantial technical and operational homogeneity that for economic reasons has remained relatively stable over a long period of time.

31. We are not, however, unalterably opposed to the use of multilateral forums for the identification of satellite requirements. Indeed, the United States participates actively in a variety of multilateral facilities planning activities. The most active involve the North Atlantic, Pacific and Caribbean regions. For each there is a continuing planning proceeding, and for the North Atlantic, a multilateral consultative process.[28] In addition, the Joint CCITT/CCIR Plan Committees have for some years sought to identify itra and inter regional circuit requirements via satellite.[29] Intelsat engages in a similar identification process on a quarterly basis.[30] There are many examples of similar activity in other regions and within many administrations.[31] It should be emphasized, however, that this activity is aimed at describing transmission service requirements based on current and anticipated demands dervied through long-standing forecasting methods.[32] These demands are then met through the use of satellite or terrerstrial facilities designed and implemented at the time they are needed, taking into account the technological, operational and economic factors extant *at that time.*

32. There are other important elements of the identification phase. For example, the point in time at which identification is accomplished may also be significant. Under the existing ITU arrangements, identification of satellite networks largely occurs at the initiative of individual administrations, as needed. If the phase is accomplished at multilateral meetings, however, the periodicity of the meetings becomes significant. The communication satellite environment, especially the Fixed-Satellite Service, is highly dynamic. If multilateral forums were to be used for identifying networks, they would necessarily have to meet very frequently, perhaps even quarterly as does Intelsat, for a service such as Fixed-Satellite.

33. The identification phase may also encompass different times of network establishment. The advance publication mechanism now used for most bands and services requires that an administration "* * * which intends to establish a satellite system shall * * * send to the IFRB, no earlier than five years and preferably not later than two years before the date of bringing into service each satellite network of the planned system, the information listed * * *."[33] This can be envisioned as a "time window" for implementation identification that continually moves 2–5 years in advance of the present. Ref. Figure 1: The Plans developed for the Broadcasting-Satellite Service at 12 GHz typically enjoy a fixed ten year time period within which the identified networks are expected to be brought into use. There is obviously some flexibility here in setting the size of this window. The boundaries are dictated by a desire to give notice in sufficient time for the subsequent harmonization phase to occur, yet at the other extreme not allow hypothetical or speculative satellite networks to be identified. We solicit comment on the appropriate boundaries for the identification of any satellite requirement period in any alternative arrangement.

[27] However, it is possible in limited or specialized circumstances for this to occur. For example, an administration may sometimes be given proxy authority by another administration, or the IFRB may assume the role of trustee for several administrations. *See* Final Acts of the World Administrative Radio Conference for the Planning of the Broadcasting-Satellite Service in the Frequency Bands 11.7–12.2 GHz (in Regions 2 and 3) and 11.7–12.5 GHz (in Region 1), Geneva, 1977, art. 11, n. 4.

[28] *See Report and Order* [in Doc. 79–184] [Atlantic Facilities], 84 FCC2d 760 (1981); Documents of the 4th North Atlantic Consultative Working Group Meeting, Paris, 31 Jan–2 Feb 1984; *Notice of Inquiry*, [in Doc. CC 81–343] [Pacific Facilities], FCC 83–515, —— FCC2d —— (8 Nov 1983); *Notice of Inquiry* [in Doc. CC 83–525] [Caribbean Facilities], FCC 83–251, —— FCC2d —— (26 May 1983).

[29] *See* General Plan for the Development of the Interregional Telecommunication Network, 1980–1983–1987 (Paris, 1980); Supplement to the World Plan, 1982–1989 (1982); General Plan for the Development of the Regional Network in Africa, 1982–1988–1990 (Libreville, 1983); General Plan for the Development of the Regional Network in the Region of Europe and Mediterranean Basin, 1978–1981–1983–1985 (Santiago de Compostela, Espana, 1979); Supplement to the Europe and Mediterranean Basin Plan, 1980–1984–1986–(1968) (1982); General Plan for the Development of the Regional Latin American Network, 1980–1984–1988 (Buenos Aires, 1981); General Plan for the Development of the Regional Asian and Oceanian Network, 1981–1984–1990 (Manila, 1982); Supplement 1 (N=1982) to the Asia and Oceania Plan (1983).

[30] *See, e.g.*, Advisory Committee on Planning, Twenty-Fifth Report to the Board of Governors, Intelsat Doc. BG–57–5E (23 Nov 1983).

[31] *See, e.g.*, Panaftel, ITU, Geneva 1983; Medarabtel, ITU, Geneva 1983; List of Projects of on Master Plan for Development of Telecommunications, Annex, CCIR Doc. IWP4/1–1154 (20 Feb 1984).

[32] *See, e.g.*, General Network Planning, CCITT (1983); Economic and Technical Impact of Implementing a Regional Satellite Network, CCITT (1983).

[33] No. 1042, Radio Regulations, Geneva, 1979.

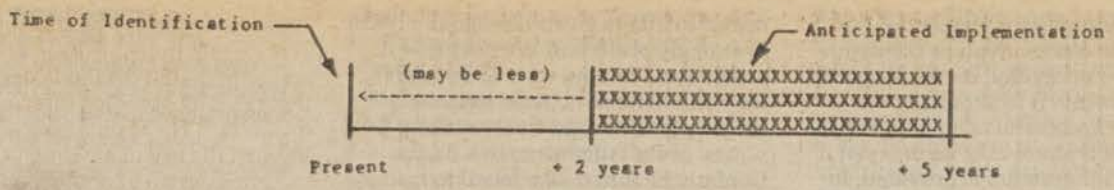
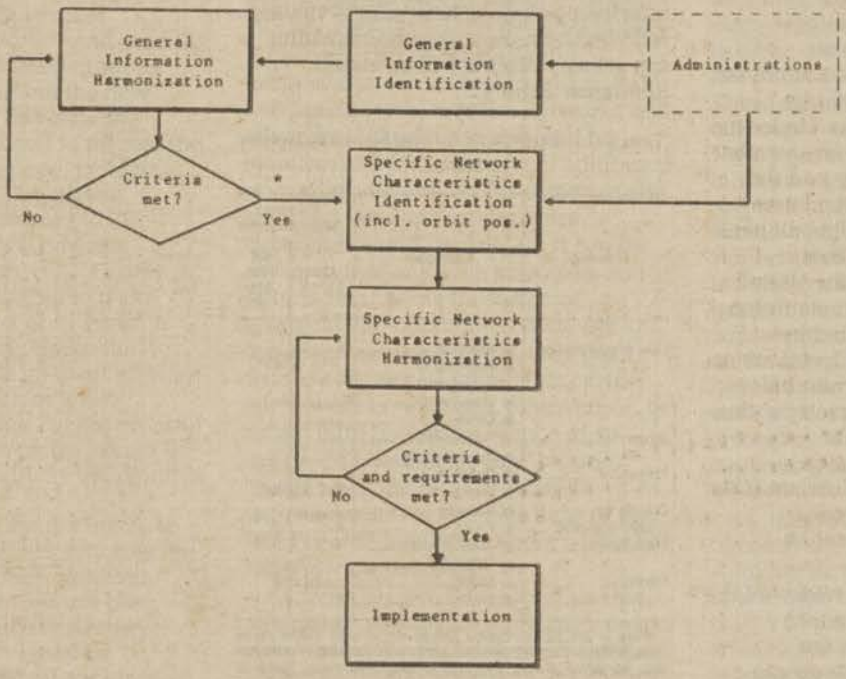


Figure 1

Depiction of the Present Implementation Window

34. The detail of data to be provided and the timing for the provision of such data are major questions to be considered in the identification phase. It may be possible to effect a two-level identification process that allows for less detailed information being identified, at the discretion of the administration. Ref. Figure 2. A similar approach was proposed by the first session of the WARC–HFBC–84. Advancement to the harmonization phase would be predicated on the filing of the additional information required. For example, the general transmission information of an administration identified in national or regional ten or twenty year telecommunication plans might be identified and perhaps even associated with some tentative satellite network characteristics. Such general or long-term information could also be used to indicate the approximate level of technology needed at the time to accommodate the overall in-orbit capacity desired by the administration. Advancement to the harmonization phase would occur at such time as the satellite is about to be actually constructed and launched, and additional supplemental characteristics, including the date of bringing into use, were identified. Comment on the applicability of such an approach to satellite networks would be particularly desirable.



Note: * The translation of general requirements into specific network characteristics would be initiated, as needed by the concerned administrations(s).

Figure 2

Example of a Two-Stage, Iterative Approach To Identification, Harmonization and Implementation

35. A very important element of the identification phase involves the nature of information provided on the proposed satellite network. It is important because the syccessful completion of the harmonization phase may be delayed if insufficient information is provided. In other words, the information provided must be sufficiently detailed to allow a determination of the other affected radiocummunication systems that should be included in the harmonization process. For all statellite services and bands, this information normally includes such characteristics as the GSO arc within which service is to be provided, the geographical service area, frequency ranges, date of bringing into use, among others.[34] However, impractical and administratively burdensome details should be avoided.

36. The last major element of the identification phase involves the matter of standing, i.e., who will be allowed to participate directly in the ITU identification phase. The matter is relevant because common user organizations such as Intelsat, Inmarsat, and Intersputnik implement large numbers of satellite facilities. Under the existing ITU arrangements, one member administration must identify and the satellite networks of a common user organization to the IFRB on behalf of all member administrations in that organization. For example, the United States acts as notifying administration for the requirements identified by Intelsat, while Intelsat staff members or committees perform the substantial engineering work. This characterization applies to other common user organizations such as Inmarsat, Intersputnik, Arabsat and Eutelsat. This is necessary under the Current International Telecommunication Convention.

37. In summary, we have reviewed the elements of the process by which proposed satellite networks are identified. These include: the means through which identification occurs, when it occurs, the implementation time period of the satellite networks, the nature of the information provided, and the participants allowed. We find that the existing means of identification, relying on unilateral administration invitiative on a case-by-case basis with notice to others given through the IFRB, is strongly preferred. We note that if multilateral forums were to be used, they would need to occur extremely frequently. The rigid treaty making nature of the Administrative Radio Conference forum was found to be clearly unsuitable to this task. We believe that existing networks should be included in the requirements identified for an administration under any approach. We solicit comment on other elements of the process of identification that could be fashioned to meet the longer range concerns of some nations, particularly with respect to the description of future network requirements.

The Harmonization Phase

38. The second phase involves the harmonization of satellite networks. During this phase, the applicable threshold for identifying potential interference among networks is applied, followed by a process of harmonizing any incompatibilities discovered. Reference Table C.

TABLE C.—ELEMENTS OF THE HARMONIZATION PHASE

Element	Examples	Existing arrangements	
		Arts. 11, 13	Art. 15, App 30
How accomplished	● Bilateral	X	
	● Regional or Subregional ARC.		X
	● World ARC		
	● Other		
When	● Concurrently		
	● Subsequently	X	
Threshold	● Variable		
	● Fixed	X	X.
Criteria for harmonization.	● Variable		
	● Fixed	X	X.
Participants	● Administrations	X	X.
	● Other		
Permitted amendment.	● Minor		X
	● Major	X	

Note.—The harmonization phase would vary under some options depending on whether general or specific information was furnished during the first phase. Reference figure 2.

There are many ways of accomplishing harmonization. The existing process for most bands and services relies upon bilateral consultations and harmonization, drawing upon the studies of the CCIR on technical coordination methods.[35] Under

[34] *See* Appendices 4.30, Radio Regulations, Genvea, 1979.

[35] *See* Art. 11, Radio Regulations, Geneva, 1979; CCIR Report 870.

the existing arrangements, harmonization begins after the publication of information on a new network. Administrations must review the notices of new networks published by the IFRB in the annex to their Weekly Circular. If any administration believes that unacceptable interference may occur to one of its satellite networks, that administration must send comments within four months to the administration identifying the new network, as well as the IFRB. The affected administrations are then required to attempt to resolve difficulties among themselves by exploring all possible means of accommodation. If no comments are filed, or the noted difficulties are successfully resolved, or after six months of unsuccessful resolution, the administration advancing the new network must then take another step. It must determine which existing networks operating in the same frequency band(s) are affected according to noise temperature calculations,[36] and send the potentially affected administrations specific information about the new satellite network. At this step, the affected parties are urged to resolve the matter among themselves, employing calculation methods and criteria generally based on relevant CCIR Recommendations agreed by the administrations concerned.[37] However, the IFRB may be requested to make certain findings of fact or to assist in resolving the difficulty. Under the existing arrangements for most services and bands, if the problem is not resolved, the newcomer cannot proceed to the implementation phase except by insistence and with a likely unfavorable finding by the Board.

39. We realize that some aspects or the existing arrangements may concern some nations. In practice, however, accommodations have always been made. We believe that satisfactory principles and criteria could be developed to give adequate assurance that administrations' telecommunication needs will be met as they arise.

40. For the Broadcasting-Satellite Service at 12GHz, on the other hand, the process embodied in Article 15 and Appendix 30 and the Final Acts of RARC–SAT–83 achieves this phase at roughly the same time as identification. Initially this was done at an administrative radio conference, and subsequently through the arrangement modification process. As we noted above and in the *Third Notice*, this approach is only feasible for services of substantial long-term homogeneity, and nontheless gives rise to significant adverse effects.

41. Multilateral approaches to harmonization suffer from many of the same deficiencies as with their application to identification. The most intensely used satellite services are also the most dynamic. Meetings would need to occur almost continuously. They would be costly and might involve many administrations who are not affected. Administrative Radio Conferences for this purpose appear totally unsuitable. On the other hand, small, less formal ad-hoc multilateral gatherings of administrations to harmonize affected networks could be useful. As we noted in para. 31, above, such an approach has already been extensively used in conjunction with the various facilities planning processes.

42. We now solicit comment on what we believe are two of the most critical WARC–ORB–85 issues. These include: (1) Whether any new institutional mechanisms are needed to accomplish harmonization of satellite networks and when these mechanisms should be invoked, and (2) whether any additional principles and criteria for detecting and resolving conflicts among those networks should be defined. It can be assumed that any such principles and criteria must allow for the great technical and operational diversity and dynamics associated with the Fixed-Satellite Service. Commenting parties might wish to reference, for example, the recent introduction by France of so-called "M3 harmonization" criteria,[38] recent CCIR material on satellite repositioning,[39] or combinations of the two proffered by Japan in the context of computer routines.[40]

43. We also solicit comment on the applicability of the Commission's means of harmonization for dozens of satellite networks.[41] Our experience has shown that where efficiency and capacity are maintained at a sufficiently high level, equitable access has been promoted. The high demand for fixed-satellite service within the United States has led to the development of technical criteria requiring adjacent satellites of different networks to be designed to operate at a predetermined maximum available orbital spacing. As the network population grows, an increasing number of networks will be required to use orbit locations that provide no more than this maximum intersatellite spacing, and they have to coordinate with each other at this spacing to the extent necessary. The maximum available spacing has been determined by a feasibility study of what is realizable under contemporary technology assumptions and is based on consensus among users. It is currently two degrees of arc for existing 12/14 GHz domestic fixed-satellites and future 4/6 GHz fixed-satellites. Slightly larger (i.e., 2.5 or 3 degrees) spacings are provided between existing 4/6 GHz satellites while in transition to 2 degrees in the future. These spacing criteria apply to co-coverage or adjacent coverage satellites. For non-overlapping coverage satellites, interleaving or co-location with other non-overlapping coverage satellites should be the design objective. It is subject to reevaluation with advances in technology, and thus provides one of the bases for an increasingly more resource-conservative orbit utilization methodology. The existing arrangements have allowed us to take advantage of such approaches. Any alternative arrangement must also allow for such continuing improvements of orbit efficiencies.

44. It would also be useful for parties to comment on whether networks enjoying particular technical or operational characteristics should as a matter of principle enjoy any advantages in the harmonization process. Such principles might concern, for example, global connectivity requirements, a country's first network, or geographical situation factors.[42]

45. Commenting parties might also wish to address the efficacy of an iterative harmonization phase that could be associated with a two-level identification phase discussed above in para. 35. Reference Figure 2. If an administration elects to furnish non-specific information concerning its

[36] *See Id.* at No. 1067, Appendix 29.

[37] *See Id.* at 1084.1.

[38] *See* France, A New Approach for WARC–ORB–85, CCIR Doc. No. IWP4/1/1151 (January 1984).

[39] *See, e.g.*, United Kingdom, Flexibility in the Positioning of Satellites, CCIR Doc. No. IWP4/1/1139 (January 1984); Canada, Satellite Relocation, CCIR Doc. No. IWP4/1/1146 (27 January 1984).

[40] *See*, Japan Determination of Orbital Positions Taking Into Account the Frequency Assignment of Individual Satellite Network, CCIR Doc. No. IWP4/1/1132 (28 Dec. 1984); Japan, Enhanced Function of Orbit-II Program, CCIR Doc. No. IWP4/1/1131 (28 Dec 1984); Japan, Automated Frequency Coordination Among Multiple Satellite Networks—CAP–N Program, CCIR Doc. No. IWP4/1/1130 (28 Dec 1984).

[41] *See Report and Order* [in CC Doc. No. 81–704], FCC 83–184, —— FCC 2d —— (16 Aug 1983).

[42] Such geographical factors might include: special latitude situations, dispersed territory situations, terrain obstruction situations, etc. *See* United States of America, Contribution Relating to Chapter Five, Report by the CCIR to the WARC–ORB–85, CCIR CPM–ORB–85 Doc. No. —— (February 1984).

satellite network requirements in the identification phase, some degree of harmonization could be accomplished prior to that administration furnishing more specific detail.

46. In addition to the other harmonization phase issues raised above, options also exist with respect to the ability of international organizations to deal directly with administrations during the pendency of the phase. This procedural question of standing before the ITU is similar to that raised for the identification phase in para. 36, above. However, there are some differences. For example, Intelsat has long been directly involved in this process, dealing with administrations in attempts to achieve harmonization. The United States has only provided a conduit and its name for the official ITU record.

47. A significant procedural issue exists regarding post-harmonization phase amendments. What degree of departure from the identified and harmonized network characteristics should be allowed without requiring the administration to repeat one or both of those phases? Comments on this matter would be useful.

The Implementation Phase

48. The third and last phase occurs before a satellite facility is brought into use, and provides the basis for network recognition and protection. Reference Table D. Examination by a competent technical body to determine conformity with the arrangements is usually a necessary part of this phase. For the past three decades, this has occurred under all approaches by notification to the IFRB.[43] The Board examines the notification and if it is found to conform with the Convention and the applicable arrangement, all administrations are notified and the information is entered in the Master Register with a favorable finding. If it is not found to conform, it may upon the insistence of the administration be entered with an unfavorable finding. Procedural means exist for subsequently upgrading this finding based on the absence of actual operational interference.[44]

49. One element of this phase that gives rise to critical WARC–ORB–85 issues relate to the nature of the international recognition and protection afforded by completing this phase. These issues, like the two critical harmonization issues described in para. 42, above, lie at the heart of the concerns giving rise to the Conference. The existing arrangements for most services and bands give significant protection to a satellite network once this phase is completed, albeit qualified by Resolution No. 2 of the World Administrative Radio Conference, Geneva, 1979. This protection includes an expectation that other networks will not cause significant intereference for the life of the network.

TABLE D.—ELEMENTS OF THE IMPLEMENTATION PHASE

Element	Examples	Existing arrangements	
		Arts. 11, 13	Art. 15, App 30
How accomplished	● IFRB notification	X	
	● Other		
Time period effective.	● Plan life		X.
	● Life of network	X	
	● Until access requested.		
	● Other		
Participants	● Administrations	X	X.
	● Other		
Permitted amendment.	● Minor	X	X.
	● Major		

50. Another element is the period of validity. The options that would be capable of accommodating the technical and operational diversity and dynamics of fixed-satellite networks in a manner acceptable to the United States result in less international protection for shorter periods of time. For example, a harmonization process that would *require* shifting frequency channels, orbital positions, and noise margins to accommodate newcomers necessarily implies a different degree and period of protection than now afforded. Such changes are not significantly different than those already domestically effected by the Commission, as discussed in para. 40, above. However, such protection can only be afforded to actual systems under the International Telecommunication Convention. This was noted in the *Third Notice* and supported by the Advisory Committee. Comments on these critical issues are requested.

51. As with the harmonization process, there are similar questions concerning standing of parties before the ITU and the kind of permitted amendments after the phase has been completed. Once the implementation phase has been completed, however, significant changes in basic network characteristics would necessarily require the administration to re-enter the harmonization phase. However, the range of permitted amendments should be sufficiently large to accommodate the technical evolution and growth normally expected in an operational satellite network.

52. Many issues and questions are raised in this *Notice*. The most critical, and central issue to the Space WARC, is what kind of alternative ITU arrangements can be devised that would continue to allow U.S. objecitves to be met, while also eliminating any perceptions that those arrangements are inequitable in practice, i.e., "first-come, first-served." The pursuit of equitable access in practice must rely on an international system of cooperation that we characterized as "the appropriate mechanisms that give everyone assurance that their needs will be met as they arise." The central questions that must be faced within this system of cooperation are reiterated below.

(1) What should be the nature of the international protection afforded upon completion of the implementation phase, including the time period such protection is effective?

(2) What additional principles and criteria should be considered during the harmonization phase for detecting and resolving conflicts among satellite networks?

(3) Whether any new institutional mechanisms should be used to accomplish harmonization of satellite networks and when should those mechanisms be invoked?

Comment from all affected parties is especially sought on this issue and these questions.

IV. Ancillary WARC–ORB–85 Issues

53. One particular topic that has only recently come to attention is the question of removing inactive satellites from the GSO to reduce the potential of in-orbit collisions over the long-term.[45] The Space WARC Advisory Committee First Report acknowledges this potential concern, and one domestic satellite operator has in fact boosted its earliest satellite from the GSO into a slightly higher orbit before permanently retiring it from service. Comments and suggestions are requested as to whether this matter should be a topic of the United States Proposals to the WARC–ORB–85.

54. The bidirectional use of frequency bands has been raised by several parties in the course of this proceeding. Such bidirectional frequency use is not endorsed for satellite systems operating in this country because of the potential sharing problems with existing space and terrestrial operations. However, the theoretical capability of this technique to virtually double orbit capacity

[43] *See* Arts. 13, 15, Radio Regulations, Geneva, 1979; Final Acts of RARC–SAT–83.

[44] *See Id.* at nos. 1566–68.

[45] *See* Report of IWP4/1 to the CCIR/CPM for WARC–ORB–85, Having Regard to the Fixed-Satellite Service, CCIR CPM–ORB–85 Doc. No. — (February 1984).

appears generally unchallenged.[46] Such a capability may become significant as the number of bands amenable for alternative ITU arrangements is reduced. In particular, if the only bands identified for alternative arrangements for the Fixed-Satellite Service are 4/6 GHz, it might be useful to demonstrate that the basic potential requirements of all administrations can be satisfied in this particular pair of bands, using bidirectional transmissions where necessary to satisfy unspecific long-term requirements. We request comments on possible United States proposals or positions on bidirectional use of satellite bands outside the United States.

55. Several Parties addressed matters related to the Final Acts of RARC-SAT-83. Satellite Television Corporation indicated that "* * * it is essential that both the downlink and feederlink Plans, together with the Associate Provisions adopted at RARC-[SAT]-83 be incorporated into the * * * Radio Regulations at [WARC]-ORB-85; * * * and that any consideration of the RARC-[SAT]-83 decisions * * * should be purely ministerial * * *." [47] The American Telephone and Telegraph Company, however, disagrees with Recommendation No. COM 6/4 of RARC-SAT-83 concerning the need to urgently study possible limits on the e.i.r.p. for stations operating above 15 GHz in the Fixed and Mobile Services directed toward the geostationary-statellite orbit in Regions 1 and 3, and the adoption of such limits at WARC-ORB-85.[48] We note with respect to this Recommendation, the recent United States contribution to CCIR has concluded that "* * * interference situations will be rare * * * [t]herefore, no orbital avoidance is necessary." [49] We concur in this conclusion, and find the United States contribution fairly dispositive of the pointing restriction issue. On the matter of incorporation of the Final Acts of the RARC-SAT-83, we believe this should occur without substantial change.

V. Administrative Matters

56. Pursuant to Sections 4(i), 303, and 404 of the Communications Act of 1934, as amended, this *Fourth Notice of Inquiry* is hereby ADOPTED.

[46] *See* Impact of Implementation of Reverse Band Satellities, Systematics General Corp. Report to NASA, February 1984. A copy of this report has been placed in the docket file.

[47] Comments of Satellite Television Corporation (STC) at 3-4.

[48] *See* Comments of AT&T at 7-8; Reply Comments of AT&T at 7-8.

[49] Draft new Report, Fixed Service E.I.R.P. Limits for the Protection of the FCC Feeder Links Around 18 GHz, CCIR Doc. No. 9/73 (1984).

57. Interested parties may file comments on or before 15 June 1984. This will allow us to consider the comments prior to the convening of the CPM-ORB-85 on 25 June at Geneva. Reply comments must be filed on or before 1 August 1984. Although Section 1.419 of the Commission Rules and Regulations requires that an original and five copies of all statements, briefs, or comments be filed in response to this *Notice*, ten additional copies would be useful.

58. Inquiries in this proceeding may be directed to Anthony M. Rutkowski, Office of Science and Technology—(202) 653-8102.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Note.—Because of the continuing effort to minimize publishing costs, Appendix A—Comments Filed, Appendices B and C—CCIR Reports, and Appendix D—Letter to Chairman of the International Frequency Registration Board, will not be printed in the **Federal Register**. However, interested parties may view these Appendices in the FCC Dockets Branch, Rm. 239, and the FCC Library, Rm. 639, both located at 1919 M St., NW., Washington, D.C. 20554.

[FR Doc. 84-13594 Filed 5-18-84; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-3089-EM]

Georgia; Amendment to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the Notice of an emergency for the State of Georgia (FEMA-3089-EM), dated May 11, 1984, and related determinations

DATED: May 14, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0501.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the State of Georgia dated May 11, 1984, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of May 11, 1984:

Telfair County for assistance as authorized by the President's declaration.

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance. Billing Code 6718-02)

[FR Doc. 84-13559 Filed 5-18-84; 8:45 am]

BILLING CODE 6718-02-M

Alabama; Emergency and Related Determinations

[FEMA-3088-EM]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Alabama (FEMA-3088-EM), dated May 11, 1984, and related determinations.

DATE: May 11, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington D.C. 20472 (202) 287-0501.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter of May 11, 1984, the President declared an emergency under the authority of the Disaster Relief Act of 1974, as amended, (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288) as follows:

I have determined that the damage in certain areas of the State of Alabama, resulting from severe storms, and tornadoes beginning on May 2, 1984, is of sufficient severity and magnitude to warrant an emergency declaration under Public Law 93-288. I therefore declare that such an emergency exists in the State of Alabama.

In order to provide Federal assistance, you are hereby authorized to make temporary housing available to the State of Alabama under the provisions of Section 404 of Public Law 93-288. You are further authorized to allocate, from funds available for these purposes, such amounts as you find necessary for administrative expenses.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. Glenn Garcelon of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following area of the State of Alabama to have

been affected adversely by this declared emergency:

The Counties of Cleburne, Dale, Mongomery and Talladega for assistance as authorized by the President's declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance. Billing code 6718-02)

Samuel W. Speck,

Associate Director, State and Local Programs and Support; Federal Emergency Management Agency.

[FR Doc. 84-13557 Filed 5-18-84; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-3089-EM]

Georgia; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Georgia (FEMA-3089-EM), dated May 11, 1984, and related determinations.

DATED: May 11, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0501.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter of May 11, 1984, the President declared an emergency under the authority of the Disaster Relief Act of 1974, as amended, (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288) as follows:

I have determined that the damage in certain areas of the State of Georgia, resulting from severe storms, tornadoes and flooding beginning on May 4, 1984, is of sufficient severity and magnitude to warrant an emergency declaration under Public Law 93-288. I therefore declare that such an emergency exists in the State of Georgia.

In order to provide Federal assistance, you are hereby authorized to make temporary housing available to the State of Georgia under the provisions of Section 404 of Public Law 93-288. You are further authorized to allocate, from funds available for these purposes, such amounts as you find necessary for administrative expenses.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. R. Jackson Ingram of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following area of the State of Georgia to have been affected adversely by this declared emergency:

The Counties of Bulloch, Montgomery, Tattnall, Toombs and Wheeler for assistance as authorized by the President's declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance. Billing Code 6718-02)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84-13558 Filed 5-18-84; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-3090-EM]

Louisiana; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Louisiana (FEMA-3090-EM), dated May 15, 1984, and related determinations.

DATED: May 15, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington D.C. 20472, (202) 287-0501.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter of May 15, 1984, the President declared an emergency under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the State of Louisiana, resulting from severe storms and tornadoes beginning on May 2, 1984, is of sufficient severity and magnitude to warrant an emergency declaration under Pub. L. 93-288. I therefore declare that such an emergency exists in the State of Louisiana.

In order to provide Federal assistance, you are hereby authorized to make temporary housing available to the State of Louisiana under the provisions of Section 404 of Pub. L. 93-288. You are further authorized to allocate, from funds available for these purposes, such amounts as you find necessary for adminstrative expenses.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. Robert D. Broussard of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following area of the State of Louisiana to have been affected adversely by this declared emergency:

Bienville Parish for assistance as authorized by the President's declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance. Billing Code 6718-02)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84-13560 Filed 5-18-84; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 522.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement Nos. 9718-10, 9731-10, 9835-7, 9975-9

Titles:

Agreement No. 9718—Japan Line, "K" Line, Mitsui O.S.K. and Y.S. Containership Service Agreement

Agreement No. 9731—NYK and Showa Line Containership Service Agreement

Agreement No. 9835—Japanese Lines' Pacific Northwest Containership Service Agreement

Agreement No. 9975—Japanese Lines' Atlantic Coast Containership Service Agreement.

Parties

Agreement No. 9718—Japan Line, Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; and Yamashita-Shinnihon Steamship Co., Ltd.

Agreement No. 9731—Nippon Yusen Kaisha and Showa Line, Ltd.

Agreement No. 9835—Japan Line Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines Ltd; Nippon Yusen Kaisha; Showa Line Ltd.; Yamashita-Shinnihon Steamship Co., Ltd.

Agreement No. 9975—Japan Line, Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: These agreements have been filed as a result of settlement negotiations between the parties in the case styled *Agreement Nos. 9718–7, et al., Space Charter and Cargo Revenue Pooling Agreements in the United States/Japan Trades*, Docket No. 82–54. All comments, protests and requests for hearing must be limited to those portions of the agreements which represent an expansion of the authority sought in Agreement Nos. 9718–7, 9718–8, 9731–8, 9835–5 and 9975–7, respectively, which were previously published in the **Federal Register**.

Filing Party: Charles F. Warren, Esquire, Warren & Associates, P.C., 1100 Connecticut Avenue, N.W., Washington, D.C. 20036.

By Order of the Federal Maritime Commission.

Dated: May 15, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84–13556 Filed 5–18–84; 8:45 am]

BILLING CODE 6730–01–M

[Independent Ocean Freight Forwarder License No. 2606–R]

Denn World Transport, Inc.; Order of Revocation

On May 14, 1984, Denn World Transport, Inc., 114 Liberty Street, New York, NY 10006 requested the Commission to revoke its Independent Ocean Freight Forwarder License No. 2606–R.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), section 9.09(e) dated September 27, 1983;

It is ordered, that Independent Ocean Freight Forwarder License No. 2606–R, be revoked effective May 14, 1984, without prejudice to reapplication for a license in the future.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon Denn World Transport, Inc.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 84–13639 Filed 5–18–84; 8:45 am]

BILLING CODE 6730–01–M

[Independent Ocean Freight Forwarder License No. 2558]

Ord, Brough & Collins, Inc.; Order of Revocation

On April 23, 1984, Ord, Brough & Collins, Inc., 4343 Sunset Blvd., Suite 4, Los Angeles, CA 90029 requested the Commission to revoke its Independent Ocean Freight Forwarder License No. 2558.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), section 9.09(e) dated September 27, 1983;

It is ordered, that Independent Ocean Freight Forwarder License No. 2558, be revoked effective April 23, 1984.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon Ord, Brough & Collins, Inc.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 84–13638 Filed 5–18–84; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Colorado Springs Banking Corp., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (49 FR 794) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of 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. 8143(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 § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 11, 1984.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Colorado Springs Banking Corporation*, Colorado Springs, Colorado; to acquire up to 27.6 percent of the voting shares of The Pueblo Bank and Trust Company, Pueblo, Colorado. Colorado Springs Banking Corporation has also applied to engage *de novo* through its subsidiary Bank Compliance Corporation, Colorado Springs, Colorado, in data processing activities within the meaning of § 225.25(b)(7).

2. *United Banks of Colorado, Inc.*, Denver, Colorado; to acquire control of Affiliated Bankshares of Colorado, Inc., Boulder, Colorado; thereby gaining indirect control of the following banks: Intermountain Bankshares of Colorado, Inc., Boulder; The First National Bank of Englewood, Englewood; The Littleton National Bank, Littleton; Denver National Bank, Denver; Lakeside National Bank, Wheat Ridge; Alameda National Bank, Lakewood; The Greeley National Bank, Greeley; First National Bank In Loveland, Loveland; The Moffat County State Bank, Craig; Arapahoe

National Bank of Boulder, Boulder; First National Bank of Louisville, Louisville; First National Bank of Lafayette, Lafayette; Bank of Manitou, Manitou Springs; First Colorado Bank, N.A., Colorado Springs; Cache National Bank of Greeley, Greeley; The Farmers National Bank of Ault, Ault; Westlake First National Bank, Loveland; First Colorado Bank of Greeley, N.A., Greeley; The Colorado Bank & Trust Company, Delta; Fruita State Bank, Fruita; Montrose State Bank, Montrose; The First National Bank of Center, Center; Chaffee County Bank, Salida; First Colorado Bank of Pueblo, N.A.; Pueblo; The First National Bank of Colorado Springs, Colorado Springs; Fort Carson National Bank, Fort Carson; University National Bank of Fort Collins, Fort Collins; First National Bank, Westminster, Westminster; and First National Bank in Boulder, Boulder, all located in Colorado.

United Banks of Colorado, Inc. has also applied to engage in nonbanking activities through the following acquisitions: Affiliated First Colorado Lease Company, Boulder, Colorado; (leasing real and/or personal property); First Colorado Bankshares Insurance Company, Boulder, Colorado, (underwriting credit life, health, and accident insurance related to extensions of credit made by affiliated subsidiaries); and Affiliated Banks Service Company, Thornton, Colorado, (providing data processing services).

Board of Governors of the Federal Reserve System, May 15, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-13546 Filed 5-18-84; 8:45 am]

BILLING CODE 6210-01-M

Key Bancshares of West Virginia, Inc., et al., Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and 225.14 of the Board's Regulation Y (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 June 11, 1984.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Key Bancshares of West Virginia, Inc.*, Huntington, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of The National Bank of Logan, Logan, West Virginia.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Rosholt Bancorporation*, Rosholt, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of The State Bank of Rosholt, Wisconsin.

2. *Town Financial Corporation*, Hartford City, Indiana; to acquire 12.6 percent of the voting shares of The Bank of Montpelier, Montpelier, Indiana.

C. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Citizens Bancshares, Inc.*, Ontonagon, Michigan; to become a bank holding company by acquiring 93.76 percent of the voting shares of The Citizens State Bank of Ontonagon, Ontonagon, Michigan.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Central Bancshares of Poteau, Inc.*, Poteau, Oklahoma; to become a bank holding company by acquiring 80 percent of the voting shares of Central National Bank, Poteau, Oklahoma.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *InterFirst Corporation*, Dallas, Texas; to acquire 100 percent of the voting shares of InterFirst Bank North Austin, N.A. Austin, Texas, a *de novo* bank.

2. *InterFirst Corporation*, Dallas, Texas; to acquire 100 percent of the voting shares of InterFirst Bank West Beaumont, N.A., Beaumont, Texas, a *de novo* bank.

3. *InterFirst Corporation*, Dallas, Texas; to acquire 100 percent of the voting shares of InterFirst Bank Westlake, N.A., Austin, Texas, a *de novo* bank.

Board of Governors of the Federal Reserve System, May 15, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-13547 Filed 5-18-84; 8:45 am]

BILLING CODE 6210-01-M

United Counties Bancorporation; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) 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 commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 June 8, 1984.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President), 33

Liberty Street, New York, New York 10045:

1. *United Counties Bancorporation*, Cranford, New Jersey; to engage *de novo* through its subsidiary, United Capital Corporation, Cranford, New Jersey, in the leasing of personal or real property; acting as insurance agent on insurance directly related to an extension of credit or the provision of other financial services by the holding company or its subsidiaries; and providing discount securities brokerage services. These activities would be performed in the states of New Jersey, New York, and Pennsylvania.

Board of Governors of the Federal Reserve System, May 15, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-13548 Filed 5-18-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-84-1389; FR-1949]

Fund Availability and Solicitation of Proposals for Project Self-Sufficiency

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Fund Availability and solicitation of proposals from eligible communities to participate in Project Self-Sufficiency.

SUMMARY: HUD is soliciting proposals from units of local government including county governments to participate in Project Self-Sufficiency. The Department is interested in encouraging local governments to develop and implement programs to enable unemployed or underemployed very low-income single parents with young children to become economically self-sufficient through the cooperative efforts of the public and private sectors. This demonstration which involves the resources of several offices within the Department of Housing and Urban Development will be coordinated by the Office of the Assistant Secretary for Policy Development and Research.

DATES: Application Deadline: Applications for participation must be received by HUD by 5 p.m. Eastern Standard Time on July 20, 1984. Comment due date: July 20, 1984.

ADDRESS: An original and two copies of the proposal should be sent to: Department of Housing and Urban Development, Attention: Project Self-Sufficiency, Room 10100, 451 Seventh Street, S.W., Washington, D.C. 20410. HUD invites interested persons to submit comments on this Notice to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Comments should refer to docket number and title. A copy of each set of comments submitted will be available for public inspection and copying during regular business hours at this address.

FOR FURTHER INFORMATION CONTACT: Margot Singleton, Telephone: (202) 426-6030 or Mary Silveira, (202) 755-7123.

SUPPLEMENTARY INFORMATION: "Project Self Sufficiency" is designed to aid unemployed or underemployed very low-income single parents with young children make the transition from public assistance to productive employment and economic self-sufficiency. Activities to be carried out by local governments selected to participate in this demonstration will include, but are not limited to, housing assistance, child care, life skills and career counseling, and job training and placement.

The Department will provide the Public Housing Agency administering a Section 8 Existing Housing Program in a community selected for participation in this demonstration with a special allocation of Section 8 existing housing certificates to be used in conjunction with the local Self-Sufficiency project. Up to 5000 Section 8 certificates will be made available nationwide for this demonstration. Certificates will be awarded based upon applicant needs as defined in the community's application, and according to the criteria set forth in this Notice. It is anticipated that most communities will request between 50 and 200 certificates. HUD will also provide, to the maximum extent possible technical assistance by HUD staff and private consultants to assist participating communities to implement effective Self-Sufficiency programs.

Each participating community will have the flexibility to design a Self-Sufficiency program to meet its local needs, priorities and government structures within the guidelines established in this Notice.

Communities are invited to submit an application for participation in this program in accordance with the requirements established in this Notice. The application must be signed by the chief executive officer. In addition the public is invited to submit comments. Section 470 of the Housing and Urban-Rural Recovery Act of 1983 requires that the Department provide a 60 day comment period for a demonstration program of this type.

1. Background

In 1982, almost 11 percent of the more than 61 million families in the U.S. were single parent families, according to data available from the U.S. Census Bureau. These families included 6.8 million children under the age of twelve or approximately six percent of all children under twelve in the country. More than one-half of those families with at least two children had incomes below the poverty level.

Single parent families with low incomes face many difficult problems. Many single parents are unemployed or underemployed and lack resources such as adequate child care services, transportation or a stable housing environment necessary to enable them to acquire skills to obtain employment.

Over the years a variety of local, State and Federal programs, including welfare, housing assistance and job training, have been established to deal with specific needs of lower income families. However, these programs are generally administered separately by different agencies at varying levels of government. Additionally, charitable organizations that can and do provide assistance to needy families exist in every community but rarely are these private organization efforts coordinated with that of the public sector. Thus, even though their clientele may be the same, there is often no effective mechanism established within the community to integrate these services and programs.

Project Self-Sufficiency is an effort to encourage communities to develop effective mechanisms for integrating the various support services—both public and private—that exists in the community into a personal development program for single parents to enable them to make the transition from welfare dependency to productive employment.

Two projects—Project Independence in Prince Georges County, Maryland and Warren Village in Denver, Colorado—have served as pilots for this demonstration. Based upon the experiences with these pilot programs, three basic precepts have been developed for Project Self-Sufficiency.

First, communities must screen applicants carefully to insure that those single parents selected for the program are motivated to become self-sufficient. Second, a comprehensive approach must be developed to coordinate public and private resources to make available transportation, housing, child care, education and job training to meet the multiple needs of single-parent families seeking to become self-sufficient. Third,

the local private sector must be willing to take the lead in identifying prospective jobs in the community, determining the types of training programs that will be needed to qualify single parents for those jobs, and assisting in actual job placement.

Under Project Self-Sufficiency, communities will be able to use a special allocation of Section 8 existing housing certificates to help single parent participants obtain housing that is not only decent, safe, sanitary and affordable, but also allows access to the full range of support services to be provided as part of the community's self-sufficiency program. Decent and affordable housing is a first step in creating the stable environment necessary to allow these single parents to develop their capabilities to become self-sufficient members of the community. Communities should coordinate the use of local public funds, which may include CDBG funds, to support the other components of the self-sufficiency program and must secure commitments from the local private sector to provide additional resources.

2. Goals of the Program

The overall goal of Project Self-Sufficiency is to enable very low income single parents to become socially and economically self-sufficient. Specific objectives of the program include:

(a) To create an awareness in local communities of the problems faced by single parent, very low income families and to mobilize community support for an effort to help them become self-sufficient and productive members of the community;

(b) To demonstrate the capacity of local communities to assist very low income single parents to become self-sufficient by the efficient and innovative use of existing public and private resources;

(c) To develop a range of effective strategies for generating private sector involvement and integrating these private sector resources with public assistance programs; and

(d) To document the implementation of successful Self-Sufficiency programs that will be replicable in other communities.

3. Resources to be Committed by HUD and Other Participants

3.1 Each participating community must commit the resources of its local social service agencies to provide such support as may be appropriate for the program. Such resources may include, but are not limited to, Community Development Block Grant funds; Job Training Partnership Act funds; Department of Health and Human Services funds; transportation; the use of publicly-owned buildings and property; local government staff, labor and equipment; and general revenues.

3.2 The chief executive officer of the participating community shall establish a Task Force of representatives from the local public and private sectors to oversee the planning and implementation of the local Self-Sufficiency program. Although the Task Force may identify an administrator for the project, the Task Force shall be the principal overseeing body and shall be responsible for pulling together the various public and private resources necessary for program implementation.

The Task Force must include representatives from the Public Housing Agency, local public and private agencies that have resources or programs available to assist unemployed single parents, local businesses, educational facilities and the single parent population. Communities are encouraged to involve the local Private Industry Council, if one exists, and to include members of the medical, religious, and financial communities in the Task Force.

3.3 Each participating local government must also commit to generating private sector commitments for the program. Evidence of private sector commitments wil be willingness of such organizations to provide the local Self-Sufficiency program with such assistance as:

—Monetary contributions
—Employment skills training; on-the-job training
—Child care support services
—Counseling
—Employment opportunities and placement
—Information/referrals
—Donations of equipment, supplies or space; and
—Volunteer time

3.4 HUD will provide a special allocation of Section 8 existing housing certificates for use in communities selected for participation in this demonstration. These certificates will be provided to the local public housing agency by HUD. The PHA shall be responsible for the administration of the certificates in the community in accordance with the local Self-Sufficiency program approved by HUD. The certificates are to be made available to single parents selected for participation in the community's self-sufficiency program to enable them to locate decent and affordable housing of their choice. Use of the certificates may not be restricted to particular housing units, although as discussed in Section 4.6 below, some communities may find it feasible to encourage single parent participants to obtain housing in a single building or area if doing so would facilitate the coordination of the other support services.

Up to 5000 certificates will be made available for this demonstration. The number of certificates to be provided to each participating community by HUD through the PHA will be within the limits of overall availability and in keeping with the projected use proposed in the community's application.

The Assistant Secretary for Housing-Federal Housing Commissioner will issue appropriate waivers, including waivers of 24 CFR 882.207(a) to permit participating PHAs to target this special allocation of certificates initially to eligible single parents who are participants in the self-sufficiency program. Single parents selected for participation must be on the PHA's Section 8 waiting list at the time the certificates are issued. Once a certificate has been used by a Project Self-Sufficiency participant, any turnover of the certificate becomes a part of the PHA's regular Section 8 Existing Housing Program.

3.5 Once communities have been selected for participation in this demonstration, the participating PHAs will be required to submit the necessary Section 8 existing housing application and a revised Administrative Plan by August 15 to the appropriate HUD field office.

3.6 The local PHA must agree in writing as part of the application package submitted by the community to administer the Section 8 certificates on behalf of the local self-sufficiency program and to cooperate in screening eligible program participants.

3.7 To the extent possible, HUD will provide technical assistance from headquarters and field staff and from private consultants at no cost to communities selected for participation in the demonstration.

4. Local Self-Sufficiency Program Design

Each participating community may design a Self-Sufficiency program that reflects local needs and priorities, available resources, and the existing local government structure within the overall guidelines set forth in this Notice. Activities that are required to be undertaken in all local Self-Sufficiency programs are described in the following paragraphs:

4. *Establishment of a Local Task Force.* Each program should begin with

the establishment of a local Task Force as described in Section 3.2 above. A strong local Task Force will be the motivating force to help the community plan, develope and implement its self-sufficiency program. The Task Force will be responsible for conducting a local needs assessment (described below), developing community objectives for the program and an action plan to meet those objectives, identifying and securing commitments of local public and private resources and overseeing the administration of the program. The single most important role of the local Task Force must be that of planning and harnessing overall community resources into commitments for specific program support activities.

4.2 *Generating Private Sector Resources.* The Task Force must identify and recruit an active group local private organizations willing to commit funds, staff, equipment, use of buildings and property, training assistance, housing, employment opportunities, and other services to the program. Such organizations may include:

—Business;
—Employee organizations;
—Religious organizations;
—Neighborhood organizations
—Private schools and colleges;
—Cultural and civic organizations;
—Voluntary and non-profit service groups;
—Foundations and corporate philanthropies;
—Individual givers

4.3 *Needs Assessment.* The planning of the local program should begin with a needs assessment to identify the particular problems faced by the target population and the activities and services needed to address these problems. The needs assessment should also identify areas of potential employment in the community and the resources and activities needed to help single parents obtain jobs in these areas.

4.4 *Action Plan.* Each community, through its local Task Force, should develop an action plan outlining specific activities and services necessary to meet the needs of program participants as discovered in the needs assessment. The plan must describe specific steps that will be taken to deliver the program services and activities, specify a time frame for each step, show how public and private resources will be integrated to implement the program, and delineate responsibilities for each step of implementation.

Although the Self-Sufficiency action plan developed by the Task Force in each community should be tailored to meet program participant needs and to make full use of community resources unique to the community as identified by the needs assessment, each action plan shall include at a minimum the following activities and services:

—Careful screening and selection of program participants to ensure that those selected are motivated to become self-sufficient;
—Housing assistance;
—Child care services;
—Counseling and personal development training;
—Development of job skills including on-the-job training where appropriate;
—Job placement through private sector job commitments;
—Public transportation access;
—Monitoring of individual progress so problems can be identified early enough to make adjustments to reduce the potential for drop-outs.

Other suggested, though not required, program elements include:

—General education (GED) training;
—Support group discussions;
—Preventive health care training;
—Financial counseling;
—Household maintenance training.

4.5 *Selection of Program Participants.* The local Task Force, in consultation with the PHA, local social service agencies and others as may be designated by the Task Force, will select program participants. Those selected for participation must be very low-income families as defined in section 3(b)(2) of the United States Housing Act of 1937, and otherwise determined by the PHA to be eligible for assistance at the time of selection. Additionally, applicants should be carefully screened to determine whether they have the necessary motivation to become self-sufficient. Applicants selected for participation must enroll in the Self-Sufficiency program before securing a housing certificate made available through this demonstration.

7.6 *Housing Assistance.* The local Public Housing Agency shall be responsible for distributing Section 8 certificates to single parents selected and participating in this program. Housing assistance must be assimilated into the larger purpose of helping to create a stable environment for these single parents to allow them to participate in job training programs without undue concern for the welfare and safety of their families. Therefore to the extent possible, the PHA should assist program participants to locate suitable housing by providing them with a list of available units that facilitate participation in the self-sufficiency program such as easy access to public transportation and/or job training sites.

The community may find it feasible to encourage program participants to utilize their housing certificates to obtain housing in a particular area if doing so would facilitate the coordination of other support services. However, a community may not mandate that utilization of the certificates be restricted to any particular building or area. All housing must meet the program requirements for the Section 8 Existing Housing Program (See 24 CFR Part 882).

4.7 *Child care.* The availability of quality child care services is considered an essential element of a successful Self-Sufficiency program. Single parents must feel assured that their children are being adequately cared for. Lack of quality child care or unreliable child care services can contribute to the failure of participants to take full advantage of the range of support services which have been identified for them and may result in absenteeism rates that preclude satisfactory completion of job training programs.

Single parent participants should receive guidance in the selection of appropriate child care services. Communities may wish to consider establishing with the help of the private sector, a centralized child care facility for the children of project Self-Sufficiency participants if doing so would facilitate access by participants to other elements of the self-sufficiency program such as evening support group meetings.

A community in which the participating PHA does not already have a child care services program in place should note section 222 of the Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98–181, November 30, 1983. Section 222 authorizes a "Public Housing Child Care Demonstration" to determine the feasibility of using public housing facilities in the provision of child care services for lower income families who reside in public housing.

Under the provisions of section 222, the Secretary shall authorize the use of public housing agency facilities for child care services where communities use community development block grant funds either alone or in conjunction with other funds for (1) minor renovations to make the facilities suitable for child care and (2) support of child care services in such facilities. Only public housing agencies which do not have a child care services program already in operation may qualify for the demonstration authorized under section 222.

The purpose of this Congressionally authorized demonstration is to determine the extent to which the

availability of child care services in lower income housing projects facilitates the employability of the heads of such families. This Congressionally authorized demonstration encourages these child care services programs to be designed to the extent practicable to involve the participation of the parents of children benefiting from the program and to employ in part-time positions elderly individuals who reside in the public housing project.

Because the intent of the congressional action to facilitate the employability of heads of households so closely parallels that of the Department in undertaking this Self-Sufficiency demonstration, applicants for the Self-Sufficiency demonstration are encouraged to incorporate, if appropriate, the child care demonstration into their self-sufficiency program design. This could be done by establishing a complementary program for public housing residents who could be provided with the same support services as the Section 8 certificate recipients except that their child care services would have to meet the criteria of section 222 of the Housing and Urban-Rural Recovery Act. If a child care services program for public housing residents was established which met the requirements of section 222, it could also serve as a centralized child care facility for the children of all Project Self-Sufficiency participants. Applicants are encouraged to indicate their willingness to participate in this Congressionally authorized child care demonstration in their response to this NOFA.

4.8 *Transportation.* Attention should be paid to the transportation needs of program participants since experience in the pilot projects indicates a high correlation between the availability of transportation and the degree to which program participants avail themselves of the full range of other support services, such as evening education classes and support group meetings.

4.9 *Employment/Like Skills Training.* While appropriate screening to select as participants only those single parents with a desire to become self-sufficient is a must, experience in the pilot projects indicates that basic life skills training, such as proper dress for the workplace and the necessity for punctuality, is often needed even for those with the necessary motivation.

4.10 *Job Development and Placement.* Experience with the pilot projects demonstrated the importance of identifying potential employer early in the planning process, so that the job training programs can be tailored to the needs of the job providers. The involvement of private sector members of the Task Force is especially criterical at this stage of program implementation. The design of a community's self-sufficiency program should include the use of a skilled placement officer to match individual program participants with employment opportunities. Placement officers must be thorughly familiar with the program participant's skills and personality so that an appropriate match can be made. Job placement must be the cornerstone and expected outcome of any training program that is undertaken.

4.11 *Program Requirement.* Communities participating in Project Self-Sufficiency must comply with all applicable Section 8 Existing Housing regulations (except as may be provided for in waivers to be issued by HUD and noted in paragraph 3.4 above). If funds are used for the local self-sufficiency program from any other source of federal assistance, the regulations and requirements of those programs must also be followed.

5. Application Requirements

A proposal should be submitted containing the following:

5.1 A narative on why a Self-Sufficiency program is needed in the community.

5.2 A statement of the number of Section 8 Existing Housing Certificates needed to support the local self-sufficiency program and information which supports that number (e.g. PHA waiting list figures, local Department of Human Services data, etc.)

5.3 A description of the local Task Force that is being established and a statement indicating its capacity to perform the functions outlined in Section 4 above. Since the Task Force shall be responsible for marshalling resource commitments from local public agencies, private organizations and individuals to support the program, this section of the application will receive particular scrutiny in the selection process.

5.4 A letter from the Public Housing Agency authorized to adminsiter a Section 8 existing housing program in the community agreeing to participate in the demonstration and stating its willingness to administer the certificates being requested for that community's Self-Sufficeincy program under the conditions set forth in this Notice. The letter should also indicate the PHA's willingness to cooperate as a member of the local Task Force in the overall planning and implementation of the project. If the PHA is not currently administering a Section 8 existing housing program, this should be noted in the application.

5.5 Please note that the application process does not anticipate that the community will have completed the Action Plan described in Section 4.4 at the time of application.

6. Selection and Approval Procedures

6.1 Applications will be reviewed, rated and ranked by HUD Headquarters. The Department will seek diversity in its selection of participants according to geographical location, population and type of government (city, county, or other locality). Field office comments will be solicited concerning the PHA's past performance in administering the Section 8 existing housing program. Other factors to be taken into consideration in assessing each application will include:

—Extent of local public sector resources committed to the program;
—Extent to which the composition of the Task Force represents a broad spectrum of the community capable of marshalling the necessary public and private sector resoruces;
—Extent to which the application reflects an understanding of the Project Self-Sufficiency concept;
—Degree of cooperation exhibited between the local government, the PHA and the private sector; and
—Ability of the applicant to implement the program within a reasonable period of time.

6.2 Preliminary selection of participants shall be made by the Assistant Secretary for Policy Development and Research in consultation with the Assistant Secretaries for Housing, and Public and Indian Housing. Final selection shall be by the Secretary.

7. Other Matters

7.1 This Notice affects the following Federal program listed in the Catalog of Federal Domestic Assistance at the specified number: Low-Income Housing Assistance Programs—Section 8 (14.156).

7.2 Periodically, communities selected for participation in this demonstration will be asked to provide information for purposes of program evaluation to HUD or HUD's designee.

7.3 The information collection requirements contained in this Notice have been submitted to the Office of Mangement and Budget (OMB) for approval under the Paperwork Reduction Act. No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control

number, when it is assigned, will be announced by separate notice in the Federal Register.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); Section 222, Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98-181, 97 Stat. 1153, Approved November 30, 1983.

Dated: May 16, 1984.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 84-13573, Filed 5-18-84; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

[516 DM 2-4]

National Environmental Policy Act; Revised Implementing Procedures

AGENCY: Department of the Interior.

ACTION: Notice of revised instructions.

SUMMARY: This notice announces revised instructions for implementing the National Environmental Policy Act (NEPA) within the Department of the Interior. These procedures were previously published in the Federal Register on April 23, 1980 (45 FR 27541) and the proposed revisions were published on September 29, 1983 (48 FR 44661).

EFFECTIVE DATE: May 11, 1984.

FOR FURTHER INFORMATION CONTACT: Bruce Blanchard, Director, Office of Environmental Project Review, Office of the Secretary, Department of the Interior, Washington, D.C. 20240, Telephone (202) 343-3891.

SUPPLEMENTARY INFORMATION: The Department's implementing instructions for NEPA appear in the Federal Register at 45 FR 27541 (April 23, 1980) and revisions were proposed at 48 FR 44661 (September 29, 1983). These revisions are a result of a continuing process of updating our NEPA procedures to reduce unnecessary paperwork and to improve the consideration of environmental factors in decisionmaking. For example, the following revisions have been made since the original procedures, including Bureau appendices, were completed in January 1981:

516 DM 6, Appendix 1 (FWS), 47 FR 28841, July 1, 1982
516 DM 6, Appendix 5 (BLM), 48 FR 43731, September 26, 1983
516 DM 6, Appendix 9 (BuRec), 48 FR 17151, April 21, 1983
516 DM 6, Appendix 7 (NPS), 49 FR 9273, March 12, 1984 (proposed)

Later this year we expect to propose changes to the Bureau appendices for the Bureau of Indian Affairs, Office of Surface Mining, and Minerals Management Service.

When we proposed this revision we received only one comment as a result of our Federal Register notice, from the Environmental Protection Agency (EPA). The EPA endorsed the proposed revisions, identified a possible shortcoming, and offered several other recommendations for changes.

The EPA felt that the lact of a reporting or documentation procedure and a consultative process with affected agencies for categorically excluded actions was a possible shortcoming. We disagree. The Department's categorical exclusions cover several hundred thousand actions each year which in our experience do not cause significant environmental effects. A Departmental requirement to report or document each of these exclusions would not improve the consideration of significant environmental effects and would substantially increase costs and unnecessary paperwork. In addition we believe that the many existing program requirements for consulting with affected agencies are sufficient for these types of actions. On the other hand the EPA may not be aware that some of our Bureaus do prepare checklists for certain categorical exclusions of particular interest to them and these appear in their handbooks.

The EPA also recommended clarifications that (1) environmental documents be prepared "pursuant to NEPA" in 516 DM 2.3A (3), (2) "proposed or designated" wilderness areas, wild and scenic rivers and National Landmarks be added to 516 DM 2, Appendix 2.2, and (3) "minor" be defined narrowly in 516 DM 2, Appendix 1.9 because land transactions and boundary changes in the West can be highly controversial. We have not adopted these suggestions for the following reasons: (1) The Department's procedures adopt (516 DM 1.7B) and supplement (516 DM 2.1) the CEQ regulations and "environmental documents" are always prepared pursuant to NEPA because they are defined in those regulations in § 1508.10. (2) Appendix 2.2 pertains to unique geographic characteristics, identifies generic examples of some, and is based on § 1508.27(b)(3) of the CEQ regulations. The recommendation implies formal designations, raises an unnecessary issue about who proposes such characteristics and would be inconsistent with CEQ's regulations. (3) If "minor" land transactions and boundary changes have highly controversial environmental effects then the exception in Appendix 2.3 applies and an environmental document must be prepared.

In addition to the revisions proposed in September we have made a few minor technical, formatting and conforming changes in the procedures. This revision now makes changes in the following sections of the Departmental Manual:

1. It revises §§ 1.3, 1.4, 1.6, 1.7 and 1.8 and adds §§ 1.9, 1.10 and 1.11 in Appendix 1 of 516 DM 2 which lists Department-wide categorical exclusions. These changes reflect our experience over the past several years and are meant to clarify and identify categories of actions which apply to all elements of the Department.

2. It amends 516 DM 2.3A(3) which establishes exceptions to the categorical exclusions listed in Appendix 1 to Chapter 2 (Department-wide) and Appendices 1-9 to Chapter 6 (Bureaus), and places these exceptions in a new Appendix 2 of 516 DM 2. Non-editorial changes occur in §§ 2.4, 2.5, 2.6 and 2.8. The substantive effect of the amendments reduces the scope of some of the exceptions and will lead to fewer unnecessary environmental assessments (EA). It will not reduce the number of environmental impact statements (EIS).

3. It adds a new § 3.6 to 516 DM 3 to provide for the adoption of EA's prepared by others. We believe this is a necessary addition and it is consistent with the recent guidance promulgated by the Council on Environmental Quality (48 FR 34263).

4. It deletes the previous Appendix 1 to 516 DM 4. This appendix provided no substantive guidance in preparing EIS's and required too much paperwork to keep current in the Departmental Manual. We will update and reissue it as a supplemental directive of the Office of Environmental Project Review.

5. It updates the previous Appendix 2 to 516 DM 4 and redesignates it as Appendix 1. The revision merely updates the appendix to reflect the current edition of the Catalog of Federal Domestic Assistance.

6. It makes minor technical and conforming changes to 516 DM 2 and 516 DM 4. For convenience 516 DM 2 with Appendices 1 and 2, 516 DM 3, and Appendix 1 to 516 DM 4 are printed in their entirety.

Dated: May 11, 1984.

Joseph W. Gorrell,

Deputy Assistant Secretary, Policy, Budget & Administration.

DEPARTMENTAL MANUAL

Part 516 National Environmental Policy Act of 1969

Chapter 2 Initiating the NEPA Process

2.1 *Purpose.* This Chapter provides supplementary instructions for implementing those portions of the CEQ regulations pertaining to initiating the NEPA process.

2.2 *Apply NEPA Early* (1501.2).

A. Bureaus will initiate early consultation and coordination with other bureaus and any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved, and with appropriate Federal, State, local and Indian tribal agencies authorized to develop and enforce environmental standards.

B. Bureaus will also consult early with interested private parties and organizations, including when the Bureau's own involvement is reasonably foreseeable in a private or non-Federal application.

C. Bureaus will revise or amend program regulations or directives to insure that private or non-Federal applicants are informed of any environmental information required to be included in their applications and of any consultation with other Federal agencies, and State, local or Indian tribal governments required prior to making the application. A list of these regulations or directives will be included in each Bureau Appendix to Chapter 6.

2.3 *Whether to Prepare an EIS* (1501.4).

A. *Categorical Exclusions (CX)*(1508.4).

(1) The following criteria will be used to determine actions to be categorically excluded from the NEPA process:

(a) The action or group of actions would have no significant effect on the quality of the human environment, and

(b) The action or group of actions would not involve unresolved conflicts concerning alternative uses of available resources.

(2) Based on the above criteria, the classes of actions listed in Appendix 1 to this Chapter are categorically excluded, Department-wide, from the NEPA process. A list of CX specific to Bureau programs will be included in each Bureau Appendix to Chapter 6.

(3) The exceptions listed in Appendix 2 to this Chapter apply to individual actions within CX. Environmental documents must be prepared for any actions involving these exceptions.

(4) Notwithstanding the criteria, exclusions and exceptions above, extraordinary circumstances may dictate or a responsible Departmental or Bureau official may decide to prepare an environmental document.

B. *Environmental Assessment (EA)* (1508.9). See 516 DM 3.

C. *Finding of No Significant Impact (FONSI)* (1508.13). A FONSI will be prepared as a separate covering document based upon a review of an EA. Accordingly, the words *include(d)* in Section 1508.13 should be interpreted as *attach(ed)*.

D. *Notice of Intent (NOI)* (1508.22). A NOI will be prepared as soon as practicable after a decision to prepare an environmental impact statement and shall be published in the **Federal Register**, with a copy to the Office of Environmental Project Review, and made available to the affected public in accordance with Section 1506.6. Publication of a NOI may be delayed if there is proposed to be more than three (3) months between the decision to prepare an environmental impact statement and the time preparation is actually initiated. The Office of Environmental Project Review will periodically publish a consolidated list of these notices in the **Federal Register.**

E. *Environmental Impact Statement (EIS)* (1508.11). See 516 DM 4. Decisions/actions which would normally require the preparation of an EIS will be identified in each Bureau Appendix to Chapter 6.

2.4 *Lead Agencies* (1501.5).

A. The Assistant Secretary-Policy, Budget and Administration will designate lead Bureaus within the Department when Bureaus under more than one Assistant Secretary are involved and will represent the Department in consultations with CEQ or other Federal agencies in the resolution of lead agency determinations.

B. Bureaus will inform the Office of Environmental Project Review of any agreements to assume lead agency status.

C. A non-Federal agency will not be designated as a joint lead agency unless it has a duty to comply with a local or State EIS requirement that is comparable to a NEPA statement. Any non-Federal agency may be a cooperating agency by agreement. Bureaus will consult with the Solicitor's Office in cases where such non-Federal agencies are also applicants before the Department to determine relative lead/cooperating agency responsibilities.

2.5 *Cooperating Agencies* (1501.6).

A. The Office of Environmental Project Review will assist Bureaus and coordinate requests from non-Interior agencies in determining cooperating agencies.

B. Bureaus will inform the Office of Environmental Project Review of any agreements to assume cooperating agency status or any declinations pursuant to Section 1501.6(c).

2.6 *Scoping* (1501.7).

A. The invitation requirement in Section 1501.7(a)(1) may be satisfied by including such an invitation in the NOI.

B. If a scoping meeting is held, consensus is desirable; however, the lead agency is ultimately responsible for the scope of an EIS.

2.7 *Time Limits* (1501.8). When time limits are established they should reflect the availability of personnel and funds.

Chapter 2 Appendix 1, Departmental Categorical Exclusions

The following actions are categorical exclusions (CX) pursuant to 516 DM 2.3A(2). However, environmental documents will be prepared for individual actions within these CX if the exceptions listed in 516 DM 2, Appendix 2, apply.

1.1 Personnel actions and investigations and personnel services contracts.

1.2 Internal organizational changes and facility and office reductions and closings.

1.3 Routine financial transactions, including such things as salaries and expenses, procurement contracts, guarantees, financial assistance, income transfers, audits, fees, bonds and royalties.

1.4 Law enforcement and legal transactions, including such things as arrests, investigations, patents, claims, legal opinions, and judicial activities including their initiation, processing, settlement, appeal or compliance.

1.5 Regulatory and enforcement actions, including inspections, assessments, administrative hearings and decisions; when the regulations themselves or the instruments of regulations (leases, permits, licenses, etc.) have previously been covered by the NEPA process or are exempt from it.

1.6 Non-destructive data collection, inventory (including field, aerial and satellite surveying and mapping), study, research and monitoring activities.

1.7 Routine and continuing government business, including such things as supervision, administration, operations, maintenance and replacement activities having limited context and intensity; e.g. limited size and magnitude or short-term effects.

1.8 Management, formulation, allocation, transfer and reprogramming of the Department's budget at all levels. (This does not exclude the preparation of environmental documents for proposals included in the budget when otherwise required.)

1.9 Legislative proposals of an administrative or technical nature, including such things as changes in authorizations for appropriations, and minor boundary changes and land transactions; or having primarily economic, social, individual or institutional effects; and comments and reports on referrals of legislative proposals.

1.10 Policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature; or the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case-by-case.

1.11 Activities which are educational, informational, advisory or consultative to other agencies, public and private entities, visitors, individuals or the general public.

Chapter 2 Appendix 2, Exceptions to Categorical Exclusions

The following exceptions apply to individual actions within categorical exclusions (CX). Environmental documents must be prepared for actions which may:

2.1 Have significant adverse effects on public health or safety.

2.2 Have adverse effects on such unique geographic characteristics as historic or cultural resources, park, recreation or refuge lands, wilderness areas, wild or scenic rivers, sole or principal drinking water aquifers, prime farmlands, wetlands, floodplains, or ecologically significant or critical areas, including those listed on the Department's National Register of Natural Landmarks.

2.3 Have highly controversial environmental effects.

2.4 Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.

2.5 Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

2.6 Be directly related to other actions with individually insignificant but cumulatively significant environmental effects.

2.7 Have adverse effects on properties listed or eligible for listing on the National Register of Historic Places.

2.8 Have adverse effects on species listed or proposed to be listed on the List of Endangered or Threatened Species, or have adverse effects on designated Critical Habitat for these species.

2.9 Require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act.

2.10 Threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

Chapter 3 Environmental Assessments

3.1 *Purpose.* This Chapter provides supplementary instructions for implementing those portions of the CEQ regulations pertaining to environmental assessments (EA).

3.2 *When to Prepare* (1501.3).

A. An EA will be prepared for all actions, except those covered by a categorical exclusion, covered sufficiently by an earlier environmental document, or for those actions for which a decision has already been made to prepare an EIS. The purpose of such an EA is to allow the responsible official to determine whether to prepare an EIS.

B. In addition, an EA may be prepared on any action at any time in order to assist in planning and decisionmaking.

3.3 *Public Involvement.*

A. Public notification must be provided and, where appropriate, the public involved in the EA Process (1506.6).

B. The scoping process may be applied to an EA (1501.7).

3.4 *Content*

A. At a minimum, an EA will include brief discussions of the need for the proposals, of alternatives as required by section 102(2) of NEPA, of the environmental impacts of the proposed action and such alternatives, and a listing of agencies and persons consulted (15.8.9(b)).

B. In addition, an EA may be expanded to describe the proposal, a broader range of alternatives, and proposed mitigation measures if this facilitates planning and decisionmaking.

C. The level of detail and depth of impact analysis should normally be limited to that needed to determine whether there are significant environmentals effects.

D. An EA will contain objective analyses which support its environmental impact conclusions. It will not, in and of itself, conclude whether or not an EIS will be prepared. This conclusion will be made upon review of the EA by the responsible official and documented in either a NOI or FONSI.

3.4 *Format.*

A. An EA may be prepared in any format useful to facilitate planning and decisionmaking.

B. EA may be combined with any other planning or decisionmaking document; however, that portion which analyzes the environmental impacts of the proposal and alternatives will be clearly and separately identified and to spread throughout or interwoven into other section of the document.

3.6 *Adoption.*

A. An EA prepared for a proposal before the Department by another agency, entity or person, including an applicant, may be adopted if, upon independent evaluation by the responsible official, it is found to comply with this Chapter and relevant provisions of the CEQ regulations.

B. When appropriate and efficient, a responsible official may augment such an EA when it is essentially but not entirely in compliance in order to make it so.

C. If such an EA or augmented EA is adopted, the responsible official must pepare his/her own NOI or FONSI which also acknowledges the origin of the EA and takes full responsibility for its scope and content.

Chapter 4 Environmental Impact Statements

Revise 516 DM 4.15 to read: A. A list of related environmental review and consultation requirements is available from the Office of Environmental Project Review.

Revise 516 DM 4.16A to read: A. Comments from state agencies will be requested through procedures established by the Governor pursuant to Executive Order 12372, and may be requested from local agencies through these procedures to the extent that they include the affected local jurisdictions. See 511 DM.

In 516 DM 4.18 change the reference to Appendix 2 to Appendix 1.

In 516 DM 4.22 change the reference to (015 DM 6) to (381 DM 4.5B).

Chapter 4 Appendix 1, Programs of Grants to States in Which Agencies Having Statewide Jurisdiction May Prepare EISs.

1.1 Fish and Wildlife Service.

A. Anadromous Fish Conservation (#15.600).

B. Fish Restoration (#15.605).

C. Wildlife Restoration (#15.611).

D. Endangered Species Conservation (#15.612).

E. Marine Mammal Grant Program (#15.613).

1.2 Bureau of Land Management.

A. Wildlife Habitat Management Technical Assistance (#15.219).

1.3 National Park Service.

A. Historic Preservation Grants-in-Aid (#15.904).

B. Outdoor Recreation—Acquisition, Development and Planning (#15.916).

1.4 Bureau of Reclamation.

A. National Water Research and Development Program (#15.505).

1.5 Office of Surface Mining.

A. Regulation of Surface Coal Mining and Surface Effects of Underground Coal Mining (#15.250).

B. Abandoned Mine Land Reclamation (AMLR) Program (#15.252).

1.6 Office of Territorial and International Affairs.

A. Economic and Political Development of the Territories and the Trust Territory of the Pacific Islands (#15.875).

Note.—Citations in parenthesis refer to the Catalog of Federal Domestic Assistance, Office of Management and Budget, 1983.

Chapter 4 Appendix 2

Delete.

[FR Doc. 84-13551 Filed 5-18-84; 8:45 am]

BILLING CODE 4310-10-M

National Strategic Materials and Minerals Program Advisory Committee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, as amended, that a meeting of the National Strategic Materials and Minerals Program Advisory Committee will be held from 9:00 a.m. to 4:00 p.m. on Friday, May 25, 1984, in the Main Interior Building, 18th and C Streets NW., Washington, D.C. in Room 7000A–B. The purpose of this meeting is to present an outline as to scope and elements of the Committee mission and organization.

This meeting will be open to the public, however, facilities and space to accommodate members of the public are limited. Interested press are requested to notify the contact below of attendance.

Uncertainty of acceptance of appointment from the final member of the Committee prevented the committee meeting notice to be published at least 15 days prior to the meeting.

Further information concerning this meeting may be obtained from Wayne Marchant, Executive Director, National Strategic Materials and Minerals Program Advisory Committee, 18th and C Streets NW., Washington, D.C. 20240 (202–343–5791).

Dated: May 15, 1984.

Ann Dore McLaughlin,

Under Secretary, U.S. Department of the Interior.

Preliminary Agenda

9:00 a.m., May 25, 1984

Room 7000A–B, Department of the Interior

Morning: Government Perspective

8:30 Coffee and registration

9:30 Secretary Clark (15')
Background; overview; charter; National Security implications; EEZ; expectations; introduce Chairman Mott.

9:15 Assistant Secretary Broadbent (15')
President's plan:
—what was promised
—what has been accomplished
—what remains
introduce agency representatives; cite committee members' concerns.

9:30 Admiral Mott (20')
Broad outline as to scope and subelements of Committee mission, organization of effort, and timetable (all to be amplified during PM session.) Introduction of first agency briefer.

9:50 Department of Defense representative (20')
National Security and Defense requirements, actions.

10:10 FEMA representative (20')
Annual Materials Plan process & organization; status of Stockpile goals and disposition/acquisition activities; Defense Production Act (DPA).

10:30 Break (15')

10:45 Department of Commerce representative (20')
Commerce overview: trade policy factors; stockpile reviews; industrial sectors case studies; DPA Title I activities.

11:05 Department of the Interior (40')
Bureau of Mines (10')—Domestic & International minerals perspectives; R & D
U.S. Geological Survey (10')—EEZ; geologic reserves
Assistant Secretary—Land and Minerals Management (10')—Withdrawals; EEZ and OCS leasing; onshore leasing
Bureau of Indian Affairs (10')—Minerals on Indian lands; availability; legality of extraction, etc.

11:45 Lunch
(Vans at C Street entrance)
Metropolitan Club, courtesy of National Strategy Information Center.

Afternoon: Members' Perspectives

1:30 Committee Members (60')
OPEN: Discussion by Members
—private sector concerns;
—State and local issues; etc.

2:30 W. C. Mott and Members (45')
(2:45: 15 minute break)
Select issues for attack;
Appoint lead members; formulate strategies; identify product and timetable, etc.

3:30 Wrapup; "housekeeping:"

4:00 Adjourn (FIRM)
(Vans at C Street Entrance; one to National Airport, one to Dulles Airport).

[FR Doc 84-13552 Filed 5-18-84; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

[C-7-84; C-10-84]

California; Filing of Plat of Survey

May 11, 1984.

1. This plat of survey of the following described land will be officially filed in the California State Office. Sacramento, California, immediately:

Mount Diablo Meridian, Siskiyou/Madera Counties

T. 45 N., R. 7 W.
T. 9 S., R. 22 E.

2. These supplemental plats of (2) Section 6, Township 9 South, Range 22 East, Mount Diablo Meridian, and (2) Section 1, Township 45 North, Range 7 West, Mount Diablo Meridian, California, were accepted May 2, 1984.

3. These plats will immediately become the basic record for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

4. These supplemental plats were executed to meet certain administrative needs of the Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 84-13579 Filed 5-18-84; 8:45 am]

BILLING CODE 4310-40-M

[C-14-84]

California; Filing of Plat of Survey

May 11, 1984.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, Plumas County

T. 24 N., R. 11 E.

2. This supplemental plat of Section 18 Township 24 North, Range 11 East, Mount Diablo Meridian, California, was accepted April 30, 1984.

3. These plats will immediately become the basic record for describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the U. S. Forest Service and this Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 84-13580 Filed 5-18-84; 8:45 am]

BILLING CODE 4310-40-M

[Group 823]

California; Filing of Plat of Survey

May 11, 1984.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, Shasta County

T. 34 N., R. 1 W.

2. This plat, representing the dependent resurvey of a portion of the Mount Diablo Meridian on the east boundary, and a portion of the north boundary, and the survey of the subdivision of Section 1, T. 34 N., R. 1 W., Mount Diablo Meridian, under Group No. 823, California, was accepted April 17, 1984.

3. This plat will immediately become the basic record for describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs and this Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 84-13581 Filed 5-18-84; 8:45 am]

BILLING CODE 4310-40-M

Bureau of Reclamation

San Juan Pueblo Diversion Project, New Mexico; Public Meeting

The Department of the Interior, Bureau of Reclamation, in conjunction with the Bureau of Indian Affairs, will hold a public meeting at 7 p.m., June 7, 1984, in the auditorium, San Juan Pueblo, Rio Arriba County, New Mexico. The purpose of the meeting is to provide information on the effect this project will have on wetlands (Executive Order 11990) and flood plains (Executive Order 11988). The Bureau of Reclamation plans to prepare an environmental assessment on this project. The meeting will also give the public an opportunity to express their views and comments relating to environmental concerns of this project.

The project consists of constructing the Acequia Madre diversion structure. The Existing rock diversion structure is frequently damaged or destroyed during high flows. Repair or complete replacement results in frequent streambed disturbance.

Additional information concerning this project may be obtained by contacting Mr. Dan Rubenthaler, Bureau of Reclamation, 714 South Tyler Street, Suite 201, Amarillo, Texas 79101, telephone (806) 378-5473.

Dated: May 15, 1984.

Richard Atwater,

Acting Commissioner.

[FR Doc. 84-13357 Filed 5-18-84; 8:45 am]

BILLING CODE 4310-09-M

Minerals Management Service

Scientific Committee of the Outer Continental Shelf (OCS) Advisory Board; Notice and Agenda of Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92-463, 5 U.S.C. App. I and the Office of Management and Budget's Circular A-63 Revised.

The Scientific Committee of the Outer Continental Shelf Advisory Board will meet on June 19 and 20, 1984, in the Oxford-Cambridge Room of The Westin-Benson Hotel, SW. Broadway at Oak, in Portland, Oregon. The Scientific Committee will meet during the period 8:30 a.m. to 5:00 p.m. on both days.

Agenda for the meeting will include the following subjects:

- Advisory Board Charter
- Offshore Leasing Program
- Review of Past Scientific Committee Action
- Environmental Studies Program
- Associated Environmental Programs
- Regional Perspectives
- Budget

The meeting of this committee is open to the public. Approximately 40 visitors can be accommodated on a first-come/first-served basis. All inquiries concerning this meeting should be addressed to: Dr. Piet deWitt, Chief, Offshore Environmental Assessment Division (644), Minerals Management Service, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240; telephone: (202) 343-2097.

Dated: May 15, 1984.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 84-13526 Filed 5-18-84; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf Advisory Board—Policy Committee; Notice and Agenda for Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. No. 92-463, 5 U.S.C. App. 1 and the Office of Management and Budget's Circular No. A-63, Revised. The Policy Committee of the Outer Continental Shelf (OCS) Advisory Board will meet during the period 8:00 a.m. to 5:00 p.m., June 21, 1984 and 8:00 a.m. to 12:00 noon, June 22, 1984, at the Westin Benson Hotel in Portland, Oregon (503-228-9611).

The meeting will cover the following principal subjects:

June 21

- Current 5-Year OCS Program
- New 5-Year OCS Program Development:
  - —Schedule of Events
  - —Approach and Procedure
- Gorda Ridge Lease Sale Update
- Exclusive Economic Zone Panel

June 22

- OCS Regulatory Reform
- Drilling Discharges in the Marine Environment.

The meeting is open to the public. Upon request, interested parties may make oral or written presentations to the committee. Such requests should be made not later than June 12, 1984, to the OCS Policy Committee, Minerals Management Service, Department of the Interior, 18th & C Streets, NW., Washington, D.C. 20240.

Requests to make oral statements should be accompanied by a summary of the statement to be made. For more information contact the Executive Secretary, Michele Tetley at (202–343–9314).

Minutes of the meeting will be available for public inspection and copying 8 weeks after the meeting at the Minerals Management Service, Department of the Interior, 18th & C Streets NW., Washington, D.C. 20240.

Dated: May 15, 1984.

John B. Rigg,

Associate Director for Offshore Minerals Management Service.

[FR Doc. 84–13527 Filed 5–18–84; 8:45 am]

BILLING CODE 4310–MR–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30453]

PLM Railcar Maintenance Company—Exemption From 49 U.S.C. Subtitle IV

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts PLM Railcar Maintenance Company from Commission jurisdiction under 49 U.S.C. Subtitle IV.

DATES: This exemption shall be effective on June 20, 1984. Petitions for stay must be filed by May 31, 1984, and petitions for reconsideration must be filed by June 11, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30453 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC. 20423

(2) Petitioner's representatives: Sander M. Bieber, Suite 1100, 1730 Pennsylvania Ave., NW., Washington, DC. 20006

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: May 10, 1984.

By the Commission's Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

James H. Bayne,

Secretary.

[FR Doc. 84–13423 Filed 5–18–84; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30463]

Soo Line Railroad Company—Trackage Rights Exemption; Exemption

On April 16, 1984, Soo Line Railroad Company (Soo) filed a notice of exemption for trackage rights over a line of track of the Burlington Northern Railroad Company (BN) between Duluth, MN and Superior, WI. The pleading was supplemented by Soo on April 25, and May 2, 1984, to clarify minor discrepancies.

On May 1, 1984, the Railway Labor Executives' Association requested the imposition of employee protective conditions.

Soo presently has trackage rights over BN's Grassy Point Bridge and over BN's St. Louis Bay Bridges, all of which are in the Duluth-Superior area. The parties propose to enter into a new agreement for different trackage rights over the Grassy Point Bridge and certain appurtenant trackage in Duluth. This will eliminate Soo's need for the existing previously described trackage rights, and the parties propose to terminate that agreement on the date of the new agreement. The proposal will not result in a substantive change in Soo's service but only in the route of the traffic movement. At present, Soo moves the traffic over the BN tracks in Superior to and over the St. Louis Bay Bridges to yard facilities in Duluth. Under the proposal, that traffic will move over the Grassy Point Bridge to and over BN tracks in Duluth and thence to the same yard facilities. Also, the Soo will continue to use the Grassy Point Bridge for other traffic, as it does now.

Since the trackage rights are "overhead" rights only, no shippers will be affected. BN, however, will be able to consolidate more train operations over a single bridge with a corresponding decrease in per unit cost to all carriers involved. Further, no expenditures are necessary to effectuate the proposal, since there will be no need for construction of connections or other facilities.

This proposal, in effect, involves the relocation of a line of railroad and does not disrupt service to shippers. Thus, under 49 CFR 1180.2(d)(5), it is specifically exempted from the necessity of prior review and approval.

As a condition to the use of this exemption, any employees affected by the trackage rights agreement shall be protected pursuant to *Norfolk and Western Ry. Co.-Trackage Rights-BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.-Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: May 15, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84–13519 Filed 5–18–84; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Coordinating Council on Juvenile Justice and Delinquency Prevention Meeting

The second quarterly meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention will be held in Washington, D.C. on June 21, 1984. The meeting will take place in the auditorium of the Hubert Humphrey Building, Department of Health and Human Services, 200 Independence Avenue, SW., from 9:30 a.m. to 12 noon. The public is welcome to attend.

The agenda will include matters related to the coordination of the federal effort in the area of Juvenile Justice and Delinquency Prevention.

For Further information, please contact Roberta Dorn, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, D.C. 20531, (202) 724–7655.

Dated: May 16, 1984.

Approved:

Alfred S. Regner,

Administration, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 84–13574 Filed 5–18–84; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 84-52]

NASA Advisory Council (NAC), Space and Earth Science Advisory Committee (SESAC), Space Station Task Force; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space and Earth Science Advisory Committee, Space Station Task Force.

DATES AND TIME: June 5 and 6, 1984, 8:30 a.m. to 5:00 p.m. each day.

ADDRESS: National Aeronautics and Space Administration, Lyndon B. Johnson Space Center, Building 1, Room 257A, Houston, TX 77058.

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth J. Frost, Code 684.0, NASA/Goddard Space Flight Center, Greenbelt, MD 20771 (301/344-8811).

SUPPLEMENTARY INFORMATION: The NAC Space and Earth Science Advisory Committee, Space Station Task Force, consults with and advises the Space and Earth Science Advisory Committee, the Council, and NASA on plans for, and work in progress on, the scientific utilization of the new capabilities which will be afforded by the Space Station, including the relationship of these plans to the existing space science program. This advice includes periodic updates of scientific requirements on Space Station hardware and operations, and interaction with contractors during the definition phase of Space Station development. The Task Force is chaired by Dr. Peter Banks and is composed of 8 other members of standing committees of the Council, who will meet with about 10 other invited participants and certain NASA personnel.

The meeting will be open to the public up to the seating capacity of the room (approximately 35 persons, including Task Force members and invited meeting participants). Visitors will be requested to sign a visitor's register.

Type of meeting: Open.

AGENDA

June 5, 1984

8:30 a.m.—Introductory Remarks, Comments on Agenda
9 a.m.—General Discussion of Space Station Program
10 a.m.—Status of Space Station Request for Proposal
11 a.m.—Discussion of Space Station Configuration and Utilization
2 p.m.—General Discussion
5 p.m.—Adjourn.

June 6, 1984

8:30 a.m.—General Discussion and Recommendations
4 p.m.—Future Plans and Organization of Summer Study
5 p.m.—Adjourn.

Dated: May 11, 1984.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

[FR Doc. 84-13543 Filed 5-18-84; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts, NEA.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by June 4, 1984.

ADDRESSES: Send comments to Mr. Joseph Lackey, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3208, Washington, D.C. 20503; (202-395-6880). In addition, copies of such comments may be sent to Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506; (202-682-5464).

FOR FURTHER INFORMATION CONTACT: Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506; (202-682-5464) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: Extensions are requested for current public use reports. Each entry issued by the Endowment contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Title: Request for Advance or Reimbursement
SF 270
Form Number: OMB #3135-0036
Frequency of Collection: As funds are needed
Respondents: Non-profit institutions, State or local governments
Use: To make grant payment to grant recipient
Estimated Number of Respondents: 8,000
Estimated Hours for Respondents to Provide Information: 4,000.

Title: Financial Status Report
SF 269
Form Number: OMB#3135-0037
Frequency of Collection: At the end of grant period
Respondents: Non-profit institutions, State or local governments
Use: Collection of information provides a basis for closing out the grant and ascertaining if grant funds were spent in accordance with the terms of the grant
Estimated Number of Respondents: 5,000
Estimated Hours for Respondents to Provide Information: 3,750.

Peter J. Basso,

Director of Administration, National Endowment for the Arts.

[FR Doc. 84-13568 Filed 5-18-84; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Maintenance Practices and Procedures; Meeting

The ACRS Subcommittee on Maintenance Practices and Procedures will hold a meeting on June 12, 1984, Room 1118, 1717 H Street, NW., Washington, DC. The Subcommittee will continue review of the NRC Integrated Maintenance Task Action Plan.

In accordance with the procedures outlined in the **Federal Register** on September 28, 1983 (48 FR 44291), 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 by asked only be members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Cognizant Federal Employee as far in advance as practicable so that

appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions during which the Subcommittee finds it necessary to discuss proprietary information. One or more closed sessions may be necessary to discuss such information. (Sunshine Act Exemption 4). To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows: *Tuesday, June 12, 1984—8:30 a.m. until the conclusion of business.*

During the initial portion of the meeting, the subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentation by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

I have determined, in accordance with Subsection 10(d) Pub. L. 92–463 that it may be necessary to close portions of this meeting to discuss proprietary information. The authority for such closure is Exemption 4 to the Sunshine Act, 5 U.S.C. 552b(c)(4).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on request for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Herman Alderman, (telephone 202/634–11414), between 8:15 a.m. and 5:00 p.m., EDT, or Staff Engineer, Mr. Charles A. McClain.

Dated May 16, 1984.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 84–13598 Filed 5–18–84; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Electrical Systems; Meeting

The ACRS Subcommittee on Electrical Systems will hold a meeting on June 1, 1984, Room 1046, 1717 H Street, NW, Washington, DC. The Subcommittee will review the work being sponsored by the RES Instrumentation and Control Branch in preparation for the writing of the report to the Commission on the FY 1986 and 1987 budget.

In accordance with the procedures outlined in the **Federal Register** on September 28, 1983 (48 FR 44291), 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 Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows: *Friday, June 1, 1984–8:30 a.m. until the conclusion of business.*

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Dr. Richard Savio (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., EDT.

Dated: May 16, 1984.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 13599 Filed 5–18–84; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommitte on Safeguards and Security; Meeting

The ACRS Subcommittee on Safeguards and Security will hold a meeting on June 12, 1984, Room 1167, 1717 H Street, NW., Washington, D.C.

In accordance with the procedures outlined in the **Federal Register** on September 28, 1983 (48 FR 44291), 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 Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions which may be closed to discuss classified and/or safeguards information (Sunshine Act Exemptions 1 and 3). One or more closed sessions may be necessary to discuss such information. To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows: *Tuesday, June 12, 1984—10:00 a.m. until the conclusion of business.*

The Subcommittee will review a proposed rule requiring replacement of highly enriched uranium fuel with low enriched uranium at non-power reactors and to review steps for improving security measures at non-power reactors.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. John C. McKinley (telephone 202/634–1413) between 8:15 a.m. and 5:00 p.m., EDT.

I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close portions of this meeting to public attendance to discuss classified and/or safeguards information. The authority for such closure is Exemptions 1 and 3 to the Sunshine Act, 5 U.S.C. 552b(c)(1)(3).

Dated: May 16, 1984.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 84–13600 Filed 5–18–84; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed meetings of the ACRS Subcommittees and of the full Committee, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published April 16, 1984 (49 FR 15028). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the Federal Register approximately 15 days (or more) prior to the meeting. Those Subcommittee meetings for which it is anticipated that there will be a portion or all of the meeting open to the public are indicated by an asterisk (*). It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 a.m. and Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the June 1984 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone 202/634–3267, ATTN: Barbara Jo White) between 8:15 a.m. and 5:00 p.m., Eastern Time.

ACRS Subcommittee Meetings

**Combined Extreme External Phenomena and Diablo Canyon,* May 24, 1984, Los Angeles, CA. The Subcommittees will review matters related to Diablo Canyon as requested in an April 13, 1984 letter from N. Palladino to J. Ebersole. This letter requested the ACRS review: (1) A proposed license condition which would require Pacific Gas and Electric to do a seismic study to reevaluate the Diablo Canyon design basis, (2) the appropriateness, if this study was done, of Pacific Gas and Electric taking the lead on this project, and (3) matters relating to the Hosgri fault as discussed in a paper entitled "Post-Miocene Compressional Tectonics Along the Central California Margin", by J. K. Crouch, et al.

**Committee Activities,* May 30, 1984, Washington, DC. The Subcommittee members will exchange views regarding the future scope and direction of Committee activities.

**Class 9 Accidents,* May 31, 1984, Washington, DC. The Subcommittee will discuss the latest review of NUREG-1070, "NRC Policy on Future Reactor Designs: Decision on Severe Accident Issues in Nuclear Power Plant Regulation."

**Combined Class 9 Accidents/ Reliability and Probabilistic Assessment,* May 31, 1984, Washington, DC—Postponed.

**Combined Reactor Radiological Effects/Air Systems/Waste Management,* May 31 and June 1, 1984, Washington, DC. The Subcommittees will review NRC proposed research programs in the pertinent areas for FY 1986 and 1987.

**Electrical Systems,* June 1, 1984, Washington, DC. The Subcommittee will review the work being sponsored by the RES Instrumentation and Control Branch in preparation for the writing of the report to the Commission on the FY 1986 and 1987 budget.

**Emergency Core Cooling Systems,* June 4, 1984, Washington, DC. The Subcommittee will review portions of the NRC Safety Research Program for the ACRS Report to the Commission on the FY 1986 budget.

**Decay Heat Removal Systems,* June 5, 1984, Washington, DC. The Subcommittee will continue review of the resolution effort for Unresolved Safety Issue A–45, Shutdown Decay Heat Removal Requirements".

**River Bend Nuclear Power Plant,* June 7 and 8, 1984, Baton Rouge, LA. The Subcommittee will review the application of the Gulf States Utilities Company for an operating license.

**Regulatory Activities,* June 12, 1984, Washington, DC. The Subcommittee will review Regulatory Guide 1.35, Revision 3, "Inservice Inspection of Ungrouted Tendons in Prestressed Concrete Containment Structures;" Regulatory Guide 1.35.1, "Determining Prestressing Forces for Inspection of Prestressed Concerte Containments;" and proposed general revisions to Appendix J to 10 CFR 50.

**Maintenance Practices and Procedures,* June 12, 1984, Washington, DC. The Subcommittee will continue review of the NRC Maintenance Program Plan. Presentations also will be made by AEOD regarding valve operability and by RES regarding the Maintenance Personnel Performance Simulation (MAPPS).

**Safeguards and Security,* June 12, 1984, Washington, DC. The Subcommittee will review a proposed rule requiring replacement of highly enriched uranium fuel with low enriched uranium at non-power reactors and to review steps for improving security measures at non-power reactors.

**Safety Research Program,* June 13, 1984, Washington, DC. The Subcommittee will continue its review of the proposed NRC Safety Research Program and Budget for FY 1986 and 1987 and also to discuss a draft ACRS report to the Commission on the related matter.

**Combined Extreme External Phenomena and Diablo Canyon,* June 13, 1984, Washington, DC. The Subcommittees will continue their review of the proposed seismic license condition on Diablo Canyon and the technical paper by J. Crouch, et al., recharacterizing the Hosrgi fault as per Chairman Palladino's letter of April 13, 1984 requesting ACRS comments.

**Advanced Reactors,* June 13, 1984, Washington, DC. The Subcommittee will review NRC activities related to LMBFR research.

**Qualification Program for Safety-Related Equipment,* June 19, 1984, Washington, DC. The Subcommittee will discuss the process for revaluating equipment qualification programs.

**Maintenance Practices and Procedures,* June 21, 1984, Seattle, WA. The Subcommittee will hear presentations from Battelle regarding Japanese maintenance practices and procedures.

**Regulatory Activities,* July 11, 1984, Washington, DC. The Subcommittee will discuss a reorganized version of Regulatory Guide 1.105, Revision 2, "Instrument Setpoints for Safety-Related Systems".

**Westinghouse Water Reactors,* Date to be determined (July tentative), Washington, DC. The Subcommittee will continue its review of the Westinghouse Advanced Pressurized Water Reactor for Preliminary Design Approval.

**Combined Reliability and Probabilistic Assessment/Limerick,* Date to be determined (early July, tentative), Washington, DC. The Subcommittees will review the probabilistic risk assessment (PRA) for the Limerick Plant.

**Millstone Unit 3,* Date to be determined (late July), Waterford, CT. The Subcommittee will review the application of the Northeast Nuclear Energy Company for an operating license.

**Emergency Core Cooling Systems,* Date to be determined (late July), Washington, DC. The Subcommittee will discuss: (1) Yankee Atomic's decay heat exemption request, (2) NRC–RES Appendix K revision effort status, and

(3) future plans for code assessment program (joint NRR/RES discussion).

Quality and Quality Assurance In Design and Construction, Date to be determined (August-September, tentative), Washington, DC. The Subcommittee will discuss the quantity and quality of quality assurance and quality control personnel at nuclear power plants during construction.

Combined Reliability and Probalistic Assessment/Millstone Unit 3, Date to be determined, Washington, DC. The Subcommittees will review the probalistic risk assessment (PRA) for Millstone Unit 3.

ACRS Full Committee Meeting

June 14–16, 1984: Items are *tentatively* scheduled.

*A. *Consideration of Severe Accidents*—Proposed NRC policy statement regarding consideration of severe accidents in the regulation of nuclear reactors.

*B. *Diablo Canyon Nuclear Power Station*—Discuss items regarding seismic design of this station.

*C. *Use of Low-Enrichment Uranium Fuel in Domestic Non-Power Reactors*—Discuss proposed NRC rule regarding use of LEU to replace HEU in domestic non-power reactors.

*D. *NRC Regulatory Guides*—Discuss proposed revisions to NRC regulatory guides regarding inservice inspection of prestressed tendons.

*E. *River Bend Nuclear Station (tentative)*—Discuss proposed operating request for this facility.

*F. *NRC Safety Research Program and Budget*—Discuss proposed NRC safety research program and budget for FY 1984 and 1987.

*G. *NRC Maintenance Program Plan*—Discuss proposed NRC program plan for maintenance requirements at nuclear facilities.

*H. *Anticipated ACRS Activities*—Anticipated activities of ACRS subcommittees and the full committee will be discussed.

July 12–14, 1984—Agenda to be announced.

August 9–11, 1984—Agenda to be announced.

Dated: May 16, 1984.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 84-13601 Filed 5-18-84; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Advisory Committee for Trade Negotiations; Closing of Meeting

The meeting of the Advisory Committee for Trade Negotiations (the Advisory Committee) to be held Monday, June 4, 1984, from 1:00 p.m. to 4:00 p.m. in Washington, D.C., will involve a review and discussion of the current issues involving the trade policy of the United States. Pursuant to section 2155(f)(2) of Title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

More detailed information can be obtained by contacting Phyllis O. Bonanno, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, D.C. 20506.

William E. Brock,

United States Trade Representative.

[FR Doc. 84-13528 Filed 5-18-84; 8:45 am]

BILLING CODE 3190-01-M

Services Policy Advisory Committee; Closing Meeting

The meeting of the Service Policy Advisory Commitee (the Advisory Committee) to be held Wednesday, June 13, 1984, from 9:30 a.m. to 11:30 a.m. in Washington, D.C., will involve a review and discussion of the current issues involving the trades policy of the United States. Pursuant to section 2155(f)(2) of Title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

More detailed information can be obtained by contacting Phyllis O. Bonanno, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, D.C. 20506.

William E. Brock,

United States Trade Representative.

[FR Doc. 84-13529 Filed 5-18-84; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

Vishay Intertechnology, Inc.; Application

May 14, 1984.

In the Matter of Vishay Intertechnology, Inc., Common Stock, $.10 Par Value; File No. 1-7416; Securities Exchange Act of 1934 Section 12(d) Notice of Application to Withdraw from Listing and Registration.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The common stock of Vishay Intertechnology, Inc. ("Company") is listed and registered on the Amex. Pursuant to a Registration Statement of Form 8-A which became effective on January 24, 1984, the Company is also listed and registered on the New York Stock Exchange ("NYSE"). The Company has determined that the direct and indirect costs and expenses do not justify maintaining the dual listing of the common stock on the Amex and the NYSE.

This application relates solely to withdrawal of the common stock from listing and registration on the Amex and shall have no effect upon the continued listing of such stock on the NYSE. The Amex has posed no objection to this matter.

Any Interested person may, on or before June 4, 1984, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue and order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 84-13626 Filed 5-18-84; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-20947; File No. SR-NYSE-84-16]

Self-Regulatory Organization; Proposed Rule Change by New York Stock Exchange, Inc.; Relating to Amendments to NYSE Rule 97

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C 78s(b)(1), notice is hereby given that on April 17, 1984, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The proposed rule change consists of amendements to Exchange Rule 97 to ease trading restrictions on block positioning firms.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) *Purpose.* Exchange Rule 97 prohibits a member organization that holds any part of a long position in a stock in its trading account resulting from a block transaction it effected with a customer from purchasing additional shares of such stock on a "plus" tick for as long as it holds the position. A firm also may not purchase additional shares of a stock on a "zero plus" tick if the purchase is to accomodate the remainder of a block order to sell the stock which had partially been executed on the immediately preceding sale on a "plus" tick. Furthermore, a firm may not purchase stock at a price higher than the lowest price at which any block was acquired, unless the purchase facilitates another block transaction and is effected on a "zero plus" tick on the bid or on a "minus" or "zero minus" tick. In the case of a short position acquired in the course of facilitating a customer's block order to buy stock, a firm is restricted from supplying further stock at a price lower than the highest price at which any such position was acquired for as long as the firm holds the short position, unless the subsequent sale is to facilitate another block transaction pursuant to a customer's order to buy stock.

For the purposes of the Rule, a block is defined as a quantity of stock having a market value of $200,000 or more. Exceptions to the Rule exist for transactions involving bona fide arbitrage or for trading in the securities of companies involved in a publicly announced merger, acquisition, consolidation, tender, etc.; to offset a transaction made in error; to facilitate the conversion of options; or by specialists in the stocks in which they are registered.

The reason for the adoption of Rule 97 was a concern that a block positioner might engage in manipulative practices by attempting to "mark up" or "mark down" the price of a stock in order to enable the position acquired in the course of block positioning to the liquidated at a profit. The various "tick" restrictions mentioned above were designed to address this concern. The general exceptions (paragraph (c) of Rule 97) to the Rule 97 trading restrictions were designed to avoid the possibility that the Rule's restrictions would impair legitimate business activities of member firms and in recongnition of the fact that the type of transactions covered by the exemptions are viewed as being beneficial to the market.

The proposed changes to Rules 97 would replace the current limitations on the trading of member organizations because of their block positioning activities with somewhat less restrictive limitations that would be applicable only for the remainder of the trading day on which a block position was acquired. The blanket prohibition against a purchase on a "plus" tick would be the replaced by a prohibition against such a purchase only if the purchase would result in a new daily high or was made within one-half hour of the close. The prohibition against a "zero plus" purchase that is the remainder of a block which had been purchased on a "plus" tick on the immediately preceding sale would be eliminated. The current Rule's prohibition against a purchase at a price higher than the lowest price at which any block was acquired (unless it facilitates a block transaction and is effected on a "zero plus" tick on the bid or on a "minus" or "zero minus" tick) would be modified. A block positioner, which is long stock as a result of accommodating a block order, would be prohibited from effecting any subsequent purchase on a plus tick at a price higher than the lowest price at which any block was acquired that day. A block positioner would be prohibited from purchasing on a zero plus tick more than 50% of the stock offered at a price higher than the lowest price at which any part of a block was acquired.

The prohibition in the case of a short position of a sale at a price lower than the highest price at which any position was acquired (unless it facilitates another block transaction) would be deleted. The definition of a block as a quantity of stock having a market value of $200,000 or more would remain. There would be no change in the existing exemptions to the Rule, however, and additional exemption would be made for purchases that facilitate another block transaction where the firm already has a long position in the stock.

The proposed amendment to Rule 97 to limit the applicability of the Rule to the day on which a position is acquired is realistic and appropriate in terms of the way we understand block positioning firms actually conduct that aspect of their business. Firms acquire block positions to accommodate institutional customers, and not necessarily with any prior intent to profit from the liquidation of the block (albeit, good business sense would dictate that in liquidating the block, the firm would try to profit or minimize its loss as market conditions permit). In today's volatile markets, firms seek to "unwind" positions as soon as possible and, preferably, on the same day they acquire them, so as to minimize exposure to market risk. Firms are particularly wary of overnight risk, and the uncertainty of the next day's opening price in the security in question.

The proposed prohibition of a purchase on a plus tick only if the purchase would result in a new daily high or was within one-half hour of the

close is more realistic in terms of today's market than the blanket prohibition against any purchase on a "plus" tick. The proposed restrictions would directly focus on the types of purchases that are most likely to be used in attempting to unduly mark up the price of a stock. The Exchange notes that the Commission has been particularly concerned about "marking up" activity at or near the close of trading, as the closing price is widely perceived as the most important price of the day for purposes of valuing inventory. The closing price is also a factor, of course, that will affect the price at which the stock opens the next day. In fact, the Exchange has been strengthening its surveillance programs to detect possible instances of manipulative trading activity near the close. Rule 97's proposed prohibition against purchases on a "plus" tick within one-half hour of the close is particularly addressed to this regulatory concern. The prohibition also would address an attempt by a block positioner to mark up the close when he has intentions to hold a position overnight and liquidate it at the opening the next day. As mentioned, the price at which a stock closes will have an effect on the opening price the next day. Thus, the prohibition might also mitigate some-what concerns about Rule 97 restrictions applying only on the day a block is acquired.

The prohibition of a purchase on a "zero plus" tick if the purchase is the remainder of a block which had been partially executed on the immediately preceding sale on a "plus" tick is felt to be unnecessary. We have not been able to determine the rationale for this restriction. Possibly, it was aimed at preventing the "splitting" of block prints to give the impression of numerous investors having a buying interest in the stock. Today, of course, block positioning firms advertise their participation in large block trades as a way of attracting additional business. "Split prints" are not a common occurrence.

The proposed limitation of a purchase on a "zero plus" tick to no more than 50% of the stock offered at a price higher than the lowest price at which any part of a block was acquired, limits the ability of a block positioner to influence the price of the stock by taking all the stock offered at a particular price level.

The restriction in the case of a short position of a sale at a price lower than the highest price at which any position was acquired, unless it is a sale to facilitate a block transaction, would be deleted. However, the normal short sale restrictions would still be applicable, of course. The short sale restrictions were designed to prevent a person from unduly "marking down" the price of a security and additional regulation on block positioners aimed at the same regulatory objective seems unnecessary and inappropriate.

The exempted transactions would remain the same, except that an additional exemption would be made for a transaction that facilitates a block transaction. This exemption is being proposed in recognition of the fact that a block positioner that has a position in a stock may, in the ordinary course of its business, seek to facilitate one or more additional block transactions for its customers. In these situations, the block positioner is not really actively initiating proprietary trading, but is really acting "passively" to accommodate a customer, and thus is not entering the market with manipulative intent. It should be noted that the present Rule's provisions against buying stock at a price higher than the lowest price at which any block was acquired (in the case of a long position) or selling stock at a price lower than the highest price at which any block was acquired (in the case of a short position) already contain certain exemptions relating to the facilitation of subsequent blocks. The new general exemption to the Rule 97 restrictions, therefore is an extension of a concept that has precedent in the existing rule.

(2) *Statutory Basis.* By removing outmoded restrictions on the activities of block positioners, the proposed rule change can be expected to facilitate trading, thereby adding to the depth, liquidity, and overall quality of the Exchange market. Thus, the proposed rule change can be said to "facilitate transactions in securities" and "remove impediments to and perfect the mechanism of a free and open market and a national market system", as called for in Section 6(b)(5) of the Securities Exchange Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, will available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 11, 1984. For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 10, 1984.

George A. Fitzsimmons,

Secretary.

EXHIBIT A

Proposed Rule Change

Deletions [bracketed]

Additions italicized

Rule 97. Limitation on Members' Trading Because of Block Positioning.

(a) When a member organization holds any part of a *long* position in a stock in its trading account resulting from a block transaction it effected with a customer, such member organization may not effect the following

transactions for any account in which it has a direct or indirect interest *for the remainder of the trading day on which it acquired such position:*

[(1) in the case of a "long" position:

(i) a purchase on a "plus" tick;

(ii) a purchase on a "zero plus" tick if such purchase is the remainder of a block which had partially been executed on the immediately preceding sale on a "plus" tick; or

(iii) a purchase at a price higher than the lowest price at which any block was acquired unless it is a purchase to facilitate a block transaction and such purchase is effected on a "zero plus" tick on the bid or on a "minus" or "zero minus" tick.

(2) in the case of a "short" position, a sale at a price lower than the highest price at which any position was acquired unless it is a sale to facilitate a block transaction.]

(i) a purchase on a "plus" tick if such purchase would result in a new daily high;

(ii) a purchase on a "plus" tick within one-half hour of the close;

(iii) a purchase on a "plus" tick at a price higher than the lowest price at which any block was acquired in a previous transaction on that day; or

[FR Doc. 84-13627 Filed 5-18-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23305; 70-6981]

Middle South Utilities, Inc.; Proposal to Issue and Sell Additional Shares of Common Stock Under Terms of Dividend Reinvestment Plan; Exception From Competitive Bidding

May 14, 1984.

Middle South Utilities, Inc. ("Middle South"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, has filed a declaration with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) promulgated thereunder.

Middle South proposes to issue and sell an additional 15,000,000 shares of Common Stock ("Additional Common Stock") under the terms of its Dividend Reinvestment and Stock Purchase Plan, as amended and restated ("Plan"). The Commission authorized the Plan, as amended, in HCAR No. 22718, dated November 18, 1982.

Middle South permits holders of record and certain beneficial owners of its Common Stock, $5 par value ("Common Stock") and of the preferred stocks ("Preferred Stock") of Middle South's principal operating subsidiaries, Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company and New Orleans Public Service Inc., along with eligible employees, to participate in Middle South's Plan. Participants in the Plan may have dividends on all, or on less than all, of their shares of Common Stock and/or Preferred Stock, as well as optional cash payments, invested in the purchase of additional shares of Common Stock.

The price per share for purchases made through reinvestment of cash dividends on shares of Common Stock or cash dividends on shares of Preferred Stock, on any day on which purchases are made under the Plan, is equal to ninety-five percent (95%) of the average of the daily high and low sale prices of the Common Stock, based on consolidated trading of the Common Stock as defined by the Consolidated Tape Association and reported as part of the consolidated trading prices of New York Stock Exchange listed securities, for the period of the last three days on which Common Stock was traded immediately preceding the applicable investment date. The price per share for purchases made through investment of cash payments is equal to one hundred percent (100%) of such average. No shares of Common Stock will be sold under the Plan at less than the par value of such shares. Participants in the Plan pay no brokerage commission or service charge.

Through December 31, 1984, 25,000,000 shares of Common Stock are authorized to be issued and sold pursuant to the Plan and have been registered with the Commission. Through April.30, 1984, 21,885,150 of such shares have been sold, and the balance is expected to be sold in the near future. The additional 15,000,000 shares of Common Stock which are the subject of this declaration should be sufficient to provide for the requirements of the Plan through December 31, 1985.

Middle South proposes to apply the net proceeds from the sale of the Additional Common Stock toward the reduction of then outstanding bank loans made to Middle South pursuant to the Revolving Credit Agreement between Middle South and various commercial banks, dated June 27, 1980, to the purchase of common stock from Middle South's subsidiaries and for other corporate purposes.

Middle South has requested that the issuance and sale of the Additional Common Stock through the reinvestment of dividends and through the investment of optional cash payments be excepted from the requirements of Rule 50 as inappropriate and unnecessary to aid the Commission in carrying out the provisions of Section 7 of the Act.

The 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 June 7, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the 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, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-13621 Filed 5-18-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23306; 70-6951]

New England Electric System et al.; Supplemental Notice of Proposal to Increase Short-Term Borrowings of Subsidiary Exception From Competitive Bidding

May 14, 1984.

New England Electric System ("NEES"), a registered holding company, and five of its subsidiaries, Granite State Electric Company ("Granite"), Massachusetts Electric Company ("Mass Electric"), The Narragansett Electric Company ("Narragansett"), New England Power Company ("NEP"), and New England Power Service Company ("NEPSCO"), 25 Research Drive, Westborough, Massachusetts, 01581, have filed a post-effective amendment to the application-declaration in this proceeding with this Commission pursuant to Sections 6(a), 7, 9(a), 10, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45 and 50(a)(5) thereunder.

By order dated March 28, 1984 (HCAR No. 23265), the above-named subsidiaries were authorized through March 31, 1985, to borrow from the system money pool and/or banks, and/or, in the case of Mass Electric and NEP, to issue commercial paper up to the following maximum outstanding

amounts: Granite—$7,000,000; Mass Electric—$15,000,000; Narragansett—$25,000,000; NEP—$195,000,000; and NEPSCO—$3,500,000. Narragansett now requests an increase of $7,000,000, from $25,000,000 to $32,000,000, in its short-term borrowing authority.

The amended 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 June 7, 1984 to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants 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-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary

[FR Doc. 84-13619 Filed 5-18-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23307; 70-6971]

New England Energy Inc.; Proposal To Enter Into Interest Rate Swaps

May 15, 1984.

New England Energy Incorporated ("NEEI"), 25 Research Drive, Westborough, Massachusetts 01581, a fuel supply subsidiary of New England Energy System, a registered holding company, has filed an application-declaration with this Commission pursuant to Sections 6(a), 7, 9(a) and 10 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42(b)(2) and 50 thereunder.

By order dated August 24, 1981 (HCAR No. 22175), the Commission authorized NEEI to enter into a secured revolving credit and term loan agreement ("Bank Loan") with Bank of Montreal, New York Branch, and Citibank, N.A. ("Banks"). The terms of the Bank Loan provide for borrowings of up to a total of $400 million in two different tranches. The first tranche ("Tranche A") operates as a revolving credit loan through December 31, 1985, subject to extension to December 31, 1986. At the end of the revolving credit period, it may be converted to a 5-year term loan with equal quarterly amortization. The second tranche ("Tranche B") is a revolving credit loan through June 30, 1985, subject to extensions to December 31, 1986. At the end of the revolving credit period, it may be converted to a 5½-year term loan to be repaid with net income from the mortgaged properties.

Interest paid on borrowings under the revolving credit arrangement and term loan arrangement can, at NEEI's option, be calculated based on: (i) The Banks' floating prime rates, (ii) LIBOR rates of various maturities up to one year, and (iii) rates offered in the Interbank Federal Funds market for maturities of up to 180 days. Under this facility, NEEI may borrow at fixed rates for periods longer than one year only when such rates are offered by the Banks.

NEEI proposes to enter into one or more interest payment exchange contracts ("Swap Agreements"), on or before December 31, 1985, for a term or terms ranging between three and seven years. Under the Swap Agreements(s) NEEI would agree to make payments to a counterparty payable annually or semi-annually in arrears, calculated by reference to an established fixed rate of interest and to specific fixed principal amounts. In return, the counterparty would agree to make payments to NEEI, based upon the same principal amounts and an agreed-upon interest rate index. The total principal amounts covered under the Swap Agreement(s) will not exceed $150 million at any one time. In no event will the payments made by NEEI exceed by more than 1.5% per annum the interest rate, at the time of entering into a Swap Agreement, on direct obligations of the U.S. Government having maturities comparable to the term of such Swap Agreement(s).

NEEI may be obligated to pay an arrangement fee and various legal fees and other expenses which will increase the effective cost of the interest rate swap. Also, in the event an intermediary between the counterparty and NEEI is necessary for the purpose of guaranteeing payment obligations under the Swap Agreement, such intermediary would require a fee not to exceed ½% per annum on the principal amount of the Swap Agreement(s). NEEI may also be required to pay amounts in addition to the payments received under the interest-rate swap in order to meet fully its interest payment obligations under the Bank Loan. Based on the March 15, 1984 yield on U.S. Treasury Notes due in February 1989 of 11.96%, the effective rate on the fixed rate obligation under the Swap Agreement would not exceed 13.96%, plus any amounts required in excess of what NEEI receives from the counterparty to meet its obligations under the Bank Loan.

It is anticipated that the Swap Agreement(s) would provide, in effect, that NEEI may not terminate the agreement without the counterparty's consent or without first making substantial early termination payments. To the extent a transaction is not excepted from Rule 50 by 50(a)(2), NEEI proposes to follow competitive procedures in accordance with the Commission's Statement of Policy, dated September 2, 1982 (HCAR No. 22623).

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 June 7, 1984 to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant 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-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-13622 Filed 5-18-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13942; File No. 812-5814]

Prudential Insurance Company of America; Filing of Application

May 15, 1984.

Notice is hereby given that the Prudential Insurance Company of America ("Prudential"), Prudential Plaza, Newark, New Jersey, 07102, filed an application on April 3, 1984 for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") granting an exemption from all provisions of the Act for the Prudential Canadian Common Stock Account, the Prudential Canadian

Bond Account, the Prudential Canadian Money Market Account, and any other Prudential separate account designated as a "Prudential Canadian" account which is hereafter organized and operated in conformity with the representations made in this application. Interested person are referred to the application on file with the Commission for a complete statement of Applicant's representations, which are summarized below, and are referred to the Act for a statement of the relevant statutory provisions.

Applicant, a mutual life insurance company organized under the laws of the State of New Jersey, established the Prudential Canadian accounts on October 11, 1983 to fund certain variable annuity and variable life insurance contracts ("contracts"). Applicant presently intends to invest the assets of each Prudential Canadian account in securities or obligations of Canadian issuers, although in the future it may invest up to 25% of these assets in securities or obligations of United States issuers. All funds received under the contracts and all securities of the Prudential Canadian accounts will be held in Canada, the operations of the accounts will be carried on in Canadian dollars, the management of the accounts' portfolios will be carried on in Canada, and the purchase and sale of securities for the account, including payment and delivery, will be made in Canada.

Applicant intends to sell the variable contract only to permanent residents of Canada, or to businesses operating in Canada for use in connection with pension plans covering their employees employed in Canada. Applicant states that it is possible that some United States citizens may purchase a contract, because Canadian law impedes it from inquiring into the nationality of prospective customers. Applicant also states that in the case of group contracts, it is possible that some United States citizens will be involved by virtue of their employment and requirements of coverage. However, Applicant represents that it will direct its marketing efforts at Canadian citezens and will exercise care to avoid marketing its contracts in situations where a substantial number of United States citizens might be involved. Applicant further states that it may allocate to the Prudential Canadian accounts some portion of the contributions of its Canadian employees under Applicant's broad retirement program.

Applicant has included as an exhibit to the application a letter sent to it by the Superintendent of the Department of Insurance of Canada, who has been delegated the administration of the Foreign Insurance Companies Act of Canada. In the letter the Superintendent describes the system of regulation applicable to the Prudential Canadian accounts and states that he believes the interests of Canadian citizens in the accounts will be protected by applicable Canadian law.

In support of the requested relief pursuant to Section 6(c), Applicant asserts, among other things, that: (1) It is not in the public interest to require a United States company doing business solely abroad to be subject to extensive statutory limitations and restrictions which would not apply to its competitors because the proposed operations of the Prudential Canadian accounts involve no significant United States interest; and (2) but for certain historical reasons described in the application, Applicant could have organized a wholly-owned subsidiary under Canadian law and conducted its business in a manner that would not have given rise to an investment company under the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 8, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, 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. 84-13624 Filed 5-18-84; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-8444]

U.S. Air Group, Inc.; Application To Withdraw From Listing and Registration

May 14, 1984.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the Boston Stock Exchange, Inc. ("BSE") and the Philadelphia Stock Exchange, Inc. ("Phlx").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The common stock of U.S. Air Group, Inc. ("Company") is listed and registered on the BSE and Phlx. In addition, the Company is also listed and registered on the New York Stock Exchange ("NYSE"). In an effort to reduce the Company's expenses, the Company has determined that continued listing of its stock on all three exchanges is no longer justified and wishes to remove its stock from the BSE and Phlx.

This application relates solely to withdrawal of the common stock from listing and registration on the BSE and Phlx and shall have no effect upon the continued listing of such stock on the NYSE.

Any interested person may, on or before June 4, 1984, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-13625 Filed 5-18-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No.20960; File No. SR-DTC-84-2]

Self Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Depository Trust Co.

May 15, 1984.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on April 26, 1984, the Depository Trust Company ("DTC")

filed with the Securities and Exchange Commission a proposed rule change increasing certain service fees. The Commission is publishing this notice to solicit comments on that rule change.

The proposed rule change revises DTC's fee schedule for certain ancillary services performed by DTC's Interface Department for its remote bank participants. Specifically the proposed rule change would increase the service fee charged for basic tasks to $80.00 per month and for additional tasks to $170.00 per month. The proposed rule change also establishes certain physical transaction forwarding fees: $.12 for deposits; $.37 for withdrawals; and $.70 for urgent withdrawals. DTC states that these fee increases are necessary in or to better reflect its costs of providing such service.

DTC solicited comments on its original proposed fee increases in December 1983, and received comments from ten participants and one industry association. Five of the comment letters addressed the proposed fee increases for Interface Department services. Of these, four objected to the magnitude of the increases.

In response to these comments, DTC revised the structure of the proposed fee increases. DTC significantly reduced the fee increases for basic tasks and additional tasks. To increase its revenue related to these services, however, DTC added forwarding charges for certain physical deposits and withdrawals. In its filing, DTC stated that the charges as amended will allow it to recover the cost of providing these services in a manner that more directly reflects the costs of ther particular activities involved. Furthermore, in conversations with Comission staff, DTC projected that revenue under the revised schedule would equal, approximately, revenues under the original proposal. DTC officials noted, however, that the revised fee schedule would raise revenues from participants on the basis of their use of Interface Department services, rather than assessing all Interface Department service users equally. Finally, DTC officials noted that these fees have not been changed since 1982.

The foregoing change has become effective, pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Reference should be made to File No. SR-DTC-84-2.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspective and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant the delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-13620 Filed 5-18-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20961; File No. SR-NASD-84-8]

Self-Regulatory Organizations; Filing of Proposed Rule Change by National Association of Securities Dealers, Inc.

May 15, 1984.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on April 27, 1984, the National Association of Securities Dealers, Inc. ("NASD"), 1735 K Street, N.W., Washington, D.C. 20006, filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The NASD is amending Article III, Section 10 of its Rules of Fair Practice which limits the dollar amount that a member, or person associated with a member, may give to any person when the payment or gratuity is given in relation to the business of the recipient's employer. The NASD states that the dollar amount has not been changed since 1969 and the NASD feels that, due to inflation, it is appropriate to raise the dollar amount from $25 to $50. In addition, current exchange requirements have a $50 limit and amending the rule will avoid inconsistent limitations for dual members. The NASD states that the proposed amendment is consistent with Section 15A(b)(6) of the Act in that it is designed to promote just and equitable principles of trade and to foster cooperation and coordination between persons engaged in the regulation of the securities industry.

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Reference should be made to File No. SR-NASD-84-8.

Copies of the submission, all subsequent amendments, all written statements ,with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the NASD.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-13623 Filed 5-18-84; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Presidential Advisory Committee on Women's Business Ownership; Public Meeting

The Presidential Advisory Committee on Women's Business Ownership will hold a public meeting on Thursday, May 31, 1984 from 9:00 am to 5:00 pm at the GTE building, 7th Floor Conference Room, 100 Wilshire Boulevard, and

Friday, June 1, 1984 from 9:00 am to 10:30 am at the First Interstate Bancorp Tower, 707 Wilshire Boulevard, 60th Floor, Los Angeles, California, to hear statements on Women Business Ownership. The meeting will be open to the public, however, space is limited.

Persons wishing to present written statements should notify Ms. Barbara Spyridon, Special Assistant to the Administrator, Small Business Administration, Room 1046, 1441 L Street, N.W., Washington, D.C. 20416 in writing or by telephone (202) 653–6167 no later than May 25, 1984.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 15, 1984.

[FR Doc. 84–13640 Filed 5–18–84; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

National Motor Carrier Advisory Committee; Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces that the National Motor Carrier Advisory Committee will hold a meeting on June 18, 1984, beginning at 9:00 a.m., in Washington, D.C., at the Department of Transportation's Headquarters Building, 400 Seventh Street, SW., Washington, D.C., Room 2230. The meeting is open to the public.

The agenda includes the following topics: Truck brake research, Bureau of Motor Carrier Safety (BMCS) seat belt use requirement and enforcement, American Trucking Associations seat belt program, status of truck route designations, rehabilitation of older Interstate segments not meeting Interstate standards and BMCS driver training text.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Stapleton, Executive Director, National Motor Carrier Advisory Committee, Federal Highway Administration, HCC–20, Room 4224, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 426–0834. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

Issued on: May 17, 1984.

R. D. Morgan,

Executive Director, Federal Highway Administration.

[FR Doc. 84–13741 Filed 5–18–84; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

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, Pub. 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 to the Treasury Department Clearance Officer, Room 7227, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512–0185
Form Number: ATF F 5400.5
Type of Review: Revision
Title: Report of Theft or Loss of Explosive Materials

OMB Number: 1512–0190
Form Number: ATF F 5100.11
Type of Review: Extension
Title: Withdrawal of Spirits, Denatured Spirits, or Wines for Exportation

OMB Reviewer: Norman Frumkin (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

United States Customs Service

OMB Number: New
Form Number: None
Type of Review: Existing Collection
Title: Change in Status of Transaction—ICB Form #97

Office of the Secretary

OMB Number: New
Form Number: FPI–1 and FPI–2 (TD F 90–19.1 and TD F 90–19.2)
Type of Review: New
Title: Foreign Portfolio Investment Survey

OMB Reviewer: Judy McIntosh (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Dated: May 11, 1984.

John Poore,

Departmental Reports, Management Office.

[FR Doc. 84–13618 Filed 5–18–84; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Customs Service

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Certain Importations Bearing Recorded U.S. Trademarks; Solicitation of Economic Data

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

ACTION: Solicitation of economic data.

SUMMARY: This document solicits economic data from the public concerning the importation of articles manufactured abroad bearing genuine trademarks without the consent of the registered U.S. trademark owner (so-called "parallel imports" or "grey market goods"). Questions are presented on behalf of the Working Group on Intellecutal Property (WGIP) of the Cabinet Council on Commerce and Trade (CCCT).

DATE: Data are requested on or before July 20, 1984.

ADDRESS: Written data (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229..

FOR FURTHER INFORMATION CONTACT:

Customs Service aspects

Sam Orandle, Entry Procedures and Penalties Division, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202/566–5765).

Questions posed by the CCCT Working Group on Intellectual Property

Barbara Luxenberg, Special Assistant to the Assistant Secretary and Commissioner, U.S. Patent and Trademark Office, Department of Commerce, Crystal Plaza 3, Room 11E10, Washington, D.C. 20231 (703/557–3071)

Background

The statutory framework affecting the importation of foreign articles bearing registered trademarks is contained in section 526 of the Tariff Act of 1930, as amended (19 U.S.C. 1526) and section 42 of the Lanham Trademark Act (15 U.S.C. 1124). The Customs Regulations implementing these statutes are set forth in Part 133 of Title 19, Code of Federal Regulations. The Customs Regulations permit any person to import foreign manufactured articles bearing genuine trademarks where: (1) Both the foreign

and U.S. trademark are owned by the same person or business entity; (2) the owners of the foreign and domestic trademarks are parent and subsidiary companies or are otherwise subject to common ownership or control; or (3) the articles bear a trademark applied under authorization of the U.S. trademark owner. Otherwise the regulations prohibit importations of such articles without the consent of the U.S. trademark owner and provide for the seizure and forfeiture of such articles.

Because of the controversy and considerable interest on both sides of the issue expressed in many letters to, and requests for meetings with, the Executive Branch Departments and Agencies, the Cabinet Council on Commerce and Trade's Working Group on Intellectual Property is studying the issues relating to parallel imports. The WGIP may make a recommendatio to the CCCT with respect to parallel imports of trademark products when it concludes its study.

To help the WGIP assess the long and short term economic effects of parallel imports, the Department of the Treasury has agreed to solicit relevant economic data from interested parties. The questions below are drawn from questions submitted by WGIP members from the following Federal agencies: United States Trade Representative, Patent and Trademark Office of the Department of Commerce, State Department, Antitrust Division of the Department of Justice, and the Office of Management and Budget.

Questions

"Parallel imports" or "grey market goods" are those goods manufactured abroad bearing an authentic U.S. trademark that are imported and sold in the United States without authorization from the owner of the U.S. trademark.

All questions need not be answered by each respondent, but those that are should be answered as completely as possible using verifiable data. Respondents should cite sources wherever possible. Any underlying assumptions used in preparing analyses must be stated explicitly. The basis for making estimates must be explained. Wherever possible, systematic analysis should be provided rather than anecdotal evidence. Respondents should indicate whether they are licensors or assignors of U.S. trademarks, U.S. trademark owners, authorized distributors of trademarked products, sellers or importers of parallel imports, consumers, or other interested parties. Please provide the information separately for each distinct trademarked product and separately for each of the past ten calendar years, 1974–1983. If information is not available for each year, please provide information for those years it is available.

The questions below are intended to be as complete as possible. However if you have any other information relevant to parallel import issues you may provide that using verifiable data.

A. Questions for all concerned respondents.

1. Which trademarked products and product markets in the United States are affected by parallel imports? Explain how you define the product market.

2. For each trademarked product and each product market, what are total U.S. sales in units and dollars? What percentage of those total sales do sales of parallel imports represent in units and dollars? How have those market shares changed in the past ten years?

3. For each trademarked product and each product market, from which countries are parallel imports brought into the United States? What are total U.S. sales in units and dollars of parallel imports of each trademarked product and in each product market from each country?

4. For each country identified above what volume of U.S. sales (in units and dollars) resulted from exports to the United States by firms licensed to use the trademark in that country? Were such licensees barred in their license agreement from exporting that product to the United States? If not, why didn't the trademark owner seek to bar them?

5. For each country, describe each relevant legal restriction placed on trademark owners that affect their ability to restrict parallel imports to the United States. For example, which of these countries, if any:

a. Require trademark holders to license their trademarks to local producers in order to gain trademark protection?

b. Prohibit trademark license agreements that restrict the local trademark licensee from exporting that trademarked product to the United States?

c. Do not give the trademark holder standing equal to the local licensee in its court system to enforce any licensing agreements?

d. Place any other legal restrictions on trademark owners?

6. Parallel imports generally exist when the price of a trademarked good in the United States is higher than the price of the imported good. Please provide verificable information that will indicate which of the following factors contributed significantly to any price differential in the product market in which you operate:

a. The trademarked good in the United States includes tied-in services—e.g., warranties, consumer service—that are not provided with the imported good.

b. The sanctioned U.S. distributor of the trademarked good places a larger mark-up (over the wholesale price) on the good than do the foreign distributors who supply the parallel imports.

c. The trademarked good is licensed for production in various countries, and production costs are lower in foreign countries than in the United States.

d. The trademarked good is centrally produced by the trademark holder and then distributed to various countries, and the trademark holder sets different wholesale prices in different countries to take advantage of different degrees of price sensitivity across countries.

e. Relative exchange rates resulting in price differentials across national borders.

f. Any other factors.

7. If a price differential is not the reason for a trademarked product being sold by parallel importers, what is the reason?

8. Please provide data comparing both: (a) Advertising, promotional, or service levels; and (b) retail prices for trademarked products in cities or regions with little parallel import competition to those with strong parallel import competition.

9. Both trademark owners and parallel importers allege that adoption of their positions would favorably affect U.S. employment. Please provide studies of employment impact which: (a) Contain estimates of both jobs created and jobs lost by allowing or prohibiting parallel import competition, and (b) explicitly state all underlying assumptions.

10. Describe and quantify the costs and benefits of a possible requirement for mandatory labeling which indicates: (a) The trademark owner's warranty does not cover the product, and (b) the actual warranty protection and repair services that are provided.

11. If the rights under a trademark were received from a foreign entity, is that entity in favor of restricting parallel imports? What is the rationale?

B. Questions primarily for owners of trademarks registered in the United States and for authorized distributors. For each question state your relationship, if any, with the foreign user of the U.S. trademark (i.e., subsidiary, distributor, assignee, licensee, licensor, etc.).

1. What effects have competition from parallel imports (or the threat of such competition) in the United States had on the way you do business in the

trademarked product, including but not limited to effects on pricing; warranties offered; and advertising, promotional, and service expenditures? What are the reasons for these effects? Provide documentation that shows that parallel imports were the causal factor in the changes in your business behavior.

2. Compare your business practices (as outlined in the question above) before and after competition from parallel imports began for a particular trademarked product or compare your business practices with respect to trademarked products which are not subject to competition from parallel imports and those that are. Provide documentation that parallel imports were the causal factor.

3. For those trademarked goods for which you have spent money on advertising, promotion, and service network development (excluding warranty service), what percentage of the total per unit costs do each of the associated costs represent? What percentage of the wholesale price? Of the average retail price? What percentage do you bear? Your foreign parent company, licensor, or assignor? Supply data for specific trademarked products.

4. Provide any existing studies on the effect of parallel import sales on advertising, promotion, and service.

5. What effect has the entry into the United States of parallel imports which were not intended for distribution in the United States had on the goodwill associated with your trademark? What are the reasons for such effects? Verify your answer or explain how it can be verified.

6. Describe each case you know of where parallel imports have failed to comply with existing labeling laws prescribed for the products involved. Provide verifiable information on how widespread this is.

7. Describe each difference, including those in warranties, between parallel import trademarked products and your trademarked product sold by you in the United States.

8. For each trademarked product, how many requests have you received for warranty work in the United States? How many of those requests were for warranty work on parallel imports?

9. For trademarked products for which you provide warranties, what percentage of the total per unit costs do the warranty costs represent? What percentage of the wholesale price? Of the average retail price? Supply data for specific trademarked products.

10. When you provide warranties for trademarked products, for what percentage of the costs associated with these warranties do you pay? What percentage do your sanctioned U.S. distributors bear? Your foreign parent company, licensor, assignor, or each other entity in the distribution chain? Data supplied should be for each trademarked product.

11. How many complaints, if any, have consumers made about the warranty service for parallel imports? What were these complaints? To whom were they made? Provide documents for verification. Have you verified whether the complaints were valid?

12. For U.S. manufacturing companies, what were U.S. sales in units and dollars of imported products bearing licensed trademarks—

a. When the trademark was originated by you and licensed to foreign producers without territorial restrictions—

(1) As a result of an arms length transaction?

(2) As a result of governmental bans on territorial restrictions?

b. When the trademark was originated by you and licensed to the foreign producer with territorial restrictions and such imports take place without violation of territorial restrictions (i.e., by third parties)?

c. When the trademark was licensed to the U.S. manufacturer by a foreign trademark originator—

(1) In the presence of territorial restrictions on the licensor in the license?

(2) In the absence of territorial restrictions on the licensor in the license?

13. Have you or others attempted to prevent or restrict foreign licensees from exporting parallel imports to the United States? If so, describe for each country such efforts and the results achieved. Include all litigation brought and all efforts through contract or otherwise to restrict foreign licensees in the sale or export of tademarked products to the United States. Describe each legal ruling with respect to such efforts and indicate whether the effort was successful and if not, why.

14. What are you doing in the United States to protect your trademark from parallel imports?

15. Have you made the business descision not to do business in a country that places restrictions on trademark property rights rather than to sign open-ended licensing agreements that would result in parallel imports?

16. What is your approximate annual profit in dollars from the sale of a trademarked product? What is your approximate annual loss in profits in dollars, if any, that you attribute to competition from parallel imports of that trademarked product? Provide verifiable accounting data.

17. For each trademarked product facing competition from parallel imports, what was the average price you charged U.S. consumers? What was the average price charged for parallel imports?

C. Questions primarily for those who import/sell parallel imports in the United States. For each answer, state your relationship, if any, to the U.S. trademark owner and to a foreign owner or licensee of that trademark.

1. What is the annual dollar volume of your imports/sales of all parallel imports? What percentage of your total import/sales does this amount represent?

2. For each trademarked product, what are your sales in units and dollars? What are total U.S. sales in units and dollars?

3. Describe each effort, if any, that has been made to prevent or restrict you from bringing parallel imports into the United States and selling them.

4. Do you charge consumers less for parallel imports than is charged for the same goods coming from the U.S. trademark owner? If so, indicate the percentage of price reduction giving specific examples and the sources of your price figures. State the reasons that you were able to charge less than the U.S. trademark owner.

5. Aside from a price differential, if any, what are the advantages to consumers of purchasing parallel imports?

6. Do you provide warranties for parallel imports which you import/sell? For all or just some goods? List specific trademarked products and provide copies of the warranties associated with each product. How do these warranties differ, if at all, from those provided by the U.S. trademark owner or by authorized U.S. distributors? Do you alert consumers to any differences? How?

7. What is your annual expenditure in dollars to provide warranties to consumers for each of the trademarked parallel imports that you sell? What percentage of the unit cost, wholesale price, and retail price do those expenditues represent? What percentage of your parallel import revenues do those expenditures represent? Describe your warranties.

8. Do you maintain repair facilities for parallel imports which you import/sell? If so, give specific details on those facilities. How do these facilities and services compare to those of U.S. trademark owners or authorized U.S. distributors?

9. Would you or consumers be harmed economically or otherwise if you were required, prior to importing/selling, to remove/obliterate the trademarks from parallel imports? Explain how and document if possible.

10. Identify each parallel import product that has labels disclosing its origins or containing warranty information. Describe the labels.

11. What is your annual expenditure in dollars for advertising, promoting, and developing service networks (excluding warranties) for each of the trademarked parallel imports that you sell? What percentage of the unit cost, wholesale price, and retail price do those expenditures represent? What percentage of your parallel import revenues do those expenditures represent? Describe your advertising, promotion and service.

12. What is your approximate annual profit from the importation or sale of the parallel imports? Provide verifiable accounting data.

D. Questions primarily for individuals who have purchased parallel imports and for consumer organizations.

1. What parallel import products have you purchased? Did you know at the time you purchased them that they were parallel import? If not, would your purchasing decision have been different had you know? Were there any differences between the parallel imports and the same model product sold by the U.S. trademark owner and its authorized distributors?

2. Describe any problems you have had with the parallel imports and describe the warranties, if any, that they carried.

3. Have you ever purchased a trademarked product which you assumed or were led to believe was warranted by the U.S. trademerk owner and later found out that the product was not under such warrantly because it was made abroad? Give specific instances.

4. Have you ever noticed price differentials between authorized trademarked products and parallel imports products even though the products were identical and carried the same trademark? If so, what percentage of price differential existed between the two?

5. Would you be willing to purchase a product bearing no trademark which was identical in every other respect to a product bearing a recognized trademark if there were no price differential between the two products? If not, at what percentage price reduction would you be willing to purchase the unmarked product? Would you be able to determine that the two products were identical in the absence of a trademark? How?

6. With respect to the unmarked product mentioned above, at what price differential would you be willing to purchase the unmarked product if you knew that it did not carry a warrantly from the owner of the U.S. trademark? At what price reduction would you consider a warranty from the foreign manufacturer or importer/retailer as an acceptable alternative?

7. Was there a label on products you purchased from an unauthorized distributor indicating the procedure to be followed if the product needed repair or was defective in some way? If so, what was your experience in obtaining repair or service on such a product? Would the existence of such a label help you to choose between purchasing an authorized trademarked product and a parallel import?

8. Have you purchased parallel imports which failed to comply with existing labelling laws prescribed for the product involved?

9. Have you been alerted to any differences in warranties between parallel imports and trademarked goods sold by the U.S. trademark owner or authorized distributor?

10. From which souces did you obtain the information on which you based you decision to purchase the trademarked product? Which information did you obtain from the advertisting and sales people of the person from whom you purchased it? Which information from the advertising and sales people of the U.S. trademark owner or one of its authorized sellers? Which information from other sources?

Comments

Data submitted to the Commissioner of Customs will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. to 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Executive Order 12291

Because this document merely requests data and will not result in a regulation which would be a "major rule" as defined by section 1(b) of E.O. 12291, a regulatory impact analysis and review as prescribed by section 3 of the E.O. is not required.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this document because it merely solicits data and will not have a significant economic impact on a substantial number of small entities. Accordingly, the Secretary of the Treasury certifies under the provision of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the document will not have a significant economic impact on a substantial number of small entities. In addition, the document is not expected to have significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Drafting Information

The principal author of this document was Barbara Luxenberg, Special Assistant to the Assistant Secretary and Commissioner of Patents and Trademarks, U.S. Department of Commerce. However, personnel from the Antitrust Division of the Department of Justice, the United States Trade Representative, the Patent and Trademark Office of the Commerce Department, the State Department, the Office of Management and Budget, and Customs and Treasury offices participated in its development.

Approved:

William von Raab,

Commissioner of Customs.

Gerald J. Mossinghoff,

Chairman, Working Group on Intellectual Property of the Cabinet Council on Commerce and Trade, Assistant Secretary and Commissioner of Patents and Trademarks.

John M. Walker Jr.,

Assistant Secretary of the Treasury.

May 2, 1984.

[FR Doc. 84-13568 Filed 5-18-84; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 99
Monday, May 21, 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

	Item
Civil Aeronautics Board	1
Consumer Product Safety Commission	2
Farm Credit Administration	3
Federal Maritime Commisison	4
Federal Mine Safety and Health Review Commission	5
National Council on Educational Research	6

1

CIVIL AERONAUTICS BOARD

[M-404 amdt 1, May 15, 1984]

Notice of addition to the May 17, 1984 meeting.

TIME AND PLACE: 10:00 a.m. (Closed), 2:30 p.m. (Open), May 17, 1984.

PLACE: Room 1012 (Closed), Room 1027 (Open), 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT: 13a. Board Support of FAA Noise Rules. (OGC. BDA).

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, The Secretary, (202) 673-5068.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-13705, Filed 5-17-84; 8:45 am]

BILLING CODE 6320-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION

Agenda Correction

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 49 No. 94 20404.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, May 16, 1984.

CHANGES IN THE MEETING: Agenda was revised to delete previous item 3 concerning Residential Swimming Pool Hazard: Status Report.

For a recorded message containing the latest agenda information, call 301-492-5709.

FOR FURTHER INFORMATION CONTACT: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301-492-6800.

May 15, 1984.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 84-13629 Filed 5-16-84; 4:53 pm]

BILLING CODE 6355-01-M

3

FARM CREDIT ADMINISTRATION

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Federal Farm Credit Board scheduled to be held on the first Monday of June 1984, as specified in 12 CFR 604.325(a).

DATE: Dates and times: The regular meeting of the Federal Farm Credit Board is scheduled to be held on June 4, 1984, 8:30 a.m. to 4:30 p.m.; June 5, 1984, 8:30 a.m. to 4:30 p.m.; and June 6, 1984, 8:30 a.m. to 4:30 p.m.

ADDRESS: Farm Credit Administration, Federal Board Room, 1501 Farm Credit Drive, McLean, VA 22102-5090.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Auberger, Secretary to the Federal Farm Credit Board, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703-883-4010).

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Federal Farm Credit Board will be open to the public (limited space available),and parts of the meeting will be closed to the public. The matters to be considered at the meeting are:

Portions Open to the Public:

- Reports of Board Members
- Governors Report
- Economic Report
- Legislative Report
- Update on Status of Farm Credit System and Farm Credit Issues for Former Federal Board Members
- Other Subjects to be Determined.

Portions Closed to the Public:

- Executive Session(s)
- Agency Report to District Boards of Directors
- Office of Examination and Supervision Report

Dated: May 17, 1984.

Kenneth J. Auberger,

Acting Governor.

[FR Doc. 84-13687 Filed 5-18-84; 8:45 am]

BILLING CODE 6705-01-M

4

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9:00 a.m., May 23, 1984.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, D.C. 20573.

STATUS: Closed.

MATTER TO BE CONSIDERED: 1. Dockets Nos. 83-9 and 83-12: *Prudential Lines, Inc.* v. *Farrell Lines, Inc.*—Consideration of the record.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary, (202) 523-5725.

Francis C. Hurney,

Secretary.

[FR Doc. 84-13628 Filed 5-16-84; 4:41 pm]

BILLING CODE 6730-01-M

5

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

May 16, 1984.

TIME AND DATE: 10:00 a.m., Wednesday, May 23, 1984.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. Freeman United Coal Mining Co., Docket No. LAKE 82-89 (Issues include whether the Administrative Law Judge erred in concluding that the operator violated 30 CFR § 50.20(a), a regulation dealing with the reporting of injuries at a mine.)

TIME AND DATE: Following oral argument.

STATUS: Closed (Pursuant to 5 U.S.C. § 552(c)(10)).

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the above mentioned item.

It was determined by a majority vote of Commissioners that this portion of the meeting be closed.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653-5632.

Jean Ellen,

Agenda Clerk.

[FR Doc. 84-13670 Filed 5-17-84; 2:08 pm]

BILLING CODE 6735-01-M

6

NATIONAL COUNCIL ON EDUCATIONAL RESEARCH

(Lab and Center Committee)
(Only the Committee will be meeting)

TIME AND DATE: 9:30 a.m.—12:00 p.m; 1:00 p.m.—3:00 p.m. Friday, May 25, 1984.

PLACE: 2000 L Street, NW., 6th Floor, Room 613.

STATUS: Open.

MATTERS TO BE DISCUSSED: Lab and Center Committee of the National Council on Educational Research will discuss and adopt their Policy governing the Lab and Center Competition, which it will recommend to the full Council.

James E. Hinish, Jr.,

Acting Executive Director, National Council on Educational Research.

May 16, 1984.

[FR Doc. 84-13727, Filed 5-17-84; 4:00 pm]

BILLING CODE 4000-01-M

federal register

Monday
May 21, 1984

Part II

Environmental Protection Agency

Policy for Review of Advanced Treatment Projects; Notice

ENVIRONMENTAL PROTECTION AGENCY

[WH-FRL 2584-1]

Policy for Review of Advanced Treatment (AT) Projects

AGENCY: Environmental Protection Agency.

ACTION: Notice of program policy and technical procedures for Agency review of advanced treatment projects proposed for funding under the construction grants program.

SUMMARY: This policy supersedes Program Requirements Memorandum (PRM) 79–7, dated March 9, 1979, and interim policies based on the draft revised PRM published for comment on June 20, 1980 (45 FR 41890). Agency policy and technical procedures are set forth to direct Headquarters and Regional (or delegated State) reviews of all wastewater treatment projects designed to meet effluent requirements more stringent than secondary treatment.

SUPPLEMENTARY INFORMATION: This policy establishes nationally consistent procedures for the conduct of advanced treatment (AT) reviews by Environmental Protection Agency (EPA) Headquarters, Regions and delegated States, and improves the technical basis for review of AT projects. Tehcnical procedures for conducting AT reviews are included in an Appendix to the policy.

EPA's intent is to institutionalize the conduct of AT reviews at the lowest feasible level of review and at the earliest feasible time in project development. AT review criteria and technical procedures should be considered in the development and review of water quality standards and in the processes for translating these standards into water quality based effluent limitations for National Pollutant Discharge Elimination System.

To assist States, EPA is now improving its guidance for reviewing water quality standards and for deriving permit effluent limitations based on the standards. After this policy goes into effect, EPA Headquarters will evaluate State and Regional implementation of the policy as a basis for judging the appropriateness of future delegation of AT reviews for projects with incremental costs of more than $3 million. This evaluation will comprise examining how well States and Regions conduct the required AT reviews for projects with incremental AT costs of $3 million or less and assessing the quality of the projects with incremental AT costs over $3 million submitted for Headquarters review.

The policy requires review of only the larger more expensive land treatment projects by providing that:

> EPA Regions should identify proposed projects featuring land treatment, or other innovative/alternative technologies affording wastewater reuse or recycling of pollutants, that result from AT discharge requirements. Where the incremental present worth cost exceeds $3 million, the project must be reviewed under this policy. For this special case, the incremental present worth cost comprises the total present worth cost of project components beyond preliminary treatment. Where the proposed preliminary treatment exceeds the secondary treatment level, the incremental present worth cost includes the cost of proposed treatment beyond that for achieving secondary treatment.

While this provision may require review of a few more land treatment projects than reviewed under the former Program Requirements Memorandum 79–7 (PRM 79–7), the number of reviewed projects is not expected to exceed ten percent of all proposed land treatment projects resulting from AT effluent limitations. Thus, project reviews will focus only on the larger and more expensive projects. The $3 million incremental land treatment limit was selected because present worth costs of most of the smaller, less expensive land treatment projects are comparable with costs of new secondary treatment alternatives.

The AT policy and technical procedures being published today incorporate many comments from States, EPA Regions and Headquarters' offices, and other Federal agencies.

This policy is organized as follows:

Statement of Policy
Expiration Date Application
Background
Authority
Application
1. Definition of Advanced Treatment
2. Projects Requiring Reviews
3. Review Exemptions
4. Review Responsibilities
Implementation
1. Previously Reviewed or Exempted Projects
2. Water Quality Standards
3. Wasteload Allocations/Facilities Planning and Design
4. Principles for Review
5. Submittal of Projects for Headquarters Review
6. Review of Draft AT Reports
7. Disposition of Projects
8. EPA Report to States
9. Agency Overview Procedures
Appendix A. Technical Procedures for Advanced Treatment Project Reviews
Appendix B. Relationship to Previous Policies

Statement of Policy

The Agency will review and fund advanced treatment (AT) projects designed for treatment more stringent than secondary treatment in accordance with the criteria and techinical procedures described herein. Pursuant to directives of the Appropriations Conference Committee, grant funds may be used for construction of new facilities providing treatment greater than secondary, as defined by the Agency, only if the incremental cost of the advanced treatment is $3 million or less, or if the Administrator personally determines that advanced treatment is required and will definitely result in siginficant water quality and public health improvements. For AT projects with incremental AT costs of $3 million or less, it is the policy of the Environmental Protection Agency (EPA) that grants funds may be used for construction of AT facilities only if the EPA Regional Administrator, or delegated State, determines that advanced treatment is required and will definitely result in signficant water quality and public health improvements. The significance of improvements resulting from and AT project will be assessed in terms of contributions toward restoring designated uses or preventing the impairment of designated uses by the proposed project.

The funding of AT projects reviewed under this policy shall be considered justified when all applicable provisions of 40 CFR Part 35 (including cost-effectiveness) and the following review criteria have been met:

1. Scientific data, information, and analyses document an existing impairment of a designated use or a use impairment that would result without the proposed project.

2. A reasonable relationship has been established scientifically between the impairment of a designated use and pollutant loadings.

3. The additional reduction of pollutant loadings resulting from construction and proper operation of the AT facility will make a substantial contribution toward the restoration of the designated use or will prevent impairment of a designated use by the proposed project.

4. All other point source discharges that contribute pollutants resulting in the use impairment of the affected waterbody are regulated under the National Pollutant Discharge Elimination System (NPDES).

5. Provisions have been made to implement those nonpoint source pollution controls that together with the

proposed AT project are considered necessary for restoring a designated use or preventing the impairment of a designated use, and such provisions are included in certified and approved water quality management plan.

Expiration Date

This policy shall be effective upon its publication date and will remain in effect until rescinded.

Background

This policy supersedes Program Requirements Memorandum (PRM) 79–7, dated March 9, 1979, and interim policies based on the draft PRM published for comment on June 20, 1980 [45 FR 41890]. Agency policy and technical procedures are set forth to direct Headquarters and Regional (or delegated State) reviews of all wastewater treatment projects designed to meet effluent requirements more stringent than secondary treatment. Technical procedures for conducting AT reviews are presented in Appendix A. Appendix B describes the relationship of this policy to previous policies.

The purpose of this policy is to assure that the use of Federal funds and the construction of municipal treatment works required by State adopted and EPA-approved water quality standards will result in the maximum return in public health and water quality improvements. EPA funding decisions based on this policy do not abrogate the right and responsibility of States to adopt and meet water quality standards under provisions of sections 301, 303, 402 and 510 of the Act.

Authority

EPA began reviewing AT projects in accordance with directives from the House and Senate Appropriations Committees. The statutory authority for AT reviews is found in section 101(f) of the Clean Water Act, 33 U.S.C. 1251(f), which requires the Administrator to implement the Clean Water Act by making the "best use of available manpower and funds." This authority was upheld by the United States Court of Appeals for the District of Columbia Circuit in *People of the State of California* v. *U.S. Environmental Protection Agency, et al.*, 689 F.2d 217 (D.C. Cir. 1982). In that case, the Court rejected a challenge by the State of California to the legality at AT reviews, holding that such reviews were authorized under section 101(f).

In reports accompanying Appropriations Acts for fiscal year (FY) 1979 and subsequent fiscal years, Congress has instructed EPA to perform AT reviews. Specifically, in action approving the FY 79 appropriation for the construction grants program, the House and Senate Appropriations Conference Committee agree "that grant funds may be used for construction of new facilities providing treatment greater than secondary only if the incremental cost of the advanced treatment is $1 million or less, or if the Administrator personally determines that advanced treatment is required and will definitely result in significant water quality and public health improvements."

In implementing that action, EPA issued PRM 79–7 on March 9, 1979, effective on that date. All AT projects proposed to receive either a step 2 or Step 3 grant in FY 79 were required to undergo an AT review unless the AT project, or portion thereof, had already been funded by a Step 3 grant before issuance of the Conference Committee directive in October 1978. If the incremental cost for the AT portion of the project exceeded $1 million, the review was conducted by EPA Headquarters and signed by the Administrator. If the AT incremental cost of the project was $1 million or less, a review was conducted at the Regional level. For FY 80 and subsequent fiscal years, the limit for Headquarters review was raised to $3 million; however, the Committees directed that all other AT projects be reviewed at the Regional level regardless of costs.

For projects with AT incremental costs over $3 million, the FY 81 Appropriations Conference Committee Report directed the Agency to continue the AT project reviews, perform the reviews at Headquarters, and cease delegation of data collection and project evaluation to Regions and States. The FY 81 Appropriations Act (Pub L. 96–526) further provided for the continuation of AT project reviews by exempting them from Appropriation Act language which otherwise prohibited retroactive requirements for the construction grants program.

For FY 82 and subsequent fiscal years funding and positions were provided for AT reviews. The FY 84 House Committee Report urged that State and Regional reviews be based on the same set of criteria as Headquarters to avoid potential wasted effort in planning and design of projects that may not be approvable.

Application

1. Definition of Advanced Treatment

The Agency has defined secondary treatment in terms of attaining an avarage effluent quality for both biochemical oxygen demand, five-day (BOD_5), and suspended solids (SS) of 30 milligrams per liter (mg/1) in a period of 30 consecutive days, an average effluent quality of 45mg/1 for the same pollutants in a period of 7 consecutive days, and 85 percent removal of the same pollutants in a period of 30 consecutive days (40 CFR Part 133). For the purposes of this policy, an AT project shall be defined as any project that: (a) Is designed to met effluent limitations for BOD_5 or SS less than 30 mg/1 (30-day average), or (b) is designed to meet effluent limitations for the removal of ammonia, nitrogen, phosphorus, or other pollutants, or (c) is designed to provide stringent disinfection by means of coagulation and filtration facilities.

2. Projects Requiring Reviews

a. *Advanced Treatment Projects.* Except for certain projects exempted as described below, this policy shall be applied to all AT projects prior to the award of a Step 3 (or Step 2+3) construction grant (40 CFR 35.2101). Phased or segmented projects (40 CFR 35.2108) that have received a Step 3 construction grant for a phase or segment with an AT component between October 1, 1978, and the effective date of this policy do not require an additional AT review under this policy.

b. *Special Cases.* (1) The EPA Regions should identify projects other than AT with long interceptors or outfalls for discharge to distant receiving waters due to blanket AT or blanket zero discharge requirements for nearby waters. Where the total capital cost of such a project exceeds by more than $3 million the capital cost of providing secondary treatment with discharge to nearby waters, the project must be reviewed under this policy.

(2) EPA Regions should identify proposed projects featuring land treatment, or other innovative/alternative technologies affording wastewater reuse or recycling of pollutants, that result from AT discharge requirements. Where the incremental present worth cost exceeds $3 million, the project must be reviewed under this policy. For this special case, the incremental present worth cost comprises the total present worth cost of project components beyond preliminary treatment. Where the proposed preliminary treatment exceeds the secondary treatment level, the incremental present worth cost includes the cost of proposed treatment beyond that for achieving secondary treatment.

3. Review Exemptions

a. *Secondary Treatment Processes.* (1) A project designed to meet State definitions of secondary treatment shall not be subject to review under this policy, if the more stringent level of effluent quality is required by State effluent standards not more stringent than 20/20 mg/l BOD_5/SS, and only secondary treatment technologies are required to achieve those levels.

(2) A project featuring only the addition of commonly used disinfection processes for pathogen inactivation (such as chlorination /dechlorination, and ozonation and ultraviolet radiation) to a secondary treatment facility shall not be subject to review under this policy.

b. *Phosphorus Removal.* (1) Secondary treatment facilities with phosphorus removal only which are required to meet the existing international agreement for the Great Lakes basin or the Upper Chesapeake Bay policy shall not be subject to review under this policy.

(2) For projects with incremental AT costs of $3 million or less, the Regional Administrator shall also have the option of exempting from review secondary facilities with phosphorus removal only, where the total phosphorus effluent limitations (as total P) are not less than 1 mg/l, EPA Headquarters will provide an expedited review for such projects with incremental costs over $3 million.

c. *Warm Weather Nitrification.* For projects with incremental AT costs of $3 million or less, the Regional Administrator shall have the option of exempting AT projects from review if such projects provide: (1) Only for warm weather (*e.g.* 20°C or greater) nitrification designed to achieve effluent limitations requiring not more than 90 percent removal of ammonia on streams with designated fishery uses, and (2) effluent flows are greater than stream flows at critical low flows. EPA Headquarters will provide an expedited review for such projects with incremental costs over $3 million.

4. Review Responsibilities

The incremental AT cost is defined as the difference in total capital cost between the most cost-effective secondary treatment facility and the proposed treatment alternative. All AT projects with an incremental capital cost for AT over $3 million, unless exempted, must be approved by the EPA Administrator in order to receive a Step 3 (or Step 2+3) grant.

All AT projects with an incremental capital cost for AT of $3 million or less, unless exempted, must be approved by the Regional Administrator in order to receive a Step 3 (or Step 2+3) grant. The Regional Administrator may delegate responsibility for the review and approval of such AT projects, consistent with the requirements and procedures of this policy, to States with 205(g) delegation for the review of facilities plans.

Implementation

The EPA Regions shall advise the States of this policy and the review criteria. The EPA Regions shall indentify all projects that require reviews under this policy (see Application section) and also require a Step 3 (or Step 2+3) construction grant award. The Regional Administrator shall assure that such projects receive adequate reviews under this policy prior to the award of a Step 3 (or Step 2+3) construction grant.

1. Previously Reviewed or Exempted Projects

No additional AT reviews will be required under this policy of previously reviewed projects with effluent limitation assessments prepared and approved under PRM 79-7 or interim policies based on the draft revised PRM published June 20, 1980. Likewise, projects previously exempted from AT reviews under the aforementioned policies will not require an AT review under this policy unless the project includes:

(a) Denitrification; or

(b) Year round nitrification; or

(c) A filtration process as an addition to nitrification.

2. Water Quality Standards

The water quality standards, established by the States and approved by EPA, are the basic regulatory mechanism for determining the designated uses to be protected and the water quality levels necessary to protect each body of water. The standards include designated uses and criteria established to protect each use. AT project reviews do not substitute for EPA's required review of water quality standards because the AT reviews are predicated on a different objective, are project-specific, and result in an EPA funding decision. Although the reviews may raise questions about the impact of a State standard on discharges in a segment, a separate State-initiated action is necessary to review and revise the standards. In determining whether a proposed AT project meets the criterion of making a substantial contribution toward restoration of a designated use or prevention of a use impairment that would occur without the project, the AT project review will take into account the State designated use and the chemical, physical and biological characteristics of the receiving water body in relation to the designated uses.

The principal foci of the AT analyses will be: (1) The methods used to determine the relationship between the pollutant loadings and the established water quality criteria (*i.e.*, wasteload allocations), (2) the adequacy of the data on which judgments were made, (3) other aspects of applying the established water quality standards (*i.e.* permit averaging periods, mixing zone determinations and seasonal loadings), and (4) the need for proposed AT processes to achieve effluent limitations.

3. Wasteload Allocations/Facilities Planning and Design

The process of establishing or revising effluent limitations for a proposed AT facility includes the performance of wasteload allocations (WLAs) and the establishment of total maximum daily loads (TMDLs) under section 303(d) of the Clean Water Act. Regions and States are strongly encouraged to review the WLAs/TMDLs and proposed effluent limitations affecting AT projects as soon as adequate data are available.

For projects still in planning that appear likely to require a Headquarters AT review, the Regions may submit WLAs and AT effluent limitations to Headquarters for a preliminary review. The results of such review should be taken into consideration in the completion of the facilities plan. This process will expedite further AT review when the proposed project is submitted to Headquarters.

The construction grants regulation (40 CFR 35.2101) requires the completion of AT reviews before the award of Step 3 (or Step 2+3) grant assistance. However, Regions, States, and grantees are encouraged to submit documentation for AT projects immediately following completion of facilities planning and prior to the initiation of work on detailed plans and specifications. Such reviews will be conducted in accordance with this policy.

Generally, AT project reviews will not re-examine the facilities planning or cost-effectiveness analysis that lead to the selection of the proposed AT alternative. AT project reviews may, however, comment upon and make recommendations as to the suitability of AT processes in meeting effluent limitations found to be justified.

4. Principles for Review

The same review criteria will be used in reviewing all AT projects, regardless of incremental costs, although the

appropriate level of effort required to satisfy the review criteria will depend on the nature of the AT project and, in particular, the magnitude of the AT costs involved. Technical procedures are being issued concurrently with this policy (see Appendix A). These procedures, as applicable, will be followed for AT reviews conducted by EPA Headquarters under this policy and should be used for reviews of projects of $3 million or less to ensure consistency of reviews. Supplemental technical guidance will be issued from time to time by the Office of Water. In the review of projects involving the critical habitat of an endangered or threatened species, the requirements of the Endangered Species Act will be met in consultation with the Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate.

5. Submittal of Projects for Headquarters Review

For AT projects with incremental AT costs greater than $3 million, the Regional Office shall submit documentation for Headquarters review, including two copies of the following:

(a) A facilities plan (draft or final) that provides documentation on the alternatives considered, and the Region's (or State's) review comments on the facilities plan;

(b) An AT Project Checklist completed by the Region;

(c) The Region's (or State's) evaluation of the restoration or prevention of impairment of designated uses, and the water quality and public health improvements that will result from AT, based upon data submitted concerning the project; and

(d) The major documents summarizing the water quality standards and the establishment of effluent limitations for the project, including an evaluation of seasonally applied standards and limitations.

This information should be submitted to: Director, Facility Requirements Division (WH–595), U.S. EPA, 401 M Street SW., Washington, DC 20460.

A draft report will be produced for comment within 6 weeks after EPA Headquarters receives acceptable AT project documentation sumitted for a funding decision by the Administrator.

6. Review of Draft AT Reports

As part of EPA's AT project review, a draft report will be prepared for each project, and submitted to the Regional Office (when Headquarters prepares the report), the State and grantee for review and comment.

7. Disposition of Projects Following AT Review

a. *Justified AT Processes.* If, as a result of EPA's AT review, EPA determines that AT processes are justified in accordance with this policy, these processes can be funded subject to all applicable provisions of 40 CFR Part 35.

b. *Unjustified AT Processes.* If, as a result of EPA's AT project review, EPA determines that certain AT processes are not justified, then grant awards for the construction of the unjustified AT processes will be deferred.

Construction grant awards can be made for the construction of secondary treatment and any justified AT components, *provided that* the grantee acknowledges that the Federal government is under no obligation to award grants for the construction of the unjustified AT components in the future.

Based on State policy or regulation, the State may require the grantee to construct the deferred AT components. (For example, States may require this action because of a desire for a greater margin of safety in areas of rapid growth, or where treated water is needed for uses such as aquifer recharge or reclamation.) In such cases, however, EPA will approve grant funding only for secondary treatment and justified AT components, and will not fund the additional deferred AT components.

Where the funding for certain AT components is deferred due to uncertainty over water quality data, modeling or pollutant loadings and the State wishes to resubmit these processes for funding, a water quality and biological monitoring program should be implemented to establish scientifically the relationship between the control of pollutants and the attainment of designated uses, and determine whether the AT components will result in significant water quality and public health improvements.

c. *Relationship to NPDES Permits.* Deferral of funding for AT facilities under the provisions of this policy does not relieve the NPDES permit holder from the enforceable provisions of the Clean Water Act, as amended. In cases where AT processes have been deferred, the Agency will provide its technical findings for consideration by the NPDES permitting authority in reviewing and revising the effluent limitations, as deemed appropriate.

8. EPA Report to States Following AT Review

Following completion of the AT project review, the Agency will provide to the State a report that includes the following:

(a) A summary statement of the information and analyses used in the AT project review which describes how the proposed project relates to the justification criteria for AT processes;

(b) A summary of the conclusions and funding decisions reached;

(c) Recommendations, if any, concerning water quality standards revisions, data and information needs, water quality and biological survey needs, special surveys or studies, or suggested provisions for NPDES permits; and

(d) A listing of sources of data, surveys, studies, plans and other scientific information, or other public comment that was taken into account by the Agency as part of the AT project review.

9. Agency Overview Procedures

As part of the Agency's responsibilities for providing program overview, EPA Headquarters will evaluate: (a) The Region's screening process for previously exempted projects (see subsection 1 of this section), and (b) the adequacy of individual Regional/State AT project reviews. For each AT project reviewed by the Region or State, the Regional Administrator shall prepare a brief summary of the proposed treatment processes, the funding decision resulting from the review, and the basis for that decision. For AT reviews conducted by the Regions, this report can serve as the summary documentation discussed in subsection 8 of this section. Summary documentation of AT reviews will be used as a basis for conducting evaluations under the Office of Water Operating Guidance and Accountability System.

Dated: April 26, 1984.

Jack E. Ravan,

Assistant Administrator for Water.

Appendix A—Technical Procedures for Advanced Treatment (AT) Project Reviews

These technical procedures, as applicable, will be followed for AT reviews conducted by EPA Headquarters under this policy and should be used for projects of $3 million or less to ensure consistency of reviews. As technical guidance is issued by the Office of Water under its "Standards to Permits" priority project program, these procedures will be updated as necessary.

1. Incremental AT Cost

The incremental AT cost is defined as the difference in total capital cost between the most cost-effective secondary treatment facility and the proposed treatment alternative. To develop secondary treatment cost, current cost curves adjusted for the local area or equivalent current cost experience should be used. Where the proposed project involves regionalization or relocation of a discharge point, all pump stations and conveyence systems should be included in the total capital cost.

2. Assessment of Significant Improvement

Congressional directives require that grant funds be used for the construction of new facilities providing treatment greater than secondary only if the advance treatment is required and will definitely result in significant water quality and public health improvements. The AT review criteria of this policy require an assessment of the significance of water quality improvements resulting from the effluent limitations in terms of contributions towards attaining or restoring designated uses.

In applying the AT review criteria and ensuring that the proposed project meets the criteria, project reviews should take into account the following:

(a) In some cases, showing only improvements in chemical water quality parameters may not sufficiently demonstrate a substantial contribution towards the restoration of a use, due to other factors such as man-made physical or hydrologic modifications of a stream or intermittent flows that restrict or prevent use attainment.

(b) A justification for funding an AT project can be based on the need to prevent a projected use impairment *if* scientific data, information, and analyses (including an assessment of the timing and probability of the future pollutant loadings) show that a municipal discharge (without providing for AT) is *likely* to result in the impairment of a designated use. However, where impaired uses are projected based on uncertain pollutant loadings, funding of that future AT need should be deferred, and provisions made for monitoring the water quality and biological impacts (see subsection 7(b) of Implementation section).

3. Water Quality Criteria for Ammonia Toxicity

Due to the significant uncertainties concerning the chronic effects of ammonia toxicity concentrations normally encountered in receiving water, AT facilities that are proposed for sole purpose of preventing ammonia toxicity should be approved only if the following has been demonstrated:

(a) Site specific biological data show that designated uses cannot be restored (or impairment prevented) without reducing ammonia toxicity; or,

(b) Bioassay data (*e.g.*, either laboratory or from a similar site) for resident species show that existing or future ammonia toxicity levels will impair beneficial use attainment. Exposure levels and duration for these tests should be similar to those occurring or anticipated to occur in the receiving water.

After publication of new ammonia toxicity criteria by EPA, AT processes proposed solely to prevent ammonia toxicity may be approved consistent with those criteria and the criteria implementation document provided that there is a showing that species used to derive the criteria are present or could be present with the reduction of ammonia.

4. Modeling Analysis

An appropriate modeling analysis should be used to assess the relationship between alternative levels of treatment and resultant water quality. These analyses can range from simple to complex. Complex modeling should be calibrated and verified. (Sensitivity analyses applied to the variables of the model can help establish whether collection of new data is essential.) Simplified procedures may be appropriate in some situations. However, projects that involve discharge into complex stream segments (e.g., with multiple dischargers or dynamic flow characteristics) need more complex analyses. Projects with discharge into lakes, estuaries, or oceans should have special analyses that usually include complex modeling. Normally these projects involve long-term effects rather than critical event analyses often used for the analysis of rivers.

The project assessment should weigh the uncertainties inherent in the water quality analyses with the marginal costs of the processes being proposed. For example, simplified water quality analyses, with more uncertainties than detailed modeling studies (See Simplified Analytical Method—September 26, 1980 and addendum dated July 25, 1982), may suffice for projects with inexpensive processes that would achieve significant pollution reduction. However, because of the uncertainties and assumptions generally inherent in a simplified analysis, this approach may be inadequate for AT processes with high marginal costs with limited pollutant reduction. In such cases, more sophisticated modeling may be required.

5. NPDES Permit Effluent Limitations

The NPDES permit effluent limitations for the proposed AT facility and the facility process design related thereto serve as the the baseline for the AT project evaluation. The evaluation should assess the effluent quality attainable from the proposed AT facilities during both critical low flow periods with minimum inflitration/inflow (usually hot, dry months) and during higher flow periods as well. The evaluation should also include determination of the effluent quality attainable during such flow condition for the secondary treatment processes and that attainable from each proposed AT process as an added increment. The costs of each AT increment should also be provided.

The AT project evaluation should analyze use of seasonal effluent limitations for achieving the water quality standards. The effects of seasonal effluent limitations on selection, design, operation and costs of AT processes, particularly those for ammonia and CBOD removal, should be assessed.

The permit averaging period (*e.g.*, the 7-day or 30-day average) is critical to improving water quality with the least AT cost. Because the flow variability of each receiving water is different and the variability of effluent quality for each AT process is unique, a single averaging period may not apply to all situations. For these reasons, the derivation of the 7-day and 30-day limitations should be based on a careful evaluation of the effluent quality variability that can be tolerated in the receiving waters.

The Agency is conducting technical analyses to study the effects of effluent concentration and streamflow variability, different dilution ratios, and the use of alternative averaging period schemes on receiving water quality. Preliminary results indicate that effluent and streamflow variability and upstream dilution are critical factors affecting the frequency of severe water quality violations.

Based on currently available data for treatment plant performance, full nitrification is a relatively stable treatment process producing stable effluent quality during the summer months. When considered together with streamflow variability and dilution, a nitrified effluent should not cause wide water quality fluctuations during periods of low, stable stream flow.

Preliminary analysis indicate that small fluctuations in the effluent quality of full nitrification facilities designed to achieve 30-day average permit limitations are not likely to have any significant impact on designated uses, especially where the variability of the stream flow is low. Thus, model output should be set as a 30-day average unless site-specific analyses indicate otherwise.

The filtration process usually reduces fluctuations in the quality of treatment plant effluent. Thus, a 30-day average for $CBOD_5$ and NH_3 should be used for such a process unless site-specific analyses indicate otherwise.

Since the receiving water response to fluctuations in inorganic nutrient loadings (phosphorus and inorganic nitrogen) is often slow, short-term fluctuations should not significantly impact receiving water quality. At least a 30-day averaging period, preferably based on site-specific analysis, should be used for nutrient models. In addition, since a chronic toxicity criterion is a "no effect" level for 95 percent of exposed aquatic organisms, the return period of such 30 day exposures must be considered on a site specific basis, taking into account the extent of the effects of the discharge on the aquatic life in the receiving waters.

NPDES regulations require municipal permit limitations to be expressed as both 7-day and 30-day average limitations. Once the appropriate permit averaging period for the model output has been determined, effluent limitations should be calculated for the other averaging periods. For example, if the model output is used as a 30-day limitation, the 7-day limitations must also be calculated. If necessary, the AT Task Force may make conclusions based on 7-day and 30-day averaging periods to the extent that sufficient water quality analysis and data have been submitted or are otherwise available to evaluate these averaging periods.

6. Use of $CBOD_5$ Measurement for Water Quality Modeling to Assess Effects of Existing Treatment Facilities

Dissolved oxygen water quality analyses generally account for carbonaceous oxygen demand and nitrogenous oxygen demand from oxidation of ammonia separately. However, the standard uninhibited BOD_5 test measures effects of both carbonaceous and nitrogenous oxygen demand if nitrifiers are present in the test sample. Thus, when water quality impacts of existing municipal discharges are modeled, the nitrogenous oxygen demand may be double counted if standard BOD_5 test procedures are used as the model input to represent effluent quality.

To avoid potential double counting of nitrogenous oxygen demand, the ultimate carbonaceous biochemical oxygen demand ($CBOD_u$) should be used, as appropriate, as CBOD input to the water quality analyses. Necessary adjustment to the $CBOD_u$ to $CBOD_5$" ratio should be made for the level of treatment considered, so that actual $CBOD_u$ loading reflects the future conditions. Treatment capabilities, expressed in terms of CBOD, should represent plant performance expected during the period being modeled (generally warm weather, low flow conditions). AT reviews will be based on $CBOD_5$. Since BOD_5 has been used in the past to set permit requirements, conversion of $CBOD_5$ results to BOD_5 effluent limitations is as site-specific determination to be made by the State.

7. Design Conditions for Stream's Critical Events

The critical low flow used in the modeling should reflect the nature of the water quality criteria used in the analysis (*i.e.*, chronic or acute). Typically, most analyses evlauate chronic exposure criteria. Since model outputs are usually based on meeting a chronic criterion value (30-day duration of exposure) at an appropriate low flow, model outputs should not be set in permits as 1-day averages, unless there is a statistical analysis clearly demonstrating that the stringent effluent averaging period requirements are needed to attain designated uses. It may be appropriate to set the model output as a 1-day average if an acute criterion is used as the target concentration for the model.

8. Nonpoint Sources

Pollution from nonpoint sources may degrade water quality regardless of point source contributions. For example, upstream background conditions could prevent attainment of standards or a significant water quality improvement even with AT. In such situations, nonpoint sources should be part of the analysis used to assess the relationship between alternative levels of treatment and resultant water quality. Although nonpoint sources usually do not directly affect stream water quality at ciritical low flow conditions, the water quality effects from nonpoint source residuals, *e.g.*, in-place pollutants, may be significant at low flow. Irrigation return flows may also be a significant nonpoint source in some cases. Other nonpoint pollution may include discharge of poor quality water from an upstream lake or reservoir, or marsh drainage.

In those situations where nonpoint sources are suspected of causing or contributing to non-attainment of standards, an assessment should be made of the relative contribution of point and nonpoint sources. Where Best Management Practices for nonpoint source control have been identified by the State under its water quality management process as required to achieve standards not now being attained, these controls should be in place or be included in a certified and approved water quality management plan.

9. Nitrification

After treatment beyond secondary has been demonstrated as necessary to enhance dissolved oxygen levels, nitrification facilities are usually cost-effective where nitrification occurs in the receiving water.

Nitrification has the coincidental benefit for reducing the risk of ammonia toxicity. This additional benefit should be considered in the overall water quality assessment of the project. If ammonia toxicity is the sole reason for proposed nitrification facilities, the ammonia limitations should be supported by site specific criteria and field survey data developed in accordance with procedures outlined in section 3, above.

10. Filtration

A tertiary filtration process by itself or following nitrification is generally less cost-effective than a nitrification process in removing oxygen demanding materials. In addition, since nitrificaiton prior to filtration removes most of the remaining ultimate carbonaceous oxygen demand, water quality analyses are often not sufficiently sensitive to determine the small incremental water quality improvement (*e.g.*, 3 to 5 mg/$CBOD_5$ reduction) afforded by the added filtration process.

Proposed filtration following nitrification may be justified in situations where additonal plant reliability is necessary to protect beneficial uses, or for facilities having harmful chemicals discharging to a drinking water source. Filtration following nitrification may also be needed to afford reliability when it is demonstrated that upsets would occur with sufficient frequency and severity to impair beneficial uses, particularly a drinking water use near the effluent discharge point.

For each of the above cases, the filtration process should be

demonstrated to be the most cost-effective control alternative available to achieve the designated beneficial use.

11. Phosphorus removal

Phosphorus removal to a level no more stringent than 1.0 mg/1 total phosphorus can be justified by a study that includes: (a) A finding that total phosphorus is or will be the nutrient that limits plant growth; (b) a nutrient budget for the receiving water showing contributions of the nonpoint and point sources of total phosphorus; and (c) a demonstration that control of point sources alone will result in significant reduction of phosphorus loading; or, if conjunctive point and nonpoint controls are needed to provide a significant reduction of total phosphorus loading, a demonstration that such provisions are included in a certified and approved water quality management plan.

Comprehensive water quality analyses should be conducted in those cases involving basinwide phosphorus limitations or very stringent limitations (*e.g.*, less than 1 mg/l).

12. Suspended Solids Removal

Treatment processes proposed solely to achieve SS effluent limitations more stringent than secondary treatment levels should not be approved, unless it is demonstrated that (1) the additional SS removal is required to achieve the proposed effluent limitation for other constituents *e.g.*, CBOD, coliform or toxics, or (2) discharge of secondary treatment SS levels would result in a substantial contribution to impairment of a use.

13. Disinfection

Where chlorination is proposed along with AT processes, the benefits and adverse impacts of chlorine on designated uses should be evaluated as part of the AT review. Chlorination of wastewater produces chlorine compounds that can be extremely toxic to aquatic wildlife. Where the receiving water does not provide sufficient dilution, such compounds could prevent the attainment of the water quality improvements that are otherwise expected to result from the proposed AT facilities. If chlorination is the method proposed for disinfection and the receiving water is designated for aquatic wildlife protection, the project should include dechlorination facilities unless an analysis is presented to show that the concentration of chlorine compounds in the receiving water will not exceed criteria established to protect this use. The recommended criterion for chronic exposure (30 days) for the protection of freshwater aquatic life in streams is that recommended in EPA's "Water Quality Criteria for Chlorine" (see **Federal Register**, 49 FR 4551, February 7, 1984 for draft recommendations; the final "Water Quality Criteria for Chlorine" document will be available by November 1984). Chronic effects from total residual chlorine (TRC) in chlorinated effluents are extremely variable depending on the rate of decay of TRC and, therefore, should be eveluated on a case-by-case basis.

14. Biological Monitoring

Biological monitoring is valuable for assessing overall water quality, and may be essential for some projects where there is currently an impairment of the designated use. An EPA Technical Support Manual on Water Body Surveys and Assessments for Conducting Use Attainability Analyses discusses biological monitoring and provides a bibliography of references on biological monitoring.

Appendix B—Relationship to Previous Policies

1. Previous Policies

PRM 79–7 contained a general policy for review of AT projects. It categorized AT projects in one of two ways: Advanced secondary treatment (AST) or advanced wastewater treatment (AWT). In addition to the general review policy and definitions of AT, PRM 79–7 also outlined the procedure and criteria for review of these projects. Briefly, projects were to be reviewed on the basis of the water quality justification including a demonstration that the wasteload allocation or other water quality analyses justifying the effluent limitations were scientifically supported by intensive surveys or other field investigations; land treatment had been adequately evaluated in all cases; the treatment processes were the most cost-effective means of meeting the prescribed effluent limitations; and finally, the project costs would not result in an undue financial burden to domestic users.

On December 28, 1979, the State of Illinois filed suit in U.S. District Court in the District of Columbia to contest a decision by the Administrator on the Galesburg, Illinois, AT project. As a result of the Agency's review of that project, the tertiary filtration facilities of the Galesburg project were deferred pending water quality justification.

EPA and the State of Illinois entered into negotiations on the Illinois suit and eventually signed a settlement agreement which was embodied in a court order on May 22, 1980. The settlement agreement, although retaining many key provisions of PRM79–7, required **Federal Register** publication of a draft revision of the PRM to reflect the process and new criteria for review agreed upon by the two parties. In anticipation of the **Federal Register** publication, on May 30, 1980, EPA issued a memorandum, which provided EPA regional offices with the option of using the draft **Federal Register** policy as an interim policy, subject to Headquarters approval. On June 20, 1980, EPA published a revised draft of a replacement policy for PRM 79–7 in the **Federal Register** [45 FR 41890], in accordance with the settlement agreement. PRM 79–7, the settlement agreement and interim policies based on the revised June 20, 1980, draft have all been used in reviewing AT projects during the past three years.

2. Revisions to Draft Policy

The June 20, 1980, draft AT policy has been revised to include a number of changes in organization and emphasis. These revisions reflect the Agency's experience in conducting AT project reviews and respond to:

(1) Recent program initiatives and regulatory reform efforts,

(2) Comments received on the draft policy and subsequent revisions, and

(3) Congressional directives contained in actions on the fiscal year 1981 appropriation for the construction grants program and the "Municipal Wastewater Treatment Construction Grant Amendments of 1981."

a. *Significant Water Quality Improvements and Restoration of Designated Uses.* The AT review policy emphasizes the need for a rigorous justification of the water quality and public health improvements resulting from AT projects. This change reflects both the likelihood that the availability of construction grant funds will be limited and the need to use limited funds on the attainment of significant water quality or public health improvements. The significance of improvements resulting from an AT project will be assessed in terms of contributions made to restoring designated uses or preventing their impairment. For each project, funding decisions will be based upon the best available scientific information and the best professional judgment of the responsible official of the extent to which the project meets the review criteria.

b. *Elimination of the Affordability Guidelines from AT Review Policy.* The Agency has reassessed the issue of affordability guidelines and their relationship to the AT review process.

Issues of project affordability, which can more appropriately be stated as grantee financial capability, will not be addressed as a part of an AT project review.

Under the Clean Water Act, prior to awarding a construction grant, the Administrator is specifically charged with making certain determination, including whether the grantee has the necessary financial and management capability to construct, operate, and maintain the wastewater treatment facilities. To serve the intent of the Clean Water Act, the Agency emphasizes that all grantees must demonstrate financial capability prior to a construction grant award [40 CFR 35.2104]. The Agency has prepared a policy on financial capability and guidance that grantees can use to meet the policy requirements. An adequate demonstration will involve a more comprehensive analysis and display of data and information than previously required on local financial and management capabilities.

C. *Inflationary Impacts.* Since the initiation of the AT project reviews under PRM 79–7, EPA Headquarters has received over eighty projects for review. In more than half of all the projects reviewed, AT project components were deferred, usually pending additional water quality justification. Real resource costs (constant dollars) saved or deferred so far total $710 million. In order to reduce the adverse effects of rising costs caused by inflationary factors, the Agency had suggested provisions for excluding projects where the costs for AT could be less than the inflationary costs of delay. However, since there has now been ample opportunity for grantees, States and Regions to anticipate needed AT reviews, and since inflation has lessened, the Agency has eliminated exemptions based on inflationary factors.

d. *Review Responsibilities.* Some proposed changes to the AT review policy were precluded by the language of the Appropriations Committee actions. For projects with AT incremental costs over $3 million, the FY 81 Appropriations Conference Committee Report directed the Agency to continue the AT project reviews, perform the reviews at Headquarters, and cease delegation of data collection and project evaluation to Regions and States. The FY 81 Appropriations Act (Pub. L. 96–526) further provided for the continuation of AT project reviews by exempting them from Appropriation Act language which otherwise prohibited retroactive requirements for the construction grants program. Additionally, the FY 84 House Appropriations Committee Report (98–223) urged that State and Regional reviews be based on the same set of criteria as Headquarters to avoid potential wasted effort in planning and design of projects that may not be approvable. Therefore, the AT review policy does not include provisions of the June 20, 1980 draft that would have delegated Headquarters review or preparation of reports to the Regions or delegated States for projects with an incremental cost over $3 million.

The June 20, 1980 draft classified AT projects as either advanced waste treatment (AWT) or advanced secondary treatment (AST). That distinction has been dropped; AT will be used to refer to both AWT and AST. The June 20 draft specified that *all* AWT projects and those AST projects costing over $3 million beyond secondary go to Headquarters for review. To be consistent and reduce confusion, the policy requires that only those AT (AWT or AST) projects with an incremental cost over $3 million undergo Headquarters review.

e. *Elimination of two discrete and separate levels of review.* The June 20 draft described two levels of review reports: Effluent limitations assessments and comprehensive evaluations. The assessment was less broad in scope than the evaluation. The level of project review resulted from screening for financial impact and inflation impact. The policy eliminates the distinction in favor of one assessment which may vary in detail from case to case. This action was based on EPA's experience in the past two years and the finding that few projects fit neatly into one category of review or another. The Agency's underlying premise in defining the scope of each project review will be to continue to concentrate on only those issues related to AT funding decisions. Issues will be narrowly defined at first and then broadened if other factors affecting the need for AT are demonstrated. Regions and States are strongly encouraged to submit AT projects for early Headquartes reviews of effluent limitations and modeling issues, so that issues will be narrowly defined at the time of the specific project review.

[FR Doc. 84–12313 Filed 5–18–84; 8:45 am]

BILLING CODE 6560–50–M

Federal Register

Monday
May 21, 1984

Part III

Department of Energy

10 CFR Part 840

Extraordinary Nuclear Occurrences; Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 840

Extraordinary Nuclear Occurrences

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is codifying its regulations that set forth DOE criteria for determining whether there has been an extraordinary nuclear occurrence. On October 31, 1968, the Atomic Energy Commission (AEC) published its final rule on Criteria for Determination of an Extraordinary Nuclear Occurrence as Subpart E to Part 140 of Title 10, Code of Federal Regulations. On January 19, 1975, the nonlicensing functions of the AEC were transferred to the Energy Research and Development Administration (ERDA) and the licensing functions were transferred to the Nuclear Regulatory Commission (NRC). On March 3, 1975, ERDA published notice in the Federal Register that it was retaining those regulations formerly promulgated by the AEC that pertained to ERDA and was redesignating them as Parts 700 through 870, respectively. Therefore, ERDA's extraordinary nuclear occurrence criteria became Subpart E of Part 840. The notice stated that the redesignation and retention was a temporary measure to provide for an immediate and orderly transfer of regulations, and that "ERDA intends to republish and recodify all regulations applicable to ERDA in the Federal Register." However, ERDA did not republish and recodify the new Part 840. In 1977, all of the functions vested in ERDA were transferred to the newly established Department of Energy (DOE) and all of ERDA's regulations were thereby transferred to DOE, including Subpart E of Part 840. DOE is now republishing and codifying Part 840, its regulations for determining whether there has been an extraordinary nuclear occurrence. Part 840 is identical to Subpart E of Part 140 as codified on January 19, 1975, the date that ERDA was formed, except that Part 840 is updated to reflect its applicability to DOE.

EFFECTIVE DATE: May 21, 1984.

FOR FURTHER INFORMATION CONTACT:
Edward J. Vallario, PE–222, U.S. Department of Energy, Washington, D.C. 20545, (301) 353–5640
Susan Kuznick, GC–32, U.S. Department of Energy, Washington, D.C. 20585, (202) 252–6975

SUPPLEMENTARY INFORMATION:

I. Introduction

On October 31, 1968, the Atomic Energy Commission (AEC) published its final rule on Criteria for Determination of an Extraordinary Nuclear Occurrence (33 FR 15998) in order to effectuate the 1966 Amendments (Pub L. 89–645) to the Price-Anderson Act. (42 U.S.C. 2210). Those amendments provided for waivers of certain defenses in the event of an extraordinary nuclear occurrence (ENO). Subpart E of Part 140 was promulgated to set forth the criteria that the AEC would use to determine whether there had been such an occurrence. It applied to applicants for and holders of licenses authorizing operation of production facilities and utilization facilities, and to other persons indemnified with respect to such facilities.

Subpart E was made applicable to those AEC contractors with indemnification agreements with AEC and to other persons indemnified with respect to AEC contractor activities through the AEC Procurement Regulations. Those regulations provided in 49 CFR 9–7.5004–24 that a determination of whether or not there has been an ENO would be made in accordance with the procedures in Subpart E of 10 CFR Part 140.

By the Energy Reorganization Act of 1974, 42 U.S.C. 5801, the AEC was abolished. The non-licensing functions and authorities of the AEC were transferred to the Energy Research and Development Administration (ERDA) and the licensing and related regulatory authorities of the AEC were transferred to the Nuclear Regulatory Commission (NRC). The transfers were effective January 19, 1975. On February 5, 1975, the AEC procurement regulations (including 49 CFR 9–7.5004.24, referencing Subpart E of Part 140), were transferred to ERDA (40 FR 5364). On March 3, 1975, ERDA published notice in the Federal Register that it was retaining all rules and regulations of the AEC (Chapter I of Title 10 of CFR except Part 9), to the extent they were not inconsistent with applicable law, and was redesignating them as Parts 700 through 870 respectively, of a new Chapter III of Title 10, Code of Federal Regulations (40 FR 8794). By this redesignation, ERDA's ENO criteria became Subpart E of Part 840. (Subpart E was the only subpart in Part 140 applicable to ERDA and therefore the only subpart retained and redesignated within Part 840.) The notice stated that the redesignation and retention was a temporary measure to provide for an immediate and orderly transfer of regulations, and that "ERDA intends to republish and recodify all regulations applicable to ERDA in the Federal Register." However, ERDA did not republish and recodify the new Part 840.

The NRC also established its regulations and appropriate redesignations, retaining Subpart E of Part 140 for its ENO criteria on March 3, 1975 (40 FR 8793). No changes have been made to Subpart E of Part 140 since that date.

Pursuant to the Department of Energy Organization Act, 42 U.S.C. 7101 et seq., all of the functions vested in ERDA were transferred to the newly established Department of Energy (DOE) on October 17, 1977, and all of ERDA's regulations were thereby transferred to DOE, including Subpart E of Part 840. 42 U.S.C. 7295. On June 14, 1979, the ERDA procurement regulations were revised to reflect the new DOE organization (44 FR 34424). The DOE procurement regulations provide at 41 CFR 9–50.704–6 that a determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in Subpart E of 10 CFR Part 840.

II. Republication for Codification Purposes

By this action, DOE is republishing and codifying as Part 840, Chapter III, Title 10, Code of Federal Regulations its regulations for determining whether there has been an extraordinary nuclear occurrence. 10 CFR Part 840, as codified by this rule, is identical to Subpart E of 10 CFR Part 140, as codified on January 19, 1975, the date that ERDA was formed, except that references to the AEC and AEC licensees in Part 140 have been changed in Part 840 to reflect Part 840's applicability to DOE and certain DOE contractors. Since only Subpart E of Part 140 was retained, the subpart designation has been eliminated.

III. Rulemaking Unnecessary

This action does not amend existing DOE regulations, but republishes for codification purposes currently effective DOE regulations and conforms them to reflect their applicability to DOE. Therefore, a rulemaking is unnecessary.

IV. List of Subjects in 10 CFR Part 840

Extraordinary nuclear occurrence, Government contracts, Nuclear materials, Price Anderson Act, Radioactive materials.

Authority: Sec. 161 of the Atomic Energy Act of 1954, Pub. L. 83–703, 68 Stat. 919 (42 U.S.C. 2201); Section 170 of the Atomic Energy Act of 1954, Pub. L. 85–256, 71 Stat. 576, as amended by Pub. L. 89–645, 80 Stat. 891 (42 U.S.C. 2210); Department of Energy

Organization Act, Pub. L. 95–91, 91 Stat. 565–613 (42 U.S.C. 7101–7352).

In consideration of the foregoing, the Department of Energy hereby publishes for codification purposes Part 840 of Chapter III, Title 10, Code of Federal Regulations.

Issued in Washington, D.C., April 30, 1984.

Jan W. Mares,

Assistant Secretary for Policy, Safety, and Environment.

Chapter III of Title 10, Code of Federal Regulations is amended by adding Part 840 as follows:

PART 840—EXTRAORDINARY NUCLEAR OCCURRENCES

Sec.

840.1 Scope and purpose.
840.2 Procedures.
840.3 Determination of extraordinary nuclear occurrence.
840.4 Criterion I—Substantial discharge of radioactive material or substantial radiation levels offsite.
840.5 Criterion II—Substantial damages to persons offsite or property offsite.

Authority: Sec. 161 of the Atomic Energy Act of 1954, Pub. L. 83–703, 68 Stat. 919 (42 U.S.C. 2201); Section 170 of the Atomic Energy Act of 1954, Pub. L. 85–256, 71 Stat. 576, as amended by Pub. L. 89–645, 80 Stat. 891 (42 U.S.C. 2210); Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 565–613 (42 U.S.C. 7101–7352).

§ 840.1 Scope and purpose.

(a) *Scope.* This subpart applies to those DOE contractor activities to which the nuclear hazards indemnity provisions in 41 CFR 9–50.704–6 apply, and to other persons indemnified with respect to such activities.

(b) *Purpose.* One purpose of this subpart is to set forth the criteria which the DOE proposes to follow in order to determine whether there has been an "extraordinary nuclear occurrence." The other purpose is to establish the conditions of the waivers of defenses proposed for incorporation in indemnity agreements.

(1) The system is to come into effect only where the discharge or dispersal constitutes a substantial amount of source, special nuclear or byproduct material, or has caused substantial radiation levels offsite. The various limits in present DOE regulations are not appropriate for direct application in the determination of an "extraordinary nuclear occurrence," for they were arrived at with other purposes in mind, and those limits have been set at a level which is conservatively arrived at by incorporating a significant safety factor. Thus, a discharge or dispersal which exceeds the limits in DOE regulations, or in DOE orders, although possible cause for concern, is not one which would be expected to cause substantial injury or damage unless it exceeds by some significant multiple the appropriate regulatory limit. Accordingly, in arriving at the values in the criteria to be deemed "substantial" it is more appropriate to adopt values separate from DOE health and safety orders, and, of course the selection of these values will not in any way affect such orders. A substantial discharge, for purposes of the criteria, represents a perturbation of the environment which is clearly above that which could be anticipated from the conduct of normal activities. The criteria are intended solely for the purposes of administration of DOE statutory responsibilities under Pub. L. 89–645, and are not intended to indicate a level of discharge or dispersal at which damage is likely to occur, or even a level at which some type of protective action is indicated. It should be clearly understood that the criteria in no way establish or indicate that there is a specific threshold of exposure at which biological damage from radiation will take place. It cannot be emphasized too frequently that the levels set to be used as criteria for the first part of the determination, that is, the criteria for amounts offsite or radiation levels offsite which are substantial, are not meant to indicate that, because such amounts or levels are determined to be substantial for purposes of administration, they are "substantial" in terms of their propensity for causing injury or damage.

(2) It is the purpose of the second part of the determination that DOE decide whether there have in fact been or will probably be substantial damages to persons offsite or property offsite. The criteria for substantial damages were formulated, and the numerical values selected, on a wholly different basis from that on which the criteria used for the first part of the determination with respect to substantial discharge were derived. The only interrelation between the values selected for the discharge criteria and the damage criteria is that the discharge values are set so low that it is extremely unlikely the damage criteria could be satisfied unless the discharge values have been exceeded.

(3) The first part of the test is designed so that DOE can assure itself that something exceptional has occurred; that something untoward and unexpected has in fact taken place and that this event is of sufficient significance to raise the possibility that some damage to persons or property offsite has resulted or may result. If there appears to be no damage, the waivers will not apply because DOE will be unable, under the second part of the test, to make a determination that "substantial damages" have resulted or will probably result. If damages have resulted or will probably result, they could vary from de minimis to serious, and the waivers will not apply until the damages, both actual and probable, are determined to be "substantial" within the second part of the test.

(4) The presence or absence of an extraordinary nuclear occurrence determination does not concomitantly determine whether or not a particular claimant will recover on his claim. In effect, it is intended primarily to determine whether certain potential obstacles to recovery are to be removed from the route the claimant would ordinarily follow to seek compensation for his injury or damage. If there has not been an extraordinary nuclear occurrence determination, the claimant must proceed (in the absence of settlement) with a tort action subject to whatever issues must be met, and whatever defenses are available to the defendant, under the law applicable in the relevant jurisdiction. If there has been an extraordinary nuclear occurrence determination, the claimant must still proceed (in the absence of settlement) with a tort action, but the claimant's burden is substantially eased by the elimination of certain issues which may be involved and certain defenses which may be available to the defendant. In either case the defendant may defend with respect to such of the following matters as are in issue in any given claim: the nature of the claimant's alleged damages, the causal relationship between the event and the alleged damages, and the amount of the alleged damages.

§ 840.2 Procedures.

(a) DOE may initiate, on its own motion, the making of a determination as to whether or not there has been an extraordinary nuclear occurrence. In the event DOE does not so initiate the making of a determination, any affected person, or any person with whom an indemnity agreement is executed may petition DOE for a determination of whether or not there has been an extraordinary nuclear occurrence. If DOE does not have, or does not expect to have, within 7 days after it has received notification of an alleged event, enough information available to make a determination that there has been an extraordinary nuclear occurrence, DOE will publish a notice in the **Federal Register** setting forth the date and place of the alleged event and requesting any

persons having knowledge thereof to submit their information to DOE.

(b) When a procedure is initiated under paragraph (a) of this section, the principal staff which will begin immediately to assemble the relevant information and prepare a report on which the DOE can make its determination will consist of the Directors or their designees of the following Divisions or Offices: Office of Nuclear Safety, Office of Operational Safety, Office of Health and Environmental Research, the General Counsel or his designee, and a representative of the program division whose facility or device may be involved.

§ 840.3 Determination of extraordinary nuclear occurrence.

If the DOE determines that both of the criteria set forth in § 840.4 and § 840.5 have been met, it will make the determination that there has been an extraordinary nuclear occurrence. If the DOE publishes a notice in the **Federal Register** in accordance with § 840.2(a) and does not make a determination within 90 days thereafter that there has been an extraordinary nuclear occurrence, the alleged event will be deemed not to be an extraordinary nuclear occurrence. The time for the making of a determination may be extended by DOE by notice published in the **Federal Register.**

§ 840.4 Criterion I—Substantial discharge of radioactive material or substantial radiation levels offsite.

DOE will determine that there has been a substantial discharge or dispersal of radioactive material offsite, or that there have been substantial levels of radiation offsite, when as a result of an event comprised of one or more related happenings, radioactive material is released from its intended place of confinement or radiation levels occur offsite and either of the following findings are also made:

(a) DOE finds that one or more persons offsite were, could have been, or might be exposed to radiation or to radioactive material, resulting in a dose or in a projected dose in excess of one of the levels in the following table:

TOTAL PROJECTED RADIATION DOSES

Critical organ	Dose (rems)
Thyroid	30
Whole Body	20
Bone Marrow	20
Skin	60
Other organs or tissues	30

Exposures from the following types of sources of radiation shall be included:

(1) Radiation from sources external to the body;

(2) Radioactive material that may be taken into the body from its occurrence in air or water; and

(3) Radioactive material that may be taken into the body from its occurrence in food or on terrestrial surfaces.

(b) DOE finds that—

(1) Surface contamination of at least a total of any 100 square meters of offsite property has occurred as the result of a release of radioactive material from a production or utilization facility or device and such contamination is characterized by levels of radiation in excess of one of the values listed in column 1 or column 2 of the following table, or

(2) Surface contamination of any offsite property has occurred as the result of a release of radioactive material in the course of transportation and such contamination is characterized by levels of radiation in excess of one of the values listed in column 2 of the following table:

TOTAL SURFACE CONTAMINATION LEVELS [1]

Type of emitter	Column 1—Offsite property	Column 2—Other offsite property
Alpha emission from transuranic isotopes.	3.5 microcuries per square meter.	0.35 microcuries per square meter.
Alpha emission from isotopes other than transuranic isotopes.	35 microcuries per square meter.	3.5 microcuries per square meter.
Beta or gamma emission.	40 millirads/hour @ 1 cm (measured through not more than 7 milligrams per square centimeter of total absorber).	4 millirads/hour @ 1 cm (measured through not more than 7 milligrams per square centimeter of total absorber).

[1] The maximum levels (above background), observed or projected, 8 or more hours after initial deposition.

[2] Contiguous to site, owned or leased by person with whom an indemnity agreement is executed.

§ 840.5 Criterion II—Substantial damages to persons offsite or property offsite.

(a) After DOE has determined that an event has satisfied Criterion I, DOE will determine that the event has resulted or will probably result in substantial damages to persons offsite or property offsite if any of the following findings are made:

(1) DOE finds that such event has resulted in the death or hospitalization, within 30 days of the event, of five or more people located offsite showing objective clinical evidence of physical injury from exposure to the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material; or

(2) DOE finds that $2,500,000 or more of damage offsite has been or will probably be sustained by any one person, or $5 million or more of such damage in the aggregate has been or will probably be sustained, as the result of such event; or

(3) DOE finds that $5,000 or more of damage offsite has been or will probably be sustained by each of 50 or more persons, provided that $1 million or more of such damage in the aggregate has been or will probably be sustained, as the result of such event.

(b) As used in paragraphs (a) (2) and (3) of this section "damage" shall be that arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material, and shall be based upon estimates of one or more of the following:

(1) Total cost necessary to put affected property back into use.

(2) Loss of use of affected property.

(3) Value of affected property where not practical to restore to use.

(4) Financial loss resulting from protective actions appropriate to reduce or avoid exposure to radiation or to radioactive materials.

[FR Doc. 84-13545 Filed 5-18-84; 8:45 am]

BILLING CODE 6450-01-M

federal register

Monday
May 21, 1984

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 904, 905, 913, 960, and 965

Definition of Income, Income Limits, Rent and Reexamination of Family Income for the Public and Indian Housing Programs; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 904, 905, 913, 960, and 965

[Docket No. R-84-1144; FR-1882]

Definition of Income, Income Limits, Rent and Reexamination of Family Income for the Public and Indian Housing Programs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements changes made by the Housing and Urban-Rural Recovery Act of 1983 and the Housing and Community Development Amendments of 1981 relating to the establishment of income limits for eligibility, definition of income, calculation of rent, and reexamination of income, in the Public and Indian Housing Programs. It does not include the corresponding provisions for the Section 8 Housing Assistance Payments and related programs, which were included in the proposed rule on this subject, since a separate and analogous rule for those programs was published separately in the Federal Register on May 10, 1984 (49 FR 19925).

EFFECTIVE DATE: July 1, 1984.

FOR FURTHER INFORMATION CONTACT: Edward Whipple, Chief, Rental and Occupancy Branch, Office of Public and Indian Housing, Room 6236, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, telephone (202) 426-0744. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: The Housing and Community Development Amendments of 1981 ("1981 Amendments") contained in Title III, Subtitle A, of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) made several changes in provisions of the United States Housing Act of 1937 ("1937 Act") relating to rents, income limits, definition of income, and reexamination of income and family composition that apply to both the Public and Indian Housing Programs and to the Section 8 Housing Assistance Payments Programs. The principal effects of the 1981 Amendments were to (1) require HUD to increase the amount of rent payable by assisted families from 25% to 30% of adjusted income, (2) restrict the number of families participating in the programs whose annual incomes are between 50% and 80% of area median income, and (3) make the revised income eligibility and rent computation requirements applicable to the Public Housing Program as well as to the Section 8 Programs. The 1981 Amendments also eliminated different statutory provisions governing the calculation of "income" under the Public Housing and Section 8 Programs in favor of a single uniform definition for all programs under the 1937 Act. Establishment of deductions from income to be used for calculation of "adjusted income" was to be left to the discretion of the Secretary.

On May 4, 1982, separate interim rules were published (47 FR 19120 and 19128) implementing only the change in the income-percentage formula for determining the tenant rental payment required in the Public Housing and Section 8 Programs, effective August 1, 1982 (see 47 FR 30969 and 30971). A separate final rule was also published (47 FR 54296) to implement the income reexamination requirements for those programs, effective April 1, 1983 (48 FR 6961).

On December 29, 1982 (47 FR 57954), the Department published a proposed rule to implement all the statutory changes described above for the Public Housing and Section 8 Programs. Public comment received on the interim rent increase rules was considered in the development of the proposed rule. The major feature of the proposed rule was the addition of a new Part 813 to cover all the statutory changes for both the Public Housing and Section 8 Programs. This new Part was to replace both Part 889 (covering the Section 8 Programs) and Subparts A and D of Part 860 (covering the Public Housing Program).

Since the publication of the proposed rule, Congress has enacted the Housing and Urban-Rural Recovery Act of 1983 ("1983 Act") (Pub. L. 98-181, approved November 30, 1983). Section 206 of the 1983 Act amended some of the provisions of the 1981 Amendments that were the subject of this rulemaking. Major changes included the addition of a statutory definition of adjusted income and an increase of the percentage of families with incomes between 50% and 80% of the area median income to be admitted to units that were available for occupancy with assistance under the 1937 Act—from 10% to 25%. Since these recent changes are specific and do not provide for the exercise of significant discretion, the Department believes that it is unnecessary to solicit public coment on their implementation.

In addition, delay to permit consideration of public comment would be contrary to the public interest. It would be contrary to the interest of many tenants to postpone the full implementation of changes such as the increased deductions from income to be used in calculating rent an additional four or five months to permit consideration of public comment on them. It would be contrary to the interest of public housing agencies (PHAs) to delay the effectiveness of changes such as the new definition of adjusted income, since PHAs would have to bear the additional administrative burden of making an additional rental computation (including determination of the effect of the 10% annual cap on rent increases) for each tenant admitted to the programs between the effective date of this rule and a later rulemaking to implement the 1983 Act's provisions. Furthermore, it would be contrary to the interest of PHAs that administer both a Public Housing Program and a Section 8 Program to delay the implementation of a uniform definition of income and adjusted income for the two Programs.

Implementation of the 1983 Act changes without delay for consideration of public comment is especially appropriate, given the fact that the 1983 Act is clearly responsive to many of the concerns expressed in public comments on the proposed rule published in December 1982. Therefore, this final rule incorporates the changes made by the 1983 Act.

An additional change since the publication of the proposed rule is the transfer, within HUD, of the responsibility for Public and Indian Housing Programs to a new Assistant Secretary for Public and Indian Housing. This final rule contains only the provisions applicable to the Public and Indian Housing Programs, and a separate final rule has been issued by the Assistant Secretary for Housing, containing the provisions applicable to the Section 8 Housing and related programs within his jurisdiction.

The content of the part *added* in this rulemaking (913) is nearly identical to 24 CFR Part 813 added in the final rulemaking on definition of income for the Section 8 Programs. The parts *amended* in that rulemaking are specific regulations for the various Section 8 Programs found in Chapter VIII of Title 24 of the Code of Federal Regulations. On September 27, 1983 the Secretary established a new Chapter IX in Title 24 of the regulations of the Assistant Secretary for Public and Indian Housing. (See 48 FR 44071.) In this rulemaking, the parts amended are specific regulations for Public Housing and Indian Housing, including homeownership programs,

which have been moved from Chapter VIII of Title 24 to Chapter IX (to contain the rules of the newly-created Assistant Secretary for Public and Indian Housing). (See 49 FR 6712, February 23, 1984.) Rules previously designated as Parts 804, 805, 860, and 865 are here described as Parts 904, 905, 960, and 965.

Response to Public Comments

More than 1,200 public comments on the proposed rule were received during the comment period. Most of the comments opposed various aspects of the rule, with the proposals concerning elimination of itemized deductions and imposition of income limits for admission drawing criticism from more than 400 commenters each. Although many comments were received on each major category of issues, some of the comments discussed below represent the views of only a few commenters. The comments are discussed here by categories: uniformity of rules for Public Housing and Section 8, definition of income, income verification and reexamination, income limits for admission, rental payments, and miscellaneous.

I. Uniformity of Rules

One of HUD's broad objectives in this rulemaking is to achieve uniformity of rules governing the Section 8 and Public Housing (including Indian Housing) Programs, as contemplated by the 1981 Amendments. Despite the decision to issue separate final rules for the two major program categories to reflect the respective Assistant Secretaries' areas of responsibility, uniformity is preserved by including identical provisions in the two rules on the definition of income and rents.

Of the few comments received on the topic of uniformity, most were in favor, but two public housing agencies (PHAs) commented that if income calculations and rent levels are the same in the programs, there will be a shift of tenants from public housing units to Section 8 housing units, since the Section 8 units tend to be newer and sometimes located in better neighborhoods.

We believe that uniformity is a desirable goal because it is more equitable for tenants of the same income in similar HUD programs to pay the same amount for rent. It is also administratively more efficient for PHAs operating both Section 8 and Public Housing Programs, and for HUD, to use uniform rules. Most importantly, however, uniformity is required by statute, since the same section of the 1937 Act defining income and prescribing rent payments applies to both programs.

Furthermore, the Department doubts that public housing units in satisfactory condition will go begging for tenants. Most PHAs have substantial waiting lists of eligible applicants for public housing. In addition, tenants now residing in public housing who are receiving the benefit of rents phased in from 25% of income to 30% will lose the benefit of the phase-in under § 813.107(c)(1) of the final rule for the Section 8 Programs if they transfer voluntarily to Section 8 units. This policy will discourage such transfers.

II. Definition of Income

The 1983 Act preserved the Secretary's discretion to define "income" for both the Public Housing and Section 8 Programs, but prescribed the deductions from income to be used to determine "adjusted income"—the element used in rent computation for both programs under Section 3(a)(1) of the 1937 Act. (Section 206(c) of the 1983 Act, amending Section 3(b)(5) of the 1937 Act.) The proposed and final rules use the term "annual income" as the equivalent of the statutory term "income", and the final rule uses the definition of "adjusted income" contained in the 1937 Act, as amended by the 1983 Act.

A. Annual Income

1. Net Assets

The definition of annual income used for determining rent in the proposed rule departed from the one found in the current Section 8 definition (24 CFR 889.104) in the treatment of net assets. If a family had net assets exceeding $5,000, the proposed rule would have included the greater of actual income from net assets or 10% of the value of the assets in income for determination of rent, as well as for eligibility (§ 813.104(b)(3)). This measure has been used in the Section 8 rule in the determination of income level for eligibility purposes (see 24 CFR 889.103), but only actual income from assets has been used for calculation of rent.

Objections to this net assets provision were of four types. The first type objected to the inclusion of any unrealized income in the definition of net assets (§ 813.102), especially since if the value of net assets exceeds $5,000, imputed income would be included in income for purposes of calculating rental payments, as well as eligibility. The second type of comment objected to the inclusion of such assets as non-income producing land and any interest in Indian trust lands. The third type objected to the $5,000 threshold amount or to the 10% imputed earnings rate to be used in calculating income under § 813.104(b)(3) of the proposed rule. The fourth type objected to the specific inclusion of the value of property disposed of for less than fair market value within two years before application or income reexamination, to the extent the value of the property exceeds the consideration received for it (§ 813.102).

In response to the first type of objection, the Department agrees with several commenters favoring the rule that expecting tenants with significant assets to invest them and to pay rent based on this expectation, is the best way to assure that the resources available for assisted housing programs are used in the most equitable manner—providing the most assistance to the neediest.

The objections to inclusion of non-income producing land and any interest in Indian trust land are separable. The Department agrees with one commenter favoring the rule who stated that it is reasonable to expect "near exhaustion" of other resources before being eligible for HUD-assisted housing. Even non-income producing land can be sold and the proceeds invested or used to pay for everyday expenses, including housing. Therefore, there is no change in the final rule as to non-income producing land in general. However, the Department does agree with a number of comments from Indians and Indian Tribal organizations that the nature of Indian trust land makes unrealistic a determination of an individual's interest, or the value of the individual's investment. Therefore, we have revised the definition of net family assets in proposed § 813.102 to exclude interests in Indian trust lands. However, *actual* income from Indian trust land will be included in the determination of annual income under § 913.106 of the final rule, subject to the exclusion in § 913.106(c) for temporary, non-recurring or sporadic income, and the exclusion in § 913.106(d)(3) for statutorily exempt income (including per capita payments). The final rule also exempts from net family assets the value of equity accounts in the homeownership programs to encourage accumulation of savings in these accounts to permit attainment of the goal of these programs—purchase of the home.

Several commenters stated that $5,000 is an unreasonably low threshold amount, because it was introduced in 1975 and has not been adjusted since. We recognize that $5,000 today may represent less value than it did in 1975 because of inflation. We believe, however, that it is appropriate to retain that amount in the rule, since the

programs are now being targeted to persons with lower incomes. However, in response to comment that 10% is now an unreasonably high interest rate to assume a tenant or applicant can realize, we have adopted in the final rule the rate earned on passbook savings accounts. This rate of return is clearly attainable by the ordinary citizen and should be imputed where it exceeds actual income derived from net assets. This lowered rate should also help mitigate the effects of retaining the $5,000 threshold.

The bases stated for objection to the fair market value provision were that it would be impossible to administer fairly, is contrary to legislative intent, would be disruptive of divorce proceedings in which rights to marital property may be relinquished in exchange for non-monetary consideration, would unfairly penalize applicants whose property was disposed of for less than full value because of a forced sale or a sale in bankruptcy, and would have retroactive effect.

While not specifically stated in this final rule, the means of administering this provision is expected to be a procedure (described in the appropriate Department handbook) for certification by an applicant or tenant, under penalty of law, whether he or she has made a disposition of property in a transaction other than an arm's length arrangement in the previous two years. If such a disposition was made, the certification will include a statement of the fair market value and the value of consideration received for the property. PHAs and owners will then investigate only those statements that warrant it. The Department believes this approach minimizes the administrative burden on PHAs and owners, while at the same time assuring that tenants are treated fairly and equitably.

The Department does not believe that inclusion of the difference between fair market value and the consideration actually received for property that has been disposed of in the definition of net family assets against which income may be imputed violates Congressional intent. The Conferees on the 1981 Amendments adopted the House-passed provision, which gives HUD broad discretion on how to determine family income. It is true that the Senate-passed provision (which the Conferees rejected) contained a provision similar to that included in the proposed rule. However, given the clear, unrestricted discretion accorded the Secretary by the statute and the lack of any guidance in the legislative history as to why the Senate provision was rejected, the Department declines to infer that its proposed application of a fair market value test to assets that are disposed of is in any way at odds with Congressional intent. (See generally H. Rep. (Conf. Rep.) No. 208, Book 2, 97th Congress, 1st Sess., 688, *reprinted in* 1981 U.S. Code, Cong. & Admin News 1047.)

One commenter also pointed out that the Senate-passed provision had imposed the requirement only if the disposition had been made to qualify the applicant for the program, whereas the proposed rule included no such fraudulent intent requirement—thus penalizing those who give money to relatives for weddings or family emergencies. The Department's intent in preserving the fair market value provision in the final rule is to target limited housing assistance to those most in need. Adding a fraudulent intent requirement would make the provision more difficult to enforce and would require considerable investigative resources, which none of the entities involved—PHAs, owners or HUD—has.

In response to the third and fourth points discussed above on the fair market value part of the net assets provision, two revisions have been made. With respect to the divorce proceedings issue, the definition of net family assets has been revised to treat dispositions in which the applicant or tenant receives important consideration not measurable in dollar terms, as dispositions for fair market value. Foreclosure sales and bankruptcy sales are also treated as sales for full value in the final rule. (See § 913.102.)

The fifth type of comment concerning the fair market value provision suggested that, in the case of families who are currently in assisted housing and are affected by the rule, there would be, in effect, a retroactive application of the requirement. We disagree. The purpose of the redefinition of income included in the rule is to set out an appropriate measure of eligible families' actual capacity to contribute to the cost of their housing. There will be no retroactive application of the rule in the sense that families will be assessed back rent to adjust for the period between a disposition of assets and the time the rule is effective. Charging rent prospectively, based in part on recent dispositions of assets, is a rational means of basing family contributions on actual income.

2. Definition of Minor

The definition of "minor" in § 813.102 of the proposed rule was used to determine the applicability of a deduction for "each minor" in the calculation of adjusted income under § 813.102 and to apply an exclusion from annual income for income they earned under proposed § 813.104(d)(1). The current provisions governing Public Housing (§§ 960.403(f)(6) and 960.403(o)) and Section 8 Housing (§§ 889.102 and 889.104(a)) define "minor" to include full-time students 18 years of age or older. The proposed rule would have excluded these students from the definition of "minor", thus removing their deduction from income and causing their income to be counted in determining annual income.

Public comments generally opposed the exclusion of full-time students from the definition of minor as contrary to a public policy of encouraging people to continue their education to enable them to earn enough money to support themselves without Government assistance. In its revision of the term "adjusted income", the 1983 Act provides that full-time students are to be treated the same as persons under 18 for purposes of the dependent deduction from annual income, and § 913.102 of the final rule has been revised accordingly. The 1983 Act is silent, however, on whether the earnings of full-time students at least 18 years old should be excluded from annual income. In light of this silence, the need to preserve scarce subsidy dollars, and the significant increase in the amount of this deduction—from $300 in the existing regulations to $480 in the final rule—we see no reason to exclude the earnings of full-time students age 18 and older from the determination of annual income. Because the 1983 Act broadened the "minor" deduction to include disabled or handicapped persons age 18 and older, the term "minor" in the proposed rule has been replaced with the broader term "dependent." In addition, the final rule incorporates the definition of "full-time student" contained in § 960.403(g), with the clarification that an educational institution includes a vocational school with a diploma or certificate program, as well as an institution offering a college degree.

3. Welfare Rent Income Component

There were two major criticisms of the proposed rule's § 813.104(b)(6)(ii). This provision states that when a welfare agency pays a family an amount designated for shelter that is adjusted in accordance with the family's actual housing costs, HUD will include in income the maximum allowance, ratably reduced once, if State law provides for welfare benefits that are a percentage of the established standard of need.

One objection was that recognizing only one application of the ratable

reduction was inconsistent with the statute, since a welfare agency might apply the reduction again after the rent was established and the rule would provide that any such reduction be ignored; thus, an amount exceeding the amount paid by the welfare agency for shelter would be included in income. The commenter cited *Smith* v. *Pierce* (D. Vt., June 30, 1982) as holding that HUD's policy was a violation of the statute. In fact, that decision upheld HUD's broad discretion to define income in this manner.

The second major objection was that by using the maximum a welfare agency could pay in computing income and establishing rent, HUD causes the welfare payments to be higher in States that designate shelter allowances, and since welfare benefits are taken into consideration in computing food stamp benefits, the higher welfare benefits reduce the family's food stamp benefits. The Department believes that despite this unfortunate consequence, it is obligated to seek the maximum, since government funds for housing benefits are limited and the welfare rent (now found in Section 3(a)(3) of the 1937 Act) was originally established to require welfare tenants to pay equitable housing costs. See H. Rep. 93–1114, 93rd Cong., 2d Sess. 24, 190–191 (1974). See also Conf. Rep. No. 740, 91st Cong., 1st Sess., *reprinted in* 1969 U.S. Code, Cong. & Admin. News 1582–83.

4. Food Stamps

Several PHAs commented that HUD should include the unreimbursed value of food stamps in the income of participating families, arguing that food stamps represent disposable income. A statutory prohibition—7 U.S.C. 2017(b)—currently exists against including the value of food stamps in income for any purpose under any Federal, State or local program. This prohibition is contained in § 913.106(d)(3)(ii).

5. Armed Forces Pay

Similar to the current Section 8 rule (§ 889.104(a)(8)), the proposed rule would have provided that all regular pay, special pay and allowances of a member of the Armed Forces who is the head of household or spouse be included in annual income, whether or not the individual lives in the dwelling. One commenter stated that if the service member was not residing in the household, only the income actually received by the household should be included. To exclude income from such an absent head of household or spouse based on what that person chose to send home would permit the absent member to reduce his or her contribution to the resident family members to zero without penalty, while HUD or the PHA would be required to increase operating subsidies to make up the difference.

The commenter cited a 1972 response by the HUD Dallas Area Office to an administrative complaint and a 1979 consent order in a case against the Alma, Georgia Housing Authority in support for that position. Since the Department no longer has records on the Texas administrative complaint, we cannot evaluate its contents or its relevance to this discussion. However, the consent order in the Georgia case (*Clark* v. *Housing Authority of Alma, Georgia*, C.A. No. 578–55 (S.D. Ga., March 30, 1979)) is not on point, since it did not address the issue of inclusion of income of an absent head of household or spouse serving in the Armed Forces. It was primarily a case about the procedural rights of tenants threatened with eviction, and the only issue with respect to income was whether adjustments to rent would be made following a reported decrease in income (they would). For these reasons, the final rule retains without change the proposed rule's general provision on inclusion of armed forces pay of an absent family member.

However, the exclusion of the special pay to a serviceman head of family away from home and exposed to hostile fire found in the current Section 8 regulations (§ 889.104(d)(5)) has been included in this final rule (§ 913.106(c)(5)) and broadened to include any family member receiving such pay.

6. Earned Income Tax Credit

The list contained in § 813.104(b) of the proposed rule of examples of types of income included in Annual Income has been expanded to include the earned income tax credit, to the extent it exceeds income tax liability. This revision of the rule is intended to clarify the existing practice of counting in Annual Income all sources of income.

7. Indian Per Capita Payments

The list in § 813.104(d)(3) of the proposed rule of exclusions from income prescribed by statute has been expanded to include an exclusion required by two 1983 statutes (25 U.S.C. 117 and 25 U.S.C. 1407–1408)—the first $2,000 of per capita shares received payment from judgment funds awarded by the Indian Claims Commission or the Court of Claims or from funds held in trust for an Indian tribe by the Secretary of Interior. The precise interpretation of this exclusion, as well as the others dealing with income or resources of Indians listed in §913.106(d)(3) of the final rule, is the subject of continuing interagency discussions, and additional guidance on them will be provided in HUD Handbooks or directives.

B. Income Levels

Section 206(b) of the 1983 Act made a technical change to Section 3(b) of the 1937 Act to permit the Secretary, based on certain findings, to establish income ceilings higher or lower than 50% of the median income for the area for families to be classified as "very low-income". A similar provision had long existed authorizing the Secretary to so modify the income level at which a family qualifies as "lower income"—not over 80 percent of the area median. Since most families served by the program must now qualify as very low-income (see Section 16 of the 1937 Act and §§ 913.104 and 913.105 of the final rule), it is more important than ever that the Secretary have flexibility to modify the ceiling used to determine who qualifies as very low-income. The statute requires that any such modification be supported by a finding that the modification is "necessary because of unusually high or low family incomes". This change is reflected in the definition of "very low-income family" found in § 913.102.

C. Definition of Adjusted Income

The proposed rule (§ 813.102) departed from the current Public Housing rule (§ 960.403(f)) and the Section 8 rule (§ 889.102) by eliminating all deductions from income in favor of two standard deductions: $400 for each minor in a family and $300 for an elderly, disabled or handicapped head of household. Comments on the proposed rule evidenced strong opposition to elimination of the 10% deduction for elderly public housing tenants and the institution of a $300 deduction for each elderly head of household.

Section 206(c) of the 1983 Act amended Section 3(b)(5) of the 1937 Act to define "adjusted income" as income that remains after excluding:

1. $480 for each member of the family residing in the household (other than the head of the household or spouse) who is under 18 years of age or who is 18 years of age or older and is disabled or handicapped or a full-time student;

2. $400 for any elderly family;

3. Medical expenses in excess of 3 percent of annual family income for any elderly family; and

4. Child care expenses to the extent necessary to enable another member of the family to be employed or to further his or her education.

This listing of adjustments is all-inclusive and mandatory, and is incorporated § 913.102 of the final rule.

In addition to increasing the amount of the deduction for dependent members of the household from $400 to $480, the new definition has expanded the category of persons qualifying for the deduction to include persons (other than head of household or spouse) who are over 18 years old and are disabled, handicapped, or (as discussed above) full-time students. The deduction for elderly families (which includes families whose head or spouse (or sole member) is disabled or handicapped) is increased by the new definition from $300 to $400.

Other changes in the definition of adjusted income in this final rule include the statutorily mandated deductions for medical expenses and child care expenses. These differ from comparable deductions in the current Section 8 (§ 889.102) and Public Housing (§ 960.403) regulations, in that the medical deduction is available only to "elderly families" and the child care deduction (available only for expenses for dependents who are under 13 years of age) has been broadened to apply where child care is necessary to further the education of a family member, as well as where such care is necessary for the employment of a family member (the condition required in current regulations).

Since income and deductions are based on anticipated events, major changes in expectations may render the income or expense projections inaccurate. The final rule provides for adjustments to reflect these changes. The family is required by its lease to report some of these changes. Similarly, if significant changes occur that are not required to be reported, such as large, unanticipated medical expenses for an elderly family, the family may request a reexamination of its income and have its adjusted income recomputed and its rental payment revised, as appropriate. (See § 960.209(b) and comparable provisions.)

III. Income Verification and Reexamination

A. Verification

Section 813.107(b) of the proposed rule would have authorized PHAs and Section 8 project owners to examine a family's Federal income tax return and to require access to other financial documents and third party information to verify statements provided by applicants and tenants regarding eligibility for and amounts of housing assistance. After considering the comments, we have decided not to incude the provision concerning the family's Federal income tax return, since uncertified returns can be falsified easily, and they provide little assurance of the accuracy of the data. However, we recognize that income tax returns will be used in some case, such as that of self-employed persons, for whom tax returns may be the only available income information.

The use of third-party verification, such as contact with employers, does not represent a change in HUD policy as reflected in current HUD handbooks. However, a few commenters objected to third-party verification as an invasion of privacy, as violative of a statutory directive on verification, or as an administrative burden on PHAs. A few PHAs objected to the use of a prescribed form for submission of the data to HUD. The final rule preserves the use of third-party verification, as well as explicitly stating that the family can be required to provide documentation directly, as is also current practice.

Although independent, third-party verification may require applicants and tenants to provide more information than a self-certification process, it is the most accurate, objective way to verify information provided by applicants and tenants. We believe that it does not violate the Privacy Act of 1974, 5 U.S.C. 522a, and we have had virtually no complaints about abuse of verification authority, which, as noted above, has been HUD policy.

Perhaps the real thrust of the concern about invasion of privacy is that individual tenant income data will be reported by each PHA to HUD, a practice that is now required by HUD, although not universally observed. This reporting is necessary to enable HUD to monitor progress toward meeting the statutory 25% and 5% limits on admissions of families with incomes between 50% and 80% of the area median. In addition, the data will permit the Department to carry out its responsibility to assure that income information provided by families is complete and accurate, to verify that eligibility and rental payment determinations have been made properly, to monitor compliance with equal opportunity requirements, and to analyze the effects of these programs. The data collected by HUD will be used only for purposes directly connected with administration of HUD's programs.

HUD requires use of a prescribed HUD form to assure that it has sufficient data to verify that HUD requirements are being followed. The PHA may use whatever form it chooses to collect the information sought on the HUD 50059 form. To simplify a PHA's task in submitting the data, HUD has issued procedures for accepting the information contained on the prescribed Form 50059 from PHAs on a PHA's computer-generated form in lieu of the HUD form, and we intend to issue procedures for accepting computer-magnetic tapes, so that there will be no additional burden placed on PHAs by the use of the form.

Section 205 of the 1983 Act prohibits the Secretary from imposing "any unnecessarily duplicative or burdensome reporting requirements on tenants or public housing agencies." The verification requirement is consistent with the duty to minimize burden because it does not require tenants to prepare any new documents or PHAs to submit any information not necessary to assure compliance with statutory requirements. This rule and the form that PHAs must complete are subject to review by the Office of Management and Budget to assure that such burdens are minimized, as required by the Paperwork Reduction Act of 1980.

B. Reexamination

The requirement that *all* tenants' incomes be reexamined at least annually was established by the 1981 Amendments' revision of Section 6(c)(2) and 8(c)(3) of the 1937 Act, and by the 1983 Act's revision of Section 3 of the 1937 Act. This requirement was implemented by a final rule (47 FR 54296), effective April 1, 1983 (48 FR 6961). Section 813.107 of the proposed rule would have required annual reexamination of family income and composition, as prescribed in individual program regulations. The proposed amendment to those individual regulations tracked the statutory language, requiring the PHA or owner to reexamine income at least annually. In addition, the amendment expressly would have permitted a PHA or owner to conduct reexaminations more frequently than annually and preserved reference to tenant-initiated reexaminations. See, e.g., § 960.209.

A few commenters suggested that the authority to conduct more frequent than annual reexaminations could be used to harass tenants who somehow offend management. Although more frequent than annual reexaminations have been permitted in the past, we have not received complaints of actual harassment. We believe that some PHAs need the flexibility to conduct reexaminations more frequently than annually under procedures now provided in HUD Handbooks. For example, earlier recertifications are appropriate if the PHA has performed a tenant-requested reexamination for a

change in circumstances that is found to have been temporary. In light of the lack of evidence of abuse, we have chosen to preserve this discretion in the final rule, but have deemphasized it by eliminating the sentence explicitly authorizing PHAs to initiate the reexaminations more frequently than annually.

One commenter requested that the rule make clear that annual reexaminations are contingent on lease provisions. We agree that such reexaminations are contingent on lease provisions, and PHAs that have a lease prescribing a reexamination interval greater than one year should amend the lease so that annual or more frequent reexaminations can occur. We have not included language to this effect in the rule, since it is a problem that arose only once—when the PHAs first implemented the annual requirement after the April 1, 1983 effective date of the rule requiring annual reexaminations for all tenants.

We have added a provision to the individual program regulations contained in the final rule requiring tenants to comply with any lease provisions regarding interim reporting of specified changes in income. This simply states current policy, as reflected in Handbook or lease provisions.

IV. Income Limits for Admission

Well over one-third of the public comments received addressed the restrictions in proposed § 813.103 on admission of lower income families that are not very low-income families: i.e., those families with incomes between 50% and 80% of the area median. This provision was designed to implement Section 16 of the 1937 Act, which limits the number of units that may be leased to these families to (1) not more than 25% (10% before Section 213 of the 1983 Act raised the ceiling) of the units that were available for occupancy before October 1, 1981 and are leased thereafter, and (2) not more than 5% of the units that first become available for occupancy after that date. The commenters almost unanimously opposed these percentage restrictions.

From the tenant perspective, commenters insisted that there should be no evictions of families with incomes above 50% of median. Comments on behalf of applicants with incomes above 50% of median who are on waiting lists claimed the rule unfairly deprived them of a benefit. PHAs had other concerns. The requirements, they asserted, would (1) contradict the public housing statutory mandate to house families with a broad range of incomes, (2) cost the government millions of dollars in additional subsidies, and (3) effectively exclude working families from assisted housing—leading to greater vandalism and property deterioration, as well as damaging the image of such housing in the community.

In addition to these objections, there were a number of questions about how the priorities for exceptions would be administered. What entity will grant the exceptions? Are some of the priorities given greater weight than others? Could a project qualify for approval of more than 5% of its units for families above 50% of median? What is the meaning of the phrase "local commitment to attaining occupacy by families with a broad range of incomes" in proposed § 813.103(d)(4)?

A. Evictions and Waiting Lists

Answering the tenant-perspective comments first, the Department from the outset intended that implementation of the income limit provision should not result in eviction of current residents of assisted housing. The income limit provision only prescribes the level of income *at admission* and does not affect any tenant's right to continued occupancy. Applicants who are on the waiting list when the rule goes into effect, however, are affected by these restrictions on admissions. The statute clearly imposes restrictions on income level at first occupancy—not at first inclusion on a waiting list.

B. Income Mix Policy

The statutorily required limit on income at admission is compatible with the statutory requirement that public housing house families with a broad range of incomes (see section 6(c)(4)(A) of the 1937 Act, 42 U.S.C. 1437d(c)(4)(A), and 24 CFR § 960.204(b)). First, with respect to one category of projects, there is clearly no conflict between these policies because the regulations impose no new income limit restrictions. For projects that were available for initial occupancy before October 1, 1981, this rule imposes no project-by-project restriction, because the Department believes the statutory limit (at least 75% of admissions to be families with incomes at or below 50% of the area median) can be met without the imposition of restrictions. (See discussion in section E, below.) Second, with respect to the other category of projects, it is noted that current tenants need not satisfy income requirements for admission and families that are admitted in the future as very low-income families may remain even after their income rises, so that projects will continue to house families with income above 50% of median and, thereby, a broad range of incomes. It is also true that there is a considerable range of incomes below 50% of the median, providing an economic mix even with that level as a ceiling.

C. Increased Subsidy Outlay

On a nationwide basis, more than 90% of assisted housing residents have incomes below 50% of median. Therefore, application of the rule's limitation is not expected to cause a dramatic shift in the income group served by the programs, as a whole, or in the amount of Federal subsidy paid. In any event, the statute requires the limitation on families with incomes above 50% of median that are admitted to the programs. The Senate Banking Committee has recognized that the change in the law would require an increase in subsidy payments: "Although this lower eligibility limit will tend to increase housing program costs, the Committee rejects the argument that for cost reasons moderate-income people should get housing while the poor wait in line. It will always be less expensive to house only those who can afford to pay more of the rent themselves. The government's purpose in lower-income housing programs though should be to help those who most need assistance." S. Rep. No. 87, 97th Cong., 1st Sess. 5 (1981).

D. Effect on Working Families and Deterioration of Living Conditions

The effect of the income limits provision on participation by working families is uncertain. Some working families (as opposed to families supported solely by welfare) may well earn less than 50% of median income for their area. For working families that are eligible under the income limits, the child care deduction will provide an additional incentive to participate. Congress implicity rejected the contention that imposing these income limits would cause serious deterioration in living conditions. (See Housing and Community Development Amendments of 1981: Hearings on S. 1022 and S. 1074 before the Subcommittee on Housing and Urban Affairs, 97th Cong., 1st Sess. 676 (1981)).

E. Administration of New Provision

Changes have been made in the rule in response to the numerous questions about how the exceptions to the limitations on admission of families with incomes above 50% of median will be administered. Section 913.103 (§ 813.103 in the proposed rule) has been divided into three sections in this final rule: § 913.103 for the overall restriction limiting admission to families with incomes not exceeding 80% of the area

median, § 913.104 for units first available before October 1, 1981, and § 913.105 for units first available on or after that date.

A provision has been included in both §§ 913.104 and 913.105 requiring PHAs to comply with reporting requirements, and stating what units will be counted, (1) for purposes of monitoring the 25% requirement and (2) for determining how HUD will calculate the 5% of units for which permission can be granted to admit lower income families who are not very low-income families. Consistent with Section 205 of the 1983 Act, these reporting requirements are being kept to the minimum necessary to permit HUD to track the units covered by Section 16 of the 1937 Act to assure compliance with that provision. The reporting required by both §§ 913.104(b) and 913.105(d) is expected to be accomplished by completion of one form (HUD 50059) for each family, which is submitted at annual and interim reexaminations.

All units that meet the statutory test of being available for occupancy under the programs covered by Part 913 and its counterpart for the Section 8 and related Programs (Part 813) will be counted in either the 25% or 5% universe, but the income level of tenants who have moved into the units between October 1, 1981 and the effective date of this rule will not be categorized as 50% of median or below, or between 50% and 80% of median. Thus, these tenants will not be counted against the 25% or 5% limitations. This result should cause no problem in meeting the 25% requirement, since HUD data show that from 1974 through 1982, for each of the five years for which we have data, the percentage of families in the 50% to 80% of median income range moving into public housing and Section 8 housing was approximately 6%. This consistently low rate of new tenants in that income category is well below the rate of 25% now required by statute. The answer is less clear with respect to the 5% post-October 1981 universe. The Department has determined, however, that not considering the incomes of tenants already in place is the most effective way of achieving our desire to maximize the statutory objective of targeting housing assistance to the neediest families without evicting or otherwise jeopardizing the continued tenancy of existing tenants.

The final rule retains the provision of proposed § 813.103(c) that reserves HUD's right to limit the admission of families with incomes between 50% and 80% of median to units under contract and first available for occupancy before October 1, 1981. No specific limitation on admission to these units is imposed in this rule (beyond the existing general requirement that income not exceed 80% of area median at admission), since the Department believes that the requirement can be achieved without the imposition of restrictions. HUD will monitor the income levels of families admitted to these units after the effective date of the rule to determine whether at some point in the future it is necessary to impose restrictions on the percentage of admission of families with incomes in the 50% to 80% range.

The final rule also retains the requirement in proposed § 813.103(d) that admission of families with incomes between 50% and 80% of area median to units subject to the 5% limit generally be permitted only with prior HUD approval. Section 913.105(b) of the final rule specifies how a PHA or project owner applies for permission to admit families in this income range to units covered by the admissions restrictions stated in § 913.105(a). In answer to a question raised in public comments, the list of "priority" categories to be considered for exception to the 5% rule is not in rank order. The final rule does not call these categories "priorities", but identifies them as "bases for exception". The list is not exhaustive, so other bases may be stated in a request for exception. Applications received by HUD under this rule (and under the companion rule for Section 8 and related Programs) will be weighed against each other for exceptions that may be available when the decision is made. No implication is intended that the Department necessarily will grant exceptions up to the 5% limit, nor shall there by any presumption of entitlement to an exception created by an application's statement of certain grounds for exception.

In § 913.105(b) of the final rule, the category for consideration of exception for projects where there is a local commitment to serving families with a broad range of incomes, has been revised to clarify that this "commitment" must be evidenced by furtherance of the policy throughout the PHA's assisted housing projects in the community.

Finally, because of the difficulty in keeping the number of lower income families that are not very low-income families below the 5% requirement nationwide, and the complexity of judgments about what projects most merit exceptions to the overall limit on admission of such families, we believe that the Congress committed solely to the Secretary's discretion decisions concerning which projects, if any, may be permitted to admit lower income families that are not very low-income. (See H. Rep. (Conf. Rep.) No. 208 (Book 2), 97th Cong., 1st Sess. 689, *reprinted in* 1981 U.S. Code, Cong. & Admin. News 1048.) Indeed, the statute allows the Secretary to prohibit any such family from being admitted, so there are no statutory standards to apply. In light of this fact, the Department believes that determinations whether to grant exceptions to the otherwise applicable 50% of area median income ceiling on admissions are agency actions committed to agency discretion by law, and accordingly these determinations will not be reviewable in any court.

In the proposed rule, the income limits provision would not have applied to either the Mutual Help (Indian) Homeownership Program or the Turnkey III Homeownership Program. In the final rule, the income limits provisions (§§ 913.103–913.105) do cover the homeownership programs, but a basis for considering excepting them from the limit on new participants with incomes between 50% and 80% percent of area median income has been added to § 913.105(b)(3). Section 16 of the 1937 Act (42 U.S.C. 1437n) applies its income limit restrictions to units "available for leasing" under the Act. After considering further the basis for the exclusion of the Turnkey III and Mutual Help Homeownership Programs from the coverage of the income limit requirements, the Department has concluded that these units must be included, because these programs do provide that the units are "leased" (under lease-purchase agreements) under the 1937 Act.

V. Rental Payment

A. Phased-In Rent Increase and Cap on Increases

We received numerous comments on the phased-in rent increase and the 10% annual cap on rent increases. Most of the comments were critical either because the system—as applied to the changes in definition of income as well as the changes in rental rates—would be difficult to administer, or because the applicability of the phase-in or cap was not regarded as sufficiently broad.

Commenters stated that in order to apply the 10% cap, many calculations would be necessary to determine the effect of the changes in the definition of income, as well as the rent increases. First, it would be necessary to make calculations using the tenant's old circumstances under old and new definitions and formulas, and then using

the tenant's new circumstances (including income, medical expenses, number of minors, etc.) under old and new definitions and formulas. We believe that only one set of such calculations is necessary to apply the cap. We recognize that even this is not an extremely simple procedure, however Sections 206(d) (1) through (4) of the 1983 Act clearly require that the cap be applied to certain tenants in a way that isolates the effect of the changes in the rule. We have simplified the procedures as much as possible.

Another criticism of the proposed rule involved proposed § 813.105(b)(2)'s provision that made eligible for the rent phase-in families that were receiving housing assistance before August 1, 1982 (the effective date of the rent increase rule) and whose assistance has been continuous thereafter, irrespective of whether the family moved from one unit, project or assistance program to another after August 1, 1982. These commenters believed that this provision was too burdensome, since it would require verification of the previous occupancy of a new tenant claiming to have moved from another assisted unit. To eliminate this administrative burden, § 913.107(c)(ii) of the final rule requires the tenant to remain within the same project or program in order to qualify for the phase-in. However, in the case of an involuntary move, a tenant will qualify if moving within the same PHA's programs.

On the other side of this issue, legal services organizations representing tenants argue that the phase-in and cap should apply to new tenants as well as existing tenants, so that all tenants with the same incomes would pay the same rent. Under § 913.107(c) of the final rule, the cap will apply to new and existing tenants to the extent they experience changes as a result of this rule. The final rule omits references to application of the cap to persons affected by changes in law defining which governmental benefits are required to or may be considered as income. The Department has determined that it would be more appropriate to provide regulatory direction treating this subject matter at such time as any change in law may occur that would require application of the cap.

The 1983 Act removed the authority of the Secretary to permit a phase-in for new tenants—at least if they are not in occupancy by the effective date of this rule. With respect to other "new tenants", i.e., those whose initial occupancy began after the effective date of the rent increase rule (August 1, 1982) but before the effective date of this rule, the Department has decided not to exercise its discretion under Section 206(d)(1)(A) of the 1983 Act to provide for a rent phase-in. These tenants are already paying the full statutory amount of rent, as provided in the Interim Rent Increase Rule. The Department believes that it would be inappropriate and administratively burdensome to provide what would be, in effect, a rent decrease for these tenants.

One commenter stated that HUD should make it clear that the 10% cap applies to tenants whose income is recertified as a result of the 1981 legislation. Recertifications conducted as a result of the 1981 Amendments are believed to be completed, thus rendering language in the rule dealing with this question unnecessary.

In the final rule, the cap is not being applied to families receiving welfare payments whose rental payments are based on the housing component of their welfare grant if the housing component is adjusted in accordance with their actual housing costs (Section 3(a)(3) of the 1937 Act) without reduction. The reason for this exception is that the failure to apply the cap to these families will not affect them adversely, and application of the cap would, therefore, not serve its purpose of protecting the families from precipitous increases in rents and preserving disposable income for other basic needs. The full cost of such families' rent charges are, in essence, paid by the welfare agency. Since the cap would not serve its purpose in such case, it is not being applied to them.

B. Utility Reimbursement

Section 813.102 of the proposed rule provided that tenants who pay directly for utilities and whose utility allowances exceed the amount they must pay for rent under the statutory formula, receive a utility reimbursement to cover the difference. A few commenters disapproved of this provision as "paying people to live in assisted housing" and accelerating the decline of housing projects, because such tenants (the commenters claimed) would not appreciate and respect their accomodations. This provision does not constitute a new policy or practice, as noted in the preamble to the proposed rule (47 FR 57960). Historically, the term "rent" under the 1937 Act has been interpreted to mean gross rent, that is, including utilities. Therefore, when the percentage of income maximum was first imposed by statute in 1969, the Department took the position that a tenant could pay no more than that percentage for housing costs including utilities, and the practice of utility reimbursements was born. The change in the statute from one percentage of income ceiling on rents to a choice of the highest of three figures as the rent does not necessitate a change in that practice, and considering the increase in the applicable percentage of income a tenant is required to pay for rent, the Department chooses not to change its utility reimbursement policy at this time.

The Department's position that any tenant payment of utilities is a payment toward "rent" is further buttressed by Section 221 of the 1983 Act, which provides that for purposes of determining benefits under the Aid to Families with Dependent Children program, any utility payment up to the amount ot the utility allowance is to be considered a rental payment. (The Department of Health and Human Services has responsibility for implementation of that provision.)

Another comment on utility reimbursements, from the tenants' perspective, was that they should be made payable either jointly to the tenant and the utility company or solely to the utility company. It has been suggested that such a change in the rule would remove the impression that people are being paid to live in assisted housing and would decrease the opportunity for fraud. By permitting a PHA or owner to make a utility reimbursement in the form of an in-kind benefit, the revision would also clarify that utility reimbursements are a part of the program's subsidy of total shelter costs, reducing the likelihood that other government agencies would count the utility reimbursements as income for purposes of determining eligibility and levels of assistance for other assistance programs, while not counting the value of the rest of the housing benefit (a practice which effectively discriminates against tenants who pay their own utilities directly). The HUD Handbook now applicable to management of Section 8 projects already suggests direct payments of utility reimbursements to the utility or jointly to the family and the utility. Consistent with current policy, we have added a sentence to § 913.108 of the final rule, and to operative provisions of the individual program regulations (§§ 904.107(j)(1), 905.304 and 960.208) permitting PHAs to follow such a practice, if all parties consent.

C. Applicability of Rent Formula and Cap to Homeownership Prorams

Section 813.105(d) of the proposed rule provided that the entire section, setting forth the calculation of the rent an assisted family must pay, would not

apply to the Mutual Help Homeownership program for Indians. This exception is based on Section 203 of the Housing and Community Development Act of 1974. Several commenters agreed that the rent formula in that section should not apply to Mutual Help, but contended that the 10% annual limitation on increases due to statutory or regulatory redefinition of income contained in that section should apply. Section 913.107(d) of the final rule (corresponding to § 813.105(d) of the proposed rule) applies the cap to the Mutual Help Program.

The regulation that governs monthly payments in the Mutual Help program, § 905.416(a), was amended in the interim rent increase rule (as § 805.416(a)) effective August 1, 1982 by raising the maximum percentage of income an Indian Housing Authority can charge a homebuyer from 25% to 30%. This final rule leaves that change intact. (The actual charge will still be determined by the Indian Housing Authority with HUD concurrence.) One conforming change from 25% to 30% is made in § 905.406(b) in the final rule. The proposed removal of § 905.416(a)(2), establishing a maximum monthly payment, has been dropped as an unnecessary change.

The regulation that governs monthly payments in the Turnkey III Homeownership Opportunities Program and the rental payment of a tenant in Indian Rental Housing before the effectiveness of this final rule, § 960.404, was amended in the interim rent increase rule (as § 860.404(a)) effective August 1, 1982 to require payment according to the formula now incorporated into § 913.107. Section 805.304(a) of the proposed rule, governing monthly payments in the Mutual Help Homeownership Opportunities Program, incorporated provisions to the same effect. The only substantive change in the corresponding section of the final rule is to add a provision explicitly permitting a utility reimbursement if the family's utility allowance exceeds its rental or homebuyer payment, consistent with § 913.108. Proposed § 804.107(j)(1) has been changed by adding a similar utility reimbursement provision (as § 904.107(j)(1)) to the final rule. In addition, since Section 3(a) of the 1937 Act does not explicitly authorize payments in the Turnkey III program for homebuyer equity accounts in excess of the amount required to be paid under the statutory rent formula, the Department has decided to delete from § 904.107(j)(1) of the final rule the provision in proposed § 804.107(j)(1) for homebuyers to pay amounts budgeted for homebuyer equity accounts in addition to the monthly amount determined in accordance with Part 913.

In all Public Housing and Indian Housing rental and homeownership programs, income for rent determination purposes will be calculated in accordance with Part 913. Only the Mutual Help Homeownership Opportunities Program is exempt from the rental payment provisions of Part 913. (But see § 913.106(d).)

VI. Miscellaneous

Comments submitted on the proposed rule concerning tenants' rights to a hearing in the Public Housing Program or establishment of utility allowances are not discussed here since those topics are addressed in separate rulemakings, Docket No. R–82–1020 (47 FR 55689) and Docket No. R–82–853 (47 FR 35249), respectively. The portion of the proposed rule that dealt with hearings in the Public Housing Program, § 860.211, has been dropped from the final rule, since it is the subject of a separate rulemaking.

One commenter stated that a public hearing should be held before issuance of a final rule. He stated that the impact on rural areas of proposed § 813.103, limiting the number of families that could be admitted to the Public Housing and Section 8 Programs, had not been considered sufficiently. The Department has considered the effect of that provision on non-urban areas and on projects within a submarket in an urban area that might not attract families in the required income category. Although permitting families with incomes above 50% of area median to occupy 5% of the units might pose a marketability problem for a few projects, the 5% limit is a nationwide one, permitting HUD to approve a greater number of units for such occupancy in some projects, where demonstrably necessary. In any event, the data presented by commenters on many topics, combined with data compiled by the Department, provide an ample record on which to base a final rule, and HUD does not find it appropriate, under 24 CFR 10.11, to provide for oral presentation of views before issuing this final rule.

VII. Transition Provisions

The 1983 Act became law on November 30, 1983. Congress did not provide a specific effective date for the amendments contained in Section 206 of the 1983 Act. However, by referring in Section 206(d)(1) to "the effective date of regulations implementing this section," Congress evidenced a contemplation that changes in tenant rental payments would become effective upon administrative implementation of the amendments through rulemaking procedures. Such an undertaking is consistent with prior practice. For example, while the 1981 Act became effective October 1, 1981, no tenant rents were increased as a result of those amendments before the effective date of the interim rules referred to at the beginning of this preamble (Aug. 1, 1982, in the case of Public Housing and Section 8).

The effective date of this final rule is July 1, 1984. However, the Secretary has determined, pursuant to Section 206(d)(1)(A) of the 1983 Act, that immediate applicability of the definitions of Annual Income and Adjusted Income would not be practicable. Implementation of PHAs of the extensive changes in current procedures required by this rule will require receipt of detailed instructions (principally in the form of HUD handbooks) and forms and staff training. In many cases, reprogramming of automated systems also will be required. Handbook and form revisions could not be completed before publication of this final rule, and full capability to implement the changes made by this rule may not be achieved for some months. Accordingly, utilization of the new definitions of Annual Income and Adjusted Income will not commence until examinations or reexaminations are conducted on or after October 1, 1984.

Although applicability of the new definitions will be effective on October 1, 1984, it would not be possible for PHAs to conform the rent computations for all tenants to the new definitions immediately. Actual application will occur as reexaminations are conducted during the following 12 months, in accordance with regular schedules. However, in order that the benefits, if any, of the revised definitions will be realized by tenants for the full period commencing October 1, 1984, § 913.110 of the rule requires a retroactive calculation to October 1, 1984, to be made at the time of the first reexamination occurring thereafter. This recalculation will apply the revised deductions to the Annual Income actually certified for that period. If the recalculation produces a lower tenant rent than that actually paid, the "overcharge" will be credited to the tenant. If the recalculation results in a higher rent than that actually paid, no adjustment will be made.

Other Matters

A Finding of No Significant Impact with respect to the environment was

made in accordance with HUD regulations in 24 CFR Part 50 that implement Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, D.C.

The Department has determined that this rule does not constitute a "major rule" as defined in Executive Order 12291. Analysis of the rule indicates that it does not (1) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (2) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with Foreign-based enterprises in domestic or export markets. While its economic impact, when considered together with the Interim Rent Increase Rules published on May 4, 1982 (47 FR 19120 and 19128) and effective on August 1, 1982 (47 FR 30960 and 30971), and the companion file rule published today for the Section 8 Programs, may exceed $100 million annually, such impact results to the greatest degree for the legislative enactment and only to a substantially lesser degree from its administrative implementation.

The undersigned hereby certifies, under Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule does not have a significant economic impact on a substantial number of small entities because it will make uniform the administration of the rental aspects of the Section 8 and Public Housing Programs by small public housing agencies, and lost rental revenue resulting from the statutorily required adjustments to income in computing rentals will be largely recoverable, presumably, through adjustments to federal operating subsidies.

This rule was listed as item H–17–84, RIN 2577–AA01, under the Office of Public and Indian Housing in the Department's Semiannual Agenda of Regulations published on April 19, 1984 (49 FR 15901, 15958), pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.156, Lower Income Housing Assistance Program (Public Housing).

Information collection requirements contained in §§ 913.104(b), 913.105(d), 913.107, and 913.109(b) of this rule have been approved by the Office of Management and Budget under the Paper work Reduction Act of 1980 (44 U.S.C. 3504(a)) and have been assigned OMB control number 1502–0204. The information collection requirement contained in § 913.105(b) of this rule has been approved by OMB and has been assigned OMB control number 2577–0063.

List of Subjects

24 CFR Part 913

Public housing.

24 CFR Part 904

Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Public housing, Homeownership.

24 CFR Part 905

Grant programs—housing and community development, Grant programs—Indians, Loan programs—Indians, Public housing, Homeownership.

24 CFR Part 960

Public housing.

24 CFR Part 965

Public housing, Utilities, Energy conservation.

Accordingly, the Department amends 24 CFR Chapter IX as follows:

1. A new Part 913 is added to read as follows:

PART 913—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE PUBLIC HOUSING AND INDIAN HOUSING PROGRAMS

Sec.

913.101 Purpose and applicability.
913.102 Definitions.
913.103 Overall income eligibility for admission.
913.104 Admission to units available before October 1, 1981.
913.105 Admission to units available on or after October 1, 1981.
913.106 Annual income.
913.107 Total tenant payment.
913.108 Utility reimbursement.
913.109 Initial determination, verification, and reexamination of family income and composition.
913.110 Transition provisions.

Authority: Secs. 3, 6, and 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437d, 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 913.101 Purpose and applicability.

This part establishes definitions, policies and procedures related to income limits and the determination of eligibility, income and rent for applicants and tenants in Public Housing and Indian Housing, including the Turnkey III Homeownership Opportunities and the Mutual Help Homeownership Opportunities Programs. (See 24 CFR Part 813 for the analogous rule applicable to the Section 8 Housing Assistance Payments and related Programs.)

§ 913.102 Definitions

Adjusted Income. Annual Income less:

(a) $480 for each Dependent,

(b) $400 for any Elderly Family,

(c) Medical Expenses in excess of three percent of Annual Income for any Elderly Family, and

(d) Child Care Expenses.

Annual Income. See § 913.106.

Child Care Expenses. Amounts anticipated to be paid by the Family for the care of children under 13 years of age during the period for which Annual Income is computed, but only where such care is necessary to enable a Family member to be gainfully employed or to further his or her education. The amount deducted shall reflect reasonable charges for child care, and, in the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of income received from such employment.

Dependent. A member of the Family household (excluding foster children) other than the Family head or spouse, who is under 18 years of age or is a Disabled Person or Handicapped Person, or is a Full-time Student.

Disabled Person. A person under a disability as defined in Section 223 of the Social Security Act (42 U.S.C. 423) or in Section 102 of the Developmental Disabilities Services Facilities Construction Amendments of 1970 (42 U.S.C. 2691(1))

Elderly Family. A Family whose head or spouse (or sole member) is a person who is an Elderly, Disabled or Handicapped Person. It may include two or more Elderly, Disabled or Handicapped Persons living together, or one or more such persons living with another person who is determined to be essential to their care or well being.

Elderly Person. A person who is at least 62 years of age.

Family. See definition in part 912 of this chapter.

Full-time Student. A person who is carrying a subject load that is considered full-time for day students under the standards and practices of the educational institution attended. An educational institution includes a vocational school with a diploma or

certificate program, as well as an institution offering a college degree.

Handicapped Person. A person having a physical or mental impairment that (a) is expected to be of long-continued and indefinite duration, (b) substantially impedes his or her ability to live independently, and (c) is of such a nature that such ability could be improved by more suitable housing conditions.

Indian Housing Authority (IHA). As defined in Part 905.

Lower Income Family. A Family whose Annual Income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 80 percent of the median income for the area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs or unusually high or low family incomes.

Medical Expenses. Those medical expenses, including medical insurance premiums, that are anticipated during the period for which Annual Income is computed, and that are not covered by insurance.

Monthly Adjusted Income. One twelfth of Adjusted Income.

Monthly Income. One twelfth of Annual Income.

Net Family Assets. Value of equity in real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded. (In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the Family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining Annual Income under § 913.106.) In determining Net Family Assets, PHAs shall include the value of any assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

Public Housing Agency (PHA). Any State, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) that is authorized to engage in or assist in the development or operation of housing for lower income families. As used in this Part, PHA includes an Indian Housing Agency.

Tenant Rent. The amount payable monthly by the Family as rent to the PHA. Where all utilities (except telephone) and other essential housing services are supplied by the PHA, Tenant Rent equals Total Tenant Payment. Where some or all utilities (except telephone) and other essential housing services are not supplied by the PHA and the cost thereof is not included in the amount paid as rent, Tenant Rent equals Total Tenant Payment less the Utility Allowance.

Total Tenant Payment. The monthly amount calculated under § 913.107. Total Tenant Payment does not include charges for excess utility consumption or other miscellaneous charges (see § 966.4 of this chapter).

Utility Allowance. If the cost of utilities (except telephone) and other housing services for an assisted unit is not included in the Tenant Rent but is the responsibility of the Family occupying the unit, an amount equal to the estimate made or approved by a PHA or HUD, under Part 965 of this chapter, of the monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.

Utility Reimbursement. The amount, if any, by which the Utility Allowance for the unit, if applicable, exceeds the Total Tenant Payment for the Family occupying the unit.

Very Low-Income Family. A Lower Income Family whose Annual Income does not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 50 percent of the median income for the area on the basis of its finding that such variations are necessary because of unusually high or low family incomes.

Welfare Assistance. Welfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly, by Federal, State or local governments.

§ 913.103 Overall income eligibility for admission.

No Family other than a Lower Income Family shall be eligible for admission to a program covered by this Part.

§ 913.104 Admission to units available before October 1, 1981.

(a) *General.* Section 16(a) of the United States Housing Act of 1937 (42 U.S.C. 1437n) ("The 1937 Act") provides that not more than 25 percent of the dwelling units that were available for occupancy under public housing Annual Contributions Contracts and Section 8 Housing Assistance Payments ("HAP") Contracts taking effect before October 1, 1981 and that are leased on or after that date shall be available for leasing by Lower Income Families other than Very Low-Income Families. HUD reserves the right to limit the admission of Lower Income Families other than Very Low-Income Families to these units.

(b) *Reporting.* PHAs shall comply with HUD-prescribed reporting requirements that will permit HUD to maintain reasonably current data as to (1) the number of dwelling units assisted under the 1937 Act in the Public Housing and Indian Housing Programs in projects for which initial occupancy began before October 1, 1981 and (2) the number of Families occupying such units that were admitted to them on or after July 1, 1984 and were not Very Low-Income Families when admitted.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under OMB Control Number 2502–0204)

§ 913.105 Admission to units available on or after October 1, 1981.

(a) *General.* Section 16(b) of the 1937 Act (42 U.S.C. 1437n) provides that not more than five percent of the dwelling units that initially become available for occupancy under public housing Annual Contributions Contracts and Section 8 HAP Contracts on or after October 1, 1981 shall be available for leasing by Lower Income Families other than Very Low-Income Families. No Lower Income Family other than a Very Low-Income Family shall, after July 1, 1984, be approved for admission to any unit in a Public Housing or Indian Housing project for which initial occupancy began on or after October 1, 1981, except with the prior approval of HUD.

(b) *Request for exception.* A request for a PHA for approval of admission of Lower Income Families other than Very Low-Income Families to units described in paragraph (a) of this section must state the basis for requesting the exception and provide supporting data.

Bases for exceptions that may be considered by HUD include the following:

(1) Need for admission of a broader range of tenants to obtain full occupancy;

(2) Local commitment to attaining occupancy by Families with a broad range of incomes. An application citing this basis should be supported by evidence that the PHA is pursuing this goal throughout its housing program in the community;

(3) Need for higher incomes to sustain homeownership eligibility in a homeownership project; and

(4) Need to avoid displacing Lower Income Families from a project acquired by the PHA for rehabilitation.

(c) *Action on request for exception.* Whether to grant any request for exception is a matter committed by law to HUD's sole discretion, and no implication is intended to be created that the Department will seek to grant approvals up to the maximum limits permitted by statute, nor is any presumption of entitlement to an exception created by the specification of certain grounds for exception that HUD may consider. HUD will review exceptions granted to PHAs at regular intervals. HUD may withdraw permission to exercise these exceptions for program applicants at any time exceptions are not being used or after a periodic review, based on the findings of the review.

(d) Reporting. PHAs shall comply with HUD-prescribed reporting requirements that will permit HUD to maintain reasonably current data as to (1) the number of dwelling units assisted under the 1937 Act in the Public Housing and Indian Housing Programs in projects for which initial occupancy began on or after October 1, 1981 and (2) the number of Families occupying such units that were admitted to them on or after July 1, 1984 and were not Very Low-Income Families when admitted.

(Information collection requirements contained in this paragraph have been approved by the Office of Management and Budget under OMB Control Number 2502-0204)

§ 913.106 Annual income.

(a) Annual Income is the anticipated total income from all sources received by the Family head and spouse (even if temporarily absent) and by each additional member of the Family, including all net income derived from assets, for the 12 month period following the effective date of initial determination or reexamination of income, exclusive of income that is temporary, nonrecurring or sporadic as defined in paragraph (c) of this section, and exclusive of certain other types of income specified in paragraph (d) of this section.

(b) Income includes, but is not limited to:

(1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

(2) The net income from operation of a business or profession (for this purpose, expenditures for business expansion or amortization of capital indebtedness and an allowance for depreciation of capital assets shall not be deducted to determine the net income from a business);

(3) Interest, dividends, and other net income of any kind from real or personal property (for this purpose, expenditures for amortization of capital indebtedness and an allowance for depreciation of capital assets shall not be deducted to determine the net income from real or personal property). Where the Family has Net Family Assets in excess of $5,000, Annual Income shall include the greater of the actual income derived from all Net Family Assets or a percentage of the value of such Assets based on the current passbook savings rate as determined by HUD;

(4) The full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts, including a lump-sum payment for the delayed start of a periodic payment;

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (but see paragraph (c)(3) of this section);

(6) Welfare Assistance. If the Welfare Assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the Welfare Assistance agency in accordance with the actual cost of shelter and utilities, the amount of Welfare Assistance income to be included as income shall consist of:

(i) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities, plus

(ii) The maximum amount that the Welfare Assistance agency could in fact allow the Family for shelter and utilities. If the Family's Welfare Assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph (b)(6)(ii) shall be the amount resulting from one application of the percentage;

(7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling;

(8) All regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is head of the Family, spouse, or other person whose dependents are residing in the unit (but see paragraph (c)(5) of this section); and

(9) Any earned income tax credit to the extent it exceeds income tax liability.

(c) Annual Income does not include such temporary, non-recurring or sporadic income as the following:

(1) Casual, sporadic or irregular gifts;

(2) Amounts that are specifically for or in reimbursement of the cost of Medical Expenses;

(3) Lump-sum additions to Family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (but see paragraph (b)(5) of this section);

(4) Amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the Government to a veteran, for use in meeting the costs of tuition, fees, books and equipment. Any amounts of such scholarships, or payments to veterans, not used for the above purposes that are available for subsistence are to be included in income; and

(5) The hazardous duty pay to a Family member in the Armed Forces away from home and exposed to hostile fire.

(d) Income does not include:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children;

(3) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under the 1937 Act. The following types of income are subject to such exclusion:

(i) Relocation payments made under title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4621-4638);

(ii) The value of the allotment provided to an eligible household for coupons under the Food Stamp Act of 1977 (7 U.S.C. 2011-2029);

(iii) Payments to volunteers under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951–4993);

(iv) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(a));

(v) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);

(vi) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8621–8629);

(vii) Payments received from the Job Training Partnership Act (29 U.S.C. 1552(b));

(viii) Income derived from the disposition of funds of the Grand River Band of Ottawa Indians (Pub. L. 94–540, 90 Stat. 2503–2504; and

(ix) The first $2,000.00 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the Court of Claims (25 U.S.C. 1407–1408), or from funds held in trust for an Indian Tribe by the Secretary of Interior (25 U.S.C. 117).

(e) If it is not feasible to anticipate a level of income over a 12-month period, the income anticipated for a shorter period may be annualized, subject to a redetermination at the end of the shorter period.

§ 913.107 Total tenant payment.

(a) *Total tenant payment for families whose initial lease is effective on or after August 1, 1982.* Total Tenant Payment shall be the highest of the following, rounded to the nearest dollar:

(1) 30 percent of Monthly Adjusted Income;

(2) 10 percent of Monthly Income; or

(3) If the Family receives Welfare Assistance from a public agency and a part of such payments, adjusted in accordance with the Family's actual housing costs, is specifically designated by such agency to meet the Family's housing costs, the monthly portion of such payments which is so designated. If the Family's Welfare Assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph (a)(3) shall be the amount resulting from one application of the percentage.

(b) *Total tenant payment for families whose initial lease was effective before August 1, 1982.* Total Tenant Payment shall be calculated in accordance with paragraph (a) of this section, except that instead of 30 percent, the percentage applied to Monthly Adjusted Income shall be in accord with the following table:

Effective date of reexamination	Percentage
Aug. 1, 1982–Sept. 30, 1982	26
Oct. 1, 1982–Sept. 30, 1983	27
Oct. 1, 1983–Sept. 30, 1984	28
Oct. 1, 1984–Sept. 30, 1985	29
Oct. 1, 1985 and after	30

(c) *Special conditions.* (1) For purposes of this section, a Family is considered to be a Family whose initial lease was effective before August 1, 1982, only if it satisfies both of the following conditions:

(i) The Family resided on July 31, 1982 in a unit under lease with assistance under the Section 8, Public Housing or Indian Housing Program, or the Family resided in a unit in a HUD-owned project; and

(ii) The Family's assistance has been continuous thereafter in the same project or same program of the PHA, or in the case of an involuntary move, in units in any of the PHA's programs.

(2) So long as a Family whose initial lease was effective before August 1, 1982 continues to reside in the same project or same program of the PHA, or, in the case of an involuntary move, in units in any of the PHA's programs, its Total Tenant Payment shall not be increased by more than 10 percent during any 12-month period as a result of: (i) Application of the percentages in paragraph (b) of this section; and (ii) application of the changes in the definitions contained in §§ 913.102 and 913.106 from definitions of comparable terms in regulations in effect immediately before July 1, 1984.

(3) So long as a Family whose initial lease was effective on or after August 1, 1982, but which was in occupancy on July 1, 1984, continues to reside in the same project or same program of the PHA, or, in the case of an involuntary move, in units of any of the PHA's programs, its Total Tenant Payment shall not be increased by more than 10 percent during any 12-month period as a result of application of the changes in the definitions contained in §§ 913.102 and 913.106 from definitions of comparable terms in regulations in effect immediately before July 1, 1984.

(4) The limitations contained in paragraphs (c) (2) and (3) above do not apply to portions of increases in Total Tenant Payment that are attributable to increases in income or changes in Family composition or circumstances unrelated to the factors referred to in paragraphs (c) (2) and (3).

(5) The limitations contained in paragraphs (c) (2) and (3) above do not apply to Families subject to paragraph (a)(3) of this section when the welfare agency includes as the housing component of the Family's grant an amount equal to the Total Tenant Payment, without reduction.

(6) In order to facilitate administration of the limitations provided in paragraphs (c) (2) and (3) above, upon any regular or interim reexamination of a Family that was in occupancy on July 1, 1984, the PHA shall continue to collect and verify information that would have been taken into account in calculating Annual Income and Annual Income After Allowances, as defined in regulations in effect immediately before July 1, 1984, as if such regulations were in effect at the date of such examination.

(7) The limitations prescribed in paragraphs (c) (2) and (3) above shall be applied in accordance with procedures prescribed by HUD.

(d) *Mutual help homeowner projects.* Paragraphs (a), (b), and (c) (2) of this section shall not apply to Mutual Help Homeownership projects (see § 905.416 of this chapter).

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under OMB control number 2502–0204)

§ 913.108 Utility reimbursement.

Where applicable, the Utility Reimbursement shall be paid to the Family in the manner provided in the pertinent program regulation (Part 904, 905 or 960 of this chapter). If the Family and the utility company consent, a PHA may pay the Utility Reimbursement jointly to the Family and the utiliy company, or directly to the utility company.

§ 913.109 Initial determination, verification, and reexamination of family income and composition.

(a) *Responsibility for initial determination and reexamination.* The PHA shall be responsible for determination of eligibility for admission, for determination of Annual Income, Adjusted Income and Tenant Rent, and for reexamination of Family income and composition at least annually, as provided in pertinent program regulations and handbooks (see, e.g., 24 CFR Part 905, Subpart C; Part 960, Subpart B). As used in this Part, the "effective date" of an examination or reexamination refers to (i) in the case of an examination for admission, the effective date of initial occupancy, and (ii) in the case of a reexamination of an existing tenant, the effective date of the redetermined Total Tenant Payment.

(b) *Verification.* As a condition of admission to, or continued occupancy of, any assisted unit under the Public

Housing or Indian Housing Program, the PHA shall require the Family head and other such Family members as it designates to execute a HUD-approved release and consent authorizing any depository or private source of income, or any Federal, State or local agency, to furnish or release to the PHA and to HUD such information as the PHA or HUD determines to be necessary. The PHA shall also require the Family to submit directly documentation determined to be necessary. Information or documentation shall be determined to be necessary if it is required for purposes of determining or auditing a Family's eligibility to receive housing assistance, for determining the Family's Adjusted Income or Tenant Rent, for verifying related information, or for monitoring compliance with equal opportunity requirements. The use of disclosure of information obtained from a Family or from another source pursuant to this release and consent shall be limited to purposes directly connected with administration of this Part or applying for assistance.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under OMB contract number 2502-0204)

§ 913.110 Transition provisions.

(a) *Delayed implementation for rent calculations.* This Part shall be effective on July 1, 1984. However, applicability of the definitions of Annual Income and Adjusted Income contained in this Part shall be delayed until October 1, 1984, due to the need for distribution of instructions and forms, instruction of PHA staffs, and similar administrative adjustments.

(b) *Examinations and reexaminations before October 1, 1984.* In the case of (1) any current tenant whose regularly scheduled reexamination is conducted on or after July 1, 1984 and before October 1, 1984, (2) current tenants for who interim reexaminations are conducted during such period, and (3) applicants for admission whose initial examinations are conducted during such period, the PHA shall conduct the examination or reexamination as scheduled and determine the Family's rent in accordance with regulations and procedures in effect immediately before July 1, 1984 (including the percentage to be applied to adjusted income under § 913.107 based on the effective date of the examination or reexamination). For purposes of this section, an examination or reexamination will be consided to be "conducted" at the time a PHA, based on its regular practice, begins scheduling and verifying the submission of data by an applicant or tenant, regardless of the "effective date" of the examination or reexamination (see § 913.109(a)).

(c) *Admissions.* On or after July 1, 1984, and before October 1, 1984, for purposes of application of §§ 913.103 and 913.105, a Family will be determined to be a Lower-Income Family or a Very Low-Income Family on the basis of a determination of Annual Income made in accordance with regulations and procedures in effect immediately before July 1, 1984. The admission of any Family on such basis before October 1, 1984, shall not be affected by a recalculation of Annual Income made pursuant to this Part on or after October 1, 1984.

(d) *Admissions and Reexaminations on or after October 1, 1984.* All regular or interim reexaminations, or examinations for admission, conducted on or after October 1, 1984, and determinations of Annual Income, Adjusted Income, Tenant Total Payment and Tenant Rent based thereon, shall be made in accordance with the requirements of this Part.

(e) *Optional Interim Reexamination.* Each PHA shall have the right, at its discretion, to require any Family in occupancy at October 1, 1984, to undergo an interim reexamination, and determination of Annual Income, Adjusted Income, Total Tenant Payment, and Tenant Rent based thereon, in accordance with the requirements of this Part, at any time after October 1, 1984, and before the next scheduled regular reexamination for such Family.

(f) *Calculation of Retroactive Adjustment.* For all Families other than those whose examination for admission was conducted on or after October 1, 1984, in accordance with this Part, at the time of the first regular or interim reexamination conducted after October 1, 1984, the PHA shall make an additional calculation with respect to the period between October 1, 1984 and the effective date of such reexamination. An adjusted tenant rental payment shall be calculated for such period on the basis of—

(1) the Annual Income determined for such period in accordance with regulations and procedures in effect immediately before July 1, 1984;

(2) the Dependent and Elderly deductions prescribed by § 913.102;

(3) estimated Medical Expenses taken into account in the calculation of Annual Income After Allowances for such period in accordance with regulations and procedures in effect immediately before July 1, 1984, but only if the Family was an Elderly Family during such period;

(4) Unusual Expenses taken into account in the calculation of Annual Income After Allowances for such period in accordance with regulations and procedures in effect immediately before July 1, 1984, but only if such Unusual Expenses qualified as Child Care Expenses as defined in § 913.102.

(5) the percentage applied to Monthly Adjusted Income in accordance with regulations and procedures in effect immediately before July 1, 1984, to determine the rental payment actually charged during such period.

(g) *Actual Adjustments.* (1) If the adjusted tenant rental payment calculated under paragraph (f) is higher than the tenant payment actually charged for the applicable period, no adjustment shall be made. If the adjusted tenant rental payment calculated under paragraph (f) is lower than the tenant rental payment actually charged for the applicable period, the amount of such difference shall first be offset against any amounts due from the Family to the PHA and any remaining balance shall be applied as a credit to the Total Tenant Payment due immediately after the effective date of the reexamination. If the amount of any such credit to a Family exceeds 25 percent of the Total Tenant Payment due from such Family, such credit may be applied in not more than four installments.

(2) If a Family vacates a unit after October 1, 1984, and before the first reexamination occurring after such date, the PHA will notify the Family of the possibility of a rent adjustment for the period commencing October 1, 1984, subject to the requirement of a request therefor (made not later than 60 days after vacating the unit) together with notification of a current address to which any refund can be sent. For any Family making such a timely request, the PHA will make all calculations necessary to determine whether an adjustment is due to the Family pursuant to this paragraph (g) and, if so, the amount of any such adjustment will first be offset against any amounts due from the Family and any balance will be refunded to the Family.

(h) *Revised Subsidy Needs.* In accordance with § 990.109(d), each PHA shall submit a revision of its annual operating budget to reflect the change in operating subsidy eligibility resulting from the estimated change in rental income that it anticipates will result from the implementation of these provisions.

PART 904—LOW RENT HOUSING HOMEOWNERSHIP OPPORTUNITIES

2. The authority citation for Part 904 is revised to read as follows:

Authority: United States Housing Act of 1937 (42 U.S.C. 1437–1437q); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

3. In § 904.104, paragraph (h)(1) is revised to read as follows:

§ 904.104 Eligibility and selection of homebuyers.

* * * * *

(h) *Eligibility for continued occupancy.* (1) A homebuyer shall cease to be eligible for continued occupancy with the aid of HUD annual contributions when the LHA determines that the homebuyer's adjusted monthly income has reached, and is likely to continue at, a level at which the current amount of the homebuyer's Total Tenant Payment, determined in accordance with Part 913 of this chapter, equals or exceeds the monthly housing cost (see paragraph (h)(2) of this section). In such event, if the LHA determines, with HUD approval, that suitable financing is available, the LHA shall notify the homebuyer that he or she must either: (1) Purchase the home or (ii) move from the development. If, however, the LHA determines that, because of special circumstances, the family is unable to find decent, safe and sanitary housing within the family's financial reach although making every reasonable effort to do so, the family may be permitted to remain for the duration of such a situation if it pays as rent an amount equal to Tenant Rent, as determined in accordance with Part 913 of this chapter. Such a monthly payment shall also be payable by the family if it continues in occupancy without purchasing the home because suitable financing is not available.

* * * * *

4. In § 904.107, paragraphs (j) (1) and (2) are revised, paragraphs (j) (3) and (4) are removed, and a new paragraph (j)(3) is added, to read as follows:

§ 904.107 Responsibilities of homebuyer.

* * * * *

(j) *Homebuyer's required monthly payment.* (1) The term "required monthly payment" as used herein means the monthly payment the homebuyer is required to pay the LHA on or before the first day of each month. The homebuyer's required monthly payment, which is based upon family income, shall be an amount equal to the Tenant Rent as determined in accordance with Part 913 of this chapter. If the Utility Allowance, as defined in Part 913 of this chapter, exceeds the Homebuyer's Total Tenant Payment, as determined in accordance with Part 913, the LHA will pay a utility reimbursement equal to that excess to the Homebuyer, or as provided in § 913.108 of this chapter.

(2) For purposes of determining Homebuyer payment amounts under paragraph (j)(1) of this section and determining whether a Homebuyer is required to purchase the home under § 904.104(h)(1), the LHA shall examine the Family's income and composition before initial occupancy and shall reexamine the Family income and composition of all Homebuyers regularly, at least once every 12 months. After consultation with the Family and upon verification of the information, the LHA shall make appropriate adjustments in the Homebuyer payment amounts. The Homebuyer shall comply with the LHA's policy regarding required interim reporting of changes in the Family's income. If the LHA receives information from the Family or other source concerning a change in the Family's income or other circumstances between regularly scheduled reexaminations, the LHA, upon consultation with the Family and verification of the information (in accordance with Part 913 of this chapter) must promptly make any adjustments determined to be appropriate in the required monthly payment.

(3) The LHA shall not refuse to accept monthly payments because of any other charges (other than overdue monthly payments) owed by the homebuyer to the LHA; however, by accepting monthly payments under such circumstances the LHA shall not be deemed to have waived any of its rights and remedies with respect to such other charges.

Appendix II—[Amended]

5. Appendix II to Part 904, Subpart B, is amended by revising paragraph 15a of Part II of the Homebuyer's Ownership Opportunity Agreement (Turnkey III), to read as follows:

15. *Eligibility for continued occupancy.* a. The Homebuyer shall cease to be eligible for continued occupancy with the aid of HUD annual contributions when the Authority determines the Homebuyer's adjusted monthly income has reached, and is likely to continue at, a level at which the Homebuyer's total payment equals or exceeds the monthly housing cost (see paragraph b of this section). In such an event, if the Authority determines, with HUD approval, that suitable financing is available, the Authority shall notify the Homebuyer that he or she must either: (1) Purchase the Home; or (2) move from the Development. If, however, the Authority determines that, because of special circumstances, the family is unable to find decent, safe and sanitary housing within the family's financial reach although making every reasonable effort to do so, the family may be permitted to remain for the duration of such a situation if it pays as rent a monthly payment consistent with its adjusted monthly income, in accordance with applicable HUD regulations prescribing rental payments for families in housing assisted under the United States Housing Act of 1937. Such a monthly payment shall also be payable by the family if it continues in occupancy without purchasing the home because suitable financing is not available.

PART 905—INDIAN HOUSING

6. The authority citation for Part 905 is revised to read as follows:

Authority: Secs. 3, 4, 5, 6, 9, 11, 12, and 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437b, 1437c, 1437d, 1437g, 1437i, 1437j, 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

7. Section 905.102 is amended by adding, in alphabetical order, the definitions of Lower Income Family, Tenant Rent, Total Tenant Payment, Utility Allowance, Utility Reimbursement and Very Low-Income Family; and revising the definitions of IHS and Interdepartmental Agreement, to read as follows:

§ 905.102 Definitions.

* * * * *

IHS. The Indian Health Service in the Department of Health and Human Services.

* * * * *

Interdepartmental Agreement. The agreement among HUD, the Department of Health and Human Services, and the Department of the Interior concerning assistance to Projects developed and operated under the Act (Appendix I to Subpart B).

* * * * *

Lower Income Family. As defined in Part 913 of this chapter.

* * * * *

Tenant Rent. The monthly amount defined in, and determined in accordance with Part 913 of this chapter.

Total Tenant Payment. The monthly amount defined in, and determined in accordance with Part 913 of this chapter.

* * * * *

Utility Allowance. As defined in Part 913 of this chapter.

Utility Reimbursement. As defined in Part 913 of this chapter.

Very-Low Income Family. As defined in Part 913 of this chapter.

8. Section 905.302(a) is revised to read as follows:

§ 905.302 Admission Policies

(a) *Income limits.* (1) IHAs shall admit families in accordance with Part 913 of this chapter.

(2) Where decent, safe and sanitary housing is not otherwise being provided in the Indian area even for those of relatively high income, the IHA may request the HUD increase income limits for Lower Income Families or Very Low-Income Families in the Indian area because of unusually high family incomes.

* * * * *

9. Section 905.302(b)(2) is revised to read as follows:

§ 905.303 Admission policies.

* * * * *

(b) * * *

(2) These regulations shall be designed: (i) Subject to the requirements and limitations of Part 913 of this chapter, to attain at initial occupancy or within a reasonable period of time for Projects beyond the state of initial occupancy (but without prejudice to contract rights of Homebuyers in Turnkey III or MH Projects), a tenant or Homebuyer body in each Project composed of families with a broad range of incomes and rent-paying ability which is generally representative of the range of incomes of those Lower Income Families in the Indian area that would be qualified for admission to the type of project (Rental or Mutual Help);

(ii) To avoid concentrations of the most economically and socially deprived families in any one or all of the IHA's Projects; and

(iii) To achieve compliance with the applicable provisions of Part 913 of this chapter, including, but not limited to §§ 913.103 through 913.105, which specify the requirements concerning income levels of families who would otherwise qualify.

10. Sections 905.304 (a) and (c) are revised to read as follows:

§ 905.304 Determination of rents and homebuyer payments.

(a) *Rental and Turnkey III Projects.* The amount of rent required of a tenant in a rental project or the Homebuyer payment amounts for a Homebuyer in a Turnkey III Project shall be equal to the Tenant Rent as determined in accordance with Part 913 of this chapter. If the Utility Allowance exceeds the rent or required monthly payment, the LHA will pay the Utility Reimbursement to the tenant or homebuyer, or as provided in § 913.108 of this chapter.

* * * * *

(c) *Initial determination and reexamination of family income.* For purposes of determining rent and Homebuyer payment amounts under paragraphs (a) and (b) of this section and determining whether an MH Homebuyer is required to purchase the home under § 905.422(e), the IHA shall examine the family's income and composition before initial occupancy and shall reexamine the family's income and composition regularly, at least once every 12 months. After consultation with the family and upon verification of the information, the IHA shall make appropriate adjustments in the rent or Homebuyer payment amount. The tenant or Homebuyer shall comply with the IHA's policy regarding required interim reporting of changes in the family's income. If the IHA receives information from the family or other source concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the IHA, upon consultation with the family and verification of the information (in accordance with Part 913 of this chapter) must promptly make any adjustments determined to be appropriate in the rent or Homebuyer payment amount.

§ 905.406 [Amended]

11. Section 905.406(b) is amended by removing the term "25 percent" and adding in its place the term "30 percent".

12. Section 905.416 (c) (1) is revised to read as follows:

§ 905.416 Required monthly payments.

* * * * *

(c) * * *

(1) "Family Income" shall have the same meaning as "Adjusted Income" as defined in Part 913 of this chapter.

* * * * *

13. Section 905.430 is amended by removing the entries for Housing Assistance Plan (HAP), Housing organizations and Indian-Owned Economic Enterprises, Maintenance Credit, and Total Family Income; adding, in alphabetical order, entries for Indian Organizations and Indian-Owned Enterprises, Lower Income Family, and Very Low-Income Family; and revising the entries for Family Income, Force Account (production) Method, and Utility Deduction, as follows:

§ 905.430 Cross references to defined terms.

* * * * *

Family Income. § 905.416(c).

* * * * *

Force Account (production) Method. § 905.203(f).

* * * * *

Indian Organizations and Indian-owned Economic Enterprises. § 905.106(a).

* * * * *

Lower Income Family. §§ 905.102, 913.102.

* * * * *

Utility Deduction. § 905.416(c).

* * * * *

Very Low-Income Family. §§ 905.102, 913.102.

PART 960—ADMISSION TO, AND OCCUPANCY OF PUBLIC HOUSING

14. The heading of Part 960 is revised to read as set forth above.

15. The authority citation for Part 960 is revised to read as follows:

Authority: Secs. 3, 5, 6, and 16, United States Housing Act of 1937 (42 U.S.C 1437a, 1437c, 1437d, 1437n); Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subparts A and D—[Removed]

16. Subpart A and Subpart D of Part 960 are removed in their entirety. Subpart A is reserved.

17. The title of Subpart B is revised to read as follows:

Subpart B—Admission, Rent and Reexamination

18. Section 960.201 is revised to read as follows:

§ 960.201 Purpose and scope.

The purpose of this subpart is to prescribe standards and criteria for tenant selection and annual reexamination of income and family composition by each public housing agency (PHA) in accordance with the U.S. Housing Act of 1937 (the Act) and the Annual Contributions Contract (ACC).

§ 960.204 [Amended]

19. Section 960.204(a) is amended by removing the term "low-income" wherever it occurs and adding in its place the term "public".

20. Section 960.204(b) is revised to read as follows:

§ 960.204 PHA tenant selection policies.

* * * * *

(b) Such policies and procedures shall be designed to: (1) Avoid concentrations of the most economically and socially deprived families in any one or all of the PHA's public housing projects; (2) preclude admission of applicants whose habits and practices reasonably may be expected to have a detrimental effect on the tenants or the project environment;

and (3) subject to the requirements and limitations of Part 913 of this chapter, attain, within a reasonable period of time, a tenant body in each project composed of families with a broad range of incomes and rent-paying ability that is generally representative of the range of incomes of lower income families, but families whose incomes are between 50% and 80% of area median income shall not be given a priority by virtue of their income.

* * * * *

21. Section 960.205(c) is amended by removing the term "low-income" wherever it occurs and adding in its place the term "lower income"; and by revising the introductory paragraph to read as follows:

§ 960.205 Standards for PHA tenant selection criteria.

* * * * *

(c) Subject to the requirements and limitations of Part 913 of this chapter, the criteria to be established shall be reasonable related to achieving the basic objective, within a reasonable period of time, of housing tenant families with a broad range of income, representative of the range of income, and rent paying ability of lower income families in the PHAs area of operation, as defined in state law. To accomplish the objective PHAs shall:

* * * * *

22. Section 960.206(a) is revised to read as follows:

§ 960.206 Verification procedures.

(a) *General.* Adequate procedures shall be developed to obtain and verify information with respect to each applicant. (See Part 913 of this chapter.) Information relative to the acceptance or rejection of an applicant shall be documented and placed in the applicant's file.

23. New §§ 960.208 through 960.210 are added, to read as follows:

§ 960.208 Rent; utility reimbursement.

The amount of rent payable by the tenant to the PHA shall be the Tenant Rent, as defined in and calculated in accordance with Part 913 of this chapter. Where applicable, the Utility Reimbursement (as defined in § 913.102 of this chapter) will be paid to the tenant by the PHA. If the Family and the utility company consent, a PHA may pay the Utility Reimbursement jointly to the Family and the utility company or directly to the utility company.

§ 960.209 Reexamination of family income and composition.

(a) *Regular reexaminations.* The PHA shall reexamine the income and composition of all tenant families at least once every 12 months and determine whether the Family's unit size is still appropriate. After consultation with the Family and upon verification of the information, the PHA shall make appropriate adjustments in the Total Tenant Payment and Tenant Rent in accordance with Part 913 of this chapter.

(b) *Interim reexaminations.* The Family must comply with provisions in its lease regarding interim reporting of changes in income. If the PHA receives information concerning a change in the Family's income or other circumstances between regularly scheduled reexaminations, the PHA must consult with the Family and make any adjustments determined to be appropriate. Any change in the Family's income or other circumstances that results in adjustment in the Total Tenant Payment or Tenant Rent must be verified.

§ 960.210 Restriction on eviction of families based upon income.

No PHA shall commence eviction proceedings, or refuse to renew a lease, based on the income of the tenant family unless: (a) it has identified, for possible rental by the family, a unit of decent, safe, and sanitary housing of suitable size available at a rent not exceeding the Tenant Rent as defined and calculated in accordance with Part 913 of this chapter, or (b) it is required to do so by local law.

PART 965—PHA OWNED OR LEASED PROJECTS—MAINTENANCE AND OPERATION

24. Section 965.472 is amended by removing the definitions of "Contract Rent" and "Gross Rent" and by adding, in alphabetical order, definitions of "Tenant Rent" and "Total Tenant Payment", to read as follows:

§ 965.472 Definitions.

* * * * *

Tenant Rent. The monthly amount defined in, and determined in accordance with Part 913 of this chapter.

Total Tenant Payment. The monthly amount defined in, and determined in accordance with, Part 913 of this chapter.

* * * * *

Dated: May 16, 1984.

Warren T. Lindquist,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 84-13575 Filed 5-18-84; 8:45 am]

[BILLING CODE 4210-33-M

federal register

Monday
May 21, 1984

Part V

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 55, 56, 57, and 58

Machinery and Equipment and Ground Control at Metal and Nonmetal Mines; Public Hearings

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 55, 56, 57, and 58

Machinery and Equipment and Ground Control at Metal and Nonmetal Mines; Public Hearings

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of public hearings.

SUMMARY: The Mine Safety and Health Administration (MSHA) will hold public hearings on its proposals to revise existing safety standards for machinery and equipment and ground control at metal and nonmetal mines. The hearings will be held in Spokane, Washington, Kansas City, Missouri; Pittsburgh, Pennsylvania; and Birmingham, Alabama and are in response to requests from the public. Each hearing will cover the major issues raised by comments submitted in response to the proposed rules.

DATES: All requests to make oral presentations for the record should be submitted at least five days prior to each hearing date. Immediately before each hearing, any unallotted time will be made available to persons making late requests.

The public hearings for both sections will be held at the following locations on the dates indicated, beginning at 8:00 a.m.:

June 19, 1984; Spokane, Washington;
June 21, 1984; Kansas City, Missouri;
June 26, 1984; Pittsburgh, Pennsylvania; and
June 28, 1984; Birmingham, Alabama.

At each location, the morning session will be devoted to comments on machinery and equipment and the afternoon session to comments on the ground control proposal. Also, arrangements have been made to continue the hearings on the next day at the same time and place, if necessary, to complete discussion of the issues.

ADDRESSES: The hearings will be held at the following locations:

June 19, 1984: Spokane, Washington, U.S. Courthouse, Room 752, W. 920 Riverside Avenue, Spokane, Washington 99201.

June 21, 1984: Kansas City, Missouri, Sheraton K.C.I., Lower Lobby Salon, 7301 Northwest Tiffany Springs Road, Kansas City, Missouri 64153.

June 26, 1984: Pittsburgh, Pennsylvania, Bureau of Mines Auditorium, 4800 Forbes Avenue, Pittsburgh, Pennsylvania 15213.

June 28, 1984: Birmingham, Alabama, Hyatt Birmingham at Civic Center, Artic and Indian Room, 901 21st Street, N, Birmingham, Alabama 35203.

Send requests to make oral presentations to: Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, phone (703) 235–1910.

SUPPLEMENTARY INFORMATION: On March 6, 1984, MSHA published proposed revisions to its existing safety standards in 30 CFR Parts 55, 56, 57 for ground control and machinery and equipment at metal and nonmetal mines (49 FR 8368). The written comment period for these proposed rules closed on May 7, 1984. In the comments filed to the proposed rules, MSHA received requests for public hearings.

The purpose of the public hearings is to receive relevant comment and respond to questions about the proposed rules. The hearings will be conducted in an informal manner by a panel of MSHA officials. Although formal rules of evidence will not apply, the presiding official may exercise discretion in excluding irrelevant or unduly repetitious material and questions.

Each session will begin with an opening statement from MSHA. The public will then be given an opportunity to make oral presentations. During these presentations, the hearing panel will be available to answer relevant questions. At the discretion of the presiding official, speakers may be limited to a maximum of 20 minutes for their presentations. Time will be made available at the end of the hearings for rebuttal statements. A verbatim transcript of each proceeding will be taken and made part of the rulemaking record. Copies of the hearing transcript will be available for review by the public.

MSHA will also accept additional written comments and other appropriate data from any interested party, including those not presenting oral statements. Written comments and data submitted to MSHA will be included in the rulemaking record. To allow for the submission of any post-hearing comments, the record will remain open until July 13, 1984.

Issues

Commenters requested clarification or revision of many specific provisions of the proposed rules. However, some of the provisions of the rules, which are discussed in this notice, received extensive comment and raised important issues. MSHA will be specifically addressing these issues at the public hearings and solicits comment on them in addition to any other aspects of the proposed rules.

A. Organizational

Consolidation of Parts 55, 56 and 57

Although some commenters opposed the consolidation of Parts 55, 56 and 57 into a single Part 58, others supported the Agency proposal. The Agency is exploring alternative reorganizations.

B. Substantive

Machinery and Equipment (Section .14)

1. *Moving Machine Parts.* Several commenters suggested revisions to proposed standard 58.14100, which concerns guarding of moving machine parts. Some commenters believed that the standard should only apply in situations where the parts could be inadvertently contacted. Others viewed the purpose of the standard as a means of protecting against persons unintentionally reaching behind a guard and contacting the moving parts. Commenters considered the proposal's requirement for the guard to enclose the moving part and prevent contact to be a vague performance requirement.

In addition, an issue was raised as to whether powered sawblades should be included as a moving machine part. Commenters also questioned whether the requirement to guard fan blades was intended to protect against the hazard of fan blades becoming projectiles or to guard against contact with the fan blade during operation.

2. *Stationary Grinding Machines.* Although several commenters supported the proposed requirement to have the tool rest set so that all points between the grinding surface of the wheel and the tool rest are not greater than ⅛ inch, others objected, stating that it was unrealistic and inflexible. In support of their objection, they stated that it was unnecessary to require constant adjustment of the opening to meet this measurement since a hazard may not always exist when the opening is greater than ⅛ inch. These commenters recommended that MSHA adopt the requirement in the preproposal draft that the opening be set to prevent material from being drawn into the opening.

3. *Hand-held Power Tools.* Commenters raised issues relating to the requirement in proposed standard 58.14106 for constant pressure switches on certain types of hand-held power tools. Some commenters believed that if

the manufacturer installed lock-on devices on the tools, MSHA should allow their use. These commenters considered the safety benefits of prohibiting lock-on devices to be marginal. Other commenters supported the proposed requirement.

4. *Tools and Equipment: Design, Use and Modification.* Comments received on proposed standard 58.14208, pertaining to modifications in the use or design of tools or equipment, questioned whether the proposal would be too restrictive. Other commenters believed that modifications should only be made with the manufacturer's approval.

Ground Control (Section .3)

1. *Definitions.* Several commenters requested revised definitions for "rock burst," "rock bolt" and "scaling." In support of their position, they stated that the proposed definition for "rock burst" needed to be clarified so that it would not be confused with "outburst"; that rock bolt was overly broad and vague; and that the scope of the definition for scaling was unclear.

Commenters requested definitions for the following terms: "active workings" (58.3130 (S), 58.3361 (U), 58.3401 (G)); "loose or unconsolidated material" (58.3131 (S)); "secondary breakage" (58.3400 (G)); "test" (58.3401 (G)); and "working place" (58.3402 (G)).

2. *Shaft Support.* A commenter suggested revision to proposed standard 58.3160 (U) stating that all shafts need not be supported, while another commenter suggested deleting the standard.

3. *Hazard Control.* Proposed standard 58.3200 (G) restricts travel where a fall of ground hazard exists by the use of a conspicuous obstruction and posting to avoid inadvertent entry. A commenter felt the term "conspicuous obstruction" was ambiguous while several commenters felt the standard should use the term "barricade" or "barrier." Another commenter felt that neither a "conspicuous obstruction" nor a "barricade" should be required since an operator cannot prevent entry by an unauthorizad person.

4. *Scaling Location.* Proposed standard 58.3201 (G) requires that scaling be performed from a location which will not expose persons to injury from falling material. Several commenters felt that it may not always be possible to scale from a location where no hazard exists.

5. *Incorporation by Reference.* Proposed standard 58.3300 (G) incorporates by reference ANSI–ASTM F432–83 (Standard Specification for Roof and Rock Bolts and Accessories). Several commenters opposed the incorporation by reference, stating that it was design oriented and internally inconsistent. They suggested that the Agency include all of the requirements for rock bolts in the standard and eliminate the incorporation by reference.

6. *Examination of Ground Conditions.* Several commenters suggested revisions to proposed standard 58.3401 (G), stating that it was overly broad and failed to distinguish between mining operations with high-wall faces or other special ground control problems which may necessitate ground control examinations.

7. *Examination of Ground Control Practices.* Comments on proposed standard 58.3402 (G) stated that it was overly broad, and that it did not distinguish between the various types of supervisory visits to the work place. Other comments suggested that supervisory visits to the work site once each shift should be mandatory.

Dated: May 15, 1984.

David A. Zegeer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 84–13593 Filed 5–18–84; 8:45 am]

BILLING CODE 4510–43–M

federal register

Monday
May 21, 1984

Part VI

Department of Labor

Office of the Assistant Secretary for Labor-Management Relations

29 CFR Part 220

Airline Employee Protection Program Rehire Program; Withdrawal of Notice of Effective Date of the Rehire Program;

Regulations

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Labor-Management Relations

29 CFR Part 220

Airline Employee Protection Program; Rehire Program; Withdrawal of Notice of Effective Date of the Rehire Program

AGENCY: Office of Labor-Management Relations Services, Labor.

ACTION: Withdrawal of notice of effective date of the rehire program.

SUMMARY: On May 18, 1984, at 49 FR 21053, the Department of Labor published a notice of effective date for regulations to implement the first-right-of-hire provisions of the Airline Deregulation Act of 1978 (ADA), the Rehire Program. The Department announced that the effective date for these regulations was May 17, 1984. On May 17, the United States District Court for the District of Columbia issued an order stating that the regulations promulgated by the Department pursuant to section 43 of the ADA are of no force and effect. Accordingly, the notice of effective date of the rehire program is hereby withdrawn.

EFFECTIVE DATE: May 17, 1984.

FOR FURTHER INFORMATION CONTACT: Jeffrey Salzman, Airline Employee Protection Program, Division of Employee Protections, Room N5633, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, tel. 357–0473.

SUPPLEMENTARY INFORMATION: Final regulations for the Rehire Program were published in the **Federal Register** on November 22, 1983 (48 FR 52854). The Department of Labor published a notice on May 18, 1984, announcing that the effective date of these regulations was May 17, 1984. On May 17, the United States District Court for the District of Columbia issued an order which declared section 43 of the ADA to be unconstitutional. The order, which was effective immediately, also declared that section 43 and the regulations promulgated by the Department of Labor pursuant thereto are of no force and effect. (*Alaska Airlines, et al.* v. *Donovan*, No. 84–0485 (D.D.C., filed May 17, 1984)). Accordingly, the notice of the effective date of the rehire program is hereby withdrawn.

The Department also published, on May 18, 1984, three related documents making technical amendments to the regulations (29 CFR Part 220) for the rehire program at pages 21053–21055. Those notices referred to the May 17 effective date of the regulations. The references to the effective date are also governed by the District Court's order.

Signed in Washington, D.C. this 18th day of May, 1984.

Raymond J. Donovan,

Secretary of Labor.

[FR Doc. 84-13781 Filed 5-18-84; 11:28 am]

BILLING CODE 4510-29-M

federal register

Monday
May 21, 1984

Part VII

Office of Personnel Management

5 CFR Parts 300, 335, 351, 430, 431, 451, 531, 532, 540, 551, and 771

Reduction in Force, Performance Management, Fair Labor Standards Act; Notice of Court Order Affecting Regulations

Digest of GAO Publications

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 300, 335, 351, 430, 431, 451, 531, 532, 540, 551, and 771

Reduction in Force, Performance Management, Fair Labor Standards Act

AGENCY: Office of Personnel Management.

ACTION: Notice of court order affecting regulations.

SUMMARY: The United States District Court for the District of Columbia has issued an injunction barring implementation of OPM regulations pertaining to reductions in force, performance management, and the applicability of the Fair Labor Standards Act to Federal employees. The Court has ordered publication of this document.

EFFECTIVE DATE: May 21, 1984.

FOR FURTHER INFORMATION CONTACT:

Part 351: Donald Holum, (202) 632–6817.
Part 551: Mario Caviglia, (202) 632–5691.
All other parts: James Weddel, (202) 632–7630.

SUPPLEMENTARY INFORMATION: On October 25, 1983, the Office of Personnel Management published final rules pertaining to reductions in force, performance appraisal systems, and the applicability of the Fair Labor Standards Act to Federal employees (48 FR 49462–98). By Order dated December 30, 1983, District Judge Barrington Parker enjoined implementation of the regulations. (*National Treasury Employees Union* v. *Devine*, C.A. No. 83–3322 (D.D.C.).) In a decision issued on April 27, 1984, the United States Court of Appeals for the District of Columbia fully affirmed the reasoning and order of the District Court. *National Treasury Employees Union* v. *Devine*, No. 84–5009 (D.C. Cir.).

The Court of Appeals held that, "The District Court reasoned that OPM's attempted implementation of the regulations had been blocked by a congressional appropriations measure, and that the regulations therefore were 'without any effect whatsoever, *as long as OPM's funding derives from H.J. Res. 413* [i.e., until October 1, 1984].' We conclude that the holding of the District Court is clearly justified and, accordingly, we affirm."

The enjoined regulations have been published in the 1984 edition of Title 5 of the Code of Federal Regulations (5 CFR). The following is a list of the affected regulations which appear in the 1984 edition of 5 CFR and which, by virtue of pending injunction, are not to be applied at the present time:

Section or part	Page(s)
Section 300.602	86
Section 335.104	142
Part 351	148–162
Part 430	202–207
Part 431	207–212
Part 451	215–218
Part 531	230–246
Part 532, Subpart H	265–266
Part 540	275–280
Section 551.102(h)	316
Section 551.201–551.209	316–319
Section 771.206(c)(3)	552

The corresponding provisions set forth in the January 1, 1983, edition of Title 5 of the Code of Federal Regulations (as amended before October 25, 1983) should be used for the applicable provisions pending further notification from the Office of Personnel Management.

List of Subjects

5 CFR Part 300

Government employees, Administrative practice and procedure.

5 CFR Part 335

Government employees.

5 CFR Part 351

Government employees.

5 CFR Part 430

Government employees, Administrative practice and procedure, Reporting requirements.

5 CFR Part 431

Government employees, Administrative practice and procedure, Reporting requirements.

5 CFR Part 451

Decoration, Medals, Awards, Government employees.

5 CFR Part 531

Government employees, Wages, Administrative practice and procedure.

5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

5 CFR Part 540

Government employees, Wages.

5 CFR Part 551

Government employees, Wages, Fair Labor Standards Act, Travel, Manpower training programs, Administrative practice and procedure.

5 CFR Part 771

Administrative practice and procedure, Government employees.

Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, for the reasons set out in the preamble, implementation of 5 CFR § 300.602, § 335.104, Part 351, Part 430, Part 431, Part 451, Part 531, Part 532 subpart H, Part 540, § 551.102(h), §§ 551.201 through 551.209, and § 771.206(c)(3) is enjoined by court order effective December 30, 1983.

[FR Doc. 84—13724 Filed 5–17–84; 4:37 pm]

BILLING CODE 6325–01–M

Reader Aids

Federal Register

Vol. 49, No. 99

Monday, May 21, 1984

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, MAY

18453-18720.....1
18721-18812.....2
18813-18982.....3
18983-19284.....4
19285-19440.....7
19441-19612.....8
19613-19794.....9
19795-19954.....10
19955-20264.....11
20265-20470.....14
20471-20630.....15
20631-20804.....16
20805-21038.....17
21039-21292.....18
21293-21504.....21

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

Proposed Rules:
Ch. III.....19027

3 CFR

Executive Orders:
8102 (Amended by PLO 6534).....20815
11651 (See EO 12475).....19955
12475.....19955
12476.....20473

Proclamations:
5186.....19285
5187.....19613
5188.....19615
5189.....19617
5190.....19619
5191.....19795
5192.....20265
5193.....20471
5194.....21039

5 CFR

300.....21503
335.....21503
351.....21503
430.....21503
431.....21503
451.....21503
531.....21503
532.....21503
540.....21503
551.....21503
771.....21503
831.....20631
870.....19287
871.....19287
872.....19287
873.....19287
1320.....20792

7 CFR

1.....21293
68.....18721
75.....18721
210.....18453, 18983
215.....18983
220.....18453, 18983
225.....18453
226.....18453, 18983
235.....18983
250.....19797
272.....18458
273.....18458
301.....18463, 18989, 19957
354.....19441
371.....19621
432.....20632
718.....20475
810.....20636
907.....19797
908.....18995, 19797, 20641
910.....18813, 18995, 20267, 20805, 21041
923.....20641
981.....19798
989.....18727
991.....18813
1040.....18815
1207.....20805
1430.....20642
1955.....20806
1980.....19252

Proposed Rules:
1.....19307
28.....20507
29.....20711
61.....20507
319.....20293
322.....20299
725.....18672
726.....18678
953.....20713
991.....18862
1004.....19502, 21060
1030.....20303
1036.....21060
1049.....21060
1062.....21060
1064.....21060
1065.....21060
1126.....20825

8 CFR

100.....18816
223a.....18996

9 CFR

51.....20267, 21041
72.....19798
78.....20643
81.....19288, 19500
92.....20644
94.....18997, 21041
102.....21042
104.....21042
112.....21042
145.....19799
147.....19799
317.....18997
318.....18997, 19621
381.....18997, 19621

Proposed Rules:
113.....21339

10 CFR

0.....19623
4.....19623
9.....19623
11.....19623
19.....19623
20.....19623

21 19623
25 19623
30 ..... 19623, 19630
31 19623
32 19623
33 19623
34 19623
35 19623
40 ..... 19623, 19630
50 19623
51 19623
55 19623
70 ..... 19623, 19630
71 19623
73 19623
75 19623
95 19623
100 19623
110 19623
140 19623
150 19623
170 21293
840 21472
1035 18732

Proposed Rules:

Ch. I 19029
1046 20436

11 CFR

9034 19807

Proposed Rules:

114 20831

12 CFR

217 19289
226 18816
303 21044
336 20269
563b 19000, 19003
565 19000

Proposed Rules:

8 19828
330 20714
336 20269
337 18497
346 20714
543 19029
563 ..... 19029, 19307, 20719
571 19307

13 CFR

125 20807

Proposed Rules:

103 19503
104 19503
105 19503
108 19503
109 19503
110 19503
112 19503
113 19503
115 19503
120 19503
122 19503
124 19503
132 19503
134 19503

14 CFR

23 20278
39 ..... 18468, 18816, 18817, 19290, 19291, 19807, 20807, 21046, 21309, 21310
71 ..... 18818, 18819, 19292, 19293, 19807, 19808, 21047, 21311, 21312
73 19808
75 ..... 18469, 19809
95 19965
97 19809
1262 19441

Proposed Rules:

27 19309
29 19309
39 ..... 21071, 21345–21349
71 ..... 18508, 19311, 19312, 19829, 20022, 20023, 20511, 21072
121 21010
241 18509
1214 19313

15 CFR

371 19811
376 19811
379 18470
399 18470

Proposed Rules:

7 20723
7a 20723
7b 20723
7c 20723

16 CFR

4 ..... 20278, 21048
13 ..... 19632–19635, 19812
453 19812

Proposed Rules:

13 ..... 18529, 19679, 21073
300 20304
301 20304
303 20304

17 CFR

1 ..... 19969, 21048
3 20476
12 19445
31 20644
210 18470
230 20279

Proposed Rules:

210 20833
229 ..... 19516, 20833
230 ..... 18532, 20833, 20852
239 ..... 18532, 20833
240 ..... 18746, 19314, 20512, 20833, 20852
249 20833
270 ..... 19320, 19519
275 19524

18 CFR

45 20477
154 19293
271 ..... 18474, 19299, 19814
274 20280
294 20808
385 21312
375 21048
1302 20480

Proposed Rules:

4 19681
12 19681
154 18539

19 CFR

6 19447
10 19447
103 19952

Proposed Rules:

12 20305
141 18543
210 19830

20 CFR

10 18976
416 19637
676 19639

21 CFR

5 19972
14 20809
122 20484
155 20810
178 ..... 18734, 18735
184 ..... 19640, 19815
193 18736
510 ..... 19299, 19640, 19641, 21317
520 ..... 18820, 19642, 19973, 20484, 20810
540 19642
555 ..... 19640, 19641
561 18736
610 21317

Proposed Rules:

301 18741
331 21350
332 21350
436 18545
440 18545
442 18545
444 18545
446 18545
448 18545
450 18545
452 18545
455 18545

23 CFR

635 18820

Proposed Rules:

660 ..... 20517, 21350

24 CFR

16 20485
200 ..... 18690, 19451
201 19454
203 ..... 19451, 19454, 00
204 19454
205 19454
207 19454
213 ..... 19454, 21317
220 ..... 19454, 21317
221 ..... 19454, 21048, 21317
232 ..... 19454, 21317
234 ..... 19451, 19454, 21317
235 ..... 19451, 19454, 21317
240 21476
241 19454
242 19454
244 19454
250 19454
255 19454
511 20486
570 21050
571 19300
800 19926
813 19926
880 19926
881 19926
882 19926
883 19926
884 19926
885 20486
886 19926
889 19926
904 21476
905 21476
913 21476
960 21476
965 21476
968 20487

Proposed Rules:

35 19210
1710 20306
203 21079
213 21079
222 21079
234 21079

25 CFR

Proposed Rules:

700 19847

26 CFR

1 ..... 19460, 19643, 19973, 21051
7 19460
11 19973
20 ..... 19973, 20283, 20811
25 ..... 19973, 20811
31 19643
36 19643
46 19643
48 19643
49 19643
51 19643
52 19643
154 19643
301 ..... 18741, 19460
305 19302
601 ..... 19643, 19648

Proposed Rules:

1 ..... 18866, 19321, 19329
20 21350
25 21350
301 19329

27 CFR

9 19466
19 20800
178 19004
250 20800

Proposed Rules:

4 ..... 19330, 21083
5 19333
9 20730
19 19333

28 CFR

16 20812

Proposed Rules:

540 20432

29 CFR

220 ..... 21053, 21499
1952 19182

Proposed Rules:

1907 19336
1910 ..... 19336, 20024
1935 19336
1936 19336

30 CFR

902 20284
906 18475

914.....20285
925.....19468
926.....20286
931.....20287
935.....18481
936.....19476
938.....20488
942.....21146
946.....19476

Proposed Rules:
55.....21494
56.....21494
57.....21494
58.....21494
75.....19601
700.....19336
926.....19340
935.....19031, 19525
936.....20308
948.....19525, 20732

31 CFR
535.....21321

32 CFR
198.....18737
221.....18546
374.....18737
811.....20646
825a.....19478
880.....20647
902.....19005
1699.....18550
2001.....20788

33 CFR
100.....19816
117.....19817, 19818
157.....20813
162.....19304
165.....18821, 18822, 19818, 20813
175.....20815

Proposed Rules:
89.....18870
100.....18872, 19847
117.....19848, 19849, 20865-20869
165.....19032, 19035, 19850, 20813
325.....19036

34 CFR

Proposed Rules:
76.....21018
369.....21018
370.....21018
614.....19039
690.....19780

35 CFR

Proposed Rules:
111.....18873

36 CFR
2.....19304
7.....19651

Proposed Rules:
13.....20732
61.....20309
251.....21083

37 CFR
1.....19305
5.....19305

Proposed Rules:
1.....19853

38 CFR
3.....19653, 19998
21.....20492
36.....20288

39 CFR
265.....21322
912.....19478

40 CFR
52.....18482, 18484, 18737, 18822, 18833, 20493-20495, 20647-20650
60.....19819
61.....19819
81.....18833-18836, 19478, 20651
124.....20138
144.....20138
146.....20138
147.....20138
160.....18738
180.....19653, 19654, 19820
228.....19005, 19012
261.....19922
271.....19820, 20496
300.....19480
403.....21024
420.....21024
610.....18486, 18837

Proposed Rules:
52.....18558, 19039, 19681, 20518, 20521
53.....18744
81.....18744
124.....20238
144.....20238
145.....21370
146.....20238
147.....20238
152.....20027
180.....19683, 19684, 20733
191.....19604
228.....19042, 19854
261.....19690
271.....19341
434.....19240
756.....20524
765.....21371

41 CFR
101-6.....20289
201-1.....20994
201-4.....20994
201-35.....20994
201-36.....20994
201-37.....20994

42 CFR
57.....19999

Proposed Rules:
60.....19048
405.....20616, 21375

43 CFR
3110.....20653
4700.....20654

Public Land Orders:
2345 (Revoked in part by PLO 6533).....20001
2676 (Amended by PLO 6534).....20815
5150 (Revoked in part by PLO 6533).....20001
6531.....19654
6532.....19655
6533.....20001
6534.....20815
6535.....20002
6536.....20497
6537.....20498

Proposed Rules:
2800.....19049
2880.....19049
3111.....20871
3120.....20871

44 CFR
15.....20498
64.....20003, 20500
67.....19343, 20005

Proposed Rules:
67.....21084

45 CFR
1600.....21327
1609.....19656
1614.....21328
1620.....19657
1628.....21331

Proposed Rules:
74.....18567
98.....18567
205.....19856

46 CFR
310.....18489
505.....20816
510.....18839
515.....18848
520.....18849
522.....20816
525.....18847
526.....18846
530.....18849
533.....18846
536.....18849, 20817
538.....20817
540.....18846
550.....18846
551.....18846
585.....20816
587.....20654

Proposed Rules:
31.....19050
61.....19050
67.....20872
71.....19050
91.....19050
107.....19050
167.....19050
176.....19050
189.....19050
505.....18874

47 CFR
0.....20291, 20502
1.....20291
2.....20505
13.....20658
21.....20658
22.....19659
61.....19821
63.....21333
67.....21335
68.....19666
69.....19669
73.....19019, 19305, 19482, 19670, 20502, 20658, 21336, 21337
74.....20502, 20658
76.....19482, 20502
78.....20658
81.....19677
83.....19677
87.....19677, 20291, 20658
90.....20291, 20505, 20658
94.....20658
95.....20658

Proposed Rules:
Ch. I.....19053, 19528, 19684
31.....21375-21377
33.....21377
42.....21377
43.....21377
67.....18746, 20734
73.....18567, 19070, 19866, 20311-20317
90.....18570, 18571, 19074
97.....18573

48 CFR
1801.....20673
1803.....20673
1804.....20673
1807.....20673
1812.....20673
1814.....20673
1815.....20673
1816.....20673
1817.....20673
1819.....20673
1822.....20673
1823.....20673
1825.....20673
1827.....20673
1830.....20673
1832.....20673
1835.....20673
1842.....20673
1845.....20673
1849.....20673
1851.....20673
1852.....20673
1853.....20673

49 CFR
173.....19025
191.....18956
192.....19823
217.....20015
571.....20818, 20822
575.....20016
1002.....18490
1011.....18490
1032.....19025
1039.....19025
1152.....18490
1177.....18490
1180.....18490
1182.....18490

Proposed Rules:
Ch. X.....19686
171.....20873
172.....20873
173.....20873
174.....20873
175.....20873
176.....20873

177.....20873
195.....19875
217.....20028
229.....20029
232.....19359
391.....21084
571.....18574, 20460, 20879
574.....20880

50 CFR

17.....21055
91.....20019
250.....19678
650.....21058
658.....18494, 20710
661.....18853, 20020
663.....19825
674.....20710

Proposed Rules:

17.....19360, 19534, 20031, 20735, 20739, 20882, 21089, 21383
26.....19363
285.....18474
560.....18578
649.....19363
654.....20883
651.....21386
658.....20883
674.....18581

LIST OF PUBLIC LAWS

Last List May 18, 1984

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (phone 202–275–3030).

H.R. 2733 / Pub. L. 98–284

To extend and improve the existing program of research, development, and demonstration in the production and manufacture of guayule rubber, and to broaden such program to include other critical agricultural materials. (May 16, 1984; 98 Stat. 181) Price: $1.75

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $550 domestic, $137.50 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at **(202) 783-3238** from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$6.00	Jan. 1, 1984
3 (1983 Compilation and Parts 100 and 101)	7.00	Jan. 1, 1984
4	12.00	Jan. 1, 1984
5 Parts:		
1-1199	13.00	Jan. 1, 1984
1200-End, 6 (6 Reserved)	6.00	Jan. 1, 1984
7 Parts:		
0-45	13.00	Jan. 1, 1984
46-51	12.00	Jan. 1, 1984
52	14.00	Jan. 1, 1984
*53-209	13.00	Jan. 1, 1984
210-299	13.00	Jan. 1, 1984
300-399	7.50	Jan. 1, 1984
400-699	6.50	Jan. 1, 1983
700-899	13.00	Jan. 1, 1984
*900-999	14.00	Jan. 1, 1984
1000-1059	12.00	Jan. 1, 1984
1060-1119	9.00	Jan. 1, 1984
1120-1199	7.50	Jan. 1, 1984
1200-1499	13.00	Jan. 1, 1984
1500-1899	6.00	Jan. 1, 1984
1900-1944	8.00	Jan. 1, 1983
1945-End	7.00	Jan. 1, 1983
8	7.00	Jan. 1, 1984
9 Parts:		
1-199	13.00	Jan. 1, 1984
200-End	9.50	Jan. 1, 1984
10 Parts:		
0-199	9.00	Jan. 1, 1983
200-399	12.00	Jan. 1, 1984
400-499	12.00	Jan. 1, 1984
500-End	13.00	Jan. 1, 1984
11	5.50	July 1, 1983
12 Parts:		
1-199	9.00	Jan. 1, 1984
200-299	8.00	Jan. 1, 1983
300-499	9.50	Jan. 1, 1984
500-End	8.00	Jan. 1, 1983
13	13.00	Jan. 1, 1984
14 Parts:		
1-59	13.00	Jan. 1, 1984
60-139	7.00	Jan. 1, 1983
140-199	7.00	Jan. 1, 1984
200-1199	7.00	Jan. 1, 1983
1200-End	7.50	Jan. 1, 1984
15 Parts:		
0-299	7.00	Jan. 1, 1984
300-399	7.00	Jan. 1, 1983
400-End	12.00	Jan. 1, 1984
16 Parts:		
0-149	9.00	Jan. 1, 1984
150-999	9.50	Jan. 1, 1984
1000-End	7.00	Jan. 1, 1983
17 Parts:		
1-239	8.00	Apr. 1, 1983
240-End	7.00	Apr. 1, 1983
18 Parts:		
1-149	7.00	Apr. 1, 1983
150-399	8.00	Apr. 1, 1983
400-End	6.50	Apr. 1, 1983
19	8.50	Apr. 1, 1983
20 Parts:		
1-399	5.50	Apr. 1, 1983
400-499	7.00	Apr. 1, 1983
500-End	7.50	Apr. 1, 1983
21 Parts:		
1-99	6.00	Apr. 1, 1983
100-169	6.50	Apr. 1, 1983
170-199	6.50	Apr. 1, 1983
200-299	4.75	Apr. 1, 1983
300-499	8.00	Apr. 1, 1983
500-599	6.50	Apr. 1, 1983
600-799	5.00	Apr. 1, 1983
800-1299	6.00	Apr. 1, 1983
1300-End	5.00	Apr. 1, 1983
22	8.50	Apr. 1, 1983
23	7.00	Apr. 1, 1983
24 Parts:		
0-199	6.00	Apr. 1, 1983
200-499	8.00	Apr. 1, 1983
500-799	5.00	Apr. 1, 1983
800-1699	6.50	Apr. 1, 1983
1700-End	6.00	Apr. 1, 1983
25	8.00	Apr. 1, 1983
26 Parts:		
§§ 1.0-1.169	8.00	Apr. 1, 1983
§§ 1.170-1.300	7.50	[1] Apr. 1, 1982
§§ 1.301-1.400	6.00	Apr. 1, 1983
§§ 1.401-1.500	7.00	Apr. 1, 1983
§§ 1.501-1.640	6.50	Apr. 1, 1983
§§ 1.641-1.850	7.50	[1] Apr. 1, 1982
§§ 1.851-1.1200	8.00	Apr. 1, 1983
§§ 1.1201-End	8.50	Apr. 1, 1983
2-29	7.00	Apr. 1, 1983
30-39	6.00	Apr. 1, 1983
40-299	7.50	Apr. 1, 1983
300-499	6.00	Apr. 1, 1983
500-599	8.00	[2] Apr. 1, 1980
600-End	5.00	Apr. 1, 1983
27 Parts:		
1-199	6.50	Apr. 1, 1983
200-End	6.50	Apr. 1, 1983
28	7.00	July 1, 1983
29 Parts:		
0-99	8.00	July 1, 1983
100-499	5.50	July 1, 1983
500-899	8.00	July 1, 1983
900-1899	5.50	July 1, 1983
1900-1910	8.50	July 1, 1983
1911-1919	4.50	July 1, 1983
1920-End	8.00	July 1, 1983
30 Parts:		
0-199	7.00	July 1, 1983
200-699	5.50	Oct. 1, 1983
700-End	13.00	Oct. 1, 1983
31 Parts:		
0-199	6.00	July 1, 1983
200-End	6.50	July 1, 1983

Title	Price	Revision Date
32 Parts:		
1–39, Vol. I	8.50	July 1, 1983
1–39, Vol. II	13.00	July 1, 1983
1–39, Vol. III	9.00	July 1, 1983
40–189	6.50	July 1, 1983
190–399	13.00	July 1, 1983
400–699	12.00	July 1, 1983
700–799	7.50	July 1, 1983
800–999	6.50	July 1, 1983
1000–End	6.00	July 1, 1983
33 Parts:		
1–199	14.00	July 1, 1983
200–End	7.00	July 1, 1983
34 Parts:		
1–299	13.00	July 1, 1983
300–399	6.00	July 1, 1983
400–End	15.00	July 1, 1983
35	5.50	July 1, 1983
36 Parts:		
1–199	6.50	July 1, 1983
200–End	12.00	July 1, 1983
37	6.00	July 1, 1983
38 Parts:		
0–17	7.00	July 1, 1983
18–End	6.50	July 1, 1983
39	7.50	July 1, 1983
40 Parts:		
0–51	7.50	July 1, 1983
52	14.00	July 1, 1983
53–80	14.00	July 1, 1983
81–99	7.50	July 1, 1983
100–149	6.00	July 1, 1983
150–189	6.50	July 1, 1983
190–399	7.00	July 1, 1983
400–424	6.50	July 1, 1983
425–End	13.00	July 1, 1983
41 Chapters:		
1, 1–1 to 1–10	7.00	July 1, 1983
1, 1–11 to Appendix, 2 (2 Reserved)	6.50	July 1, 1983
3–6	7.00	July 1, 1983
7	5.00	July 1, 1983
8	4.75	July 1, 1983
9	7.00	July 1, 1983
10–17	6.50	July 1, 1983
18, Vol. I, Parts 1–5	6.50	July 1, 1983
18, Vol. II, Parts 6–19	7.00	July 1, 1983
18, Vol. III, Parts 20–52	6.50	July 1, 1983
19–100	7.00	July 1, 1983
101	14.00	July 1, 1983
102–End	6.50	July 1, 1983
42 Parts:		
1–60	12.00	Oct. 1, 1983
61–399	7.50	Oct. 1, 1983
400–End	17.00	Oct. 1, 1983
43 Parts:		
1–999	9.00	Oct. 1, 1983
1000–3999	14.00	Oct. 1, 1983
4000–End	7.50	Oct. 1, 1983
44	12.00	Oct. 1, 1983
45 Parts:		
1–199	9.00	Oct. 1, 1983
200–499	6.00	Oct. 1, 1983
500–1199	12.00	Oct. 1, 1983
1200–End	9.00	Oct. 1, 1983
46 Parts:		
1–40	9.00	Oct. 1, 1983
41–69	9.00	Oct. 1, 1983
70–89	5.00	Oct. 1, 1983
90–139	9.00	Oct. 1, 1983
140–155	8.00	Oct. 1, 1983
156–165	9.00	Oct. 1, 1983
166–199	7.00	Oct. 1, 1983
200–399	12.00	Oct. 1, 1983
400–End	7.00	Oct. 1, 1983
47 Parts:		
0–19	12.00	Oct. 1, 1983
20–69	14.00	Oct. 1, 1983
70–79	13.00	Oct. 1, 1983
80–End	13.00	Oct. 1, 1983
48	1.50	[3] Sept. 19, 1983
49 Parts:		
1–99	7.00	Oct. 1, 1983
100–177	14.00	Nov. 1, 1983
178–199	13.00	Nov. 1, 1983
200–399	12.00	Oct. 1, 1983
400–999	13.00	Oct. 1, 1983
1000–1199	12.00	Oct. 1, 1983
1200–1299	12.00	Oct. 1, 1983
1300–End	7.50	Oct. 1, 1983
50 Parts:		
1–199	9.00	Oct. 1, 1983
200–End	13.00	Oct. 1, 1983
CFR Index and Findings Aids	17.00	Jan. 1, 1984
Complete 1983 CFR set	615.00	1983
Complete 1984 CFR set	550.00	1984
Microfiche CFR Edition:		
Complete set (one-time mailing)	155.00	1982
Subscription (mailed as issued)	250.00	1983
Subscription (mailed as issued)	200.00	1984
Individual copies	2.25	1983

[1] No amendments to these volumes were promulgated during the period Apr. 1, 1982 to March 31, 1983. The CFR volumes issued as of Apr. 1, 1982 should be retained.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1983. The CFR volume issued as of Apr. 1, 1980, should be retained.

[3] Refer to September 19, 1983, FEDERAL REGISTER, Book II (Federal Acquisition Regulation).