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Federal Register

Thursday
December 20, 1984

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Civil Aeronautics Board

Air Pollution Control
Environmental Protection Agency

Animal Biologics
Animal and Plant Health Inspection Service

Animal Drugs
Food and Drug Administration

Authority Delegations (Government Agencies)
Immigration and Naturalization Service

Aviation Safety
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Coast Guard

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Civil Aeronautics Board

Communications Common Carriers
Federal Communications Commission

Fisheries
National Oceanic and Atmospheric Administration

Flood Insurance
Federal Emergency Management Agency

Food Additives
Food and Drug Administration

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

GENERAL ACCOUNTING OFFICE

4 CFR Part 21

General Accounting Office—Bid Protest Regulations

AGENCY: General Accounting Office.
ACTION: Final rule.

SUMMARY: These rules reflect adoption of and amendments to the General Accounting Office's proposed rules published September 17, 1984 (49 FR 36386), implementing section 3551–3556 of title 31, United States Code (as added by section 2741 of the Competition in Contracting Act of 1984 (Pub. L. 98–369) and respond to comments submitted. They are designed to provide the framework for the consideration of bid protests by the General Accounting Office.

EFFECTIVE DATE: January 15, 1985.

FOR FURTHER INFORMATION CONTACT: John Brosnan, Senior Attorney, General Accounting Office, by telephone (202) 275–5476.

SUPPLEMENTARY INFORMATION: The General Accounting Office's proposed rules were the subject of 30 days public comment. In light of the comments received, several changes are made.

The Comments

Twenty-three comments were received on the proposed rules. The following is a discussion of the principal issues raised in the comments and the General Accounting Office's response thereto.

Section 21.0(d) defined "days" in the regulations as working days of the federal government. One commenter suggested that GAO explain how days would be counted for the purpose of calculating the various time limits prescribed by the regulations. In response, § 21.0(d) has been revised to provide the method by which such periods of time will be calculated. Also, GAO has revised § 21.0(d) to state that § 21.4, concerning withholding of contract award and suspension of contract performance, is excluded from the general rule that the term "days" means government working days, because § 21.4 repeats for informational purposes language from the Competition In Contracting Act of 1984, Pub. L. 98–369 (Competition in Contracting Act).

Another commenter suggested that the § 21.0(e) definition of "adverse agency action" be revised to include bid opening and receipt of proposals as examples of adverse agency action. The section has been so revised.

Several commenters suggested that GAO clarify questions regarding the joint jurisdiction of the General Services Administration Board of Contract Appeals and GAO concerning protests of Brooks Act procurements for automated data processing equipment and services. Under section 3552 of the Competition In Contracting Act, a party who files a protest with the Board may not later file a protest with respect to that procurement with GAO. Section 21.1(a) contained similar language. In response to the comments, GAO has expanded the section 3552 prohibition to cover all protests filed with respect to a particular procurement. Thus, to avoid an undesirable fragmentation of remedies, § 21.1(a) has been amended to provide that after a particular procurement has been protested to the Board no protests by any party regarding that procurement will be considered by GAO while that initial protest is before the Board.

Several federal agencies have suggested that § 21.1(c), describing the elements of a protest, be amended to require that protests include a citation of the specific statute or regulation the protester contends the agency violated. GAO recognizes that the Competition In Contracting Act describes protests as concerning alleged violations of procurement statutes or regulations. A requirement that protesters cite the particular statute or regulation allegedly violated seems unnecessary, however, where a protester clearly describes the basis of protest, GAO would not want to dismiss a protest merely because a statute or regulation has not been cited.

Many commenters requested changes in the scheme contained in §§ 21.1 and 21.2 regarding filing of protests and the service of protest copies. Section 21.2(b)(1) stated that a protest would not be considered filed at GAO until it was received in GAO's Procurement Law Control Group. That section also required that the protest include evidence of service upon the contracting activity and contracting agency. Section 21.2(b)(2) provided that service could be accomplished by delivering the protest in person or by sending the protest by certified, first-class or overnight mail. Section 21.2(b)(3) required that the protest contain a certificate of service. Also, other sections contained corresponding requirements. Section 21.1(c), describing the content of a protest, required that a certificate of service be included in the protest. Section 21.3(c) required the contracting agency to serve its report in the same manner that protests were to be served. Also, § 21.3(e) and § 21.6(c) (now § 21.5(c)) required copies of comments to be "served."

Some commenters complained that the requirement in § 21.2(b)(1) that protests be specifically received in GAO's Procurement Law Control Group placed too great a risk of late filing on protesters and that the requirement in § 21.2(b)(2) for a certificate of service was unduly complex. The contracting agencies complained primarily that depositing a copy of the protest in the mail did not insure that the agency would receive it soon enough.

In response to these suggestions, GAO has changed § 21.2(b)(1) so that a protest is to be deemed filed if received in GAO itself, rather than in the Procurement Law Control Group. The service and certificate of service requirements of §§ 21.2(b) (2) and (3) have been eliminated. Instead, a new § 21.1(d) has been added which provides that a copy of the protest must be received by the appropriate agency official or location within 1 day after the protest is filed with GAO. Rather than the more formal certificate of service, the protest must state that a copy has been or will be provided promptly to the agency. The burden is on the protester to get the copy of its protest to the agency within a day of filing at GAO. After GAO notifies the agency that a protest has been filed, the contracting agency should inform GAO if it has not received the protest document. The agency can facilitate timely receipt of a

copy of the protest by providing in their solicitations notice designating where the protest copy should be furnished.

Section 21.1(c)(2) has also been amended to require that a copy of the protest along with the original be filed with GAO. The additional copy can be made available by GAO to contracting agencies in Washington, D.C.

Finally, §§ 21.1(c), 21.3 (c) and (e), and 21.5(c) have been amended to conform to these revised requirements.

Section 21.3(a) provided that GAO would notify the contracting agency within 1 day of the filing of a protest. Several commenters suggested revising the section to specify precisely how notification would be made. The section has been revised to state that GAO shall notify the contracting agency by telephone within 1 day of the filing of a protest, and shall promptly mail a written confirmation of the notice. Telephone notice is the only practical way to comply with the Competition In Contracting Act's requirement that GAO notify the contracting agency within 1 day of the filing of a protest. Further, § 21.3(c), concerning the time for filing the agency report, has been revised to state specifically that the 25-day period for filing the report begins to run from the date of telephone notice.

GAO received several comments on § 21.3(b), which provided that material submitted by a protester will not be withheld from the contracting agency or interested parties except as permitted or required by law or regulation. One commenter felt that the provision should specifically state the type of information that may be withheld and the laws or regulations that might apply. Another commenter felt that anyone requesting information should be required to pay for it. After consideration of these comments, the GAO has decided to retain the language of the proposed provision. That language is identical to the language of the corresponding provision of our current procedures. 4 CFR 21.3(b) (1984). The provision has proven to be clear and fair.

GAO has eliminated § 21.5, which stated the circumstances in which agencies must provide relevant protest-related documents to interested parties, and incorporated the substance of that provision into § 21.3(c). Sections 21.6 through 21.13 were renumbered accordingly. This provision gives protesters and other interested parties the right to receive copies of the agency report and relevant documents that would not give the party a competitive advantage, and that the party is otherwise authorized by law or regulation to receive. If documents are withheld the report must contain a list of withheld documents.

Some commenters felt that § 21.3(c) required agencies to furnish copies of documents to a party that the party already had in its possession. The provision has been revised to require only copies of "relevant documents," "as appropriate."

Two commenters expressed concern that in protests of overseas procurements agencies could not file reports within the 25-day requirement of § 21.3(c). Nevertheless GAO has decided not to revise § 21.3(d) regarding time extensions to automatically waive the 25-day period for overseas procurements. The 25-day period is mandated by the Competition In Contracting Act for all protests and extensions are to be granted on a case-by-case basis in exceptional circumstances.

A few commenters felt that protests should not necessarily be dismissed for failure of the protesters to file comments, a request for an extension of time, or a request that the case be decided on the existing record as required by § 21.3(e). The GAO has decided not to amend this section. The requirement does not seem burdensome. A protester is required to indicate its continued interest in the protest so that the procurement is not further disrupted and GAO resources are not wasted by the continuation of a protest in which the protester no longer is interested.

A typographical error in § 21.3(f) has been corrected. The reference to § 21.2(d) has been changed, to the proper reference, § 21.2(c).

Section 21.3(f)(2), concerning GAO review of Small Business Size Standards, has been revised to include specifically protests of standard industrial classifications among matters that the GAO will not review.

Section 21.3(f)(3), which stated that the Small Business Administration (SBA) makes final dispositions of contracting officer determinations that a small business firm is not responsible, has been revised to make it clear that the SBA does not conclusively certify a *lack* of responsibility. The section has also been revised to reflect the current language of GAO cases concerning the limited circumstances in which the GAO will review certificate of competency decisions.

Two comments were received on § 21.3(f)(4), which stated that GAO would not review the decision to effect a set-aside under section 8(a) of the Small Business Act or the decision to award an 8(a) subcontract, absent a showing of possible fraud or bad faith or that regulations were violated. One commenter suggested that the term "Set-Aside" be eliminated from the title to avoid confusion with the small business set-aside program under section 15 of the Small Business Act. That commenter also suggested that the language setting forth the exceptions under which the GAO would review section 8(a) actions be amended by changing the word "regulations" to "Federal Acquisition Regulation." The commenter felt that the SBA should handle protests of violations of SBA regulations.

The other commenter suggested revising the section to include set-asides under sections 9 and 15 of the Small Business Act as set-asides not reviewable by GAO, due to the discretion granted by statute to SBA. The commenter also suggested eliminating violation of regulations as an exception permitting review by GAO.

The section has been revised to eliminate the word "Set-Aside" from the title, and to state that the decision not to place, as well as to place, a procurement under the 8(a) program would not be reviewed by GAO absent the stated exceptions.

Section 21.3(f)(5), concerning GAO review of affirmative determinations of responsibility, has been revised to state specifically that it refers to affirmative determinations of responsibility by the contracting officer to distinguish it from SBA certificate of competency actions.

Section 21.3(f)(8), which provides that GAO will not review procurements by agencies other than federal agencies, has been revised to include nonappropriated fund activities as an example of an entity other than a federal agency. Section 21.3(f)(9), concerning nonappropriated fund activities, has been eliminated as a separate section. As a result, § 21.3(f)(10) has been renumbered § 21.3(f)(9).

Section 21.3(f)(10) has been added stating that GAO will not consider most subcontractor protests. The section also sets forth the circumstances in which GAO will review protests of subcontract awards. This section changes GAO's previous review standards of subcontracts set forth in *Optimum Systems, Incorporated*, 54 Comp. Gen. 767 (1975), 75-1 CPD ¶ 166, by eliminating review of subcontracts under any circumstances other than where they are "by or for" a federal agency. Other subcontractor protests are beyond the reach of the Competition In Contracting Act.

Section 21.3(f)(11) has been revised to state more clearly the circumstances in which the GAO will dismiss a protest

involving a matter that is or has been the subject of litigation.

Under § 21.4, some commenters questioned why the provisions of the Competition In Contracting Act relating to withholding of award and suspension of contract performance were included in the Bid Protest Regulations. Several commenters felt the provisions were more appropriate for inclusion in the Federal Acquisition Regulation.

The provisions are contained in § 21.4 for the benefit of protesters so that they will not have to refer to multiple sets of regulations to ascertain the effect of a protest. The citation in § 21.4 (a) and (b) to the Competition In Contracting Act has been moved to the beginning of the sections to make this clear.

GAO received a large number of comments on § 21.7, redesignated § 21.6; most of them concerned the statement in § 21.7(e) that the recovery of the costs of filing and pursuing a protest would be granted only if it is not feasible to recommend any other remedy. Some commenters argued that the granting of the costs of pursuing a protest should be further limited to instances in which the contracting agency's procurement actions and position taken in the protest are not reasonably justified. Conversely, other commenters argued that recovery of costs of pursuing a protest be routinely granted when a protest is sustained regardless of whether any other remedy is recommended.

After careful consideration of these comments, GAO has decided to modify the provision. Section 21.6(e) has been revised to allow recovery of the costs of pursuing a sustained protest except where GAO recommends that the protested contract be awarded to the protester and the protester receives the award. Also, the section has been revised to include the standard, adopted from language in the Conference Report on the Competition In Contracting Act, that recovery of the costs of pursuing a protest and bid and proposal preparation will be available only where the contracting agency has unreasonably excluded the protester from the procurement. *See* Conference Report on the Competition In Contracting Act of 1984, H. Rep. No. 98–861, at 1437 (June 23, 1984).

One important purpose of the bid protest forum is to provide a procedure through which private parties may enforce the substantive provisions of the Competition In Contracting Act. GAO believes that the amended regulation will help accomplish this aim without undue expense to the public treasury.

Section 21.12(b), redesignated § 21.11(b), has been amended to make clear that sections 3553 (c) and (d) of the Competition In Contracting Act of 1984 relating to withholding of award and suspension of contract performance do not apply to nonstatutory protests.

Section 21.13(c), redesignated § 21.12(c), has been reworded, in response to a comment, to also make clear that the filing of a request for reconsideration does not invoke the Competiton In Contracting Act provisions for the withholding of award or the suspension of contract performance.

Several commenters have asked that GAO formalize in the regulations its long-standing policy of prohibiting *ex parte* contacts regarding the merits of a protest between GAO and the parties to a bid protest. GAO will continue to follow this policy and not discuss the merits of a protest with any party except at a protest conference with all parties invited (see § 21.5).

List of Subjects in 4 CFR Part 21

Administrative practice and procedures, Government contracts.

Accordingly, 4 CFR Part 21 is revised to read as follows:

PART 21—BID PROTEST REGULATIONS

Sec.

21.0 Definitions.
21.1 Filing of protest.
21.2 Time for filing.
21.3 Notice of protest, submission of agency report and time for filing of comments on report.
21.4 Withholding of award and suspension of contract performance.
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21.9 Effect of judicial proceedings.
21.10 Signing and distribution of decisions.
21.11 Nonstatutory protests.
21.12 Request for reconsideration.

Authority: 31 U.S.C. 3551–3556.

§ 21.0 Definitions.

(a) "Interested party" means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

(b) "Federal agency" means any executive department or independent establishment in the executive branch, including any wholly owned government corporation, and any establishment in the legislative or judicial branch, except the Senate, the House of Representatives and the Architect of the Capitol and any activities under his direction.

(c) "Contracting agency" means a federal agency which has awarded or proposes to award a contract under a protested procurement.

(d) All "days" referred to are deemed to be "working days" of the federal government except in § 21.4, where the statutory language is repeated. Except as otherwise provided, in computing a period of time prescribed by these regulations, the day from which the designated period of time begins to run shall not be counted, but the last day of the period shall be counted unless that day is not a working day of the federal government, in which event the period shall include the next working day. Time for filing any document or copy thereof with the General Accounting Office expires at 5:30 p.m. Eastern Standard Time or Eastern Daylight Savings Time as applicable on the last day on which such filing may be made.

(e) "Adverse agency action" is any action or inaction on the part of a contracting agency which is prejudicial to the position taken in a protest filed with the agency. It may include but is not limited to: a decision on the merits of a protest; a procurement action such as the opening of bids or receipt of proposals, the award of a contract, or the rejection of a bid despite the pendency of a protest; or contracting agency acquiescence in and active support of continued and substantial contract performance.

§ 21.1 Filing of protest.

(a) An interested party may protest to the General Accounting Office a solicitation issued by or for a federal agency for the procurement of property or services, or the proposed award or the award of such a contract. After an interested party protests a particular procurement or proposed procurement of automated data processing equipment and services to the General Services Administration Board of Contract Appeals under section 111(h) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(h)) and while that protest is pending before the Board that procurement or proposed procurement may not be the subject of a protest to the General Accounting Office. An interested party who has filed a protest with the Board may not protest the same matter to the General Accounting Office.

(b) Protests must be in writing and addressed as follows: General Counsel, General Accounting Office, Washington, D.C. 20548, Attention: Procurement Law Control Group.

(c) A protest filed with the General Accounting Office shall:

(1) Include the name, address and telephone number of the protester,

(2) Include an original signed by the protester or its representative, and at least one copy,

(3) Identify the issuing agency and the solicitation and/or contract number,

(4) Set forth a detailed statement of the legal and factual grounds of protest including copies of relevant documents,

(5) Specifically request a ruling by the Comptroller General of the United States (Comptroller General), and

(6) State the form of relief requested.

(d) The protester shall furnish a copy of the protest (including relevant documents not issued by the contracting agency) to the individual or location designated by the contracting agency in the solicitation for receipt of protests. If there is no designation in the solicitation, the protester shall furnish a copy of the protest to the contracting officer. The designated individual or location, or if applicable, the contracting officer must receive a copy of the protest no later than 1 day after the protest is filed with the General Accounting Office. The protest document must indicate that a copy has been furnished or will be furnished within 1 day to the appropriate individual or location.

(e) No formal briefs or other technical forms of pleading or motion are required. Protest submissions should be concise, logically arranged, and clearly state legally sufficient grounds of protest.

(f) A protest filed with the General Accounting Office may be dismissed for failure to comply with any of the requirements of this section.

§ 21.2 Time for filing.

(a)(1) Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals. In procurements where proposals are requested, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested not later than the next closing date for receipt of proposals following the incorporation.

(2) In cases other than those covered in paragraph (a)(1) of this section, protests shall be filed not later than 10 days after the basis of protest is known or should have been known, whichever is earlier.

(3) If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action will be considered, provided the initial protest to the agency was filed in accordance with the time limits prescribed in paragraph (a)(1) and (a)(2) of this section, unless the contracting agency imposes a more stringent time for filing, in which case the agency's time for filing will control. In cases where an alleged impropriety in a solicitation is timely protested to a contracting agency, any subsequent protest to the General Accounting Office must be filed within the 10-day period provided by this paragraph.

(b) The term "filed" regarding protests to the General Accounting Office means receipt of the protest submission in the General Accounting Office.

(c) The General Accounting Office, for good cause shown, or where it determines that a protest raises issues significant to the procurement system, may consider any protest which is not filed timely.

§ 21.3 Notice of protest, submission of agency report and time for filing of comments on report.

(a) The General Accounting Office shall notify the contracting agency by telephone within 1 day of the filing of a protest, and shall promptly mail confirmation of that notification to the contracting agency. The contracting agency shall immediately give notice of the protest to the contractor if award has been made or, if no award has been made, to all bidders or offerors who appear to have a substantial and reasonable prospect of receiving an award if the protest is denied. The contracting agency shall furnish copies of the protest submissions to such parties with instructions to communicate further directly with the General Accounting Office. Copies of any such communications from any such parties shall be furnished to the contracting agency.

(b) Material submitted by a protester will not be withheld from any interested party outside the government or from any federal agency which may be involved in the protest except to the extent that the withholding of information is permitted or required by law or regulation. If the protester considers that the protest contains material which should be withheld, a statement advising of this fact must be affixed to the front page of the protest submission and the allegedly protected information must be so identified wherever it appears.

(c) The contracting agency shall file a complete report on the protest with the General Accounting Office within 25 days from the date of the telephone notice of the protest from the General Accounting Office. The report shall contain copies of relevant documents including, as appropriate: the protest, the bid or proposal submitted by the protester, the bid or proposal of the firm which is being considered for award, or whose bid or proposal is being protested, the solicitation, including the specifications or portions relevant to the protest, the abstract of bids or offers or relevant portions, any other documents that are relevant to the protest, and the contracting officer's statement setting forth findings, actions, recommendations and any additional evidence or information deemed necessary in determining the validity of the protest. The statement shall be fully responsive to all allegations of the protest which the agency contests. Pursuant to section 3553(f) of the Competition In Contracting Act of 1984, Pub. L. 98-369, the contracting agency shall simultaneously furnish a copy of the report to the protester and interested parties who have responded to the notice given under paragraph (a) of this section. Copies of reports furnished to such parties shall include relevant documents that would not give the party a competitive advantage and that the party is otherwise authorized by law or regulation to receive. If documents are withheld from any of the parties, the agency must include in the report filed with the General Accounting Office and in the copies of the report provided to the protester and interested parties a list of the withheld documents. The copy of the report filed with the General Accounting Office shall also identify the parties who have been furnished copies of the report.

(d) The contracting agency may request, in writing, an extension of the 25-day report submission time period. The request shall set forth the reasons for which the extension is needed. The General Accounting Office will determine, in writing, whether the specific circumstances of the protest require a period longer than 25 days for the submission of the report and, if so, will set a new date for the submission of the report. Extensions are to be considered exceptional and will be granted sparingly. The agency should make its request for an extension as promptly as possible to permit it to submit a timely report should the General Accounting Office deny the request.

(e) Comments on the agency report shall be filed with the General Accounting Office within 7 days after receipt of the report, with a copy furnished by the commenting party to the contracting agency and other

participating interested parties. Failure of the protester to file comments, or to file a statement requesting that the case be decided on the existing record, or to request an extension under this section within the 7-day period will result in dismissal of the protest. The General Accounting Office upon a showing that the specific circumstances of the protest require a period longer than 7 days for the submission of comments on the agency report, may set a new date for the submission of such comments. Extensions are to be considered exceptional and will be granted sparingly.

(f) Notwithstanding any other provision of this section, when on its face a protest does not state a valid basis for protest or is untimely (unless the protest is to be considered pursuant to § 21.2(c)) or otherwise not for consideration by the General Accounting Office, it will summarily dismiss the protest without requiring the submission of an agency report. When the propriety of a dismissal becomes clear only after information is provided by the contracting agency or is otherwise obtained by the General Accounting Office, it will dismiss the protest at that time. If the General Accounting Office has dismissed the protest, it will notify the contracting agency that a report need not be submitted. Among the protests which may be dismissed without consideration of the merits are those concerning the following:

(1) Contract Administration. The administration of an existing contract is within the discretion of the contracting agency. Disputes between a contractor and the agency are resolved pursuant to the disputes clause of the contract and the Contract Disputes Act of 1978. 41 U.S.C. 601–13.

(2) Small Business Size Standards and Standard Industrial Classification. Challenges of established size standards or the size status of particular firms, and challenges of the selected standard industrial classification are for review solely by the Small Business Administration. 15 U.S.C. 637(b)(6); 13 CFR 121.3–6 (1984).

(3) Small Business Certificate of Competency Program. Any referral made to the Small Business Administration pursuant to section 8(b)(7) of the Small Business Act, or any issuance of a certificate of competency or refusal to issue a certificate under such section is not reviewed by the General Accounting Office absent a showing of possible fraud or bad faith on the part of government officials.

(4) Procurements under section 8(a) of the Small Business Act. Since contracts are let under section 8(a) of the Small Business Act to the Small Business Administration at the contracting officer's discretion and on such terms as agreed upon by the procuring agency and the Small Business Administration, the decision to place or not to place a procurement under the 8(a) program and the award of an 8(a) subcontract are not subject to review absent a showing of possible fraud or bad faith on the part of government officials or that regulations may have been violated. 15 U.S.C. 637(a).

(5) Affirmative Determination of Responsibility by the Contracting Officer. Because a determination that a bidder or offeror is capable of performing a contract is based in large measure or subjective judgments which generally are not readily susceptible of reasoned review, an affirmative determination of responsibility will not be reviewed, absent a showing that such determination was made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met.

(6) Procurement Protested to the General Services Administration Board of Contract Appeals. Interested parties may protest a procurement or proposed procurement of automated data processing equipment and services to the General Services Administration Board of Contract Appeals. After a particular procurement or proposed procurement is protested to the Board, the procurement may not, while the protest is before the Board, be the subject of a protest to the General Accounting Office. An interested party who has filed a protest with the Board may not protest the same matter to the General Accounting Office. 40 U.S.C. 759(h), as amended by section 2713 of the Competition In Contracting Act of 1984, Pub. L. 98–369.

(7) Protests not filed either in the General Accounting Office or the contracting agency within the time limits set forth in § 21.2.

(8) Procurements by Agencies Other Than Federal Agencies as Defined by Section 3 of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 472. Protests of procurements of proposed procurements by such agencies (e.g., U.S. Postal Service, Federal Deposit Insurance Corporation, nonappropriated fund activities) are beyond the General Accounting Office bid protest jurisdiction as established in section 2741 of the Competition In Contracting Act of 1984, Pub. L. 98–369.

(9) Walsh-Healey Public Contracts Act. Challenges of the legal status of a firm as a regular dealer or manufacturer within the meaning of the Walsh-Healey Act is for determination solely by the procuring agency, the Small Business Administration (if a small business is involved) and the Secretary of Labor. 41 U.S.C. 35–45.

(10) Subcontractor Protests. The General Accounting Office will not consider subcontractor protests except where the subcontract is by or for the government.

(11) Judicial Proceedings. The General Accounting Office will not consider protests where the matter involved is the subject of litigation before a court of competent jurisdiction, unless the court requests a decision by the General Accounting Office. The General Accounting Office will not consider protests where the matter involved has been decided on the merits by a court of competent jurisdiction.

(g) A protest decision may not be delayed by the failure of a party to file a submission within the specified time limits. Consequently, the failure of any party or contracting agenty to comply with the prescribed time limits may result in resolution of the protest without consideration of the untimely submission.

§ 21.4 Withholding of award and suspension of contract performance.

Sections 3553 (c) and (d) of the Competition in Contracting Act of 1984, Pub. L. 98–369, set forth the following requirements regarding the withholding of award and suspension of contract performance when a protest is filed with the General Accounting Office. The requirements are included here for informational purposes.

(a) When the contracting agency receives notice of a protest from the General Accounting Office prior to award of a contract it may not award a contract under the protested procurement while the protest is pending unless the head of the procuring activity responsible for award of the contract determines in writing and reports to the General Accounting Office that urgent and compelling circumstances significantly affecting interests of the United States will not permit waiting for the General Accounting Office decision. This finding may be made only if the award is otherwise likely to occur within 30 days.

(b) When the contracting agency receives notice of a protest from the General Accounting Office after award of a contract, but within 10 days of the date of contract award, it shall immediately direct the contractor to cease contract performance and to suspend related activities that may result in additional obligations being

incurred by the government under that contract while the protest is pending. The head of the procuring activity responsible for award of the contract may authorize contract performance notwithstanding the pending protest if he determines in writing and reports to the General Accounting Office that:

(1) Performance of the contract is in the government's best interest, or

(2) Urgent and compelling circumstances significantly affecting interests of the United States will not permit waiting for the General Accounting Office's decision.

§ 21.5 Conference.

(a) As conference on the merits of the protests may, at the sole discretion of the General Accounting Office, be held at the request of the protester, interested parties who have responded to the notice given under § 21.3(a), or the contracting agency. Requests for a conference should be made at the earliest possible time in the protest proceeding.

(b) Conferences will be held on a date set by the General Accounting Office no later than 5 days after receipt by the protester and interested parties of the agency report. All such interested parties shall be invited to attend. Ordinarily, only one conference will be held on a bid protest.

(c) If a conference is held, no separate comments under § 21.3(e) will be considered. The protester, all interested parties and the contracting agency may file comments on the conference and report as appropriate with the General Accounting Office, with copies furnished to the other parties, within 5 days of the date on which the conference was held.

(d) The General Accounting Office may request that a conference be held if at any time during the protest proceeding it decides that such a conference is needed to clarify material issues. If such a conference is held, the General Accounting Office shall make such adjustments in the submission deadlines as it determines to be fair to all parties.

(e) Failure of the protester to file comments, or to file a statement requesting that the case be decided on the existing record, or to request an extension under this section within the 5-day period set forth in paragraph (c) of this section will result in dismissal of the protest. The General Accounting Office may set a new date for the submission of comments under the circumstances set forth in § 21.3(e).

§ 21.6 Remedies.

(a) If the General Accounting Office determines that a solicitation, proposed award, or award does not comply with statute or regulation, it shall recommend that the contracting agency implement any combination of the following remedies which it deems appropriate under the circumstances:

(1) Refrain from exercising options under the contract;

(2) Terminate the contract;

(3) Recompete the contract;

(4) Issue a new solicitation;

(5) Award a contract consistent with statute and regulation; or

(6) Such other recommendations as the General Accounting Office determines necessary to promote compliance.

(b) In determining the appropriate recommendation, the General Accounting Office, shall, except as specified in paragraph (c) of this section, consider all the circumstances surrounding the procurement or proposed procurement including, but not limited to, the seriousness of the procurement deficiency, the degree of prejudice to other interested parties or to the integrity of the competitive procurement system, the good faith of the parties, the extent of performance, cost to the government, the urgency of the procurement and the impact of the recommendation on the contracting agency's mission.

(c) If the head of the procuring activity makes the finding referred to in § 21.4(b)(1) that performance of the contract notwithstanding a pending protest is in the government's best interest, the General Accounting Office shall make its recommendation under paragraph (a) of this section without regard to any cost or disruption from terminating, recompeting or reawarding the contract.

(d) If the General Accounting Office determines that a solicitation, proposed award, or award does not comply with statute or regulation it may declare the protester to be entitled to reasonable costs of:

(1) Filing and pursuing the protest, including attorney's fees; and

(2) Bid and proposal preparation.

(e) The General Accounting Office will allow the recovery of costs under paragraph (d)(1) of this section where the contracting agency has unreasonably excluded the protester from the procurement except where the General Accounting Office recommends pursuant to paragraph (a)(5) that the contract be awarded to the protester and the protester receives the award. The General Accounting Office will only allow the recovery of costs under paragraph (d)(2) of this section where the contracting agency has unreasonably excluded the protester from the procurement and where other remedies listed in paragraphs (a)(2)–(5) are not appropriate.

(f) If the General Accounting Office decides that the protester is entitled to the recovery of such costs, the protester and the contracting agency shall attempt to reach agreement on the amount of the costs. If the protester and the contracting agency cannot reach agreement within a reasonable time, the General Accounting Office will determine the amount.

§ 21.7 Time for decision by the General Accounting Office.

(a) The General Accounting Office shall issue a decision on a protest within 90 days from the date the protest is filed with it.

(b) In those protests for which the General Accounting Office invokes the express option under § 21.8, the General Accounting Office shall issue a decision within 45 calendar days from the date the protest is filed with it.

(c) Under exceptional circumstances the General Accounting Office may extend the deadlines in paragraph (a) of this section on a case-by-case basis by stating in writing the reasons that the specific circumstances of the protest require a longer period.

§ 21.8 Express option.

(a) At the request of the protester, the contracting agency or an interested party for an expeditious decision, the General Accounting Office will consider the feasibility of using an express option.

(b) The express option will be invoked solely at the discretion of the General Accounting Office only in those cases suitable for resolution within 45 calendar days.

(c) Requests for the express option must be in writing and received in the General Accounting Office no later than 3 days after the protest is filed. The General Accounting Office will determine within 2 days of receipt of the request whether to invoke the express option and will notify the contracting agency, protester and interested parties who have responded to the notice under § 21.3(a).

(d) When the express option is used the filing deadlines in § 21.3 and the provisions of § 21.5 shall not apply and:

(1) The contracting agency shall file a complete report with the General Accounting Office on the protest within 10 days from the date it receives notice

from the General Accounting Office that the express option will be used and furnish copies of the report to the protester and interested parties who have responded to the notice under §21.3(a).

(2) Comments on the agency report shall be filed with the General Accounting Office within 5 days after receipt of the report with a copy furnished by the commenting party to the contracting agency and other participating interested parties.

(3) The General Accounting Office may arrange a conference to ascertain and clarify the material issues at any time deemed appropriate during the protest proceeding.

(4) The General Accounting Office shall issue its decision within 45 calendar days from the date the protest is filed with it.

§ 21.9 Effect of judicial proceedings.

(a) The General Accounting Office will dismiss any protest where the matter involved is the subject of litigation before a court of competent jurisdiction, unless the court requests a decision by the General Accounting Office. The General Accounting Office will dismiss any protest where the matter involved has been decided on the merits by a court of competent jurisdiction.

(b) Where the court requests a decision by the General Accounting Office, the times for filing the agency report (§ 21.3(c)), filing comments on the report (§ 21.3(e)), holding a conference and filing comments (§ 21.5), and issuing a decision (§ 21.7) may be changed if the court so orders.

§ 21.10 Signing and distribution of decisions.

Each bid protest decision shall be signed by the Comptroller General or a designee for that purpose. A copy of the decision shall be made available to all participating interested parties, the protester, the head of the contracting activity responsible for the protested procurement, the senior procurement executive of each federal agency involved, and any member of the public.

§ 21.11 Nonstatutory protests.

(a) The General Accounting Office may consider protests concerning sales by a federal agency or procurements by agencies of the government other than federal agencies as defined in § 21.0(b) or by the District of Columbia, if the agency involved has agreed in writing to have its protests decided by the General Accounting Office.

(b) All of the provisions of these Bid Protest Regulations shall apply to any nonstatutory protest decided by the General Accounting Office except for the provisions of § 21.6(d) pertaining to entitlement to reasonable costs of filing and pursuing the protest, including attorney's fees. Sections 3553 (c) and (d) of the Competition in Contracting Act of 1984, Pub. L. 98–369, pertaining to withholding of award and suspension of contract performance shall not apply.

§ 21.12 Request for reconsideration.

(a) Reconsideration of a decision of the General Accounting Office may be requested by the protester, any interested party who participated in the protest, and any federal agency involved in the protest. The General Accounting Office will not consider any request for reconsideration which does not contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered.

(b) Request for reconsideration of a decision of the General Accounting Office shall be filed, with copies to any federal agency and interested parties who participated in the protest, not later than 10 days after the basis for reconsideration is known or should have been known, whichever is earlier. The term "filed" as used in this section means receipt in the General Accounting Office.

(c) A request for reconsideration shall be subject to those bid protest regulations consistent with the need for prompt and fair resolution of the matter. The filing of a request for reconsideration will not invoke Section 3553 (c) or (d) of the Competition in Contracting Act of 1984, Pub. L. 98–369 relating to the withholding of award and the suspension of contract performance.

Charles A. Bowsher,

Comptroller General of the United States.

[FR Doc. 84–33068 Filed 12–19–84; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 810

U.S. Standards for Triticale

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: According to the requirements for periodic review of existing regulations, the Federal Grain Inspection Service (FGIS) has reviewed the U.S. Standards for Triticale, and is amending the triticale standards to: (1) Reduce the allowable limit for castor beans in the numerical grades; (2) delete smut as a factor which would render triticale Sample grade; and (3) make other miscellaneous nonsubstantive changes in language, format, and references. These changes are made to update the standards and conform the standards to other grain standards.

EFFECTIVE DATE: May 1, 1986.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Information Resources Management Branch, USDA, FGIS, Room 0667 South Building, 1400 Independence Avenue, SW., Washington, D.C. 20250; telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation as established in the Order.

Regulatory Flexibility Act Certification

Dr. Kenneth A. Gilles, Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities because those persons who apply the standards and most users of triticale inspection services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Further, the standards are applied equally to all entities by FGIS employees or licensed persons.

Final Action

The review of the standards included a determination of the continued need for the standards and the potential to clarify or simplify the language of the standards; a review of changes in marketing practices and functions affecting the standards; a review of changes in technology and economic conditions in the area affected by the standards; and a determination of the potential to improve the standards and their application through the incorporation of grading factors or tests which better indicate quality attributes. The objective was to assure that the standards continue to serve the needs of the market to the greatest possible extent.

A notice requesting public comment on the U.S. Standards for Triticale was published in the December 21, 1983 **Federal Register** (48 FR 56398). Within

the 60-day comment period, 6 comments were received. All comments addressed 3 primary issues.

1. Should the allowable limits for castor beans in the numerical grades (7 CFR 810.656) be tightened from 2 to 1, for example, 2 seeds would render triticale U.S. Sample grade?

Two commenters suggested that in tightening allowable limits for castor beans, FGIS should proceed further and allow no castor beans in triticale. One commenter misinterpreted the proposed change and objected to raising the limit from 0 to 1. Two castor beans are currently allowed in the numerical grades, and the proposal was to permit only one. Although the commenters expressed a desire to see the allowable limit further reduced, such a change is not necessary, based upon present testing information regarding the presence of castor beans in triticale.

2. Should the presence of an extreme amount of smut be deleted as a factor rendering triticale U.S. Sample grade (7 CFR 810.656)?

Two commenters asked that FGIS retain current limits for smut, and advised against looser limits. FGIS was not proposing to change the limits for "Light smutty" and "Smutty", but to delete the provision which renders triticale Sample grade when the quantity of smut is so great that one or more of the grade requirements cannot be determined accurately. Due to seed treatment and other improvements, the "Sample grade" provision based upon smut has not been applied for several years.

3. Should the standards be eliminated or is there sufficient need to retain them?

Four commenters stated that triticale standards must be retained to aid in their efforts to market the grain. Research results have been published on the nutritional aspects of triticale. While market development has been somewhat slow, these merchandisers of triticale advised that the standards are needed to continue development of the market.

Two commenters suggested that test weight limits may need to be increased. When the standards for triticale were promulgated, it was understood that as more varieties were developed, and the production areas expanded, the need for adjustments in the grade-determining factors would be addressed. At this time, the number of new varieties and the expansion of acreage and production are not sufficient to evaluate a need for change in the test weight requirement.

One commenter stated that there was no need to retain the triticale standards; however, the commenter concurred that if the standards were retained, changes should be made on the two issues of castor beans and smut.

A proposal to amend the standards for triticale was published in the July 31, 1984 **Federal Register** (49 FR 30480), and a correction was issued subsequently (49 FR 31432) on August 7, 1984, to correct the close of the comment period and the format of the grade chart (§ 810.656).

No comments were received in response to the proposal. FGIS is publishing as a final rule the text of the proposed rule except for additional minor non-substantive format changes referenced below. Pursuant to section 4(b) of the Act, no standards established or amendments or revocations of standards under the Act are to become effective less than one calendar year after promulgation, unless in the judgment of the Administrator, the public health, interest, or safety require that they become effective sooner. To coincide with the beginning of the 1986 harvest, the amendments will become effective May 1, 1986.

A review of available information indicates that certain amendments to the standards would clarify and increase the effectiveness of the standards and effect uniformity with other standards, especially the wheat and rye standards. As a result of this review, FGIS is revising the U.S. Standards for Triticale as follows:

1. The allowable limit for castor beans in the numerical grades (7 CFR 810.656) will be reduced from 2 to 1, for example, 2 or more seeds will grade triticale U.S. Sample grade. Castor bean seeds are rarely found in any grain. However, the large size of the seed and the toxicity of the ricin found within, make it prudent to permit the presence of only the minimum number of seeds in triticale, as is practicable. Accordingly, § 810.656 is amended to show that the limit for castor bean seeds in the numerical grades is reduced from 2 to 1, for example, when a 1,000 gram sample contains 2 or more castor beans, the triticale will be graded "U.S. Sample grade."

2. The presence of an extreme amount of smut is deleted as a factor rendering triticale U.S. Sample grade. Currently, when smut is evident in a sample, the special grades "Light smutty" and "Smutty" are applied (7 CFR 810.658 (d) and (e)). Also, when the sample contains a quantity of smut so great that one or more grade requirements cannot be determined accurately, a U.S. Sample grade designation is applied (7 CFR 810.656(b)). Inspection data show that triticale rarely, if at all, contains so much smut that grade requirements cannot be determined accurately. The special grades adequately inform the user of the condition of the triticale and make the requirement regarding extreme quantities of smut as U.S. Sample grade unnecessary. Accordingly, § 810.656 is amended to show that the presence of an extreme amount of smut will not render the triticale U.S. Sample grade.

3. Revisions in wording are made to clarify and effect uniformity among standards, including reference to FGIS handbooks. Specifically, § 810.652 (d), (g), (i), (l), and footnote 2; § 810.657 footnote 4; and § 810.658(f) is amended to show that the Grain Inspection Manual and the Equipment Manual have been renamed as the "Grain Inspection Handbook" and the "Equipment Handbook," respectively; § 810.654 is amended to delete as unnecessary reference to field offices, official agencies, and interested parties, and so as to conform the language in this section to identical language in other grain standards; and § 810.656 is further amended to show that the footnote indicator "1" in the column heading for total foreign material should read "2".

4. Miscellaneous non-substantive format changes are being made to § 810.656 for clarity and to conform to other grain standards. Certain of these changes are in addition to those format changes as proposed.

List of Subjects in 7 CFR Part 810

Export, Grain.

PART 810—OFFICIAL U.S. STANDARDS FOR GRAIN

Accordingly, § 810.652 (d), (g), (i) and (l), and footnote 2; § 810.654; § 810.656; § 810.657 footnote 4; and § 810.658(f) are revised as follows:

United States Standards for Triticale [1]

§ 810.652 Definition of other terms.

* * * * *

(d) *Dockage.* All matter other than triticale which can be removed readily from a test portion of the original sample using an approved device following procedures prescribed in the Grain Inspection Handbook.[2] Also,

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[1] Compliance with the provisions of the standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or other Federal laws.

[2] The following publications are referenced in these standards. Copies may be obtained from the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250.

(a) Equipment Handbook, U.S. Department of Agriculture, Federal Grain Inspection Service;

(b) Grain Inspection Handbook, U.S. Department of Agriculture, Federal Grain Inspection Service.

underdeveloped, shriveled, and small pieces of triticale kernels removed in separating the material other than triticale and which cannot be recovered by properly rescreening or recleaning. (See also § 810.655 and § 810.657.) For the purpose of this paragraph, "approved device" shall include the Carter Dockage Tester and any other equipment that is approved by the Administrator as giving equivalent results.[3]

* * * * *

(g) *Moisture.* Water content in triticale as determined by an approved device following procedures prescribed in the Grain Inspection Handbook.[2] For the purpose of this paragraph, "approved device" shall include the Motomco Moisture Meter and any other equipment that is approved by the Administrator as giving equivalent results.[3]

* * * * *

(i) *Shrunken and broken kernels.* All matter which can be removed from a test portion of the dockage-free sample using an approved device following procedures prescribed in the Grain Inspection Handbook.[2] For the purpose of this paragraph, "approved device" shall be the 0.064×0.375 (3/64) inch oblong-hole sieve.[3]

* * * * *

(l) *Test weight per bushel.* The weight per Winchester bushel (2,150.42 cubic-inch capacity) as determined on a dockage-free test portion of the original sample using an approved device following instructions in the Grain Inspection Handbook.[2] Test weight per bushel shall be expressed to the nearest tenth of a pound. For the purpose of this paragraph, "approved device" shall include the Fairbanks-Morse or Ohaus Test Weight Per Bushel Apparatus and any other equipment that is approved by the Administrator as giving equivalent results.[3]

§ 810.654 Temporary modifications in equipment and procedures.

The equipment and procedures referred to in the triticale standards are applicable to triticale produced and harvested under normal environmental conditions. Abnormal environmental conditions during the production and harvest of triticale may require minor temporary modifications in the equipment or procedures to obtain results expected under normal conditions. When these adjustments are necessary, proper notification will be made in a timely manner. Adjustments in interpretations (i.e., identity, quality, and condition) are excluded and shall not be made.

§ 810.656 Grades and grade requirements for triticale.

(See also § 810.658.)

Grade	Minimum test weight per bushel (pounds)	Maximum limits of—					
		Damaged kernels		Foreign material			Defects (total)[3] (Percent)
		Heat-damaged (percent)	Total[1] (percent)	Material other than wheat or rye (percent)	Total[2] (percent)	Shrunken and broken kernels (percent)	
U.S. No. 1	48.0	0.2	2.0	1.0	2.0	5.0	5.0
U.S. No. 2	45.0	0.2	4.0	2.0	4.0	8.0	8.0
U.S. No. 3	43.0	0.5	8.0	3.0	7.0	12.0	12.0
U.S. No. 4	41.0	3.0	15.0	4.0	10.0	20.0	20.0

U.S. Sample grade—U.S. Sample grade shall be triticale which:

(a) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, or 4, or

(b) Contains 8 or more stones, 2 or more pieces of glass, 3 or more crotalaria seeds (Crotalaria spp.), 2 or more castor beans (Ricinus communis), 4 or more particles of an unknown foreign substance(s), or a commonly recognized harmful or toxic substance(s), or 2 or more rodent pellets, bird droppings, or an equivalent quantity of other animal filth per 1,000 grams of triticale; or

(c) Has a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or

(d) Is heating or otherwise of distinctly low quality.

[1] Includes heat-damaged kernels.
[2] Includes material other than wheat or rye.
[3] Defects (total) includes damaged kernels (total), foreign material (total) and shrunken and broken kernels. The sum of these three factors may not exceed the limit for "defects (total)" for each numerical grade.

§ 810.657 Grade designations.

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(b) * * *[4]

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Special Grades, Special Grade Requirements, and Special Grade Designations

§ 810.658 Special grades and special grade requirements.

* * * * *

(f) *Weevily triticale.* Triticale which is infested with live weevils or other insects injurious to stored grain. As applied to triticale, the meaning of the term "infested" is set forth in the Grain Inspection Handbook.[2]

Authority: Secs. 5, 18, Pub. L. 94-582, 90 Stat. 2869, 2884 (7 U.S.C. 76, 87(e))

Dated: December 5, 1984.

Kenneth A. Gilles,

Administrator.

[FR Doc. 84-33082 Filed 12-19-84; 8:45 am]

BILLING CODE 3410-EN-M

[3] Request for information concerning approved devices and procedures, criteria for approved devices, and request for approval of devices should be directed to the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250.

[4] The conditions are listed in the Grain Inspection Handbook. Copies may be obtained from the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250

7 CFR Part 810

Revision of the U.S. Standards for Flaxseed

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: According to the requirements for the periodic review of existing regulations, the Federal Grain Inspection Service (FGIS) has reviewed the U.S. Standards for Flaxseed, and is revising the standards by (1) deleting the requirement that flaxseed be graded U.S. Sample grade when the moisture exceeds 9.5 percent, (2) revising the definition of flaxseed, (3) adding definitions for distinctly low quality and other grains, (4) adding a section for temporary modification of equipment and procedures, (5) revising that section on percentages to clarify its scope, (6) including limits in the Sample grade requirements for flaxseed, and (7) making other miscellaneous changes in language, format, and references. These changes are made to update and conform the standards to other grain standards.

EFFECTIVE DATE: July 13, 1986.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Information Resources Management Branch, USDA, FGIS, Room 0667, South Building, 1400 Independence Avenue, SW, Washington, D.C. 20250, telephone (202) 382-1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as nonmajor because it does not meet

the criteria for a major regulation as established in the Order.

Regulatory Flexibility Act Certification

Dr. Kenneth A. Gilles, Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities because those persons who apply the standards and most users of flaxseed inspection services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Further, the standards are applied equally to all entities by FGIS employees or licensed persons.

Final Action

This review of standards included a determination of the continued need for the standards and the potential to clarify or simplify the language of the standards; a review of changes in marketing practices and functions affecting the standards; a review of changes in technology and economic conditions in the area affected by the standards; and a determination of the potential to improve the standards and their application through incorporation of grading factors or tests which better indicate quality attributes. The objective was to assure that the standards continue to serve the needs of the market to the greatest possible extent.

A notice requesting public comment on the U.S. Standards for Flaxseed was published in the December 29, 1983 **Federal Register** (48 FR 57304). Within the 60-day comment period, one comment was received. The comment addressed two issues in the notice:

1. Should the format of the flaxseed standards (7 CFR 810.501 *et seq.)* be updated to conform to the current arrangement of the sections as appears in the wheat standards?

2. Should the moisture requirement for U.S. Sample grade flaxseed be deleted?

The commenter agreed that the format of the flaxseed standards should be updated and that the moisture requirement for U.S. Sample grade flaxseed be deleted.

A proposal to revise the standards for flaxseed was published in the August 10, 1984 **Federal Register** (49 FR 32077). Within the 60-day comment period two comments were received. One commenter expressed support for the proposed changes. The other commenter opposed deleting the moisture requirement for U.S. Sample grade flaxseed since moisture is a critical factor relating to storage of flaxseed. Moisture content will continue to be shown on all official certificates which show an official grade determination. Further, desired moisture levels could be achieved through contracting. Since specifying a maximum moisture content is a common practice the grade limit generally does not serve a useful purpose.

Pursuant to section 4(b) of the U.S. Grain Standards Act no standards established or amendments or revocations of standards under this Act are to become effective less than one calendar year after promulgation, unless in the judgment of the Administrator, the public health, interest, or safety require that they become effective sooner. To coincide with the beginning of the 1986 harvest, the amendments will become effective July 13, 1986.

A review of available information indicates that certain revisions in the standards would increase clarity and effectiveness of the standards and reflect current marketing practices. As a result of this review, the U.S. Standards for Flaxseed are revised as discussed below.

1. To enhance clarity and uniformity between standards, the U.S. Standards for Flaxseed are revised by dividing the standards into 3 parts, and into sections, similar to the present format in the U.S. Standards for Wheat. Specifically, in addition to the changes discussed below, an undesignated heading, *Terms Defined* consists of a new § 810.501, *Definition of flaxseed,* and a new § 810.502, *Definition of other terms.* An undesignated heading, *Principles Governing Application of Standards* consists of a new § 810.503 *Basis of determination,* a new § 810.504, *Temporary modifications in equipment and procedures,* and a new § 810.505, *Percentages.* An undesignated heading, *Grades, Grade Requirements, and Grade Designations* consists of a new § 810.506, *Grades and grade requirements for flaxseed* and a new § 810.507, *Grade designations.* Incidental to this revision, the current § 810.501, *Terms defined* is eliminated as unnecessary. The current § 810.502, *Flaxseed* is clarified by rewording the definition and is included in the new § 810.501, *Definition of flaxseed.* Included in a new § 810.502 is the current § 810.503, *Dockage;* § 810.504, *Damaged flaxseed;* § 810.505, *Heat-damaged flaxseed;* § 810.506, *Stones;* § 810.510, *Moisture;* and § 810.511, *Test weight per bushel,* and these sections are clarified by rewording the definitions as necessary. Also included in the new § 810.502, *Definition of other terms,* are the definitions for 2 new terms, *Distinctly low quality* and *Other grains* which are terms presently used in the flaxseed standards and, as such, should be defined. The definitions are the same or similar to those used in other grain standards including wheat. The current § 810.507, *Principles governing the application of standards* is eliminated as unnecessary. The current § 810.508, *Basis of determinations* is clarified by rewording the section and is included in the new § 810.503, *Basis of determination* which is divided into three subparagraphs, distinctly low quality, certain quality determinations, and all other determinations. This format appears in the wheat standards and the information which appears in the section generally is contained in the FGIS Grain Inspection Handbook. The current § 810.509, *Percentages* is clarified by spelling out in greater detail the rounding procedures currently used for flaxseed. Accordingly, the revision specifies how a figure is rounded when followed by a figure greater, lesser, or equal to five. This revision makes the wording of the section the same or similar to that used in other grain standards, as appropriate. The section is included in the new § 810.505, *Percentages.* The current § 810.512, *Grades* is eliminated as unnecessary. The current § 810.513, *Grades and grade requirements for Flaxseed* is clarified by making format changes and is included in the new § 810.506, *Grades and grade requirements for Flaxseed.* The current § 810.514, *Grade designations* is included in the new § 810.507, *Grade designations.*

2. FGIS has deleted the moisture requirement for U.S. Sample grade flaxseed which presently appears in § 810.513. Flaxseed which contains moisture in excess of 9.5 percent is currently graded U.S. Sample grade. Moisture content is a condition of the grain rather than a quality factor. Pursuant to current trade practices, discounts for moisture generally are assessed on the actual moisture content rather than numerical grade to account for weight loss and drying costs of the handler. High moisture grain is a normal condition during movement from harvest into market channels or storage. Moisture content by itself does not imply an intrinsic quality, but rather measures the amount of dry matter and water content of the grain. Moreover, moisture content can be specified through contracting which is a common practice, for example, with corn. Since specifying a maximum moisture content is a common practice, the grade limit generally does not serve a useful purpose. Also, the grain may be dried and graded accordingly. The moisture content will continue to be shown on all official certificates which show the

official grade determination as required under § 800.162(a)(3) of the regulations. Moisture content is not a grade-determining factor in the U.S. Standards for Wheat, Barley, Oats, Triticale, and Rye. A final rule to delete moisture content as a grade-determining factor in the U.S. Standards for Corn, Sorghum, and Soybeans was published in the September 12, 1984, **Federal Register** (49 FR 35743), with an effective date of September 9, 1985. Accordingly, this deletion adds consistency among the various grain standards.

3. The equipment and procedures referred to in the flaxseed standards are applicable to grain produced and harvested under normal environmental conditions. The revision provides that, when adverse growing or harvesting conditions make impractical the use of routine procedures, minor temporary modifications in the equipment or procedures may be required to obtain results expected under normal conditions. Accordingly, a new § 810.504 on temporary modifications in equipment and procedures is added. Adjustments in interpretations (i.e., identity, quality, and condition) shall not be made. This section is similar to sections which appear in other grain standards.

4. FGIS has included in the definition of U.S. Sample grade, the limits for stones, pieces of glass, crotalaria seeds, castor beans, particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), rodent pellets, bird droppings, and animal filth. The limits of 8 or more stones, 2 or more pieces of glass, 3 or more crotalaria seeds, 2 or more castor beans, 4 or more particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), and 10 or more pieces of rodent pellets, bird droppings, or other animal filth, have been followed in the inspection process for many years as they have appeared in the FGIS Grain Inspection Handbook and do not constitute new limits. The limits are added to the definition of U.S. Sample grade for clarity and to conform flaxseed to other grain standards. Further, in addition to the changes proposed to § 810.513 as discussed above, miscellaneous non-substantive format changes are made for clarity, to facilitate the use of the standards, and to conform flaxseed standards to other grain standards.

5. Footnotes are updated to reference the Inspection and Equipment Hand books as appropriate and delete outdated references.

6. Allowable limits for crotalaria seeds are included in the definition of U.S. Sample grade for clarity and uniformity with other grain standards. This limit currently is included in § 810.901 which considers grain exceeding this limit as distinctly low quality. Section 810.901 still is applicable to soybeans but no longer applies to flaxseed. Similar revisions have been made to all the other grain standards with the intention of eventually deleting § 810.901 in its entirety. A final rule to delete corn from § 810.901 was published in the September 7, 1984, **Federal Register** (49 FR 35339), with an effective date of September 9, 1985. Therefore, FGIS has amended § 810.901 since the provision is included in the U.S. Sample grade definition for flaxseed; and the section is not referenced in the flaxseed standards.

List of Subjects in 7 CFR Part 810

Export, Grain.

PART 810—OFFICIAL U.S. STANDARDS FOR GRAIN

Accordingly, the United States Standards for Flaxseed (7 CFR 810.501–810.507 and 810.901) are revised to read as follows:

United States Standards for Flaxseed [1]

Terms Defined

Sec.

810.501 Definition of flaxseed.
810.502 Definition of other terms.

Principles Governing Application of the Standards

810.503 Basis of determination.
810.504 Temporary modifications in equipment and procedures.
810.505 Percentages.

Grades, Grade Requirements, and Grade Designations

810.506 Grades and grade requirements for flaxseed.
810.507 Grade designations.

United States Standards for Flaxseed [1]

Terms Defined

§ 810.501 Definition of flaxseed.

The grain of common flaxseed (*Linum usitatissimum L.*) which, before the removal of the dockage, consists of 50 percent or more of flaxseed and not more than 20 percent of other grains for which standards have been established under the United States Grain Standards Act and which, after the removal of the dockage, contains 50 percent or more of whole flaxseed.

§ 810.502 Definition of other terms.

For the purpose of these standards, the following terms shall have the meanings stated below:

(a) *Damaged flaxseed.* Flaxseed and pieces of flaxseed which are badly ground-damaged, badly weather-damaged, diseased, frost-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged, in the sample after the removal of dockage.

(b) *Distinctly low quality.* Flaxseed which obviously is of inferior quality because it contains foreign substances or because it is in an unusual state or condition, and which cannot be properly graded by use of the other grading factors provided in the standards. Distinctly low quality shall include the presence of any objects too large to enter the sampling device; i.e., large stones, wreckage, or similar objects.

(c) *Dockage.* All matter other than flaxseed which can be removed readily from a portion of the original sample using an approved device following procedures prescribed in the Grain Inspection Handbook.[2] Also, underdeveloped, shriveled, and small pieces of flaxseed removed in separating the material other than flaxseed and which cannot be recovered by properly rescreening or recleaning. (See also § 810.505 and § 810.507.) For the purpose of this paragraph, "approved device" shall include the Carter Dockage Tester and any other equipment that is approved by the Administrator as giving equivalent results.[3]

(d) *Heat-damaged flaxseed.* Flaxseed and pieces of flaxseed which are materially discolored and damaged by heat.

(e) *Moisture.* Water content in flaxseed as determined by an approved device following precedures prescribed in the Grain Inspection Handbook.[2] For the purpose of this paragraph, "approved device" shall include the Motomco Moisture Meter and any other equipment that is approved by the Administrator as giving equivalent results.[3]

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[1] Compliance with the provisions of the standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or other Federal laws.

[2] The following publications are referenced in these standards. Copies may be obtained from the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250

(a) Equipment Handbook, U.S. Department of Agriculture, Federal Grain Inspection Service.

(b) Grain Inspection Handbook, U.S. Department of Agriculture, Federal Grain Inspection Service.

(f) *Other grains.* Barley, corn, cultivated buckwheat, einkorn, emmer, guar, hull-less barley, nongrain sorghum, oats, Polish wheat, popcorn, poulard wheat, rice, rye, safflower, sorghum, soybeans, spelt, sunflower, sweet corn, triticale, wheat, and wild oats.

(g) *Stones.* Concreted earthy or mineral matter and other substances of similar hardness that do not disintegrate readily in water.

(h) *Test weight per bushel.* The weight per Winchester bushel (2,150.42 cubic-inch capacity) as determined on a dockage-free test portion of the original sample using an approved device following instructions in the Grain Inspection Handbook.[2] Test weight per bushel shall be expressed in whole and half pounds. A fraction of a half pound shall be disregarded. For the purpose of this paragraph, "approved device" shall include the Fairbanks-Morse or Ohaus Test Weight Per Bushel Apparatus and any other equipment that is approved by the Administrator as giving equivalent results.[3]

Principles Governing the Application of the Standards

§ 810.503 Basis of determination.

(a) *Distinctly low quality.* The determination of distinctly low quality shall be made on the basis of the lot as a whole at the time of sampling when a condition exists that may not appear in the representative sample and/or the sample as a whole.

(b) *Certain quality determinations.* Each determination of the definition of flaxseed, rodent pellets, bird droppings, other animal filth, broken glass, castor beans, crotalaria seeds, dockage, stones, an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), and otherwise distinctly low quality, shall be upon the basis of the sample as a whole.

(c) *All other determinations.* All other determinations shall be upon the basis of the grain when free from mechanically separated dockage, except the determination of odor shall be upon either the basis of the grain as a whole or the grain when free from mechanically separate dockage.

§ 810.504 Temporary modifications in equipment and procedures.

The equipment and procedures referred to in the flaxseed standards are applicable to flaxseed produced and harvested under normal environmental conditions. Abnormal environmental conditions during the production and harvest of flaxseed may require minor temporary modifications in the equipment or procedures to obtain results expected under normal conditions. When these adjustments are necessary, proper notification will be made in a timely manner. Adjustments in interpretations (i.e., identity, quality, and condition) are excluded and shall not be made.

§ 810.505 Percentages.

(a) Percentages shall be determined on the basis of weight and shall be rounded off as follows:

(1) When the figure to be rounded is followed by a figure greater than 5, round to the next higher figure; e.g., state 0.46 as 0.5.

(2) When the figure to be rounded is followed by a figure less than 5, retain the figure; e.g., state 0.54 as 0.5.

(3) When the figure to be rounded is even and is followed by the figure 5, retain the even figure. When the figure to be rounded is odd and is followed by the figure 5, round the figure to the next higher number; e.g., state 0.45 as 0.4; state 0.55 as 0.6.

(b) Percentages shall be stated in whole and tenth percent to the nearest tenth percent, except when determining the percentage of dockage. The percentage of dockage when equal to one percent or more shall be stated in terms of whole percent, and when less than one percent shall not be stated. A fraction of a percent of dockage shall be disregarded.

Grades, Grade Requirements, and Grade Designations

§ 810.506 Grades and grade requirements for Flaxseed.

Grade	Minimum test weight per bushel (pounds)	Maximum limits of—	
		Heat damaged flaxseed (percent)	Damaged flaxseed (total) (percent)
U.S. No. 1	49.0	0.2	10.0
U.S. No. 2	47.0	0.5	15.0

U.S. sample grade—U.S. sample grade shall be flaxseed which:

(a) Does not meet the requirements for the grades U.S. Nos. 1 or 2; or

(b) Contains 8 or more stones which have an aggregate weight in excess of 0.2 percent of the sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (Crotalaria spp.), 2 or more castor beans (Ricinus communis), 4 or more particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), 10 or more pieces of rodent pellets, bird droppings, or other animal filth; or

(c) Has a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or

(d) Is heating or otherwise of distinctly low quality.

§ 810.507 Grade designations.

(a) *Grade designations for flaxseed.* The grade designations for flaxseed shall include in the following order: (1) the letters "U.S. "; (2) the number of the grade or the words "Sample grade"; (3) the word "Flaxseed"; and (4) when applicable, the word "dockage" together with the percentage thereof.

(b) *Optional grade designations.* Flaxseed may be certificated (under certain conditions [4]), when supported by official analysis, as "U.S. No. 2 or better Flaxseed" or "U.S. Sample grade or better Flaxseed". Dockage, when applicable, also shall be included (under certain conditions [4]) in the certification.

Interpretations

§ 810.901 Interpretation with respect to the term distinctly low quality.

The term distinctly low quality, when used in the United States Standards for Soybeans, shall be construed to include grain which contains more than two crotalaria seeds (*Crotalaria spp.*) in 1,000 grams of grain.

Authority: Secs. 5, 18, Pub. L. 94–582, 90 Stat. 2869, 2884 (7 U.S.C. 76, 87(e)).

Dated: December 5, 1984.

Kenneth A. Gilles,

Administrator.

[FR Doc. 84–33083 Filed 12–19–84; 8:45 am]

BILLING CODE 3410-EN-M

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7 CFR Part 810

U.S. Standards for Oats

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: According to the requirements for the periodic review of existing regulations, the Federal Grain Inspection Service (FGIS) has reviewed the U.S. Standards for Oats, and is revising the standards by (1) deleting the special grade "Tough" and the U.S. Sample grade requirement for high-moisture oats, (2) expanding the definition for U.S. Sample grade by including specific limits for broken glass, castor beans, unknown foreign substances, cockleburs, and animal filth, and (3) adding a definition for damaged kernels; revising the definitions for distinctly low quality, other grains, and test weight per bushel; and making other nonsubstantive miscellaneous changes in language, format, and references.

[2] Requests for information concerning approved devices and procedures, criteria for approved devices, and requests for approval of devices should be directed to the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250.

[4] The conditions are listed in the Grain Inspection Handbook. Copies may be obtained from the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250

These changes are made to update and conform the standards to other grain standards.

EFFECTIVE DATE: April 14, 1986.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Information Resources Management Branch, USDA, FGIS, Room 0667 South Building, 1400 Independence Avenue, SW, Washington, D.C. 20250; telephone (202) 382-1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the order.

Regulatory Flexibility Act Certification

Dr. Kenneth A. Gilles, Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities because those persons who apply the standards and most users of oats inspection services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities by FGIS employees or licensed persons.

Final Action

This review of the standards included a determination of the continued need for the standards and the potential to clarify or simplify the language of the standards; a review of changes in marketing practices and functions affecting the standards; a review of changes in technology and economic conditions in the area affected by the standards; and a determination of the potential to improve the standards and their application through the incorporation of grading factors or tests which better indicate quality attributes. The objective was to assure that the standards continue to serve the needs of the market to the greatest possible extent.

A notice requesting public comment on the U.S. Standards for Oats was published in the December 29, 1983 **Federal Register** (48 FR 57304). Within the 60-day comment period, one comment was received. The commenter stated that the two issues discussed in the notice, which included the grading and certification of high-moisture oats and updating the U.S. Sample grade definition, should be incorporated into the standards.

A proposal to revise the standards for oats was published in the August 8, 1984 **Federal Register** (49 FR 31697). The proposal included the following:

1. Delete the special grade "Tough" and the U.S. Sample grade requirement for high-moisture oats.

2. Expand the U.S. Sample grade definiton to include specific limits for broken glass, castor beans, unknown foreign substances, cocklebur, and animal filth.

3. Make miscellaneous changes including definitions of several terms, reference to FGIS handbooks, and format changes to update and enhance the clarity and uniformity among grain standards.

Within the 60-day comment period, 5 comments were received. Three commenters agreed that the changes should be made, a fourth expressed concern that the deletion of moisture from the oats standards ultimately would cause oats to deteriorate in storage. Such a change would not be a cause for deterioration for several reasons including the fact that moisture content would continue to be shown on official certificates which shows official grade determinations. Additional reasons as to why such a situation would not develop are referenced below in the discussion of the deletion of the special grade "Tough" and the U.S. Sample grade requirements for high moisture oats. The fifth commenter felt that the changes in the moisture factor were not warranted, but that if the changes were made, requested assurance that the revision would not become effective for one year after promulgation. As discussed below, the effective date is over one year after promulgation.

Pursuant to section 4(b) of the Act, no standards established or amendments or revocations of standards under the Act are to become effective less than one calendar year after promulgation, unless in the judgment of the Administrator the public health, interest, or safety require that they become effective sooner. To coincide with the beginning of the 1986 harvest, the amendments will become effective April 14, 1986.

A review of available information indicates that the changes would increase the clarity and effectiveness of the standards and reflect current marketing practices. As a result of this review, FGIS is revising the U.S. Standards for Oats as follows:

1. Delete the special grade "Tough" and the U.S. Sample grade requirement for high-moisture oats. Currently, "Tough" is defined as "oats which contain more than 14.0 percent but not more than 16.0 percent of moisture" (7 CFR 810.258(i)) and is therefore characteristic of moisture content. Also, U.S. Sample grade includes oats which contain more than 16.0 percent of moisture (7 CFR 810.256). Moisture content and the terminology "Tough" is not descriptive of grain quality. Moisture content is a condition of the grain rather than a quality factor. Pursuant to current trade practices, discounts for moisture generally are assessed on the actual moisture content rather than numerical grade to account for weight loss and drying costs of the handler. High moisture grain is a normal condition during movement from harvest into market channels or storage. Moisture content by itself does not imply an intrinsic quality, but rather measures the amount of dry matter and water content of the grain. Moreover, moisture content can be specified through contracting which is a common practice, for example, with corn. Since specifying a maximum moisture content is a common practice, the sample grade limit and special grade generally do not serve a useful purpose. Also, the grain may be dried and graded accordingly.

The moisture content will continue to be shown on all official certificates which show the official grade determination as required under § 800.162(a)(3) of the regulations. The special grade "Tough" has been deleted from other grain standards. Moisture content is not a grade-determining factor in the U.S. Standards for Wheat, Barley, Oats, Triticale, and Rye. A final rule to delete moisture content as a great determining factor in the U.S. Standards for Corn, Sorghum, and Soybeans was published in the September 12, 1984 **Federal Register** (49 FR 35743), with an effective date of September 9, 1985. Accordingly, this revision would add consistency among the various grain standards.

2. Amend the U.S. Sample grade definition (7 CFR 810.256) to include limits for broken glass, castor beans,

unknown foreign substances, cocklebur, and animal filth. The limits of 2 or more pieces of glass, 2 or more castor beans, 4 or more particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), 8 or more cocklebur seeds, or 10 or more pieces of rodent pellets, bird droppings, or other animal filth have been followed in the inspection process for many years as they have appeared in the FGIS Grain Inspection Handbook and do not constitute a change in inspection procedures. The limits are included to make the oats standards conform to the format of other grain standards.

3. Enhance the clarity and uniformity between standards by making other miscellaneous changes. The current § 810.252 (a) *Distinctly low quality* is clarified to show how stones and debris too large to enter the sampling device are applied. The current (f) *Other grains* is expanded to include safflower. The current (j) *Test weight per bushel* is slightly modified for clarity and uniformity with other grain standards. Section 810.253 is modified by dividing the section into 2 parts, (a) and (b), to clarify the basis of determination, and to conform the section to the term as used in other grain standards as appropriate. The information which appears is generally contained in the FGIS Handbooks. Section 810.254 is amended to delete unnecessary reference to field offices, official agencies, and interested parties, so as to conform the language in this section to identical sections in other grain standards. A proposal was made to include in the oats standards a definition for a new term, "damaged kernels". This definition is similar to the definition of "sound oats". However, because the terminology "sound oats" is more commonly used when referring to oats, FGIS has decided that adding a new term "damaged kernels" to the standards would be confusing and therefore has deleted the damaged kernels definition for this final rule. The current § 810.252 (b), (e), and (j), § 810.255 (second paragraph), § 810.258 (h) and (i), and applicable footnotes 2, 3, and § 810.257 footnote 4 are updated to reference the Grain Inspection Handbook and Equipment Handbook and to delete obsolete references. Also, miscellaneous non-substantive format changes are made in § 810.255 and § 810.256 for clarity and to facilitate the use of the standards, certain of the format changes to § 810.256 are in addition to those format changes that were proposed and are made to conform oats to other grain standards.

List of Subjects in 7 CFR Part 810

Export, Grain.

PART 810—OFFICIAL U.S. STANDARD FOR GRAIN

Accordingly, §§ 810.252 through 810.256 are revised as follows:

United States Standards for Oats [1]

Terms Defined

§ 810.252 Definition of other terms.

For the purposes of these standards the following terms shall have the meanings stated below:

(a) *Distinctly low quality.* Oats which are of obviously inferior quality because they contain foreign substances or because they are in an unusual state or condition, and which cannot be graded properly using the other grading factors provided in the standards. Distinctly low quality shall include oats which contain any objects too large to enter the sampling device, i.e., large stones, wreckage, or similar objects.

(b) *Fine seeds.* All matter which may be removed from a test portion of the original sample by an approved device following procedures prescribed in the Grain Inspection Handbook.[2] For the purpose of this paragraph, "approved device" shall be the 5/64 inch triangular-hole sieve.[3]

(c) *Foreign material.* All matter other than oats, wild oats, and other grains (see paragraph (f) of this section). Oat clippings and detached oat hulls and pieces of detached hulls are foreign material.

(d) *Heat-damaged kernels.* Kernels and pieces of kernels of oats, other grains (see paragraph (f) of this section), and wild oats which are materially discolored and damaged as a result of heating.

(e) *Moisture.* Water content in oats as determined by an approved device following procedures prescribed in the Grain Inspection Handbook.[2] For the purpose of this paragraph "approved device" shall include the Motomco Moisture Meter and any other equipment that is approved by the Administrator as giving equivalent results.[3]

(f) *Other grains.* Barley, corn, cultivated buckwheat, einkorn, emmer, flaxseed, guar, hull-less barley, nongrain sorghum, Polish wheat, popcorn, poulard wheat, rice, rye, safflower, sorghum, soybeans, spelt, sunflower, sweet corn, triticale, and wheat.

(g) *Sieves.*

(1) *5/64 inch triangular-hole sieve.* A metal sieve 0.032 inch thick with equilateral triangular perforations the inscribed circles of which are 0.0781 (5/64) inch in diameter.

(2) *0.064 x 3/8 inch oblong-hole sieve.* A metal sieve 0.032 inch thick with oblong perforations 0.064 inch by 0.375 (3/8) inch.

(h) *Sound oats.* Kernels and pieces of kernels of oats (except wild oats) which are not badly ground-damaged, badly weather-damaged, diseased, frost-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged.

(i) *Stones.* Concreted earthy or mineral matter and other substances of similar hardness that do not disintegrate readily in water.

(j) *Test weight per bushel.* The weight per Winchester bushel (2,150.42 cubic inch capacity) as determined on a test portion of the original sample by an approved device following instructions in the Grain Inspection Handbook.[2] For the purpose of this paragraph "approved device" shall include the Fairbanks-Morse or Ohaus Test Weight Per Bushel Apparatus and any other equipment that is approved by the Administrator as giving equivalent results.[3] Test weight per bushel, for grade determination, shall be stated in terms of whole and half pounds; a fraction of a pound when equal to or greater than one-half shall be stated as one-half and when less than one-half shall be disregarded; e.g., 41.0 through 41.4 shall be 41.0 and 41.5 through 41.9 shall be 41.5.

(k) *Wild oats.* Seeds of *Avena fatua* and *A. sterilis.*

Principles Governing the Application of the Standards

§ 810.253 Basis of Determination

(a) *Distinctly low quality.* The determination of distinctly low quality shall be on the basis of the lot as a whole at the time of sampling when a condition exists that may or may not appear in the representative sample and/or the sample as a whole.

(b) *All other determinations.* All other determinations shall be upon the basis of the sample as a whole.

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[1] Compliance with the provisions of these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or other Federal laws.

[2] The following publications are referenced in these standards. Copies may be obtained from the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250.

(a) Equipment Handbook, U.S. Department of Agriculture, Federal Grain Inspection Service.

(b) Grain Inspection Handbook, U.S. Department of Agriculture, Federal Grain Inspection Service.

[3] Requests for information concerning approved devices and procedures, criteria for approved devices, and requests for approval of devices should be directed to the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250.

§ 810.254 Temporary modifications in equipment and procedures.

The equipment and procedures referred to in the oats standards are applicable to oats produced and harvested under normal environmental conditions. Abnormal environmental conditions during the production and harvest of oats may require temporary modifications in the equipment or procedures to obtain results expected under normal conditions. When these adjustments are necessary, proper notification will be made in a timely manner. Adjustments in interpretations (i.e., identity, quality, and condition) are excluded and shall not be made.

§ 810.255 Percentages.

(a) Percentages shall be determined on the basis of weight and shall be rounded off as follows:

(1) When the figure to be rounded is followed by a figure greater than 5, round to the next higher figure, e.g., state 0.46 as 0.5.

(2) When the figure to be rounded is followed by a figure less than 5, retain the figure; e.g., state 0.54 as 0.5.

(3) When the figure to be rounded is even and is followed by the figure 5, retain the even figure. When the figure to be rounded is odd and is followed by the figure 5, round the figure to the next higher number; e.g., state 0.45 as 0.4; state 0.55 as 0.6.

(b) Percentages, except when determining the quantity of ergot and the identity of oats, shall be stated in whole and tenth percent to the nearest tenth percent, unless otherwise prescribed in the Grain Inspection Handbook.[2] The percentage of ergot shall be stated to the nearest hundredth percent. The percentage of oats, wild oats, and other grains in determining the identity of oats shall be stated to the nearest whole percent.

Grades, Grade Requirements, and Grade Designations

§ 810.256 Grades and grade requirements for oats. (See also § 810.258)

Grade	Minimum limits—		Maximum limits—		
	Test weight per bushel (pounds)	Sound oats (percent)	Heat-damaged kernels (percent)	Foreign material (percent)	Wild oats (percent)
U.S. No. 1	36.0	97.0	0.1	2.0	2.0
U.S. No. 2	33.0	94.0	0.3	3.0	3.0
U.S. No. 3[1]	30.0	90.0	1.0	4.0	5.0
U.S. No. 4[2]	27.0	80.0	3.0	5.0	10.0

U.S. sample grade—U.S. sample grade shall be oats which—

(a) Do not meet the requirements for the grades U.S. Nos. 1, 2, 3, or 4; or

(b) Contain 8 or more stones which have a aggregate weight in excess of 0.2 percent of the sample weight, 2 or more pieces of broken glass, 3 or more crotalaria seeds (Crotalaria spp.), 2 or more castor beans (Ricinus communis), 4 or more pieces of an unknown foreign substance(s) or a commonly recognized harmful or toxic foreign substance(s), 8 or more cocklebur or similar seeds singly or in combination, or 10 or more pieces of rodent pellets, bird droppings, or an equivalent quantity of animal filth in 1⅛ to 1¼ quarts cut from the representative sample; or

(c) Have a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor), or

(d) Are heating or otherwise of distinctly low quality.

[1] Oats that are slightly weathered shall be graded not higher than U.S. No. 3.

[2] Oats that are badly stained or materially weathered shall be graded not higher than U.S. No. 4.

Section 810.257 is amended by revising footnote 4 in paragraph (b) to read as follows:

§ 810.257 Grade designations.

* * * * *

(b) * * *[4]

* * * * *

[4] The conditions are listed in the Grain Inspection Handbook. Copies may be obtained from the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250.

Section 810.258 is amended by revising paragraphs (h) and (i) to read as follows:

Special Grades, Special Grade Requirements and Special Grade Designations

§ 810.258 Special grades and special grade requirements.

(h) *Thin oats.* Oats which contain more than 20.0 percent of oats and other matter, except "fine seeds," which may be removed from a test portion of the original sample by approved devices following procedures prescribed in the Grain Inspection Handbook.[2] For the purpose of this paragraph "approved devices" shall be the 0.064 x ⅜ inch oblong-hole sieve and the 5/64 inch triangular-hole sieve.[3]

(i) *Weevily oats.* Oats which are infested with live weevils or other insects injurious to stored grain as set forth in the Grain Inspection Handbook.[2]

* * * * *

Authority: Secs. 5, 18, Pub. L. 94-582, 90 Stat. 2869, 2884 (7 U.S.C. 76, 87(e)).

Dated: December 5, 1984.

K. A. Gilles,

Administrator.

[FR Doc. 84-33084 Filed 12-19-84; 8:45 am]

BILLING CODE 3410

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

Powers and Duties of Service Officers; Availability of Service Records

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule revises the regulations relating to the authority of regional commissioners to settle tort claims under 28 U.S.C. 2672 by increasing the limit on this authority from $2,500 to $25,000.

EFFECTIVE DATE: December 20, 1984.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633-3048.

For Specific Information: Mary E. Beim, Assistant General Counsel, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633-5001.

SUPPLEMENTARY INFORMATION: Under the existing regulation, Regional Commissioners are authorized to settle tort claims in the amount of $2,500 or less under 28 U.S.C. 2672. The extension of this authority to claims in the amount of $25,000 or less is considered appropriate and necessary for a more efficient administration of the agency's workload as the former limitation of $2,500 excluded the settlement of many tort claims at the regional level.

The limit of $25,000 is consistent with 28 U.S.C. 2672, which authorizes the settlement of tort claims by the head of each Federal agency or his designee provided that settlements in excess of $25,000 shall be effected only with prior written approval of the Attorney General or his designee. Likewise the rule is consistent with 28 CFR 14.6(a).

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because this rule relates to agency organization and management.

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

This order is not a major rule within the definition of Section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure; Delegation of authority.

Accordingly, Chapter 1 of Title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

In § 103.1, paragraph (l)(1) is revised to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(l) * * *

(1) Settle tort claims of $25,000 or less under 28 U.S.C. 2672; and

* * * * *

(Sec. 103 of the Immigration and Nationality Act, as amended; (8 U.S.C. 1103))

Dated: December 10, 1984.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 84-33166 Filed 12-19-84; 8:45 am]

BILLING CODE 4410-10-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Ch. VII

Interpretive Ruling and Policy Statement 84-1; Membership in Federal Credit Unions

Correction

In FR Doc. 84-30959, beginning on page 46536, in the issue of Tuesday, November 27, 1984, make the following corrections.

1. On page 46538, column two, second full paragraph third line, add "is community based. In order for this type of multiple group" in between the words "group" and "charter".

2. On the same page, third column, second full paragraph, the second, third, and fourth sentences are correctly reprinted as follows:

Since the field of membership policy has been broadened, more cross-regional mergers and expansions have taken place. The policy on approval and control of cross-regional mergers and expansions is as follows. No cross-regional merger or expansion will be authorized without the approval of all regional directors affected.

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket 84-NM-112-AD; Amdt. 39-4968]

Airworthiness Directive: Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires modification of Boeing Model 747 series airplanes equipped with autoland autopilots which use certain Landing Rollout Control Units (LRCU). This action is necessary because loss of battery power to these LRCU's can produce hazardous pitch and roll maneuvers during final approach that may result in damage to or loss of the airplane.

DATE: Effective January 2, 1985.

Comments must be received by January 22, 1985.

ADDRESSES: The applicable service information may be obtained from: Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may also be examined at the FAA, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Husband, Systems and Equipment Branch, ANM-130S, Seattle Aircraft Certification Office; telephone (206) 431-2944. Mailing address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: As a result of ground testing, there have been reports that certain models of the autopilot Landing Rollout Control Units (LRCU) used in Boeing Model 747 series airplanes exhibit anomalous behavior as a result of loss of battery power. This loss of battery power inadvertently activates the built-in test circuitry, which is normally used during maintenance activities. Loss of battery power also causes the LRCU to command the airplane to simultaneously pitch and roll. Since there is only a single autopilot battery circuit in the airplane, the power loss affects all autopilot/flight director channels, resulting in multi-channel/multi-axis commands. This phenomenon can only occur at relatively low altitudes after autopilot/flight director capture of the glideslope or localizer. If this failure should occur just prior to touchdown, the crew may not have enough time to overpower and recover the airplanes in order to land safely.

The airplanes affected are those with LRCU's, Boeing part numbers 60B00013-757 and 60B00013-759. The Boeing Company has prepared Alert Service Bulletin 747-22A2152, dated November 16, 1984, to correct this problem. Modification of the aircraft wiring in accordance with this service bulletin will prevent the hazardous pitch and roll maneuver during final approach, a situation which could result in damage to or loss of the aircraft.

Since a situation exists which 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.

Although this action is in the form of a final rule, which involves an emergency and, thus, was not preceded by notice and public procedure, interested persons are invited to submit such written data, views, or arguments as they may desire regarding this AD within 20 days after its publication. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Directives Rules Docket No. 84-NM-112-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. All communications received before this date will be considered by the Administrator, and the AD may be changed in light of the comments received. Operators are urged to submit their comments as early as possible since it may not be possible to evaluate comments received near the effective date in sufficient time to amend the AD, if necessary, before it becomes effective.

The substance of the AD has been informally coordinated with the manufacturer and the Air Transport Association of America.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of 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:

Boeing: Applies to all Boeing Model 747 airplanes equipped with Landing Rollout Control Unit automatic landing systems, Boeing P/N 60B00013–757 or 60B00013–759.

To prevent a hazardous condition due to loss of the autopilot battery power, within 30 days after the effective date of this AD install a placard on the autopilot P10 mode select panel which reads as follows: "DO NOT USE THE LAND MODE," unless already accomplished. The placard may be removed when the airplane wiring has been modified in accordance with Boeing Service Bulletin 747–22A2152, dated November 16, 1984, or later FAA approved revision; or any alternate means of compliance which provides an equivalent level of safety approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this proposal who have not already received the Service Bulletin may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98168. These documents may also be examined at the FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective January 2, 1985.

(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 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not considered to be major under 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's Policies' and Procedures (44 FR 11034; February 26, 1979). 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 December 11, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84–33153 Filed 12–19–84; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 84–NM–66–AD; Amdt. 39–4969]

Airworthiness Directives: Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires replacement of the existing ram air turbine (RAT) rotary actuator electric motor with an improved motor incorporating additional exterior sealing and added brake rotor drainage holes. During testing, it was found that moisture could accumulate and freeze. This could keep the RAT from deploying. This action is necessary to ensure that the RAT will deploy if needed and provide hydraulic power to the flight controls.

DATES: Effective January 25, 1985.

Compliance required within 140 days after the effective date of this AD, unless already accomplished.

ADDRESSES: The applicable Service Bulletin may be obtained from Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may also be examined at the Federal Aviation Administration, Seattle Aircraft Certification Office, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. McCracken, Systems and Equipment Branch, ANM–130S, Seattle Aircraft Certification Office; telephone (206) 431–2947. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires replacement of the RAT rotary actuator electric motor on Boeing 767 airplanes was published in the **Federal Register** on September 11, 1984 (49 FR 35640). This action is necessary to minimize the likelihood of the RAT not deploying when needed.

The comment period for the NPRM, which ended October 23, 1984, afforded interested persons an opportunity to participate in the making of this amendment. Due consideration has been given to all comments received. One industry group, representing operators of Boeing 767 airplanes, requested that the compliance period for replacing the motor be extended from 90 days to 140 days to allow sufficient time to cycle the motors through the vendor for modification. Noting the turn-around time currently being quoted by the motor vendor and the availability of spares, an increase of the compliance period to 140 days is necessary. The FAA has determined that safety will not be adversely affected by this increased compliance time and has changed the rule accordingly.

Another commenter noted a number of items in the NPRM that require clarification. The Summary section stated: "During testing it was found that moisture could accumulate in the motor and freeze." The testing referred to was laboratory testing only, and no cases have been documented in which the RAT failed to deploy due to extend-motor icing. The NPRM stated that the RAT did not deploy. In the test setup, the RAT was replaced by extend-motor output torque measuring equipment. This distinction is noted. The commenter also stated that in the event both engines fail, hydraulic power in addition to that available from the RAT would be available from windmilling engines driving the engine-driven hydraulic pumps; the ram air turbine was presented by the manufacturer as the primary source of hydraulic power for the flight controls in the event of loss of power on both engines. It is recognized that for much of the flight envelope, the engines will windmill with sufficient speed to provide adequate hydraulic power for the flight controls. During certification, this technique was not presented for approval and, therefore, was not demonstrated. In any case, the RAT provides dedicated hydraulic power even at speeds below which windmilling power would be available. The commenter also correctly noted that the drain holes required to be added by the proposal were to be added to the brake plate itself, and were not to modify the motor case drainage system.

Approximately 51 U.S. airplanes will be affected by this AD. It is estimated that 5 manhours per airplane will be required by this AD and that the average labor cost is $40 per manhour. Based on these figures, the total cost to U.S. operators is estimated at $10,200. For these reasons, this 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 will be affected.

After a careful review of all available data, including the above comments, the FAA has determined that air safety and the public interest require the adoption of the proposed rule with a change in the compliance period as previously noted.

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:

Boeing: Applies to Boeing Model 767 airplanes noted in the Boeing Service Bulletin listed below. To prevent freezing of the ram air turbine (RAT) actuator motors and ensure deployment of the RAT when required, accomplish the following within 140 days after the effective date of this AD, unless already accomplished:

A. Replace the RAT rotary actuator electric motor P/N S258T711–3 with motor P/N S258T711–4, and operationally test the RAT deployment system in accordance with Boeing Service Bulletin 767–29–17, Revision 2 dated June 29, 1984, or later FAA approved revision. A –3 motor may be modified to a –4 configuration by accomplishing rework in accordance with EEMCO Service Bulletin 5076–29–1, Revision 1, dated June 25, 1984, or later FAA approved revision.

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 replacements required by this AD.

All persons affected by this directive who have not already received the above specified Service Bulletins from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or they may be examined at the FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington 98108.

(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 11.89)

Note. For the reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because no Boeing Model 767 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption **FOR FURTHER INFORMATION CONTACT."**

Issued in Seattle, Washington, on December 11, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84–33154 Filed 12–19–84; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 84–NM–48–AD; Amdt. 39–4967]

Airworthiness Directives: Boeing Model 757–200 and 767–200 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This document revises an existing airworthiness directive (AD) applicable to Boeing Model 757–200 and 767–200 aircraft which requires periodic checks of the Fuel Quantity Indicating System (FQIS). This amendment requires replacement of the FQIS processor unit and terminates the repetitive checks. Failure of the FQIS may result in fuel exhaustion.

DATE: Effective January 25, 1985.

ADDRESSES: The service bulletins specified in this AD may be obtained upon request to The Boeing Company, P.O. Box 3707, Seattle, Washington 98124, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stewart R. Miller, Propulsion Branch, ANM–140S, Seattle Aircraft Certification Office; telephone 206–431–2969. Mailing address: Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 (14 CFR Part 39) of the Federal Aviation Regulations to revise Amendment 39–4696, AD 83–15–05, was published in the **Federal Register** on June 29, 1984 (49 FR 26747). The amendment requires replacement of the FQIS processor and terminates the requirement for repetitive checks. Interested persons have been afforded the opportunity to participate in the making of the amendment. No objections were received.

It is estimated that 114 U.S. registered airplanes will be affected by this AD, that it will take approximately one manhour per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The replacement components will be provided without cost. Based on these figures, the total cost impact of this AD to the U.S. operators is estimated to be $4560. For these reasons, the 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 will be affected.

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

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 revising Amendment 39–4969 (48 FR 34731; August 1, 1983), AD 83–15–05, to read as follows:

Boeing: Applies to Boeing Model 757 and 767 series airplanes certificated in all categories. To prevent loss of engine power due to fuel exhaustion resulting from erroneous fuel quantity indications, accomplish the following:

A. For Model 757 aircraft, replace Fuel Quantity Indicating System (FQIS) processor part number S345T002–310 with part number S345T002–350 in accordance with Boeing Service Bulletin 757–28A7 dated March 23, 1984, or later FAA approved revision, prior to April 1, 1985.

B. For Model 767 aircraft, replace Fuel Quantity Indicating System (FQIS) processor part number S345T002–41 with part number S345T002–42 in accordance with Boeing Service Bulletin 767–28A5 dated March 15, 1984, or later FAA approved revision, prior to April 1, 1985.

C. For Model 757 aircraft, continue an inspection program in accordance with Boeing Alert Service Bulletin 757–28A7, dated June 17, 1983, or later FAA approved revision, until FQIS processor part number S345T002–350 is installed.

D. For Model 767 aircraft, continue an inspection program in accordance with Boeing Alert Service Bulletin 767–28A5, dated June 12, 1984; or later FAA approved revision, until FQIS processor part number S345T002–42 is installed.

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

This amendment becomes effective January 25, 1985.

(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.—For the reasons discussed in the preamble, the FAA has determined that this regulation is not considered to be major

under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 757 or 767 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption **FOR FURTHER INFORMATION CONTACT.**

Issued in Seattle, Washington, on December 11, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-33152 Filed 12-19-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-AAL-11]

Establishment of Transition Area; Port Heiden, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action lowers the base of controlled airspace in the vicinity of Port Heiden, AK, Airport to 700 feet above the surface. This action is taken to provide aircraft conducting flight under instrument flight rules (IFR) with exclusive use of that airspace when the visibility is less than 3 miles, thereby enhancing the safety of such operations.

EFFECTIVE DATE: 0901 G.m.t., February 14, 1985.

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

SUPPLEMENTARY INFORMATION:

History

On September 12, 1984, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish the base of controlled airspace at 700 feet above the surface over Port Heiden, AK, Airport (49 FR 35788). This action was taken to enhance the safety of aircraft conducting IFR flight. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment was received. The Alaska Airmen's Association concurred with the proposal. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes the base of controlled airspace at 700 feet above the surface over the Port Heiden, AK, Airport within a generally circular area of approximately 800 square miles. While this airspace designation would exclude aircraft from conducting flight under visual flight rules (VFR) when the visibility is less than 3 miles, it would enhance the safety of aircraft conducting flight under IFR.

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

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

Port Heiden, AK [New]

That airspace extending upward from 700 feet above the surface within a 14.5-mile radius of the Port Heiden Airport (lat. 56°57'36" N., long. 158°36'48" W.); and within 9.5 miles south and 4.5 miles north of the 248° bearing from the Port Heiden NDB, extending from the 14.5-mile radius area to 23 miles west of the NDB; and within 9.5 miles west and 4.5 miles east of the 339° bearing from the Port Heiden NDB extending from the 14.5-mile radius area to 23 miles north of the NDB.

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

Issued in Washington, D.C., on December 13, 1984.

James Burns, Jr.,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 84-33148 Filed 12-19-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-AAL-4]

Establishment of Transition Area; Mekoryuk, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action lowers the base of controlled airspace in the vicinity of Mekoryuk, AK, Airport to 700 feet above the surface to provide aircraft conducting flight under instrument flight rules (IFR) with exclusive use of that airspace when the visibility is less than 3 miles, thereby enhancing the safety of such operations.

EFFECTIVE DATE: 0901 G.m.t., February 14, 1985.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:

History

On September 12, 1984, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish the base of controlled airspace at 700 feet above the surface in a rectangular area 37 statute miles by 15.5 statute miles over the Mekoryuk, AK, Airport (49 FR 35786). While this airspace designation would exclude aircraft from conducting flight under visual flight rules (VFR) when the visibility is less than 3 miles, it would enhance the safety of aircraft conducting flight under IFR. Protection of IFR traffic is required for instrument approach, departure, missed approach, and holding procedures established for a new nondirectional beacon with distance measuring equipment (NDB/DME) recently installed at Mekoryuk, AK. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment was received. That

comment was submitted by the Alaska Airmen's Association which concurred with the proposal. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400. dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes the base of controlled airspace at 700 feet above the surface in a rectangular area 37 statute miles by 15.5 statute miles over the Mekoryuk, AK, Airport. The rule is effected to enhance safety of operations in the area by insuring that when flight visibility is less than 3 miles aircraft operations would be conducted under IFR only. This action is brought about by the installation of omnidirectional radio beacon with distance measuring equipment at Mekoryuk, AK, along with the development of two public instrument approach procedures.

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

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

PART 71—[Amended]

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, §71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

Mekoryuk, AK [New]

That airspace extending upward from 700 feet above the surface within 6 miles southeast and 9.5 miles northwest of the Nanwak NDB (lat. 60°23'10" N., long. 166°12'46" W.) 244° and 064° bearings, extending from 18.5 miles southwest to 18.5 miles northeast of the NDB.

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

Issued in Washington, D.C., on December 13, 1984.

James Burns, Jr.,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 84-33146 Filed 12-19-84; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 84-AWA-36]

Amendment of Prohibited Area P-40, Thurmont, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the boundaries of an existing prohibited area in the State of Maryland to enhance security and safety at the Naval Support Facility, Thurmont, MD.

EFFECTIVE DATE: 0901 GMT, February 14, 1985.

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

The Rule

This amendment to Part 73 of the Federal Aviation Regulations amends the boundaries of Prohibited Area P-40 at Thurmont, MD, by increasing the radius from 1 nautical mile to a radius of 3 nautical miles. The designated altitudes of surface to but not including 5,000 feet mean sea level remain unchanged. This amendment to the prohibited area is required in order to provide the necessary safeguards for the protection of the aeronautical activities associated with security at this facility and for the safety of persons and property on the ground. Since there is a security requirement for expeditious adoption of this amendment, good cause exists for making this regulation effective at the earliest possible date and without prior public notice.

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. For the same reason, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Prohibited areas, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 73.90 of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

P-40 Thurmont, MD

By removing the words "1 NM" and substituting the words "3 NM"

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

Issued in Washington, D.C., on December 13, 1984.

James Burns, Jr.,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 84-33149 Filed 12-19-84; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 24391; Amdt. No. 1284]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An affective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purpose—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO–230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4 and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and pubic procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. By Amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN SIAPs identified as follows:

** * * Effective February 14, 1985*

Soldotna, AK—Soldotna, VOR-A, Amdt. 5
Lihue, HI—Lihue, VOR or TACAN RWY 35, Amdt. 2
Shreveport, LA—Shreveport Downtown, VOR RWY 14, Amdt. 12
Ft Leonard Wood, MO—Forney AAF, VOR RWY 14, Amdt. 4
Ft Leonard Wood, MO—Forney AAF, VOR RWY 32, Amdt. 4
Havre, MT—Havre City-County, VOR RWY 7, Amdt. 5
Havre, MT—Havre City-County, VOR RWY 25, Amdt. 7
Brookings, SD—Brookings Muni, VOR RWY 12, Amdt. 5
Brookings, SD—Brookings Muni, VOR RWY 30, Amdt. 4
Sioux Falls, SD—Joe Foss Field, VOR/DME or TACAN RWY 33, Amdt. 6
Sioux Falls, SD—Joe Foss Field, VOR or TACAN RWY 15, Amdt. 15
McKinney, TX—McKinney Muni, VOR/DME-A, Amdt. 1
Tyler, TX—Tyler Pounds Field, VOR/DME RWY 22, Orig.
Tyler, TX—Tyler Pounds Field, VOR/DME RWY 4, Orig.

** * * Effective January 31, 1985*

Evergreen, AL—Middleton Field, VOR/DME RWY 9, Amdt. 1
Bridgeport, CT—Igor I. Sikorsky Memorial, VOR RWY 24, Amdt. 11
Bridgeport, CT—Igor I. Sikorsky Memorial, VOR RWY 6, Amdt. 18
Hartford, CT—Hartford—Brainard, VOR-A, Amdt. 7
Dickinson, ND—Dickinson Muni, VOR-A, Amdt. 2
Alliance, OH—Great Lakes Aero—Port, VOR-A, Amdt. 7
Youngstown, OH—Youngstown Executive, VOR RWY 11, Amdt. 3
Youngstown, OH—Youngstown Executive, VOR/DME-A, Amdt. 7
Roanoke, VA—Roanoke Regional/Woodrum Field, VOR/DME-A, Amdt. 2
Wausau, WI—Wausau Muni, VOR-A, Amdt. 15
Wausau, WI—Wausau Muni, VOR/DME RWY 12, Amdt. 1

2. By amending § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, and SDF/DME SIAPs identified as follows:

** * * Effective February 14, 1985*

Shreveport, LA—Shreveport Downtown, LOC RWY 14, Amdt. 2
Ft Leonard Wood, MO—Forney AAF, LOC RWY 14, Amdt. 5
Billings, MT—Billings Logan Intl, LOC BC RWY 27R, Amdt. 7

** * * Effective January 31, 1985*

Cleveland, OH—Cuyahoga County, LOC BC RWY 5, Amdt. 7

** * * Effective December 5, 1984*

Lebanon, MO—Floyd W. Jones Lebanon, SDF RWY 36, Amdt. 1

3. By amending § 97.27 NDB and NDB/DME SIAPs identified as follows:

** * * Effective February 14, 1985*

Soldotna, AK—Soldotna, NDB/DME RWY 7, Orig.
Soldotna, AK—Soldotna, NDB RWY 25, Orig.
Brookfield, MO—Brookfield Memorial, NDB-A, Amdt. 2
Brookfield, MO—Brookfield Memorial, NDB RWY 35, Amdt. 2
Ft Leonard Wood, MO—Forney AAF, NDB RWY 32, Amdt. 4
Sioux Falls, SD—Joe Foss Field, NDB RWY 3, Amdt. 22
McKinney, TX—McKinney Muni, NDB BWY 17, Amdt. 1

* * * *Effective January 31, 1985*

Wiscasset, ME—Wiscasset, NDB RWY 25, Amdt. 3
Mocksville, NC—Twin Lakes, NDB RWY 9, Amdt. 1
Statesville, NC—Statesville Muni, NDB RWY 20, Amdt. 7
Lancaster, OH—Fairfield County, NDB RWY 28, Amdt. 3

* * * *Effective January 17, 1985*

Natchitoches, LA—Natchitoches Muni, NDB RWY 34, Orig.

* * * *Effective December 5, 1984*

Lebanon, MO—Floyd W. Jones Lebanon, NDB RWY 36, Amdt. 1

4. By amending § 97.29 ILS ILS/DME, ISMLS, MLS, MLS/DME and MLS/RNAV SIAPs identified as follows:

* * * *Effective February 14, 1985*

Lihue, HI—Lihue, ILS RWY 35, Amdt. 2
Rochester, MN—Rochester Muni, ILS RWY 13, Amdt. 3
Rochester, MN—Rochester Muni, ILS RWY 31, Amdt. 18
Sioux Falls, SD—Joe Foss Field, ILS RWY 3, Amdt. 24
Sioux Falls, SD—Joe Foss Field, ILS RWY 21, Amdt. 5

* * * *Effective January 31, 1985*

Dickinson, ND—Dickinson Muni, ILS/DME RWY 32, Amdt. 1
Cleveland, OH—Cuyahoga County, ILS RWY 23, Amdt. 9

* * * *Effective December 11, 1984*

Dallas, TX—Dallas Love Field, ILS RWY 31L, Amdt. 14

5. By amending § 97.31 RADAR SIAPS identified as follows:

* * * *Effective February 14, 1985*

Sioux Falls, SD—Joe Foss Field, RADAR-1, Amdt. 6

6. By amending § 97.33 RNAV SIAPs identified as follows:

* * * *Effective January 31, 1985*

East Hampton, NY—East Hampton, RNAV RWY 10, Amdt. 3
Dickinson, ND—Dickinson Muni, RNAV RWY 14, Amdt. 2
Hamilton, OH—Hamilton, RNAV RWY 29, Amdt. 5

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, and 1510); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(3))

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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C. on December 14, 1984.

Kenneth S. Hunt,

Director of Flight Operations.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

[FR Doc. 84-33150 Filed 12-19-84; 8:45 am]

BILLING CODE 4910-13-M

CIVIL AERONAUTICS BOARD

14 CFR Part 380

[Special Regulations; Amendment No. 18 to Part 380; Docket 41184; Regulation SPR-195]

Public Charters

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: In response to a petition, the CAB adopts a rule requiring advertising of charter flights, charter tours, or components of charter tours to state the entire price that a passenger must pay for the flight, tour, or tour component.

DATES:

Adopted: November 28, 1984.
Effective March 19, 1985.

FOR FURTHER INFORMATION CONTACT: John Craig Weller, Rules and Legislation Division, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW, Washington, D.C. 20428; 202 673-5442.

SUPPLEMENTARY INFORMATION: In SPDR-90/PSDR-82, 48 FR 50900, November 4, 1983, the Board proposed to prohibit the advertising of charter flights and package tours using air transportation that prominently displayed a base price, plus an additional "add-on" percentage, usually displayed much less prominently. The proposal would have required all advertising for flights or package tours which mentioned price to state the total price for all items included as one amount, although prices of optional features could be mentioned separately. The Board's proposal was in response to a petition filed by Mr. Donald Pevsner.

Mr. Pevsner claimed that many charter tour operators were advertising package tours in various cities by prominently featuring an attractive price, together with a much less prominent statement that an additional percentage would be added for "taxes and service." For example, an advertisement might feature a price of $399 in large, eye-catching type, together with a small asterisk. In much smaller type elsewhere in the advertisement would be a notice that this price was "plus 15% taxes and service." Mr. Pevsner charged that this practice deceived potential purchasers of package tours and made informed comparisons among tours impossible.

After Mr. Pevsner filed his petition, the Board's enforcement staff conducted an investigation. It found that the use of percentage "add-on" advertising was, in fact, prevalent in some vacation markets. The enforcement staff then sent an industry letter to all tour operators and airlines, warning that the use of percentage especially if the "add-on" advertising could be an unfair and deceptive practice, percentage amount did not truly represent the amount of taxes and service charges actually included. After sending this industry letter, the enforcement staff continued its investigation and discovered that virtually no tour operator could justify the amount of percentage "add-on" being used unless a substantial portion was allocated to operator overhead or profit. The Board then decided to begin this rulemaking proceeding by proposing to require that advertising for all flights and tours using air transportation be required to state the price of the package in one single amount.

Commenters expressing unqualified support were the American Society of Travel Agents, the City of New York Department of Consumer Affairs, Eastern Air Lines, the publisher of *Economy Traveler Newsletter*, and two individuals.

Transamerica Airlines, Carefree Vacations, Samson Tours, Aer Lingus, and Trans World Airlines all supported the proposal, but suggested some modifications. Those opposed were the National Indirect Air Carrier Association, Trans National Tours, Travelers International Tour Operators, and the law firm of Covington and Burling.

This proceeding is not the first time the Board has faced the issue of percentage "add-on" advertising. In PSDR-39, 39 FR 15309, April 29, 1974, the Board proposed adoption of a policy statement concerning the advertising of group inclusive tours (GIT). This policy would have regarded advertising of GIT's which did not state the price in one single amount to be an unfair and deceptive practice, essentially the same proposal being considered in this proceeding. The Board's concern grew from the practice of GIT operators to

feature advertisements with one price prominently displayed, together with an additional percentage amount for "taxes and service." The Board noted that the amount of "add-on" was often unrelated to the actual cost of taxes and service charges included in the package. Such advertising, the Board concluded, could mislead the public about the total cost of a GIT.

Subsequently, in PS–62, 40 FR 4906, February 3, 1975, the Board finally concluded that regulation of GIT advertising was necessary to protect the public from misleading ads. However, in response to comments, the Board decided that GIT operators should have the flexibility to list separately the prices of the air fare and ground components of a tour. Therefore, the Board adopted a policy statement declaring that GIT advertisements which do not state the total tour price are unfair and deceptive, but explained that this policy would not prohibit the separate listing of prices for air fare and ground accommodations. This policy remains in effect. 14 CFR 399.84.

After considering the comments filed in this proceeding, the Board has decided that, instead of the proposed requirement for prices to be stated as a single amount, the existing policy which applies to GIT's should be extended to all passenger air transportation. Advertisements for flights, tours, or for components of tours such as hotel packages, may use a total price for the flight or tour, or separate prices for each tour component, as long as each price represents the total cost that must be paid by the passenger to the tour operator for the flight, tour, or component. This means, for example, that in an advertisement for a tour that mentions air and ground arrangements any price featured must cover both components, including any related taxes or service charges to be paid to the tour operator. On the other hand, an advertisement may mention only hotel accommodations and include only the price of that component. The provisions of the GIT rule should be familiar to most of the industry since they have been in effect for nearly 10 years. During this period, the Board is not aware that the rule has caused problems for GIT operators or for consumers. Because the new rules will be the same for all types of air transportation, there will be no discrimination between charter tours and scheduled service tours, as several commenters feared.

In addition, this approach will allow operators the flexibility to state separately the prices of the components of package tours if they wish, although it will not be required. Both Aer Lingus and TWA argued that this flexibility was important for operators of scheduled service tours for two reasons. First, tour brochures must be printed and distributed far in advance of a tour marketing campaign. However, air fares in some markets may often change because of competitive pressures. Pre-printed brochures containing such fares would thus become obsolete. In addition, some fares can be combined with more than one ground package to form several different tour packages. Listing of each possible resulting price would be cumbersome and potentially confusing. The Board considered these same arguments in PS–62 and decided that GIT advertisements should be able to state the price of air transportation and ground arrangements separately. No problems seem to have resulted and so this option should be available to operators using both scheduled service and charters.

Transamerica Airlines, Carefree Vacations, and TWA argued that advertisements should be able to exclude taxes from the total price, or state them separately. The Board also considered this question in PS–62 with regard to GIT pricing, deciding that because taxes were an essential part of the cost of a tour they should be included in the total tour price. This decision still seems reasonable and taxes will not be excluded from the coverage of the rule.

Trans National Tours stated that the Board should not prohibit the separate statement of prices for optional tour features. That was not the Board's intent. The final rule makes it clear any tour component, optional or required, may be separately priced as long as the price advertised is the total price for the advertised component.

The National Indirect Air Carrier Association argued that the Board should not regulate in this area for a number of reasons. First, NIACA asserted that the proposed regulation would be an unconstitutional infringement on commercial speech which is not misleading. The Board does not agree. It decided almost 10 years ago that percentage "add-on" advertising for GIT's was misleading. It would be illogical to hold such advertising to be misleading to GIT customers, but not misleading to all other tour purchasers. Thus, the extension of the Board's GIT advertising policy to all forms of passenger air transportation is constitutionally permissible.

NIACA also asserted that the proposal would inhibit the dissemination of valuable information about the components of a tour. The Board cannot accept this argument for two reasons. First, the Board has already found "add-on" advertising to be deceptive, and it is hard to understand how valuable information is disseminated by such misleading means. Also, the Board's enforcement staff has determined that the amount of the percentage "add-on" used by almost all tour operators has no relationship to the actual cost of tour components. Because the information conveyed by "add-on" pricing is inaccurate, it would seem to have little, if any, value.

NIACA states that the use of percentage "add-on" advertising, using an amount of 15%, has become an industry standard, and that prohibition of this practice will result in higher charter costs by raising the base amount on which agent's commissions are determined. The investigation by the Board's staff, and comments in this proceeding, however, indicate that the use of "add-on" advertising is far from being standard in the industry. It appears to be a practice used by some operators in selected markets. There also seems to be no reason why the cost of tours should necessarily rise because of this action. Since the majority of tour operators do not use "add-on" advertising, the costs of most operators should remain unaffected. Those who are affected can always adjust the rate of commission paid to agents to compensate for the inclusion of "taxes and service" in their base prices.

NIACA also says that the proposed rule fails to state reasonable standards for compliance. The Board does not agree. The revised rule is not vague. In addition, a nearly identical policy has been in effect for GIT advertising for nearly 10 years without significant compliance problems. Thus, it should present no difficulties for operators selling other types of tours. NIACA states that advertising problems are best handled on a case-by-case basis, but the Board believes that such an approach would lead to just the sort of confusion NIACA fears. The standards in the final rule the Board is adopting are clear and should provide both guidance and flexibility for tour operators.

NIACA asserts that the proposed regulation will only be the beginning of advertising regulation by the Board as operators develop new advertising methods. NIACA submitted additional comments in this proceeding which purport to show a new advertising abuse by some scheduled carriers. These advertisements feature an inclusive price to be paid to the operator, plus a less prominent

disclosure that additional amounts for "taxes and service" must be paid directly to the hotel. The Board does not believe that its action in prohibiting "add-ons" that must be paid to the tour operator will necessarily lead to other advertising abuses. In any case, fear of other, potential abuses should not persuade the Board to allow an actual abuse to continue. While the practice NIACA complains about is potentially troublesome, it is outside the scope of this proceeding. NIACA is free to file a petition for additional rulemaking, or a complaint of unfair or deceptive practices, if it chooses.

The American Leadership Study Group (ALSG), which operates educational tours for students, said that it charges a $25 application fee for all prospective student passengers. This fee is applicable to more than one tour and is in addition to the price of any particular ALSG tour. ALSG does not think this fee should be included in the total tour price. The Board does not agree. This application fee apparently covers part of ALSG's administrative costs connected with the tours it sells. It clearly is a part of the cost of a tour for its customers. Thus it seems no different than other "service charges" which will have to be included in tour prices and it should not be treated differently.

Effective Date

The Board recognizes that the industry will need time to comply with the rule. Many tour brochures and other promotional material must be prepared well in advance of a marketing campaign. Once these materials are distributed to various sales outlets, it is unreasonably costly to recall or modify them. Therefore, these rules will not become effective until 90 days after publication in the Federal Register. Any printed material that is actually distributed before that time need not comply with this rule.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Board certifies that none of these proposed changes will, if adopted, have a significant impact on a substantial number of small entities. As already discussed, the majority of tour operators do not use percentage "add-on" advertising. In addition, because all tour operators will be covered, there should be no competitive impact on any one operator or group of operators.

List of Subjects in 14 CFR Part 380

Public charters, Surety bonds, Advertising, Antitrust, Charter flights, Consumer protection, Educational study program, Travel agents.

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 380, *Public Charters*, as follows:

1. The authority for Part 380 is:

Authority: Secs. 101(3), 204, 401, 402, 407, 416, 1102, Pub. L. 85-726, as amended, 72 Stat. 737, 743, 754, 757, 766, 771, 797; 49 U.S.C. 1301, 1324, 1371, 1372, 1377, 1386, 1502, unless otherwise noted.

2. § 380.30 is revised by adding a new paragraph (e) as follows:

§ 380.30 Solicitation materials.

* * * * *

(e) In any solicitation material from a direct air carrier, indirect air carrier, or an agent of either, for a charter, charter tour (i.e., a combination of air transportation and ground accommodations), or a charter tour component (e.g. a hotel stay), any price stated for such charter, tour, or component shall be the entire price to be paid by the participants to the air carrier, or agent, for such charter, tour, or component.

By Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-32918 Filed 12-19-84; 8:45 am]

BILLING CODE 6320-01-M

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14 CFR Part 399

[Policy Statements; Amendment No. 88 to Part 399; Docket 41184; PS-113]

Statements of General Policy

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: In response to a petition, the CAB adopts a policy statement declaring any advertising of flights, tours, or components of tours, which does not state the total price of the flight, tour, or tour component, to be an unfair or deceptive practice.

DATES: Adopted: November 28, 1984.

Effective: March 19, 1985.

FOR FURTHER INFORMATION CONTACT: John Craig Weller, Rules and Legislation Division, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; 202 673-5442.

SUPPLEMENTARY INFORMATION: For the reasons discussed in SPR-195, issued today, the Board revises Subpart G of Part 399 of its Policy Statements.

List of Subjects in 14 CFR Part 399

Administrative practice and procedures, Advertising, Air carriers, Antitrust, Agreements, Archives and records, Consumer protection, Foreign air carriers, Reporting and recordkeeping requirements, Travel agents.

PART 399—[AMENDED]

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 399, *Statements of General Policy*, as follows:

1. The authority for Part 399 is:

Authority: Secs. 101, 102, 105, 204, 401, 402, 403, 404, 405, 406, 407, 408, 409, 411, 412, 414, 416, 801, 1001, 1002, 1102, 1104, Pub. L. 85-726, as amended, 72 Stat. 737, 740, 92 Stat. 1708, 72 Stat. 743, 754, 757, 758, 760, 763, 766, 767, 768, 769, 770, 771, 782, 788, 797, 49 U.S.C. 1301, 1302, 1305, 1324, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1381, 1382, 1384, 1386, 1461, 1481, 1482, 1502, 1504; Pub. L. 96-354, 5 U.S.C. 601, unless otherwise noted.

2. § 399.84 is revised to read:

§ 399.84 Price advertising.

The Board considers any advertising or solicitation by a direct air carrier, indirect air carrier, or an agent of either, for passenger air transportation, a tour (i.e., a combination of air transportation and ground accommodations), or a tour component (e.g., a hotel stay) that states a price for such air transportation, tour, or tour component to be an unfair or deceptive practice, unless the price stated is the entire price to be paid by the customer to the air carrier, or agent, for such air transportation, tour, or tour component.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-32915 Filed 12-19-84; 8:45 am]

BILLING CODE 6320-01-M

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14 CFR Part 399

[Policy Statements; Amendment No. 87 to Part 399; Docket 41597; Regulation PS-112]

Statements of General Policy

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB removes a policy statement concerning two standard conditions on foreign air carrier permits: that the permit is subject to treaties or agreements governing foreign air transportation, and that the carrier waives any claim of sovereign immunity in any U.S. court for claims against it. These conditions will continue to be standard in all foreign air carrier permits so there is no need for a separate policy statement about them.

DATES:

Adopted: November 28, 1984.

Effective: January 18, 1985.

FOR FURTHER INFORMATION CONTACT: Nancy Pitzer Trowbridge, Regulatory Affairs Division, Bureau of International Aviation, 202 673–5134, or John Craig Weller, Rules and Legislation Division, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW, Washington, D.C. 20428; 202 673–5442.

SUPPLEMENTARY INFORMATION: The Board's statements of general policy are in 14 CFR Part 399. Section 399.13 contain two of the many standard conditions which are attached to foreign air carrier permits authorizing foreign air transportation to and from the United States. In PSDR–80, 48 FR 35119, August 8, 1983, the Board proposed elimination of that policy statement.

The two conditions contained in the policy statement are that: (a) any permit is subject to agreements and treaties between the United States and the carrier's home country, and (b) the carrier must waive any claim of sovereign immunity in actions against it brought in U.S. courts. Since the adoption of this policy statement, these conditions have routinely been placed in all foreign air carrier permits. Therefore, the Board tentatively concluded that the policy statement was duplicative and unnecessary.

No comments were received in response to PSDR–80, and the Board has decided that this policy statement should be eliminated. Copies of foreign air carrier permits, containing these conditions, are readily available to the public and to government officials. Applicants that want to learn of standard conditions on permits can easily obtain that information from the Board staff. Because there are many more standard conditions placed in permits than the two in the policy statement, the continued listing of only these two may actually lead to confusion. All standard conditions will continue to be placed in all foreign air carrier permits.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Board certifies that this action will not have a significant economic effect on a substantial number of small entities. The standard conditions will continue to be placed in all foreign air carrier permits; this action only removes a duplicate statement of those conditions.

List of Subjects in 14 CFR Part 399

Administrative practice and procedures, Advertising, Air carriers, Antitrust, Agreements, Archives and records, Consumer protection, Foreign air carriers, Reporting and recordkeeping requirements, Travel agents.

PART 399—[AMENDED]

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 399, *Statements of General Policy*, as follows:

1. The authority for Part 399 is:

Authority: Secs. 101, 102, 105, 204, 401, 402, 403, 404, 405, 406, 407, 408, 409, 411, 412, 414, 416, 801, 1001, 1002, 1102, 1104, Pub. L. 85–726, as amended, 72 Stat. 737, 740, 92 Stat. 1708, 72 Stat. 743, 754, 757, 758, 760, 763, 766, 767, 768, 769, 770, 771, 782, 788, 797, 49 U.S.C. 1301, 1302, 1305, 1324, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1381, 1382, 1384, 1386, 1461, 1481, 1482, 1502, 1504; Pub. L. 96–354, 5 U.S.C. 601, unless otherwise noted.

2. 14 CFR Part 399 is revised by removing and reserving § 399.13, *Standard provisions in foreign air carrier permits.*

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–32916 Filed 12–19–84; 8:45 am]

BILLING CODE 6320–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–14275; File No. S7–944]

Exemption From the Definition of Investment Company for Certain Finance Subsidiaries of United States and Foreign Private Issuers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a rule revision that exempts finance subsidiaries of certain U.S. and foreign private issuers from the definition of investment company. The Commission is adopting the rule to make it necessary for a company organized primarily to finance the business operations of its parent or companies controlled by its parent to apply for exemptive relief provided that certain conditions are met.

EFFECTIVE DATE: December 20, 1984.

FOR FURTHER INFORMATION CONTACT: William C. Gibbs, Esq. or Elizabeth K. Norsworthy, Chief (202–272–2048), Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

After the effective date, questions should be directed to the Office of the Chief Counsel (202–272–2030), Division of Investment Management, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting rule 3a–5 [17 CFR 270.3a–5] under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] ("Act") and rescinding rule 6c–1 [17 CFR 270.6c–1] under that Act. Rule 3a–5 provides an exemption from the definition of investment company for companies organized primarily to finance the business operations of their parents or companies their parents control. The rule also provides an exemption from the definition of "investment securities" found in section 3(a)(3) of the Act [15 U.S.C. 80a–3(a)(3)] for securities of the finance subsidiary that are held by its parent company or by a company which the parent controls.

Background

A subsidiary of a non-investment company which has been formed primarily to finance its parent's business operations comes within the definition of investment company in section 3(a) of the Act [15 U.S.C. 80a–3(a)] [1] if the finance subsidiary invests in, reinvests in, owns, holds or trades in securities of its parent or its parent's other subsidiaries. In a typical financing, the finance subsidiary receives the securities as consideration for remitting to the parent or to the parent's other subsidiaries cash or cash equivalents which the finance subsidiary has raised by issuing non-voting preferred stock or debt securities or by other forms of borrowing. The parent or another subsidiary of the parent usually owns substantially all of the finance subsidiary's voting securities. Since the finance subsidiary's securities that are held by its parent or another subsidiary of its parent would be considered investment securities, the parent (or other subsidiary) would also be considered an investment company if the value of all investment securities owned by it exceeds 40 percent of its total assets on an unconsolidated basis.[2]

[1] In pertinent part, section 3(a) states an "investment company" means any issuer which (1) Is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities; * * * or (3) is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

[2] "Investment securities" are defined in section 3(a)(3) to include "all securities except (A)

Continued

In 1968, the Commission adopted rule 6c–1 to exempt from all provisions of the Act U.S. subsidiaries of U.S. issuers organized primarily to finance the foreign business operations of their parents by issuing debt securities abroad. The rule was adopted in response to a January 1, 1968 Executive Order that placed mandatory restrictions on investment of U.S. capital abroad and was designed to ensure that the balance of payments position of the United States would not be adversely affected.[3] To that end, the rule made exemptive relief available only for so long as the securities of the finance subsidiary purchased by U.S. nationals or residents were subject to the Interest Equalization Tax or a comparable deterrent.[4] When the Interest Equilization Tax expired in 1974 and a comparable deterrent was not adopted, rule 6c–1 required finance subsidiaries to obtain exemptive orders before issuing any securities (except to their parents or to other subsidiaries of their parents). The Commission had subsequently granted a number of orders exempting from all provisions of the Act the U.S. subsidiaries of foreign private issuers, as well as U.S. issuers, which have been formed primarily to finance the business operations of their parents and their parent's other subsidiaries in the United States, as well as abroad, by raising capital in U.S. as well as foreign securities markets.

In order to provide for uniform exemptive treatment under the Act, the Commission requested public comment on a proposed revision of rule 6c–1.[5] The proposal would define a finance subsidiary to be any corporation (i) All of whose securities other than debt securities, non-voting preferred stock or director's qualifying shares are owned either by a foreign private issuer (in which case the finance subsidiary must be organized under the laws of the United States or a state) or by a U.S. issuer; and (ii) whose primary purpose is to finance the business operations of its parent company through borrowings or other sale of the finance subsidiary's securities.

Under the proposed rule, the parent would be required to guarantee unconditionally payment of principal, dividends, premiums, liquidation preference, and sinking fund obligations on the finance subsidiary's debt securities and non-voting preferred stock issued to or held by the public. The proposed rule provided that in the event of default, legal proceedings could be instituted directly against the parent to enforce the guarantee; any convertible or exchangeable securities of the finance subsidiary could be convertible or exchangeable only for securities of the parent company; and the finance subsidiary could not deal or trade in securities or hold securities other than securities resulting from its primary purpose. The proposed rule also provided that for purposes of the rule, securities of a finance subsidiary held by its parent or another subsidiary of its parent would not be considered investment securities.[6]

In response to the proposed rule revision, thirteen comment letters were received. In general, the commentators strongly supported the proposed revision, but requested certain substantive changes with respect to the nature of the parent, the finance subsidiary and the securities issued by the finance subsidiary. As discussed in more detail below, the Commission is adopting the revisions to rule 6c–1 (to be renumbered rule 3a–5) substantially as proposed but with some changes which reflect commentator suggestions and the Commission's reconsideration of certain issues.

Discussion

As stated in the proposing release, the Commission believes that it is appropriate to exempt a finance subsidiary from all provisions of the Act where neither its structure nor its mode of operation resembles that of an investment company. We have found this to be the case where the primary purpose of the subsidiary is to finance the business operations of its parent or other subsidiaries of its parent which are not investment companies. We have also found this to be the case where any purchaser of the finance subsidiary's debt instruments ultimately looks to the parent for repayment and not to the finance subsidiary. The rule, therefore, describes a situation where the finance subsidiary is essentially a conduit for the parent to raise capital for its own business operations or for the business operations of its other subsidiaries.

As explained in more detail below, to the extent that the commentators have suggested changes in the proposal that are consistent with the conduit theory and that would give a finance subsidiary the flexibility needed to raise capital, the proposal has been redrafted to reflect those comments. Other comments have not been adopted. Technical word changes to clarify the rule's meaning also have been made.

I. Nature of the Exemption

The final rule is renumbered rule 3a–5 and provides an exemption from the definition of investment company found in section 3(a) of the Act [7] for a finance subsidiary that meets the conditions set forth in the rule. The revision of rule 6c–1 that was proposed would have provided an exemption for finance subsidiaries from all provisions of the Act. The Commission is adopting the final rule under section 3(a) because it is under that section that a finance subsidiary meets the literal definition of investment company. Historically, with the exception of rule 6c–1, rules that have provided exemptive relief to companies that do not appear to be the type of entities that the Act was designed to regulate have been keyed to section 3(a), not section 6(c).[8]

II. Nature of the Parent

A. *How parent's non-investment company status may be determined.* The final rule provides an exemption from the definition of investment company for a finance subsidiary whose voting securities are virtually all owned by its parent or a company controlled by its parent if neither the parent nor the controlled company is considered an investment company section 3(a) or if the parent or the controlled company is excepted or exempted by order from the definition of investment company under section 3(b) [9] or by the rules or

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Government securities, (B) securities issued by employees' securities companies, and (C) securities issued by majority-owned subsidiaries of the owner *which are not investment companies.*" [Emphasis added.]

[3] *See* Investment Company Act Release 5330 (dated March 25, 1968) [33 FR 5295].

[4] *Id.*

[5] *See* Investment Company Act Release No. 12679 (September 22, 1982) [47 FR 42578].

[6] *Id.*

[7] *See supra* note 1.

[8] *See, e.g.*, rules 3a–1 [17 CFR 270.3a–1] and 3a–2 [17 CFR 270.3a–2] that provide exemptions for certain *prima facie* and transient investment companies, as well as rule 3a–3 that provides an exemption for certain subsidiaries of companies that are not investment companies.

[9] Section 3(b)(1) [15 U.S.C. 80a–3(b)(1)] excepts from the definition of investment company any issuer primarily engaged directly or through a wholly-owned subsidary or subsidiaries in a business or businesses other than that of investing, reinvesting, owning, holding or trading in securities. Section 3(b)(2) [15 U.S.C. 80a–3(b)(2)] permits an issuer to apply to the Commission for an order finding that it is primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding or trading in securities either directly or through majority-owned subsidiaries or through controlled companies. Section 3(b)(3) [15 U.S.C. 80a–3(b)(3)] excepts from the definition of investment company an issuer all the outstanding securities of which (other than short-term paper and directors' qualifying shares) are directly owned by a company excepted from that definition under sections 3(b)(1) or 3(b)(2).

regulations under section 3(a). As proposed, the exemption would have extended only to finance subsidiaries whose voting securities are owned by a parent or another subsidiary of the parent [10] if neither the parent nor the other subsidiary is considered an investment company under section 3(a) of the Act.

Two commentators suggested extending the proposed exemption to finance subsidiaries of companies that are excepted from the definition of investment company by sections 3(b) or 3(c),[11] by rules or regulations adopted thereunder or that are exempted from all provisions of the Act by exemptive order pursuant to section 6(c).[12] The Commission intended to provide in the proposal that the parent be able to derive its non-investment company status from the rules or regulations under section 3(a) as well as from the section itself,[13] and the proposal has been reworded to make that clear. The Commission also agrees that the parent should be able to derive its non-investment company status from section 3(b) because that section excepts or exempts upon application companies that are not primarily engaged, directly or indirectly, in investment company activities.[14] However, a parent that is excepted from the definition of investment company under section 3(c) could be engaged or could intend to engage primarily in investment company activities. For example, an issuer is excepted under section 3(c)(1)—not because of the nature of its activities—but because its outstanding securities (other than short-term paper) are beneficially owned by not more than one hundred persons and it is not making and does not presently propose to make a public offering of its securities. While it may be appropriate to make exemptive relief available to the finance subsidiary of an issuer excepted under section 3(c), the Commission believes that, at least for the time being, such exemptive relief should be granted only on a case-by-case basis so that it can have the opportunity to evaluate all of the relevant factors. Similarly, the Commission is not convinced that because a parent, at some time in the past, has been granted exemptive relief from all provisions of the Act under section 6(c), a financing subsidiary later formed by the parent should also be automatically relieved from complying with the Act. Since the conditions under which such exemptive orders have been granted under section 6(c) differ dramatically and involve myriad fact patterns, the question of whether an exempted issuer's finance subsidiary should also be exempted should be decided only on the basis of an application.

B. *Description of eligible foreign parents.* The final rule provides that a parent company or a company controlled by the parent company must be, in the case of foreign issuers, a foreign private issuer. The rule defines a foreign private issuer to mean any issuer which is incorporated or organized under the laws of a foreign country, but not a foreign government or a political subdivision of a foreign government. The proposed rule would have defined an eligible foreign parent simply as a foreign private issuer without defining the term. In the proposing release, the Commission requested specific comment on whether eligible foreign private issuers should be limited to "world class issuers", *i.e.*, those that meet the registrant requirements specified in form F-3 [17 CFR 239.500].[15]

A majority of the commentators opposed limiting eligible foreign parents to world class issuers, arguing that it would be unfair for the rule to distinguish between foreign issuers and U.S. issuers where no apparent purpose under the Act would be served. Those commentators observed that the credit and size of the parent is irrelevant to the issue of whether the parent's finance subsidiary should be regulated under the Act. One commentator also asked that the exemption be made available to the finance subsidiaries of foreign governments and political subdivisions. In the event that the Commission did not agree to include the finance subsidiaries of foreign governments, that commentator suggested that the rule should at a minimum define the term foreign private issuer by reference to rule 3b-4(c) [17 CFR 240.3b-4(c)] under the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*] ("Exchange Act").

The final rule does not limit eligible foreign parents to world class issuers, because the Commission agrees that the size or credit of the parent does not indicate whether the primary purpose of its finance subsidiary is to raise cash for the parent or the parent's other subsidiaries. However, the final rule does limit eligible foreign issuers to private issuers because government issuers are more likely to be insulated from liability. As suggested, however, the final rule does explicitly define foreign private issuer.[16]

C. *Whether finance subsidiaries of multiple parents should be exempted.* The final rule defines an eligible parent company to include a partnership or joint venture as well as a corporation under certain conditions. The revised rule as proposed would not have extended exemptive relief to the finance subsidiaries of such multiple parents but invited specific comment on the issue.

A majority of the commentators urged the Commission to permit the finance subsidiaries of multiple parents to rely on the final rule, arguing that as long as the finance subsidiary is formed primarily to finance the business operations of the multiple parents, the subsidiary can still be viewed as a conduit for its parents. The commentators noted that a finance subsidiary is frequently formed by multiple parents to finance a large-scale project because single sponsors are unable to devote the necessary capital or credit to the project or are unable to use all of the net output of the project.

The final rule does extend exemptive relief to the finance subsidiaries of multiple parents, but only if the parents are joined formally as a partnership or joint venture and the partners or participants in the joint venture, as well as the partnership or joint venture itself, would not be considered investment companies under section 3(a) or would be excepted or exempted by order from the definition of investment company by section 3(b) or by the rules or regulations under section 3(a). To ensure

[10] *See* discussion *infra* re change in the final rule to require that where the finance subsidiary's voting securities are owned by another subsidiary of the parent, that subsidiary must be controlled by the parent.

[11] Section 3(c) [15 U.S.C. 80a-3(c)] excepts specific classes of entities from the definition of investment company.

[12] Section 6(c) [15 U.S.C. 80a-6(c)] gives the Commission authority, by rules or regulations upon its own motion or by order upon application, to "conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions of [the Act] or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the Act]."

[13] *See supra* note 8.

[14] *See supra* note 9.

[15] Form F-3 requires, *inter alia*, that the aggregate market value worldwide of an issuer's voting stock held by non-affiliates be the equivalent of $300 million or more unless the issuer is registering only non-convertible investment grade debt securities.

[16] The definition does not refer, however, to Exchange Act Rule 3b-4, because that rule excludes from the definition of foreign private issuer certain issuers that have significant ties to the United States so that those issuers will be treated as U.S. issuers for purposes of registration and reporting under sections 12, 13, 14, and 16 of the Exchange Act. If the final rule were to define foreign private issuer by referring to rule 3b-4, the U.S. connected issuers excluded by that rule would not be considered eligible parents under rule 3a-5.

that the purchaser of the finance subsidiary's debt securities will look to the partners or participants in the joint venture for repayment, the rule also provides that where the parent company is a partnership or joint venture, the holders of the finance subsidiary's securities must have direct recourse against the partners or participants in the joint venture to enforce the parent company's unconditional guarantee.[17]

III. Nature of Subsidiary

A. *Whether exemptive relief should be extended to foreign subsidiaries of foreign private issuers.*—The final rule makes exemptive relief available to foreign finance subsidiaries of foreign private issuers although the proposed rule would have excluded such subsidiaries from the scope of the rule. Several commentators requested that this change be made, observing that certain foreign private issuers have considered raising capital in U.S. securities markets by organizing foreign, as well as U.S., finance subsidiaries. According to those commentators, although typically a foreign private issuer chooses to organize a finance subsidiary in the United States because of state legal investment law,[18] there may be tax reasons for a foreign private issuer to organize the finance subsidiary in its own country instead of in the United States.

The Commission has decided to extend exemptive relief to foreign subsidiaries of foreign private issuers in the final rule because as long as the other conditions of the rule are complied with, that subsidiary should be functioning primarily as a conduit for its parent and investors should view its debt as essentially the debt of its parent.

B. *The primary purpose test*—1. *The extent to which other purposes should be permitted.* The final rule retains the requirement contained in the proposed revision that a finance subsidiary may rely on the rule only if its primary purpose is to finance the business operations of its parent.[19] Several of the commentators questioned the need for such a primary purpose test, arguing that subsidiaries that are used to finance the business operations of their parents are also often used to provide other services to the parent and its affiliates.

The Commission has decided to retain the primary purpose test in the final rule; to do otherwise would be inconsistent with the rule's underlying rationale. If a subsidiary were to be engaged primarily in non-financing activities, it could not be considered a conduit for the parent to raise capital. In addition, the Commission notes that the primary purpose test by no means prevents a finance subsidiary from engaging in non-financing activities so long as its primary purpose is to engage in financing activities.

2. *Whether the subsidiary's primary purpose may be to finance the business operations of the parent's other subsidiaries.* The final rule provides that the primary purpose of a subsidiary may be to finance the business operations of companies controlled by the parent, as well as the business operations of the parent itself. This is in contrast to the proposal which required that the primary purpose of the subsidiary must be to finance the business operations solely of its parent. Several commentators questioned the primary purpose test as phrased in the proposed rule revision because the test was contradicted by a statement in the release which referred to subsidiaries exempted under the rule financing the operations of the parent "or one of the parent's subsidiaries." Two commentators requested that, as is the case in existing rule 6c–1, the exemption extend to finance subsidiaries that loan cash or cash equivalents to companies in which the parent company owns at least a ten percent equity interest. One commentator observed that financing the operations of an affiliate of the parent is equivalent to financing the operations of the parent since the capital raised goes to the corporate group and the investors are protected by the parent's guarantee.

The Commission agrees that financing the business operations of a controlled company can be considered the equivalent of financing the business operations of the parent so long as the company controlled by the parent company is not considered an investment company and investors look to the parent company and not the controlled company for repayment of the finance subsidiary's debt. Under the final rule, the primary purpose test is limited, however, to companies in which the parent owns more than 25% of the outstanding voting securities.[20] If the primary purpose test permitted the finance subsidiary to finance the business operations of entities in which the parent's interest is less significant, the Commission does not believe that the finance subsidiary could be perceived as a conduit for the parent company.

C. *Whether the rule should address the amount of cash or cash equivalents which the finance subsidiary must remit to its parent or companies controlled by its parent and when that amount should be remitted.* A new provision has been added to the final rule which conditions exemptive relief upon the finance subsidiary remitting at least 85% of any cash or cash equivalents which it raises to the parent company or a company controlled by the parent company as soon as practicable, but in no event later than six months after the subsidiary receives such cash or cash equivalents. The Commission believes that if the final rule does not expressly state how much of the money raised by the finance subsidiary must be remitted to its parent or a company controlled by its parent and how long that money may be held by the finance subsidiary, the finance subsidiary could function as a *de facto* investment company for an indefinite period.

D. *The extent to which the finance subsidiary should be permitted to invest in, reinvest in, own, hold or trade in securities other than the securities of its parent or a company controlled by its parent.* The final rule also provides that the finance subsidiary may not invest in, reinvest in, own, hold or trade in securities other than Government securities, securities of its parent company or a company controlled by its parent company (or in the case of a partnership or joint venture, securities of the partners or participants in the joint venture) and debt securities (including repurchase agreements) which would be exempted from the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] by section 3(a)(3) of that Act [15 U.S.C. 77c(a)(3)].[21] This represents a significant rewording of the provision in the proposed rule which would have conditioned exemptive relief upon the finance subsidiary not dealing or trading in

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[17] *See* discussion *infra* re the Commission's decision to retain an unconditional guarantee requirement in the final rule.

[18] *See* discussion in proposing release *supra* note 5, concerning state legal investment laws which limit the extent to which certain U.S. institutional investors can acquire the debt securities of foreign issuers.

[19] *See* discussion *infra* re extension of the exemption to a subsidiary whose primary purpose is to finance the business operations of companies controlled by its parent.

[20] In the case of a partnership or joint venture, the rule requires the parent company to have the power to exercise a controlling influence over the management or policies of the partnership or joint venture. *See* definition of control in section 2(a)(9) of the Act [15 U.S.C. 80a–2(a)(9)].

[21] Section 3(a)(3) provides an exemption for "any note, draft, bill of exchange, or banker's acceptance which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited; . . ."

securities or holding securities other than securities resulting from its primary purpose.

Several commentators believed that the proposed revision was too restrictive and would inhibit responsible cash management. They observed that under the rule revision as proposed, a finance subsidiary would not be permitted to make temporary investments of idle cash before loaning that cash to its parent or companies controlled by its parent.

The reworded provision in the final rule is intended to make clear that a finance subsidiary may temporarily own or hold, invest, reinvest or trade in, short-term money market investments. This should give the subsidiary the flexibility of offering its debt securities under auspicious market conditions and managing the cash received from the offering until its parent or a company controlled by its parent is in a position to receive the offering proceeds. At the same time, as discussed above, such money market investments can only be temporary, because the finance subsidiary has no more than six months to remit 85% of any cash or cash equivalents which it raises to the parent company or companies the parent controls.

One commentator was concerned that the rule revision as proposed could be interpreted to prohibit the transfer of equity stock or debt securities from a parent company's foreign operating subsidiaries to its finance subsidiary resulting in the loss of an income tax exemption for foreign investors on the interest income from bonds, notes or other interest-bearing obligations issued by the finance subsidiary. As reworded, the final rule makes clear that a finance subsidiary may own, hold, trade, invest, or reinvest in the securities of its parent company or a company controlled by its parent company. The securities of foreign operating subsidiaries are included to the extent that such subsidiaries meet the definition of a "company controlled by the parent company."

IV. Nature of the Securities of the Finance Subsidiary

A. *Whether the securities of the finance subsidiary should be unconditionally guaranteed by the parent company.* The final rule retains the proposed rule's requirement that debt securities of the finance subsidiary issued to or held by the public must be unconditionally guaranteed by the parent company as to payment of principal, interest and premium, if any, and that non-voting preferred stock of the finance subsidiary issued to or held by the public must be unconditionally guaranteed by the parent with respect to payment of dividends, liquidation preference in the event of liquidation and payments to be made under a sinking fund, if a sinking fund is to be provided.[22]

In response to the Commission's request for specific comment on the unconditional guarantee requirement, a few commentators advocated its elimination and several urged that the final rule provide for functional equivalents of a guarantee. Those commentators who favored elimination of the requirement stated that the requirement is unnecessary, given the rule's primary purpose test. Those commentators also believed that the level of credit support for a finance subsidiary's debt is essentially a business judgment. Several commentators stated that the Commission should accept alternatives to an unconditional guarantee, noting that these alternatives could still provide the investor with recourse to the parent company or to another creditworthy entity. Among the alternatives cited were: (i) Income maintenance agreements by which the parent agrees with the subsidiary or with the holders of the subsidiary's securities to make sufficient contributions to the subsidiary's capital to service the subsidiary's debt; (ii) direct or indirect support of the subsidiary's debt securities by an irrevocable credit support agreement with a financial institution; or (iii) "throughput and deficiency" agreements by which the parent (usually a partnership or joint venture) undertakes to provide a joint business enterprise with a sufficient volume of business to service the subsidiary's debt and to advance payments to the subsidiary to cover any deficiencies.

After consideration of these alternatives, the Commission still believes that exemptive relief should be made available only where the parent unconditionally guarantees the finance subsidiary's debt and the holders of those debt instruments have direct recourse to the parent to enforce repayment.[23] As stated above, it appears appropriate to exempt a finance subsidiary from the definition of investment company only where the primary purpose of the subsidiary is to serve as a conduit for its parent *and* where the subsidiary's debt can be viewed essentially as the debt of its parent. Even if the primary purpose of the finance subsidiary is to finance the business operations of its parent and companies which its parent controls, that does not necessarily mean that purchasers of the subsidiary's debt securities would look to the parent company for repayment. While some applications for exemptive relief involving income maintenance, credit support and throughput and deficiency agreements have been granted, the Commission believes that the use of such agreements should be evaluated on a case-by-case basis.

B. *Whether the finance subsidiary's convertible or exchangeable securities should be convertible or exchangeable only for securities of the parent company.* The final rule allows the finance subsidiary to issue securities which are convertible or exchangeable for other debt securities or non-voting preferred stock that it may issue or for securities of its parent.[25] Under the proposed rule, the securities could only be converted or exchanged for securities of the parent. Several commentators questioned the need for this provision. One commentator states that the rule should not restrict conversion or exchange privileges at all, even conversion or exchange privileges at all, even conversion or exchange for securities issued by an investment company. These commentators believed that at a minimum, the provision should not restrict conversion or exchange for other debt securities or non-voting preferred stock that the finance subsidiary may issue.

The Commission believes that some restriction on conversion and exchange privileges is necessary for the debt of the finance subsidiary to be considered the equivalent of the debt of its parent. However, the final rule does permit conversion or exchange for other debt securities or non-voting preferred stock of the subsidiary if those securities are backed by the parent's unconditional guarantee and give the security holder the right to proceed directly against the parent in the event of nonpayment.

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[22] The final rule contains a technical change from the proposed unconditional guarantee requirement to state that the parent's guarantee of the finance subsidiary's debt securities or non-voting preferred stock (instead of the debt securities issued by the finance subsidiary) may be subordinated in right of payment to other debt of the parent company.

[23] As described above, in the case of a parent company which is a partnership or joint venture, the subsidiary's security holders must have direct recourse against the partners or participants in the joint venture to enforce repayment.

[25] Where the parent company is a partnership or joint venture, the rule provides that the finance subsidiary's securities can be converted or exchanged for securities issued by the partners or participants in the joint venture as well as for securities issued by the parent.

Conclusion

The Commission is adopting rule 3a–5 substantially as proposed to except the finance subsidiaries of U.S. and foreign private issuers from the definition of investment company under certain conditions.

The final rule differs from the proposal in the following respects: (i) The rule excepts the finance subsidiary from the definition of investment company under section 3(a) instead of exempting the subsidiary from all provisions of the Act under section 6(c); (ii) the rule permits a parent (or a company controlled by the parent) to derive its non-investment company status from section 3(b) and from the rules or regulations under section 3(a) as well as from section 3(a); (iii) the rule defines parent company to include a partnership or joint venture as well as a corporation as long as certain conditions are met; (iv) the rule extends exemptive relief to foreign as well as U.S. finance subsidiaries of foreign private issuers; (v) the rule extends exemptive relief where the primary purpose of the subsidiary is to finance the business operations of companies controlled by the parent company as well as where the subsidiary's primary purpose is to finance the business operations of the parent; and (vi) the rule permits the securities of the finance subsidiary to be convertible or exchangeable for other debt securities or non-voting preferred stock of the finance subsidiary as well as for securities of the parent company.

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Rule

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is amended as set forth below:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. By adding § 270.3a–5 to read as follows:

§ 270.3a–5 Exemption for subsidiaries organized to finance the operations of domestic or foreign companies.

(a) A finance subsidiary will not be considered an investment company under section 3(a) of the Act and securities of a finance subsidiary held by the parent company or a company controlled by the parent company will not be considered "investment securities" under section 3(a)(3) of the Act; *Provided That:*

(1) Any debt securities of the finance subsidiary issued to or held by the public are unconditionally guaranteed by the parent company as to the payment of principal, interest, and premium, if any (except that the guarantee may be subordinated in right of payment to other debt of the parent company);

(2) Any non-voting preferred stock of the finance subsidiary issued to or held by the public is unconditionally guaranteed by the parent company as to payment of dividends, payment of the liquidation preference in the event of liquidation, and payments to be made under a sinking fund, if a sinking fund is to be provided (except that the guarantee may be subordinated in right of payment to other debt of the parent company);

(3) The parent company's guarantee provides that in the event of a default in payment of principal, interest, premium, dividends, liquidation preference or payments made under a sinking fund on any debt securities or non-voting preferred stock issued by the finance subsidiary, the holders of those securities may institute legal proceedings directly against the parent company (or, in the case of a partnership or joint venture, against the partners or participants in the joint venture) to enforce the guarantee without first proceeding against the finance subsidiary;

(4) Any securities issued by the finance subsidiary which are convertible or exchangeable are convertible or exchangeable only for securities issued by the parent company (and, in the case of a partnership or joint venture, for securities issued by the partners or participants in the joint venture) or for debt securities or non-voting preferred stock issued by the finance subsidiary meeting the applicable requirements of paragraphs (a)(1) through (a)(3);

(5) The finance subsidiary invests in or loans to its parent company or a company controlled by its parent company at least 85% of any cash or cash equivalents raised by the finance subsidiary through an offering of its debt securities or non-voting preferred stock or through other borrowings as soon as practicable, but in no event later than six months after the finance subsidiary's receipt of such cash or cash equivalents; and

(6) The finance subsidiary does not invest in, reinvest in, own, hold or trade in securities other than Government securities, securities of its parent company or a company controlled by its parent company (or in the case of a partnership or joint venture, the securities of the partners or participants in the joint venture) or debt securities (including repurchase agreements) which are exempted from the provisions of the Securities Act of 1933 by section 3(a)(3) of that Act.

(b) For purposes of this rule,

(1) A "finance subsidiary" shall mean any corporation—

(i) All of whose securities other than debt securities or non-voting preferred stock meeting the applicable requirements of paragraphs (a)(1) through (a)(3) or directors' qualifying shares are owned by its parent company or a company controlled by its parent company; and

(ii) The primary purpose of which is to finance the business operations of its parent company or companies controlled by its parent company;

(2) A "parent company" shall mean any corporation, partnership or joint venture:

(i) That is not considered an investment company under section 3(a) or that is excepted or exempted by order from the definition of investment company by section 3(b) or by the rules or regulations under section 3(a);

(ii) That is organized or formed under the laws of the United States or of a state or that is a foreign private issuer; and

(iii) In the case of a partnership or joint venture, each partner or participant in the joint venture meets the requirements of paragraphs (b)(2)(i) and (ii).

(3) A "company controlled by the parent company" shall mean any corporation, partnership or joint venture:

(i) That is not considered an investment company under section 3(a) or that is excepted or exempted by order from the definition of investment company by section 3(b) or by the rules or regulations under section 3(a);

(ii) That is either organized or formed under the laws of the United States or of a state or that is a foreign private issuer; and

(iii) In the case of a corporation, more than 25 percent of whose outstanding voting securities are beneficially owned directly or indirectly by the parent company; or

(iv) In the case of a partnership or joint venture, each partner or participant in the joint venture meets the requirements of paragraphs (b)(3) (i) and (ii), and the parent company has the power to exercise a controlling influence over the management or policies of the partnership or joint venture.

(4) A "foreign private issuer" shall mean any issuer which is incorporated or organized under the laws of a foreign

country, but not a foreign government or political subdivision of a foreign government.

§ 270.6c-1 [Removed]

2. By removing § 270.6c-1.

Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis in accordance with 5 U.S.C. 604 regarding the adoption of rule 3a-5. A summary of the corresponding Initial Regulatory Flexibility Analysis was included in the release proposing the revised rule at 47 FR 42578. Members of the public who wish to obtain copies of the Final Regulatory Flexibility Analysis should contact William C. Gibbs in the manner specified above.

Statutory Basis

The Commission is adopting rule 3a-5 and rescinding rule 6c-1 pursuant to authority granted in sections 6(c) [15 U.S.C. 80a-6(c)] and 38(a) [15 U.S.C. 80a-37(a)] of the Act.

Dated: December 14, 1984.

John Wheeler,

Secretary.

[FR Doc. 84-33073 Filed 12-19-84; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM80-53]

Natural Gas Policy Act; Maximum Lawful Prices

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order of the Director, OPPR.

SUMMARY: Pursuant to the authority delegated by 18 CFR 357.307(1), the Director of the Office of Pipeline and Producer Regulation revises and publishes the maximum lawful prices prescribed under Title I of the Natural Gas Policy Act (NGPA) for the month of January 1985. Section 101(b)(6) of the NGPA requires that the Commission compute and publish the maximum lawful prices before the beginning of each month for which the figures apply.

EFFECTIVE DATE: January 1, 1985.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Williams, Director, OPPR, (202) 357-8500.

SUPPLEMENTARY INFORMATION: Section 101(b)(6) of the Natural Gas Policy Act of 1978 (NGPA) requires that the Commission compute and make available maximum lawful prices and inflation adjustments prescribed in Title I ot the NGPA before the beginning of any month of which such figures apply. Pursuant to this requirement and § 375.307(1) of the Commission's regulations, which delegates the publication of such prices and inflation adjustments to the Director of the Office of Pipeline and Producer Regulation, the maximum lawful prices are issued by the quarterly publication of price tables.

When the maximum lawful prices were published on October 24, 1984, it was decided that January 1985 prices would not be issued until the Commission issued an order concerning deregulation and price changes to take effect on January 1, 1985. On November 16, 1984, the Commission issued Order No. 406 in Docket No. RM84-14-000 which, among other things, revised Table I of § 271.101(a) to provide for the inclusion of new maximum lawful prices under sections 103(b)(2) and 105(b)(3) of the NGPA. In order No. 406 the Commission also decided that the tight formation and production enhancement ceiling prices should be based on 200 percent of the "old" section 103 price (section 103(b)(1) of the NGPA).

To implement the price changes of Order No. 406, the Director of OPPR is now issuing the maximum lawful prices for the month of January 1985 by publishing the tables for the applicable quarter (November and December 1984 and January 1985). Pricing tables are found in § 271.101(a) of the Commission's regulations. Table I of § 271.101(a) specifies the maximum lawful prices for gas subject to NGPA sections 102, 103(b)(1)(2), 105(b)(3), 106(b)(1)(B), 107(c)(5), 108 and 109. Table II of § 271.101(a) specifies the maximum lawful prices for sections 104 and 106(a) of the NGPA. Table III of § 271.102(c) contains the inflation adjustment factors. The maximum lawful prices and the inflation adjustment factors for the periods prior to August 1984 are found in the tables in §§ 271.101 and 271.102.

List of Subjects in 18 CFR Part 271

Natural gas.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

1. Section 271.101(a) is amended by inserting the maximum lawful prices for January 1985 in Tables I and II.

2. Section 271.102(c) is amended by inserting the inflation adjustment for the month of January 1985 in Table III.

§ 271.101 [Amended]

(a) * * *

TABLE I.—NATURAL GAS CEILING PRICES

[(Other than NGPA §§ 104 and 106(a)) Maximum lawful price per MMBtu for deliveries in—]

Subpart of part 271	NGPA section	Category of gas	November 1984	December 1984	January 1985
B	102	New natural gas, certain OCS gas [4]	$3.821	3.845	3.869
C	103(b)(1)	New onshore production wells [5]	2.942	2.951	2.960
	103(b)(2)	New onshore production wells [5]			3.415
E	105(b)(3)	Intrastate existing contracts			3.869
F	106(b)(1)(B)	Alternative maximum lawful price for certain intrastate rollover gas [1]	1.681	1.686	1.691
G	107(c)(5)	Gas produced from tight formations [3]	5.884	5.902	5.920
H	108	Stripper gas	4.092	4.118	4.144
I	109	Not otherwise covered	2.436	2.444	2.452

[1] Sec. 271.602(a) provides that for certain gas sold under an intrastate rollover contract the maximum lawful price is the higher of the price paid under the expired contract, adjusted for inflation or an alternative Maximum Lawful Price specified in this Table. This alternative Maximum Lawful Price for each month appears in this row of Table I. Commencing January 1, 1985, the price of some intrastate rollover gas is deregulated. (See Part 272 of the Commission's Regulations.)

[3] The maximum lawful price for tight formation gas is the lesser of the negotiated contract price or 200% of the price specified in subpart C of Part 271. The maximum lawful price for tight formation gas applies on or after July 16, 1979. (See § 271.703 and § 271.704.)

[4] Commencing January 1, 1985, the price of natural gas finally determined to be new natural gas under sec. 102(c) is deregulated. (See Part 272 of the Commission's Regulations.)

[5] Commencing January 1, 1985, the price of some natural gas finally determined to be natural gas produced from a new, onshore production well under sec. 103 is deregulated. (See Part 272 of the Commission's regulations.)

TABLE II.—NATURAL GAS CEILING PRICES: NGPA SECS. 104 AND 106(a)—(SUBPART D, PART 271)

[Maximum lawful price per MMBtu for deliveries made in—]

Category of natural gas and type of sale or contract	November 1984	December 1984	January 1985
Post-1974 gas: all producers	$2.436	$2.444	$2.452
1973-74 biennium gas			
Small producer	2.063	2.069	2.075

TABLE II.—NATURAL GAS CEILING PRICES: NGPA SECS. 104 AND 106(a)—(SUBPART D, PART 271)—Continued

[Maximum lawful price per MMBtu for deliveries made in—]

Category of natural gas and type of sale or contract	November 1984	December 1984	January 1985
Large producer	1.572	1.577	1.582
Interstate rollover gas: all producers	.904	.907	.910

TABLE II.—NATURAL GAS CEILING PRICES: NGPA SECS. 104 AND 106(a)—(SUBPART D, PART 271)—Continued

[Maximum lawful price per MMBtu for deliveries made in—]

Category of natural gas and type of sale or contract	November 1984	December 1984	January 1985
Replacement contract gas or recompletion gas:			
Small producer	1.157	1.161	1.165
Large producer	.885	.888	.891
Flowing gas:			
Small producer	.586	.588	.590
Large producer	.495	.497	.499
Certain Permian Basin gas:			
Small producer	.690	.692	.694
Large producer	.609	.611	.613
Certain Rocky Mountain gas:			
Small producer	.690	.692	.694
Large producer	.586	.588	.590
Certain Appalachian Basin gas:			
North subarea contracts dated after Oct. 7, 1969	.555	.557	.559
Other contracts	.513	.515	.517
Minimum rate gas: [1] all producers	.302	.303	.304

[1] Prices for minimum rate gas are expressed in terms of dollars per Mcf, rather than MMBtu.

§ 271.102 Amended]

* * * * *

(c) * * *

TABLE III.—INFLATION ADJUSTMENT

Month of delivery 1984–85	Factor by which price in preceding month is multiplied
November	1.00311
December	1.00311
January	1.00311

[FR Doc. 84–33167 Filed 12–19–84; 8:45 am]

BILLING CODE 6717–01

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR PART 177

[Docket Nos. 82F–0282 and 83F–0261]

Indirect Food Additives; Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 1,3,5-benzenetricarbonyl chloride polymer with 1,3-benzenediamine as the food-contact surface of a semipermeable reverse osmosis membrane to be used in the concentration of liquid foods. This action responds to petitions filed by De Danske Sukkerfabrikker and Paterson Candy International, Ltd.

DATES: Effective December 20, 1984; objections by January 22, 1985.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: George H. Pauli, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 1, 1982 (47 FR 43428), FDA announced that a petition (FAP 2B3645) had been filed by De Danske Sukkerfabrikker through its U.S. Representative, General Dairy Equipment Co. (now Pasilac Inc.), 660 Taft St. NE., Minneapolis, MN 55413, proposing that the food additive regulations be amended to provide for the safe use of copolymer of *m*-phenylenediamine and benzene-1,3,5-tricarboxylic acid chloride as a component of an ultrafiltration membrane intended for use in food-processing applications.

Also in a notice published in the **Federal Register** of August 19, 1983 (48 FR 37713), FDA announced that a petition (FAP 3B3739) had been filed by Paterson Candy International, Ltd., Laverstake Mill, Whitchurch, Hampshire, England, proposing that the food additive regulations be amended to provide for the safe use of 1,3,5-benzenetricarbonyl chloride polymer with 1,3-benzenediamine as the food-contact surface of a semipermeable membrane to be used in the concentration of liquid foods.

The two notices refer to the same polymer described by a different nomenclature. Both petitions are for the use of this polymer as a reverse osmosis membrane.

FDA has evaluated data in the petitions and other relevant material and concludes that the proposed food additive use is safe and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Polymeric food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Food Safety and Applied Nutrition (21 CFR 5.61), Part 177 is amended in Subpart C by adding new § 177.2550 to read as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

§ 177.2550 Reverse osmosis membranes.

Substances identified in paragraph (a) of this section may be safely used as reverse osmosis membranes intended for use in processing bulk quantities of liquid food to separate permeate from food concentrate or in purifying water for food manufacturing under the following prescribed conditions:

(a) *Identity.* For the purpose of this section, the reverse osmosis membrane consists of a cross-linked high molecular weight polyamide identified as 1,3,5-benzene–tricarbonyl trichloride polymer with 1,3-benzenediamine (CAS Reg. No. 83044–99–9). The membrane is on the food-contact surface, and its maximum weight is 62 milligrams per square decimeter (4 milligrams per square inch) as a thin film composite on a suitable support.

(b) *Optional adjuvant substances.* The basic polymer identified in paragraph (a) of this section may contain optional adjuvant substances required in the production of such basic polymer. These optional adjuvant substances may include substances permitted for such use by regulations in Parts 170 through 186 of this chapter, substances generally recognized as safe in food, and substances used in accordance with a prior sanction or approval.

(c) *Supports.* Suitable supports for reverse osmosis membranes are materials permitted for such use by regulations in Parts 170 through 186 of this chapter, substances generally

recognized as safe in food, and substances used in accordance with a prior sanction or approval.

(d) *Conditions of use.* (1) Reverse osmosis membranes described in paragraph (a) of this section may be used in contact with all types of liquid food at temperatures up to 80 ° C (176 ° F).

(2) Reverse osmosis membranes shall be maintained in a sanitary manner in accordance with current good manufacturing practice so as to prevent microbial adulteration of food.

(3) To assure their safe use, reverse osmosis membranes and their supports shall be thoroughly cleaned prior to their first use in accordance with current good manufacturing practice.

Any person who will be adversely affected by the foregoing regulation may at any time on or before January 22, 1985 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation is effective December 20, 1984.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: December 10, 1984.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84–33064 Filed 12–19–84; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 452

[Docket No. 84N–0339]

Antibiotic Drugs; Erythromycin-Benzoyl Peroxide Topical Gel

Correction

In FR Doc. 84–31674, beginning on page 47485 in the issue of Wednesday, December 5, 1984, make the following correction: On page 47485, in the third column, in § 452.510d, the last word in the fourth line of paragraph (a)(1) should read "erythromycin".

BILLING CODE 1505–01–M

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Morantel Tartrate Cartridge

Correction

In FR Doc. 84–31920 beginning on page 47830 in the issue of Friday, December 7, 1984, make the following correction: In the third column, third line from the bottom, "21 U.S.C. 360(i)" should read "21 U.S.C. 360b(i)".

BILLING CODE 1505–01–M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lasalocid

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the new animal drug regulations to reflect approval of Hoffmann-LaRoche's supplemental new animal drug application (NADA) for lasalocid for increased rate of weight gain in pasture cattle.

EFFECTIVE DATE: December 20, 1984.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5247.

SUPPLEMENTARY INFORMATION: Hoffmann-LaRoche, Inc., Nutley, NJ 07110, has submitted a supplement to their approved NADA 96–298 for lasalocid sodium premixes. The supplement is for Bovatec® (lasalocid) premixes for use in feeds for pasture cattle for increased rate of weight gain. The lasalocid premixes were previously approved for such use in cattle fed in confinement. The supplement provides for use of lasalocid premixes at levels of 15, 20, 33.1, or 50 percent lasalocid sodium activity for use in making products to be fed at a rate of 60 milligrams to 200 milligrams of lasalocid per head per day. The basis for approval is discussed in the freedom of information summary. Based on the data and information submitted, the supplement is approved and the regulations are amended accordingly.

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

The Center for Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Center's finding of no significant impact and the evidence supporting this finding, contained in an environmental impact analysis report (pursuant to 21 CFR 25.1(j)) may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) 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 5.83), § 558.311 is amended by revising paragraph (b)(3) and adding item (9) to the table in paragraph (f) to read as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.311 Lasalocid.

* * * * *

(b) * * *

(3) Premix levels of 15, 20, 33.1 and 50 percent lasalocid sodium activity granted to No. 000004 in § 510.600(c) of this chapter for use in feed for cattle as provided in paragraph (f)(6), (7) and (9) of this section and for use in sheep feed as provided in paragraph (f)(8) of this section. Premixes containing lasalocid dried fermentation residue are for use in cattle and sheep feed only.

* * * * *

(f) * * *

Lasalocid sodium activity in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
*	*	*	*	*
(9)		Cattle; for increased rate of weight gain.	For pasture cattle (slaughter, stocker, and feeder cattle) only; feed continuously at a rate of not less than 60 mg nor more than 200 mg of lasalocid per head per day when on pasture; the drug must be contained in at least 1 pound of feed.	000004

Effective date. December 20, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: December 14, 1984.

Marvin A. Norcross,

Acting Associate Director, for Scientific Evaluation.

[FR Doc. 84-33063 Filed 12-19-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7992]

Income Tax; Taxable Years Beginning After December 31, 1953; Installment Treatment of Certain Deemed Distributions to DISC Shareholders

Correction

In FR Doc. 84-32297, beginning on page 48282, in the issue of Wednesday, December 12, 1984, make the following correction.

§ 1.921-IT [Corrected]

On page 48283, second column, in § 1.921-IT(a)(10), *Answer 12* (i) the last four lines should read as follows: "subdivision (i) shall be treated as received by the shareholder on the last day of such taxable year."

BILLING CODE 1505-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 142

[DOD Directive 5535.4]

Copyrighted Sound and Video Recordings

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule.

SUMMARY: The increasing availability of videotaped movies and taped sound recordings has created a demand among military personnel for facilities on DoD installations for the reproduction of these recordings for personal use. Although there is some uncertainty regarding the application of U.S. copyright laws to such activities, it is considered appropriate for general policy guidelines to be established. This rule sets out policies concerning the use of government equipment and facilities for the duplication of sound and video recordings for personal use.

EFFECTIVE DATE: August 31, 1984.

ADDRESS: The General Counsel, Department of Defense, The Pentagon, Washington, D.C. 20301-1600.

FOR FURTHER INFORMATION CONTACT: David W. Ream, Office of the General Counsel, Department of Defense, (202-695-3272).

SUPPLEMENTARY INFORMATION: This Directive was published in the **Federal Register** dated March 20, 1984 [49 FR 10275 as a proposed rule]. Comments were received from individuals and organizations within the Department of Defense as well as from members of the public. After reviewing the comments, the Department prepared a final rule incorporating many of the proposed changes suggested by commenters. The comments and the Department's treatments of them are discussed below.

Background

Technological advances in the past few years in the transcription and broadcasting of entertainment media have had their effect in the Department of Defense (DoD). In particular, the increasing availability of videotaped movies and taped sound recordings has created a demand from military personnel for facilities on DoD installations for the viewing of these products and for the reproduction of recordings for personal use.

On numerous occasions during the past several years DoD officials have been contacted by representatives of persons who own copyrights in a variety of film, sound tape, phonograph record, and videotape products. They assert that DoD is promoting the misuse of their materials in violation of copyright laws. Their principal concerns fall into two areas: First, they claim that DoD fosters the illegal duplication of sound tapes and videotapes by making government equipment and other facilities available for this purpose. Second, they allege that the showing of videotaped movies, and the unlicensed playing of records or tapes in DoD Clubs, terminals, transient billets, and recreational facilities, are violations as well.

The proposed rule did not address "official" uses of copyrighted works. Although the Department respects privately held copyrights, the Government has a statutory right to use copyrighted material without the permission of the copyright owners. Judicial and administrative remedies are available for alleged violations. The proposed rule was directed toward removing DoD support of the questionable personal use of copyrighted materials by individual officers, enlisted members, and employees of the Department.

Analysis of General Comments

The comments were divided approximately equally in representing two opposing views. On the one hand, a number of commenters suggested that this was not an appropriate area for Departmental controls and that the proposed rule was far too restrictive. On the other hand, persons supporting the interests of the copyright owners asserted that the proposal was superficial in its treatment of the problem and did not go far enough to eliminate the perceived wrongs. These viewpoints will be examined in more detail.

The leading advocates for the first position were representatives of military personnel. They argued that the regulation did not take into account the rigors of military life, particularly in overseas areas. The proposed regulation, they stated, singled out military personnel for restrictions not binding on their civilian, private sector, counterparts, and that these restrictions are unrelated to their military responsibilities. These advocates described the proposed rule as contributing to the "erosion of the benefits" to which military members are entitled.

The drafters of the proposed rule were fully aware of the conditions under which military personnel serve. It was recognized that entertainment facilities often are inadequate and that remedial steps may need to be taken.

Nevertheless, such shortcomings do not justify Governmental support of copyright violations or, in the view of some, the encouragement of piracy. As

an analogy, if more recreational playing fields are required at a military base they will not be seized from the owners of adjacent property but will be leased or purchased under authorized procedures. Similarly, the Department of Defense will not facilitate or condone the misappropriation of copyrighted materials but instead will acquire these materials through authorized methods.

Spokespersons for copyright owners claimed that the proposed regulation fell short of the definitive guidance that is required, and that it does not fully implement the restrictions found in the copyright laws. It also omits major areas of potential abuse, such as the reception and retransmission of signals from satellites and the unauthorized copying of computer software.

There are several reasons for the approach taken in the proposed directive. There is not unanimous agreement among copyright lawyers on the scope of the U.S. copyright law and the degree to which it is enforceable. While some of these issues may be clarified by the courts or by congressional action, it is necessary to develop a uniform general policy that will be applicable to DoD personnel world-wide and will be enforceable under regulatory authority, independent of remedies available to copyright owners under the copyright laws. The general policy will be supplemented by more detailed guidance by the Military Departments and other DoD Components. In addition, there is an urgent need to take this initial step and publish some minimal guidance. If the components fall short in their implementation, or if additional elaboration on a Department-wide basis is necessary, those steps will be taken later. The time required for judicial or legislative clarification, or even to coordinate a more detailed policy within DoD, could postpone indefinitely this first remedial step.

Analysis of Specific Comments

The proposed rule was titled, "Copyrighted Sound and Video Recordings Used for Entertainment Purposes." Two commenters asked if it were intended to limit coverage to entertainment and exclude other potential misuse. Although past inquiries directed to the Department generally involved entertainment media, the philosophy behind the policy also applies to training, educational, and other activities. Accordingly, the title and the "Purpose" section of the final rule do not include the limiting phrase, "Used for Entertainment Purposes."

One commenter asked if there was a distinction between "official" and "unofficial" use of Government facilities. This rule is intended to limit the use of Government equipment and facilities for the personal benefit of individuals, i.e., the "unofficial" uses of resources. To clarify that point, a statement to this effect has been placed in the "Applicability" section of the final rule, explaining that it "does not regulate the procurement or use of copyrighted works for authorized official purposes."

The policy statement in the proposed Directive acknowledged Department of Defense recognition of "the rights of U.S. copyright owners" and referred to intended guidelines "for the use of U.S. copyrighted works." A commenter asked if protection afforded by this policy was intended to be limited to U.S. owners and U.S. rights. Such was not the intention and the "U.S." references have been deleted.

Several commenters complained that a "loophole" was built into the policy by the statement that the rights of copyright owners would be recognized to the extent consistent with the Department's "unique mission and worldwide commitments." Because flexibility in the application of the policy is required to accommodate unforeseen circumstances, this qualification is unchanged in the final rule. It may be necessary to change the guidelines to more rigid rules after there has been some experience with this initial rule.

Another limitation in the policy is the statement that the Department will not condone, facilitate, or permit certain activities "for private or personal use." One commenter objected on the basis that this phrase was surplus and that if the activity were improper it was of no consequence that the use was "private or personal." The challenged phrase has been retained to clarify the point that the purpose of the rule is to cover other than official DoD activities.

Three commenters questioned the assertion that the policy "does not necessarily represent DoD's interpretation of U.S. copyright laws." As noted earlier, the purpose of the Directive is to end certain undesirable practice, whether or not they may be enforced by judicial proceeding. There are wide differences in opinion regarding the application of the copyright law and to its enforceability against the Department, its components, and individual members. The efforts of the Department to regulate certain activities should not be regarded as DoD's interpretation of the copyright law. If an enforcement action is initiated against the Department, appropriate defenses will be utilized on the Department's behalf by the Department of Justice, depending upon the facts of the case, notwithstanding the policies of this Directive. This provision of the final rule has been reworded to clarify its intended meaning.

The proposed rule permitted the performance of copyrighted sound and video recordings without permission or license of the copyright owner when the performances are in "bachelor officer or enlisted quarters or some other residential facility or a physical extension thereof, such as a dayroom." It also specified that places of entertainment, "such as a club, library or open mess, shall not be considered a physical extension of a residential facility for purposes of this Directive." Several representatives of copyright owners suggested that this undermined the standard specified in the U.S. copyright law. To perform a work "publicly," according to section 101 of title 17, United States Code, "means to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered * * *" Advocates of military members claimed that the copyright law definition could have no application in a military community and that clubs, libraries, etc. should be considered the equivalent of personal residences. The final rule recognizes that there are substantial differences among the various DoD components. For example, a DoD rule defining "public" for purposes of an Air Force Base may not be suitable for a Navy vessel. Accordingly, several broad parameters are established in the final rule but the development of implementing standards will be the responsibility of the Heads of the DoD Components.

Finally, one individual suggested that the rule prohibit the possession or storage of pirated tapes on Government property. The enforcement of this suggestion could be impossible without excessive intrusion into the lives of individuals living and working on DoD installations. Other practical considerations, such as the difficulty of identifying pirated products and proving the wrongful intent of the possessor, caused this suggestion to be rejected.

List of Subjects in 32 CFR Part 142

Copyright, Recordings.

Accordingly, 32 CFR is amended by adding a new Part 142 reading as follows:

PART 142—COPYRIGHTED SOUND AND VIDEO RECORDINGS

Sec.
241.1 Purpose.
241.2 Applicability.
241.3 Policy.
241.4 Procedures.
241.5 Responsibilities.

Authority: 10 U.S.C. 133.

§ 142.1 Purpose.

This part provides policy, prescribes procedures, and assigned responsibilities regarding the use of copyrighted sound and video recordings within the Department of Defense.

§ 142.2 Applicability.

(a) The provisions of this part apply to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified commands, and the Defense Agencies (hereafter referred to collectively as "DoD Components").

(b) This part does not regulate the procurement or use of copyrighted works for authorized official purposes.

§ 142.3 Policy.

(a) It is DoD policy: (1) To recognize the rights to copyright owners by establishing specific guidelines for the use of copyrighted works by individuals within the DoD community, consistent with the Department's unique mission and worldwide commitments, and (2) Not to condone, facilitate, or permit unlicensed public performance or unlawful reproduction for private or personal use of copyrighted sound or video recordings, using government appropriated or nonappropriated-fund-owned or leased equipment or facilities.

(b) Although the policy expressed in this Directive takes into account the copyright law of the United States, the application of that law to specific situations is a matter for interpretation by the U.S. Copyright Office and the Department of Justice.

§ 142.4 Procedures.

(a) Permission or licenses from copyright owners shall be obtained for public performance of copyrighted sound and video recordings.

(b) Component procedures established pursuant to § 142.5, below provide guidance for determining whether a performance is "public." These general principles will be observed:

(1) A performance in a residential facility or a physical extension thereof is not considered a public performance.

(2) A performance in an isolated area or deployed unit is not considered a public performance.

(3) Any performance at which admission is charged normally would be considered a public performance.

(c) Government audio and video duplicating equipment and appropriated funded playback equipment may not be used for reproduction of copyrighted sound or video recordings.

§ 142.5 Responsibilities.

Heads of DoD Components shall establish procedures to comply with this Directive and shall provide necessary local guidance and legal interpretation.

December 14, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-33007 Filed 12-19-84; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD3 83-059]

Drawbridge Operation Regulations; Lake Champlain (Missisquoi Bay), VT

AGENCY: Coast Guard, DOT.

ACTION: Final Rule; Correction.

SUMMARY: This document corrects a final rule governing the Missisquoi Bay railroad drawbridge between West Swanton and East Alburg, VT, published in the **Federal Register** on Monday, November 5, 1984, (49 FR 44207). This action is necessary to correct omission of this regulation from the New York State listing. This document makes no substantive changes to the regulations.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, Third Coast Guard District (212) 668-7994.

SUPPLEMENTARY INFORMATION: On April 24, 1984 the Coast Guard published a final rule in the **Federal Register** (49 FR 17450) which completely reorganized 33 CFR Part 117 containing requirements relating to the use and operation of drawbridges across the navigable waters of the United States. The revision was designed to simplify the use of these regulations by grouping all of the general rules into a single subpart and by arranging the provisions pertaining to individual drawbridges alphabetically by state and waterway. Waterways running through or bordering more than one state are listed under both states. Lake Champlain is listed under both New York (§ 117.797) and Vermont (§ 117.993). The final rule published November 5, 1984 (49 FR 44207) only amended the Vermont listing. This document publishes the New York listing to reflect the changes made in that amendment and to maintain identical language in both sections.

Drafting Information

The drafters of this correction are W.C. Heming, project manager, and Mary Ann Arisman, project attorney.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations:

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations is amended by revising § 117.797(c) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.797 Lake Champlain.

* * * * *

(c) The draw of the Central Vermont Railway bridge across Missisquoi Bay, mile 105.6 shall open on signal:

(1) From June 15 through September 15:

(i) Monday through Friday from 9 a.m. to 5 p.m.;

(ii) Saturdays, Sundays, Independence Day and Labor Day from 7 a.m. to 11 p.m.;

(iii) At all other times, if at least two hours notice is given. (2) From September 16 through June 14 if at least 24 hours notice is given.

* * * * *

(33 U.S.C. 499; 49 CFR 1.46(c)(2); 33 CFR 1.05-1(g)(3))

Dated: December 10, 1984.

P.A. Yost,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 84-33133 Filed 12-19-84; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 207

San Diego Bay, California, Naval Amphibious Base; Restricted Area

AGENCY: Army Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Army is establishing a naval restricted area in

the Pacific Ocean in Middle San Diego Bay, California. The restricted area surrounds the existing Naval Amphibious Base peninsula where extensive special operations take place. This restricted area will protect persons and property from the dangers encountered with these special operations.

EFFECTIVE DATE: January 22, 1985.

ADDRESS: HQDA, DAEN–CWO–N, Washington, DC 20314.

FOR FURTHER INFORMATION CONTACT: Mr. Glenn Lukos at (213) 688–5606 or Mr. Ralph T. Eppard at (202) 272–0200.

SUPPLEMENTARY INFORMATION: The U.S. Navy has requested the Corps of Engineers establish a naval restricted area in the Pacific Ocean in Mid-San Diego Bay, California.

On January 27, 1984, the Corps published the proposed naval restricted area in the Notice of Proposed Rulemaking Section of the **Federal Register** with the comment period ending on March 12, 1984 (49 FR 3491–3492). The coordinates published in the proposed rule contained errors in Stations No. 7 and No. 8. A correction published in the **Federal Register** on February 21, 1984, (49 FR 6386) corrected only Station No. 7, thereby omitting the required correction to Station No. 8. Accordingly, the Corps republished the proposed rule (corrected) on April 12, 1984 and extended the comment period to expire on April 27, 1984 (49 FR 14540–14541).

The Corps received an inquiry from Congressman Duncan Hunter on behalf of a constitutent and letters from 19 individuals, several of whom represented yacht clubs and home owner associations in the area. These letters expressed opposition to the establishment of the restricted area basically for one or the other of the following two reasons:

1. The restriction on boating/sailing through the area in the lee of the Naval Amphibious Base Several groups indicated they hold sailboat races and/or regattas through the area.

2. Elimination of the anchorage area adjacent to the Naval Amphibious Base at Glorietta Bay.

All comments received were furnished the Commander, Naval Amphibious Base for consideration.

The Navy states that it never intended to restrict such transit through the subject area and has agreed to a rewording of the rule to make this clear, (i.e., "all vessels entering the restricted area shall proceed across the area by the most direct route and without unnecessary delay. For vessels under sail, necessary tacking shall constitute a direct route.") Also, added to the rule is the statement, "organized activities (such as sail races and regattas) within the restricted area will normally be allowed unless the Commanding Officer, Naval Amphibious Base determines such use would interfere with military operations in the area. Requests must be made to the Commanding Officer, Naval Amphibious Base, Coronado, San Diego, California 92155 or by calling, telephone number (619) 522–4833 at least 10 days prior to the event." The Navy expresses great concern about having the anchorage area adjacent to the base at Glorietta Bay. The Navy points out that it actually owns all of the submerged land currently used by the anchorage and that the boats at this anchorage are trespassing. This been verified through charts available at the Port of San Diego. The individuals anchoring in this area currently do so under provisions in 33 CFR 110.210 (San Diego Harbor, California Anchorage Grounds). Unrestricted anchorage (currently permitted by 33 CFR 110.210) within the subject area is now prohibited under this rule.

The naval facilities at the amphibious base include the fuel pier, a variety of classified special warfare vessels, classified underwater vessels, and classified training facilities. The Navy indicates that they have had to increase security measures along this portion of their shore as a result of the anchorage. An additional Navy concern is the safety of these anchored vessels and liability should there be an accident involving the fuel pier or training vessels.

Having considered all comments received and relevant information available, the Department of the Army has determined that the establishment of the restricted area is warranted. Accordingly, the Department of the Army is establishing a naval restricted area under 33 CFR 207.611 as set forth below.

Note.—This regulation is issued with respect to a military function of the Defense Department; is not a major rule within the meaning of Executive Order 12291 and accordingly the provisions of Executive Order 12291 do not apply. The Corps of Engineers certifies pursuant to Section 605(b) of the Regulatory Flexibility Act of 1980, that this regulation will not have a significant economic impact on a substantial number of entities.

List of Subjects in 33 CFR Part 207

Transportation, Water transportation, Marine safety, Navigation, Water transportation and marine carriers.

Dated: December 10, 1984.

Robert K. Dawson,

Acting Assistant Secretary of the Army (Civil Works).

PART 207—[AMENDED]

Section 207.611 is added to 33 CFR to read as follows:

§ 207.611 San Diego Bay, California: Naval restricted area.

(a) The Area. The water of the Pacific Ocean in Middle San Diego Bay in an area extending from the northern and eastern boundary of the Naval Amphibious Base about 0.1 nautical miles and 0.6 nautical miles from the southern shoreline and basically outlined as follows:

Station	Latitude	Longitude
1	32°40'33.0" N	117°10'02.4" W
2	32°40'34.7" N	117°09'54.0" W
3	32°40'46.0" N	117°09'44.2" W
4	32°41'00.0" N	117°09'24.6" W
5	32°40'20.0" N	117°08'36.7" W
6	32°40'00.0" N	117°09'00.0" W
7	32°39'18.0" N	117°08'45.0" W
8	32°39'16.0" N	117°08'48.5" W

(b) *The Regulations.* (1) Swimming, fishing, waterskiing, mooring or anchoring shall not be allowed within the restricted area.

(2) A portion of the restricted area extending 120 feet from pierheads and from the low water mark on shore where piers do not exist is closed to all persons and vessels except those owned by, under hire to, or performing work for, the Naval Amphibious Base.

(3) All vessels entering the restricted area shall proceed across the area by the most direct route and without unnecessary delay. For vessels under sail, necessary tacking shall constitute a direct route.

(4) The regulations in this section shall be enforced by the Commanding Officer, Naval Amphibious Base, Coronado, California, and such agencies as he/she shall designate. Organized activities (such as sail races and regattas) within the restricted area may be allowed providing that a request has been made to the Commanding Officer, Naval Amphibious Base, Coronado, San Diego, California 92155 or by calling, telephone number (619) 522–4833 at least 10 days prior to the event.

(33 U.S.C. 1)

[FR Doc. 84–33141 Filed 12–19–84; 8:45 am]

BILLING CODE 3710–GH–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-2739-4]

Approval and Promulgation of Implementation Plans Massachusetts; Table of EPA Approved Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is publishing a table which summarizes approval actions already taken to incorporate Massachusetts Air Pollution regulations into the State Implementation Plan (SIP). The intended effect of this action is to make it easier to identify those Massachusetts Air Pollution Regulations, or portions thereof, which have been approved by EPA and made part of the federally-approved SIP.

EFFECTIVE DATE: This action will be effective February 19, 1984 unless notice is received within 30 days that adverse or critical comments will be submitted.

ADDRESSES: Comments may be mailed to Harley F. Laing, Director, Air Management Division, Room 2312, JFK Federal Building, Boston, MA 02203. Copies are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2313, JFK Federal Bldg., Boston, MA 02203.

FOR FURTHER INFORMATION CONTACT: Cynthia L. Greene (617) 223–5133.

SUPPLEMENTARY INFORMATION: Since the Commonwealth of Massachusetts initially submitted its State Implementation Plan (SIP) to EPA in 1972, there have been numerous revisions to the plan. These revisions included changes to almost every regulation. The table which is being codified today at 40 CFR 52.1167 identifies those Massachusetts regulations which are part of the federally-approved SIP. The table also provides the date on which EPA took final action to revise each regulation. Where only part of a regulation is federally approved, it is indicated in the comments section of the table. We are publishing this table in today's **Federal Register**, and making it part of the Code of Federal Regulations to assist the public in identifying those Massachusetts regulations or portions thereof, which are federally approved. We intend to revise this table each time we approve a revision to the Massachusetts SIP. The table published today has been developed primarily for informational purposes. It does not have any independent regulatory effect. The actual federally-approved Massachusetts SIP is incorporated by reference at 40 CFR 52.1120. To the extent that this table codified at 40 CFR 52.1167 conflicts with 40 CFR 52.1120, 40 CFR 52.1120 governs.

EPA is publishing this table without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective 60 days from today.

Final Action: EPA is publishing a table of federally-approved Massachusetts Air Pollution regulations at 40 CFR 52.1167.

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

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

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

List of Subjects in 40 CFR Part 52

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

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

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

William D. Ruckelshaus,

Administrator.

December 13, 1984.

PART 52—[AMENDED]

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

Subpart W—Massachusetts

1. Section 52.1167, is added as follows:

§ 52.1167 EPA-approved Massachusetts State Regulations.

The following table identifies the State regulations which have been submitted to and approved by EPA as revisions to the Massachusetts State Implementation Plan. This table is for informational purposes only and does not have any independent regulatory effect. To determine regulatory requirements for a specific situation consult the plan identified in § 52.1120. To the extent that this table conflicts with § 52.1120, § 52.1120 governs.

TABLE 52.1167—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
310 CMR 7.02	Plans and approval and emission limitations	4/27/72	10/28/72	37 FR 23085	2	
		8/28/72	10/28/72	37 FR 23085	4	
		5/27/82 9/9/82	1/10/84	49 FR 1187	60	7.02(2)(b)(4) and 7.02(2)(5) for new source review.
310 CMR 7.02(11)	Emission limitations for incinerators	2/01/78	3/15/79	44 FR 15704	18	Adds an emission limitation for sewage sludge incinerators.
310 CMR 7.02(12)(a)(b)	Organic material, bulk plants and terminals handling organic material.	12/31/78 5/16/79	9/16/80	45 FR 61293	30	
310 CMR 7.02(12)(a)1e	Gasoline liquid storage in external floating roof tanks.	12/02/83	3/8/84	49 FR 8611	56	Approved for secondary seals or equivalent weather roofs.
310 CMR 7.02(12)(b)2	Stage I vapor recovery	5/20/77	5/25/78	43 FR 22356	15	Provisions for Pioneer APCD Stage I vapor recovery.

TABLE 52.1167—EPA-APPROVED RULES AND REGULATIONS—Continued

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
		12/31/78	9/16/80	45 FR 61293	30	
		5/16/79				
		3/25/83	7/07/83	48 FR 31200	55	Exempt Berkshire APCD.
310 CMR 7.04(5)	Fuel oil viscosity	12/28/78	6/17/80	45 FR 40987	29	For Cambridge Electric Light Company's Kendal Station, and Blackstone Station.
		12/28/78	10/18/80	45 FR 48131	29	Correction notice.
310 CMR 7.05	Sulfur-in-fuel	8/28/72	10/28/72	37 FR 23058	4	
		7/05/78	2/07/79	44 FR 7712	17	Approves the burning of coal/oil slurry at New England Power Company, Salem Harbor Station, MA.
310 CMR 7.05(1)(a)	Sulfur content of fuels and control thereof for Berkshire APCD.	4/14/77	3/24/78	43 FR 12324	13	Approves the burning of 1% for all but: Crane and Company Inc., and Schweitzer Division, Kimberly Clark Corporation, Columbia Mill.
		4/14/77	3/07/79	44 FR 12422	13	Approves the burning of 2.2% at Crane & Co., Inc., and Schweitzer Division, Kimberly-Clark Corp., Columbia Mill.
		8/11/78				
		8/31/78				
		11/08/82	4/28/83	48 FR 19172	54	Approves burning of 2.2% at Esleek Manufacturing Company, Inc., provided the fuel firing rate does not exceed 137.5 gallons per hour.
310 CMR 7.05(1)(b)	Sulfur content of fuels and control thereof for Central APCD.	6/25/76	2/15/77	42 FR 9176	10	Approves the burning of 2.2% until 7/1/78 for 100 mBtu sources listed in 52.1126.
		3/29/76	5/19/77	42 FR 25730	11	Approves burning of 2.2% at James River Associates, Inc. and part of Fitchburg Paper Company, April through October. November through March, they are limited to burning 1% sulfur-in-fuel oil.
		5/25/76				
		6/25/76	6/21/78	43 FR 26573	10	Extends expiration date to 6/21/78.
		8/22/77				
		3/02/79	7/16/79	44 FR 41180	24	Permanent extension for certain sources to burn 2.2% under specified conditions.
	Sulfur content of fuels and control thereof for central APCD.	9/28/79	6/17/80	45 FR 40987	24	Approves the burning of 2.2% at Fitchburg Paper (55 Meter stacks only) for James River, Massachusetts, Inc., year round.
		3/20/80	9/10/80	45 FR 59578	31	Approves the temporary burning of 2.2% at Seaman Paper Co., Templeton.
		3/02/79	9/17/81	46 FR 46133	33	Approves the burning of 2.2% at Millers Falls Paper Co.
		5/05/81				
310 CMR 7.05(1)(c)	Sulfur content of fuels and control thereof for Merrimack Valley.	6/04/76	12/30/76	41 FR 56804	8	Approves the burning of 2.2% except at those sources listed in 52.1126.
		1/28/76	7/12/77	42 FR 35830	8	Approves burning of 1.4% at Haverhill Paperboard Corp., Haverhill, MA.
		12/30/76				
		1/28/76				
		8/22/77	6/21/78	43 FR 26573	8	Extends expiration date to 7/1/79.
		12/30/76				
		12/28/78	5/21/79	44 FR 29453	20	Permanent extension to burn 2.2%.
310 CMR 7.05(1)(d)	Sulfur content of fuels and control thereof for Metropolitan Boston APCD.	7/11/75	12/05/75	40 FR 56889	6	Approves burning of 1% for large electric generating facilities in certain cities and towns and 2.2% for smaller facilities. Effective 7/1/75 to 7/1/77.
		9/16/75				
		7/11/75	8/22/77	42 FR 42218	6	Extends expiration date from 7/1/77 to 7/1/78 except for Eastman Gelatin Corp., which must burn 1%.
		4/01/77				
		4/20/78	11/30/78	43 FR 56040	6	Extends expiration date from 7/1/78 to 7/1/79.
	Sulfur content of fuels and control thereof for Metropolitan Boston APCD.	12/28/78	5/21/79	44 FR 29453	20	Permanent extension to burn 2.2%.
		4/25/80	1/27/81	46 FR 8476	34	Approves the burning of 2.2% at Natick Paperboard Corp.
		11/25/80	8/11/81	46 FR 40688	38	Approves the increase to 2.2% at Boston Edison Mystic Generating Station for 30 months from 8/11/81 (expires 2/11/84).
		7/14/81	12/16/81	46 FR 61123	41	Approves burning of 2.2% at Haverhill Paper Corp.
		11/27/79	12/15/80	45 FR 82251	32	Allows the burning of 2.2% at Proctor and Gamble.
		9/24/81	12/15/81	46 FR 61118	43	Approves burning of 2.2% at Eastman Gelatin Corp.
		12/7/83	9/25/84	49 FR 37592	65	Approves burning of 2.2% at Boston Edison Mystic Generating Station until 3/25/87.
310 CMR 7.05(1)(e)	Sulfur content of fuels and control thereof for Pioneer Valley APCDs.	7/22/77	2/01/77	42 FR 5957	9	Approves 2.2% except for sources listed in 52.1125.
		7/22/76				
		8/22/77	6/21/78	43 FR 26573	9	Extends expiration date to 7/1/79.
		12/27/77				
		1/03/79	5/21/79	44 FR 29453	21	Permanent extension to burn 2.2%
		3/02/80	1/19/81	45 FR 4918	33	Approves the burning of 2.2% at all sources in Franklin and Hampshire Counties rated at less than 100 mBtu except Esleek Manufacturing Co., and Millers Falls Paper Co.
		10/13/81	2/10/82	47 FR 6011	45	Approves the burning of 2.2% at Holyoke Gas and Electric Department, Holyoke, MA.
310 CMR 7.05(1)(f)	Sulfur content of fuels and control thereof for Southeastern APCD.	12/30/76	9/02/77	42 FR 44235	12	Approves burning of 2.2% for sources listed in 52.1126, all others must continue to burn 1%.
		12/30/76	9/08/78	43 FR 40010	12	Extends expiration date from 5/1/78 to 7/1/79.
		1/31/78				
		1/31/79	5/21/79	44 FR 29453	22	Permanent extension to burn 2.2%.
310 CMR 7.05(4)	Ash content of fuels for Pioneer Valley for APCD.	1/03/79	5/21/79	44 FR 29453	21	
310 CMR 7.05(4)	Ash content of fuels for Metropolitan Boston APCD.	7/20/79	5/21/79	44 FR 29453	23	
310 CMR 7.06	Visible emissions	8/28/72	10/28/72	37 FR 23085	4	

TABLE 52.1167—EPA-APPROVED RULES AND REGULATIONS—Continued

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
		7/05/78	2/07/79	44 FR 7712	17	Approves New England Power Company, Salem Harbor Station to burn a coal oil slurry.
		12/28/79	8/12/80	45 FR 53476	17	Extension of temporary revision to allow exceedance of 20% capacity limit at New England Power Company's Salem Harbor Station, Salem, MA Unit 1 so can burn 30% coal/70% oil mixture until 12/31/80.
310 CMR 7.07	Open burning	12/09/77	9/29/78	43 FR 44841	16	Two revisions with conditions to permit open burning of brush cane, driftwood and forest debris for 2 months of the year.
	Open burning	9/28/79	6/17/80	45 FR 40987	27	Approves open burning (as in (c) 16) from 1/15 to 5/1 in certain areas of the State.
310 CMR 7.08	Incinerators	8/28/72	10/28/72	37 FR 23085	4	
310 CMR 7.09	Dust and odor	8/28/72	10/28/72	37 FR 23085	4	
		12/09/77	9/29/78	43 FR 44841	16	Adds a requirement that mechanized street sweeping equipment must be equipped and operated with a suitable dust collector or suppression system.
310 CMR 7.15	Asbestos application	8/28/72	10/28/72	37 FR 23085	4	
310 CMR 7.16	Reduction to single passenger commuter vehicle use.	5/20/77	5/25/78	43 FR 22356	15	For Pioneer Valley APCD.
		12/31/78 5/16/79	9/16/80	45 FR 61293		Reduction of single occupant commuter vehicles.
310 CMR 7.17	Coal conversion	9/07/78	5/14/79	44 FR 27991	19	Brayton Point Station, New England Power Company.
		1/22/82	6/09/82	47 FR 25007	49	Mount Tom Plant, Holyoke, MA Holyoke Water Power Company.
310 CMR 7.18(2)(b)	Generic VOC bubble for surface coaters	3/06/81 11/12/81	3/29/82	47 FR 13143	42	Includes surface coating of metal cans, large appliances, magnet wire insulation, automobiles, paper fabric and vinyl.
	Generic VOC bubble for surface coaters	6/24/80	7/12/82	47 FR 30060	47	Adds metal coils.
		7/21/81 3/10/82	6/02/82	47 FR 23927	48	Adds miscellaneous metal parts and products and graphic arts-rotogravure and flexography.
		9/09/82	2/3/83	48 FR 5014	53	Adds metal furniture.
310 CMR 7.18(3)	Metal furniture surface coating	12/31/78 5/16/79	9/16/80	45 FR 61293	30	
		9/09/82	11/09/83	48 FR 51480	53	Adds test methods.
310 CMR 7.18(4)	Metal can surface coating	12/31/78 5/16/79	9/16/80	45 FR 61293	30	
		9/09/82	11/09/83	48 FR 51480	53	Adds test methods.
310 CMR 7.18(5)	Large appliances surface coating	12/31/78 5/16/79	9/16/80	45 FR 61293	30	
		9.09/82	11/09/83	48 FR 51480	53	Adds test methods.
310 CMR 7.18(6)	Magnet wire insulation surface coating	12/31/78 5/16/79	9/16/80	45 FR 61293	30	
		9/09/82	11/09/83	48 FR 51480	53	Adds test methods.
310 CMR 7.18(7)	Automobile surface coating	12/31/78 5/16/79	9/16/80	45 FR 61293	30	
		9/09/82	11/09/83	45 FR 51480	53	Adds test methods.
310 CMR 7.18(8)	Solvent metal degreasing	12/31/78 5/16/79	9/16/80	45 FR 61293	30	Conditional approval requiring controls for small solvent metal degreasers.
		8/13/83	11/09/83	48 FR 51480	53	Approves public education program for small degreasers and removes conditional approval.
310 CMR 7.18(9)	Cutback asphalt	12/31/78 5/16/79	9/16/80	45 FR 61293	30	
		9/09/82	11/09/83	48 FR 51480	53	Adds an exemption.
310 CMR 7.18(10)	Surface coating of metal coils	6/24/80	7/12/82	47 FR 30060	47	Approves and adds to 310 CMR 7.18(2)(b).
		9/09/82	11/09/83	48 FR 51480	53	Adds test methods and removes extended compliance schedule.
310 CMR 7.18(11)	Surface coating of miscellaneous metal parts and products.	7/21/81 3/10/82	6/02/82	47 FR 23927	48	Adds to 310 CMR 7.18(2)(b).
		9/09/82	11/09/83	48 FR 51480	53	Adds test methods.
310 CMR 7.18(12)	Graphic arts-rotogravure and flexography	7/21/81 3/10/82	6/02/82	47 FR 23927	48	Adds to 310 CMR 7.18(2)(b).
		9/09/82	11/09/83	48 FR 51480	53	
310 CMR 7.18(13)	Perchloroethylene dry cleaning systems	7/21/81 3/10/82	6/02/82	47 FR 23927	48	
		9/09/82	11/09/83	48 FR 51480	53	Adds test methods.
310 CMR 7.18(14)	Paper surface coating	3/06/81	3/08/82	47 FR 9836	40	
		9/09/82	11/09/83	48 FR 51480	53	Adds test methods.
310 CMR 7.18(15)	Fabric surface coating	3/06/81	3/08/82	47 FR 9836	40	
		9/09/82	11/09/83	48 FR 51480	53	Adds test methods.
310 CMR 7.18(16)	Vinyl surface coating	3/06/81	3/08/82	47 FR 9836	40	
		9/09/82	11/09/83	48 FR 51480	53	Adds test methods.
310 CMR 7.18(17)	RACT	9/09/82	11/09/83	48 FR 51480	53	All 100 ton per year sources not covered by a CTG.
310 CMR 7.19	Interim sulfur-in-fuel limitations for fossil fuel utilization facilities pending conversion to an alternate fuel or implementation of permanent energy conservation measures.	9/12/80	3/19/81	46 FR 17551	37	Energy/environment initiative.
		12/29/81	4/13/82	47 FR 15790	46	ATF Davidson Company, Northbridge, MA temporary sulfur-in-fuel revision until 12/1/83.
		9/28/82	12/01/82	47 FR 54072	52	Polaroid Corp., Waltham, MA temporary sulfur/in/fuel relaxation until 6/1/85.
			6/02/83	48 FR 24689	52	Correction notice.
		9/29/82	11/23/82	47 FR 52704	51	Northeast Petroleum Corp., Chelsea, MA sulfur content increase from 0.28 to 0.55 lbs/mBtu heat release potential permanently.
		4/04/83	3/23/84	49 FR 11092	59	Stanley Woolen Co., Uxbridge, to burn 2.2% until 9/23/86.

TABLE 52.1167—EPA-APPROVED RULES AND REGULATIONS—Continued

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
	Interim sulfur-in-fuel limitations for fossil fuel utilization facilities pending conversion to an alternative fuel or implementation of permanent energy conservation measures.	10/31/83	3/23/84	49 FR 11091	61	Reed and Barton Silversmiths, Taunton, to burn 2.2% until 9/23/86.
		11/16/83	7/30/84	49 FR 30306	62	ATF Davidson Company, Northbridge, to burn 2.2% permanently.
		2/2/84	6/15/84	49 FR 24723	63	American Biltrite Corporation, Chelsea, to burn 1.0% until 12/15/86.
		7/11/84	9/25/84	49 FR 37591	67	James River Corporation, Hyde Park Mill, Boston to burn 2.2% until 3/25/87.
310 CMR 7.50	Variances, regulations for control of air pollution in the six MA APCDs.	9/14/74	10/08/76	41 FR 44395	7	
		9/14/74	2/04/77	42 FR 6812	7	Correction.
310 CMR .51	Hearings relative to orders and approvals.	8/28/72	10/26/72	37 FR 23085	4	
310 CMR 7.52	Enforcement provisions.	8/28/72	10/26/72	37 FR 23085	4	
310 CMR 8	Regulations for the prevention and/or abatement of air pollution episode and air pollution incident emergencies.	2/22/72	10/26/72	37 FR 23085	1	
		12/30/76	9/02/77	42 FR 44235	12	Changes significant harm and alert levels.

NOTES:
1. This table lists regulations adopted as of 1972. It does not depict regulatory requirements which may have been part of the Federal SIP before this date.
2. The regulations are effective statewide unless stated otherwise in comments or title section.

[FR Doc. 84-33111 Filed 12-19-84; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 52

[Document No. AM047MD; A-3-FRL-2739-8]

Approval and Promulgation of Implementation Plans; Approval of Revision of the Maryland State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The State of Maryland has submitted a Consent Order for the Westvaco Corporation Paper Mill located in Luke, Maryland. The Consent Order establishes a revised sulfur dioxide (SO_2) emissions limitation for the mill. Although the revised SO_2 emissions limitation is less stringent than the currently approved SIP limitation, the State has adequately demonstrated that ambient SO_2 air quality standards will still be met. The State has also demonstrated that PSD increments in the four PSD areas where baseline has been triggered will not be violated.

EPA is approving this Consent Order as a revision to the Maryland SIP, as the State submittal meets all of the applicable requirements of the Clean Air Act and 40 CFR Part 51.

EFFECTIVE DATE: January 22, 1985.

ADDRESSES: Copies of the State submittal and EPA's technical support document are available for inspection during normal business hours at the following offices:

U.S. Environmental Protection Agency, Region III, Air Management Division, Curtis Building, Sixth and Walnut Streets, Philadelphia, PA 19106. Attn: Mrs. Patricia Gaughan

Maryland Air Management Administration, 201 West Preston Street, Baltimore, MD 21201, Attn: George P. Ferreri

Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460 (Submittal Only)

The Office of Federal Register, 1100 L Street NW., Washington, DC 20460 (Submittal Only)

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford (3AM13) at the aforementioned EPA Region III address.) Phone: 215/597-1325.

SUPPLEMENTARY INFORMATION:

Background

On September 8, 1983, the State of Maryland submitted a Consent Order for the Westvaco Corporation Paper Mill located in Luke, Maryland, and requested that it be reviewed and processed as a revision to the Maryland State Implementation Plan (SIP). The State certified that a public hearing was held in Cumberland, Maryland on August 31, 1983, in accordance with the requirements of 40 CFR 51.4. This Consent Order, which was further revised by Maryland on January 26, 1984 and submitted to EPA on February 7, 1984, establishes a revised sulfur dioxide (SO_2) emissions limitation for the Luke Mill. Under the terms of the Order, SO_2 emissions from all fuel burning equipment may not exceed:

(a) 66 tons per day as calculated from midnight to midnight.

(b) For each three-hour period (calculated as block averages), a range of 9.4 tons at 50% buoyancy to 17.0 tons at 100% buoyancy, represented by a curve defined as follows:

$$Y = -16.0X^2 + 39.2X - 6.2$$

where * * *

X = fractional plume buoyancy (0.5 to 1.0)

and . . . . . .

Y = emission limit (ton/3 hours)

Additional details concerning Maryland's submittal and EPA's preliminary review are described in the notice of proposed rulemaking on July 2, 1984, 49 FR 27177.

One statement made in the notice of proposed rulemaking regarding the characterization of the SHORTZ model as an "EPA-guideline model" was incorrect. SHORTZ is not an EPA guideline model as such. Rather, SHORTZ was chosen by EPA to be used as the reference model. In situations where a refined guideline model is appropriate, such model is usually chosen as the reference model. However, for situations where no refined guideline model is appropriate, it is up to the agency to negotiate with the applicant the appropriate choice for a reference model. The type of demonstration required is described in the EPA guidance document "Interim Procedures for Evaluating Air Quality Models." (August, 1981).

EPA chose SHORTZ to be the reference model against which the nonguideline model (LUMM), submitted by the State as its control strategy demonstration, would be compared. The SHORTZ model was chosen as the reference model in this case for the following reasons:

(1) No refined guideline model exists which would be applicable for this case.

(2) The model was developed by H.E. Cramer Company for EPA Region III

specifically for complex terrain situations.

(3) The SHORTZ model has the capability of utilizing the sophisticated meteorological measurements that were taken.

(4) The SHORTZ model has a long history as being the government's representative model in this case.

Thus, EPA's incorrect characterization of the SHORTZ model in the notice of proposed rulemaking will not affect EPA's determination that the LUMM nonguideline model was judged to be the more accurate in predicting ambient SO_2 concentrations.

Notice of Proposed Rulemaking/Receipt of Public Comments

On July 2, 1984, 49 FR 27177, EPA proposed approval of the revised SO_2 SIP limitation for the Westvaco Mill. EPA also requested comments as to whether a PSD increment consumption analysis need be addressed as part of the control strategy demonstration pertaining to this SO_2 emissions increase. During the public comment period, which ended on August 1, 1984, EPA received comments from five interested parties. These comments raised a number of issues, including the applicability of the PSD increment consumption analysis with respect to this SIP revision.

Concerning the PSD issues, three commenters argued that the PSD increment consumption analysis should not apply to this SIP revision. In this way, the commenters argue, the increased SO_2 emissions would be included into the baseline concentration. These commenters have asserted that such a determination is justified, as this SIP revision is a continuation of the process, which has been ongoing since 1975, to establish a final SO_2 emission limitation for the Westvaco Mill. The commenters pointed out that the June, 1978 regulations provided a "grandfathering" provision, which placed all emissions increases resulting from pending SIP revisions as of August 7, 1977 into the baseline concentration.

One commenter submitted comments asserting that the SO_2 emissions increase provided for in this SIP revision should not be included in the baseline concentration. The commenter cites 40 CFR 51.24(b)(13), which generally states that actual emissions increases and decreases at any stationary source occurring after the baseline date will affect the applicable PSD increments.

EPA Response: Although the June 1978 PSD regulations allowed for the "grandfathering" of pending SIP revisions so that the increased emissions would be calculated into the baseline concentrations, the revised PSD regulations published on August 7, 1980, 45 FR 52715, rescinded the "grandfathering" exemption. The relevant language states as follows:

"EPA believes this exemption from increment consumption analysis is no longer necessary. States and sources have been on notice since June 1978 that emissions increases at existing sources due to SIP relaxations must be evaluated for possible increment consumption. No state or source has been uncertain as to the applicable baseline date, or been placed in an inequitable position as to other states or sources. Therefore, today's regulations do not exempt from increment consumption analysis those SIP relaxations not finally approved by EPA prior to the baseline date in the affected area."

Therefore, EPA has determined that the revised SO_2 emissions limitation cannot be considered to be part of the baseline. Thus, the increased SO_2 emissions from the Westvaco Mill do consume PSD increment.

In addition to EPA's determination that this revised SO_2 emissions limitation will consume PSD increment, the commenters have raised a number of other issues relating to how much and where increment will be consumed. One commenter suggested that the increment being consumed should be split evenly between Maryland and West Virginia (the two states whose PSD increment would be consumed). However, EPA has no policy which would allow consumption of the available increment to be split evenly by two States if the modeling analysis demonstrates otherwise. The same commenters also submitted comments stating that West Virginia, as the State where most of the PSD increment will be consumed, might be subject to a "potentially severe" economic impact in several West Virginia counties because of the level of increment consumed. However, EPA has determined that the revised SO_2 SIP limitation will not consume 100% of the increment in any affected PSD area.

Additionally, it is important to realize that the short-term increment consumption caused by a new source entering the area would be added to the total predicted consumption by Westvaco, only in the event that the source was locating on a line in between the Class I area and Westvaco. That is, the total impact resulting from the interactions of the two sources would almost certainly not be the addition of their separate worst case impacts. In all likelihood, the worst case impact from either one source or the other, whichever is larger, would represent the total short-term increment consumption. Therefore, the potential for economic growth will not be at this time entirely prevented by EPA's approval of the revised SO_2 emissions limitation for the Westvaco Mill.

Another related issue addressed by a commenter concerns the level of emissions used to determine the level of baseline concentration. EPA has determined the 24-hour baseline to be 58 tons per day (the emission limit of the Secretarial Order in force at the time). In EPA's and Maryland's engineering judgment, this baseline level was determined to be representative of actual emissions during the two years preceding the baseline triggering date. The annual baseline concentration was based on an SO_2 emission limit of 47.9 tons per day.

The commenter suggests that the 49 tons per year limit approved by EPA on April 25, 1980, 45 FR 27933, should be used to establish baseline, as EPA analysis had shown that NAAQS violations may occur if the emissions limit exceeded 49 tons per day.

EPA responds in the following manner:

(1) The modeling analysis submitted by Maryland supports the revised SO_2 limitation and indicates that no NAAQS violations are predicted to occur when the 66 ton/day limit is established.

(2) According to current Agency policy, EPA defines baseline concentration as the ambient concentration levels at the time of the first permit application in an area subject to PSD requirements. Baseline concentration generally includes, inter alia, actual source emissions from existing sources, which are generally estimated from source records and any other information reflecting the actual source operations over the 2-year time period preceding the baseline date. (*See*, 45 FR 52714.) As previously stated EPA has determined, based on the Agency's and Maryland's engineering judgment, the 24-hour baseline to be 58 tons per day at the time of the first permit application.

Another commenter suggested, assuming that PSD increment consumption takes place, that the increment consumption analysis performed by the State of Maryland was done on a conservative, worst case, basis, and that the increment consumption analysis should be recalculated on a "more realistic" basis. EPA responds to this comment as follows: The Agency attempts to make conservative predictions as a result of a very basic procedure found in EPA guidance which applies to all modeling

applications. When approaching a regulatory modeling problem, the first step is to perform a screening analysis. Such analysis is designed to be of a simple nature and conservative, in order to avoid having to perform very sophisticated and costly analysis when not warranted. However, if the results of a screening analysis indicates problems, then a more sophisticated ("refined") analysis can be performed for the purpose of accurately predicting ambient air impacts.

EPA considers screening procedures to be essential for long range transport applications (which was the case in determining Westvaco's potential PSD impacts). The reason for this is two-fold:

1. There is no refined model approved for general use (i.e., a "guideline model") that applies to long range transport situations.

2. These sophisticated models that do exist for long range transport are enormously resource-intensive.

Thus, EPA concluded that the conservative screening analysis performed to determine Westvaco's impact on increment consumption was appropriate. However, recognizing the fact that the amount of increment consumption predicted was based on a very conservative screening technique, a new source entering the area would be free to re-model the situation. All sources, including the source under consideration, should be modeled with as sophisticated an approach as would be needed to demonstrate that the Class I increments would not be violated. The approach taken could be the same as was performed in the Westvaco case or one could use some other conservative screening technique but which is less conservative than the original screen (e.g., use of the same models but this time accounting for pollutant decay), or finally one could use a sophisticated long range transport model.

Two commenters raised the issue that the proposed SO_2 emissions limit constitutes a "major modification", and therefore should undergo a full PSD analysis. EPA has determined that the proposed emissions increase would not constitute a "major modification", as the August 7, 1980 regulations, 45 FR 52698, do not treat this type of change as a physical change or a change in the method of operation. According to the preamble of the August 7, 1980 regulation, a physical change or change in the method of operation shall not include "a switch to a fuel or raw material which the source was capable of accommodating before January 6, 1975, so long as the switch would require no change in any preconstruction permit condition established after the date under the SIP" (as was true in this case).

EPA also received comments pertaining to this SIP revision which concerns issues other than PSD. One commenter suggested that there should be more of an evaluation of available low-sulfur fuel technology to determine if an SO_2 emissions relaxation is necessary.

Response: The Clean Air Act provides that States shall set emissions limitations which ensure attainment of the NAAQS and protection of all applicable PSD increment. The control strategy demonstration submitted by Maryland on behalf of Westvaco adequately supports the conclusion that the SO_2 emissions relaxation will not result in NAAQS violations.

Since the revised SO_2 emissions limitation is not considered a "major modification" and therefore not subject to a full PSD analysis, there is no best available control technology (BACT) requirement that the source must meet. As long as the State has adequately demonstrated that the revised SO_2 emissions limit will not result in any violations of the SO_2 NAAQS or any applicable PSD increment (as was done in this case), the State may request an SO_2 emissions relaxation as a revision to its SIP.

One commenter questioned whether the modeling which supports the Westvaco consent order assumed maximum allowable emissions and worst case meteorological conditions. The commenter also questioned whether certain property on which air quality monitors are located is currently owned by the company. EPA has determined that the property in question is presently owned by the company. EPA has also determined that the LUMM modeling did assume maximum allowable emissions and worst case meteorological conditions, and that the modeling adequately demonstrated that no ambient air violations of the SO_2 standard are likely to occur under those conditions.

Another commenter also submitted comments stating that the July 2, 1984 notice of proposed rulemaking did not adequately address the issue of the "potentially severe" economic impact of this proposed SIP revision in portions of West Virginia such that a reader of this notice could determine that such an impact might exist. EPA responds that based on the above discussion, it is the Agency's opinion that the results of the increment consumption analysis performed does not pose a significant threat to the future growth or industry in West Virginia.

Stack Height Determination

As EPA explained in its notice of proposed rulemaking, Westvaco's emission limitations are affected by credit for the company's stack height. Portions of EPA's stack height regulations were overturned by the U.S. Court of Appeals for the D.C. Circuit. *Sierra Club* v. *EPA*, 719 F.2d 436 (1983).

In response, EPA proposed revised stack height regulations on November 9, 1984. (49 FR 44878) The stack height credit used in establishing the Westvaco emission limits is consistent with this proposal. However, these emission limits will be reviewed for consistency after EPA's new stack height regulations are promulgated.

EPA Actions

In view of the above evaluation, as well as EPA's determination in the Notice of Proposed Rulemaking, 49 FR 27177 (1984), that the modeling analysis submitted by Maryland is adequate to justify both protection of the SO_2 NAAQS and protection of the applicable PSD increments, EPA approves Maryland's Consent Order for the Westvaco Corporation as a revision of the Maryland SIP. In conjunction with the Administrator's approval, this notice revises 40 CFR 52.1070 (Identification of Plan) of Subpart V (Maryland) to incorporate this Consent Order into the Maryland SIP.

General

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 19, 1985. This action may not be challenged later in proceedings to enforce its requirements (see Section 307(b)(2)).

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

List of Subjects in 40 CFR Part 52

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

(42 U.S.C. 7401–7642)

Dated: December 14, 1984.

William D. Ruckelshaus,

Administrator.

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

PART 52—[AMENDED]

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

Subpart V—Maryland

Section 52.1070 is revised by adding paragraph (c)(74) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(74) A Consent Order granting the Westvaco Corporation a sulfur dioxide (SO_2) emissions limitation which is equivalent to COMAR 10.18.09.07(A)(1)(a); submitted on September 7, 1983, as amended on February 7, 1984 by the Maryland Air Management Administration.

[FR Doc. 84-33112 Filed 12-19-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[Region II Docket No. 43; A-2-FRL-2740-3]

Approval and Promulgation of State Implementation Plans; Revision to the New York State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces the Environmental Protection Agency approval of a revision to the New York State Implementation Plan concerning a "special limitation" (variance) issued by the State to the Long Island Lighting Company (LILCO). The "special limitation" permits LILCO to continue using fuel oil with a maximum sulfur content of 2.8 percent, by weight, for two years in units 1, 2, and 3 of its Northport generating facility and in units 3 and 4 of its Port Jefferson generating facility. The sulfur content of the fuel oil permitted to be burned in these units during the third year of this variance will be reduced to 2.0 percent, by weight. The current fuel oil sulfur content regulatory limitation is 1.0 percent, by weight. The State's submittal, extending a current "special limitation," allows the use of up to 2.8 percent sulfur content fuel oil during the period from September 25, 1984 until September 24, 1986; and up to 2.0 percent sulfur content fuel oil to be used from September 25, 1986 until December 31, 1987.

EFFECTIVE DATE: This action is effective on December 20, 1984.

ADDRESSES: All correspondence, comments and other written submissions pertaining to this action, including documents referenced in this notice, are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Air Programs Branch, Region II Office, 26 Federal Plaza, Room 1005, New York, New York 10278

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

Office of the Federal Register, Room 8401, 1100 L Street, NW., Washington, D.C. 20406.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION: On August 21, 1984, New York State submitted to the Environmental Protection Agency (EPA) a proposed revision to its State Implementation Plan (SIP) concerning a "special limitation" issued by the State under the provisions of Part 225.2 of Title 6 of its Official Compilation of Codes, Rules and Regulations. This "special limitation" allows the continued use by Long Island Lighting Company (LILCO) of fuel oil with a maximum sulfur content of 2.8 percent, by weight, for two years, in units 1, 2, and 3 of the Northport generating station, and in units 3 and 4 of the Port Jefferson generating station. The maximum sulfur content of the fuel oil permitted to be burned in these units during the third year of this variance will be reduced to 2.0 percent, by weight.

New York State regulations normally limit fuel oil sulfur content at these units to a maximum of 1.0 percent; however, under an EPA approved "special limitation" higher sulfur content fuel oil has been burned at these units since July 20, 1976. The most recent "special limitation" issued by the State would allow the use of up to 2.8 percent sulfur content fuel oil from September 25, 1984 until September 24, 1986 and up to 2.0 percent sulfur content fuel oil from September 25, 1986 until December 31, 1987. The last EPA approved "special limitation" expired on September 24, 1984.

EPA reviewed the technical material submitted by New York State along with the proposed SIP revision request and concurred with the State's determination that no violation of national ambient air quality standards would occur at any location in any state. Also, since the emission levels associated with the burning of 2.8 percent sulfur content fuel oil were included in the "baseline," as defined in EPA's Prevention of Significant Deterioration regulations, no increment would be consumed as a result of the continued use of 2.8 percent sulfur content fuel oil. Based upon this review and EPA's own analysis of the technical material submitted, EPA proposed to approve the New York SIP revision on August 22, 1984 (45 FR 33286). In that Federal Register notice of proposed rulemaking EPA advised the public that comments received on or before September 22, 1984 would be considered in the Administrator's final decision. No public comments were received.

Good Engineering Practice Stack Height Discussion

Portions of the stack height regulations promulgated on February 8, 1982 (47 FR 5864) have been overturned by the U.S. Court of Appeals for the District of Columbia Circuit, *Sierra Club v. EPA* 719 F.2d 436 (1983) *cert. denied*, 52 U.S.L.W. 3929 (U.S. July 2, 1984). In response, EPA published proposed revised stack height regulations on November 9, 1984 (49 FR 44878). EPA has determined that the action taken today is consistent with the proposed revised stack height regulations.

Four of the units affected by today's action, Northport Units 1 and 2 and Port Jefferson Units 3 and 4, were in operation prior to 1971 and are, therefore, exempt from the proposed revisions to the stack height regulations. The two stacks associated with Northport Units 3 and 4 were not completed prior to 1971. Therefore, a GEP formula stack height (2.5H) was used to calculate stack height for dispersion modeling purposes. Since the building height associated with these stacks is less than the width, the H+1.5L formula height is equivalent to the 2.5H formula. Although this determination of GEP stack height has been calculated in accordance with the proposed stack height regulations, this action will be re-evaluated for consistency with the final stack height regulations when promulgated.

In the interest of expediting federal review, EPA proposed approval of this SIP revision before final submittal of the revision to EPA by New York. EPA refers to this procedure as "parallel processing". New York's final submittal revised the three year sulfur in fuel oil variance from allowing the use of up to 2.8 percent sulfur content fuel oil for three years to allowing its use only from September 25, 1984 to September 24, 1986 with 2.0 percent, by weight, fuel oil to be burned from September 25, 1986

until December 31, 1987. Since this revision is more restrictive than proposed, a revised notice of proposed rulemaking is not required.

This action is being made immediately effective because it is a substantive rule which grants an exemption or relieves a restriction, it imposes no hardship on any affected sources, and no purpose would be served by delaying its effective date.

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

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

List of Subjects in 40 CFR Part 52

Air pollution control, Sulfur oxides, Incorporation by Reference.

(Secs. 110 and 301 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7600))

Dated: December 13, 1984.

William D. Ruckelshaus,

Administrator, Environmental Protection Agency.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Subpart HH—New York

Section 52.1670, paragraph (c) is amended by adding a new paragraph (c)(71) as follows:

§ 52.1670 Identification of plans.

* * * * *

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

* * * * *

(71) Revision submitted on August 21, 1984 by the New York State Department of Environmental Conservation which grants a "special limitation" establishing, until September 24, 1986 from [the date of today's publication], a maximum sulfur-in-fuel-oil limitation of 2.8 percent, by weight, and from September 25, 1986 until December 31, 1987 a sulfur-in-fuel-oil limitation of 2.0 percent, by weight, for the Long Island Lighting Company's Northport generating facility, units 1, 2 and 3, and the Port Jefferson generating facility, units 3 and 4.

[FR Doc. 84-33115 Filed 12-19-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[Region II Docket No. 39; A-2-FRL-2740-2]

Approval and Promulgation of Implementation Plans; Revision to the Commonwealth of Puerto Rico Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces that the Environmental Protection Agency (EPA) is revoking a rule promulgated by EPA as part of the Commonwealth of Puerto Rico's Implementation Plan. The promulgated rule made it clear that certain specific actions taken by the Commonwealth's Environmental Quality Board (EQB) are to be submitted to EPA as implementation plan revisions. Today's action is being taken because EPA believes that it is not now practical to identify generic categories of EQB actions which should or should not require EPA approval as implementation plan revisions.

EFFECTIVE DATE: This action is effective on December 20, 1984.

ADDRESSES: A copy of EPA's original action, EPA's proposal to revoke the rule, and comments received during EPA's public comment period are available for inspection during normal business hours at the following locations:

Environmental Protection Agency, Air Programs Branch, Room 1005, Region II Office, 26 Federal Plaza, New York, New York 10278

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

Office of the Federal Register, Room 8401, 1100 L Street, NW., Washington, D.C. 20408.

FOR FURTHER INFORMATION CONTACT: Warren H. Llewellyn, Chief, Air Branch, Office of Regional Counsel, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278, (212) 264-8181.

SUPPLEMENTARY INFORMATION:

Background

On November 3, 1980 (45 FR 72655) the Environmental Protection Agency (EPA) published its approval of a revision to the Commonwealth of Puerto Rico's Implementation Plan. The revision consisted, in part, of a recodification of the Commonwealth's "Regulation for the Control of Atmospheric Pollution" (the Regulation). Under certain provisions of the Regulation, the Puerto Rico Environmental Quality Board (EQB) is authorized under various circumstances to take action to establish, alter or vary emission limitations or compliance dates set forth in the Regulation.

In its November 3, 1980 action, EPA promulgated a rule, 40 CFR 52.2732, which reiterated the Agency's general view that actions of a state which modify the provisions of an applicable implementation plan are required to be submitted to EPA by the state for approval as plan revisions. In its preamble to that action, EPA attempted to identify certain provisions of the Regulation granting EQB authority which, if exercised, would result in actions subject to the implementation plan revision process.

Because of the lack of general criteria as to what constitutes implementation plan changes subject to EPA approval, and because the list of affected provisions of the Regulation did not purport to be exclusive, EPA received comments from EQB and others stating that its effort to restate a general policy and provide guidance had, instead, created additional confusion for EQB and for sources located within Puerto Rico. Therefore, upon reconsideration, EPA published a notice of proposed rulemaking on February 18, 1981 (48 FR 5139), proposing to revoke 40 CFR 52.2732. The reader is referred to the February 18, 1981 notice for additional discussion of the reasons underlying today's action.

In its February 18, 1981 proposal, EPA advised the public that comments would be accepted as to whether the proposed revocation of 40 CFR 52.2732 should be approved or disapproved. During the comment period, which ended on April 20, 1981, EPA received two comments which are discussed later in today's notice.

Today's action finalizes the February 18, 1981 proposal revoking 40 CFR 52.2732 and withdrawing the preamble listing of certain regulatory provisions which would be subject to this provision. This does not mean, however, that all actions taken by EQB under the Regulation are to be exempted from the implementation plan revision process. EPA remains responsible, under the Clean Air Act, for ensuring that the Puerto Rico Implementation Plan provides for the attainment and maintenance of national standards. EPA will continue to work with the EQB to help identify those particular EQB

actions which require EPA approval as implementation plan revisions. EPA is also willing to discuss with EQB and with individual sources, on a case-by-case basis, the need for EPA approval of any particular action to be taken by EQB. Finally, EPA will make every effort to promptly review and act on all EQB actions submitted as implementation plan revisions.

EPA's revocation of 40 CFR 52.2732 will not affect the approval status of the Puerto Rico Implementation Plan, nor will it alter the requirements regarding plan revisions set forth at 40 CFR 51.6 and 51.34.

Discussion of Comments Received

EPA received two comments, one from the Commonwealth of Puerto Rico Environmental Quality Board, the other submitted jointly by the Puerto Rico Manufacturers Association (PRMA) and Union Carbide Caribe, Inc. (UCCI). Although both comments supported EPA's proposed revocation of 40 CFR 52.2732 and withdrawal of the preamble listing of affected regulatory provisions, each did raise the following specific concerns.

While EQB expressly agreed with EPA's proposed revocation and withdrawal, as set forth in the February 18, 1981 proposal, it did express its concern that the language of the notice is an expression of EPA's continuing intention to impose those standards set forth in 40 CFR 52.2732 and in the November 3, 1980 preamble on EQB's exercise of discretionary authority.

It was EPA's sole intention in its 1980 rulemaking to restate its general policy regarding the necessity for a state to submit to EPA, as proposed revisions to its implementation plan, variances granted by that state. This 1980 restatement of policy did not represent a departure from previous policy. *See* CFR 51.34 and 51.6.

Certainly, EPA did not intend this restatement of policy to create any additional uncertainty or confusion for EQB or the regulated community. EPA recognizes that there may be actions of limited duration where it is not practical for the action to be submitted as an implementation plan revision. Moreover, EPA does not intend to intervene in the affairs of the Commonwealth to any extent beyond that which is required under the Clean Air Act. And, as stated earlier, EPA is willing to work both with EQB and potentially affected sources to identify those particular EQB actions which should be submitted to EPA as implementation plan revisions.

Similarly, those comments submitted jointly by PRMA and UCCI express their mutual concern that EPA's policy limits EQB's ability to exercise its discretionary authority under its existing implementation plan. While EPA agrees that the Clean Air Act provides a state with maximum flexibility to carry out its implementation plan, EPA remains responsible under the statute for ensuring that a state plan provides for the attainment and maintenance of national air quality standards. To the extent that this statement, in conjunction with EPA's general statement of policy, as set forth earlier, creates confusion for the regulated community, EPA is willing to work with both EQB and the regulated community to discuss the application of this policy to concrete factual situations. While the identification of an exhaustive list of all possible actions by the Commonwealth of Puerto Rico under its Regulation which would or would not require an implementation plan revision might alleviate any confusion on the part of the EQB and the regulated community, EPA does not believe it is possible to develop such a list at this time.

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

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

List of Subjects in 40 CFR Part 52

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

Incorporation by reference of the Implementation Plan for the Commonwealth of Puerto Rico was approved by the Director of the Office of Federal Register on July 1, 1982.

(Secs. 110 and 301, Clean Air Act, as amended (42 U.S.C. 7410 and 7610))

Dated: December 14, 1984.

William D. Ruckelshaus,

Administrator, Environmental Protection Agency.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Subpart BBB—Puerto Rico

§ 52.2732 [Removed]

Section 52.2732 is removed.

[FR Doc. 84-33114 Filed 12-19-84; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 65

[A-5-FRL-2738-1]

Approval of Delayed Compliance Order Issued by the Michigan Department of Natural Resources to Barker and Sons Finishing Company, Inc.

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: The Administrator of the USEPA hereby approves a Delayed Compliance Order (DCO) issued by the Michigan Department of Natural Resources to Barker and Sons Finishing Company, Inc. The Order requires the company to bring Volatile Organic Compound (VOC) emissions from its spray painting operations into final compliance with the limits established by Michigan Administrative Code 1980 AACS, R336.1621, part of the federally approved Michigan State Implementation Plan (SIP).

EFFECTIVE DATE: This final rulemaking becomes effective on December 20, 1984.

FOR FURTHER INFORMATION CONTACT: Maggie Greene, U.S. Environmental Protection Agency, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6029.

SUPPLEMENTARY INFORMATION: On September 25, 1984, the Regional Administrator of USEPA's Region V office published in the **Federal Register** (49 FR 37646) a notice proposing to approve a DCO issued by the Michigan Department of Natural Resources to Baker and Sons Finishing Company, Inc. The notice asked for public comments by October 25, 1984. No public comments were received in response to the notice. Therefore, effective this date, the DCO issued by the Michigan Department of Natural Resources to Barker and Sons Finishing Company, Inc. is approved by the Administrator of USEPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order requires final compliance by June 30, 1985, with emission limits of 3.5 pounds of VOC per gallon of coating, as applied, for extreme performance and air-dried coatings, and 3.0 pounds of VOC per gallon of

coating, as applied, for all other coatings.

USEP's criteria for approval of DOC's are set forth in Section 113(d) of the Clean Air Act (the Act), as amended August 1977, and in an April 26, 1983, memorandum from Kathleen M. Bennett who, at the time, was the Assistant Administrator for Air, Noise and Radiation. USEPA evaluated the Order using these criteria and determined that it meets all the criteria as set forth below.

1. The Order must require final compliance as expeditiously as practical but no later than July 1, 1979, or 3 years after the date for final compliance specified in the SIP, whichever is later. The DCO requires compliance by June 30, 1985. This is within 3 years of the final compliance date of December 31, 1983, specified in the Michigan SIP.

2. The Order must include reasonable requirements for monitoring and reporting. The DCO requires monthly reports documenting the quantity and VOC content of coatings used at the facility.

3. The Order must include reasonable and practicable interim controls. The DCO stipulates that, after the effective date of the Order and until June 30, 1985, the VOC emissions from the spray painting operations shall not exceed 5.8 pounds of VOC per gallow of coating, minus water as applied for extreme performance and air-dried coatings, and 5.2 pounds of VOC per gallon of coating, minus water, as applied for all other coatings.

4. The Order must include a finding that the source is currently unable to comply with the SIP requirements. The DCO contains such a finding.

5. Notice and opportunity for a public hearing must be provided. A public hearing was held on March 20, 1984.

6. The Order must include a schedule for compliance. The DCO includes a schedule which contains increments of progress as specific in 40 CFR Section 51.1(q).

7. If the Order is for a major source, it must notify the source of its possible liability for noncompliance penalties under Section 120 of the Act. This is provided for in the DCO.

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

List of Subjects in 40 CFR Part 65

Air pollution control.

This notice is issued under authority of Section 113 of the Clean Air Act, as amended (42 U.S.C. 7413 and 7601).

Dated: December 13, 1984.

William D. Ruckelshaus

Administrator.

PART 65—DELAYED COMPLIANCE ORDERS

In consideration of the foregoing, Chapter 1 of Title 40 of the Code of Federal Regulations is amended as follows:

§ 65.271 [Amended]

By adding the following entry to the table in § 65.271—USEPA Approval of State Delayed Compliance Orders issued to major stationary sources.

Source	Location	Order No.	Date of FR proposal	SIP regulation involved	Final compliance date
Barker and Sons Finishing Co., Inc.	Otsego, Michigan		Sept. 25, 1984	Code 1980 AACS R336.1621	June 30, 1985.

[FR Doc. 84-33110 Filed 12-19-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 65

[A-5-FRL-2738-2]

Delayed Compliance Orders; Approval of a Delayed Compliance Order Issued by the Michigan Department of Natural Resources to Chrysler Corp., Warren Truck Plant

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: The Administrator of the USEPA hereby approves a Delayed Compliance Order (DCO) issued by the Michigan Department of Natural Resources to Chrysler Corporation in Warren, Michigan. The Order requires the company to bring particulate matter emissions from Boilers 1, 2, 3, 4, and 5 into final compliance with the limits established by Michigan Administrative Code 1980 AACS, R336.1331, part of the federally approved Michigan State Implementation Plan (SIP).

EFFECTIVE DATE: This final Rulemaking becomes effective on December 20, 1984.

FOR FURTHER INFORMATION CONTACT: Maggie Greene, U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6029.

SUPPLEMENTARY INFORMATION: On September 25, 1984, the Regional Administrator of USEPA's Region V Office published in the **Federal Register** (49 FR 37648) a notice proposing to approve a DCO issued by the Michigan Department of Natural Resources to Chrysler Corporation, Warren Truck Plant. The Order requires the shutdown of Boilers 1 and 2 on July 6, 1984 and final compliance with particulate matter emission limits of 0.30 pounds per 1,000 pounds of exhaust gases by September 1, 1984, January 31, 1985, and November 30, 1984, for Boilers 3, 4, and 5, respectively. The notice asked for public comments by October 25, 1984. No public comments were received. Therefore, effectively this date, the DCO issued by the Mighigan Department of Natural Resources is approved by the Administrator of USEPA pursuant to the authority of Section 113(d) (2) of the Clean Air Act, 42 U.S.C. 7413(d)(2).

USEPA evaluated the Order using criteria set forth in Section 113(d) of the Clean Air Act (the Act), as amended August 1977, and determined that it meets all the requirements as shown below:

1. The Order must include a finding that the source is currently unable to comply with the SIP requirements. The DCO contains such a finding.

2. Notice and opportunity for a public hearing must be provided. A public hearing was held on April 5, 1984.

3. The Order must include a schedule for compliance. The DCO contains a schedule of milestones for compliance for all five boilers. The schedules include plan submittal, contract initiation, start of construction, completion of construction, and final testing.

4. The Order must include reasonable and practicable interim controls. Interim emission reduction measures are included in the Order, consisting of the requirement that only the best controlled boiler be used until compliance is demonstrated for all boilers. The schedule is such that

summer steam demand levels will be low until after installation of the collector is complete for Boiler 3.

5. The Order must include reasonable requirements for monitoring and reporting. The DCO requires continuous opacity monitoring equipment on Boilers 3, 4, and 5. Monitoring data are to be maintained for 2 years. Each year, Method 5, stack testing is to be performed on each boiler and submitted to the MDNR. The company has already installed equipment to monitor opacity in the stacks.

6. The DCO must require final compliance as expeditiously as practicable but no later than July 1, 1979, or 3 years after the date for final compliance specified in the SIP whichever is later. The compliance dates are less than 3 years after the original compliance date of December 31, 1982.

7. If the Order is to a major source, it must notify the source of its possible liability for noncompliance penalties under Section 120 of the Act. The company was notified and acknowledged in the Order their exposure to penalties under Section 120 of the Clean Air Act.

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

List of Subjects in 40 CFR Part 65

Air pollution control.

This notice is issued under authority of Section 113 of the Clean Air Act, as amended (42 U.S.C. 7413 and 7601).

Dated: December 13, 1984.

William D. Ruckelshaus,

Administrator.

In consideration of the foregoing, Chapter 1 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

§ 65.271 [Amended]

By adding the following entry to the table in § 65.271—USEPA approval of State Delayed Compliance Orders issued to major stationary sources.

Source	Location	Order No.	Date of FR proposal	SIP regulation involved	Final compliance date
Chrysler Corp., Warren Truck Plant	Warren, Michigan		Sept. 25, 1984	Code 1980 AACS R336.1331	Jan. 31, 1985.

[FR Doc. 84-33109 Filed 12-19-84; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 81

[A-5-FRL-2740-1]

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

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Notice of final rulemaking.

SUMMARY: This final rulemaking action revises the Total Suspended Particulates (TSP) attainment status designations for a sub-city area of Waukesha, Wisconsin, from primary and secondary nonattainment to secondary nonattainment only, and for a sub-township area of Pacific Township, Wisconsin, from primary and secondary nonattainment to full attainment. These revisions are based on redesignation requests from the Wisconsin Department of Natural Resources (WDNR), dated January 4, 1984, and March 14, 1983, respectively, and on supporting technical data submitted by the Department. Under the Clean Air Act, an attainment status designation can be changed if warranted by the available data. In today's action, USEPA is approving the redesignations as requested by the State of Wisconsin.

DATE: This final rulemaking becomes effective on January 22, 1985.

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

Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 S. Dearborn Street, Chicago, Illinois 60604

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

FOR FURTHER INFORMATION CONTACT: Colleen W. Comerford, (312) 886-6034.

SUPPLEMENTARY INFORMATION:

Waukesha

In the June 5, 1984, **Federal Register** (49 FR 23195), USEPA proposed to revise the attainment status designation of Waukesha from primary and secondary nonattainment to secondary nonattainment for Total Suspended Particulates (TSP). This proposed revision was based on two factors: (1) A January 4, 1984, request from the WDNR to revise the Section 107 attainment status designation for Waukesha; and (2) a March 14, 1983, technical support document containing a summary of the most recent 8 consecutive quarters of TSP ambient air quality data, collected from six monitoring sites and one special purpose monitor located in Waukesha. Additional technical information was provided by the WDNR on September 13, 1983. A detailed discussion of USEPA's proposed approval can be found in the June 5, 1984 notice of proposed rulemaking (49 FR 23195).

USEPA proposed to approve the WDNR's redesignation request because the ambient air monitoring data showed no violations of the primary TSP National Ambient Air Quality Standards (NAAQS) from 1980 to 1983. (However, violations of the secondary TSP NAAQS were recorded at four of the sites during 1980, and at two of the sites during 1981-1983.) In addition, the WDNR supplied verification of the factors contributing to these reduced primary TSP emission levels.

These factors included source shutdowns in the primary nonattainment area, Street paving in both nonattainment areas, and source compliance with the federally approved Part D SIP for TSP (48 FR 9860; March 9, 1983).

Pacific Township

In the July 30, 1984, **Federal Register** (49 FR 30338), USEPA proposed to revise the attainment status designation of Pacific Township from primary and secondary nonattainment to full attainment for TSP. This proposed revision was based on two factors: (1) A March 14, 1983, request from the WDNR to revise the Section 107 attainment status designation for Pacific Township; and (2) a February, 1983, technical support document containing a summary of the most recent 8 consecutive quarters of TSP ambient air quality data, collected from two monitoring sites during 1980-1982. In addition, operating

permits for the two sources located within the nonattainment area were submitted as supplementary information on January 17, 1984. A detailed discussion of USEPA's proposed approval can be found in the July 30, 1984, notice of proposed rulemaking (49 FR 30338).

USEPA proposed to approve the WDNR's redesignation request because the ambient air monitoring data showed no violations of the primary or secondary TSP NAAQS between 1980 and 1982. In addition, the improvement in ambient TSP levels can be attributed to control strategies that have been implemented at the two industrial sources located within the nonattainment area. The effectiveness of the implemented control measures has been verified by the 1980–1982 air quality data, which are representative of current air quality.

Conclusion

During the public comment period, no comments were submitted on either redesignation. Therefore, USEPA takes final action to eliminate the designation of primary nonattainment, to retain the designation of secondary nonattainment, and to reduce the size of the secondary nonattainment area for Waukesha, Wisconsin, for TSP as defined at 40 CFR 81.350. The boundaries of the remaining secondary nonattainment area are given below:

North—Moreland Boulevard east from Frame Park Drive to White Rock Avenue, south on White Rock Avenue to Eales Avenue, east on Eales Avenue to Cleveland Avenue.

East—Cleveland Avenue from Eales Avenue to Perkins Avenue.

South—East Main Street from White Rock Avenue to the Strand, north on the Strand to Perkins Avenue, east on Perkins Avenue from the Strand to Cleveland Avenue.

West—White Rock Avenue from East Main Street to Frame Park Drive, Frame Park Drive from Perkins Avenue to Moreland Boulevard.

USEPA also takes final action to approve the redesignation of a sub-township portion of Pacific Township from primary and secondary nonattainment to full attainment for TSP. Consequently, all of Columbia County is now designated attainment for TSP, as defined at 40 CFR 81.350, and a Part D TSP attainment plan is no longer required for this County. Therefore, USEPA lifts the industrial growth prohibition that was imposed on Columbia County, under Section 110(a)(2)(I) of the Clean Air Act, with this final approval of the Pacific Township redesignation.

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

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

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: December 14, 1984.

William D. Ruckelshaus,

Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

§ 81.350 [Amended]

1. Section 81.350—Wisconsin, the attainment status designation table for Total Suspended Particulates is amended by revising the designations for Waukesha and Pacific Township, Wisconsin, as follows:

WISCONSIN—TOTAL SUSPENDED PARTICULATES (TSP)

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * *	*	*	*	*
AQCR 239:				
* * *	*	*	*	*
Waukesha County: Waukesha Sub-city area defined as follows. North—Moreland Boulevard east from Frame Park Drive to White Rock Avenue, south on White Rock Avenue to Eales Avenue, east on Eales Avenue to Cleveland Avenue. East—Cleveland Avenue from Eales Avenue to Perkins Avenue. South—East Main Street from White Rock Avenue to the Strand, north on the Strand to Perkins Avenue, east on Perkins Avenue from the Strand to Cleveland Avenue. West—White Rock Avenue from East Main Street to Frame Park Drive, Frame Park Drive from Perkins Avenue to Moreland Boulevard.		X		
Remainder of Waukesha County			X	
AQCR 240:				
Columbia County			X	
* * *	*	*	*	*

[FR Doc. 84-33113 Filed 12-19-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR 4 Parts 1 and 61

[CC Docket No. 83-992]

Amendment of the Commission's Rules With Regard to Tariffs

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Commission revised Part 61 and § 1.773 of its rules on tariffs and these revisions became effective November 19, 1984. These revisions contained one cross-reference error which is rectified here.

FOR FURTHER INFORMATION CONTACT: Joanne M. Salvatore, Tariff Division, Common Carrier Bureau (202) 632-6917.

Erratum

In the matter of amendment of Parts 1 and 61 of the Commission's Rules (CC Docket No. 83-992).

Released: December 11, 1984.

§1.773 [Corrected]

1. The Report and Order on the above-captioned amendment of the Commission's Rules (FCC 84–353, released October 9, 1984, 49 FR 40858, October 18, 1984) contained an erroneous cross-reference in § 1.773(b)(1)(iv), 47 CFR 1.773(b)(1)(iv) located in Appendix B. The reference to (a)(1)(i)–(iii) should be replaced by (a)(2)(i)–(iii).

Federal Communication Commissions.

Albert Halprin,

Chief, Common Carrier Bureau.

[FR Doc. 84–33057 Filed 12–19–84; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 22

[Gen. Docket No. 81–768; FCC 84–596]

Amendment of the Commission's Rules To Allow the Selection From Among Certain Applications Using Random Selection or Lotteries Instead of Comparative Hearings

AGENCY: Federal Communications Commission.

ACTION: Reconsideration of final rule.

SUMMARY: This document considers several petitions for reconsideration that were filed in response to the adoption of rules that authorized the use of lotteries as a method to choose from among certain competing initial applicants for telecommunications licenses. This document generally affirms the earlier rules. Two significant changes made by this document are the recognition of statutory authority to conduct tie-breaker lotteries on an *ad hoc* basis and provision for selection between lotteries and comparative hearings in certain common carrier land mobile licensing situations.

EFFECTIVE DATE: January 22, 1985.

FOR FURTHER INFORMATION CONTACT: Randy W. Thomas, Office of General Counsel, Federal Communications Commission, Washington, D.C. 20554, (202) 632–6990.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 22

Mobile radio service.

Memorandum Opinion and Order

Adopted: December 3, 1984.
Released: December 4, 1984.

By the Commission: Commissioners Fowler, Chairman; and Patrick concurring and issuing separate statements at a later date; Commissioner Rivera concurring in the result.

I. Introduction and Background

1. The Commission has before it a number of petitions [1] seeking reconsideration or clarification of our *Second Report and Order* which authorized the use of random selection or lotteries to choose from among certain competing applicants. *Second Report and Order*, Gen. Docket No. 81–768, 93 FCC 2d 952 (1983), 48 FR 27182 (June 13, 1984); *Erratum*, 48 FR 34039 (July 27, 1983); *Order Granting Stay of § 22.23(a)*, FCC 83–378, released August 9, 1983.

2. The *Second Report* was a broad-ranging document that for the first time in Commission history authorized the use of random selection in lieu of comparative hearings to select initial licensees. Lottery rules were adopted for the low power television service [2] in the Mass Media Bureau; in private land mobile operational fixed microwave, aviation and maritime services in the Private Radio Bureau; and in public land mobile (except cellular radio) in the Common Carrier Bureau.[3]

3. A significant portion of the *Second Report* involved issues relating to the use of lotteries in the low power television service. Due to the lottery statute's requirement that preferences be given to applicants in any case where lotteries are used to allocate licenses in the mass media service, preferences were established for low power applicants as follows:

(a) Applicants more than 50% controlled by minorities (a 2:1 preference);

(b) Applicants whose owners control no other media of mass communcations (a 2:1 preference); and

(c) Applicants whose owners control 1, 2 or 3 other media of mass communications (a 1.5:1 preference).[3a]

4. In the Private Radio Services it was determined that lotteries will only be used in the subject services where a determination has been made that it would be in the public interest. For example, in the private land mobile services, lotteries will be used among competing applicants only if there are no material differences in competing applicants' abilities to serve the public interest.

5. The *Second Report* established lottery procedures in the common carrier public mobile service (except cellular). The Rules promulgated by the *Second Order* permit lotteries to be used both for expansion of existing systems and for initiation of new systems.

6. The petitions for reconsideration of the *Second Report* raise a number of issues concerning the implementation and operation of the Commission's lottery licensing authority. In the mass media area, the minority preference is questioned by some as being unconstitutional and by others as not being a "significant" preference. It is asserted that the diversity preference is unconstitutional and is not sensitive enough to distinguish between different types of media interests. One mass media petitioner seeks modification or waiver of the lottery rules in instances where a financially troubled UHF television station seeks translator authorization to fill out its predicted coverage area. Existing low power licensees argue that existing LPTV stations that get "bumped" due to the start up of a full power station should not be required to compete in a lottery for a new frequency assignment.

7. In the private radio area, petitioners seek clarification of the cut-off and application procedures. In addition, petitioners argue that certain private radio services, *e.g.*, maritime radio common carrier, public safety and special emergency, and radio location services, should not be subject to a lottery. It is also argued that expansion channels for existing systems may be subject to competition from "gamblers" who are merely interested in a "sporting opportunity" to obtain license authority. Public safety petitioners object to language in the *Second Report* that indicates that lotteries may be used for making grants between competing public safety applicants.

8. Common carrier petitioners argue that lotteries should not be used in situations where land mobile licenses seek to expand existing systems. One petitioner seeks elimination of a Part 22 Rule which, it is argued, would make it difficult to amend applications. This latter concern was addressed by the Commission subsequent to the issuance of the *Second Report. See Order Granting Stay*, FCC 83–378, Released, August 9, 1983.

9. Finally, reconsideration is sought of the erratum that corrected a number of errors contained in the regulations accompanying the *Second Report. See*

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[1] *See* Appendix A for the list of petitioners.

[2] All references to "low power" or "LPTV" include television translators, except when otherwise stated.

[3] In late 1983, the Commission proposed to use lotteries as a method of allocating cellular licenses in the markets below the top—30. *Notice of Proposed Rule Making*, CC Docket No. 83–1096, 48 FR 51493 (November 9, 1983).

[3a] The issue of preferences for women applicants in the mass media services subject to a lottery is the subject of a separate, pending proceeding. *Third Notice of Proposed Rule Making*, Gen. Docket No. 81–768, 48 FR 49069 (Oct. 24, 1983).

Final Rule Correction, 48 FR 34039 (July 27, 1983).

10. These broad issues as well as other more narrowly-focused issues raised by petitioners will be discussed in the context of their relevant service areas below. Where appropriate, this Order will also discuss minor rule changes that appear warranted based upon the pleadings before us and our own experience with the lottery rules.

II. Tie-Breaker Lotteries

11. In the *Second Report* we interpreted the lottery statute as conferring upon the Commission authority to conduct the use of *ad hoc* lotteries in tied cases. *Second Report* at 27185. Nevertheless, we declined to implement tie-breaker lotteries at that time because the matter was deemed to deserve further study. *Id.*

12. Upon further reflection of this interpretation during our overall review of this Docket, we have decided, *sua sponte*, to revisit this issue. It is now our view that the new lottery statute was not intended to apply to the deadlock or tie-breaker situation. This view is supported by the language used by Congress in both the initial and revised lottery statutes. Both statutes and their legislative histories are replete with references to the use of "a *system* of random selection."[4] (emphasis added). The term "system" denotes an "orderly combination or arrangement, as of particulars, parts, or elements into a whole . . . ." Black's Law Dictionary 1621 (4th ed. rev. 1968). Thus a random selection system is not being employed when a lottery is not contemplated at the outset of a proceeding and is used only as a last resort to resolve a deadlocked comparative proceeding.

13. In the *Second Report*, the systematic use of lotteries for certain specific services in the mass media, common carrier and private radio areas was implemented as a substitute for comparative hearings. This is in sharp contrast to the occasional *ad hoc* use of a lottery as an instrument of last resort to resolve a comparative hearing after there is a record finding that there are no material differences between the applicants. Indeed, if the new statute governed tie-breaker situations, it could create the anomalous result of according diversity or minority preferences in a lottery, even though the Commission after a full hearing applied such preferences in finding the rival applicants equally qualified.

14. Without apparent authority under the new legislation to conduct a lottery in a tie-break situation, the question is whether our general public interest authority supports such a result.[5] Section 309 of the Act describes in general terms the procedures that the Commission should use for dispensing telecommunications licenses. A public interest, necessity and convenience finding is necessary before any license may be granted. 47 U.S.C. 309(a). And a "full hearing" is required in the case of contested applications. 47 U.S.C. 309(e).

15. The term "full hearing" has been traditionally held to require a comparison between competing mutually exclusive applicants. *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945). The Commission's selection of applicants in a comparative proceeding must be a reasoned decision that, based upon relevant comparative criteria, selects the best applicant. *Johnston Broadcasting Co. v. FCC* 175 F.2d 351 (D.C. Cir. 1949). For the Commission to make a strained or arbitrary decision within the context of a comparative hearing, when it cannot make a rational distinction between the applicants, would be inconsistent with the Administrative Procedure Act ("APA"), which requires reasoned decision making and rationality as the hallmark of administrative law and procedure. 5 U.S.C. 706(2)(A). Due to the mathematical equality of opportunity inherent in a pure lottery, we view the use of lotteries as a fair and reasonable decisionmaking device if the applicants are in true equipoise on comparative factors. In this manner, the objectives of both the Communications Act and the Administrative Procedure Act can be harmonized because each applicant will have an equal chance of winning and no one will be harmed by an arbitrary choice on the merits.

16. It is our view that in a legitimate "tie" situation, use of a lottery would not contravene the section 309 requirements. In reaching this result, the Commission could conclude that on the record evidence before it there were either no differences of decisional significance between the applicants, or the differences between the applicants weighed equally in each of their favor. In effect, such a situation would leave the Commission no choice but to conduct a lottery or other type of tie-breaker to avoid arbitrary or capricious action. *See, e.g., MCI Cellular Telephone Company*, FCC 84-61, Mimeo No. 34321, para. 57 (released March 6, 1984).

17. Finally, in our view, there are no legal or procedural grounds for delaying the use of a tie-breaker lottery in an appropriate proceeding. It is well established that an administrative agency can implement new policy either by administrative rule or in the context of *ad hoc* adjudication. *SEC v. Chenery Corp.* ("*Chenery II*"), 332 U.S. 194 (1947). Applying a lottery at the end of a comparative hearing without prior notice would not be prejudicial because the applicants will have had ample opportunity to present all of their evidence and arguments to show that they were the best qualified applicant.[6] Although not required as a matter of law, the Commission may choose to follow prior practice and allow the parties to comment on the proposed use of a lottery or other alternative tie-breaker approaches. *See, e.g., Alexander S. Klein, Jr.*, FCC 79-401 (released August 3, 1979).

18. In sum, we view the Commission's mandate to "encourage the larger and more effective use of radio in the public interest" as ample authority for the use of *ad hoc* lotteries. 47 U.S.C. 303(g); *National Broadcasting Co. v. United States*, 319 U.S. 190, 216 (1943). Additionally, the Commission is given wide latitude to "conduct its

[4] With regard to the 1982 revision, *see* 47 U.S.C. 309(i)(1), (3)(A) and (4)(A) and H.R. Rep. No. 765, 97th Cong., 2d Sess. 37, 40 and 46 (1982). The 1981 version of subsection 309(i), Pub. L. No. 97-35, contained three references to "a system of random selection." 47 U.S.C. 309(i)(1), (3)(A) and (4)(A).

It is a cardinal rule of statutory construction that each word within a statute should be given independent meaning and effect. *Wilkinson v. Leland*, 27 U.S. (2 Pet.) 627, 662 (1829); *American Radio Relay League v. FCC*, 617 F.2d 875, 879 (D.C. Cir. 1980); 2A C. Sands, Sutherland Statutory Construction, section 46.06 (rev. 3d ed. 1973).

[5] The lottery legislation did not purport to preempt our residual authority to use a lottery pursuant to our public interest mandate. In addition, the Commission's inherent authority to use lotteries should not be considered undermined because it has "long hesitated" and eventually sought Congressional authority for the systematic use of lotteries. *See United States v. Southwestern Cable Co.*, 392 U.S. 157, 170-71 (1968).

[6] As noted in *MCI Cellular Telephone Company, supra*, we believe that it is appropriate for Administrative Law Judges to certify that the ultimate choice among applicants should be made randomly where two or more applicants are tied. However, we also believe that such a determination should be made only after completion of a full evidentiary hearing and preparation of an initial decision containing findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record, as required by the Administrative Procedure Act, 5 U.S.C. 557. In reaching the ultimate conclusions, we contemplate that an ALJ would provide a reasoned analysis supporting the determination that two or more of the applicants are tied and then certify the case as appropriate for utilization of a lottery. Any party objecting to this action would be free to file exceptions to the initial decision, as provided by §§ 1.276 and 1.277 of our Rules, directly with the Commission notwithstanding §§ 0.361 and 0.365 of our Rules. If no exceptions are filed, a random selection would be promptly made by lottery without consideration in Mass Media Services cases of any preference accorded by § 1.122 of our Rules.

proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice." 47 U.S.C. 154(j). We believe that the public interest could best be served by using lotteries to resolve tied cases and therefore speed new service to the public and save both the Commission's and the public's time and resources.

III. Mass Media Services

19. Several petitioners seek reconsideration of the preference system that was adopted by the *Second Report*. SIN, Inc. and Affiliated Low Power Television Applicants ("SIN") "urge the Commission to alter its lottery preference scheme to provide the 'significant preference' to minority applicants which the revised statute" requires. Petition at pp. 1–2. SIN argues that the 2:1 fixed relative minority preference adopted in the *Second Report* does not comport with the lottery statute [7] which requires a "significant preference" for minority controlled applicants. 47 U.S.C. 309(i)(3)(A). Furthermore, SIN asserts that the 2:1 lottery preference for minorities reduces the likelihood that minorities will prevail in a lottery selection as compared to a traditional comparative hearing.

20. SIN takes issue with the minimum forty per cent diversity preference for all eligible applicants in a given pool of competitors, as compared to the minority preference which is not subject to adjustment to a certain minimum or floor. It is argued that this diversity preference adjustment further dilutes the effect of the minority preference. We are urged by SIN to increase the minority preference from its current 2:1 level to some level that will provide a more meaningful preference.

21. Neighorhood TV Company ("Neighborhood") claims that the minority preference is "absolute" and detrimental to other applicants who are ineligible for the minority preference. Petition at pp. 3, 12 and 13. Petitioner Neighborhood asserts that the lottery preference system is unconstitutional as it allegedly violates the equal protection aspect of the Fifth Amendment's Due Process Clause. It is argued that the minority preference is unsupported by findings of prior discrimination in the telecommunications field, that a minority preference will not necessarily increase the diversity of information and, in any event, the use of a minority preference in the lottery selection system is contrary to the public interest.

[7] 47 U.S.C. 309(i)(3)(A).

22. International Broadcasting Network ("IBN") questions the diversity preference given in mass media lotteries. IBN contends that the Commission's diversity preference fails to distinguish between different types of media ownership interests.[8] IBN suggests that the Commission should exclude the first fifteen translator and low power TV stations from counting against an applicant when computing the diversity preference. Finally, IBN contends that the lottery statute is "constitutionally infirm." Petition at p. 4.

23. Greater Williamette Vision, Ltd. ("GWV") urges the Commission to modify the lottery rules or exempt from the lottery selection process those new, financially troubled UHF–TV stations that need translator facilities to fill out their predicted contour coverage. GWV asserts that it needs translator service to fill-in its authorized coverage area and that in applying for a translator it should be given a conclusive preference or at least it should not be disfavored in a lottery situation.[9]

24. Bahia Honda, Inc., Los Cerezos Television Company, Graciela Olivarez, Seven Hills Television Company, Spanish International Communications Corporation and Las Tres Campanas Television Company ("Joint Petitioners") seek reconsideration of the *Second Report* on the ground that it would require an existing LPTV or translator licensee forced to change channels due to the initiation of full power television service to compete for a new channel in the lottery context. Under our existing Rules, a low power or translator licensee that changes channels to avoid interference from a full power television station would have to file a "major change" application. 47 CFR 73.3572(a)(1)(i). The low power rules treat a "major change" application as an initial application and thus subject to competing applications and the random selection process. *Report and Order*, BC Docket No. 78–253, 47 FR 21468, 21487 (May 18, 1982); 47 CFR 74.732(d). Joint Petitioners state that the *Second Order* is ambiguous as to whether existing low power licensees who must change channel assignments to avoid interference to full power stations are subject to competing applications. In addition, Joint Petitioners request the Commission to give dispositive preferential treatment to displaced LPTV or translator licensees.

[8] The lottery Rules provide a 2:1 relative diversity preference for those applicants with no other media interests. Applicants with 1, 2 or 3 other media interests receive a 1.5:1 relative diversity preference. IBN argues that our diversity preferences are insensitive to different types of media holdings. For example, it is pointed out that an applicant who is the licensee of a full power station would be accorded the same diversity preference as an applicant who is the licensee of a LPTV station.

[9] Under our lottery rules, GWV, if it owns no other media interests, would be ineligible for the 1.5:1 diversity preference due to the geographical proximity of its existing and proposed stations. *See Second Report* at 27191, 27192 and 27203.

25. We are unpersuaded by the arguments advanced by IBN, Neighborhood and SIN that our lottery preference system needs to be modified or set aside as unconstitutional. We remain constant in our view that the lottery statute is constitutional and affirm our previous conclusion:

> The program adopted herein does not share that attributes of the scheme rejected in *Bakke*, and comports with the teachings of *Fullilove*. The Conferees have, at 43–44 of the Report, found that past discrimination has resulted in severe underrepresentation of minorities in media ownership. They have therefore established a program in which race is one of two factors to be awarded fixed relative preferences. . . .[F]ixed relative preference does not guarantee that minorities will receive double the number of licenses as would non-minority applicants. Further, the Conferees have instructed that we report annually on the effect of the preference system and whether it is serving the purposes intended. Congress will be able to further tailor the program based on that information, and may eliminate the preferences when appropriate. All of these factors lead to the conclusion that the preference system as adopted passes constitutional muster.

48 FR 27182, 27190 (June 13, 1983) (footnotes omitted).

26. In response to IBN and others, we decline to modify the weight or operation of either the minority or diversity preferences. We believe that the preferences as adopted represent a reasonable exercise of the Commission's discretion to structure "significant preferences" for the promotion of minority and diversity interests. *See* 47 U.S.C. 309(i)(3)(A); *Second Report* at 27190–91. And, as the courts have observed, administrative agencies are granted reasonably wide discretion in carrying out their statutory duties. *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 381 (1969); *Federal Election Commission v. Democratic Senatorial Campaign Committee*, 454 U.S. 27, 39 (1981).

27. With regard to SIN's complaint that the minimum forty per cent diversity preference unnecessarily dilutes the minority preference, we note that minority applicants who own few or no other media of mass communications may also take advantage of the diversity preference. The minimum forty per cent diversity

preference was specified in the Conference Report and implemented in the *Second Report*. *See* Conference Report at 42 and 46 and *Second Report* at 27203. In essence, the minimum forty per cent diversity preference ensures that diversity qualified applicants as a group have at least a forty per cent chance of winning in relation to applicants who qualify for no preferences. As an additional matter, it should be noted that minority applicants are faring reasonably well in the low power television lotteries. To date, it appears that approximately 73% or 36 out of 49 of the lotteries in which minorities have participated have been tentatively "won" by minorities.

28. Neighborhood mischaracterizes the nature of the minority preference as "absolute." The minority preference, as well as the diversity preference, was adopted by the Commission as a "fixed relative preference." *Second Report* at 27190–91. *See also* Conference Report at 42–44. The 2:1 fixed relative minority preference doubles the chances of a minority applicant in relation to non-preferred applicants. However, the actual probability based upon preference that is assigned to minority applicant varies from lottery to lottery depending upon the number of applicants and the presence or absence of applicants eligible for a diversity preference. *See* Conference Report at 42.

29. With regard to GWV's request that it be excused from competing in a lottery to obtain a translator license to fill out its predicted coverage area, we note that a recent *Notice of Proposed Rule Making* seeks comments on whether television translators should be processed in a manner different than low power television applications. *Notice of Proposed Rule Making*, MM Docket No. 83–1350, 49 FR 908, 911 (January 6, 1984). Numerous comments addressing this issue have been filed in Docket No. 83–1350. Therefore, we will defer the issue until we resolve it in that rule making proceeding. In the interim, however, we believe that the public interest does not weigh in favor of holding up the mutual processing of low power and translator applications. If an applicant loses a lottery for a particular UHF frequency, there may be another available frequency for which authorization may be sought.

30. Although at this time our treatment of television licensees who seek to improve service in their authorized coverage area is different than our treatment of common carrier mobile service licensees (*see* paras. 44–46 *infra*), we believe that there are sound public interest reasons for requiring mutually exclusive translator and LPTV applicants to compete in the same lottery. First, UHF frequencies are generally fungible (and there may be several available) for LPTV and translator licensees, whereas due to technical factors, certain adjacent or compatible frequencies are required for efficient system expansion in the common carrier mobile service. *See* para. 44, *infra*. Secondly, due to the mobility of the receive locations in the common carrier mobile services, potentially all customers are affected by a gap in the service coverage area; whereas in the broadcast service, where the nature of the service is not mobile, only the potential viewers in the shadowed area are affected.

31. Joint Petitioners seek reconsideration of the *Second Order* on the grounds that LPTV or translator licensees that are displaced due to the start up of a nearby full power station should not have to compete in a lottery for new channel assignments. It is argued that is is unfair for an existing licensee with an ongoing operation to be forced to compete in a lottery for a new authorization. It is asserted that displaced licensees should be entitled to some "expectancy" of receiving a new authorization.

32. Joint Petitioners' request for special dispensation will not be considered at this time, and we will not change our current processing procedures for pending LPTV and translator applications. Joint Petitioners' request directly conflicts with our present views on the fundamental concept of LPTV as a secondary service. Moreover, the outstanding rule making proceeding referred to above proposes new procedures, including a "window" filing period in place of "cut-off" that, if adopted, should alleviate much of Joint Petitioners' concern. Consequently, prudence dictates that we not consider additional relief at this time.

33. Displaced LPTV and translator licensees are not left completely without a remedy. Displaced licensees are eligible for special temporary authority ("STA") on an available frequency as long as they have an application on file for that particular frequency. *See, e.g., Second Report* at 27193; 47 U.S.C. 309(f). In this manner displaced licensees can continue operations, at least for an interim period.

34. Finally, in the mass media area, New Life Evangelistic Center, Inc. ("New Life") seeks reconsideration of an Erratum which corrected certain errors in the *Second Report*. 48 FR 34039 (July 27, 1983). The crux of New Life's petition is that "the Erratum deletes publication in the **Federal Register** of cut-off Public Notices in the broadcast cases . . . ." New Life's petition is denied. When we published our lottery Rules in the *Second Report* we inadvertently copied obsolete mass media Rules that specified **Federal Register** publication of cut-off lists. Commission practice only requires public notice of such lists. *Second Report and Order*, Gen. Docket No. 79–137, 46 FR 36850 (July 16, 1981). Therefore, reconsideration of the ministerial act of republishing the correct Rules is denied.

IV. Private Radio Services

35. Petitioners Mobile Marine Radio, Inc., Waterway Communications System, Inc. and Offshore Navigation, Inc. ("three petitioners") raise several mutual concerns. The three petitioners, respectively, urge the Commission not to use lotteries in maritime MF and HF band common carrier service, inland waterway communications service and radiolocation service. We reject petitioners' requests on this issue and remain firm in our view that the public interest will best be served by using lotteries in these services to select initial licensees where there are no substantial material differences in the qualifications of the competing applicants. *See Second Report* at 27196.

36. The three petitioners also request reconsideration concerning §§ 1.918(b) and 1.227(b)(4) of the Commission's Rules. With regard to § 1.918(b), the concern is that an applicant's right to amend its application to raise or address comparative issues might be cut-off by the operation of § 1.918(e) prior to the determination whether a lottery or comparative hearing will be used to select an initial licensee.

We did not mean to preclude the submission of supplemental information which might address issues of comparative significance. Although applicants do not have an unlimited right to *amend* their applications, they may *supplement* their applications with such information as is necessary to address relevant issues.

37. The three petitioners contend that § 1.227(b)(4), regarding consolidation of applications, should apply to both lotteries and comparative hearings. This concern is now moot. Section 1.227(b)(4) was modified by Commission Order, released July 24, 1984 (FCC 84–323), to clarify, *inter alia*, our intention that Rule Section should apply to both lotteries and comparative hearings.

38. Offshore Navigation, Inc. pointed out in its petition that mutually exclusive applications are possible in Subpart F of Part 90, the Radiolocation

Service. Section 1.962 of our Rules authorizes petitions to deny in the Radiolocation Service. Nothing in the *Second Report* should be construed to the contrary. Petitions to deny in the Radiolocation Service may be filed in accordance with the procedures established in the *Second Report* for Private Radio Services in which petitions to deny are authorized. However, we will not modify § 1.972(c), as requested by Offshore Navigation. Since the current language encompasses mutually exclusive applications in the Radiolocation Service, any additional clarifying language would be superfluous.

39. The Associated Public-Safety Communications Officers, Inc. and the Los Angeles County Sheriff's Department ("two petitioners") raise mutual concerns. First, the two petitioners are concerned about the implication in the *Second Report* that a lottery might be used to choose between competing public safety applicants. As stated in the *Second Report*, a lottery will *not* be used to choose between competing public safety and non-public safety applicants. For competing public safety applications, we will not use lottery procedures when it appears upon initial analysis that there are significant differences in the abilities of competing applicants to serve the public. However, when it appears upon initial analysis that there are no substantial and material differences in the merits of competing applications, we may select licensees by lottery. In this way, lotteries will be used only when comparative procedures would serve no useful purpose. In making this public interest determination whether public safety applications should be subject to a comparative hearing or lottery, we may consider such factors as overall public safety implications, geographic coverage area, population affected, operator experience and spectrum efficiency. Our reasons for using lotteries or comparative hearings will be specified in public documents in each individual case. If we use lotteries in such a case, we expect to expedite service to the public while ensuring that licensees always remain fully qualified. In any instance where we select licensees by lottery in these services, we will make the affirmative finding, referenced in the Conference Report, that the public interest will be significantly benefited. Conference Report at 37–38.

40. The two petitioners also seek reconsideration of the *Second Report* to exempt Public Safety and Special Emergency Radio Services eligibles from any system of random selection. Petitioners argue that the use of lotteries to select licensees for such services would be inconsistent with 47 U.S.C. 332(a) and its legislative history. Recently amended section 332(a) instructs the Commission to consider the promotion of safety of life and property in the management of private land mobile spectrum. Similarly, the legislative history of section 332(a) states that the Commission should carefully consider and promote the needs of public safety agencies in managing the private land mobile spectrum.[10]

41. Petitioners request for reconsideration on this issue is denied. Our decision to use lotteries in these circumstances is well within our statutory authority.[11] Both the recently amended land mobile provision (section 332(a)) and the lottery provision (section 309(i)) were included in the Communications Amendments Act of 1982. Thus, when drafting section 332(a), Congress was well aware of the lottery provision.[12] Indeed, the legislative history accompanying section 332(a) discourages the use of auctions for allocating land mobile spectrum, but expressly provides that "this should not be construed to limit the ability of the Commission to use lottery procedures for purposes of granting private land mobile licenses." Conference Report at 53. Accordingly, we find petitioner's statutory argument to be without merit.

V. Common Carrier Services

42. Kadison, Pfaelzer, Woodard, Quinn & Rossi ("Kadison") seeks reconsideration of the *Second Report* and specifically elimination of new Rule § 22.23(a)(2) concerning amendment of applications in the Common Carrier Mobile Service. On August 9, 1983, we stayed this Rule change,[13] in order to consider Kadison's arguments in the ongoing proceeding to revise Part 22, CC Docket No. 80–57. In our *Report and Order* in that Docket, we partially granted the relief requested. *See Report and Order*, FCC 83–476 at paras. 58–65, released December 19, 1983.

43. Telocator Network of America ("Telocator") and joint petitioners Kelly Communication and Omni Communications, Inc. ("Kelly and Omni") seek reconsideration of the lottery Rules with respect to radio common carriers licensed under Part 22 of the Rules. These petitioners argue that the Commission should not use lotteries across the board in the mobile services. Petitioners assert that carriers who seek to expand existing systems to relieve congestion should not be subject to random selection. It is argued that valid public interest reasons exist for such exemption. For example, existing carriers would be unable to rationally plan the improvement of existing systems; all frequencies potentially available for expansion are not fungible, some being more crucial to expansion of existing systems than others; and "fortune-seekers" may seek to acquire an expansion channel solely for the purpose of reselling it at an exorbitant price to an existing carrier who needs it for system improvement.

44. We are persuaded that the public interest would best be served by retaining the option to use comparative proceedings rather than lotteries in certain situations in the Public Land Mobile Service. The petitioners have set forth certain conditions under which, we believe, the use of some type of comparative hearings (not necessarily trial-type hearings before administrative law judges) may be warranted. When a carrier seeks to increase the capacity of an authorized system by the addition of channels, it will generally find it necessary to do so for both technical and economic reasons by the addition of channels in the same frequency band as those used on its existing system.[14] Similarly, a carrier seeking to increase the geographic coverage of an authorized system by the addition of transmitter locations will need to apply for the same channels used on its existing system. In both of these cases, applicants may be limited in their choice of frequencies by factors that do not constrain new station applicants. A new applicant may simply apply for a

[10] *See* H.R. Rep. No. 765, 97th Cong., 2d Sess. 52–53 (1982).

[11] As we have indicated, we will not use lotteries to select among public safety and non-public safety applications, and we will not use lotteries to select among public safety applications when there are material differences in the merits of the applications. We anticipate that the selective use of lotteries in these services will ensure that the Commission fulfills its Congressional mandate to consider the communications requirements of public safety entities in making spectrum assignments.

[12] Generally, when Congress enacts two statutory provisions in the same bill and on the same subject matter, it is assumed that Congress was aware of both provisions and an effort should be made to construe the two together and give effect to each. *See, e.g.*, 2A C. Sands, Sutherland Statutory Construction § 51.02 (rev. 3d ed. 1973).

[13] *Order Granting Stay*, FCC 83–378, released August 9, 1983.

[14] This is less true in the case of paging than in two-way service, because the latter often involves trunked equipment. A paging system licensee would be expected to make a substantial showing to justify a request for comparative hearing.

different available frequency in the event of losing a licensing lottery, while an existing carrier may be precluded from expanding its authorized system in an efficient manner if the only frequencies compatible with its operations are awarded to another applicant by lottery, even though frequencies in other bands may be available. Accordingly, we will permit applicants for the expansion of authorized systems to request that their mutually exclusive applications be designated for a comparative hearing instead of being placed in a lottery for selection.[15] After reviewing the pleadings (see Appendix B), the Commission will either issue a designation order or an order stating why the application will not be accorded a comparative hearing.

45. In order to ensure that applicants do not attempt to circumvent our lottery procedures, we shall adopt guidelines specifying those applications for which comparative procedures may be requested. First, the frequency must be in the same band (*i.e.*, 35/43 MHz, 150 MHz, 450 MHz or 900 MHz) as the frequency for which the applicant is already licensed. Second, if the application involves geographical expansion, the proposed base station must be located within 40 miles of one of the applicant's existing base stations. This is consistent with § 22.525(b) of our Rules which defines when a paging application will be considered as seeking an additional frequency for purposes of our one initial channel policy. The Rule is set forth in Appendix B.

46. Unlike the mass media discussion, *supra* at para. 30, we believe that existing mobile service licensees that seek to either add additional frequencies or expand their coverage area should have the option of either a lottery or comparative hearing. There is a fundamental difference between the mobile service and the LPTV/translator service. Translator and LPTV frequencies, to the extent they are available, are generally fungible. That is, one available UHF television frequency is generally as desirable as another. On the other hand, mobile service frequencies for existing licensees, as opposed to new entrants, are not always fungible; in order for licensees to efficiently and economically expand frequencies or coverage area, certain adjacent or compatible frequencies must often be used.

Thus, we believe it desirable for mobile service licensees seeking to expand their systems or coverage areas to have the option of demonstrating their specific frequency requirements and the unmet business needs of their customers in a comparative hearing. Accordingly, we believe that our different approaches to the system coverage area issue in the mass media and common carrier services are well founded.

[15] In permitting the use of a comparative hearing instead of a lottery in these circumstances, it is not our intention to establish an automatic presumption that an applicant seeking to expand an authorized system is to be preferred over a new applicant. Upon designation for hearing, all applicants will be given the opportunity to demonstrate that the public interest would be served by a grant of their applications.

VI. Conclusion

47. In view of the foregoing and pursuant to sections 1, 4 (i) and (j), 303(r), and 309(i)(4)(A) of the Communications Act of 1934, as amended (47 U.S.C. 151–610), it is hereby ordered that the action taken herein is effective January 22, 1985.

48. Accordingly, it is ordered that the petitions of SIN, Neighborhood, IBN, New Life, Associated Public-Safety Communications Officers, Los Angeles County Sheriff's Department, Mobile Marine Radio, Inc., Waterway Communications System, Inc. and Offshore Navigation, Inc. are denied.

49. It is further ordered that the petitions of Kadison, Telocator and Kelly and Omni are granted to the extent indicated herein and otherwise denied.

50. It is further ordered that the petition of GWV is dismissed without prejudice and on the Commission's own motion is hereby incorporated into the record in MM Docket No. 83–1350. Joint Petitioner's petition is hereby deferred for future resolution in this Docket.

51. Contact Randy W. Thomas, Office of General Counsel, (202) 632–6990 for further information regarding this proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Lottery Reconsideration Petitions

1. New Life Evangelistic Center, Inc.
2. Bahia Honda, Inc., Los Cerezos Television Company, Graciela Olivarez, Seven Hills Television Company, Spanish International Communications Corporation and Las Tres Campanas Television Company.
3. Telocator Network of America.
4. SIN, Inc. and Affiliated Low Power Television Applicants.
5. Greater Willamette Vision, Ltd.
6. Neighborhood TV Company, Inc.
7. International Broadcasting Network.
8. Kadison, Pfaelzer, Woodard, Quinn & Rossi.
9. Kelley Communication and Omni Communications, Inc.
10. Mobile Marine Radio, Inc.
11. Associated Public-Safety Communications Officers, Inc.
12. Los Angeles County Sheriff's Department.
13. Waterway Communication System, Inc.
14. Offshore Navigation, Inc.

Appendix B—Rules

PART 22—PUBLIC MOBILE RADIO SERVICES

Subpart B—Applications and Licenses

1. 47 CFR 22.33 is revised to read as follows:

§ 22.33 Grants by Random Selection.

(a) If a properly filed application for an initial license in the Public Land Mobile Service is mutually exclusive with one or more other such applications, the applications shall be included in the random selection process set forth in Part I, § 1.821 *et seq.*, unless a request to proceed by comparative hearing is made under the provisions of paragraph (b), below. No preferences shall be awarded. Renewal applications shall not be included in a random selection process.

(b) A mutually exclusive applicant proposing to expand an authorized station as described in (1) or (2) below may request that its application and those applications mutually exclusive with it be designated for a comparative hearing under the procedures set forth in § 22.32. Such a request must be filed with the Commission within 30 days of the Commission's announcement by Public Notice that the applications appear to be mutually exclusive. The request must include a demonstration of how the public interest would be served by using a comparative hearing procedure. If the Commission finds that the requesting applicant satisfies the requirements of this section, it shall determine whether the public interest would be served by using some form of comparative procedure instead of a lottery. The showings necessary to qualify for a request under this paragraph are in addition to any need showing or traffic load study that may be required for the requested facilities The following applicants shall be eligible to make this request:

(1) An applicant proposing to add one or more transmitter locations to an authorized station on the same frequency or frequencies for which it is already licensed and within 40 miles of existing transmitter locations on those frequencies, and when the applicant demonstrates in its application a demand by its existing subscribers for the expanded service; or

(2) An applicant proposing to add one or more frequencies to an authorized station at the same location or other locations within 40 miles of an existing transmitter location, if the frequencies to be added are in the same frequency band as those already authorized (*i.e.*, low-band (35–43 MHz), VHF (150 MHz), UHF (450 MHz), or 900 MHz).

[FR Doc. 84–33005 Filed 12–19–84; 8:45 am]
BILLING CODE 6712–01–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Parts 750 and 752

[AIDAR Notice 85–3]

Miscellaneous Amendments to the Acquisition Regulation (AIDAR)

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The AID Acquistion Regulation (AIDAR) is being amended to correct an authority citation relating to extraordinary contractual relief, to allow more flexibility and discretion in setting contract payment due dates, and to correct an obsolete address.

EFFECTIVE DATE: December 10, 1984.

FOR FURTHER INFORMATION CONTACT: M/SER/CM/SD/POL, Mr. J.M. Kelly. Telephone (703) 235–9107.

SUPPLEMENTARY INFORMATION: The AIDAR, in subpart 750.71, contains procedures for extraordinary contractual relief to protect foreign policy interests of the United States. AID was authorized to use these procedures by State Department Delegation No. 104, and this authority was cited in Subpart 750.71. State Department Delegation 104, has been superseded by Executive Order 12163 and International Development Cooperation Agency (IDCA) Delegation of Authority No. 1; Subpart 750.71 is amended to reflect this.

The AID contract clause concerning payment due dates was established in response to the Prompt Payment Act. The AID clause set payment due dates of 30 days after receipt of a proper invoice, or acceptance of property or services, whichever is later, for contracts paid from a paying office in the United States; and 45 days, same basis, for contracts paid from a paying office located overseas. As written, the clause allowed no discretion to the contracting officer or controller in establishing payment due dates, considering a contractor's usual practice, or any special requirements or a particular procurement. The clause has been modified to make it clear that payment due dates other than the 30/45 days now required may be authorized. This treatment is consistent with the Prompt Payment Act, OMB Circular A–125, and applicable Treasury and AID regulations concerning contractor payment.

None of the changes being made by this AIDAR Notice will have any significant impact on AID contractors or the general public. Therefore, the changes are not considered "significant" under OFPP Policy Letter 83–2, or FAR 1.303(b) or 1.501, and public comments have not been solicited.

This AIDAR Notice is not a "major rule" as defined in Executive Order 12291; therefore no regulatory impact anaylsis is required.

As required by the Regulatory Flexibility Act, it is hereby certified that AIDAR Notice 85–3 will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 48 CFR Parts 750 and 752

Government procurement, Extraordinary contractual relief, Contract clauses.

Accordingly, Title 48 Ch. 7 of the Code of Federal Regulations is amended as set forth below.

PART 750—EXTRAORDINARY CONTRACTUAL ACTIONS

1. Section 750.7101, Authority, is revised as follows:

750.7101 Authority.

(a) Under section 633 of the Foreign Assistance Act of 1961, 75 Stat. 454 (22 U.S.C. 2933), as amended; Executive Order 11223, dated May 12, 1965 (30 FR 6635), as amended; Executive Order 12163, dated September 29, 1979 (44 FR 56673), as amended; and International Development Cooperation agency Delegation of Authority No. 1, dated October 1, 1979 (44 FR 57521), as amended, the Administrator of the Agency for International Development has been granted authority to provide extraordinary contractual relief. The Authority is set forth in sections 3 and 4 of Executive Order 11223, as follows:

Section 3. With respect to cost-type contracts heretofore or hereafter made with non-profit institutions under which no fee is charged or paid, amendments or modifications of such contracts may be made with or without consideration and may be utilized to accomplish the same things as any original contract could have accomplished, irrespective of the time or circumstances of the making, or of the form of the contract amended or modified, or of the amending or modifying contract and irrespective of rights which may have accrued under the contract or the amendments or modifications thereof.

Section 4. With respect to contracts heretofore or hereafter made, other than those described in section 3 of this order, amendments and modifications of such contracts may be made with or without consideration and may be utilized to accomplish the same things as any original contract could have accomplished, irrespective of the time or circumstances of the making, or the form of the contract amended or modified, or of the amending or modifying contract, and irrespective of rights which may have accrued under the contract or the amendments or modifications thereof, if the Secretary of State or the Director of the United States International Development Cooperation Agency (with respect to functions vested in or delegated to Director) determines in each case that such action is necessary to protect the foreign policy interests of the United States.

(b) The authority delegated to the Director of the International Development Cooperation Agency under Executive Order 11223 has been redelegated to the Administrator, Agency for International Development.

2. Section 750.7103, Definitions, is amended by removing the current paragraph "(c)" and redesignating paragraph "(d)" as paragraph "(c)", and be revising paragraph (b) as follows:

750.7103 Definitions.

* * * * *

(b) The term "the Executive Order" shall mean Executive Order 11223 (30 FR 6635) as amended, unless otherwise stated.

* * * * *

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

752.7003 [Amended]

3. The contract clause titled "Payment Due Dates", appearing in paragraph (a), *Alternate 70,* of 752.7003, Payment, is amended by changing the clause date from "(Apr. 1984)" to "(Nov. 1984)", and by revising the first sentence of paragraph (a) of the clause (which now reads "(a) Payments under this contract will be due as follows:") to read "(a)

Unless otherwise specifically provided in this contract, payments under this contract will be due as follows:" (subparagraphs (a)(1) and (a)(2) of the clause are unchanged).

752.7004 [Amended]

4. The contract clause titled "Source and Nationality Requirements for Procurement of Goods and Services" in AIDAR 752.7004 is amended by changing the clause date from "[Apr. 1984]" to "[Nov. 1984]", and by amending paragraph (b)(5) of the clause to revise the address for the Maritime Administration to read "Maritime Administration, Division of National Cargo, 400 Seventeen Street, S.W., Washington, D.C. 20590".

This AIDAR Notice is issued under the authority of Sec. 621, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, September 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Dated: December 10, 1984.

John F. Owens,

AID Procurement Executive.

[FR Doc. 84-33104 Filed 12-19-84; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 21130-239]

Atlantic Surf Clam and Ocean Quahog Fisheries

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

ACTION: Final rule; technical amendment.

SUMMARY: NOAA issues this final rule implementing a technical amendment to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP). This technical amendment deletes a sentence in the implementing regulations which states that "All fishing periods will end at 1800 hours". The intended effect is to permit a more flexible fishing period which considers the uncertainties of weather on fishing conditions for surf clam fishing safety.

EFFECTIVE DATE: December 19, 1984.

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde, 617-281-3600, extension 273.

SUPPLEMENTARY INFORMATION: Section 652.22(a)(2) of the regulations which implement this FMP established hours and effort restrictions for the surf clam fishery in the Mid-Atlantic Area (47 FR 4270, January 29, 1982). The Regional Director notifies fishing vessel owners or operators engaged in the surf clam fishery concerning the allowable combinations of fishing periods for varying levels of allowable fishing time. Specifically, § 652.22(a)(2) directs that "All fishing periods will end at 1800 hours".

At the implementation of the FMP, the Mid-Atlantic Fishery Management Council (Council) did not contemplate that a fishing period would be less than 12 hours per fishing day. However, to avoid a lengthy closure at the end of 1984, fishing vessel time was reduced to one six-hour fishing period for every two weeks. Consequently, the six-hour fishing period for surf clam fishing vessels had to begin at noon (1200 hours) to comply with § 652.22(a)(2).

Commercial surf clam fishermen and processors reported to the Council and NMFS that during the winter months the afternoon weather pattern was less favorable to fishing conditions that the morning hours because of prevailing offshore winds. This technical amendment deletes the statement that all fishing periods will end at 1800 so that the Regional Director will have the flexibility to establish a fishing period that will help commercial fishermen increase the safety of their fishing strategy.

List of Subjects in 50 CFR Part 652

Fisheries, Fishing.

Dated: December 17, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

PART 652—[AMENDED]

For the reasons set forth in the preamble, 50 CFR Part 652 is amended as follows:

1. The authority citation for Part 652 reads as follows:

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

2. In § 652.22, paragraph (a)(2) is revised by deleting the second sentence which reads "All fishing periods will end at 1800 hours".

[FR Doc. 84-33143 Filed 12-19-84; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 49, No. 246
Thursday, December 20, 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

Federal Grain Inspection Service

7 CFR Part 810

U.S. Standards for Soybeans

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: According to the requirements for the periodic review of existing regulations, the Federal Grain Inspection Service (FGIS) has reviewed the U.S. Standards for Soybeans. Pursuant to this review, FGIS proposes to revise the soybean standards to: (1) Delete test weight per bushel as a grade-determining factor for soybeans; (2) revise the current classes of soybeans by deleting the classes of Green, Black, and Brown soybeans, and include these deleted classes in a new definition of Soybeans of other colors; (3) include limits in the Sample grade requirements for soybeans, and (4) make changes in language, format, and update the footnotes referenced in the standards. These changes are made to update and conform the standards to other grain standards.

DATE: Comments must be submitted on or before February 19, 1985.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., Information Resources Management Branch, USDA, FGIS, Room 0667 South Building, 1400 Independence Avenue SW., Washington, D.C. 20250, telephone (202) 382–1738. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., address as above, telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

Dr. Kenneth A. Gilles, Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities because those persons who apply the standards and most users of soybean inspection services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities by FGIS employees or licensed persons.

Review of Standards

The review of the standards included a determination of the continued need for the standards and the potential to clarify or simplify the language of the standards; a review of changes in marketing practices and functions affecting the standards; a review of changes in technology and economic conditions in the area affected by the standards; and a determination of the potential to improve the standards and their application through the incorporation of grading factors or tests which better indicate quality attributes. The objective is to assure that the standards continue to serve the needs of the market to the greatest possible extent.

A notice requesting public comment on the U.S. Standards for Soybeans, Corn, and Mixed Grain was published in the May 8, 1980, **Federal Register** (45 FR 30446). Views and comments were solicited to help in the study and evaluation of present grading practices and standards and in the development of any recommendations for change. Within the 60-day comment period, twenty-three comments were received on the soybean standards. Fifteen commenters stated summarily that the soybean standards do not need to be changed. Eight commenters favored inclusion of oil content in the soybean standards, and the majority of these commenters also favored inclusion of protein content. Other commenters addressed the removal of test weight and/or moisture as grade-determining factors and the limits for foreign material in the standards.

To gather additional information, discussions were held with industry representatives; including the American Soybean Association (ASA). The ASA represents a large number of soybean producers. At the annual meeting in August, 1984, the ASA recommended several changes to the soybean standards. These recommendations were:

1. Eliminate moisture content as a grade-determining factor, provided that moisture will always be shown on the inspection certificate.
2. Eliminate test weight as a grade-determining factor, but make it optional upon request.
3. Eliminate all classes of soybeans except Yellow and Mixed soybeans, and
4. Eliminate stinkbug damaged kernels from the factor "damaged kernels total", and show the percentage of stinkbug damaged kernels for informational purposes on inspection certificates.

The deletion of moisture content as a grade-determining factor in corn, sorghum, and soybeans was proposed in the June 7, 1984, **Federal Register** (49 FR 23651) to provide for consistency among the various grain standards and to recognize current trade practices. A final rule for this action was published in the **Federal Register** on September 12, 1984 (49 FR 35743). Effecitve September 9, 1985, moisture content will no longer be a grade-determining factor, but will continue to be shown on all soybean inspection certificates which show an official grade determination.

As discussed below, FGIS concurs with the recommendations of the ASA to delete test weight per bushel as a grade-determining factor in soybeans and to delete all classes of soybeans except for Yellow and Mixed soybeans. However, FGIS will study the recommendation to eliminate stinkbug damage from the factor "damaged kernels total." FGIS' concerns with the recommendation are:

1. The added time and costs of inspection to show stinkbug damage results separately on all inspection certificates, and
2. The potential for confusion on the part of foreign buyers in contracting for specific limits for stinkbug damaged kernels and/or the impact upon foreign markets if there were no limits.

As a number of initial commenters indicated in the request for public comment, oil and protein content are

important factors for determining the quality and value of soybeans. However, additional time is needed to refine methods of determination before these factors can be made applicable to the official inspection procedures. If methodology is developed which will allow oil and protein to be determined accurately and rapidly, FGIS will consider proposing the inclusion of oil and protein into the soybean standards.

Although a small number of commenters addressed the limits for foreign material in the soybean standards, these limits have not generally been a major point of concern. FGIS, therefore, has determined the limits to be adequate and they should not be revised at this time.

A review of available information indicates that certain revisions in the standards would increase clarity and effectiveness of the standards and reflect current marketing practices. As a result of this review, FGIS proposes the following changes in the U.S. Standards for Soybeans:

1. To enhance clarity and uniformity among standards, FGIS proposes to revise the U.S. Standards for Soybeans by dividing the standards into 4 parts, and into sections, similar to the present format in other U.S. grain standards. Specifically, in addition to the changes below, the undesignated heading, TERMS DEFINED would consist of a new § 810.601, *Definition of soybeans*, and a new § 810.602, *Definition of other terms*. An undesignated heading, PRINCIPLES GOVERNING APPLICATION OF STANDARDS would consist of an new § 810.603, *Basis of determination*, a new § 810.604, *Temporary modifications in equipment and procedures*, and a new § 810.605, *Percentages*. An undesignated heading, GRADES, GRADE REQUIREMENTS, AND GRADE DESIGNATIONS would consist of a new § 810.606, *Grades and grade requirements for soybeans*, and a new § 810.607, *Grade designations*. The undesignated heading, SPECIAL GRADES, SPECIAL GRADE REQUIREMENTS, AND SPECIAL GRADE DESIGNATIONS would consist of a new § 810.608, *Special grades and special grade requirements*, and § 810.809, *Special grade designations*.

Incidental to this revision, the current § 810.601, *Terms defined*, would be removed as unnecessary, TERMS DEFINED would become an undesignated heading, and § 810.601 would be designated the new *Definition of soybeans*. The current § 810.602, *Principles governing application of the standards*, would be removed; PRINCIPLES GOVERNING APPLICATION OF STANDARDS would become an undesignated heading, and § 810.602 would be designated the new *Definition of other terms*. The current § 810.603, *Grades, grade requirements, and grade designations*, would be removed; GRADES, GRADE REQUIREMENTS, AND GRAD DESIGNATIONS would become an undesignated heading, and § 810.603 would be designated the new *Basis of determination*.

The current § 810.601(a) *Soybeans*, would be redesignated as § 810.601, *Definition of soybeans*, and would include the scientific name for soybeans. The current § 810.601(b) *Classes*, § 810.601(c) *Yellow soybeans, and § 810.601(g) Mixed soybeans*, would be revised and redesignated as the new § 810.602(a). The current § 810.601 (d), (e), and (f) would be removed as classes and redesignated as § 810.602(h), *Soybeans of other colors*, as discussed in 3 below. The current § 810.601(h) *Grades* is removed as unnecessary. The current § 810.601(i), *Bicolored soybeans*, would be incorporated into the new § 810.602(h), *Soybeans of other colors*, and would include additional information incorporated from the current § 810.903. Section § 810.903 would, therefore, be removed.

The current §810.601(j) *Splits*, (k) *Damaged kernels*, (l) *Heat-damaged kernels*, (m) *Foreign material*, and (n) *Stones* would be restated and redesignated as § 810.602 (i), (b), (e), (d), and (j), respectively. The current § 810.602(c) *Moisture*, and (d) *Test weight per bushel* would be redesignated as (f) and (k), respectively. The current §810.601(o) *8/64 sieve*, would be redesignated as §810.602(l).

Also included in the §810.602 *Definition of other terms*, would be definitions for two new terms, (c) *Distinctly low quality* and (g) *Purple mottled or stained*, which are incorporated from the current §810.901 and §810.902 respectively. Sections §810.901 and 810.902 would therefore be removed.

The new §810.603, *Basis of determination*, (previously §810.602(a)) would be clarified by rewording the section and dividing it into three subparagraphs, (a) *Distinctly low quality*, (b) *Certain quality determinations*, and (c) *All other determinations*. This format appears in other grain standards and the information which will appear in the section is generally contained in the FGIS Grain Inspection Handbook.

A new §810.604, *Temporary modifications in equipment and procedures*, is proposed. The equipment and procedures referenced in the soybean standards are applicable to grain produced under normal environmental conditions. FGIS proposes to provide that, when adverse growing or harvest conditions make impractical the use of routine procedures, minor temporary modifications in the equipment or procedures may be required to obtain results expected under normal conditions. Adjustment in interpretations (i.e., identity, quality, and condition) shall not be made. This section is similar to sections which appear in other grain standards.

The current §810.602(b), *Percentages*, would be clarified by spelling out in greater detail the rounding procedures currently used for soybeans. Accordingly, the proposed revision would specify how a figure would e rounded when followed by a figure greater, lesser, or equal to five. This revision would make the wording of the section the same or similar to that used in other grain standards, as appropriate. The section would be included in the new §810.605, *Percentages*.

A new §810.606, *Grades and grade requirements for soybeans*, (currently §810.603) is proposed. Changes would be made to clarify wording and to revise the format for the requirements for U.S. Sample grade. The format changes for the U.S. Sample grade requirements are made to conform to other grain standards and to incorporate the current §810.901 into these requirements. Because of changes to other standards, §810.901 applies in effect only to soybeans, therefore §810.901 would be removed.

A new § 810.607, *Grade designation*, (currently an undesignated heading) is proposed. Changes would be made to clarify wording and to conform to other grain standards. The current § 810.603 (b) and (c) would be redesignated as § 810.607 (a) and (b), respectively.

An undesignated heading, currently contained in § 810.603(d) is revised to read: SPECIAL GRADES, SPECIAL GRADE REQUIREMENTS, AND SPECIAL GRADE DESIGNATIONS. The heading would be followed by two new sections, § 810.608, *Special grades and special grade requirements*, and § 810.609, *Special grade designations*. This information is currently contained in § 810.603 (d) (1 and 2). The new wording and format for this section of the soybean standards would add clarity and conforms with other grain standards.

As indicated above, § 810.901, § 810.902, and § 810.903 in the current standards would be removed and incorporated into other sections.

2. FGIS proposes to delete test weight per bushel as a grade-determining factor in the standards for soybeans. The value of test weight per bushel has been questioned by producers as a critical test for soybeans. Other factors such as moisture content and the percentage of foreign material (which would include soybeans and pieces of soybeans smaller than 5/64 inch in diameter) also serve as indicators of light test weight per bushel soybeans. Producers state that discounts may be applied for all three factors—low test weight per bushel, high moisture content, and high foreign material. As proposed, test weight per bushel would continue to be shown on inspection certificates as required by regulations under the U.S. Grain Standards Act (§ 800.162(a)(2)). A revised definition of test weight per bushel is included in the proposed standards which conforms to wording found in other grain standards. Currently, test weight per bushel is expressed in whole and half pounds with a fraction of a half pound disregarded. Since test weight per bushel would no longer be a grade-determining factor, it is proposed that test weight per bushel be expressed to the nearest tenth of a pound.

3. FGIS proposes that the current classes of soybeans be revised. The current soybean standards define classes for Yellow, Green, Brown, Black, and Mixed soybeans. While it is known that some black or brown soybeans are produced for special purposes, any detailed information on the production of grean, brown, or black soybeans is not available because of the crop size. Further, these soybeans are rarely offereed for official inspection. With the proposed revisions in soybean classes, two classes are defined—Yellow and Mixed soybeans. Under the proposed revision, green, brown, or black soybeans, or a mixture thereof, when exceeding 10% of the sample, would be classed as Mixed soybeans. A new definition for soybeans of other colors would be added to the standards with the proposed revision. Soybeans of other colors would include black, brown, green, and bicolored soybeans. The percentage of yellow soybeans and the percentage of soybeans of other colors would follow the class designation on the inspection certificate, e.g., U.S. No. 2 Mixed soybeans, Yellow soybeans 80%, Soybeans of other colors, 20%.

4. FGIS proposes, for uniformity, to include in the definition of U.S. Sample grade: the limits for stones, pieces of glass, crotalaria seeds, castor beans, particles of an unknown foreign substance(s), rodent pellets, bird droppings, and animal filth. The limits of 8 or more stones (which have an aggregate weight in excess of 0.2 percent of the sample weight), 2 or more pieces of glass, 3 or more crotalaria seeds, 2 or more castor beans, 4 or more particles of an unknown substance(s) or a commonly recognized harmful or toxic substance(s), and 10 or more pieces of rodent pellets, bird droppings, or other animal filth, have been followed in the inspection process for many years, are contained in the FGIS Grain Inspection Handbook, and do not constitute new limits. The limits should be included to make the soybean standards conform to the format of other grain standards.

5. Footnotes would be updated to delete reference to the Inspection and Equipment Handbooks as appropriate. Footnote 2 would be revised and references to footnotes 3 and 4 would be changed to footnote 2. Footnotes 3 and 4 would be deleted.

Comments including data, views, and arguments are solicited from interested persons. Pursuant to Section 4(b) of the United States Grain Standards Act (7 U.S.C. 76(b)), upon request, such information may be orally presented in an informal manner. Also, pursuant to section 4(b) of the Act, no standards or amendments or revocations of standards under the Act are to become effective less than one calendar year after promulgation, unless in the judgment of the Administrator the public health, interest, or safety require that they become effective sooner.

List of Subjects in 7 CFR Part 810

Export, Grain.

PART 810—OFFICIAL U.S. STANDARDS FOR GRAIN

Accordingly, it is proposed that the United States Standards for Soybeans be revised and §§ 810.901–810.903 be removed as follows:

United States Standards for Soybeans

Sec.

Terms Defined

810.601 Definition of soybeans.
810.602 Definition of other terms.

Principles Governing Application of Standards

810.603 Basis of determination.
810.604 Temporary modifications in equipment and procedures.
810.605 Percentages.

Grades, Grade Requirements, and Grade Designations

810.606 Grades and grade requirements for soybeans.
810.607 Grade designation.

Special Grades, Special Grade Requirements and Special Grade Designations

810.608 Special grades and special grade requirements.
810.609 Special grade designations.

United States Standards for Soybeans [1]

Terms Defined

§ 810.601 Definition of soybeans.

Grain which consists of 50 percent or more of whole or broken soybeans (*Glycine max (L.) Merr.)* which will not pass readily through an 5/64 -inch sieve and not more than 10.0 percent of other grains for which standards have been established under the United States Standards Act.

§ 810.602 Definition of other terms.

For the purposes of these standards the following terms shall have the meanings stated below:

(a) *Classes.* There are two classes for soybeans:

1. Yellow soybeans. Soybeans which have yellow or green seed coats, and which in cross section, are yellow or have a yellow tinge, and may include not more than 10.0 percent of soybeans of other colors.

2. Mixed soybeans. Soybeans that do not meet the requirements of the class Yellow soybeans.

(b) *Damaged kernels.* Soybeans and pieces of soybeans which are badly ground-damaged, badly weather-damaged, diseased, frost-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, stinkbug-stung, or otherwise materially damaged. Stinkbug-stung kernels are considered damaged kernels at the rate of one-fourth of the actual percentage of the stung kernels.

(c) *Distinctly low quality.* Soybeans which are of obviously inferior quality because they are in an unusual state or condition, and which cannot be graded properly by use of the other grading factors provided in the standards. Distinctly low quality includes the presence of any objects too large to enter the sampling devices; i.e., large stones, wreckage, or similar objects.

(d) *Foreign material.* All matter, including soybeans and pieces of soybeans, which will readily pass through an 5/64-inch sieve and all matter other than soybeans remaining on the sieve after sieving.

(e) *Heat-damaged kernels.* Soybeans and pieces of soybeans which are

[1] Compliance with the provisions of the standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or other Federal laws.

materially discolored and damaged by heat.

(f) *Moisture.* Water content in soybeans as determined by an approved device in accordance with procedures prescribed in FGIS Instructions.[2]

(g) *Purple mottled or stained.* Soybeans which are discolored by the growth of a fungus; or by dirt; or by a dirt like substance including nontoxic inoculants; or by other nontoxic substances.

(h) *Soybeans of other colors.* Soybeans which have green, black, brown, or bicolored seed coats. Soybeans which have green seed coats will also be green in cross section. Bicolored soybeans will have seed coats of two colors, one of which is brown or black, and the brown or black color shall cover 50 percent of the seed coats. The hilum of a soybean is not considered a part of the seed coat for this determination.

(i) *Splits.* Soybeans with more than ¼ of the bean removed and which are not damaged.

(j) *Stones.* Concreted earthy or mineral matter and other substances of similar hardness that do not disintegrate readily in water.

(k) *Test weight per bushel.* The weight per Winchester bushel (2,150.42 cubic inch capacity) as determined on the original sample using an approved device in accordance with procedures prescribed in FGIS Instructions.[2] Test weight per bushel is expressed to the nearest tenth of a pound.

(l) *9/64 inch sieve.* A metal sieve 0.032 inch thick perforated with round holes 0.125 (9/64) inch in diameter with approximately 4,736 perforations per square foot.

Principles Governing the Application of the Standards

§ 810.603 Basis of determination.

(a) *Distinctly low quality.* The determination of distinctly low quality is made on the basis of the lot as a whole at the time of sampling when a condition exists that may or may not appear in the representative sample and/or the sample as a whole.

(b) *Certain quality determinations.* Each determination of class, heat damaged kernels, damaged kernels, splits, and soybeans of other colors is made on the basis of the grain when free from foreign material.

(c) *All other determinations.* All other determinations are made on the basis of the sample as a whole. When a condition exists that may not appear in the representative sample, the determination may be made on the basis of the lot as a whole at the time of sampling in accordance with procedures prescribed in the Grain Inspection Handbook.[2]

§ 810.604 Temporary modifications in equipment and procedures.

The equipment and procedures referred to in the soybean standards are applicable to soybeans produced and harvested under normal environmental conditions. Abnormal environmental conditions during the production and harvest of soybeans may require temporary modifications in the equipment or procedures to obtain results expected under normal conditions. When these adjustments are necessary, proper notification will be made in a timely manner. Adjustments in interpretations (i.e., identity, quality, and condition) are excluded and shall not be made.

§ 810.605 Percentages.

(a) Percentages shall be determined on the basis of weight and shall be rounded off as follows:

(1) When the figure to be rounded is followed by a figure greater than 5, round to the next higher figure; e.g., state 0.46 as 0.5.

(2) When the figure to be rounded is followed by a figure less than 5, retain the figure; e.g., state 0.54 as 0.5.

(3) When the figure to be rounded is even and is followed by the figure 5, retain the even figure. When the figure to be rounded is odd and is followed by the figure 5, round the figure to the next higher number; e.g., 0.45 report as 0.4; 0.55, report as 0.6.

(b) Percentages shall be stated in whole and tenth percent to the nearest tenth percent, except when determining splits. The percentage of splits is stated in whole percent with a fraction of a percent disregarded.

Grades, Grade Requirements, and Grade Designations

§ 810.606 Grades and grade requirements for soybeans.

The following grades and grade requirements are applicable under these standards. In Mixed soybeans, the factor "soybeans of other colors" will be disregarded.

Grade	Maximum limits of—				
	Splits (percent)	Damaged kernels		Foreign material (percent)	Soybeans of other colors (percent)
		Total (percent)	Heat damaged (percent)		
U.S. No. 1	10.0	2.0	0.2	1.0	1.0
U.S. No. 2	20.0	3.0	0.5	2.0	2.0
U.S. No. 3[1]	30.0	5.0	1.0	3.0	5.0
U.S. No. 4[2]	40.0	8.0	3.0	5.0	10.0

U.S. Sample grade:—U.S. Sample grade shall be soybeans which:

(a) Do not meet the requirements for U.S. No. 1, 2, 3, or 4; or

(b) Contain 8 or more stones which have an aggregate weight in excess of 0.2 percent of the sample weight, 2 or more pieces of broken glass, 3 or more crotalaria seeds (Crotalaria spp.), 2 or more castor beans (Ricinus communis), 4 or more pieces of an unknown foreign substance(s) or a commonly recognized harmful or toxic foreign substance(s), 10 or more pieces of rodent pellets, bird droppings, or an equivalent quantity of other animal filth in 1,000 grams of soybeans; or

(c) Have a musty, sour or commercially objectionable foreign odor (except garlic odor); or

(d) Are heating or otherwise of distinctly low quality.

[1] Soybeans which are purple mottled or stained shall be graded not higher than U.S. No. 3.
[2] Soybeans which are materially weathered shall be graded not higher than U.S. No. 4.

§ 810.607 Grade designation.

(a) *Grade designations for soybeans.* (See also § 810.608.) The grade designations for soybeans shall include in the following order: (1) The letters "U.S."; (2) The number of the grade or the words "Sample grade"; (3) The class; and (4) Each applicable special grade (See also § 810.609). In the case of Mixed soybeans, the grade designation shall also include, following the name of the class, the approximate percentages of Yellow soybeans and Soybeans of other colors in the mixture.

(b) *Optional grade designations.* Soybeans may be certified (under certain conditions [2]) when supported by official analysis, as "U.S. No. 2 or better Soybeans," "U.S. No. 3 or better Soybeans," etc. The optional grade designations for soybeans shall include the name of the applicable class immediately preceding the word "soybeans" on the grade designation. The special grade designation, when applicable, also shall be incuded (under certain conditions [2]) in the certification.

[2] Requests for information concerning inspection and certification procedures, approved devices, criteria for approved devices, and requests for approval of devices should be directed to the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250

Special Grades, Special Grade Requirements and Special Grade Designations

§ 810.608 Special grades and special grade requirements.

A special grade, when applicable, is supplemental to the grade assigned under § 810.606. Such special grades are established and determined as follows:

(a) *Garlicky soybeans.* Soybeans which contain 5 or more garlic bulblets in a 1,000 gram portion.

(b) *Infested soybeans.* Soybeans which are infested with live weevils or other insects injurious to stored grain as set forth in the Grain Inspection Handbook.[2]

§ 810.609 Special grade designations.

Special grade designations shall be made in addition to all other information prescribed in § 810.607. The grade designation for garlicky and infested soybeans shall include in the order listed, following the applicable class, the word "Garlicky" and "Infested," as warranted, and all other information prescribed in § 810.607.

§§ 810.901–810.903 [Removed]

Authority: Secs. 5, 18, Pub. L. 94–582, 90 Stat. 2869, 2884 (7 U.S.C. 76, 87(e)).

Dated: December 7, 1984.

Kenneth A. Gilles,

Administrator.

[FR Doc. 84–33081 Filed 12–19–84; 8:45 am]

BILLING CODE 3410–EN–M

Animal and Plant Health Inspection Service

9 CFR Part 113

[Docket No. 84–086]

Viruses, Serums, Toxins, and Analogous Products; Revision of Standard Requirements for Tetanus Toxoid and Tetanus Antitoxin

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The proposed action would revise the Standard Requirements for the production of Tetanus Toxoid and Tetanus Antitoxin by changing the criteria for a valid test. The current Standards require that the controls must die with clinical signs of tetanus. The proposed revision would provide for terminating the test by euthanasia when the animals are manifesting clinical signs from which recovery is highly improbable.

DATE: Comments must be received on or before February 19, 1985.

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

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Senior Staff Veterinarian, 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."

This 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 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.

In addition, this proposed rule is the result of a cyclical review of 9 CFR 113.99 and 113.251. This review is required by Executive Order 12291.

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.

Alternatives

The alternatives considered are:

1. Do not amend the current regulations. This would continue the procedure in which test animals must linger until death for a valid test.

2. Amend the current regulations to allow for use of specific clinical signs as a criteria for a valid test. This not only conserves time but is also a more humane method of conducting required tests. This alternative is selected.

Background

The present Standard Requirements for Tetanus Toxoid and Tetanus Antitoxin provide for each serial to be potency tested in guinea pigs. For a test to be valid, the control animals must die with clinical signs of tetanus described in the Standard Requirements. The National Veterinary Services Laboratories has analyzed data accumulated over a period of 3 years including results of 69 tests. These data were evaluated to determine if the tests could have been terminated when controls developed specific clinical signs of tetanus without altering the validity of the test system. The results showed that the final outcome would not have changed if judged by the criteria of these proposed revisions. Therefore, it is proposed to amend 9 CFR 113.99(c)(4) and 113.251(d)(6) to allow for terminating the tests by euthanasia after the development of specific definitive clinical signs.

Other changes are proposed to clarify and update the regulations. In 9 CFR 113.99(c), "adult" is deleted and a weight range is added. A correction is made to reflect that "each dilution of pooled serum" is used. This is consistent with the requirements in 9 CFR 113.251 and accepted international standards for Tetanus Toxoid and Tetanus Antitoxin. In 9 CFR 113.251(d), the period of observation has been changed from "approximately 96 hours" to "60 to 120 hours." In the last sentence of § 113.251(d)(4), "expected unit value" is changed to "labeled unit value, one dilution at 10 percent above and one dilution at 20 percent above." This change is consistent with § 113.251(a)(2) of this part. It assures an adequate number of units in all final containers of Tetanus Antitoxin throughout a dating period. This is the common practice used in the industry to establish dating at 1 year and 3 years, respectively. Other minor changes in wording have been made to clarify and update these Standards without changing the meaning or intent of the regulations.

List of Subjects in 9 CFR Part 113

Animal biologics.

PART 113—STANDARD REQUIREMENTS

Section 113.99 paragraph (c) would be revised to read:

§ 113.99 Tetanus Toxoid.

* * * * *

(c) *Potency test.* Bulk or final container samples of completed product from each serial shall be tested for potency. A group of at least 10 guinea pigs, consisting of an equal number of males and females weighing 500 grams ±10 percent shall each be injected subcutaneously with 0.4 of the dose recommended on the label for a horse.

(1) Six weeks after injection all surviving guinea pigs shall be bled and equal portions of serum, but not less than 0.5 ml from each, shall be pooled. Serum from not less than eight animals shall be used.

(2) The pooled serum shall contain at least 2.0 Antitoxin Units (A.U.) per ml as determined by titrating it in the manner prescribed for Tetanus Antitoxin in 9 CFR 113.251. A 1:10 and a 1:20 dilution of the serum shall be made. The dilutions shall be held at 20 to 25 °C for 30 minutes prior to combining with a test dose of Standard Toxin. The test dose of Standard Toxin shall be mixed in proper proportion with each dilution of pooled serum, incubated at 20 to 25 °C for 1 hour and injected subcutaneously into two guinea pigs weighing between 340 and 380 grams.

(3) The test dose of the Standard Toxin shall be verified against 0.1 of a unit of Standard Antitoxin in two guinea pigs weighing 340 to 380 grams which serve as control animals.

(4) Controls shall be observed until they are down and are unable to rise or stand under their own power. At this time they are euthanized and the time of death is recorded in hours. For a valid test the controls must reach this point with clinical signs of tetanus within 24 hours of each other and within an overall time of 60 to 120 hours. The clinical signs to be observed are increased muscle tonus, curvature of the spine, asymmetry of the body outline when the resting animal is viewed from above, generalized spastic paralysis, particularly of the extensor muscles, inability to rise from a smooth flat surface when the animal is placed on its side, or any combination of these signs. If the control guinea pigs do not respond in this manner, the test is invalid and shall be repeated. In a valid test, if the titer is at least 2.0 A.U. per ml, the serial is satisfactory. If the titer is at least 1.0, but less than 2.0 A.U. per ml, the retest provided for by paragraph (c)(5) of this section may be conducted. If the titer is less than 1.0 A.U. per ml, the serial is unsatisfactory and may not be retested.

(5) Serials with titers of at least 1.0 A.U. per ml, but less than 2.0 A.U. per ml in the initial test may be retested, but if the retest is not conducted the serial is unsatisfactory. The retest shall be conducted in the same manner as the initial test except that at least 20 guinea pigs, consisting of an equal number of males and females weighing 500 grams ±10 percent, shall be used as vaccinates and serum from not less than 18 animals shall be pooled for the toxin-antitoxin titration. In the retest, the pooled serum from vaccinated guinea pigs is diluted 1:25. If the retest titer is less than 2.5 A.U. per ml, the serial is unsatisfactory.

Section 113.251, paragraph (d) would be revised to read:

§ 113.251 Tetanus Antitoxin.

* * * * *

(d) *Potency test.* Bulk or final container samples of completed product from each serial shall be assayed to calculate the units of Tetanus Antitoxin in each final container. A comparative toxin-antitoxin neutralization test shall be conducted using a standard antitoxin and a standard toxin. All dilutions shall be made in M/15 phosphate buffered (pH) 7.4 physiological saline with 0.2 percent gelatin.

(1) One ml of the Standard Antitoxin shall be diluted before use so the final volume contains 0.1 unit per ml. The dilution shall be held at 20 to 25 °C for 30 minutes prior to combination with a test dose of toxin.

(2) The Standard Toxin test dose is that amount which when mixed with 0.1 unit of Standard Antitoxin, incubated at 20 to 25 °C for 1 hour, and injected subcutaneously into a 340 to 380 gram guinea pig, results in death of that guinea pig within 60 to 120 hours with clinical signs of tetanus. The toxin shall be diluted so the test dose shall be in 2.0 ml.

(3) A mixture of diluted Standard Toxin and diluted Standard Antitoxin shall be made so that 0.1 unit of antitoxin in 1 ml is combined with a test dose of toxin. This Standard Toxin-Antitoxin mixture shall be held at 20 to 25 ° C for 1 hour before injections of guinea pigs are made.

(4) A sample from each serial of antitoxin shall be prepared as was the Standard Toxin-Antitoxin mixture, except the amount of antitoxin shall be based on an estimation of the expected potency. The final titration shall include a test at the labeled unit value, one dilution at 10 percent above and one dilution at 20 percent above.

(5) Normal guinea pigs weighing within a range of 340 to 380 grams shall be used. Pregnant guinea pigs must not be used.

(i) Each of the two guinea pigs (controls) shall be injected subcutaneously with a 3 ml dose of the Standard Toxin-Antitoxin mixture. Injections shall be made in the same order that toxin is added to the dilutions of antitoxins. These shall be observed parallel with the titration of one or more unknown antitoxins.

(ii) Two guinea pigs shall be used as test animals for each of three dilutions of the unknown antitoxin. A 3.0 ml dose shall be injected subcutaneously into each animal.

(6) Controls shall be observed until they are down and are unable to rise or stand under their own power. At this time they are euthanized and the time of death is recorded in hours. For a satisfactory test, the controls must reach this point with clinical signs of tetanus within 24 hours of each other and within an overall time of 60 to 120 hours. The clinical signs to be observed are increased muscle tonus, curvature of the spine, asymmetry of the body outline when the resting animal is viewed from above, generalized spastic paralysis, particularly of the extensor muscles, inability to rise from a smooth surface when the animal is placed on its side, or any combination of these signs. If the control guinea pigs do not respond in this manner, the entire test shall be repeated.

(7) Potency of a new antitoxin is determined by finding the mixture which will protect the test animal the same as the toxin-antitoxin mixture. Test animals dying sooner than the controls indicate the unit value selected in that dilution was not present, whereas those living longer indicate a greater unit value.

(37 Stat. 832–833 (21 U.S.C. 151–158))

Done at Washington, D.C., this 11th day of December 1984.

R.L. Rissler,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 84–33162 Filed 12–19–84; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-NM-110-AD]

Airworthiness Directives: McDonnell Douglas Model DC-10 and KC-10A (Military) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) that would require modification of the slat position indicating system on certain McDonnell Douglas Model DC-10 and KC-10A airplanes. This action is prompted by reports of rejected takeoffs due to slat disagree indications during the takeoff roll. A study conducted by the manufacturer has revealed that the tolerances for the outboard slats which induce these disagree indications, are too narrow and are causing unnecessary rejected takeoffs at high speed. Widening the tolerances for the outboard slats will eliminate unnecessary rejected takeoffs without compromising safety.

DATES: Comments must be received no later than February 11, 1985.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Eugene F. Huettner, Aerospace Engineer, Systems & Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2831.

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 under the caption "AVAILABILITY OF NPRM." 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 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 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-110-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

During the past several years, six operators have experienced seven instances of slat disagree indications due to slat mechinical movement occurring during the takeoff roll. These slat disagree indications resulted in rejected takeoffs, some at high speeds. A study conducted by the manufacturer has revealed that the disagree indications have been caused by the outboard slat surfaces experiencing aerodynamic loads during takeoff which cause the outboard slats to extend slightly beyond the takeoff tolerance band of the slat indication system. These tolerances are too narrow and are causing unnecessary rejected takeoffs at high speed. Modifying the targets and sensors of the outboard slats will widen the tolerance band, reduce slat disagree indications during takeoff, and eliminate unnecessary rejected takeoffs without compromising safety.

The FAA has determined that incorporation of McDonnell Douglas Service Bulletin 27-195 is necessary to decrease the potential for slat disagree indications occurring during takeoff. These proposed modifications would provide more reliable operation of the slat indication system and reduce the potential for unnecesary rejected takeoffs at high speeds.

Cost Estimate

It is estimated that 160 U.S. registered airplanes would be affected by this NPRM, that it would take approximately 12 manhours per airplane to accomplish the required action, and that the average labor costs would be $40 per manhour. The costs of modification parts are estimated to be $482 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators would be $153,920. 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 directives:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-10 and KC-10A airplanes, certified in all categories which are listed in McDonnell Douglas Service Bulletin 27-195, NEW, dated June 25, 1984. Compliance is required by January 1, 1986, unless previously accomplished. To minimize the potential operational hazard associated with unnecessary rejected takeoffs caused by slat disagree indications, resulting from too narrow tolerances, accomplish the following:

A. Modify the targets and sensors of the outboard slats in accordance with McDonnell Doulgas DC-10 Service Bulletin 27-195, NEW, dated June 25, 1984, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Los Angeles 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 in order to comply with the requirements of this AD.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

(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 DC-10 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 December 11, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-33151 Filed 12-19-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-ANM-18]

Proposed Alteration of VOR Federal Airways; Denver, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of several VOR Federal Airways located in the vicinity of Denver, CO, by deleting some alternate airway segments and renumbering other airway segments. This action supports our agreement with the International Civil Aviation Organization (ICAO) to eliminate all alternate airway designations from the National Airspace System.

DATES: Comments must be received on or before February 4, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Northwest Mountain Region, Attention: Manager, Air Traffic Division, Docket No. 84-ANM-18, Federal Aviation Administration, 17900 Pacific Highway South, C-68966, Seattle, WA 98168.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-ANM-18." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of several airways by deleting all alternate route designations, renumbering some airway segments and revoking airway segments that are not required. This action supports our agreement with ICAO to eliminate all alternate route designations from the National Airspace System. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The FAA has determined that this proposed 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.

List of Subjects in 14 CFR Part 71

VOR Federal Airways, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

V-210 [Amended]

By removing the words "Alamosa, CO, including a south alternate via INT Farmington 086° and Alamosa 232° radials;" and substituting the words "Alamosa, CO;"

V-368 [New]

From Alamosa, CO; INT Farmington, NM, 086°T(072°M) and Alamosa 232°T(219°M) radials; to Farmington, NM.

V-8 [Amended]

By removing the words "Bryce Canyon, UT, Hanksville, UT, including a south alternate; Grand Junction, CO, including a south alternate via INT of Hanksville 087° and Grand Junction 232° radials and also a north alternate from Bryce Canyon to Grand Junction via INT Bryce Canyon 048° and Grand Junction 259° radials; 33 miles, 130 MSL, Kremmling, CO, including a south alternate from Grand Junction, 33 miles, 21 miles, 127 MSL, 120 MSL, INT Grand Junction 075° and Kremmling 228° radials, 28 miles 120 MSL, 130 MSL to Kremmling;" and substituting the words "Bryce Canyon, UT, Hanksville, UT, Grand Junction, CO, Kremmling, CO;"

V–382 [New]

From Bryce Canyon, UT; INT Bryce Canyon 048°T(033°M) and Grand Junction, CO, 2559°T(244°M) radials; to Grand Junction, CO.

V–4 [Amended]

By removing the words "Denver; including a north alternate from Laramie to Denver via Gill, CO;" and substituting the word "Denver;"

V–575 [New]

From Laramie, WY; via Gill, CO; to Denver, CO.

V–138 [Amended]

By removing the words "Medicine Bow; Cheyenne, WY, including a N alternate via INT Medicine Bow 106° and Cheyenne 330° radials;" and substituting the words "Medicine Bow; Cheyenne, WY;"

V–132 [Amended]

By removing the words "From Cheyenne, WY;" and substituting the words "From Medicine Bow, WY; INT Medicine Bow 106°T(092°M) and Cheyenne, WY, 330°T(317°M) radials; Cheyenne;"

V–19 [Amended]

By removing the words "Cheyenne, WY; Casper, WY, including an E alternate from Cheyenne to Casper via INT Cheyenne 002° and Douglas, WY, 152° radials and Dougles;" and substituting the words "Cheyenne, WY; Casper, WY;"

V–547 [New]

From Cheyenne, WY; INT Cheyenne 002°T(349°M) and Douglas 152°T(138°M) radials; Douglas, WY; to Casper, WY.

V–85 [Amended]

By removing the words "Medicine Bow; Casper, WY, including a west alternate via INT Medicine Bow 336° and Casper 216° radials;" and substituting the words "Medicine Bow; Casper, WY."

V–491 [New]

From Medicine Bow, WY; INT Medicine Bow 336°T(322°M) and Casper 216°T(201°M) radials; to Casper, WY.

V–465 [Amended]

By removing the words "Miles City, MT, Williston, ND, including and E alternate" and substituting the words "Miles City, MT, Williston, ND"

V–545 [New]

From Miles City, MT; INT Miles City 053°T(038°M) and Williston, ND, 204°T(189°M) radials; to Williston, ND.

V–187 [Amended]

By removing the words "including a west alternate from Farmington, Cortez, CO; Dove Creek, CO, 17 miles, 28 miles 115 MSL, to Grand Junction, excluding the airspace between the main and west alternate;"

V–391 [Amended]

By removing the words "From Dove Creek, CO, via Grand Junction, CO," and substituting the words "From Farmington, NM; via Cortez, CO; via Dove Creek, CO; via Grand Junction, CO;"

V–207 [Amended]

By removing the words "Denver, CO, Gill, CO; including a W alternate via INT Denver 004° and Gill 234° radials;" and substituting the words "Denver, CO; Gill, CO;"

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.65)

Issued in Washington, D.C., on December 13, 1984.

James Burns, Jr.,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 84–33147 Filed 12–19–84; 8:45 am]

BILLING CODE 4910–13–M

Coast Guard

33 CFR Part 117

[CGD7 84–22]

Drawbridge Operation Regulations; Intracoastal Waterway, SC

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the South Carolina Department of Highways and Public Transportation, the Coast Guard is considering a change to the regulations governing the State Road 544 bridge of Socastee, mile 371, Horry County, South Carolina, by permitting the number of openings to be limited during certain periods. This proposal is being made because periods of peak vehicular traffic have increased. This action should accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before February 4, 1985.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 SW., 1st Avenue, Miami, Florida 33130. The comments and other materials referenced in this notice will be available for inspection and copying at 51 SW., 1st Avenue, Room 816, Miami, Florida. Normal office hours are between 7:30 a.m. and 4:00 p.m. Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, Bridge Administration Specialist, telephone (305) 350–4108.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Mr. Walt Paskowsky, Bridge Administration Specialist, Project Officer, and Lieutenant Commander Ken Gray, project attorney.

Discussion of Proposed Regulations

Vehicular traffic across the bridge during the summer months from 10 a.m. to 2 p.m., Saturdays and Sundays, averaged 4156 vehicles in August 1980, as compared to an average of 5625 vehicles for the same period in August 1983, an increase of 35%. Vehicular traffic across the bridge during the winter months from 7 a.m. to 6 p.m., Monday through Friday, averaged 6232 vehicles in February 1980, as compared to an average of 8275 vehicles for the same period in November 1983, an increase of 33%.

The major portion of the vehicular traffic crossing the bridge in the summer is recreationaly oriented, while the majority of the traffic crossing the bridge in the winter is commuter oriented. Marine traffic through the draw follows a different pattern with 55% of the bridge openings occuring during 4 months of the year in the spring and fall reflecting the seasonal migration of vessels to and from southern waters. Accordingly, regulations are being proposed for these months since this is the period when vessel movements have the greatest impact on vehicular traffic.

Economic Assesment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the proposal will exempt regulary scheduled cruise vessels and

tugs with tows. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, by redesignating paragraphs (a) (b) and (c) of § 117.911 as paragraphs (b), (c) and (d), without change, and by adding a new § 117.911(a) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.911 Atlantic Intracoastal Waterway Little River to Savannah River.

(a) The draw of the Socastee (SR–544) bridge across the AIWW, mile 371, at Socastee shall open on signal except from 1 April through 30 June and 1 October through 30 November from 7 a.m. to 10 a.m. and 2 p.m. to 6 p.m., Monday through Friday, except federal holidays, the draw need only be opened on the hour, 20 minutes after the hour, and 40 minutes after the hour if any vessels are waiting to pass. From 1 May through 30 June and 1 October through 31 October from 10 a.m. to 2 p.m., Saturdays, Sundays and federal holidays, the draw need only be opened on the hour, 20 minutes after the hour and 40 minutes after the hour if any vessels are waiting to pass. Public vessels of the United States, tugs with tows, regulary scheduled cruise vessels and vessels in distress shall be passed at any time.

* * * * *

(33 U.S.C. 499; (g)(2); 49 CFR 1.46 (c)(5); 33 CFR 1.05–1(g)(3).)

Dated: December 10, 1984.

R.P. Cueroni,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 84–33134 Filed 12–19–84; 8:45 am]

BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Part 111

Solicitations in the Guise of Bills, Invoices, or Statements of Account

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposal would amend the regulation implementing statutory provisions on the mailing of solicitations in the guise of bills, invoices, or statements of account. It would clarify an existing regulation by removing possible ambiguity. It would also foreclose a potentially deceptive technique used by some mailers to render less obvious a required warning regarding the true nature of their solicitations.

DATES: Comments must be received on or before January 19, 1985.

ADDRESS: Written comments should be directed to the Assistant General Counsel, Consumer Protection Division, Law Department, U.S. Postal Service, Washington, D.C. 20260–1112. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday in Room 1P–613, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260.

FOR FURTHER INFORMATION CONTACT: George C. Davis, (202) 245–4385.

SUPPLEMENTARY INFORMATION: Under 39 U.S.C. 3001(d) and implementing postal regulations, solicitations in the guise of bills, invoices, or statements of account are "nonmailable" unless certain warnings are printed on the face of the solicitation making it clear that the solicitations are merely offers and not bills that have to be paid. These regulations require warnings to be displayed in capital letters of a color prominently contrasting with the background against which they appear. These regulations also specify alternative locations for the warnings. The regulations regarding one alternative location require the warning to be centered diagonally across the face of the solicitation. Recent litigation involving this regulation suggested that the rule is ambiguous and that the mailer is free to print the warning horizontally on the center of the invoice. Also, some recent solicitations resembling invoices have surrounded the required warning with printed matter so similar in style and size of type to the warning as to "camouflage" the warning and render it less conspicuous to the consumer.

Although we believe the current regulations form a basis for challenge of these practices under 39 U.S.C. 3001(d) and the false representation law (39 U.S.C. 3005), the adoption of a revised regulation is the most effective method of curtailing the proliferation of these practices. The proposed revisions would specify and illustrate diagrammatically the alternative diagonal placement of the warning and would specify that the required warning may not be surrounded by words or symbols which detract from its conspicuousness.

In view of the considerations discussed above, the Postal Service invites comments on the following proposed revisions of the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

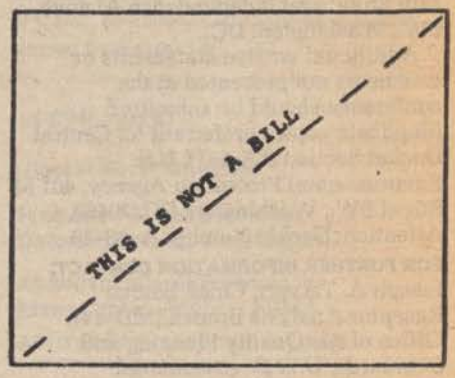
In 123.4 revise .41b(1) and .41(c) to read as follows:

123.4 Nonmailable Written, Printed or Graphic Matter Generally

.41 * * *

b. The notice or disclaimer required by this section must be displayed either:

(1) Diagonally on the center of a line drawn from the vertex of the lower left corner to the vertex of the upper right corner, as in the following example; or



* * * * *

c. The notice or disclaimer must stand conspicuously apart on the page. It must not be preceded, followed, or surrounded by words, symbols or other matter which reduces its conspicuousness or which introduces, modifies, qualifies or explains the prescribed text, such as "Legal notice required by law."

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if this proposal is adopted.

(39 U.S.C. 401, 3001, 3005)

W. Allen Sanders,

Associate General Counsel Office of General Law and Administration.

[FR Doc. 84–33062 Filed 12–19–84; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[AD-FRL-2740-4 Docket No. A-80-46]

Conference on Air Quality Modeling

AGENCY: Environmental Protection Aency (EPA).

ACTION: Notice of conference.

SUMMARY: EPA announces the Third Conference on Air Quality Modeling. Such a conference is required by Section 320 of the Clean Air Act (CAA) to be held every three years. The purpose of the third conference is to provide a forum for public review and comment on proposed revisions to the Guideline on Air Quality Models.

DATE: The Conference will be held on January 29, 30, and 31, 1985 (Tuesday, Wednesday, and Thursday) from 9:00 am to 5:00 pm on January 29 and 30; 9:00 am to Noon on January 31.

ADDRESSES: The Conference will be held in the Thomas Jefferson Auditorium, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC.

Additional written statements or comments not presented at the conference should be submitted (duplicate copies preferred) to: Central Docket Section (LE-131), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460, Attention: Docket Number A-80-46.

FOR FURTHER INFORMATION CONTACT: Joseph A. Tikvart, Chief, Source Receptor Analysis Branch (MD-14), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; phone (919) 541-5561 or J. S. Touma, phone (919) 541-5681.

SUPPLEMENTARY INFORMATION: To standardize air quality modeling practices within such programs as prevention of significant deterioration (PSD), Section 320 of the Clean Air Act Amendments of 1977 states that a conference on air quality modeling is to be held every three years to address appropriate air quality modeling necessary to carry out regulatory requirements. The first conference held in December 1977 addressed EPA's proposed modeling guideline and was devoted almost exclusively to PSD discussions. The result was the "Guideline on Air Quality Models" (EPA-450/2-78-027) which provides guidance on the selection and application of air quality models. Such models are required for evaluating State Implementation Plans, making new source reviews, assessing PSD proposals and otherwise estimating source receptor relationships. The second conference in August 1981 was an open forum to address model accuracy and the incorporation of model uncertainty in regulatory decision-making. The third conference will again address EPA's modeling guidance because substantial new knowledge concerning modeling analyses has been developed since the original guideline was issued. Revised guidance is needed to improve the basis for air quality impact assessments and to insure that the current state-of-the-art with respect to air quality models and data bases is represented.

As a basis for revising the Guideline on Air Quality Models and for holding this conference, EPA has conducted in-house workshops which included Regional Office, research and headquarters staffs. Furthermore, EPA has entered into a cooperative agreement with the American Meteorological Society (AMS) to obtain input from the scientific community on resolving issues raised at previous public meetings and conferences. Also, a procedure for including new models in the guideline, as noticed in the **Federal Register**, Vol. 45, No. 61 March 27, 1980, was initiated and about 30 models have been received. Based onthe results of these activities, EPA is proposing revisions to the guideline and is soliciting comments through this conference.

This conference is serving jointly as a public hearing on proposed amendments to EPA regulations which appear at 40 CFR 51.24 and 52.21. The amendments relate to using air quality models and substituting by reference the revised guideline for the original 1978 version. EPA has previously issued a notice (see 49 FR 48018-48021, December 7, 1984), on a Public hearing concerning these amendments.

The conference will begin with an opening day summary on applicable CAA requirements and issues concerning consistency in modeling. Reports on the plans and accomplishments of EPA's cooperative agreement with the AMS and on other major EPA programs concerning model evaluation will be presented. Status reports on research programs of the electric Power Research Institute and of EPA will also be presented. On the afternoon of the first day, there will be briefings by EPA officials on the Agency's response to previous public comments and on the proposed revised guideline. To conclude the day, representatives of the APCA Meteorology Committee will discuss technical issues associated with air quality modeling. On the second day, the conference will begin with statements from the National Academy of Sciences, appropriate Federal agencies including the National Science Foundation, the National Oceanic and Atmospheric Administration, the National Bureau of Standards and others. Statements by representatives of State and local air quality management agencies will follow. Following these presentations, the conference will be opened to statements and comments from the general public.

EPA solicits advice and comment especially on the following items: (1) Specific changes to 40 CFR Parts 51 and 52; (2) the revised format of the modeling guideline; (3) recommendations concering models for ozone; (4) proposed changes to the preferred models; (5) how performance evaluations can be improved for models, particularly photochemical ozone models (i.e., EKMA for which adequate evalaution data bases are not available); (6) specific quantitative procedures for relating air quality standards and PSD increments to emission limitations through the use of mathematical models that include statistical techniques to deal with uncertainty; (7) the degree to which individual State or local regulatory agencies, within the context to Clean Air Act regulatory requirements, should be provided more (or less) authority to use air quality models which have not been reviewed and approved by EPA; and (8) if regulatory agencies are provided additional authority to use other air quality models, what degree of oversight or approval authority should be retained by EPA.

In order to assist the Agency in preparing for the conference, persons planning to attend are asked to notify the Agency by mail or phone at the address or phone number given in the "Further Information" section above no later than ten (10) days prior to the meeting date. Such persons should identify the organization (if any) on whose behalf they are entering a statement and the date(s) of attendance. If a presentation is projected to be longer than 15 minutes, the presenter should also state why it needs to be longer. Persons failing to submit a written notice but desiring to speak at the conference should notify the presiding officer immediately before the meeting and will be scheduled on a time-available basis. Persons submitting by January 18 a notice of intent to attend will be sent by mail a copy of the agenda and the proposed revisions to

the guideline. Limited copies will be available for registrants at the conference.

The conference will be conducted informally and chaired by an EPA official. There will be no sworn testimony or cross examination. A verbatim transcript of the conference proceedings will be maintained for use in reviewing comments of EPA's modeling guidance. Speakers are encouraged to bring extra copies of their presentations for the convenience of the reporter and the Agency panel. Speakers will be permited to enter itno the record any additional written comments they do not present orally. Written comments by the public are encouraged. The issues addressed will be considered in further development of a revised Guideline on Air Quality Models. The transcript of the proceedings and all written comments will be maintained in Docket Number A–80–46 which will remain open for 60 days following the conference.

Dated: December 14, 1984.

John C. Topping,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 84–33116 Filed 12–19–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–6599]

Proposed Flood Elevation Determinations, North Dakota

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule; revision.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Township of Stanley, Cass County, North Dakota.

Due to recent engineering analysis, this proposed rule would revise the proposed determinations of base (100-year) flood elevations published in 49 FR 19352 on May 7, 1984, and in the *Fargo Forum,* published on or about February 27, 1984, and March 5, 1984, and hence would supersede those previously published rules for the areas cited below.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at Stanley Township Supervisor's Home, Route 1, Horace, North Dakota.

Send comments to: the Honorable Gerald Floden, Route 1, Horace, North Dakota.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0700.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the Township of Stanley, Cass County, North Dakota, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4 (a)).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 USC 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed base (100-year) flood elevations are:

Source of flooding	Location	#Depth in feet above ground, *Elevation in feet (NGVD)
Sheyenne River.	Intersection of River and center of County Highway 6.	*913
Wild Rice River.	Intersection of River and center of U.S. Highway 81.	*908

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator)

Issued: December 7, 1984.

Jeffrey S. Bragg,

Federal Insurance Administrator, Federal Insurance Administration.

[FR Doc. 84–33066 Filed 12–19–84; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 67

[Docket No. FEMA–6568]

Proposed Flood Elevation Determinations, Washington

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule; revision.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of St. George, Washington County, Utah.

Due to recent engineering analysis, this proposed rule would revise the proposed determinations of base (100-year) flood elevations published in 48 FR 50378 on November 1, 1983, and in *Color Country Spectrum,* published on or about September 21, 1983, and September 28, 1983, and hence would supersede those previously published rules for the areas cited below.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review

at the City Engineer's Office, 175 East 200 North, St. George, Utah.

Send comments to: the Honorable Karl F. Brooks, 175 East 200 North, St. George, Utah 84770.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287–0700.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the City of St. George, Washington County, Utah, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a)).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it hs no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed base (100-year) flood elevations are:

Source of flooding	Location	#Depth in feet above ground, *Elevation in feet (NGVD)
Fort Pierce Wash.	30 feet upstream from the center of Fort Pierce Wash.	*2,565

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator)

Issued: December 12, 1984.

Jeffrey S. Bragg,

Federal Insurance Administrator, Federal Insurance Administration.

[FR Doc. 84–33067 Filed 12–19–84; 8:45 am]

BILLING CODE 6718–03–M

Notices

Federal Register
Vol. 49, No. 246
Thursday, December 20, 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

Forest Service

Modoc National Forest Grazing Advisory Board; Meeting

The Modoc National Forest Grazing Advisory Board will meet at 1:00 p.m., January 17, 1985, in the Conference Room of the Supervisor's Office at 441 North Main Street, Alturas, California.

The purpose of this meeting is to discuss expenditures of Range Betterment Funds and Allotment Management Plans.

The meeting will be open to the public. Persons who wish to attend or who would like further information should notify William E. Britton, Modoc Supervisor's Office, telephone 916–233–5811. Written statements may be filed with the Board before or after the meeting.

December 12, 1984.

Glenn Bradley,

Forest Supervisor.

[FR Doc. 84–33093 Filed 12–19–84; 8:45 am]

BILLING CODE 3410–11–M

Revised Intent; the Bighorn National Forest; Proposed Land and Resource Management Plan and Draft Environmental Impact Statement; Big Horn, Johnson, Sheridan, and Washakie Counties, WY

On August 6, 1984, the Forest Service, U.S. Department of Agriculture, distributed to the public and filed the Bighorn National Forest Land and Resource Management Plan and Draft Environmental Impact Statement (DEIS) with the Environmental Protection Agency (EPA). The effects of alternative land use allocations for 17 roadless areas inventoried in the second Roadless Area Review and Evaluation (RARE II, FEIS, January 1979) were disclosed in DEIS Appendix M. On August 24, 1984, the EPA published a Notice of Availability in the **Federal Register** (Vol. 49, No. 166, pg. 33722). A 90-day public review and comment period was closed on November 26, 1984.

Although we believe the effect of the wilderness decision on the analyses disclosed in the DEIS is minor, a Supplement will be issued to document principal changes as a result of the wilderness decision. Additionally, because the question of "wilderness suitability" (Planning question 7, pg. 1–10, DEIS) is no longer within the scope of the analysis of the DEIS, those commenting on the DEIS may wish to change, revise, or refocus their comments.

Changes to the DEIS, documented in the Supplement, resulting from not analyzing wilderness suitability will be reflected in the Forest plan and final EIS. For example, outputs and effects such as recreation and wilderness will change. Documentation of the roadless area reanalyses in the DEIS, including Appendix M, is no longer within the scope of the DEIS and will be removed from the final EIS. Additionally, alternative I and J, originally included to insure a full range of wilderness suitability alternatives, will be removed in the final EIS.

To insure ample time to comment on these changes, we are providing an additional 90 day comment period. Please send your comments to the Forest Supervisor, 1969 South Sheridan Ave., Sheridan, Wyoming 82801. To be addressed in the final EIS, comments on the draft documents must be received by midnight March 28, 1985.

All comments received during the initial 90 day comment period which ended on November 26, 1984, will be addressed in the final EIS. Feel free, however, to change or revise your comments based on the Supplement or other information.

We are also sponsoring two public advisory hearings to provide an opportunity for oral comment to the Forest Service concerning the proposed plan, DEIS and Supplement. The first hearing will be held on January 23, 1985 at the Elks Lodge No. 1431 located at 622 Greybull Avenue, Greybull, Wyoming. The second hearing will be on January 24, 1985 in the convention center of the Holiday Inn Holidome, 1809 Sugarland, Sheridan, Wyoming. Both hearings will begin at 7:00 p.m. and will close at 10:00 p.m.

Each hearing will be conducted by a hearing officer. After an introduction by the Forest Service, oral and/or written comments may be presented. A verbatim record of all oral comments will be kept which will become part of the comments on the Proposed Plan, DEIS and Supplement.

To insure full participation by the public, some ground rules have been established for the conduct of the hearing:

1. Each speaker will be limited to 5 minutes for an oral presentation. This time may be adjusted at the hearing to insure that everyone has an opportunity to make a presentation.

2. Persons may pre-register to speak at the hearings by contacting the receptionist at the Forest Supervisor's Office by phone (307) 672–0751, in writing, or by a personal visit. We will need to know your name, address, who you represent (including self only) and which hearing(s) you wish to attend.

3. Pre-registration may also take place until 7:00 p.m. on the day of each hearing. Pre-registration will be permitted at the door from 6:30 until 7:00 p.m.

4. The Forest Service will accept written statements, postmarked anytime prior to midnight on March 28, 1985.

5. The order of speaking will be established by the order of pre-registration. Elected officials making a statement will speak first.

6. There will be no comment by representatives of the Forest Service on the issues or questions raised at the hearings. All questions, issues, and comments will be addressed by the Forest Service in the Final EIS.

For further information contact: Edward L. Schultz, Forest Supervisor, Bighorn National Forest, 1969 S. Sheridan Avenue, Sheridan, Wyoming 82801, Phone: (307) 672–0751.

S. H. Hanks,

Deputy Regional Forester.

December 11, 1984.

[FR Doc. 84–33105 Filed 12–19–84; 8:45 am]

BILLING CODE 3410–01–M

Revised Notice of Intent To Prepare the Shoshone National Forest Land and Resource Management Plan and Environmental Impact Statement; Park, Fremont, Hot Springs, Teton, and Sublette Counties, WY

A Notice of Intent to prepare an environmental impact statement (EIS) for the Shoshone National Forest Land and Resource Management Plan was published in the **Federal Register** on November 14, 1980.

A revised Notice of Intent was published in the **Federal Register** on August 25, 1983. The August 1983 notice indicated that the analysis in the draft EIS would disclose the environmental consequences of wilderness and nonwilderness management for the areas of the Shoshone National Forest which were inventoried in the Roadless Area Review and Evaluation (USDA Forest Service, RARE II FEIS, January 1979).

Subsequent to the August 1983 notice appearing in the **Federal Register**, Congress passed the Wyoming Wilderness Act. The President signed it into law (Pub. L. 98–550) on October 30, 1984. There is one new wilderness on the Shoshone National Forest (the Popo Agie). There are additions to the Fitzpatrick, Washakie, and Beartooth-Absaroka Wilderness, and one Wilderness Study Area (the High Lakes). The status of the Dunoir Special Management Unit was not changed and provisions of Pub. L. 92–476 will still apply. The Act states that the wilderness attributes of the Study Area be protected until the next round of Forest Planning. All other roadless areas on the Shoshone National Forest were released for nonwilderness uses.

Therefore, the analysis described in the August 1983 notice will not be performed as the re-evaluation of roadless areas is no longer within the scope of the EIS.

The proposed Forest Plan and draft EIS will be released for public review and comment in Spring 1985. For more information please contact: Stephen Mealey, Forest Supervisor, Shoshone National Forest, 225 W. Yellowstone Ave., P.O. Box 2140, Cody, WY 82414, Phone: (307) 527–6241.

Dated: December 11, 1984.

S.H. Hanks,

Deputy Regional Forester.

[FR Doc. 84–33106 Filed 12–19–1984; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Public Information Collection; Agency Form Submitted for OMB Review

SUMMARY: The U.S. Commission on Civil Rights has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This entry contains the following information: (1) Type of Submission; (2) Title of Information Collection; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the proposal may be obtained.

New

Relative Effectiveness of Public School Desegregation Plans

The purpose of the study is to determine the relative effectiveness of different types of desegregation plans. Our report will be made available to public officials who influence and/or determine the desegregation policies of State and local educational systems.

Respondents

District Administrators of Public Elementary and Secondary Schools

Responses: 165

Burden Hours: 415

Addresses: Comments are to be forwarded to Mr. Joseph Lackey, Office of Management and Budget, Desk Officer, Room 3208, New Executive Office Building, Washington, D.C. 20503, and Max Green, Assistant Staff Director for Programs and Policy, Room 710, 1121 Vermont Avenue, NW., Washington, D.C. 20425, telephone (202) 523–5625.

SUPPLEMENTAL INFORMATION: A copy of the information collection proposal may be obtained from Mr. Max Green, whose address and telephone number are listed above.

December 17, 1984.

Lawrence B. Glick,

Federal Register Liaison Officer, U.S. Commission on Civil Rights.

[FR Doc. 84–33157 Filed 12–19–84; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee will be held January 8, 1985, at 9:30 a.m., Herbert C. Hoover Building, Room B841, 14th Street and Constitution Avenue, NW., Washington, D.C. The Committee advises the Office of Export Administration with respect to technical questions which affect the level of export controls applicable to computer peripherals, components and related test equipment or technology.

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Report on membership by the Chairman.
4. Review of annual plan and priorities of the Committee.
5. Determination of subcommittee makeup and staffing.
6. Briefing on foreign availability project by Dept. of Commerce.
7. Briefing on technical data by Department of Commerce: Overview.
8. Report on new CCL 1565 by Chairman, Dept. of Commerce, and Department of Defense.
9. Action items underway.
10. Action items due at next meeting.

Executive Session

11. Discussions of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meeting of the Committee to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on February 6, 1984, in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377–4217.

For further information or copies of the minutes contact Margaret A. Cornejo (202) 377–2583.

Dated: December 14, 1984.

Margaret A. Cornejo,

Acting Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 84-33070 Filed 12-19-84; 8:45 am]

BILLING CODE 3510-DT-M

University of Virginia; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84-239. Applicant: University of Virginia, Charlottesville, VA 22903. Instrument: Induced Electromagnetic Conductivity Profiling Meter. Manufacturer: Geonics Limited, Canada. Intended use: See notice at 49 FR 30984.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument measures ground conductivity in millimhos per meter without surface contact. The National Bureau of Standards advises in its memorandum dated October 24, 1984 that: (1) The capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Leonard E. Mallas,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-33071 Filed 12-19-84; 8:45 am]

BILLING CODE 3510-DS-M

Semiconductor Technical Advisory Committee; Partially Closed Meeting

SUMMARY: The Semiconductor Technical Advisory Committee was initially established on January 3, 1973, and rechartered on January 5, 1981 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

Time and place: January 17, 1985 at 9:30 a.m., Herbert C. Hoover Building, Room 3708, 14th Street and Constitution Ave. NW., Washington, D.C.

Agenda

General Session

1. Opening remarks by the Chairman.
   a. Summary of TAC chairmen's meeting.
   b. Outline of 1985 TAC goals.
2. Presentation of papers or comments by the public.
3. Solicitation of inputs on needed areas of commodity decontrol or relaxation of export controls.
4. Old committee business.
5. New committee business.
6. Action items underway.
7. Action items due at next meeting.

Executive Session

8. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

Public participation: The General Session will be open to the public and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

SUPPLEMENTARY INFORMATION: A Notice of Determination to close meeting or portions of meetings of the Committee to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on February 6, 1984, in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377-4217.

For further information or copies of the minutes contact Margaret A. Cornejo (202) 377-2583.

December 13, 1984.

Margaret A. Cornejo,

Acting Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 84-33069 Filed 12-19-84; 8:45 am]

BILLING CODE 3510-DT-M

[Case No. 626]

Piher Semiconductors, S.A.; Order Amending Temporary Denial of Export Privileges

In the matter of Piher Semiconductors, S.A., Avda San Julian, s/n Apartado Correos 177, Granallers (Barcelona), Spain.

By Orders of April 9, 1982, 47 FR 16819 (April 20, 1982), June 2, 1982, 47 FR 24765 (June 8, 1982), August 3, 1982, 47 FR 35808 (August 17, 1982), October 12, 1982, 47 FR 46558 (October 19, 1982), December 7, 1982, 47 FR 55989 (December 14, 1982), March 22, 1983, 48 FR 12762 (March 28, 1983), May 19, 1983, 48 FR 23471 (May 25, 1983), August 26, 1983, 48 FR 40418 (September 7, 1983), November 30, 1983, 48 FR 54676 (December 6, 1983), February 28, 1984, June 1 1984, 49 FR 23906 (June 8, 1984), and August 31, 1984, 49 FR 35823 (September 12, 1984), the Order of February 25, 1982, 47 FR 9044 (March 3, 1982) Temporarily Denying Export Privileges was amended so as to authorize certain exports by Piher International Corp. The Order of August 31, 1984 further provided that Piher International Corp. could apply for an extension of such authorization to export if serious economic hardship would be caused by failure of such extension coupled with a continuing consideration of a motion filed by Piher International Corp. that requested exception from the provisions of Paragraph III of the Order of February 25, 1982.

Consideration of this motion to except Piher International Corp. is still continuing, and it has now applied for an extension of its authorization to make certain exports, asserting that failure to obtain the extension will entail serious economic hardship. Piher International Corp. has also indicated that it has changed its address during 1984. The addresses listed for Piher International Corp. in the Order of February 25, 1982 were initially amended in the Order of April 9, 1982.

Based on the representations made by Piher International Corp., I find: first, that the Order of February 25, 1982 should be amended to reflect Piher International Corp.'s new address; and, second, that granting Piher International Corp.'s application for an extension of its authorization to make certain exports is justified, and that granting this extension will not jeopardize the purpose of the Order of February 25, 1982.

Accordingly, it is hereby ordered, first, that the references to Piher International Corp. in Paragraph III of the Order of February 25, 1982 are amended to read as follows:

Piher International Corp., formerly with addresses at 565 W. Golf Rd., Arlington Heights, Illinois 60005 and at Post Office Box 91969, Chicago, Illinois 60680, changed during 1984 to addresses at 903 Feehanville Drive,

Mt. Prospect, Illinois 60056, and at Post Office Box 91969, Chicago, Illinois 60680.

Further, it is hereby ordered, second, that the Order of February 25, 1982 is additionally amended by excepting, from its denial of export privileges, Piher International Corp.—formerly with addresses at 565 W. Golf Road, Arlington Heights, Illinois 60005 and at Post Office Box 91969, Chicago, Illinois 60680, and currently with addresses at 903 Feehanville Drive, Mt. Prospect, Illinois 60056, and at Post Office Box 91969, Chicago, Illinois 60680—insofar as Piher International Corp. exports variable resistors and potentiometers to its customers in Canada and Singapore in fulfillment of shipments scheduled through March 1985 in the shipment release documents filed by Piher International Corp. in support of its Application for this extension, provided all such exports are G–DEST under the Export Administration Regulations (15 CFR Parts 368–399 (1984)). Piher International Corp. may apply for an extension of this Amendment to shipments scheduled after March 1985 should a continuing consideration of its aforesaid motion entail serious economic hardship if such an extension is not issued.

This Amendment of the Order is effective December 1, 1984.

Dated: December 14, 1984.

Thomas W. Hoya,

Hearing Commissioner.

[FR Doc. 84–33140 Filed 12–19–84; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

Foreign Fishing; Receipt of Permit Applications

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*) Send comments on applications to:

Fees, Permits and Regulations Division (F/M12), National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235

or, send comments to the Fishery Management Council(s) which review the application(s), as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231–0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South New Street, Dover, DE 19901; 302/674–2331

David H.G. Gould, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407; 803/571–1366

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00818; 809/753–6910

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, FL 33609; 813/228–2815

Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 526 S.W. Mill Street, Portland, OR 97201, 503/221–6352

Jim H. Bryson, Executive Director, North Pacific Fishery Management Council, 411 W. Fourth Avenue, Suite 2D, Anchorage, AK 99510; 907/271–4060

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 164 Bishop Street, Room 1608, Honolulu, HI 98613; 808/523–1368

For further information contact Shirley E. Whitted or John D. Kelly (Fees, Permits, and Regulations Division, 202–634–7432).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the **Federal Register.** The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983, issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1985 have been received from the Government(s), shown below.

Dated: December 17, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

Fishery codes and designation of Regional Fishery Management Councils which review applications for individual fisheries are as follows:

Code	Fishery	Regional fishery management councils
ABS	Atlantic billfishes and sharks	New England, Mid Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA	Bering Sea and Aleutian Islands	North Pacific.
GOA	Gulf of Alaska	North Pacific.
NWA	Northwest Atlantic Ocean	New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
SMT	Seamount groundfish	Western Pacific.
SNA	Snails (Bering Sea)	North Pacific.
WOC	Pacific groundfish (Washington, Oregon and California).	Pacific.
PBS	Pacific billfishes and sharks	Western Pacific.

Activity codes which specify categories of fishing operations applied for are as follows:

Activity code	Fishing operations
1	Catching, processing and other support.
2	Processing and other support only.
3	Other support only.
4	"Joint venture" in support of U.S. vessels.

Nation/vessel name/vessel type	Application No.	Fishery	Activity
Government of the German Democratic Republic:			
Breitling, cargo transport vessel	GC–85–0012	NWA	3
Government of Japan:			
Ariake Reefer, Cargo transport vessel	JA–85–0910	BSA, NWA, GOA, SMT, SNA	3
Kukuyo Maru, pair trawler	JA–85–0113	BSA	1
Kureha Maru, pair trawler	JA–85–0011	BSA	1
Shinpoh Maru No. 10, cargo transport vessel	JA–85–1079	BSA, GOA, NWA, SMT, SNA	3
Sky Reefer, cargo transport vessel	JA–85–0907	BSA, NWA, SMT, SNA, GOA	3
Suzuran Maru, cargo transport vessel	JA–85–1152	BSA, GOA, SMT, SNA, NWA	3
Taisei Maru No. 101, cargo transport vessel	JA–85–1144	BSA, GOA, SMT, SNA, NWA	3
Tenyo Maru No. 25, longliner gillnet	JA–85–0618	BSA, GOA	1
Yoshiho, cargo transport vessel	JA–85–0031	BSA, GOA	3
Suzuka Maru, large stern trawler/factory ship	JA–85–0363	NWA	2 (4)
Government of Portugal:			
Joao Alvares Fagundes, large stern trawler	PO–85–0004	NWA	1 (4)
David Melgueiro, side trawler	PO–85–0021	NWA	1 (4)
Elisabeth, large stern trawler	PO–85–0015	NWA	1 (4)
Estavao Gomes, side trawler	PO–85–0022	BSA, GOA	1 (4)

Nation/vessel name/vessel type	Application No.	Fishery	Activity
Fernandes Lavrador, side trawler	PO-85-0023	BSA, GOA	1 (4)
Luis Ferreira De Carvalho, large stern trawler	PO-85-0005	NWA	1 (4)
Maria De Ramos Pascoal, side trawler	PO-85-0025	BSA	1
Taiwan:			
Min Hong 31, longliner	TW-85-3071	PBS	1
Yin Kuo Shiang 7, longliner	TW-85-3012	PBS	1
Chief Dragon 101, medium stern trawler	TW-85-0001	BSA, GOA	1 (4)
Government of the USSR:			
Aragonit, large stern trawler	UR-85-0224	BSA, GOA	1 (4)
Druzhba USSR-GDR, large stern trawler	UR-85-0221	BSA, GOA	1 (4)
Izumrudnyi, large stern trawler	UR-85-0747	BSA, GOA	1 (4)
Karagiach, large stern trawler	UR-85-0028	BSA, GOA	1 (4)
Khrustalnyi, large stern trawler	UR-85-0710	BSA, GOA	1 (4)
Mramornyi, large stern trawler	UR-85-0713	BSA, GOA	1 (4)
Mys Osipova, large stern trawler	UR-85-0585	BSA, GOA	1 (4)
Mys Senyavina, large stern trawler	UR-85-0227	BSA, GOA	1 (4)
Mys Yudina, large stern trawler	UR-85-0025	BSA, GOA	1 (4)
Mys Zolotoy, large stern trawler	UR-85-0775	BSA, GOA	1 (4)
Pistatel, large stern trawler	UR-85-0561	BSA, GOA	1 (4)
Skalistyi, large stern trawler	UR-85-0052	BSA, GOA	1 (4)
Ivan Malyakin, large stern trawler	UR-85-0194	BSA, GOA	1 (4)

Japan

Joint Venture—The Government of Japan has applied for a fishing vessel permit to engage in joint venture activities in the NWA fishery. The application requests that the Japanese vessel receive transshipments of *Illex* (1,500 mt) and *Loligo* (1,500 mt) from domestic vessels beginning in April. The American partner is Edward Watral, Eastern Long Island Trawlers, Corp., South De Witt Place, Montauk, NY 11954. The joint venture is scheduled to operate April 1985 to March 1986.

Portugal

Joint Venture—The Government of Portugal has applied for fishing vessel permits to engage in joint venture activities in Alaska. The application requests that Portuguese vessels receive transshipments of pollock (10,000) and Pacific cod (15,000) in the BSA fishery and pollock (10,000) and Pacific cod (5,000) in the GOA fishery. The total amount requested is 40,000 mt. The American partner is Profish Alaska, Inc., P.O. Box 104927, Anchorage, AK. The joint venture will operate January 1-April 30, 1985, and October 1-December 31, 1985.

An application was submitted for the NWA squid fishery. The application requests that Portuguese vessels receive transshipments of *Illex* squid (3,000 mt) from domestic vessels in the NWA fishery. The American partner is Joint Trawlers (North America), Ltd., 63 Main Street, Gloucester, MA 01930. The joint venture will operate June 1985–October 1985.

[FR Doc. 84-33142 Filed 12-17-85; 3:02 pm]

BILLING CODE 3510-22-M

Gulf of Mexico Fishery Management Council; Public Meetings

The Gulf of Mexico Fishery Management Council will convene public meetings as follows:

Council—review and hear public comment on amendments to the Mackerel Fishery Management Plan (FMP); work plan for the Data Collection FMP; amendments to the Magnuson Fishery Conervation and Management Act; actions on the continuation of the Texas closure and the Tortugas Sanctuary; summary of activities of East Coast Councils, as well as spiny lobster regulations. The meeting will convene at 8:30 a.m., January 9, 1985, and recess at 5 p.m.; reconvene at 8:30 a.m., January 10, 1985, and adjourn at approximately noon.

Council's Shrimp Advisory Panel—in conjunction with the January Council meeting, will review the result of the 1983 shrimp fishing season and a proposal for transboundary shrimp studies at the U.S./Mexican border. The meeting will convene at 2 p.m., January 7, 1985, and recess at approximately 11 a.m.; reconvene at 8 a.m., January 8, 1985, adjourn at approximately 11 a.m.

Both meetings will be held at the Sheraton Plaza Royale, 377 North Expressway, Brownsville, TX. For further information, contact the Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, FL 33609; telephone: (813) 228–2815.

Dated: December 17, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84-33144 Filed 12-19-84; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Abbott Laboratories having an office in North Chicago, Illinois, an exclusive right to practice the inventions embodied in U.S. Patent Application Serial No. 6- 665,400, "Screening Test for Reverse Transcriptase Containing Virus." The patent rights in this invention are being assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101–4.1. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing Department of Commerce, National Technical Information Service.

[FR Doc. 84-33092 Filed 12-19-84; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishing Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

December 14, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 17, 1984. For further information contact James Nader, International Trade Specialist (202) 377–4212.

Background

Pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 13 and November 9, 1982, as amended, between the Government of the United States and the Republic of Indonesia, on October 31, 1984 notice was published in the **Federal Register** (49 43744), which established import limits for man-made fiber work gloves in Category 631 pt. (only T.S.U.S.A numbers 704.3215, 704.8525, 704.8550 and 704.9000), produced or manufactured in Indonesia and exported during the ninety-day period which began on September 28, 1984. The notice also stated that the Government of the Republic of Indonesia is obligated under the bilateral agreement, if no mutually satisfactory solution is reached on levels for this category during consultations, to limit its exports during the period beginning on September 17, 1984 to 94,685 dozen pairs for Category 631 pt.

The notice also stated that merchandise in the category which is in excess of the ninety-day limit, if it is allowed to enter, may be charged to the prorated limit.

The United States Government has decided, inasmuch as no mutually satisfactory solution has been agreed concerning this category, to control imports at the designated limits. The limits may be adjusted to include prorated swing and carryforward.

A description of textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), and November 9, 1984 (49 FR 44782).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

December 14, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 13 and November 9, 1982, as amended, between the Governments of the United States and the Republic of Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on December 17, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Category 631 pt.,[1] produced or manufactured in Indonesia and exported during the period which began on September 17, 1984 and exported during the period ending June 30, 1985 to 94,685 dozen pairs.

Textile products in Category 631 pt. which have been exported to the United States during the ninety-day period which began on September 17 and ended on December 15, 1984 shall be subject to this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), and November 9, 1984 (49 FR 44782).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84–33137 Filed 12–19–84; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With the Government of Thailand To Review Trade in Category 438 pt. (Women's Wool Shirts and Blouses)

December 17, 1984.

On November 30, 1984 the Government of the United States requested consultations with the Government of Thailand with respect to Category 438 pt. (women's wool shirts and blouses in TSUSA numbers 383.1305, 383.2507, 383.5234, 383.5810, 383.6310 and 383.7724). This request was made on the basis of the bilateral agreement of July 27 and August 8, 1983 between the Governments of the United States and Thailand relating to trade in cotton, wool and man-made fiber textiles and textile products. The agreement provides for consultations when the orderly development of trade between the two countries may be impeded by imports due to market disruption, or the threat thereof.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations between the two governments within 90 days of the request for consultations, CITA, pursuant to the terms of the bilateral agreement, may establish a prorated specific limit of 711 dozen for the entry and withdrawal from warehouse for consumption of wool textile products in Category 438 pt., produced or manufactured in Thailand and exported to the United States during the period which began on November 30, 1984 and extends through December 31, 1984.

A summary market statement concerning this category follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), and November 9, 1984 (49 FR 44782).

The Government of the United States, pending agreement in consultations on a mutually satisfactory solution, has decided to control imports in this category during the ninety-day consultation period (November 30, 1984–February 27, 1985) at 2,773 dozen. In the event the level established for Category 438 pt. during the ninety-day period is exceeded, such excess amounts, if they are allowed to enter, shall be charged to the limit established for 1985.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Thailand, further notice will be published in the **Federal Register.**

Effective date: December 26, 1984.

Anyone wishing to comment or provide data or information regarding the treatment of Category 438 pt. under the Bilateral Cotton, Wool and Man-Made Fiber Agreement with the Government of Thailand, or on any

[1] Only TSUSA numbers 704.3215, 704.8525, 704.8550 and 704.9000.

other aspect thereof, or to comment on domestic production or availability of textile products included in the Category 438 pt., is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Thailand—Market Statement

Category 438pt.—Women's Girl's and Infants' Wool Knit Blouses

November 1984.

This category part covers TSUSA Nos. 383.1305, 383.2507, 383.5234, 383.5810, 383.6310 and 383.7724. U.S. imports of this category part from Thailand were only 157 dozen in 1982 and 246 dozen in 1983. Imports of commercial quanties began in April 1984 when 1,095 dozen were entered. Imports for the April–June 1984 quarter from Thailand were 1,592 dozen and for the July–September quarter, 10,883 dozen. This was a quarter-to-quarter increase of 584 percent.

The sudden and sharp increase of imports of Category 438 pt. from Thailand threatens to disrupt the U.S. market for women's, girls', and infants' wool knit blouses.

The U.S. market for Category 438pt. increased significantly in 1983 from the recession year of 1982. Imports, including those from Thailand, absorbed this increase and also took away part of the market supplied by our domestic maufacturers. The result was a decline in domestic production.

January–September 1984 imports were in excess of total 1983 imports and were up 81 percent from the same period in 1983. This import growth will again exceed market growth and the domestic industry's share of the market will decline in 1984.

The U.S. industry is fragmented with many relatively small firms which are threatened by an import rise in this category.

Domestic production of Category 438pt. declined by 20.5 percent in 1983 to 178,000 dozen from 224,000 dozen in 1982. Imports, on the other hand, increased by 32.7 percent from 422,000 dozen to 560,000 dozen. The ratio of imports to domestic production climbed from 188.4 percent in 1982 to 314.6 percent in 1983. It will be higher in 1984 due to the further sharp increase in imports.

December 17, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on December 7, 1983 by the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Thailand.

Effective on December 26, 1984, the directive of December 7, 1983 is further amended to include a level of restraint of 2,773 dozen [1] for wool textile products in Category 438 pt., produced or manufactured in Thailand and exported during the ninety-day period which began on November 30, 1984 and extends through February 28, 1985.

Textile products in Category 438 pt.[2] which have been exported to the United States before November 30, 1984 shall not be subject to this directive.

Textile products in Category 438 pt.[2] which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1983 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (FR 28754), and November 9, 1984 (49 FR 44782).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

[1] The level of restraint has not been adjusted to reflect any imports exported after November 29, 1984.

[2] In Category 438 only TSUSA numbers 383.1305, 383.2507, 383.5234, 383.5810, 383.6310 and 383.7724.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84–33138 Filed 12–19–84; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With Uruguay on Category 434

December 14, 1984.

On November 29, 1984, the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles, requested the Government of Uruguay to enter into consultations concerning exports to the United States of men's and boys' other coats in Category 434, produced or manufactured in Uruguay.

The purpose of this notice is to advise that, if no solution is agreed upon with the Government of Uruguay in consultations during the sixty-day period which began on November 29, 1984, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of wool textile products in Category 434, produced or manufactured in Uruguay and exported to the United States during the twelve-month period which began on November 30, 1984 and extends through November 30, 1984 and extends through November 29, 1985 at a level of 9,636 dozen.

A summary market statement follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment this category is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Commitee for the implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. (a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Uruguay—Market Statement

Category 434—Men's and Boy's Wool Coats, Excluding Suit-Type Coats

November 1984.

U.S. imports of Category 434 from Uruguay amounted to 10,236 dozen during the year ending September 1984, nearly six and one-half times the quantity imported a year earlier. Imports for the first nine months of 1984 were 8,003 dozen compared with 1,576 dozen imported during the same period in 1983. Uruguay was the fourth largest supplier during the year ending September 1984, accounting for 10.6 percent of the total imports.

These imports from Uruguay are disrupting the market for Category 434 and the sharp increases, if continued, threaten more serious disruption.

U.S. production of Category 434 has trended downward for a number of years. Production in 1983 was 315,000 dozen the lowest level on record and down 13.7 percent from 1982. Imports also trended downward through 1981 but sharply increased during the 1982 and 1983 period and during the first nine months of 1984. Imports in 1983 were 60,000 dozen, up 71.4 percent from 1982 and 122.2 percent from 1981. Imports for the first nine months of 1984 were 76,000 dozen, 92.3 percent above the same period in 1983. The ratio of imports to domestic production increased from 8.3 percent in 1981 to 19.1 percent in 1983. The 1984 ratio probably will be between 30 and 35 percent.

[FR Doc. 84-33139 Filed 12-19-84; 8:45 am]

BILLING CODE 3510-DR-M

CONSUMER PRODUCT SAFETY COMMISSION

Interagency Committee on Cigarette and Little Cigar Fire Safety; Technical Study Group; Meeting

AGENCY: Interagency Committee on Cigarette and Little Cigar Fire Safety.

ACTION: Notice of meeting.

SUMMARY: The Technical Study Group on Cigarette and Little Cigar Fire Safety will have its first meeting on January 3, 1985 in Washington, D.C. The purpose of this meeting is to discuss the organization, procedures, and major tasks of the Technical Study Group.

DATE: The meeting will begin at 10:30 a.m. on January 3, 1985.

ADDRESS: The meeting will be in room 729G, Hubert Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Harry Cohen, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6554.

SUPPLEMENTARY INFORMATION: The Cigarette Safety Act of 1984 (Pub. L. 98-587; 98 Stat. 2925, October 30, 1984) created the Interagency Committee on Cigarette and Little Cigar Fire Safety, which is charged with responsibility to make recommendations to Congress concerning the feasibility of developing cigarettes and little cigars with minimum propensity to ignite upholstered furniture and mattresses. The Cigarette Safety Act also created a Technical Study Group consisting of scientific and technical representatives of the Federal government, affected industries, and associations concerned with fire safety. The Technical Study Group is charged with responsibility for preparing a final technical report to Congress concerning the technical and commercial feasibility, economic impact, and other consequences of developing cigarettes and little cigars with minimum propensity to ignite upholstered furniture and mattresses.

On January 3, 1985, the Technical Study Group will have its first meeting for organizational purposes. At this meeting, the Technical Study Group will establish operating procedures and identify and discuss major tasks to be accomplished in order to fulfill its statutory mandate. This meeting will be open to observation by members of the public, but only members of the Technical Study Group may participate in the discussion.

Dated: December 14, 1984.

Nancy Harvey Steorts,

Chairman, Interagency Committee on Cigarette and Little Cigar Fire Safety.

[FR Doc. 84-33128 Filed 12-19-84; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

December 12, 1984.

The USAF Scientific Advisory Board's Strategic and Tactical Cross-Matrix Panels will meet in the PACAF theater at 5th AF HQ, Yokota AFB, Japan; 313 AD Headquarters, Kadena AB, Okinawa; and 314 AD Headquarters, Osan AB, Korea from January 21-24, 1985.

The purpose of the meeting will be to discuss unique C³, maritime operations, and tactical problems of concern to the 5th AF Commander and obtain assistance from the Panels in resolving them. The meeting will convene from 9:00 a.m. to 5:00 p.m. on January 21, 8:00 a.m. to 5:00 p.m. on January 22, 10:30 a.m. to 5:00 p.m. on January 23, and 8:00 a.m. to 3:00 p.m. on January 24.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) and (4) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8845.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 84-33099 Filed 12-19-84; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Military Traffic Management Command; Military Personal Property Symposium; Open Meeting

Announcement is made of meeting of the Military Personal Property Symposium. This meeting will be held on January 16, 1985 at the Sheraton Crystal City Hotel, Crystal City Hotel, Crystal City, Arlington, Virginia, and will convene at 0930 hours and adjourn at approximately 1500 hours.

Proposed Agenda: The purpose of the Symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to Personal Property Traffic Management Regulation (DOD 4500.34-R), and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Movement and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MT-PPM, at telephone number 756-1600, between 0700-1530 hours. Topics to be discussed should be received on or before January 8, 1985.

Dated: December 13, 1984.

Nathan R. Berkley,

Colonel, GS, Director of Personal Property.

[FR Doc. 84-33156 Filed 12-19-84; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Cooperative Education Program; Application Notice for New and Noncompeting Continuation Awards for Fiscal Year 1985

Applications are invited for new and noncompeting continuation awards for administration, demonstration, and training projects under the Cooperative Education Program for fiscal year 1985. Applications are not invited for new exploration or research projects under this program for fiscal year 1985.

Authority for this program is contained under Title VIII of the Higher Education Act of 1965, as amended by Pub. L. 96–374. (20 U.S.C. 1133–1133b)

The Cooperative Education Program provides Federal financial assistance to institutions of higher education to enable them to initiate, improve or expand their own cooperative education programs. Cooperative education programs at institutions of higher education provide students with the opportunity to earn funds for continuing and completing their academic or career objectives. The Program also provides assistance to institutions of higher education and public or private nonprofit organizations to conduct research and training projects for the purpose of improving cooperative education.

Closing date for transmittal of applications: (1) An application for a new award must be mailed or hand delivered by February 25, 1985.

(2) An application for a noncompeting continuation award, to be assured of consideration for funding, should be mailed or hand delivered by February 25, 1985.

If the application is late, the Department of Education may lack sufficient time to review it with other noncompeting continuation applications and may decline to accept it.

Applications delivered by mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.055A (for administration projects), 84.055B (for demonstration projects), or 84.055D (for training projects), Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) A mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first-class mail. Each late applicant for a new award will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th & D Streets, S.W., Washington, D.C.

The Application Control Center will accept a hand delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

Hand-delivered applications for a new grant will not be accepted after 4:30 p.m. on the closing date.

Program information: Regulations for the Cooperative Education Program are published in 34 CFR Parts 631, 632, 633, and 635. Applicants should be guided by the provisions or requirements of the regulations in developing their applications.

Applicants are encouraged to be specific in their responses to the selection criteria, inasmuch as the Secretary will not give further consideration for funding to any application that receives an average score of 50 points or less in the evaluation process conducted in accordance with 34 CFR 75.217.

Administration projects: To provide opportunities for a greater number of students to participate in Cooperative Education as defined in 34 CFR 631.3 of the regulations, the Secretary strongly encourages institutions of higher education to apply for funds for more than one eligible "unit," as that term is also defined in 34 CFR 631.3 of the regulations.

As provided in the statute, in any fiscal year, an institution of higher education applying for an administration grant individually is eligible for an award of up to $325,000. Each institution applying for an administration grant as a member of a consortium is eligible for an award up to $250,000.

The Secretary will give single-year awards for approximately 10 to 12 multi-year projects to the highest ranking successful applicants who have never before received Federal funds to support a program of Cooperative Education. Continuation awards for these multi-year projects will be made out of succeeding fiscal years' appropriations and in accordance with 34 CFR 75.253. The Secretary will give awards for single-year projects to all other successful applicants.

In awarding administration grants, the Secretary, in accordance with the statute, will place an emphasis on funding insitutions of higher education that show the greatest promise of success because of—

(1) The extent to which Cooperative Education Programs in the academic disciplines with respect to which the application is made have had a favorable reception by employers; and

(2) The commitment of the institution of higher education to Cooperative Education, as demonstrated by the plans which the institution has made to continue Cooperative Education after the termination of Federal financial assistance.

Demonstration projects: Applicants may apply for a demonstration grant to conduct a "comprehensive Cooperative Education project," as defined in 34 CFR 631.3 of the regulations.

Successful applicants may be given a multi-year grant out of the fiscal year 1985 appropriation to cover a project period of up to three years.

Training projects: The Secretary will make awards for training projects designed to meet the needs of eligible individuals who participate in the planning, establishment, administration, or coordination of Cooperative Education projects conducted by institutions of higher education.

In preparing the application, applicants are encouraged to work jointly with employers in planning training projects.

The Secretary will make awards for single-year or multi-year projects to successful applicants. Continuation awards for multi-year projects will be made out of succeeding years' appropriations and in accordance with 34 CFR 75.253.

Available funds: The Department of Education appropriation for fiscal year 1985 provides $14,400,000 for this program. Of appropriated funds, $9,400,000 has been allocated for administration grants. Of this sum, $2,314,258 has been committed for

noncompeting continuation grants for 39 administration projects. It is estimated that the remaining $7,085,742 will support about 140 new projects, with awards averaging approximately $50,600.

The sum of $4,100,000 is available for demonstration grants. Of this sum $1,533,200 has been committed for noncompeting continuation grants for 12 comprehensive Cooperative Education projects. It is estimated that the remaining $2,566,800 will support about 5 additional comprehensive Cooperative Education projects, with awards averaging approximately $513,400.

The sum of $900,000 is available for training grants. Of this sum, $646,500 has been committed for noncompeting continuation grants for 5 training projects. It is estimated that the remaining $253,500 will support 2 or 3 additional training projects, with awards averaging approximately $84,500.

These estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant, except as may be required by the applicable statute and regulations.

Application forms: Application forms and program information packages are expected to be mailed to eligible institutions of higher education by January 4, 1985. They may be obtained after that date by writing to the U.S. Department of Education, Office of Postsecondary Education, Division of Higher Education Incentive Programs (Cooperative Education), (Room 3022-ROB#3), 400 Maryland Avenue, SW., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. The program information is intended to aid new and continuation applicants in applying for assistance under this competition. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those specifically imposed under the statute and regulations governing the competition. The Secretary strongly urges that the narrative portion of the application not exceed 25 pages in length for administration projects, 30 pages for demonstration projects, and 20 pages for training projects. The Secretary further urges that applicants not submit information that is not requested. These program forms are approved under the Paperwork Reduction Act of 1980 (Approved by OMB under control number 1840-0126).

Applicable regulations: Regulations applicable to this program include the following:

(a) Regulations governing the Cooperative Education Program (34 CFR Parts 631, 632, 633, and 635).

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

Further information: For further information, contact the U.S. Department of Education, Office of Postsecondary Education, Division of Higher Education Incentive Programs (Cooperative Education), 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone 245-3253.

(20 U.S.C. 1133-1133b)

(Catalog of Federal Domestic Assistance No. 84-055: Cooperative Education Program)

Dated: December 17, 1984.

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 84-33145 Filed 12-19-84; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER85-175-000]

Alabama Power Co.; Filing

December 17, 1984.

The filing Company submits the following:

Take notice that on December 10, 1984, Alabama Power Company filed Twenty-Second Revised Sheet No. 37 to its FERC Electric Tariff, Original Volume No. 1. The purpose of this filing is to give notice that effective February 15, 1985 electric service to Central Alabama Electric Cooperative's new Prattville 115 kV delivery point will be established and, concurrently, service to the Cooperative's Prattville 44 kV delivery point will be terminated.

Copies of the filing were served upon Central Alabama Electric Cooperative, Inc.

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, N.E., 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 motions or protests should be filed on or before January 2, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-33172 Filed 12-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER-172-000]

Appalachian Power Co.; Filing

December 17, 1984.

The filing Company submits the following:

Take notice that Appalachian Power Company (APCO), on December 10, 1984, tendered for filing a power sales agreement executed with Craig-Botetourt Electric Cooperative, Inc. (Craig-Botetourt) dated August 15, 1984. This agreement is intended to replace, in part, the existing service arrangement between Craig-Botetourt and Virginia Electric Power Company (VEPCO) at two existing delivery points: Meadow Creek (or New Castle) and Stone Coal Gap.

APCO requests a proposed effective date for the tendered agreement of February 28, 1985 to match the requested effective date of the notice of cancellation for resale service at the two delivery points provided by Craig-Botetourt to VEPCO.

Copies of the filing were served upon Craig-Botetourt and VEPCO.

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 January 2, 1985. 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. 84-33171 Filed 12-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES85-22-000]

Central Louisiana Electric Co.; Application

December 17, 1984.

Take notice that on December 5, 1984, Central Louisiana Electric Company (Applicant) filed an application seeking authority pursuant to section 204 of the Federal Power Act to issue up to $80,000,000 in the aggregate principal amount of short-term undebtedness on or before December 31, 1986, with a final maturity date of not later than December 31, 1987.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 4, 1985, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 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 parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file motions to intervene in accordance with the Commission's rules. The Application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-33173 Filed 12-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-177-000]

Commonwealth Electric Co., Filing

December 17, 1984.

The filing Company submits the following:

Take notice that on December 10, 1984, Commonwealth Electric Company ("Commonwealth") filed, pursuant to § 35.12 of the Commission's Regulations, an agreement governing the sale by Commonwealth of System Power (as defined therein) to Central Vermont Public Service Corporation ("Buyer").

By the provisions of the Agreement, Commonwealth proposes to sell to Buyer certain quantities of electric power upon terms and conditions and in amounts mutually acceptable to both parties. Commonwealth has requested the Commission to waive its notice requirements pursuant to Section 35.11 of its regulations for good cause shown and to permit the tendered agreement to become effective as proposed on September 15, 1984.

A copy of this filing has been served upon Buyer and upon the Massachusetts Department of Public Utilities.

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, N.E., 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 motions or protests should be filed on or before January 2, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-33174 Filed 12-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-167-000]

CP National Corp.; Filing

December 14, 1984.

Take notice that on December 6, 1984, CP National submitted for filing a Notice of Cancellation of the rate schedule for wheeling service provided by CP National Corporation to the City of Hurricane, Utah. CP National provided this service for the period on or about January 1, 1985 through October 1, 1981.

The reason for cancellation of service is that on October 1, 1981 CP National sold the facilities used to provide transmission service to Hurricane to Utah Power & Light Company. Since then Utah Power & Light has been providing wheeling service for Hurricane. Under these circumstances, CP National submits that good cause exists for permitting cancellation of the rate schedule as of October 1, 1981.

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 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 December 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 proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-33175 Filed 12-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7164-001]

The Grisdale Hill Co.; Surrender of Preliminary Permit

December 14, 1984.

Take notice that The Grisdale Hill Company, Permittee for the proposed Hidden Dam Hydro Project No. 7164, has requested that its preliminary permit be terminated. The preliminary permit was issued on November 10, 1983, and would have expired April 30, 1985. The project would have been located on the Fresno River in Madera County, California.

The permittee filed the request on November 30, 1984, and the preliminary permit for Project No. 7164 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-33176 Filed 12-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-174-000]

Gulf States Utilities Co.; Filing

December 17, 1984.

The filing Company submits the following:

Take notice that Gulf States Utilities Company ("Gulf States") on December 10, 1984 tendered for filing proposed changes in the electric service schedules presently on file with the Commission which are applicable to a Power Interconnection Agreement between Gulf States and Sam Rayburn Dam Electric Cooperative (SRDE), Sam Rayburn G&T, Inc. (SRG&T) and Sam Rayburn Municipal Power Agency (SRMA) and their member cooperatives. The rate schedule change will involve the installation of a 900 HP motor near Batson, Texas which will require GSU to reconsider 4.2 miles of a 13.2 KV distribution line at Batson Feeder 53,

and payment by SRDE of a facilities charge.

Gulf States indicates that the reason for the proposed change is that by reconductoring the distribution line SRDE will better serve its member cooperatives. Copies of the filing were served upon SRDE, SRG&T, SRMA, and the utilities commissions of Texas and Louisiana.

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, N.E., Washington, DC 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 on file on or before January 2, 1985. 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 the filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-33177 Filed 12-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-000]

Inter-City Minnesota Pipelines Ltd., Inc.; Filing Tariff Sheet

December 14, 1984

Take notice that on December 7, 1984, Inter-City Minnesota Pipelines, Ltd., Inc. filed Twenty-Second Revised Sheet No. 4 to its FERC Gas Tariff Original Volume No. 1 in accordance with the Commission's October 26, 1984 order directing Minnesota Pipelines to a file a revised tariff sheet that satisfactorily states purchased gas costs pursuant to § 154.111(a)(3) of the Commission's regulations.

Minnesota Pieplines states the tariff sheet reflects the base actual purchased gas cost for both the eastern and western service zones, the figures reflect the cost ot gas at the Canadian border and the current and cumulative Account 191 adjustments. Minnesota Pipelines also states the tariff sheet does not involve any rate change from its previous filing on October 1, 1984 and requests waiver of any filing fees.

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, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 or the Commission's Rules of Procedure. All such petitions or protests should be filed on or before December 21, 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. 84-33178 Filed 12-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-176-000]

Portland General Electric Co.; Filing

December 17, 1984.

The filing Company submits the following:

Take notice that on December 10, 1984, Portland General Electric Company (PGE) tendered for filing a Summary of Sales made under the Company's first revised Electric Service Tariff, Volume No. 1, during October of 1984, along with a cost justification for the rates charged.

Copies of the filing were served upon parties having service agreements with PGE, parties to the Intercompany Pool Agreement (revised), intervenors in Docket No. ER77-121 and the Oregon Public Utility Commissioner.

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, N.E., 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 motions or protests should be filed on or before January 2, 1985. Protest will be condisered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-33179 Filed 12-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT85-7-000]

Sea Robin Pipeline Co.; Proposed Changes in FERC Gas Tariff

December 14, 1984.

Take notice that Sea Robin Pipeline Company (Sea Robin), on December 5, 1984, tendered for filing a Title Page, Seventh Revised Sheet No. 1, and Third Revised Sheet No. 1-A to its FERC Gas Tariff, Original Volume No. 1, and a Title Page, Eighth Revised Sheet No. 1, and First Revised Sheet No. 1-A to its FERC Gas Tariff, Original Volume No. 2.

Sea Robin states that these sheets are submitted to update Sea Robin's Title Pages and Tables of Contents. Sea Robin requests an effective date of January 1, 1985.

Copies of the filing will be served upon Sea Robin's jurisdictional customers and Louisiana Public Service Commission.

Any person desiring to be heard or to protect said filing 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 §§ 385.214 and 385.211 of this chapter. All such petitions or protests should be filed on or before December 21, 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. 84-33180 Filed 12-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-115-000]

South Fork II, Inc. (Weeks Falls Project); Application for Commission Certification of Qualifying Status of a Small Power Production Facility

December 14, 1984.

On November 30, 1984, South Fork II, Inc. (Applicant), of 2820 Northup Way, Suite 190, Bellevue, Washington 98004 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 3.4 megawatt hydroelectric facility (P. 7563) will be located near the

Snoqualmie River in King County, Washington.

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 protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-33181 Filed 12-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP84-55-000]

Southern Union Gathering Co.; Petition for Declaratory Order

December 14, 1984.

Take notice that on September 21, 1984, Southern Union Gathering Company (Gathering Company), Post Office Box 26400, Albuquerque, New Mexico 87125, filed in Docket No. GP84-55-000 a petition, pursuant to Rule 207, for a declaratory order clarifying the extent of Gathering Company's jurisdictional obligations, all as more fully set forth in the petition and the appendices thereto which are on file with the Commission. All interested members of the public are invited to inspect these documents.

The petition states that Gathering Company was created in 1953 to gather natural gas in the San Juan Basin area of northwestern New Mexico in order to continue to supply, primarily, the markets of its affiliate, Gas Company of New Mexico (Gas Company), and, secondarily to sell what Gathering Company characterizes as "excess volumes" to interstate markets. Gathering Company further states that since that time it has met all requirements of Gas Company's Northwest New Mexico service territory as its primary market, and sold surplus supplies to El Paso Natural Gas Company (El Paso). Gathering Company states that these sales of surplus supplies to El Paso have been made pursuant to what it refers to as an "excess gas sales contract" (the Contract) and certificates of public convenience and necessity, in order to maintain ratable takes and avoid the incurrence of substantial penalty payments to producers for failure to take ratably. Gathering company maintains that the applications, certificates, and the Contract relating to the El Paso sale all recognize what Gathering Company characterizes as the limited nature of the underlying obligation to El Paso. Because of its view of the purpose and nature of the underlying authorizations, Gathering company believes that it can market surplus volumes not desired by El Paso through first sales to: (1) Gas Company, for resale to intrastate purchasers in New Mexico or to other interstate purchasers under Gas Company's Hinshaw certificate issued in Docket No. CP80-331-000; or (2) to any other interstate or intrastate purchasers (whether direct-sale or sale-for-resale customers), without having to obtain a certificate of public convenience and necessity from the Commission or any abandonment authorization.

Gathering Company is also seeking a confirmation of its view as to the pricing implications which would flow from a declaration that only the volumes El Paso actually takes under the Contract are committed or dedicated by Gathering Company to interstate commerce. Gathering Company states that in order to assess adequately these pricing implications, it is necessary to analyze separately Gathering Company's sales to El Paso, to Gas Company, and to all others (the post-NGPA customers).

As to the rate for Gathering Company's sales to El Paso under the Contract, Gathering Company states that the declaration requested will have no impact on the rate for Gathering Company's sales rate to El Paso. These sales are made at Gathering Company's system average cost of gas plus a Commission authorized gathering charge.

The natural gas supplies at issue here are produced from wells in the San Juan Basin, that are connected to a natural gas gathering system owned and operated by Gathering Company. Gathering Company states that it is currently negotiating with several prospective cutomers, who are interested in purchasing gas that is in excess of the requirements of Gas Company without the delays and uncertainty that are inherent in having to obtain certificate or abandonment authorization from the Commission in order to sell gas. For all the reasons stated in the application, Gathering Company seeks a declaration that its certificates authorizing sales to El Paso do not require it to obtain certificate or abandonment authorization from the Commission in order to sell gas, which is excess to the requirements of Gas Company, in first sales to: (1) Gas Company, for resale to intrastate markets in New Mexico or to other purchasers under Gas Company's Hinshaw certificate; or (2) to any other intrastate or interstate purchasers.

Gathering Company's contends that, under the Contract and the Commission's order with respect to its sale to El Paso, as properly interpreted, no specific acreage or volumes were dedicated by Gathering Company, and that the only gas that ws dedicated to interestate commerce is that which is actually sold to El Paso as needed to maintain ratable takes.

Any person desiring to be heard or to protest this petition should file a motion to intervene or protest with the Federal Energy Commission, 825 North Capital Street, NE., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions or protests should be filed on or before January 4, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene.

Copies of the petition are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-33182 Filed 12-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-44-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

December 14, 1984.

Take notice that on December 7, 1984 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Sheet No. 253. The tariff sheet is proposed to be made effective January 1, 1985.

Transco states that this tariff sheet is being filed pursuant to Commission Opinion No. 226 issued September 28, 1984, in Docket No. RP84-85-000, which amended and approved Gas Research Institute's (GRI) 1985 Research and Development Program and Related Five-Year Plan for 1985-1989. The tariff sheet effects the change order in Opinion No. 226 that collection of the GRI funding unit be remitted to GRI within fifteen (15) days of receipt.

The Company states that copies of the filing were served upon the Company's jurisdictional customers and interested State Commissions.

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, N.E., 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 December 21, 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. 84-33183 Filed 12-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-113-000]

United Gas Pipe Line Co.; Request Under Blanket Authorization

December 17, 1984.

Take notice that on November 15, 1984, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85-113-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install a sales tap to provide gas service to the Utilities Board of the Town of Citronelle, Alabama (Citronelle), under the certificate issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to construct and operate a 2-inch sales tap on its 30-inch Lirette to Mobile main line in Mobile County, Alabama, in order to deliver an average 8 Mcf of natural gas per day to Citronelle, an existing customer of United, for residential use. It is asserted that the sale through the proposed tap would be made pursuant to United's Rate Schedule G-N, would be within Citronelle's current daily entitlement and would not increase Citronelle's peak day sale estimate of 40 Mcf.

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 authorizatioin pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-33184 Filed 12-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT85-6-000]

United Gas Pipe Line Co.; Proposed Changes in FERC Gas Tariff

December 14, 1984.

Take notice, that United Gas Pipe Line Company (United), on December 5, 1984, tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2:

First Revised Volume No. 1

Title page
Sixteenth Revised Sheet No. 1
Sixth Revised Sheet No. 1-A
Fourth Revised Sheet No. 1-B
Third Revised Sheet No. 1-C
Second Revised Sheet No. 1-D

Original Volume No. 2

Title Page
Twenty-Sixth Revised Sheet No. 1
Eleventh Revised Sheet No. 1-A
Fourth Revised Sheet No. 1-B
Third Revised Sheet No. 1-C

United states that these sheets are submitted to update United's Title Pages and Tables of Contents. United requests an effective date of January 1, 1985.

Copies of the filing will be served upon United's jurisdictional customers and the public service commissions of the states of Alabama, Florida, Louisiana and Mississippi, and the Texas Railroad Commission.

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, N.E., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of this chapter. All such petitions or protests should be filed on or before December 21, 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 avilable for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-33185 Filed 12-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT85-8-000]

United Gas Pipe Line Co.; Proposed Changes in FERC Gas Tariff

December 14, 1984.

Take notice that United Gas Pipe Line Company (United), on December 5, 1984, tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

Twentieth Revised Sheet No. 100
Twenty-First Revised Sheet No. 101
Seventeenth Revised Sheet No. 102
Nineteenth Revised Sheet No. 103
Nineteenth Revised Sheet No. 104
Fifth Revised Sheet No. 105
Fourth Revised Sheet No. 106
Fourth Revised Sheet No. 107

United states that these sheets are submitted to update United's Index of Purchasers. United requests an effective date of January 1, 1985.

Copies of the filing will be served upon United's jurisdictional customers and the public service commissions of the States of Alabama, Florida, Louisiana and Mississippi, and the Texas Railroad Commission.

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 §§ 385.214 and 385.211 of this chapter. All such petitions or protests should be filed on or before December 21, 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. 84-33168 Filed 12-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-576-003]

Wisconsin Power and Light Co.; Revised Compliance Filing

December 14, 1984.

Take notice that on December 4, 1984, Wisconsin Power and Light Company (WPL) submitted for filing a revised compliance report pursuant to the Commission's order dated November 19, 1984.

WPL has submitted revised "under bond" and Tier I rate schedules W-1, W-2 and W-3 for service to its municipal and cooperative wholesale customers. The filing also includes revised customers impact statements and revised cost statements and workpapers in support of such revised rates. As directed by the Commission, the revised rates and cost statements reflect the correct wholesale demand and energy allocators and exclude the South Beloit Water Gas and Electric Company revenues from the large industrial rate for purposes of performing a preliminary price squeeze evaluation of the interim rates.

WPL states that except for these two changes the revised rates and cost statements filed are unchanged from the original August 1, 1984, filing in this docket.

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 December 31, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-33169 Filed 12-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5818-003]

Woods Creek, Inc.; Surrender or Preliminary Permit

December 17, 1984.

Take notice that Woods Creek, Inc., Permittee for the Eagle Creek Water Power Project No. 5818, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 5818 was issued on May 19, 1982, and would have expired on May 31, 1985. The project would have been located on Eagle Creek in King County, Washington, within the Snoqualmie National Forest.

The Permittee filed the request on October 29, 1984, and the preliminary permit for Project No. 5181 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-33170 Filed 12-19-84; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 2740-5]

Tentative Denial of Applications for Variances Submitted Under Section 301(m) of the Clean Water Act; Simpson Paper Co. and Louisiana-Pacific Corp.

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative denial of variances and notice of public availability of tentative decision documents.

SUMMARY: The United States Environmental Protection Agency (EPA) is today providing notice of (1) tentative decisions to deny variance requests submitted by Simpson Paper Company, Fairhaven, CA, and Louisiana-Pacific Corporation, Samoa, CA, under section 301(m) of the Clean Water Act, (2) a workshop and public hearing on the tentative decisions, and (3) the availability of "Tentative Decision Documents," technical documents supporting the Agency's decision.

DATES: Comment Period—Interested persons may submit written comments on the tentative decisions to deny the 301(m) variance requests and on the administrative record to Doug Eberhardt at the address below not later than March 1, 1985.

Workshop—EPA will conduct an informal public workshop to discuss the tentative decisions on January 23, 1985, at 1:00 pm in Eureka, CA, at the address below.

Public Hearing—The hearing officer designated by the Regional Administrator will conduct a public hearing on the tentative decisions on February 6, 1985, at 1:30 pm and 7:30 pm in Eureka, CA, at the address below.

ADDRESSES: Public Comments—Send comments on the tentative decisions to Doug Eberhardt (W-5-1); U.S. Environmental Protection Agency, Region 9; 215 Fremont Street; San Francisco, CA 94105.

Workshop—EPA will conduct an informal public workshop on the tentative decisions on January 23, 1985, at 1:00 pm at the Eureka City Hall Council Chambers, 531 K Street, Eureka, CA, 95501.

Public Hearing—EPA will conduct a public hearing on the tentative decisions on February 6, 1985, at 1:30 pm and 7:30 pm at Eureka City Hall Council Chambers, 531 K Street, Eureka, CA 95501.

FOR FURTHER INFORMATION CONTACT: Further information on these actions and requests for copies of the Tentative Decision Documents are available from Doug Eberhardt, 301(m) Project Officer, Water Quality Permits Section (W-5-1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-8280.

SUPPLEMENTARY INFORMATION: .

I. Background

On January 8, 1983, President Reagan signed into law section 301(m) of the Clean Water Act (CWA), which provides the opportunity for two pulp mills located on the Samoa Peninsula in California to apply to the Environmental Protection Agency for permit modifications from nationally-applicable Best Practicable Technology (BPT) and Best Conventional Technology (BCT) effluent limitations, and the requirements of section 403 of CWA, for biochemical oxygen demand (BOD) and pH. These two companies, Louisiana-Pacific Corporation, Samoa, CA and

Simpson Paper Company, Fairhaven, CA, hold National Pollutant Discharge Elimination System (NPDES) permits numbered CA0005894 and CA0005282. On September 26, 1983, the companies submitted to the Agency applications for such variances. The Agency requested supplementary information from both applicants on December 29, 1983, and March 15, 1984, and received such information shortly thereafter.

II. Tentative Decision

Today's action announces EPA's tentative decision to deny the 301(m) variance requests. After a public comment period, EPA will make a final decision on the requests. Copies of the Tentative Decision Documents may be obtained from Doug Eberhardt at the address above. The administrative record supporting these tentative decisions may be received by contacting Doug Eberhardt.

On the basis of the data, references, and empirical evidence furnished in the applications and supplementary materials, and on the basis of the rest of the information contained in the administrative record, EPA has made the following findings regarding compliance with the statutory critera:

- The facilities for which the variances are sought were covered by NPDES permits numbered CA0005894 and CA0005282 at the time of enactment of section 301(m). (Section 301(m)(1)(A)).
- Both applicants have failed to demonstrate that the energy and environmental costs of treatment would exceed the benefits by an unreasonable amount. (Section 301(m)(1)(B)).
- Both applicants have established a program to monitor the impact of their discharges. Since EPA proposes to deny the variances, we are not commenting on the sufficiency of the programs at this time. (Section 301(m)(1)(C)).
- Both applicants have demonstrated that their respective proposed discharges will not result in any additional requirements on any other point or non-point source. (Section 301(m)(1)(D)).
- Neither applicant plans to add new discharges or to increase existing discharges over the five-year permit period. (Section 301(m)(1)(E)).
- The hydrological and geological characteristics of the receiving water are not sufficient to allow compliance with all the requirements of section 301(m). (Section 301(m)(1)(F)).
- The applicants have established a program from research and development in water pollution control technology and have made clear their intention to undertake a contractual obligation to carry this program out upon issuance of a modified permit. Since EPA proposes to deny the variances, we are not commenting on the sufficiency of the programs at this time. (Section 301(m)(1)(G)).
- The applicants have failed to demonstrate that the facts and circumstances present a unique situation which, if relief is granted, will not establish a precedent or the relaxation of the requirements of this Act applicable to similarly situated discharges. (Section 301(m)(1)(H)).
- EPA has not made a determination on whether the granting of these variances would put the owner or operator of any similar facility at a competitive disadvantage. (Section 301(m)(1)(I)).
- The effluent limitations proposed are not sufficient to implement all the applicable water quality standards. (Section 301(m)(2)).
- The proposed discharges do not impact any public water supplies. It appears, given limited ambient data and inconsistent sampling, that the proposed discharges do not interfere with the protection and propagation of a balanced, indigenous population (BIP) of fish, shellfish, fauna, and wildlife. The discharges may, however, discourage recreational activity on the water. (Section 301(m)(2)).

Detailed information on these findings is available in the Tentative Decision Documents.

If EPA issues a final denial of these variances, the State of California, a delegated NPDES state, will renew the NPDES discharge permits under which the applicants are now operating. The new permits would have BPT/BCT effluent limitations. If EPA reverses its decision and issues a final approval of the variance, then EPA will issue the modified NPDES Permits with appropriate modified effluent limitations.

Dated: December 14, 1984.

Judith E. Ayres,

Regional Administrator, Region 9.

[FR Doc. 84-33122 Filed 12-14-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 79-187; FCC 84-567]

AT&T Earnings on Interstate and Foreign Services During 1978; Decision

Adopted: November 21, 1984.

Released: December 11, 1984.

By the Commission.

1. This proceeding was initiated as a result of information that indicated that tariffs incorporating compensation to local exchange carriers, interexchange carriers, and AT&T, would result in an earned rate of return for 1978 that would exceed the level authorized by the Commission.[1] At issue is whether the authorized rate of return for 1978 was exceeded, and if so, the remedial action that the Commission should take. We conclude that the level of interstate revenues that was received by AT&T and the Bell System Companies (hereinafter collectively referred to as "AT&T", unless the context indicates otherwise) during 1978 exceeded the authorized level by $101,000,000. We also establish a remedy by providing for reductions to prospective rates. In a forthcoming order, we will address the 1978 compensation that was received by non-AT&T/BOC carriers that was derived from interstate tariffs that were filed by AT&T.[2]

I. Background

2. On January 19, 1976, the Commission voted to prescribe 9.5 percent as the rate of return for AT&T's interstate and foreign services. The Commission also stated that earnings equivalent to an additional 0.5 percent return on AT&T's interstate rate base would be allowed as an incentive for increased productivity and efficiency. A written decision to this effect was released on February 5, 1976,[3] that stated that the Commission would "not require any downward adjustment of AT&T's overall interstate rates provided its overall rate of return does not exceed 10 percent." AT&T filed tariff revisions on January 29, 1976 that were represented as having been designed to produce the prescribed 9.5 percent rate of return. The Commission suspended the revised rates for one day and subjected those rates to an accounting order.

3. With the increased rates in effect for only part of the year, AT&T reported an overall interstate rate of return of

[1] During 1978 AT&T filed monthly reports of interstate earnings that showed earnings ratios in excess of those that had been prescribed in Docket No. 20376, 57 FCC 2d 960 (1976). On December 20, 1978, the General Services Administration wrote to the Acting Chief of the Common Carrier Bureau with respect to AT&T's interstate earnings. On July 20, 1979, the National Citizens Committee for Broadcasting, the Consumer Federation of America, and the Missouri Public Interest Research Group filed a "Petition for Enforcement of Accounting Order" which raised questions concerning AT&T's 1978 interstate earnings. Our action in this proceeding also addresses that petition.

[2] *See* paras. 17, 19, and 25, *infra.*

[3] *AT&T Rate of Return*, Docket No. 20376, 57 FCC 2d 960, 973 (1976).

9.25 percent for 1976. During 1977, AT&T's measurement of its earned rate of return increased to 9.59 percent. AT&T's Interstate Monthly Reports ("IMR 1") for the first nine months of 1978 showed a cumulative annual rate of return of 10.42 percent. This prompted the Common Carrier Bureau to initiate an internal review of AT&T's earnings. On December 20, 1978, the Acting Chief of the Common Carrier Bureau formally requested information from AT&T.[4] In response to the Bureau Chief's letter, AT&T stated that its 1978 rate of return was 10.02 percent when calculated in accordance with the accounting changes concerning plant under construction that had been adopted in Phase II of Docket No. 19129.[5] It also stated that changes in economic conditions since the 1976 prescription justified an increased earnings level.[6]

4. AT&T's IMR 1 dated January 22, 1979 for calendar year 1978 showed a 10.22 percent rate of return on AT&T's interstate and foreign services.[7] The Acting Chief of the Common Carrier Bureau subsequently asked AT&T to explain the difference between the 10.02 percent figure cited in its letter of January 19, 1979 and to 10.22 percent figure shown on the IMR 1 which was dated January 22, 1979.[8] AT&T stated that the 10.02 percent figure for 1978 had been calculated in accordance with accounting rules for interest during construction that actually were not scheduled to become effective until January 1, 1979. AT&T further stated that it had used this measure of rate of return because it appeared to be a better indicator of future earnings levels than the unadjusted figure due to the fact that those accounting changes would tend to lower the measurement of the earned rate of return somewhat in future years.[9]

5. On September 18, 1979, the Commission adopted a Notice of Inquiry in this proceeding to examine the policy and earnings measurement issues that had arisen from AT&T's 1978 interstate operations. We requested comments on five issues: (1) Is review of AT&T's earnings on a calendar year basis appropriate in determining whether AT&T has complied with a rate of return prescription? (2) If a calendar year assessment is not appropriate, what interval should be used? (3) What is the correct measurement of AT&T's earned rate of return during 1978? (4) Has AT&T exceeded its prescribed rate of return, and if so, by what dollar amount? (5) What remedial action should the Commission take if AT&T's earned rate of return has exceeded the prescribed level?[10]

6. Comments in response to those issues were filed by AT&T, the United States Independent Telephone Association (USITA), the United States Office of Consumer Affairs (USOCA), the General Services Administration (GSA), and the Massachusetts Public Interest Research Group (Massachusetts PIRG). Joint Comments were filed by the National Citizens Committee for Broadcasting, the Consumer Federation of America, the Missouri Public Interest Research Group, and the California Department of Consumer Affairs, (hereinafter collectively referred to as "NCCB"). AT&T opposed refunding any revenues that resulted in earnings in excess of 10.0 percent.

7. AT&T argued, *inter alia*, that the Commission did not have authority to order refunds of 1978 revenues. AT&T also contended that if the Commission had legal authority to order refunds, refunds were not warranted as a matter of discretion given AT&T's earnings history and then existing conditions in the financial markets. In addition, AT&T stated that its 1978 rate of return for all interstate services was not the 10.22 percent shown for 1978 on the IMR 1 but rather 10.09 percent because the IMR 1 reflected only the revenues, expenses, and investment that were associated with services provided at uniform nation-wide rates.[11] USITA also opposed any refund of AT&T's 1978 revenues, arguing that the Commission only has authority to prescribe actual rates, not a rate of return. In addition, USITA contended that the reasonableness of a given rate of return varies with changing economic and financial conditions.

8. GSA supported refunding those revenues that caused AT&T's 1978 earnings to exceed a 10.0 percent rate of return. USOCA also supported refunds after having noted that the Commission's 1976 prescription Decision had placed AT&T on notice that 10.0 percent was the maximum allowable rate of return. Both GSA and USOCA argued that 10.22 percent was the correct figure for AT&T's 1978 earned rate of return. NCCB also supported refunds, but stated that the amount of the overage should be determined through evidentiary hearings. The Massachusetts PIRG filed a letter suggesting that AT&T's 1978 earnings in excess of 10.0 percent be used to establish a consumer action group to monitor AT&T.

9. AT&T, GSA, USOCA, and NCCB filed reply comments. AT&T argued that GSA, USOCA, and NCCB had failed to discuss the central issue in the case, erroneously assuming that the 10.0 percent figure constituted a ceiling for AT&T's rate of return despite changing economic conditions. Responding to this contention, GSA, USOCA, and NCCB argued that a rate of return prescription remains binding until changed by the Commission after a full hearing.[12]

[4] Letter to William R. Stump, American Telephone and Telegraph Company, from the Acting Chief, Common Carrier Bureau, December 20, 1979.

[5] *Phase II Final Decision and Order in Docket No. 19129*, 64 FCC 2d 1 (1977). *See Memorandum Opinion and Order In the Matter of American Telephone and Telegraph Co.*, 72 FCC 2d 1 (1979). At the time of the Bureau Chief's letter, AT&T had a petition before the Commission that subsequently was approved at a public meeting on December 21, 1978. The effect of granting AT&T's request was to increase the measurement of AT&T's earned rate of return to 10.22 percent. A more extensive discussion of the treatment of interest on plant during construction, and its relationship to the measurement of AT&T's 1978 interstate earnings, is contained in Appendix A.

[6] Letter to Acting Chief, Common Carrier Bureau, from William R. Stump, Assistant Vice President, AT&T, January 19, 1979.

[7] The revenue required to produce an after tax rate of return of 10.0 percent for 1978 is $101.0 million less than the revenues shown on the IMR 1. Letter to Glenn DeChabert, Common Carrier Bureau, for T.E. Lawrence, AT&T, October 26, 1979. AT&T Comments at para. 64. This dollar measurement has not been contested by any of the parties to this proceeding, and there is no question of fact incident thereto.

[8] Letter to William R. Stump, Assistant Vice President, AT&T, from Chief, Common Carrier Bureau, April 20, 1979.

[9] Letter to Chief, Common Carrier Bureau, from William R. Stump, Assistant Vice President, AT&T, May 3, 1979.

[10] *Common Carrier-Interstate and Foreign Earnings* (CC Docket No. 79-187), 75 FCC 2d 412 (1979).

[11] A further reduction of 20 basis points (to 9.89 percent) was viewed by AT&T as being preferable to the 10.09 percent figure because the 9.89 percent measurement reflected "full implementation of the Commission's Phase II decision in Docket No. 19129." AT&T Comments at 41.

[12] AT&T also argued that a time period other than a calendar year should be used for assessing compliance with a rate of return prescription. In its opposition the USOCA referred to *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U.S. 591, a frequently cited decision that refers to the annual returns that the Hope Natural Gas Co was to achieve. *Id.* at 605. USOCA also observed that to use any measure other than the calendar year would ignore established regulatory standards. USITA stated that the exact earned ("*ex post*") rate of return of a common carrier can only be ascertained at the end of the carrier's fiscal year because it is only "at the end of the fiscal year [that] actual expenses can be subtracted from actual revenue and the result divided by the actual rate base for the year." We agree with USITA to the extent that the fiscal year of the carrier should control, as contrasted with the calendar year. The revenues, expenses, and assets of common carriers are typically subject to independent audit on a fiscal year basis, with income tax liabilities (and filings) being based upon data that are collected during each tax payer's fiscal year. Further, the Securities and Exchange Commission's annual

Continued

II. Discussion

A. Assessment of Measurements of AT&T's 1978 Interstate Rate of Return

10. Including its comments in this proceeding, AT&T has provided five earned rate of return figures for 1978. The Interstate Monthly Report No. 1 ("IMR 1"), that AT&T filed with this Commission as its statement of earnings on interstate and foreign operations, reported that AT&T's earned rate of return for the calendar year ending December 31, 1978, was 10.22 percent. On June 29, 1979, AT&T submitted a "1978 Annual FDC Report" that stated that AT&T's 1978 earned rate of return on its interstate and foreign services was 10.1 percent. On November 13, 1979, AT&T filed comments stating that the 10.1 percent was really 10.09 percent.[13] The 10.02 percent measurement was supplied by AT&T on January 19, 1979, in a letter from Mr. William R. Stump to the then Acting Chief of the Common Carrier Bureau which Mr. Stump further clarified by a letter to the Chief of the Common Carrier Bureau dated May 3, 1979.

11. The five different figures that AT&T provided are based upon three essentially separate concepts. The IMR 1 stated that the earned rate of return was 10.22 percent. AT&T's 1978 FDC 7 Report, which was based upon data for the month of June 1978, stated that the earned rate of return was 10.09 percent (or 10.1 percent). AT&T also contended that the preceding measurements should be reduced by twenty basis points (0.20 percent) to reflect the Commission's decisions in Phase II of Docket No. 19129. We reject this later adjustment of twenty basis points for reasons that have been expressed in our decisions in other proceedings.[14]

12. We thus turn to the adjustments that were made to the 10.22 percent reported in the December, 1978, IMR 1 to arrive at the 10.09 percent that AT&T submitted in its "1978 Annual FDC Report" as its earned rate of return for 1978. By transmittal letter dated June 29, 1979, AT&T filed a "1978 Annual FDC Report." That report, which relied upon data for the month of June, 1978, purported to show the rate of return that AT&T had earned during the 1978 calendar year on each of its interstate services. Volume 2 of that report developed a "recast" of the IMR 1 that revised AT&T's December, 1978, IMR 1 to show an earned rate of return of 10.09 percent on AT&T's interstate services. The "recast" contained interstate investment, expenses, and revenues that had purportedly not been included in the prior IMR 1 reports that AT&T had supplied to this Commission. Specifically, AT&T stated that the IMR 1 had not included investment, revenues, or expenses that were incident to the provision of interstate services at "non-uniform rates."[15] Several aspects of AT&T's approach require that we not accord to the "1978 Annual FDC Report" adjustments the same weight that we attach to the figures that were contained in the December, 1978 IMR 1. For example, if "recasting" were required, actual data for the 1978 calendar year should have been employed for "recasting" rather than data that were selected for the month of June.[16] Second, no data have been presented that credibly establish that June, 1978, is a month that accurately presents the investment and/or expenses that were associated with the provision of facilities to the OCCs.[17] In this regard we concur in USITA's assessment that the measurement of excess interstate revenues for the fiscal year of a carrier requires actual interstate investment, expenses, and revenues for the entire fiscal year.

13. More important, however, is the fact that *this Commission has consistently relied upon the Interstate Monthly Report No. 1 in assessing AT&T's interstate earnings.* AT&T has supplied the IMR 1 reports to this Commission for approximately twenty-eight years as its summary of its interstate and foreign services operations. On July 25, 1979, AT&T, in response to specific questions as to measurement of AT&T's earned rate of return on interstate services for the calendar year 1978, stated:

> AT&T reports monthly to the Commission the interstate rate of return consistent with the Commission's past decisions as to the appropriate elements of revenues, expenses, taxes and net investment to be used in the calculation of the rate of return. *The report on which the interstate rate of return is shown is the Interstate Monthly Report No. 1.*
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> * * * * *
>
> [t]he rate of return of 10.22% shown on the December 1978 Interstate Monthly Report No. 1 is the rate of return for 1978 based on the Commission's directives appropriate to that year, including the December 21 [IDC] decision mentioned above. (Letter from Mr. William Stump to the Chief of the Common Carrier Bureau, dated July 25, 1979.) (Emphasis added.)

14. On September 27, 1979, additional information was requested from Mr. Thomas Lawrence, a member of AT&T's FCC Financial and Accounting Matters Staff, as to the measurement of the revenues that AT&T had received during 1978 that were in excess of the 10.0 percent specified in our decision in Docket No. 20376. Specifically, Mr. Lawrence was asked to:

> [p]lease state: (1) What total revenues for 1978 would have been required to achieve an after tax rate of return of 10.00 percent and (2) the income tax rates (federal, state, and, if applicable, municipal) which have been applied to any revenues *which have resulted in earnings in excess of the 10.00% rate of return specified in Docket No. 20376.* (Emphasis added.)

In response thereto, Mr. Lawrence stated:

> Pursuant to your request, we have computed the revenues that would have been required to achieve an after-tax rate of return of 10.0% for the year 1978. The data utilized in the attached analysis indicates that *the revenues required to achieve a 10.0% return would have been $101.0 million less than the*

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corporate reporting requirements (including annual reports to shareholders) are based upon the fiscal year, with the consequence that the adoption of the fiscal year for assessments of AT&T's earned rate of return would assist investors, the public, and governmental entities in reviewing AT&T's operating results on a consistent basis. Accordingly, since AT&T's 1978 fiscal year was coincident with the calendar year, we conclude that we will confine our analysis to those issues that are raised by earnings that were achieved during AT&T's fiscal year ending December 31, 1978.

[13] In the second footnote on page 43 of AT&T's comments, AT&T stated: "[t]he 10.1 percent was a rounding of a 10.09 percent, so that the excess is only 9 basis points."

[14] At this point it is sufficient to note that we have already ruled upon this matter. *See Memorandum Opinion and Order In the Matter of The American Telephone and Telegraph Company,* 72 FCC 2d 1 (1979), and the discussion contained in Appendix A, *infra.*

[15] In its "1978 Annual FDC Report", AT&T described "services provided at non-uniform rates" as being the use of its facilities pursuant to BSOC Tariffs Nos. 3 and 4, Western Union Contracts Nos. 1 and 2, and the use of its facilities by other common carriers. In its comments in this proceeding, AT&T stated that the 10.22 percent measurement contained in the December, 1978, IMR 1 has "[e]xcluded, for example, * * * revenues, expenses and investment associated with interstate facilities provided to other common carriers, foreign exchange channels between contiguous exchanges and less than fourteen miles in length, and link facilities for air-ground and coastal harbor service, and CATV channel service." (Emphasis added.)

[16] Presumably data for each of the twelve months in 1978 were available to AT&T during the Spring of 1979, given the fact that AT&T's IMR 1 for the Month of December, 1978, states that it was issued on January 22, 1979.

[17] Additional issues arise with respect to the treatment of the adjustments that were made for facilities incident to the provision of services under BSOC Tariff Nos. 3 and 4 ands Western Union Contracts Nos. 1 and 2. The Western Union Contracts Nos. 1 and 2 terminated on September 30, 1978, which would suggest that adjustments would be necessary to reflect the fact that no further activity under those contracts occurred during the months of October, November, and December, 1978.

revenues shown on the Interstate Monthly Report No. 1 for the year 1978 as issued by AT&T on January 22, 1979. * * * (Letter from Mr. Thomas Lawrence, AT&T, dated October 26, 1979) (emphasis added).

15. In its comments in this proceeding, AT&T has also stated that an earned rate of return measurement of 10.22 percent would result in $101.0 million of revenues in excess of 10 percent.[18] In light of the information that is before us, we conclude that AT&T's 1978 interstate and foreign services revenues exceeded the level that was authorized by $101,000,000.[19]

16. The $101 million in excess revenues that AT&T received[20] during 1978 are exclusive of interest. In prior refund cases, it has been our policy to award simple interest at the rate that has been computed by the Commissioner of the Internal Revenue Service. Although comments suggested that another interest rate be adopted, we see no compelling reason to depart from that well established practice here.[21] It has also been the Commission's practice to compute interest from the date of the complaint.[22] In this case, however, we have determined that the final date for the determination of AT&T's excess revenues is at the conclusion of AT&T's fiscal year on December 31, 1978. Accordingly, interest shall be calculated from that date, rather than from the December 20, 1978, date of the GSA letter. The Internal Revenue Service interest rates that were applicable from January 1, 1979 are: 6 percent from January 1, 1979, through January 31, 1080; 12 percent from February 1, 1980, through January 31, 1982; 16 percent from January 1, 1983, through June 30, 1983; 20 percent from February 1, 1982, through December 31, 1982; 11 percent from July 1, 1983 through December 31, 1984; and 13 percent from January 1, 1985 to June 30, 1985.[23]

B. Restitution

17. The Notice of Inquiry requested comments on the action that this Commission should take when the earned rate of the return exceeds the rate that has been authorized. Information in response to that request suggests that the mechanism that entails the least administrative expense would require the imposition of a temporary discount upon interstate services for a period that is sufficient to reduce carrier revenues by the amount that is to be restored to interstate ratepayers. During the time that has elasped since comments were received in this proceeding, the Bell System Operating Companies have been divested from AT&T, the Division of Revenues process has terminated, access charges have been implemented, and earlier settlements procedures have been supplanted by the NECA administered distribution of access charges revenues under Part 69 of the Commission's rules.[24] Whatever weight might properly be ascribed to the conclusion that, in a pre-divestiture environment, temporary discounts on services are less expensive and more efficiently administered than cash refunds has added weight in the post-divestiture environment. In structuring an appropriate remedy, this conclusion is particularly compelling in light of the joint nature of the interstate services that were provided by AT&T, the Bell System Operating Companies, and the independent telephone companies during 1978. During that period, local exchange and other connecting carriers that received revenues that flowed from the provisions of services pursuant to AT&T's interstate and foreign services tariffs also shared in aggregate revenues that were excessive. Traditional concepts of equity would, therefore, require that those entities that received excess revenues proportionately share the burden of restoring those revenues to the subscribers from whom they were received.[25]

18. Effecting restitution has been further complicated by the fact that it is virtually impossible to achieve a "direct targeting" of the amounts that should be refunded to particular recipients. Since 1978, ratepayers have died, changed names, and changed addresses. Corporations and other entities having *de jure* status as ratepayers during 1978 have been dissolved, estates have been liquidated and distributed, conservators have been appointed, and trustees in bankruptcy have become successors in interest to rights of bankrupt ratepayers in funds. Moreover, even if each element within the class of 1978 ratepayers were still in existence and identifiable at ascertainable addresses, it would still not be possible to allocate the amount of 1978's excess revenues, with accrued interest, that should be directly refunded to each of those ratepayers without additional proceedings that would be extensive and time consuming. Also, as we have heretofore observed, we cannot conclude, on the basis of AT&T's 1978 FDC study, that the proportions of the excess revenues that would be allocated to each tariffed service offering during 1978 would be correct.[26]

19. We have thus concluded that restitution can best be accomplished through a mechanism that will permit us to apply 1978's excess revenues, with accrued interest, to benefit subscribers utilizing the interstate and foreign telecommunications services of AT&T and its connecting and concurring carriers.[27] Accordingly, we direct AT&T

[18] AT&T Comments, para. 64.

[19] In the case before us here, there is no issue of fact that requires a trial type evidentiary hearing. We have relied upon the IMR 1 that AT&T has supplied to this Commission. AT&T's alternative measurements of its earned rate of return during 1978 (*viz.* 9.89 percent, 10.02 percent, 10.09 percent, 10.1 percent) have been rejected on the basis of our earlier decisions with respect to IDC (9.89 percent, 10.02 percent), and our assessment of the "1978 Annual FDC Report" (10.09 percent, 10.1 percent). The resolution of these measurement issues depends either upon the meaning of our prior decisions (see Appendix A, *infra*), or upon the fact that we accord no weight to the measurement of AT&T's rate of return that is contained in AT&T's 1978 Annual FDC Report. As AT&T noted in its Opposition to the NCCB petition, "the pertinent data are already before the Commission in reports routinely filed as well as previous correspondence * * *." AT&T Opposition at 3, n.* (filed August 2, 1979).

[20] AT&T's reported gross revenues were based upon tariffs that included connecting and concurring carriers that received revenues through the division of revenues and settlements processes.

[21] The National Citizens Committee for Broadcasting, the Consumer Federation of America and the Missouri Public Interest Research Group requested that interest be accrued at the prime rate. The USOCA supported that request.

[22] *Teleprompter Inc.* v. *Chesapeake and Potomac Tel. Co.*, 79 FCC 2d 232, 238–39 (1980), *recon.* 85 FCC 2d 23 (1981); *Georgia Power Co.* v. *Columbus Cablevision, Inc.*, FCC 84–100 (released March 2d, 1984) at para. 9 n.9.

[23] Rev. Rul. 83–171, 1983–47 I.R.B. 7; Rev. Rul. 84–66, IRB 1984–18 (April 30, 1984). *See* references cited in para. 16 n.2, *supra*.

[24] 47 CFR 69.601 et seq.

[25] Section 201(a) of the Communications Act empowers the Commission, after opportunity for hearing, to establish the division of charges among common carriers that engage in the joint provision of interstate and foreign telecommunications services. 47 U.S.C. 201(a) (1982). Section 201(b) requires that all charges "in connection with such communication service shall be just and reasonable," and "any such charge * * * that is unjust or unreasonable is hereby declared to be unlawful * * *." 47 U.S.C. 202(a) (1982). We have concluded that AT&T's 1978 interstate tariffs yielded excessive revenues to the providers of those services. As a consequence, it is not inappropriate to adjust the prospective division of charges among those carriers by their proportionate shares of the excess revenues that were received during 1978. We are herewith instituting the hearing that is required by section 201(a) in the context of tariff revisions that we have required. *See* para. 25, *infra*. We recognize, in structuring the remedy that is contained herein, that the record in this proceeding is inadequate to permit a quantitative assessment of the restitution obligations of the independent telephone companies that participated in revenues that were derived from AT&T's 1978 tariffs.

[26] Para. 12, *supra*.

[27] *See Bebchick* v. *Public Utilities Commission*, 318 F.2d 187, 203–04 (D.C. Cir. en banc), *cert. denied*, 373 U.S. 913 (1963) (opinion permitting utility commission to fashion relief to benefit a class of

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to reduce its estimate of its 1985 revenue requirement by its proportionate share of 1978's excess revenues (including accrued interest),[28] and we further direct that the NECA shall reduce the estimated 1985 carrier common line pooled revenue requirement by the balance.[29]

C. Legal Authority

20. After a full hearing on the record, the Administrative Law Judge entered an Order in Docket No. 20376 that provided that AT&T's interstate earnings were not to exceed 10.0 percent.[30] After expressly affirming the decision of the Administrative Law Judge, the Commission stated that AT&T's earnings were "not to exceed 10 percent",[31] and further stated that it would "not require any downward adjustment of AT&T's overall interstate rates provided its overall rate of return does not exceed 10 percent."[32] AT&T did not, however, seek during 1978 to modify the rate of return prescription that AT&T now contends had been vacated by rapidly changing economic circumstances. Nor did this Commission or any court modify, during 1978, the Docket No. 20376 prescription orders. After receiving evidence during 1980, we did prescribe an interim rate of return of 10.5 percent based upon the preliminary evidence that was then before us.[33] At that time we took care to point out that the Commission's Docket No. 20376 prescription orders had not lapsed, and that changes in AT&T's cost of capital could not "simply be determined by reference to changes in economic conditions without a hearing. Thus, we note that general fluctuations in the economy do not, as AT&T implies, weaken or invalidate an outstanding prescription such that a carrier may freely exceed it by filing increased rates."[34] The proper procedure for a carrier who contends that an outstanding order is improper is to petition the Commission to modify that order.[35] During 1978 AT&T did not conform to the Commission's procedural rules by seeking an order that would have vacated the 1976 prescription order. Accordingly, there is no statutory basis that would lead to the conclusion that the 1976 prescription was not in full force and effect during 1978.[36]

21. We next turn to an argument that was raised by USITA. In discussing the Commission's authority under section 205(a), USITA stated "[t]he FCC accepted the rates filed by AT&T in 1976. These rates became lawful rates, and AT&T could charge neither greater nor lesser rates. Yet this is precisely what the Commission would be doing in ordering refunds for 1978."[37] In essence, USITA appears to contend that the interstate tariffs under which AT&T was providing service during 1978 were "lawful rates." In this regard, several observations are in order. First, the Commission had never made an affirmative finding that any of AT&T's tariffed charges during 1978 were "just and reasonable" within the meaning of the Communications Act. Second, tariffed charges of AT&T that were in effect during 1978 had been found by this Commission to be unlawful (see Appendix B, *infra*, and references cited therein). The continuation of those services was permitted because the detrimental effects that would resulted from a disruption in the provision of those services outweighed the harm that would result from the continued provision of those services at rates that had not been adequately justified. We did not, however, intend that AT&T's charges would result in revenues that exceeded that limit that we prescribed in Docket No. 20376.[38] USITA's

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ratepayers where individual ratepayers who had been overcharged could not be identified). In this case, we could have ordered an immediate discount. However, we have recently imposed revisions to interstate tariffs for switched services and have been conducting an extended reveiw of the private line and special access service tariffs. Additional revisions to reflect changes in assets, expenses, and patterns of demand in exchange access tariffs will be necessary periodically. Because the imposition of unnecessary administrative expense is undesirable, we have concluded that it will be more efficient to address the revenue requirement adjustments that we have required in the context of tariff revisions that will be occuring during 1985. This decision is based upon the fact that we have previously established an orderly procedure for the annual revision of exchange carrier customer line charges, that provides for exchange carrier filings that are to have a scheduled effective date of June 1. *See* § 69.3 of the Commission's Rules. Those revisions would ordinarily require changes in AT&T's interexchange tariffs, that would require an assessment of AT&T's supporting documentation. As a consequence, it would be administratively more efficient and less expensive to ensure that appropriate modifications have been made to interstate tariffs during the period that has been scheduled for that process, rather than providing for an additional round of tariff modifications and review on top of those that have been required in the context of our most recent orders. We have also concluded that it is not feasible to disproportionately allocate 1978's excess revenues, with accrued interest, among categories of interstate services on the basis of AT&T's 1978 FDC Report (see para. 12, *supra*). At this point, we feel that the administrative, technical, and data complexities, that are associated with effecting restitution in a timely manner, require that we adopt the approach that is contained herein.

[28] The "Plan of Reorganization" that implements the "Modification of Final Judgement" provides that contingent liabilities that relate to interstate rates be apportioned on the basis of "relative investment devoted to interstate services as of the effective date of divestiture (as calculated in accordance with the FCC-prescribed Separations Manual in effect on the date of divestiture), adjusted to reflect the assignments of assets under this Plan of Reorganization (CPE and InterLATA assets to AT&T, and intraLATA assets to the BOCs)." "Plan of Reorganization", filed in *United States* v. *Western Elec. Co. & AT&T*, C.A. No. 82–0192 (D.D.C., filed December 16, 1982) at 188. We find that such an allocation would be a reasonable and equitable division of the restitution obligations of the exchange and interexchange carriers.

[29] Interest on AT&T's pro rata share of the $101,000,000 shall be accrued from January 1, 1979, to the date upon which AT&T files tariff revisions that reflect the reductions in revenue requirements that have been ordered herein. The aggregate reduction in revenue requirements is to be allocated among the estimated revenue requirements for each service offering by a constant proportion (*e.g.* the revenue requirement of each service offering shall be reduced by a fraction that is equal to AT&T's total restitution obligation divided by AT&T's total 1985 interstate revenue requirement). Interest on the exchange carrier portion of the restitution obligation shall be computed from January 1, 1979, and shall conclude on the date that NECA files 1985 exchange carrier common line charges that reflect the restitution obligation that we have imposed today.

[30] *AT&T Co.* (Docket 20376), 57 FCC 2d 979, 1005 (1975).

[31] *AT&T Co.* (Docket 20376), 57 FCC 2d 960, 973 (1976).

[32] *Id.*

[33] See AT&T Petition for Determination of Fair Rate of Return in CC Docket No. 79–63 (filed March 8, 1979). *AT&T*, 78 FCC 2d 661, 668–70, 672 (1980). Based in large measure upon information that was provided with respect to economic conditions during 1981, we subsequently concluded that AT&T's prescribed rate of return should be increased to 12.75 percent. *AT&T* 86 FCC 2d 221, 251 (1981).

[34] *AT&T* 78 FCC 2d at 666 n.7. Although AT&T contends that economic conditions during 1978 were sufficiently different to have vacated the 1976 prescription, we do not perceive AT&T's factual predicate to have been well founded. Our assessment of economic and financial market conditions that are of public record with respect to 1978, as well as AT&T's interstate earnings during 1978, reaffirms our conviction that AT&T's prescribed rate of return was within the correlative range of economic and financial market conditions that we considered at the time of the rate of return prescription in early 1976.

[35] *See* § § 1.2, 1.106, and 1.401 of the Commission's Rules, 47 CFR 1.2, 1.106, and 1.401 (1978).

Commission orders continue in force until the Commission or a court of competent jurisdiction issues a superseding order. 47 U.S.C. 408 (1978).

[36] *See AT&T*, 78 FCC 2d at 665–70.

[37] USITA Comments at 5–6.

[38] *AT&T*, 57 FCC 2d 960, 973 (1976); *AT&T*, 78 FCC 2d at 667. *See also* Appendix B, *infra*, and citations contained therein. The difficulties that the Commission was encountering with respect to AT&T's tariffs are described in *Docket No. 18128*, 61 FCC 2d 587 (1976), *recon.*, 67 FCC 2d 1441 (1978); *Notice of Inquiry in CC Docket No. 79–245* (In the Matter of American Telephone & Telegraph Co. Manual and Procedures for Allocation of Costs), 73 FCC 2d 629 (1979); *WATS*, 66 FCC 2d 9, 51–56 (1977), *recon.*, 69 FCC 2d 2031 (1979); *DDS*, 67 FCC 2d 1195, 1229–30 (1978), *recon.*, 70 FCC 2d 616, 630–33 (1979). To the extent that services with associated charges that have been found to be unlawful have been provided through the use of plant that has been jointly used in the provision of other services at charges that have not been determined to be "just and reasonable", we confront a situation that, in the absence of enforcement of the overall rate of return prescription, would potentially permit carriers to achieve unlimited rates of return unless this Commission were to terminate the provision of those services.

contention that AT&T's interstate charges during 1978 were *ipso facto* lawful because they were filed at this Commission is incorrect. It is clear under *Arizona Grocery* v. *Atchison, Topeka, and Santa Fe Railyway Co.* that rates that become effective may subsequently be found to have violated statutory standards.[39] It is also clear under the Communications Act that a carrier is under an affirmative duty to revise its rates to conform to outstanding prescription orders.[40]

22. Because Section 205(a) does not expressly contain the word "refunds", USITA further contends that any Commission action pursuant to a section 205(a) prescription could not embrace refunds as a mechanism for remediation. While section 205 does not specifically provide for the enforcement of Commission prescriptions through refund orders, Section 4(i) gives the Commission broad authority to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions."[41] In *Nader* v. *FCC*, the Court expressly recognized that the power to order refunds is inherent in the Commission's prescription authority.[42]

III. Ordering Clauses

23. It is ordered that the GSA and NCCB petitions are granted to the extent stated in the rulings and procedures that have been adopted herein and are, in all other respects, denied.[43]

24. It is further ordered that restitution shall be effected as provided herein, and that changes in exchange carrier rates that implement this order shall be reflected in AT&T's estimated revenue requirements.

25. It is further ordered pursuant to sections 4(i)–(j), 201, and 202 of the Communications Act, That comments may be filed within twenty (20) days from the date of each tariff filing that implement this Order, and reply comments may be filed withn ten (10) days thereafter.

26. It is further ordered that the Secretary shall cause this decision to be published in the **Federal Register.**

27. It is further ordered that the Secretary shall, by registered mail, serve a copy of this decision and notice of hearing upon the American Telephone and Telegraph Company and each of the Bell System Operating Companies in accordance with Sections 416 and 413 of the Communications Act of 1934, as amended, and shall enter proof of service in the docket in this proceeding.

28. It is further ordered that the Secretary shall transmit a copy of this order to the NECA.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A—Interest During Construction

1. In correspondence with the Common Carrier Bureau, and in its comments in this proceeding, AT&T has asserted that the earned rate of return measurements that AT&T reported in the IMR 1 and the 1978 Annual FDC Report should be reduced by 0.20% on the basis of "full compliance" with Docket 19129 (Phase II). In the interest of brevity, those adjustments shall be referred to hereinafter as either the "Interest During Construction" or "IDC" adjustments. The 9.89% measurement of AT&T's earned rate of return for 1978 results from the deduction, by AT&T, of 1978's Interest During Construction from the revenues that AT&T's employed in presenting the 10.9% 1978 earned rate of return figure that was contained in AT&T's FDC Report. Similarly, the 10.02% measurement results from deducting IDC from the 10.22% figure that AT&T filed in its IMR–1 Report for December, 1978. To understand the nature of AT&T's contentions it is necessary to review "IDC" concepts and our decisions with respect to IDC from the ratemaking prespective that is relevant here. Subsequent paragraphs in this Appendix discuss IDC, our decisions with respect to IDC, AT&T's correspondence with respect to IDC, and the measurement of AT&T's earned rate of return during 1978.

2. When a utility constructs plant, the construction of the plant is frequently, although not necessary, financed through the issuance of interest bearing debt. Inclusion of the interest that was incurred to finance the plant construction could result in "double counting" [1] and therefore a double recovery to the carrier if the plant that was under construction were also included in the carrier's rate base for allowed rate of return measurement purposes. As a hypothetical example of this possibility, assume that during 1978 a carrier had $573,478,000 of telephone plant under construction and had incurred $46,786,000 in interest during 1978 to finance that plant while it was under construction. If that carrier were permitted to earn an allowed rate of return of 10% on the plant under construction in its revenue requirements for that year, and also receive IDC, the carrier would have been permitted to earn $104,133,000 [2] or 18.16% [3] on that investment as compared with the allowed rate of return of 10%.

3. The issue that AT&T raised in its letters of January 19, 1979, May 3, 1979, and in its comments with respect to IDC had its genesis in our consideration of AT&T's network capacity in the *Phase II Final Decision and Order in Docket No. 19129*, 64 FCC 2d 1, 44–60 (1977). At that time, we noted that our practice had been to "[i]nclude plant under construction in the rate base and change interest during construction. The interest during construction is included in income for ratemaking purposes and is added to the construction work in progress to be included in utility plant when the construction work is placed in service." *Id.* at 56. An explanation of that treatment for rate making purposes will help to clarify the background that underlies AT&T's proposed adjustment.

4. Upon occurrence of the condition that the constructed plant is actually placed in service,[4] AT&T has been permitted to add IDC to the cost of that constructed plant, which, in turn, was then included in AT&T's rate base and depreciation expense for ratemaking purposes. To avoid "double counting", in the period(s) prior to the constructed plant's actual commitment to service (and subsequent thereto), we required, for ratemaking purposes, that while the plant was being constructed (termed "construction work in progress") the interest that was being incurred on the construction be *added* to the revenues of the carrier to offset the rate of return which the carrier was being permitted to earn upon the plant while it was being constructed. Not including the credit to revenues of IDC for ratemaking

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[39] *Arizona Grocery* v. *Atchison, Topeka & Santa Fe Railway Co.*, 284 U.S. 370, 384 (1931). *See Carterfone*, 13 FCC 2d 420, *recon. denied*, 14 FCC 2d 571 (1968).

[40] Section 205(a) of the Communications Act of 1934, as amended, 47 U.S.C. 205(a) (1978) (Commission may "prescribe what will be" * * * thereafter observed" * * *.").

[41] 47 U.S.C. 154(i) (1978). With respect to the relationship between Section 4(i) and Section 205(a), the Court in the *Nader* case stated that the "discretion that must be afforded the Commission in the exercise of its ratemaking power is enhanced by Section 4(i) of the Communications Act * * * " *Nadar* v. *FCC*, 520 F.2d 182, 203 (D.C. Cir. 1975).

[42] *Nader* v. *FCC*, *supra*, at 204–05 n.25.

[43] *See AT&T Co.* (Order Instituting Hearing), *supra*, at 690 n.4.

[1] The "double counting" would occur as a consequence of allowing the carrier to earn its allowed rate of return (cost of capital) on the funds which were being used for constructing plant, while, at the same time permitting the carrier to accrue "interest during construction" which the carrier is subsequently permitted to recover from ratepayers.

[2] ($573,478,000) (.1) + $46,786,000 = $104,133,000.

[3] $104,133,000/$563,478,000 = .1816, or 18.16%.

[4] See *Phase II Final Decision and Order in Docket No. 19129*, 64 FCC 2d 1 46–53, 56–62 (1977).

purposes would have resulted in the following consequences: (1) The carrier would be permitted to earn a rate of return on plant under construction; (2) the carrier would then be permitted to take the portion of return which was associated with the construction of the plant (IDC) and place that money in the rate base (thereby being compensated twice for the use of the money necessary for construction of the same plant); and (3) the carrier would subsequently be permitted to earn the allowed rate of return upon the IDC, for which the carrier had already been compensated when the carrier had been permitted to earn a rate of return on the plant while it was under construction (see (1), above).

5. A numerical illustration of these concepts may be helpful. Assume that a carrier's allowed rate of return is ten percent, that the carrier borrows at ten percent to finance construction, and that $10,000 in construction expenditures occur during 1978. Under this scenario, the carrier is permitted to recover its cost of capital (the allowed rate of return of ten percent) on the construction, or $1,000 ($10,000x.1) during 1978. The subsequent inclusion of IDC ($10,000x.1=$1,000) during 1978 in the carrier's rate base would permit the carrier to recover a second round of capital costs (the "double count") when that carrier is subsequently permitted to recover the $1,000 of IDC in increased depreciation expense in subsequent time periods, and is also permitted to earn the allowed rate of return upon the IDC that is in the rate base. The offsetting entry that we had required from Docket No. 16258, 9 FCC 2d 960, 972 (1967), *reduced* the revenue requirement *by adding*, for *rate evaluation purposes*, IDC to the revenues that the carrier was receiving. This had the direct effect of increasing the measurement of the carrier's earnings for *ratemaking* purposes.

6. The treatment of IDC that was discussed in the three preceding paragraphs was examined by the Trial Staff in Docket No. 19129. In our *Phase II Final Decision and Order in Docket No. 19129, supra* at 60, we found "sufficient merit in the Trial Staff's criticism of our present procedures for treating PUC and IDC to institute changes to eliminate some of the problems it has asserted." Specifically, our Order stated:

> [w]e shall continue the practice * * * of including short-term construction projects in the current rate base as the investment is incurred. We shall, however, neither compute nor capitalize IDC on such amounts, but rather * * * treat short-term projects similarly to plant in service.
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> * * * * * *
>
> Furthermore, we shall require all projects which actually take longer than one year to complete to be removed from the rate base at the end of the year, unless given a waiver by this Commission. In that event, IDC will be computed starting at the end of one year in accordance with the procedures set forth below. Additionally, any project suspended longer than six months will be removed from the rate base and no IDC will be computed on such amounts. Projects designed with construction time exceeding one year will be removed from the rate base *ad initio* * * *.

64 FCC 2d 1, 59 (1977). In addition, we explained that:

> [w]e realize that changes to the Uniform System of Accounts will be required in order to implement these rate base changes, as projects with completion dates exceeding one year must be isolated from those taking less than one year. We are also concerned that the necessary accounting changes are not inconsistent with regulatory systems of the several states. Accordingly, we are by separate Order instituting a proceeding, pursuant to Section 220(i) of the Act * * *, to solicit the views of the states on the proposed accounting changes.

Id. at 60.

7. The proceeding to amend the Uniform System of Accounts ("USOA") as suggested in Docket No. 19129 was instituted by a Notice of Proposed Rulemaking, which was adopted on April 28, 1977 (Docket No. 21230), and published in the **Federal Register** on May 13, 1977, 42 *Fed. Reg. 24291).* In that Notice, we pointed out that in our *Phase II Final decision and Order in Docket No. 19129* we had "prescribed, among other things, the treatment of certain plant and expense items for ratemaking purposes"; that "[a]lthough the investigation in Docket No. 19129 was limited to the operations of [AT&T] * * * the conclusion reached therein should be rules of general applicability"; and, that the USOA "should therefore reflect the rate base prescriptions." Our Notice of Proposed Rulemaking repeated the view expressed in Docket No. 19129 that "orderly implementation of certain of those prescriptions [including plant under construction] will require amendment of the Uniform System."

8. On February 24, 1978, subsequent to the institution of the rulemaking proceeding to modify the necessary accounts, we considered on our own motion (FCC 78–103, 67 FCC 2d 1429) the problem of plant under construction and IDC in Docket No. 19129 and observed that:

> [u]nder the provisions of our decision [Docket 19129], see para. 322, our revised treatment of Plant Under Construction (PUC) and Interest During Construction (IDC) for ratemaking purposes became effective for reporting year 1977. It was also originally determined that certain changes to our accounting rules were necessary for the orderly implementation of our revised policy. Accordingly, on May 9, 1977, we released a Notice of Rulemaking for comment by various states regarding the proposed amendments to the Uniform System of Accounts * * *. Until that time [*i.e.*, until the USOA is amended in accordance with the requirements of Section 220 of the Act], *present accounting rules will remain in effect, although, for ratemaking purposes,* interest is not to be calculated on projects scheduled to be compeleted in less than one year.

67 FCC 2d 1429, 1435–36 (emphasis added).

We further stated:

> *[w]e are using this opportunity to clarify the rate base treatment of IDC accrued before the effective date of the above accounting change. For the reason stated below, we find the appropriate treatment is to disallow such IDC for ratemaking purposes* during calendar year 1977. Traditionally, IDC has been designed, in part, to compensate investors for funds prudently invested in construction projects, since projects while under construction generally generate neither revenues nor profits. However, because we are allowing investment in construction projects that are completed in less than one year to be included immediately in the rate base, AT&T will have the opportunity to earn an immediate fair return. *To allow AT&T the additional opportunity to capitalize IDC at the time the associated PUC goes into service, and this to recover such IDC over the life of the facility, would compensate AT&T's investors twice. We find such "double counting" not to be in the public interest and shall therefore disallow such IDC, effective January 1, 1977, from respondent's interest rate base.*

Id. at 1436 (emphasis added).

9. About a month later, on March 27, 1978, Mr. William R. Stump, AT&T Assistant Vice President for FCC Financial and Accounting Matters, wrote to the Chief of the Common Carrier Bureau seeking additional information as to the treatment of IDC. The letter stated:

> [i]t is clear that the Commission intends to disallow the inclusion of IDC from the rate base, for ratemaking purposes, during the pendency of changes in the Uniform System of Accounts to avoid any possibility of "double dipping" during the Docket 19129 (Phase II) Final Order and the necessary accounting changes in Docket 21230.
>
> It also appears to be the Commission's intent in Paragraphs 14 and 15 to restore this IDC to the rate base once the new accounting changes go into effect and the opportunity for "double dipping" no longer exists.
>
> While this is a logical approach and appears to be the intent of the Commission, the wording in Paragraphs 14 and 15 is not as clear as it might be in this regard. It would be helpful if this point could be clarified in the Order prescribing the necessary acocunting changes.

In reply, the Bureau Chief agreed with AT&T's interpretation that the Commission's intent in Docket No. 19129 was to exclude IDC from the rate base for ratemaking purposes pending necessary accounting changes as a means of avoiding the opportunity for "double dipping." On the other hand, unlike AT&T, the Bureau Chief did "not read the Commission's orders as evidencing an intent to restore the IDC to rate base once the new accounting changes prescribed by Docket 21230 become effective."

10. On May 11, 1978, the Commission issued the *Amendment of Part 31 Report and Order* (Docket No. 21230), 68 FCC 2d 902. Consistent with our findings in Docket No. 19129, our decision in Docket No. 21230 amended the USOA to require, *inter alia*, that the *account* for telephone plant under construction be subdivided into two parts: one to show those projects to be completed within one year (short-term projects); the other to show those projects to be completed in more than a year (long-term projects). Basically, those projects to be completed within one year were to be placed in the plant accounts immediately and no IDC was to be accured thereon. Long term projects (*e.g.* those which are to be completed in more than one year) were to accrue IDC but were to be placed in plant accounts only when ready for service. Those *accounting* changes were ordered to become effective on January 1, 1979. See *Amendment of Part 31, supra*, at 908; *recon.*, FCC 79–678 (released November 6, 1979).

11. On June 2, 1978, AT&T filed an "Application For Review" challenging the conclusions reached by the Bureau Chief in his May 8, 1978, letter "as contrary to statutory requirements, case precedent, the Commission's decision in Docket 19129 Phase II and Commission policy." AT&T requested that we set aside the Bureau Chief's conclusions and hold instead:

1. That IDC accrued by AT&T on short term Plant Under Construction in 1977 and 1978 was allowable for interstate ratemaking purposes; and

2. That the Bureau Chief exceeded his authority in concluding that interest accrued on short term plant during 1977 and 1978 should be written off AT&T's books as an unrecoverable cost.

AT&T's Application For Review also stated:

> [w]hile it is true, as [the Common Carrier Bureau Chief's] letter states, that "capitalized IDC is recovered through increased depreciation charges over the life of the plant on which IDC was initially accrued" *this does not amount to double counting, so long as the IDC is included as income for ratemaking purposes * * ** (emphasis added).

12. Thus, AT&T's June 2, 1978, Application For Review requested, for ratemaking purposes during 1977 and 1978, that this Commission continue in effect the IDC treatment that AT&T was then using for accounting and ratemaking purposes in its IMR 1 reports which was, in fact, the same accounting and ratemaking treatment that this Commission had prescribed in 1967 in Docket No. 16258. *As noted above, AT&T expressly stated that IDC, under that method, must be included with income for ratemaking purposes to offset the "double counting" that would otherwise result.* Upon further consideration, we granted AT&T's request that had the consequence that insofar as the ratemaking treatment of IDC on Plant Under Construction was concerned for 1977 and 1978, *AT&T would continue its existing reporting of IDC* (which included the revenue credit of IDC to offset "double counting") and that our ratemaking assessment would correspond thereto.[5]

13. Against this factual backdrop, we now consider AT&T's statements regarding the appropriate treatment of IDC during 1978 insofar as they concern the measurement of AT&T's earned rate of return for 1978. On January 19, 1979, AT&T stated, with respect to AT&T's earned rate of return during 1978: "[i]n 1978, on the basis of full compliance with Docket 19129 (Phase II) requirements it was 10.02%—for all practical purposes, right at the upper part of the range * * *." (Letter from Mr. William Stump, AT&T, to the Acting Chief of the Common Carrier Bureau, dated January 19, 1979).

14. On May 3, 1979, in response to a letter by the Chief of the Common Carrier Bureau with respect to the 10.02% measurement, AT&T stated:

> [y]ou ask that we fully explain the difference between the 10.22% rate of return reported on the Interstate Monthly Report No. 1 (IMR 1) and the 10.02% rate of return mentioned in my letter as having been calculated on the basis of full compliance with the Docket 19129 (Phase II) requirements.
>
> The 20 basis point difference between the 10.22% reported on the December 1978 1MR 1 as the 1978 interstate ratio of net earnings to average net investment and the 10.02% ration mentioned in my letter to you as the 1978 ratio on the basis of full compliance with the Docket No. 19129 requirements *results from the adjusting out of amounts of interest during construction accrued on short-term plant under construction in 1978* (see Attachment). The 1977 and 1978 operating results reported in the 1978 IMR 1's reflected the Docket No. 19129 decision except for the accrual of these amounts of interest during construction because the changes to Part 31 of the Commission's rules which would result in full implementation of this Decision in this regard were not effective until January 1, 1979. (Letter from Mr. William R. Stump, AT&T, to the Chief, Common Carrier Bureau, dated May 3, 1979.) (Emphasis added.)

15. In response to further inquiry as to the measurement of AT&T's earned rate of return during 1978, Mr. Stump stated, in a letter to the Chief of the Common Carrier Bureau that was dated July 25, 1979: "[t]he rate of return of 10.22% shown on the December 1978 Interstate Monthly Report No. 1 is the rate of return for 1978 based on the Commission's directives appropriate to that year, including the December 21 decision mentioned above."

16. In its comments in this proceeding, AT&T has stated: "[t]he 10.02 and 9.89 percent measurement differ from the 10.22 and 10.1 percent measurements, respectively, only in that the former two measurements, but not the latter two, reflect full implementation of the Commission's Phase II decision in Docket 19129." (AT&T comments, para. 63.) AT&T further stated, in a footnote to paragraph 64 of its comments, that: "[t]he 10.1 percent was a rounding of a 10.09 percent, so that the excess is only 9 basis points."

17. Thus, AT&T has stated in its letter of May 3, 1979, and in its comments in this proceeding that the difference between 10.02% and the 10.22% reported in AT&T's December, 1978, IMR 1 results from AT&T's "adjusting out" IDC for 1978. Similarly, the 9.89% measurement supplied in AT&T's comments (paras. 60, 63, 64) results from AT&T's "adjusting out" IDC for 1978 from the 10.09% earned rate of return that AT&T reported in its "1978 Annual FDC Report." As heretofore noted, those proposed downward IDC adjustments and the earned rates of return measurements associated therewith have been rejected. As we have heretofore stated *for ratemaking as well as for accounting purposes during 1978, IDC must be added to AT&T's revenues for interstate and foreign services to prevent double counting.* In its June 2, 1978, Application For Review, AT&T acknowledged that IDC must be added to income to prevent double counting during 1978 (see para. 11, *supra*), and our June 1, 1979, Memorandum Opinion and Order expressly recognized that fact. *See Memorandum Opinion and Order In The Matter Of The American Telephone and Telegraph Company*, 72 FCC 2d 1, 6 (1979). The "full implementation of the Commission's Phase II decision in Docket 19129" to which AT&T refers

[5] *See In the Matter of the American Telephone and Telegraph Co.*, 72 FCC 2d 1 (decided December 21, 1978; adopted in final form on May 30, 1979; released June 1, 1979).

(AT&T comments, para. 63; AT&T letters of January 19, 1979, and May 3, 1979) not only involved accounting changes that were effective on January 1, 1979, *but also involved concommitant ratemaking changes to prevent double counting that were also not effective until January 1, 1979.* AT&T's proffered "full implementation" of our Phase II Decision in Docket No. 19129, by now including for 1978 inapplicable January 1, 1979, accounting changes (which intentionally were not to become effective until January 1, 1979), would, for 1978, result in the exact result that we have consistently sought to avoid: a double recovery of IDC.

Appendix B

1. This Appendix contains a brief history of AT&T filings and FCC proceedings that relate to tariffs under which AT&T was providing interstate services during 1978.

2. On January 29, 1976, AT&T filed "Transmittal No. 12497" which contained revisions to Tariffs FCC Nos. 259, 260, 263, 264, and 267, which were represented as having been designed to yield a 9.5% rate of return. On February 5, 1976, after a full hearing, the Commission released a Memorandum Opinion and Order in Docket No. 20376, 57 FCC 2d 960 (1976), which prescribed a fair rate of return for AT&T of 9.5% and permitted AT&T to earn an additional 0.5% as "an incentive to increased productivity and efficiency." *Id.* at 973. On March 1, 1976, we released a Memorandum Opinion and Order in Docket No. 20732, 58 FCC 2d 1 (1976), which considered the tariff revisions that were contained in Transmittal No. 12497. As noted therein, numerous issues were raised by participants in that proceeding that were also, in part, being considered in Docket Nos. 18128, 19989, and 20288. Accordingly, pursuant to Sections 4(i), 4(j), 204, 205, and 403 of Communications Act of 1934, as amended, the tariff revisions that were contained in Transmittal No. 12497 were suspended for one day, a hearing was instituted into the lawfulness of those tariff revisions, the hearing was held in abeyance pending further order of this Commission, and we required "that AT&T maintain an accounting of the revenues derived under these revised tariffs, for possible refund upon resolution of the lawfulness thereof." *Id.* at 5. On March 26, 1976, we released an "Errata" in Docket No. 20732, FCC 76–248, 58 FCC 2d 905 (1976), which, *inter alia*, revised paragraph 14 of our Memorandum Opinion and Order in Docket No. 20732, *supra*, at 5, to read:

[f]or the reasons indicated we shall order AT&T and all participating telephone companies to maintain accounts by service classes and subclasses, in the aggregate, specifying the amounts of all increases and the service classification for which such amounts are accounted. Classifications for which accounts must be kept are as follows: (1) Private line services, by series; (2) MTS and WATS, insofar as rates have been increased, and for each classification of service (e.g., dial station, operator-assisted, inward WATS, outward WATS, etc.); (3) DDS; and (4) all other services.

58 FCC 2d 1, 5 (1976). Service of the Errata upon AT&T was effected on March 26, 1976. On March 29, 1976, the Commission released a Memorandum Opinion and Order in Docket No. 20736 (In the Matter of American Telephone and Telegraph Company Revision to Tariff FCC No. 260 (Series 1000)), 58 FCC 2d 899 (1976), which similarly provided for the suspension of certain AT&T tariff revisions, the institution of a hearing at a date to be specified, and the imposition of an accounting order upon AT&T and upon all carriers participating in the provision of the Series 1000 service. *Id.* at 903. In our Final Decision and Order in Docket No. 19989, 59 FCC 2d 671, 709–10 (1976), after having found the WATS tariff filings at issue therein to be unlawful, we stated:

[a]lthough the WATS tariff has been found unlawful as indicated herein, there is a clear public interest requirement for continuity of Inward and Outward WATS service to the public. Further, this procedure will avoid the confusion and administrative difficulties which would likely arise if an alternative WATS tariff was filed to become effective during the interim period while Bell prepared the tariff filing required by our Decision. Finally, we note that existing accounting orders shall continue as set forth herein to protect the public and we retain our rights to investigate or reject or impose an accounting order with respect to the tariff revisions which Bell must file. In view of the foregoing, the course outlined above will best serve the public interest.

Our Designation Order herein imposed an accounting order by individual customer account on Bell for all charges which were increased under the filing of Transmittal No. 11935, 46 FCC 2d at 86. No accounting order was imposed for the increased charges resulting from Bell's March 1975 filing under Transmittal No. 12303, 52 FCC 2d 155, 156, and a 'class' accounting order was imposed for the increased charges resulting from Bell's February 1976 filing under Transmittal No. 12493, Docket No. 20732, 58 FCC 2d 1, 4–5 (1976). Moreover, an accounting order by individual customer account remains outstanding with respect to the 1973 WATS rate increases, 40 FCC 2d 18, 20. As indicated above, we have found the foregoing WATS tariff filing unlawful. In the normal case where charges are found unlawful after hearing, we would prescribe lawful rates, and therefore know what portions of the increases are lawful. Here, however, we have an insufficient record to support a rate prescription, and we therefore believe it an appropriate exercise of our discretion not to order any refunds pending consideration of the tariff revisions filed in accordance with this Decision.

Accordingly, we will leave the accounting orders now pending in effect. However, to the extent possible, we shall order Bell to convert the existing accounting orders by individual account into "class" accounting orders, i.e., for Outward MT, Outward FBD (FT), Inward MT and Inward FBD (FT) services, upon the effective date of this decision * * *.

* * * * *

It is further ordered, that the accounting orders pursuant to 40 FCC 2d 18, 20 and 46 FCC 2d 81, 86 shall be converted to class accounting orders (for Outward MT, Outward FT/FBD, Inward MT, Inward FT/FBD categories of service) insofar as feasible.

Id. at 709–10. By subsequent Memorandum Opinion and Order in Docket No. 19989, 64 FCC 2d 538, 540–41 (1977), which was released on April 18, 1977, we clarified the earlier accounting orders in Docket No. 19989, *supra*, at 709–10, by stating:

[i]n its Reply to AT&T's Opposition, National Data restates its view that existing individual accounts should not be destroyed nor converted to class accounts if the effect would be to eliminate the basis for possible individual customer refunds, for WATS customers who have relied upon the accounting order by individual account issued by the Commission for the period March 14, 1973 to March 8, 1975 as the ultimate source of relief. National Data points out that with respect to future individual account record keeping it has not sought to require compilation of such records. It also does not deny that it is "concerned about its own hopes for a refund," claiming it has suffered several dramatic increases in its WATS charges since 1973, much to the detriment of its business operations and economic well being. National Data further renews its request that the Commission provide AT&T's WATS customers some indication as to its view of the likelihood that individual refunds, for the years 1973, 1974 and 1975, will be ordered so that if necessary, such customers may consider seeking alternate relief. Finally, National Data claims its participation in the informal discussions between AT&T and the Bureau will be of assistance due to its thorough knowledge of the issues which it obtained as a party to Docket No. 19989.

To the extent indicated below, we grant the relief requested by National Data. In regard to National Data's concern about accounting orders and records, our March 1, 1976 action in Docket No. 20732, *supra*, sets forth the public policy reasons justifying the entry of class accounting orders and supports the conversion of accounting orders by individual customer account to class accounting orders as ordered in this particular case. In our March 1, 1976 action, 58 FCC 2d at 4, we stated that "[i]n major rate cases * * *, the

imposition of individual accounting requirements [i]s a costly, inefficient, and largely ineffective means of protecting the public interest." Although we ordered the conversion to class accounting, and reaffirm that decision here, we never expected AT&T to physically convert the two accounting orders until we first decided whether or how any alleged refund liability was to be considered or determined. See 59 FCC 2d at 709. Thus, no destruction of existing individual account records, which is National Data's major concern, has occurred or will occur in the future pending further Commission order.

64 FCC 2d 538, 540–41. In the Phase II Final Decision and Order in Docket No. 19129, 64 FCC 2d 100–01, 110, released on March 1, 1977, we terminated the outstanding accounting orders with respect to AT&T's Message Telecommunications Service. On May 9, 1977, this Commission issued a clarifying Memorandum Opinion and Order, FCC 77–310, which, *inter alia*, stated:

[O]n March 1, 1977, we released the Phase II Final Decision and Order in our Docket No. 19129 investigation of AT&T, FCC 77–150, —— —— FCC 2d —— ——. We found in that proceeding, *inter alia*, that the rate level of AT&T's Message Telecommunications Service (MTS), reflected in the earnings ratio from the service through 1975, was just and reasonable during the period of this proceeding. Para. 253. Accordingly, we concluded that maintenance of the outstanding accounting orders, with the costs thereof placed upon the operating expenses of AT&T, was no longer required and terminated all such accounting orders with respect to MTS. Paras. 276, 328.

In the Phase II Final Decision, *supra*, we found the overall rate levels of MTS reasonable through 1975, but we have taken no position on the lawfulness of the 1976 rate increase. As long as the question of the reasonableness of the MTS rate level in that filing remains under question (footnote omitted), we believe it inappropriate to terminate the MTS 1976 accounting order. Therefore, we hereby clarify that para. 328 of the Phase II Final Decision, *supra*, does not terminate the accounting order in this proceeding [Docket No. 20732].

Accordingly, it was ordered, That the accounts ordered in this proceeding at 58 FCC 2d 1, 5 (1976) shall continue to be kept until further order of this Commission.

3. On May 9, 1977, the preceding Memorandum Opinion and Order in Docket No. 20732 was served upon AT&T. Pursuant to section 408 of the Communications Act of 1934, as amended, 47 U.S.C. 408, that order remained in full force and effect during 1978.

4. By Memorandum Opinion and Order in Docket No. 18128, 61 FCC 2d 587, 669 (released October 1, 1976), this Commission terminated all extant accounting orders in Docket No. 18128. However, upon reconsideration, by Memorandum Opinion and Order released on June 13, 1977, 64 FCC 2d 971, 993, we reinstituted the accounting orders in Docket No. 18128. Upon further reconsideration, Second Order on Reconsideration in Docket No. 18128, 67 FCC 2d 1441, 1453 (released February 24, 1978), we reaffirmed the reinstitution of the extant accounting orders in Docket No. 18128, and stated:

[a]s noted above, certain rate increases were found unjustified while others like Telpak are still subject to further proceedings. This circumstance allows that certain users may have been overcharged and may be entitled to refunds either presently or at the outcome of the proceeding. Clearly, the carrier, which has the burden of justifying its rates, should carry the risk of failure in the proceeding, not the customer. AT&T would have us place the customer in the position of bearing the entire risk of overpayment in the event that rates are proven unlawfully high. We must reject the view, and therefore hold that maintenance of the accounting orders is necessary to continue to protect customer interest still extant in this proceeding.

Id. at 1453.

5. During 1978, AT&T had in effect several tariffed rates that the Commission has found to be unlawful or that have been continued pursuant to Court order. During April, 1976, AT&T filed Tariff revisions 12546 and 12547 introducing the multi-schedule private line (MPL) rates. On May 19, 1976, the Commission suspended the effective date of the MPL rates, and set those rates for investigation. In the Matter of American Telephone & Telegraph Company, 59 FCC 2d 428 (1976). At that time, we stated:

[s]ubstantial questions have been raised concerning the lawfulness of the MPL rate structure. Some of the specific features of the tariff which need close scrutiny are, among others, the increases in the charges of services of 25 miles or less in length, the high charge for the first mile of service, the possible anti-competitive implications of the decreases in charges for long haul services, and the possibility of unlawful discrimination between users.

Id. at 431. The MPL rates became effective on August 20, 1976, following expiration of the three-month suspension period. Those rates remained in effect with minor revisions through 1978. On March 19, 1979, the Administrative Law Judge, after a lengthy hearing, released his decision. As reported in the Commission's final decision, the Administrative Law Judge:

found eight separate violations of Docket No. 18128 requirements in the MPL cost studies. He thus concluded, that the costing practices and classifications underlying those cost studies are not just and reasonable within the meaning of section 201(b) of the Communications Act (47 U.S.C. 202(b)); that AT&T has failed to demonstrate that such classifications and practices would not constitute an unjust or unreasonable discrimination in violation of section 202(a) of the Act. (47 U.S.C. 202(a)); and that AT&T has not met or even attempted to meet the cost allocation guidelines set out in the Docket No. 18128 Decision. The Judge concluded that the Series 2000/3000 transmittals at issue are unlawful and must be rejected.

In the Matter of American Telephone and Telegraph Company, 74 FCC 2d 1, 7 (1979). On September 20, 1979, the Commission in its Final Decision in Docket No. 20814 found that as a consequence of the use of AT&T's basic service philosophy, AT&T had "failed to carry its burden of justifying the MPL tariff under section 201(b) of the Act in accordance with Docket No. 18128 requirements." 74 FCC 2d 1, 41 (1979). The Commission then concluded that the public interest required that AT&T's tariff remain in effect until the Commission was in a position to prescribe new rates, or until a new carrier initiated tariff became effective. In the Commission's Final Decision and Order in Docket No. 19989, 59 FCC 2d 671 (1976), *recon.*, 64 FCC 2d 538 (1977), the Commission, in considering AT&T's WATS tariff rates, concluded that:

Pursuant to section 201(b) and 202(a) of the Act, the tariff schedules filed with Bell Transmittal Nos. 11657 and 11935 (and revisions thereto) are found unlawful as indicated herein, are null and void, effective 210 days after publication of this Decision in the **Federal Register.**

It is further ordered, That Bell shall file tariff revisions accompanied by the information required by § 61.38 of the Commission's Rules, 37 CFR 61.38, and which meet the guidelines specified herein;

* * * * *

It is further ordered, That the provisions of Section 61.58 of the Commission's Rules, 47 CFR 61.58, are waived, and the tariff revisions to be filed on not less than 60 days notice; 59 FCC 2d 671, 709–710.

In response to this order, AT&T filed Transmittal 12745 which was to become effective on August 1, 1977. On July 21, 1977, the Commission concluded that:

AT&T's WATS tariff filing, Transmittal No. 12745, is rejected, except to the extent WATS services are to be initiated to and from points outside the 48 contiguous states* * *.

It is further ordered, That the effective date of paragraph 90 of our Decision in Docket No. 19989, 59 FCC 2d 671, 709–710 (1976), which declared the present WATS tariff null and void is deferred, pending further Commission Order.

In the Matter of American Telephone and Telegraph Company (Long Lines Department) Revisions to Tariff FCC No.

259 Wide Area Telecommunications Service (WATS), Transmittal No. 12745, 66 FCC 2d, 62–63 (1977).

6. On November 21, 1978, the Commission, in the preceding WATS Decision, set forth a mechanism for the filing of revised WATS tariffs. Thus, the WATS tariffed rates,found to be unlawful in 1976, remained in effect during 1978 with minor exceptions noted above. On January 17, 1977, the Commission released the Memorandum Opinion and Order In The Matter of American Telephone and Telegraph Company Investigation Into The Lawfulness Of Tariff FCC No. 267, Offering A Dataphone Digital Service Between 5 Cities (Docket No. 20288), 62 FCC 2d 774 (1977), *recon. denied,* 64 FCC 2d 994 (1977), regarding the provision of dataphone digital service. In the Decision, the Commission stated:

[T]he rates and conditions of AT&T's Tariff No. 267, as specified herein, are unjust, unreasonable, and unlawful, in violation of § 201(b) of the Communications Act* * *. Accordingly, we require AT&T to file an interim tariff offering dataphone digital service at rates designed to yield the 9.5% return, as provided herein, no later than February 22, 1977, effective on thirty days notice.

62 FCC 2d FCC 2d 774, 807 (1977). AT&T filed interim rates patterned after the rates in Tariff No. 260 (Series 2000/3000) under Transmittal 12687 which became effective on March 24, 1977. In allowing those tariffed rates to become effective, the Commission stated:

[we]find that AT&T has substantially complied with our guidelines set forth in the Docket 20288 Decision. Upon examination of the arguments in the petitions for investigation and rejection, we cannot agree that the requested relief is warranted. Therefore, we will allow the tariff revisions which reflect the interim rates to become effective.

In The Matter Of American Telephone and Telegraph Company, 63 FCC 2d 936, 937 (1977). On July 25, 1977, AT&T filed revised Dataphone Digital Service ("DDS") tariffs under Transmittal 12790 to become effective on January 16, 1978. On January 12, 1978, the Commission rejected proposed DDS tariff rates on the ground that the filing did not comply with the Commission's Order in Docket No. 20288. In the Matter Of American Telephone and Telegraph Company Revisions Of Tariff No. 267 Dataphone Digital Service (DDS), 67 FCC 2d 1195 (1978), *recon. denied,* 70 FCC 2d 616 (1979). Since its initial tariff offering service to five cities, AT&T expanded in phases the number of cities to be served. Each incremental tariff filing for each incremental service was based upon the interim rates that were filed in 1977.

7. On October 1, 1976, the Commission released its Memorandum Opinion and Order in Docket No. 18128, 61 FCC 2d 1444 (1978), *aff'd. sub nom. Aeronautical Radio, Inc.* v. *FCC,* 642 F.2d 1221 (D.C. Cir., 1980), *cert. denied.* 451 U.S. 920 (1981). In that Decision, the Commission found that it was:

[u]nable to find that the TELPAK offering, as presently structured, constitutes a proper response to the extent of competition posed by private microwave. We nevertheless believe that a properly structured bulk rate offering, which would compete with private microwave or other competitive alternatives is justified. However, it is clear from the record herein, that the *nationwide* rate differential existing between TELPAK and like private line service cannot be supported by alleged cost comparability between TELPAK and hypothetical private microwave systems.

61 FCC 2d 587, 658 (1976) (emphasis in the original). In response to this finding, the Commission concluded that:

The rate level differential existing between TELPAK and other private line services constitutes an unlawful discrimination between like services, under Section 202(a). We do recognize, however, the benefit to industrial, transportation and government users from a bulk offering. Bell may file within the eight month period outlined below a new appropriately responsive bulk offering consistent with our guidelines herein, which can be supported on the basis of competitive necessity, costs, or other relevant factors.

Id. at 659. In response to this directive, AT&T filed tariff changes to eliminate the Transmittal No. 12714 TELPAK (Series 5000) offering. On reconsideration of the Final Decision in Docket No. 18128, the Commission decided that:

[c]onfusion on the [scope of the Notice of questions at issue] may have resulted from differing statements contained in orders issued during this somewhat convoluted and protracted proceeding. We shall on this ground reconsider the matter of TELPAK's lawfulness as well as whether the return levels on these discounted rates fall within the zone of resonableness.

* * * * *

Consequently, we set aside, and accordingly stay our Order requiring Bell to eliminate TELPAK by June 8, 1977* * * and will conduct an expedited hearing on the question of TELPAK's lawfulness in general under Sections 201(b) and 202(a) of the Act.

64 FCC 2d 971, 985 (1977).

In addition, the Commission stated:

[i]n conclusion, on reconsideration we find that the TELPAK discounts, now subject to termination at the carrier's option, have not yet been justified on the basis of either a cost differential, an overall return level, or competitive necessity. Such justification will be the subject of the further hearings we are ordering herein.

Id. at 989. On June 2, 1977, the Commission issued an Order denying petitions to suspend or reject AT&T's tariff filing terminating the TELPAK offering. In the Matter of American Telephone And Telegraph Company Long Lines Department Revisions To FCC Tariffs No. 258 and 260 (series 5000) Termination of TELPAK Service, 64 FCC 2d 959, 968 (1977). On July 21, 1977, the United States Court of Appeals for the District of Columbia Circuit enjoined AT&T from discontinuing the TELPAK offering to existing customers pending review of the Commission's Order allowing the terminating tariff to take effect. The TELPAK rates remained in effect through the period under consideration here.

8. Thus, the Commission had not only found specific AT&T tariffs that were in effect during 1978 to have been unlawful, but the Commission had also imposed accounting orders with respect to interstate services that were being provided by AT&T. To the extent that services with associated charges that have been found to be unlawful have been provided through common plant with other services at charges that have not been found to be "just and reasonable", we confront a situation that, in the absence of an upper bound to the carriers earnings, would potentially permit unlimited rates of return on regulated services. We do not believe that Congress intended such a result. Nor do we believe that such a consequence would be consistent with Section 1 of the Communications Act of 1934 or the obligations that are imposed under sections 201–205 of the Communications Act.

[FR Doc. 84–33055 Filed 12–19–84; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL HOME LOAN BANK BOARD

[No. 84–724]

Fair Housing and Nondiscrimination in Lending

Dated: December 13, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board has submitted a request for extension, without revision, of its information collection, "Fair Housing and Nondiscrimination in Lending" to the Office of Management and Budget for approval in accordance with the

Paperwork Reduction Act (44 U.S.C. Chapter 35).

Comments

Comments on the information collection request are welcome and should be submitted within 15 days of publication of this notice in the **Federal Register**. Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection request and supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552, Phone: 202–377–6933.

FOR FURTHER INFORMATION CONTACT: Richard Tucker, Director, Office of Community Investment. Phone: 202–377–6211.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 84–33135 Filed 12–19–84; 8:45 am]

BILLING CODE 6720–01–M

[No. 84–748]

Financial Reporting Requirements

Dated: December 13, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board has submitted a request for extension through December 1987, of its information collection request, "Periodic Reports Required of Savings Institutions, Section A, B, C, D, E, F, G, H, I, and K" to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Board has asked OMB for expedited approval of the collection of information. Comments on the proposal should be directed promptly to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection request and supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552, Phone: 202–377–6933.

FOR FURTHER INFORMATION CONTACT: Richard Pickering, Deputy Director, Office of Policy and Economic Research. Federal Home Loan Bank Board. Phone: 202–377–6770.

By the Federal Home Loan Bank Board.

J.J. Finn,

Secretary.

[FR Doc. 84–33136 Filed 12–19–84; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 221–003944–001.

Title: Vancouver Terminal Agreement.

Parties: The Port of Vancouver (Port)
United Grain Corporation of Oregon (UGC)

Synopsis: Agreement No. 221–003944–001 amends the basic agreement which provides for the lease to UGC by the Port of grain loading and storage facilities within the Port of Vancouver, Washington. The amendment modifies the rentals for the premises, provides for a new section for the mandatory prepayment of rentals, and amends the section of the agreement covering guaranty and letters of credit.

Agreement No.: 212–009847–011.

Title: U.S. Atlantic Coast/Brazil Agreement.

Parties: United States Lines (S.A.) Inc.
Companhia de Navegacao Lloyd Brasileiro
Companhia de Navegacao Maritime Netumar

Synopsis: The proposed amendment has been submitted in compliance with previous Commission requests to amend the agreement to conform with the format requirements of the Commission's regulations and to conform with the Commission's requirements concerning interstitual authority. The parties have requested a shortened review period.

Agreement No.: 213–010704.

Title: Transamerican Steamship Corporation/C.A. Maritime Oceanica Granelera Space Charter and Rationalization Agreement.

Parties: Transamerican Steamship Corporation
C.A. Maritime Oceanica Granelera

Synopsis: The proposed agreement would establish a rationalization and space chartering agreement between the parties in the trade between U.S. Atlantic and Gulf ports and ports in Venezuela. The agreement would also permit the parties to use joint terminal facilities and services, to cross-lease equipment and to use common agents.

By Order of the Federal Maritime Commission.

Dated: December 17, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84–33158 Filed 12–19–84 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Additions to Senior Executive Service; Performance Review Board Membership

Title 5, U.S.C., section 4314(c)(4) of the Civil Service Reform Act of 1978, Pub. L. 95–484, requires that the appointment of Performance Review Board members be published in the **Federal Register.**

The Department of Health and Human Services Performance Review Board membership, effective October 20, 1984, was published in the **Federal Register** on November 2, 1984. The following members are hereby added to that membership:

Charles D. Baker
Michael L. Sturman

Dated: December 13, 1984.

Thomas S. McFee,

Assistant Secretary for Personnel Administration.

[FR Doc. 84-33078 Filed 12-19-84; 8:45 am]

BILLING CODE 4160-01-M

Food and Drug Administration

Advisory Committee; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. January 24 and 25, 9 a.m., Bldg. 29, Rm. 121, 8800 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, January 24, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 2 p.m.; open committee discussion, 2 p.m. to 4:30 p.m.; closed presentation of date, January 25, 8:30 a.m to 3 p.m.; Jack Gertzog, Center for Drugs and Biologics (HFN-31), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of vaccines and related biological products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. On January 24, the committee will continue its discussion of the intramural research program in the Office of Biologics Research and Review. On January 25, the committee will discuss influenza vaccine formulation for the 1985-1986 season.

Closed committee deliberations. The committee will review trade secret or confidential commercial information relevant to a pending license application. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings. This guideline was published in the **Federal Register** of April 13, 1984 (49 FR 14723). These procedures are primarily intended to expedite media access to FDA's public proceedings, including hearings before a public advisory committee conducted pursuant to Part 14 of the agency's regulations. Under this guideline, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including the presentation of participants at a public hearing. Accordingly, all interested persons are directed to the guideline, as well as the **Federal Register** notice announcing issuance of the guideline, for a more complete explanation of the guideline's effect on public hearings.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of dicussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA-305), Rm. 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly

unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: December 13, 1984.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 84-33065 Filed 12-19-84; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Statement of Organization, Functions and Delegations of Authority; Correction

Correction Notice. On November 15, 1984 the Department of Health and Human Services published a reorganization notice merging the Executive Director of Regional Operations (EDRO) into the Office of Regulatory Affairs (ORA) in the Food and Drug Administration (see 49 FR 45260-452-64 of November 15, 1984). Through an administrative error, a portion of that reorganization notice was not published. The following additional material should be inserted after the third complete paragraph of Part H (Public Health Service), Chapter HF (Food and Drug Administration). Section HF-B, subsection (f-3-ii) (page 45263, 2nd column), to read as follows:

Develops control procedures for field laboratory operations and evaluates the adequacy and effectiveness of field scientific activities through onsite visits.

Manages the field laboratory research programs; identifies the need for, develops, tests, evaluates, and/or arranges for the adoption of new field equipment, techniques, and methodologies.

Participation in the determination of long- and short-range field scientific facility needs.

Coordinates research on the applicability of new, complex, scientific instruments for field analyses; designs instrument systems.

Participation in the formulation and evaluation of training and career development plans for field scientists.

Provides scientific an analytical expertise related to laboratory automation, analysis, and process control and acquisitions of automated data laboratory instruments.

Develops and maintains liaison with outstanding scientists to assure the most effective use of field scientific resources.

Develops and/or reviews the scientific and technical aspects of environmental impact statements.

Coordinates the development and audits the implementation of safety programs in field laboratories.

(f-3-iii) *Division of Field Investigations (HFA4C3).* Serves as the agency focal point for Headquarters/field investigational and inspectional operations (including the use of national experts); develops and recommends related policy and procedures, coordinates these activities with other Federal organizations through interagency agreements.

Dated. December 13, 1984.

Wallace O. Keene,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 84-33077 Filed 12-19-84; 8:45 am]

BILLING CODE 4160-01-M

Grant Authorities Under Title III of the Public Health Service Act; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of August 4, 1981 (46 FR 42918), by the Assistant Secretary for Health to the Director, Centers for Disease Control, of certain authorities under Title III of the Public Health Service Act (42 U.S.C. 241 et seq.), as amended, the Director, Centers for Disease Control, has delegated to the PHS Regional Health Administrators, Regions I-X, with authority to redelegate, the following authorities, for exercise within their respective jurisdictions:

1. To review and award grants, except for the administration of related direct assistance, under Section 317(a) of the Public Health Service Act (42 U.S.C. 247b), as amended, for childhood immunization programs.

2. To review and award grants under Section 318(c) of the Public Health Service Act (42 U.S.C. 247c), as amended (except for the administration of related direct assistance) for projects and programs for the prevention and control of sexually transmitted diseases (STD), and under Section 318(b) of the Public Health Service Act (42 U.S.C. 247c), as amended, with respect to public information and education activities, and professional education, training, and clinical skills improvement activities integral to State control programs approved under Section 318(c).

This delegation includes the authority to provide continued funding for a period of 6 months for existing STD training centers.

This delegation excludes the authority to review and award grants for new STD training centers and other professional education, training, and skills improvement activities which are national in scope.

The Director, Centers for Disease Control, has made provision for the ratification of all actions taken by the PHS Regional Health Administrators on behalf of the Director, Centers for Disease Control, consistent with the foregoing delegation, under sections 317 and 318 of the Public Health Service Act, as amended.

The delegation dated August 17, 1982, from the Director, Centers for Disease Control, to the PHS Regional Health Administrators of authority under Sections 317 and 318 of the Public Health Service Act concerning grant programs has been superseded.

The delegation to the PHS Regional Health Administrators, Regions I-X, became effective on November 21, 1984.

Dated: December 4, 1984.

William E. Muldoon,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 84-33155 Filed 12-19-84; 8:45 am]

BILLING CODE 4160-18-M

Office of the Assistant Secretary for Health; National Center for Health Services Research; Third Assessment of Medical Technology

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), has announced that it is conducting an assessment of what is known of the safety, clinical effectiveness, and indications for the use of Magnetic Resonance Imaging (MRI). (49 FR 18624, May 1, 1984).

The first segment of the subject assessment will address the application of MRI technology in the evaluation of lesions of the central nervous system. Specifically, it will examine the efficacy of the subject technology in evaluating

lesions involving the brain, brain stem and spinal cord. (49 FR 44244, November 5, 1984).

The second segment of the subject assessment will address the application of MRI technology in the evaluation of lesions of the pelvis, bladder and prostate gland. OHTA is soliciting any clinical and scientific data that address the effectiveness of this modality for imaging those structures.

The PHS assessment consists of a synthesis of information obtained from appropriate organizations in the private sector and from PHS agencies and others in the Federal Government. PHS assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on this assessment, a PHS recommendation will be formulated to assist the Health Care Financing Administration in establishing Medicare coverage policy. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than March 29, 1985, or within 90 days from the date of publication of this notice.

The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published, controlled clinical trials and other well-designed clinical studies. Information related to the characterization of the patient population most likely to benefit, the clinical acceptability, and the effectiveness of this technology is also being sought.

Written material should be submitted to: National Center for Health Services Research, Office of Health Technology Assessment, Park Building, Room 3–10, 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: December 10, 1984.

Enrique D. Carter, M.D.,

Director, Office of Health Technology Assessment, National Center for Health Services Research.

[FR Doc. 84–33059 Filed 12–19–84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Alaska AA–48579–D]

Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease AA–48579–D has been received covering the following lands:

Copper River Meridian, Alaska

T. 8 S., R. 1 W.,
Sec. 16, NW¼SW¼,
(40 acres).

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from May 1, 1984, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48579–D as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective May 1, 1984, subject to the terms and conditions cited above.

Dated: December 7, 1984

Robert E. Sorenson,

Chief, Branch of Mineral Adjudication.

[FR Doc. 84–33101 Filed 12–19–84; 8:45 am]

BILLING CODE 4310-JA-M

Proposed Off-Road Vehicle Designation Decision-8340; Boise District

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed off-road vehicle designation decision-8340.

SUMMARY: Notice is hereby given to extend the comment period on the Bruneau and Owyhee Resource Area proposed designations until January 18, 1985. The original notice of the proposed off-road vehicle designations may be found in the Federal Register Vol. 49, No. 208/Thursday, October 25, 1984.

ADDRESS: For further information about this designation, contact the following Bureau of Land Management Office: George Farrow, Boise District office, 3948 Development Avenue, Boise, Idaho 83705, (208) 334–1582.

Dated: December 11, 1984.

J. David Brunner,

Associate District Manager.

[FR Doc. 84–33102 Filed 12–19–84; 8:45 am]

BILLING CODE 4310-GG-M

Realty Action: Proposed Leasing of Public Land; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed leasing of public land in Teller and Boulder Counties, Colorado.

SUMMARY: Four parcels of land are being considered for lease under section 302 of the Federal Land Policy and Management Act of 1976 (90 Stat 2762; 43 U.S.C. 1732). Leasing of the land will authorize existing uses and improvements, and will allow the government to collect fair market rental. The land and the prospective lessees are as follows:

Sixth Principal Meridian, CO

1. T.1 N., R. 72 W., Sec. 12. Lots 5 and 6 (part), containing approximately 1.0 acre in Boulder County. Prospective lessee: James E. Conlin of Boulder, CO.

2. T.1 N., R.72 W., Sec. 7, a parcel of land being a part of the unpatented Indiana Placer, MS 11281, containing approximately 3.0 acres in Boulder County. Prospective lessee: Edward A. Martinek of Ward, CO.

3. T.15 S., R.70 W., Sec.s 10 and 11, Parcel "A" being bounded by MS10307, MS14541, and MS8925; Parcel "B" being bounded by MS10307 and MS8925, containing 0.937 acres in Teller County. Prospective lessee: Gerald L. Overstreet of Florissant, CO.

4. T.1 N., R.71 W., Sec. 6, a parcel of land being a part of the unpatented Broadway Lode, containing 1.16 acres in Boulder County. Prospective lessee: John J. Hanrahan of Jamestown, CO.

Parcel 4 is located within a 100-year flood plain. A limitation would be included in any lease for this parcel which would prohibit habitation or storage of hazardous material on the site.

The parcels would be offered to the present users for direct, noncompetitive leases at no less than fair market rental. The size, configuration and location of the parcels severely limit other potential uses or users. The general terms and conditions for the leases are found in 43 CFR 2920.7.

The lessee(s) would be required to reimburse the United States for reasonable costs incurred in processing and monitoring the lease(s), in accordance with 43 CFR 2920.6.

For a period of 30 days from publication of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, 3080 East Main Street, Canon City, Colorado 81212. Any adverse comments will be evaluated and the decision to issue a lease affirmed, modified or rejected.

Donnie Sparks,

District Manager.

[FR Doc. 84–33103 Filed 12–19–84; 8:45 am]

BILLING CODE 4310-JB-M

[OR-19228; 5-00250-GP5-060]

Oregon; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Army, Corps of Engineers proposes that a land withdrawal for the Coos Bay North Jetty Project continue for an additional 100 years. The land(s) would remain closed to surface entry and mining but have been and would remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208 (Telephone 503–231–6905).

The Department of the Army, Corps of Engineers proposes that the existing land withdrawal made by the Executive Order of November 13, 1889, be continued for a period of 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The land(s) involved are located on the Coos Bay North Spit approximately five miles west of North Bend and aggregate approximately 313.77 acres within Coos County, Oregon.

The purpose of the withdrawal is to protect the Coos Bay North Jetty Project. The withdrawal segregates the land(s) from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purposed or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potenital demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: December 14, 1984.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84–33095 Filed 12–19–84; 8:45 am]

BILLING CODE 4310–33–M

Intent To Close the Cow Mountain Management Area During Periods of Inclement Weather; Clear Lake Resource Area; Ukiah District, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to 43 CFR 8341.2 and 43 CFR 8364.1 (a-d) notice is hereby given that the Clear Lake Resource Area, Ukiah District, California, will close portions of the Cow Mountain Management ARea during periods of wet weather.

DATE: Closure authority will be effective beginning January 14, 1985. A public meeting will be held January 8, 1985, at the BLM Ukiah District Office, 555 Leslie Street, Ukiah, to provide an open forum for discussion.

FOR FURTHER INFORMATION CONTACT: Stanley R. Whitmarsh, Clear Lake Area Manager, P.O. Box 940, 555 Leslie Street, Ukiah, California 95482, Telephone (707) 462–3873.

SUPPLEMENTARY INFORMATION: The Cow Mountain Management Area contains a system of roads and trails used primarily for recreational purposes. A variety of vehicles, including motorcycles, 3-wheeled ATV's and 4-wheel drives use the area. Most of the use occurs during fall, winter and spring. During extremely wet periods, rutting of roads and trails occurs, resulting in increased maintenance costs, safety hazards, and adverse effects to soil, vegetation, wildlife and wildlife habitat. No vehicle use will be allowed during periods of closure; however, landowners within the Cow Mountain Management Area, law enforcement vehicles, emergency vehicles, and Bureau administrative access will not be subject to closure.

Closure notices will be posted at the point of closure. A notice of the closure and description of the closed area will also be posted at the Ukiah District Office, 555 Leslie Street, Ukiah, California 95482.

Dated: December 11, 1984.

Edwin G. Katlas,

Acting District Manager.

[FR Doc. 84–33098 Filed 12–19–84; 8:45 am]

BILLING CODE 4310–84–M

Idaho Falls District; Emergency Closure; Public Land; Market Lake State Wildlife Management Area

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Emergency closure of public lands (Market Lake).

SUMMARY: Notice is hereby given that effective immediately all public lands located in the Market Lake Area are closed to motorized vehicles. The area is bounded generally by Highway 33 on the north, Market Lake State Wildlife Management Area on the south, the Union Pacific Railroad tracks on the east, and Interstate 15 on the west.

The legal description of this area is:

Portions of Sections 5 and 6, T. 5 N., R. 37 E. 19, 20, 29, 30, 31 and 32, T. 6 N., R. 37 E. 25 and 26, T. 6 N., R. 36 E.

All Federal lands administered by the Bureau of Land Management within the above described area are closed to all motorized vehicles from the date of this notice until April 15, 1985, or until animals leave the area. Signs will be posted to identify the exterior boundaries.

The purpose of this closure is to protect wintering big game from all motor vehicles.

The authority for this closure is 43 CFR 8341.2. The closure will remain in effect until April 15, 1985, or until animals leave the area.

Decembr 14, 1984.

O'dell A. Frandsen,

District Manager.

[FR Doc. 84–33096 Filed 12–19–84; 8:45 am]

BILLING CODE 4310–84–M

Idaho Falls District; Emergency Closure; Public Lands; Stinking Spring Area

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Emergency closure of public lands (Stinking Spring).

SUMMARY: Notice is hereby given that effectively immediately all public lands located in the Stinking Spring Area are closed to snowmachine use. This area is bounded generally by the Targhee National Forest on the north and east, South Fork of the Snake River on the south, and on the west by the Stinking Spring Road—South Fork River Road junction.

The legal description of this area is:

Portions of Sections 3, 4, 8, 9, 10, 11, and 15, T. 3N., R. 41 E.

All Federal lands administered by the Bureau of Land Management within the above described area are closed to snowmachine travel from the date of this notice until May 15, 1985, or until the animals leave the area. Signs will be posted to identify the exterior boundaries.

The purposes of this closure is to protect wintering big game from all snowmachines.

The authority for this closure is 43 CFR 8341.2. The closure will remain in effect until May 15, 1985 or until the animals leave the area.

December 14, 1984.

O'dell A. Frandsen,

District Manager.

[FR Doc. 84-33097 Filed 12-19-84; 8:45 am]

BILLING CODE 4310-84-M

[CA-16395]

California Realty Action; Public Land Sale in San Diego County

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty action; sale of public lands in San Diego County, California

SUMMARY: The public lands, described in this notice are scattered, isolated tracts, many of which are land-locked by adjoining private property, and are difficult and uneconomic to manage as part of the public lands. This notice serves to inform the public of land identified for future disposal and will segregate the subject lands from appropriation under the public land laws, including the mining laws, subject to valid existing rights. The lands described below may be suitable for disposal through sale, at not less than appraised market value, under Section 203 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750-2751; 43 U.S.C. 1713):

San Bernardino Meridian, California *San Diego County*

T. 14 S., R. 2 E.,
Sec. 6, NW¼SE¼.
Containing 40.00 acres.

T. 14 S., R. 2 E.,
Sec. 5, Lots 2-6, S½NW¼.
Containing 170.92 acres.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform the public of a future public land sale in the Southern California area. The public lands that may be offered for sale are currently being inventoried in preparation for an environmental assessment; this notice serves to identify the location of the subject lands. Public response to this action is invited and a 45-day comment period, beginning the date this notice is published in the **Federal Register**, is provided.

In addition to informing the public and inviting comment, this action shall segregate the lands, described in this notice, to the extent that they will not be subject to appropriation under the public land laws, including the mining laws, but not the mineral leasing laws. The segregative effect, as provided in this notice, shall be modified upon publication in the **Federal Register** of a final notice of realty action. This action is necessary to avoid the occurrence of surface or mining entries that could encumber the public lands while field inventories of existing resource values are under way.

A final notice of realty action will be published once the necessary field work is completed and an environmental assessment/land report has been done. The final notice will provide a description of the lands to be sold, together with any reservations or encumbrances to patent. Appraised market values will also be included in the final notice of realty action.

Additional Information: More detailed information concerning procedural steps involved in purchasing public lands can be obtained by requesting this information, in writing, from Russell L. Kaldenberg, Project Area Manager, Southern California Metropolitan Project, 1695 Spruce Street, Riverside, California 92507. Written comments concerning the lands identified for future sale may be sent to the same address.

Dated: December 13, 1984.

Gerald E. Hillier,

District Manager.

[FR Doc. 84-33107 Filed 12-19-84; 8:45 am]

BILLING CODE 4310-10-M

[CA-16640]

California Realty Action; Public Lands in Riverside

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty Action; exchange—Preliminary notice.

SUMMARY: The following described public lands have been determined to be suitable for disposal via exchange under Section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

San Bernardino Meridian, California

Township 5 South, Range 4 West
Sec. 26: N½NW¼, SW¼NW¼, NW¼SW¼, E½SE¼;
Sec. 26: W½SE¼SE¼, S½NE¼SE¼SE¼;
Sec. 33: E½NE¼NE¼, N½NW¼NE¼NE¼, SW¼NE¼NE¼, SE¼NE¼.
Township 5 South, Range 3 West
Sec. 18: Lot 4, S½SE¼, S½ Lot 1 of SW¼;
Sec. 30: N½SE¼.
Township 13 South, Range 1 East
Sec. 6: N½SE¼.
Comprising 675.14 acres, more or less.

The public lands, described below, are also considered suitable for disposal via Bureau benefiting land exchange. These lands are currently withdrawn under executive order for Reservoir Site Reserve No. 15, dated March 30, 1922; the withdrawal is currently being revoked.

Township 5 South, Range 4 West, SBM
Sec. 14: E½SE¼;
Sec. 26: NE¼, SE¼NW¼, E½SW¼, SW¼SW¼, and W½SE¼;
Sec. 34: SE¼NE¼, E½SE¼, SW¼SE¼.
Comprising 640.0 acres, more or less.

Purpose: The above described lands will be classified for use as exchange bases to acquire private lands in the California Desert District's El Centro, Indio and Redding resource areas. The exchange proposals will benefit the public by disposing of scattered, isolated and unmanageable tracts of public land located in the Southern California Metropolitan Project Area. The private lands acquired through the exchange process will be added to existing wildlife habitat areas managed by the Bureau of Land Management.

This action is taken to provide a response period of forty-five (45) days during which time public comments will be accepted. Interested parties may submit comments to the Bureau of Land Management at the address indicated below.

The publication of this notice segregates the public lands described above from settlement, location and entry under the public land laws, including the mining laws but not from exchange pursuant to Section 206, of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713 and 1716). The segregative effective shall terminate either upon publication in the **Federal Register** of a termination of the segregation or two (2) years from the date of this publication, whichever comes first. This action is necessary to avoid the occurrence of nuisance mining claims and any associated surface occupancy that could encumber the public lands and jeopardize the proposed exchange while negotiations and preparation of an environmental assessment/land report are ongoing.

Upon completion of final negotiations and preparation of an environmental assessment, a final notice of realty action will be published. The notice will

provide a final description of the federal and private lands to be exchanged.

More information concerning the subject exchange may be obtained by contacting, in writing, the Project Area Manager, Southern California Metropolitan Project Area, 1695 Spruce Street, Riverside, California 92507.

Public comments may be submitted by interested parties to the District Manager, California Desert District Office, 1695 Spruce Street, Riverside, California 92507.

Dated: December 13, 1984.

Gerald E. Hillier,

District Manager.

[FR Doc. 84-33108 Filed 12-19-84; 8:45 am]

BILLING CODE 4310-40-M

Minerals Management Service

Receipt of Proposed Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Kerr-McGee Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5191, Block 1143, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on December 12, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m., to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised 250.34 of Title 30 of the CFR.

Dated: December 12, 1984.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 84-33085 Filed 12-19-84; 8:45 am]

BILLING CODE 4310-MR-M

Receipt of Proposed Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that The Superior Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0244, Block 71, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on December 12, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region, Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is availble for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: December 12, 1984.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 84-33086 Filed 12-19-84; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-229)]

Rail Carriers; Burlington Northern Railroad Co. Abandonment in Clearwater County, ID; Notice of Findings

The Commission has issued a certificate authorizing Burlington Northern Railroad Company to abandon its 9.25-mile rail line between Revling (milepost 30.77) and Headquarters (milepost 40.03) in Clearwater County (Counties), ID. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.

James H. Bayne,

Secretary.

[FR Doc. 84-33091 Filed 12-19-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-236 (Sub-1)]

Rail Carriers; Camas Prairie Railroad Co. Discontinuance of Service in Clearwater County, ID; Notice of Findings

The Commission has issued a certificate authorizing Camas Prairie Railroad Company to discontinue service over Burlington Northern Railroad Company's 9.25-mile rail line

between Revling (milepost 30.77) and Headquarters (milepost 40.03) in Clearwater County, ID. The discontinuance of service certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 84–33090 Filed 12–19–84; 8:45 am]

BILLING CODE 7035–01–M

NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

Atmospheric Affairs Panel; Meeting

December 14, 1984.

Pursuant to section 10 (a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1 (1982), notice is hereby given that the Atmospheric Affairs Panel of the National Advisory Committee on Oceans and Atmosphere (NACOA) will meet Wednesday, January 9, 1985. The panel, chaired by Dr. S. Fred Singer, will meet in Los Angeles, California from 9:00 a.m.—3:00 p.m. The location of the meeting is the Biltmore Hotel, 515 Olive Street, Los Angeles, California 90013. The room number for the meeting is not yet available.

The NACOA meeting will be held in conjuction with the annual meeting of the American Meteorological Society (AMS), January 7–11, 1985 and two conferences: the Internaitonal Conference on Interactive Information and Processing Systems for Meteorology, Oceanography, and Hydrology, January 8–11, 1985, and the Third Conference on Climate Variations and Symposium on Contemporary Climate 1850–2100, January 8–11, 1985.

The tentatiive agenda of the Atmospheric Affairs Panel meeting is as follows:

January 9, 1985

9:00 a.m.–11:00 a.m—Topic: Nuclear Winter; Speakers: TBA
11:00 a.m.–12:30 p.m—Topic: Acid Rain; Speakers: TBA
12:30 p.m.–1:30 p.m—Lunch
1:30 p.m.–3:00 p.m—Topic: Work Session; Speakers: None.

Persons desiring to attend will be admitted to the extent that seating is available. Persons wishing to make formal statements should notify the Chairman of the Atmospheric Affairs Panel, Dr. S. Fred Singer, in advance of the meeting. The Chairman retains the prerogative to impose limits on the duration of oral statements and discussion. Written statements may be submitted before or after each session.

Additional information concerning this meeting may be obtained through the NACOA Executive Director, Mr. Steven Anastasion of Dr. James Almazan, the Staff Member for the Atmospheric Affairs Panel. The mailing address is NAOCA, 3300 Whitehaven Street NW., Suite 438, Page Building No. #1, Washington, DC 20235 (Phone: 202/653–7818).

Steven D. Anastasion,

Executive Director.

Date: December 14, 1984.

[FR Doc. 84–33060 Filed 12–19–84; 8:45 am]

BILLING CODE 3510–12–M

NATIONAL TRANSPORTATION SAFETY BOARD

Availability of Recommendation Responses

Responses From

Highway—*Secretary of U.S. Department of Transportation: Oct. 11: H–83–16:* Federal Highway Administration is examining the safety hazards presented by joint use of right-of-way by highways and rapid rail systems. Urban Mass Transportation Administration may require new rapid transit systems to cooperate with highway offices to insure that shared traffic barriers are designed and constructed to minimize penetration by vehicles carrying hazardous materials. *Nov. 8: H–81–88 and –89:* Pending NTSB's review of National Academy of Sciences' study effort, FHWA will provide additional information on implementation in each State conducting Federal-aid resurfacing, restoration, and rehabilitation projects. *Nov. 15: H–84–56:* To strengthen evaluations and minimize shortcomings in compliance with bridge standards, the Office of Inspector General will review FHWA Headquarters. OIG will expand three planned audits of FHWA's bridge programs to include coverage of bridge inspection. Also plan to review FHWA's effectiveness in assuring state compliance with the program objectives established by Congress.

Federal Highway Administration: Sept. 25: H–84–59 and 60: FHWA will issue bulletin entitled "Fatigue in Bus Drivers." Industry's attempts to develop devices and techniques to warn driver when he is becoming drowsy have been unsuccessful to date.

State of Alaska: Sept. 28: H–83–39: The Commissioner of Education will issue a memorandum to all school districts and school bus contractors notifying them that passengers in small school buses and vans are required to use available restraint systems whenever the vehicle is in motion. *H–83–40:* The Minimum Standards for Alaska School Buses, the National Minimum Standards for School Buses, and contracts between school bus contractors and school districts require that Federal Motor Vehicle Safety Standards be met. *H–83–41:* The School Bus Drivers' Manual and the National Minimum Standards for School Bus Operations require that the driver of a school bus wear a seat belt when the bus is in motion. *H–83–46:* State regulations and school bus contracts call for biannual inspections of school buses. Plan is being developed to address development of inspection criteria and manuals, and training of inspectors. *H–83–47:* Will isse a news release encouraging school districts to make sure that vehicles are mechanically safe before beginning activity trips. *H–83–48:* Standards require that a fire extinguisher be placed in the driver's compartment, and that it be readily accessible to the driver. Commissioner will issue memorandum urging drivers to brief passengers on the location and use of emergency equipment periodcally and before beginning activity trips. *Nov. 21: H–84–77:* Is complying with preliminary breath test devices by currently teaching all police officers to administer the "gaze nystagmus" test. A "Task Force on Drunk Driving" has been appointed.

Arizona Department of Transportation: Oct. 16: H–84–17: An effort to promote an Administrative License Suspension Law has been made by the DOT. State is working to educate the criminal justice community of the advantages of Administrative Per Se legislation. *H–84–18:* The DOT plans to evaluate the effects of Administrative Per Se on reducing the D.U.I. problem. It is anticipated that in this evaluation, the impacts of other new programs, such as

sobriety checkpoints, education programs, etc., will be evaluated also. Evaluation of checkpoints in the past have been favorable.

State of Colorado: Sept. 6: H–83–46 thru –48: Department of Education is reviewing school bus inspection. Early this year a meeting of school transportation people met to review the requirements of local school district inspection, repair and maintenance of school buses. *Sept. 20: H–84–19:* Sobriety checkpoint program has not yet been initiated due to local problems in Colorado Springs. *Nov. 5: H–84–19 through –21:* Passed legislation authorizing pre-arrest screening devices for suspected drunk drivers. The Drunk Driving Task Force is working with the courts and prosecution and studying the issues of treatment, service and records systems. Enforcement agencies are now undergoing "nystagmus" training. State Patrol recently launched an educational program based on the film "None For the Road."

State of Connecticut: Sept. 12: H–83–51: A discussion of the misuse of safety seats for children is included in the pamphlet, "There Are Better Ways to Protect Your Child." Parents handbook, informational fact sheet, and conference dealing exclusively with child restraints are among the information activities. *Sept. 26: H–84–8:* The specifications of school buses which transport the elderly and handicapped are continually reviewed to improve safety. Additional standards have been incorporated to require padding to protect passengers from sharp edges and other hazards. The DOT will periodically evaluate the specifications to determine the feasibility of further modification.

District of Columbia, Department of Public Works: Sept. 21: H–83–52: To prevent the misuse of child safety seats and inform the public of their importance, dissemination of pertinent information, workshops, in-service training, and technical assistance are provided on an ongoing basis. *Oct. 25: H–84–72:* Presently have an effective school bus licensing program to screen applicants. Plan to study the possibility of developing a program to test operators of non-commercial buses.

State of Florida: Oct. 22: H–84–72: State does not require drivers to be tested in class of vehicle for which they are licensed. Classified Driver Licensing System was introduced in the legislative session but died in the committee process.

Territory of Guam: Oct. 25: H–83–39 and –40: School buses and vans purchased from U.S. manfacturers are all equipped with seat restraints and must meet specifications mandated by DOT before released for shipment to Guam. *H–83–41:* Department of Public Works employees will be required to wear a safety restraint when operating DPW government vehicles to include all school bus drivers.

State of Hawaii: Nov. 8: H–84–77: Have trained traffic law enforcement personnel on the horizontal gaze nystagmus and other breath testing devices. *H–84–81:* Provide training for judges and prosecutors on the latest methods of adjudication in hearing DWI cases.

State of Idaho: Oct. 17: H–84–72: Will give consideration to legislation requiring the testing of noncommercial bus operators.

State of Georgia: Sept. 27: H–83–39: Not prepared to support legislative action to require mandatory use of available restraint systems on school buses and vans. *H–83–40:* Recommendation is complemented by recent enactment of mandatory child restraint law that will provide for ages 4 and under. *H–83–46:* School bus inspection and quality control procedures for mechanics are provided through a program of technical in-service training and hands-on experience. *H–83–47:* State statute specifically covers procedures to prevent activity groups and drivers from beginning or continuing trips in mechanically unsafe vehicles. *H–83–48:* Based on previous accident experience, improper utilization of an additional extinguisher placed to the rear of a school bus could have more hazardous consequences than inaccessibility. *Nov. 7: H–84–70:* Code Section 40–5–23 distinguishes classes of licenses, and authorizes appropriate training, experience or educational prerequisites necessary for the safe operation of the various types, sizes or combinations of vehicles, including examination of each applicant according to the type of general class of license applied for. *Nov. 7: H–83–52:* Department of Human Resources and The Agricultural Extension Service were selected to provide training, resources, education, information and utilization of child safety seats.

Illinois Department of Transportation: Oct. 23: H–83–39: State law does not mandate the use of seat belts on Type II school buses. The expense of onboard monitors has proved to be a stumbling block to legislation. *H–83–40:* All Type II school buses are required to meet all applicable Federal Motor Vehicle Safety Standards. *H–83–41:* Law requires bus drivers to wear seat belts. *H–83–46:* Buses are safety inspected every six months at an official Testing Station. Drivers perform pre-trip inspections and the DOT is required to conduct periodic non-scheduled inspections. *H–83–47:* Pre-trip inspections ensure that trips are not started in mechanically unsafe vehicles. *H–83–48:* Do not support the placement of an additional fire extinguisher in the rear of the school bus.

State of Indiana: Aug. 30: H–83–52: Training sessions and workshops provide officers with information for proper accident investigation and follow-up reporting in the event a child is injured while riding in a child restraint seat.

Indiana Department of Education: Sept. 12: H–83–39: No State requirement to use available restraint systems. *H–83–40:* State does permit the use of vans for extracurricular activities and rehabilitation. *H–83–41:* Drivers of school buses are required to wear seat belts.

State of Kansas: Sept. 20: H–83–39 through –41: H83–46 through –48: The safe and reliable transportation school children is being evaluated. Should legislation be required, requests for its introduction during the forthcoming session will be considered.

State of Kentucky: Sept. 13: H–84–12 and –14: Continuing efforts to convince local law enforcement agencies to institute sobriety checkpoints and evaluate their effectiveness. *H–83–13:* No plans have been made to enact legislation regarding administrative revocation of licenses of drivers who refuse a chemical test for alcohol or who provide a result at or above the State presumptive limit.

State of Louisiana: Oct. 4: H–83–39: Bulletin 1213 mandates that all public school buses be equipped with restraint systems and that passengers be required to use them. *H–83–40:* Bulletin 1213 requires school buses meet all Federal Motor Vehicle Safety Standards. *H–83–41:* Bulletin 1191 mandates that bus drivers wear seat belts at all times while bus in in operation. *H–83–46:* Safety Enforcement Officers check qualifications of mechanics and conduct re-inspections to ensure vehicle safety. *H–83–47-* Activity bus drivers are mandated to conduct pre-trip inspections, report problems and maintain accurate maintenance records. *H–83–48:* Current specifications mandate that each school bus be equipped with one fire extinguisher. Adding a second extinguisher will be discussed.

State of Maine: Oct. 12: H–83–51: Law requires usage of child safety restraints. Prior to legislation informational brochures, public information notices

and speaking appearances helped to educate public on proper usage.

State of Maryland: Nov. 1: H–83–77 through –86: Presently coordinating with appropriate State agencies in preparing a formal response to alcohol-highway safety programs. *Nov. 5: H–84–52:* Project KISS, Kids in Safety Seats, conducts public information education, evaluates parents knowledge and attitudes and aids in the establishment of car seat loaner programs. *Nov. 19: H–84–15 through –18:* Sobriety checkpoints have expanded to 12 counties. Task Force on Drinking Drivers continues to meet and examine drunk drivers.

State of Minnesota: Oct. 24: H–84–77 through –86: Appropriate agencies will review progress on drunk driving programs and Commissioner of Public Safety will review recommendations. *Sept. 12: H–83–39 through 41:* Task Force to study issues on school bus safety. Among the issues being studied are State standards, driver qualifications and training, student conduct, and safety procedures. *Oct. 9: H–84–72:* State has in place driver licensing requirements. School bus drivers must pass written examination with additional endorsement indicating proficiency. *Nov. 9: H–84–77:* Law specifically authorizes use of preliminary breath test devices for alcohol. *H–84–78:* Law provides for blood test procedures for alcohol. *H–84–79:* Post-arrest policies protect against release of an impaired person. *H–84–80:* To meet plea bargaining problems a test result of .10 was originally established in 1976. *H–84–81:* State sponsors seminars and judicial college courses for judges hearing DWI cases. *H–84–82:* Juvenile alcohol-related offenses are maintained on driver records and count toward identifying repeat offenses. *H–84–83:* All driver records including juvenile records are available to judges prior to sentencing. *H–84–84:* Statutes require school alcohol problem assessments even if a charge is reduced. *H–84–86:* Alcohol treatment programs for all ages are provided.

State of Nebraska: Aug. 28: H–83–52: Promotional materials, including a fact sheet regarding proper installation for child safety seats. Department of Health is conducting workshop. *Sept. 27: H–83–39 through –41:* State has no record of receiving recommendation, therefore, action cannot be taken. *Nov. 9: H–84–77:* All agencies use preliminary breath testing devices. *H–84–78:* Individual must be read his rights prior to collecting a sample BAC test. *H–84–79:* Encouraging detention agencies to hold DWI offenders until blood alcohol has dropped below lowest level in State law. *H–84–80:* Will explore possibility of having driver records reflect original charge to further inhibit plea bargaining in alcohol related traffic ofenses. *H–84–81:* Encourage training for all alcohol adjudication personnel. *H–84–82:* All juvenile alcohol-traffic offenses are kept on record even after individual reaches adulthood. *H–84–83:* Judges must review complete driving records of all DWI offenders prior to sentencing. *H–84–84:* Most State jurisdictions conduct pre-sentence investigations on DWI offenders and make them available to judges. *H–84–85:* 1982 DWI legislation states that pretrial diversion programs are not to be allowed for DWI offenders. *H–84–86:* Availability and quality of alcohol treatment services for juvenile offenders is satisfactory.

State of Nevada: Oct. 29: H–84–70: Adopted a classified drivers' license system in 1969. The holder indicates he has been examined and is qualified to drive vehicles of that classification. *Nov. 5: H–84–77 through –86:* Many recommendations have been addressed by the legislative session. D.U.I. Task Force considering remaining recommendations.

State of New Hampshire: Sept. 6: H–83–52: State has passed child restraint law. *Oct. 23: H–83–52:* Obtaining a small grant to give workshops, distribution of large quantities of brochures on car seat misuse have been among the efforts. Panel discussions and regional workshops are planned for the future.

State of New Jersey: Nov. 5: H–84–77: Recent legislation provided for a pilot test program for breath testing. *H–84–78:* Legislation expanding the implied consent law to include testing of blood and urine is before the legislature. *H–84–79:* Generally those accused of drunk driving are released to the care of a responsible adult. Those with high BAC's are taken to a hospital facility. *H–84–80:* Plea bargaining in DWI cases is banned by State Supreme Court. *H–84–81 and 82:* All traffic offenses are reported to DMV. If the defendant is too young for a license, his license number is generated, and a violation file initiated. *H–84–83:* Alcohol assessments are mandatory and completion of an educational or treatment program are a precondition to relicensing. *H–84–84:* DWI statutes do not permit diversion. *H–84–85:* The treatment of young alcohol abusers is required under the law.

State of New Mexico: Sept. 28: H–83–52: State passed child passenger protection legislation. All programs provide information regarding the need for correct usage of child safety seats. *Oct 10: H–84–72:* Currently there are no regulations pertaining to bus operators' training and licensing.

State of New York: Oct. 2: H–79–48: Replacement of substandard median barrier on the Grand Central Parkway has been completed and project officially accepted by the State.

State of North Carolina: Oct. 15: H–84–70: State has Classified Driver License Program. DOT will study proposed change to require operators to be tested in size and type of vehicle for which license is issued.

State of North Dakota: Sept. 10: H–83–39: Concern about liability of bus driver who must enforce mandatory seat belt use has surfaced and must be resolved before implementing a mandatory requirement. *H–83–41:* Bus drivers are required administratively to wear seat belts when bus is in motion.

State of Ohio: Sept. 10: H–83–39: Will not mandate mandatory use of seat belts by school bus drivers due to the cost and near impossibility of monitoring their use. *H–83–40:* State has for some time enforced the structural standards for school buses. *H–83–41:* State supports mandatory use of seat belts by school bus drivers. *Oct. 10: H–84–72:* Activity bus drivers hold Chauffeurs' license which differentiate them. Further study in the area of activity bus licensure will be made.

Oklahoma State Department of Education: Sept. 7: H–83–40: State regulations state that any vehicle with a design of more than 10 passengers must meet Federal and State requirements. *H–83–41:* State statutes require drivers of school district vehicles to use seat belts, and failure to do so shall be deemed a misdemeanor.

State of Oregon: Oct. 9: H–84–72: State does not require volunteer church bus drivers to obtain a special license. Will consider developing a driver manual and other safety material to be made available to churches. *Oct. 9: H–84–19:* Sobriety checkpoints have been used for decades. Evaluations have been made with very positive results. *H–84–20:* Grant has been made available to the State Police to pay police ovetime for sobriety checkpoints. *H–84–21:* Full time researcher has been hired to evaluate the new drunk driving law which took effect July 1, 1984.

State of Pennsylvania: Sept. 28: H–83–39 through –41: and H–83–46 through –48: Laws and regulations governing school buses and school vehicles have been rewritten and/or amended to bring them in compliance with federal guidelines as evidenced in 23 Code of Federal Regulations.

State of South Dakota: Aug. 30: H–83–39 and 41: No action has been taken to

mandate the use of seat belts on school buses for drivers or passengers. *H–83–40:* All school buses are required to meet the national, state, and federal motor vehicle safety standards

State of Texas: July 27: H–82–18: Support will be given to the passage of legislation to raise the minimum drinking age to 21.

State of Vermont: Sept. 26: H–83–39: State requires day care centers to protect the passengers in child safety seats or seat belts. There are no other State laws or regulations in existence or pending to require the use of restraints or seat belts in school buses or vans. *H–83–40:* State does not anticipate legislation to ensure Class II vehicles meet all federal safety standards. *H–83–41:* The requirement for school bus drivers to wear a safety belt is the prerogative of each individual school district.

Commonwealth of Virginia: Sept. 6: H–84–15: Funds have been allocated to police agencies for selective alcohol enforcement. Agencies are encouraged to conduct sobriety checkpoints. *H–84–17:* General Assembly was unwilling to support license revocation on a per se basis for BAC of .10 percent but supported a per se law of .15.

State of Washington: Oct. 19: H–84–70: Presently in the process of updating commercial driver examination procedures. Specially selected personnel will attend intensive bus driver training course, after which a comprehensive operator skill test will be developed. *Nov. 9: H–84–77 through –86:* Chairman of the Interagency Committee for Alcohol and Traffic Safety to study the issue of DWI and take action to implement those recommendations appropriate to the State.

State of West Virginia: Sept. 21: H–83–39: Cannot ensure that all users are 100 percent in compliance with the provision that all restraints are always worn when vehicle is in motion. *H–83–40:* Vehicles carrying more than 10 passengers and weighing less than 10,000 pounds GVWR are in compliance. *H–83–41:* School Bus Regulations require that operators wear their seat belts at all times.

State of Wisconsin: Nov. 8: H–84–72: DOT has been studying the feasibility of requiring road tests in appropriately sized vehicles.

State of Wyoming: Oct. 9: H–83–39: Encourages passenger use of seat belts but do not require their use. *H–83–40:* Do not support the concept that the State should control the activities of vehicles owned by groups other than public schools. *H–83–41:* Encourages bus drivers to wear seat belts at all times.

State of Rhode Island: Oct. 24: H–83–51: Have commenced loaner activities under the auspices of the Red Cross and their Kids in Safety Seats program. In the process of conducting a survey to determine child restraint usage. Presently hiring an additional person to work in the restraint area for children and adults.

University of Nevada, Reno, The National Judicial College: Oct. 19: H–84–90: Alcohol and Drugs Specialty course, Sentencing Misdemenants and a course called "Anatomy of a Trial" will be part of the curriculum to train judges in alcohol issues and DWI case adjudication.

American Association of State Highway and Transportation Officials: Aug. 31: H–84–69: Recommendations have been forwarded to the Chairman of the Standing Committees on Highways and Highway Traffic Safety.

County of Allegheny, Pa. Oct. 11: H–83–22: Traffic engineering study to determine a safe operating speed for the curve at the north end of the Fleming Park Bridge, site of the September 21, 1981 accident between a bus and gasoline tank truck, have now been completed. Have prepared a permanent signing plan to provide advanced warning of the 220 foot radius curve.

Wayne Corporation: Oct. 19: H–84–76: Cannot respond to recommendation to improve the hazard of loose seat cushions during a crash until the Safety Board provides the Corporation a copy of the highway accident report, HAR–84/05.

Note.—Single copies of these response letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594. Please include respondent's name, date of letter, and recommendation number(s) in your request. The photocopies will be billed at a cost of 14 cents per page ($1 minimum charge).

December 17, 1984.

H. Ray Smith, Jr.,

Federal Register Liaison Officer.

[FR Doc. 84–33188 Filed 12–19–84; 8:45 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[License No. 13–10205–01; EA 84–65]

Community Hospital of Anderson; Order Imposing Civil Monetary Penalties

I

Community Hospital of Anderson, 1515 North Madison Avenue, Anderson, IN 46012 (the "licensee") is the holder of Byproduct Material License No. 13–10205–01 (the "license") issued by the Nuclear Regulatory Commission (the "Commission") which authorizes medical diagnosis and therapy. License No. 13–10205–01 would have expired on August 31, 1984 but for the licensee's timely request for renewal of the license which was submitted on July 10, 1984.

II

As a result of a routine inspection conducted on April 5, 9–11, and 27, 1984 by the Nuclear Regulatory Commission's Region III office, the NRC staff determined that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties was served on the licensee by letter dated July 30, 1984. The Notice stated the nature of the violations, the provisions of the Commission's requirements that the licensee had violated, and the cumulative amount of the proposed civil penalties. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalties by letter that was received by the Region III office on August 30, 1984.

III

Upon consideration of the licensee's response and the statements of fact, explanation, and arguments for remission or mitigation of the proposed civil penalties contained therein the Deputy Director, Office of Inspection and Enforcement, has determined, as set forth in the Appendix to this Order, that the penalties proposed for the violations set out in the Notice of Violation and Proposed Imposition of Civil Penalties should be imposed.

IV

In view of the foregoing, and pursuant to section 234 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2282, Pub. L. 96–295, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay civil penalties in the cumulative amount of Four Thousand Dollars within 30 days of the date of this Order, by clerk, draft or money order payable to the Treasurer of the United States and mailed to the Deputy Director, Office of Inspection and Enforcement, USNRC, Washington, D.C. 20555.

V

The licensee may, within 30 days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Deputy Director, Office of Inspection and Enforcement. A copy of the hearing request shall also be sent

to the Executive Legal Director, USNRC, Washington, D.C. 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. Should the licensee fail to request a hearing within 30 days of the date of this Order, the provision of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

VI

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalties, and

(b) Whether on the basis of such violations, this Order should be sustained.

Dated at Bethesda, Maryland, this 13th day of December 1984.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Director, Office of Inspection and Enforcement.

Appendix

Evaluation and Conclusions

The violations and associated civil penalties are identified in the Notice of Violation and Proposed Imposition of Civil Penalties dated July 30, 1984. The licensee's response was received by the Region III office on August 30, 1984.

In its response, the licensee denies that, with the exception of Item C, the violations occurred as described in the Notice of Violation. Additionally, the licensee offers several reasons why the civil penalties should not be imposed. NRC's evaluation of these is presented below, followed by conclusions regarding the proposed civil penalties.

Item A—Statement of Violation

License Condition No. 17 requires that all licensed material be possessed and used in accordance with statements, representations, and procedures contained in applications dated November 27, 1978 and January 13, 1982, and letters dated January 18, 1979 and April 21, 1982.

The application dated November 27, 1978 requires that the dose calibrator be checked for constancy on a daily basis by assaying a cesium-137 source and a cobalt-57 source, and that records shall be maintained of the results.

Contrary to the above, records for the period of December 28, 1983 through April 4, 1984 of daily constancy checks for the dose calibrator, utilizing a cobalt-57 source, were falsified in that the readings recorded were not the readings obtained from the source.

Licensee's Response to Item A

1. The licensee denies that the daily constancy records were intentionally falsified.

NRC's Response. There is little dispute that the records did not accurately reflect the daily constancy checks and, thus, that a violation occurred. The question of whether the inaccurate entries were deliberately made goes to the severity level of the violation. As the licensee's letter dated June 13, 1984 acknowledges, the technologist entered the same value in the log that had been previously recorded rather than the value that appeared on the dose calibrator. The entries were not inadvertent clerical errors. They were made to conform logs to the technologist's expectations of what the readings should be, not what the readings actually were. In this sense, the inaccurate entries were deliberately made and sufficient to support classification of the violation at Severity Level II.

2. The licensee states that the failure to catch the inaccuracies of the constancy records does not indicate a lack of management or supervision over the department. The licensee also felt confident that the tests were being performed and recorded properly since their consulting physicist audited the program just one month prior to the inspection.

NRC's Evaluation. The NRC believes that the failure to identify the inaccuracies does represent a lack of management of supervision over the department. It appears that licensee management was relying on the quarterly audits performed by the consulting physicist to provide assurance that the department was in compliance with NRC rules and regulations and had inappropriately delegated responsibility for ensuring compliance with NRC requirements to the consultant. If the department had had adequate day-to-day supervision, the inaccurary of the records could have been observed.

3. The licensee states that there have been no overexposures or overdoses to patients due to the inaccuracies of the constancy results and thus requests a reduction of the Severity Level and a mitigation of the civil penalties.

NRC's Evaluation. In the licensee's June 13, 1984 letter, the individual stated that she attached no significance to the test and felt it was simply to generate numbers. NRC places significance on assuring that quality control tests are performed on dose calibrators to assure that patients are given the presribed dosage. From the information obtained during the inspection, NRC cannot determine whether patients were given overdoses of radiopharmaceuticals.

4. The licensee states that there was relatively little opportunity to discover the inaccuracy of the records prior to the inspection due to the minor changes in the daily constancy test results from December 28, 1983 to April 5, 1984.

NRC's Evaluation. If an adequate audit had been performed by the consulting physicist in March of 1984 or if department had adequate day-to-day supervision, the inaccuracy of the records should have been observed. It should be noted that the NRC inspector was able to identify this violation from a review of the licensee's records.

5. The licensee stated that the NRC refers to this violation as a repeat violation and the proposed civil penalty should not be augmented based on past performance.

NRC's Evaluation. The NRC's July 30, 1984 letter did not state that this violation was a repeat violation. It did state, however, the violation is similar to one identified in the April 1980 inspection since it related to quality control tests on the dose calibrator. However the amount of the proposed civil penalty was not increased based on poor past peformance and, consequently, will not be mitigated on the basis of the licensee's response.

Item B—Statement of Violation

License Condition No. 18 requires radioactive waste to be monitored with typical low-level laboratory survey instruments to determine that its radioactivity cannot be distinguished from background prior to disposal as normal waste.

Contrary to the above, molybdenum-99/technetium-99m generator columns were disposed of as normal waste on September 30, 1983, although surveys revealed readings of 0.8 mR/hr and the background reading was 0.4 mR/hr.

Licensee's Response to Item B

The licensee denies that the generator columns disposed of on September 30, 1983, were above background levels for the follonwing reasons:

1. The actual background recorded that day was 0.5 mR/hr rather than 0.4 mR/hr as was stated in the July 30, 1984 Notice of Violation.

NRC's Evaluation. The NRC agrees that the Notice of Violation should have stated 0.5 mR/hr rather than 0.4 mR/hr. It should be noted that surveys made to

determine the presence of measurable amounts of radioactive material should not be made in the nuclear medicine laboratory, but instead the generator columns should be surveyed in a low background area. This would enable the licensee to easily detect radiation levels well below 0.5 mR/hr.

2. The licensee states that the difference between 0.5 mR/hr and 0.8 mR/hr is indistinguishable with the measuring device used.

NRC's Evaluation. The NRC agrees that the difference between 0.5 mR/hr and 0.8 mR/hr is not easily distinguishable with the licensee's CDV 700 survey meter if one of the instrument's higher ranges is used. However, as stated in Item B.1 above, such measurements should be made in a low background area. This would eliminate this problem and 0.5 mR/hr could then be easily measured.

3. The licensee states that the column disposed of on September 30, 1983, had decayed to 2.6×10^{-6} millicuries, claiming that this was essentially background and far below the level of detectability for the GM survey meter used.

NRC's Evaluation. The NRC inspector calculated that the actual activity remaining on September 30, 1983, was 4.4 microcuries rather than the 2.6×10^{-6} millicuries as stated in the licensee's response.

During a September 12, 1984 telephone conversation with the NRC inspector, the licensee's consulting physicist agreed that the actual activity remaining in the generator column was 4.4 microcuries.

A generator containing 4.4 microcuries of molybdenum-99 is easily detectable with a GM survey meter, and the violation did occur as stated in the Notice of Violation.

Item C—Statement of Violation

License Condition No. 17 requires that all licensed material be possessed and used in accordance with statements, representations, and procedures contained in applications dated November 27, 1978 and January 13, 1982, and letters dated January 18, 1979 and April 21, 1982.

The application dated November 27, 1978 requires all elution, preparation and injection areas to be surveyed daily with a GM meter and decontaminated as necessary.

Contrary to the above, no surveys were done in the elution and preparation areas from April 3 through 5, 1984.

Licensee's Response to Item C

The licensee admits the violation, yet requests a reduction of the Severity Level due to the fact that the hospital has substantially complied with the requirement, having missed only two days since the last inspection four years ago.

NRC's Evaluation. It should be noted that this is a report of a violation that was identified during the April 1980 inspection. If this had been the only violation identified, the severity level would have been lower. However, as discussed below, this was one of several violations identified which were categorized in the aggregate at Severity Level II.

Licensee's Request for Reduction in Severity Level and Reduction of Proposed Civil Penalties

The licensee states that the overall impact of the alleged violations is not of such a serious nature as to justify classification at Severity Level II. It states that Severity Level II encompasses violations such as overdoses to patients or overexposures to workers, and none of these have occurred.

NRC's Evaluation. The NRC's Enforcement Policy classifies a falsification of records in which the records were deliberately falsified by or with the knowledge of management as a Severity Level I violation. However, since the NRC staff has concluded that management was not aware of the falsification of the records, the violation has been classified at Severity Level II. Falsification of records, in this case, could have led to a misadministration to a patient since the individual performing the test attached no significance to the test and was just generating numbers.

Violations B and C are not themselves as significant as Violation A, which involves the falsification of records. As discussed above, Violation A itself fits an example of a Severity Level II violation under Supplement VII to the enforcement policy because the violation involved deliberate falsification of records, although without management involvement. Violations B and C were included with Violation A for purposes of classifying the significance of the violations identified by the NRC to determine the appropriate enforcement sanction. All three violations stem, in NRC's view, from the same underlying problem—lack of adequate management oversight and control of the radiation safety program. Violations B and C were repetitive of the same or similar violations previously identified by NRC inspections and, thus, reinforce this conclusion. Accordingly, the grouping of the three violations for purposes of determining the severity level was appropriate and in accordance with the policy.

The NRC did not increase the base penalty of $4,000 for a Severity Level II violation, although such factors as poor enforcement history and multiple instances of violations could have been applied here. None of the factors for decreasing the base penalty are applicable here. The licensee's corrective actions were not extraordinarily prompt or extensive enough to warrant mitigation, and the licensee's enforcement history, as noted above, has not been good in this area.

Conclusion

After reviewing the licensee's response to the violations including corrective actions already completed and those corrective actions that will be taken, the NRC staff has concluded that the licensee has not provided a basis for mitigation of the civil penalties.

[FR Doc. 84-33163 Filed 12-19-84; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-213; License No. DPR-61; EA 84-115]

Connecticut Yankee Atomic Power Co. (Haddam Neck Plant); Order Modifying License

I

Connecticut Yankee Atomic Power Company (the "licensee") is the holder of Facility Operating License No. DPR-61 which authorizes the licensee to operate the Haddam Neck Plant (the "facility") in Haddam, Connecticut.

II

On August 21, 1984, with the refueling cavity filled with reactor coolant water and refueling scheduled to begin within approximately eighteen hours, the reactor refueling cavity seal failed. As a result, about 200,000 gallons of borated reactor coolant water drained from the reactor cavity to the containment floor in approximately 20 minutes.

An NRC inspection was conducted on August 21 through September 4, 1984 to review the circumstances associated with the seal failure. In January 1983, the licensee implemented a design change which replaced the flat steel plate previously used as the seal which covered the 28 inch annulus between the reactor and the bottom of the refueling cavity. The new seal design consisted of a stiffened 24-inch annular steel plate with inflatable rubber boots on each side of the plate. Inspection of the cavity seal after its failure found that the outer rubber boot had extruded through the 2

inch gap between the seal assembly and the cavity plate for about ¼ of the seal circumference. Subsequent testing by the licensee indicated that sufficient margin did not exist in the seal design to prevent such extrusion.

A design basis for the seal, namely, holding the static water pressure of the refueling cavity during refueling operations, was not correctly translated into the design modifications in that the rubber boots were neither specified nor suitably tested to meet this basis with an adequate safety margin. This design error was not identified during the required design verification process.

In addition, the written safety evaluation associated with the design change stated that the modification was reviewed to assure compliance with 10 CFR 50.59. The written safety evaluation incorrectly concluded that no unreviewed safety question would be presented by the proposed change because the modification would not create a type of accident that was not evaluated previously. However, the evaluation failed to provide any basis for concluding that the flexible parts of the new design did not introduce a failure mechanism or malfunction to which the previous bolted all-metal seal was not susceptible. For example, the evaluation did not consider the effect of a dropped object on the unprotected rubber portion of the new seal or extrusion of the seal through the gap between the annular plate and the reactor cavity. Further, the plant design change request associated with the modification was reviewed and approved by the Plant Operations Review Committee (PORC) and the Nuclear Review Board (NRB), even though no basis was provided to support a conclusion that the change did not involve an unreviewed safety question.

These events demonstrate inadequacies in the methods used during the seal modification for design and design verification, written safety evaluations, and PORC and NRB reviews.

The violations associated with this event are set forth in the Notice of Violation and Proposed Imposition of Civil Penalty issued to the licensee on this date which is incorporated herein by reference. These recent violations at the facility represent a continuing problem of equipment being rendered inoperable because of inadequate control and implementation of design changes. Specifically, in October 1983, the Post Accident Sampling System was found to be inoperable because a valve was improperly installed, and the preoperational test to verify system operability had not identified the improper installation. Further, in May 1984, high range containment radiation monitors were not environmentally qualified because the design specifications were not correctly translated into instructions for the installation of the monitors. As a result, the electrical leads were not properly insulated and one monitor subsequently failed.

These incidents demonstrate the need for effective corrective measures to prevent similar occurrences in the future.

III

Collectively, these occurrences at the facility represent inadequate planning, direction, and control of activities involving design modifications with the potential for affecting the public health and safety. These occurrences are indicative of programmatic deficiencies in the design change program and demonstrate the need for significant generic corrective measures to prevent similar occurrence in the future to assure public health and safety.

IV

In view of the foregoing, and pursuant to sections 103, 161(i), 161(o), and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Part 50, it is hereby ordered that:

A. Within 60 days of the effective date of this Order, the licensee shall submit to the Regional Administrator, Region I, for review and approval, a plan for review and appraisal of the following items by an independent organization:

(1) Design modification packages approved since January 1, 1979 to determine the adequacy of design control and of implementation of the packages, and to determine whether each such modification introduced any previously unanalyzed failure mode or mechanism.

(2) The process for initiating, evaluating, reviewing, approving, and implementing design change modifications to determine if any deficiencies exist in the process, and to specify recommendations for improvement.

The identity and qualifications, including resumes, of each member of the independent organization assigned to perform the review and appraisal, shall also be provided to the Regional Administrator with the plan. The plan shall describe the methods for performing the review and appraisal and for documenting the results.

B. Within 6 months of the date of the Regional Administrator's acceptance of the plan required by section IV.A, the review and appraisal shall be completed. A copy of the final appraisal report specifying identified deficiencies and recommendations, and any drafts thereof, shall be submitted to the Regional Administrator, Region I, at the same time they are submitted to or reviewed by the licensee. The licensee shall also direct the appraisal team to submit to the Regional Administrator any status report, including drafts, whenever any such report or draft is submitted to the licensee.

C. Within 2 months after the date of issuance of the final appraisal report required by section IV.B. of this Order, the licensee shall submit to the Regional Administrator, Region I, for review and approval, a plan for improvements based on evaluation of the appraisal findings and recommendations. This plan shall include (1) action items to be performed and (2) a schedule for completion of each specific action item. This plan shall also provide justification if any of the recommendations of the appraisal report are not adopted.

D. Within 60 days of the effective date of this Order, the licensee shall also submit a description of the interim actions planned to assure adequate control of the design changes that will be implemented prior to the completion of the actions called for in sections IV.A., IV.B. and IV.C.

E. The Regional Administrator, Region I, may relax or terminate any of the preceding conditions for good cause.

V

The licensee or any other person whose interest is adversely affected by this Order may request a hearing on this Order. Any request for hearing shall be submitted to the Deputy Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, within 30 days of the date of this Order. A copy of the request shall also be sent to the Executive Legal Director at the same address and to the Regional Administration, Region I, 631 Park Avenue, King of Prussia, Pennsylvania 19406.

If a hearing is to be held concerning this Order, the Commission will issue an Order designating the time and place of hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order shall be sustained.

This Order shall become effective upon expiration of the time during which a hearing may be requested or, in the event that a hearing is requested, on the date specified in an order issued following further proceedings on this Order.

Dated at Bethesda, Maryland, this 13th day of December 1984.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Director, Office of Inspection and Enforcement.

Notice of Violation and Proposed Imposition of Civil Penalty

On August 21, 1984, at about 8:00 a.m., with the reactor refueling cavity filled in preparation for removing spent fuel from the reactor, the cavity seal failed and about 200,000 gallons of borated reactor coolant water drained to the containment floor in about 20 minutes. If the seal had failed during the planned refueling, which was scheduled to begin about 18 hours after the failure, as many as four fuel assemblies could have been partially or fully uncovered in the reactor cavity and the upper three feet of the fuel stored in the spent fuel pool could also have been uncovered. Further, as more of the highly radioactive assemblies were moved from the reactor vessel to the spent fuel pool, the consequences of a seal failure would increase. However, at the time of the failure, refueling fuel movements had not begun and the fuel transfer tube was isolated. The licensee immediately suspended refueling operations and notified the NRC of the occurrence at about 8:25 a.m.

An NRC inspection was conducted on August 21 through September 4, 1984, to review the circumstances associated with the seal failure. In January 1983, the licensee implemented a design change which replaced the flat steel plate previously used as the seal which covered the 28 inch annulus between the reactor and the bottom of the refueling cavity. The new seal design consisted of a stiffened 24-inch annular steel plate with inflatable rubber boots on each side of the plate. Inspection of the cavity seal after its failure found that the outer rubber boot had extruded through the 2 inch gap between the seal assembly and the cavity plate for about ¼ of the seal circumstance. Subsequent testing by the licensee indicated that sufficient margin did not exist in the seal design to prevent such extrusion.

A design basis for the seal, namely, holding the static water pressure of the refueling cavity during refueling operations, was not correctly translated into the design modifications in that the rubber boots were neither specified nor suitably tested to meet this basis with an adequate safety margin. This design error was not identified during the design verification performed by another engineer.

In addition, the written safety evaluation associated with the design change states that the modification was reviewed to assure compliance with 10 CFR 50.59. The written safety evaluation incorrectly concludes that no unreviewed safety question existed because the modification did not create a type of accident that was not evaluated previously. However, the evaluation does not describe any basis for concluding that the flexible parts of the new design did not introduce a failure mechanism/malfunction to which the previous bolted all metal seal was not susceptible. For example, the evaluation did not consider the effects of a dropped object on the unprotected rubber portion of the new seal or extrusion of the seal through the gap between the annular plate and the reactor cavity.

Further, the plant design change request associated with the modification was reviewed and approved by the Plant Operations Review Committee (PORC) and the Nuclear Review Board (NRB), even though no basis was provided to support a conclusion that the change did not involve an unreviewed safety question.

These occurrences reflect deficiencies in the design change modification program and they demonstrate the need for generic corrective measures to assure improvements in the program. To emphasize the importance the NRC places on an effective design change process for modifications that may affect public health and safety, the Nuclear Regulatory Commission proposes to impose a civil penalty in the cumulative amount of Eighty Thousand Dollars ($80,000) for this matter.

In accordance with the General Statement of Policy and Procedure for NRC Enforcement Actions, 10 CFR Part 2, Appendix C, as revised, 49 FR 8583 (March 8, 1984) and pursuant to section 234 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2282, Pub. L. 96–295, and 10 CFR 2.205, the particular violations and associated civil penalty are set forth below.

A. Technical Specification 6.5.1, requires that the Plant Operations Review Committee (PORC) function to advise the Station Superintendent on all proposed changes or modifications to plant systems or equipment that affect nuclear safety. Technical Specification 6.5.2 requires that the Nuclear Review Board (NRB) shall function to provide independent review and audit of activities, including safety evaluations for changes completed under the provisions of 10 CFR 50.59.

Contrary to the above, both the PORC and the NRB conducted inadequate reviews of a plant design change request for the refueling cavity seal. Specifically, in January 1983, Plant Design Change Request PDCR–461 was implemented involving replacement of the steel plate refueling cavity seal with a newly designed seal which included inflatable boot seals. Even though the new design created the possibility of a different seal malfunction and susceptability to physical damage other than was credible with the previous all-metal seal design, the PORC did not advise the Station Superintendent that such was the case and the NRB did not provide an independent review of this aspect. In the written safety evaluation which certified compliance with 10 CFR 50.59, and in the associated PORC and NRB reviews, a rationale was not provided for the erroneous conclusion that there was no possibility of a different malfunction.

B. 10 CFR 50, Appendix B, Criterion III, requires establishment of measures to assure that appropriate quality standards are specified and included in design documents and that the design control measures provide for verifying or checking the adequacy of design by design review, calculations, or suitable testing.

Contrary to the above, appropriate quality standards were not specified nor included in design documents for a design change performed in 1983 to the refueling cavity seal and the design review did not provide adequate verification of the design. Specifically, rubber boot seals were included in the new design, replacing an all metal seal, without those boots being specified or suitably tested to withstand refueling cavity water pressure with an adequate safety margin and the reviews of the design failed to identify this deficiency.

These violations have been categorized in the aggregate as a Severity Level II problem (Supplement I).

(Cumulative Civil Penalty—$80,000 assessed equally among the violations.)

Pursuant to the provisions of 10 CFR 2.201, Connecticut Yankee Atomic Power Company is hereby required to submit within 30 days of the date of this Notice, a written statement or explanation, including for each alleged violation: (1) admission or denial of the alleged violation; (2) the reasons for the violation, if admitted; (3) the corrective steps which have been taken and the results achieved; (4) the corrective steps which will be taken to avoid further violations; (5) the date when full compliance will be achieved.

Considerations may be given to extending the response time for good cause shown. Under the authority of Section 182 of the Act, U.S.C. 2232, this response shall be submitted under oath or affirmation.

Within the same time as provided for the response required above under 10 CFR 2.201, Connecticut Yankee Atomic Power Company may pay the civil penalty in the amount of $80,000 or may protest imposition of the civil penalty in whole or in part by a written answer. Should Connecticut Yankee Atomic Power Company fail to answer within the time specified, the Deputy Director, Office of Inspection and Enforcement, will issue an order imposing the civil penalty in the amount proposed above. Should Connecticut Yankee Atomic Power Company elect to file an answer in accordance with CFR 2.205 protesting the civil penalty, such answer may: (1) deny the violations listed in the Notice on whole or in part; (2) demonstrate extenuating circumstances; (3) show error in this Notice; or show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty. In requesting mitigation of the proposed penalty, the five factors contained in section V. B of the revised 10 CFR Part 2, Appendix C should be addressed. Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply pursuant to 10 CFR 2.201, but may incorporate by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of Connecticut Yankee Atomic Power Company is directed to the other provisions of 10 CFR 2.205 regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty due which has been subsequently determined in accordance with the applicable provisions of 10 CFR 2.205, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland this 13th day of December 1984.

James M. Taylor,

Deputy Director, Office of Inspection and Enforcement.

[FR Doc. 84-33164 Filed 12-19-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-409-OL; ASLBP No. 78-368-05-OL]

Dairyland Power Cooperative (LaCrosse Boiling Water Reactor); Notice of Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721, the Atomic Safety and Licensing Board for *Dairyland Power Cooperative* (LaCross Boiling Water Reactor), Docket No. 50-409-OL, is hereby reconstituted by appointing Administrative Judge Frederick J. Shon in place of Administrative Judge Hugh C. Paxton, who has resigned from the Panel.

As reconstituted, the Board is comprised of the following Administrative Judges:

Charles Bechhoefer, Chairman
George C. Anderson
Frederick H. Shon

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is: Administrative Judge Frederick J. Shon, Atomic Safety and Licensing Board, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dated at Bethesda, Maryland, this 14th day of December, 1984.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 84-33165 Filed 12-19-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-312]

Sacramento Municipal Utility District; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-54, issued to Sacramento Municipal Utility District (the licensee), for operation of the Rancho Seco Nuclear Generating Station located in Sacramento County, California.

The amendment would revise the Technical Specifications to allow on a one time only basis, the extension of the definition of refueling interval from 18 months to two months beyond the maximum 25% extension for performance of the refueling interval surveillance test of the Reactor Internal Vent Valves. The temporary definition of the refueling interval for the Reactor Internal Vent Valves will expire on startup from the 1985 refueling outage.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Rancho Seco Nuclear Generating Station has experienced a number of unscheduled shutdowns (outages) in recent months due to steam generator leaks. As a result of these shutdowns, the expected refueling outage was extended until March 1985. Therefore, the 18-month refueling interval since the last refueling outage plus the 25% extension provided for in the current Technical Specifications will be exceeded. Since surveillance of the Reactor Vent Valves necessitates removal of the Reactor Vessel Head and the Reactor Vessel Head was not removed during any of the unscheduled outages, the vent valves could not be surveilled. All other surveillance schedules for the planned 1985 refueling outages were completed during the unscheduled outages.

The licensee has inspected its previous surveillance records for past inspections and found only one case where the reactor or vessel internal vent valves degraded. However, the valves were still operational and still capable of performing their intended function. In addition, the proposed two month extension in the surveillance interval for the internal vent valves will be small compared to the allowed interval under the current Technical Specifications. Therefore, the proposed amendment does not involve a significant increase in the probability of an accident previously evaluated or a significant reduction in a margin of safety. Because no changes in operating conditions will result from the increase in the surveillance interval, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. Because no changes in any

accident analyses will result from the increase in the surveillance interval, the proposed amendment does not involve any increase in the consequences of an accident previously evaluated. On these bases, the NRC staff proposes to determine that this proposed amendment does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Branch.

By January 22, 1985, the license may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave for intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify aspect(s) of the subject matter of the proceeding as to which the petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 15380, Sacramento, California 95813, attorney for the license.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Sacramento City-County Library, 828 I Street, Sacramento, California.

Dated at Bethesda, Maryland, this 17th day of December 1984.

For the Nuclear Regulatory Commission.

John F. Stolz,

Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 84-33252 Filed 12-19-84; 8:45 am]

BILLING CODE 7590-01-M

PANAMA CANAL COMMISSION

Collections of Information Submitted to OMB for Review

AGENCY: Panama Canal Commission.

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 [44 U.S.C. Chapter 35], the Panama Canal Commission hereby gives notice that it has submitted to the office of Management and Budget (OMB) a proposal to revise a currently approved collection of information designated "Personnel Administration Forms" and a request for approval to extend the expiration date of currently approved collection of information designated "Authorization for Disclosure of Medical Information."

Address Comments To: Comments may be sent to Carlos Tellez, Information Desk Officer for the Panama Canal Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: For further information or a complete copy of the information collection requests and related documents, call Barbara Fuller, at (202) 724-0104.

SUPPLEMENTARY INFORMATION:

Revision

• Personnel Administration Forms.

On January 20, 1982, OMB approved this information collection proposal submitted by the Panama Canal Commission and assigned it the control number 3207-0005 and an expiration date of January 31, 1985. It is proposed to continue using this information collection with minor revisions to a few of the forms. Three forms no longer required by the Central Examining Office are deleted; namely PCC Form No. 11 (Checklist for Bookbinder, Bindery and Finish Worker and Papercutter Operator); No. 582 (Supplemental Qualification Statement for Painter); and No. 590-P (Supplemental Application for Aircraft Mechanic and Related Jobs). PCC Form No. 497 (Confidential Qualifications Inquiry), English and Spanish versions, was not included in the initial submission of the information collection designated Personnel Administration Forms because its use had temporarily been discontinued; it is now proposed to resume use of the form. That form has been included in the current submission.

Extension

• Authorization for Disclosure of Medical Information.

On January 20, 1982, OMB approved this information collection proposal submitted by the Panama Canal Commission and assigned it the control number 3207-0003 and an expiration date of January 31, 1985. It is proposed to continue using this information collection without any change in the substance or in the method of collection.

Dated: December 17, 1984.

Joseph J. Wood,

Acting Deputy Administrator, Senior Official for Information Resources Management.

[FR Doc. 84-33088 Filed 12-19-84; 8:45 am]

BILLING CODE 3640-04-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) Collection title: Certification Regarding Rights to Unemployment Benefits.

(2) Form(s) submitted: UI-45.

(3) Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(4) Frequency of use: On occasion.

(5) Respondents: Individuals or households, Business or other for profit.

(6) Annual responses: 8,500.

(7) Annual reporting hours: 999.

(8) Collection description: In administering the disqualification for the voluntary leaving work provision of section 4 of the Railroad Unemployment Insurance Act, the Railroad Retirement Board investigates an unemployment claim indicating the claimant left work voluntarily. The certification obtains information needed to determine whether the levaing was with good cause.

Additional Information or Comments

Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Robert Fishman (202-395-6880), Office of Management and Budget, Room 3201, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 84-33094 Filed 12-19-84; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory-Organizations; Cincinnati Stock Exchange; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

December 13, 1984.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 therunder, for unlisted trading privileges in the following stocks:

British Telecommunications PLC
American Depository Recipts, File No. 7-8190

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 7, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler

Secretary.

[FR Doc. 84-33074 Filed 12-19-84; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Philadelphia Stock Exchange; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

December 13, 1984.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

British Telecommunications PLC
American Depositary Receipts, File No. 7-8192

Golden West Financial Corp.
Common Stock, $.10 Par Value, File No. 7-8191

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 7, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 84-33075 Filed 12-19-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14276 (812-5953)]

Principal Preservation Tax-Exempt Fund, Inc.; Application for an Order

December 13, 1984.

Notice is hereby given that Principal Preservation Tax-Exempt Fund, Inc. ("Applicant"), 215 North Main Street, West Bend, Wisconsin 53095, a Maryland corporation registered as an open-end, management investment company under the Investment Company Act of 1940 ("Act"), filed an application on October 3, 1984, and an amendment thereto on November 27, 1984, for an order pursuant to section 6(c) of the Act exempting Applicant from the provisions of section 22(d) of the Act to the extent necessary to permit sales of its shares at a reduced sales load to those directors of The Ziegler Company, Inc. ("Ziegler"), who are not directors of Applicant's adviser and distributor, B.C. Ziegler and Company ("Adviser"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and rules thereunder for the complete text of the applicable provisions.

Applicant states that the Adviser is a wholly-owned subsidiary of Ziegler, a publicly traded financial services holding company with ten directors, no employees, and no substantial business enterprise other than the ownership of Ziegler and four other subsidiaries. Applicant also states that approximately 70 percent of the Ziegler's income is derived from the activities of the Adviser.

Applicant represents that it maintains a continuous public offering of its shares at their respective net asset value plus a sales load ranging from 4.5 percent to 0.5 percent of the offering price, depending upon the dollar amount of the purchase. Applicant further represents that, pursuant to Rule 22d-1 under the Act, five directors of Ziegler who are also directors of the Adviser may purchase Applicant's shares at net asset value without a sales charge. Applicant proposes to sell its shares at a reduced sales load of 0.5 percent to the remaining five directors of Ziegler who are not directors of the Adviser ("Ziegler Directors"). Applicant represents that sales to a Ziegler Director will only be made upon the written assurance of the Ziegler Director that the purchase is made for investment and that the shares cannot be resold except through redemption or repurchase by or on behalf of Applicant. Further, Applicant represents that no individual or in-person group sales solicitations or presentation will be made to the Ziegler Directors and that Applicant's prospectus will be amended to reflect that the Ziegler Directors may purchase shares of Applicant at a reduced sales charge.

Applicant argues that the proposed sales will serve the public interest by encouraging the Ziegler Directors, who have indirect control over the Adviser, and, consequently, over Applicant, to be better informed and involved with the business of the Adviser and Applicant. Applicant also argues that the Ziegler Directors, through the Adviser, have intimate knowledge of Applicant and, therefore, such sales could be made with virtually no sales effect or costs. Further, Applicant submits that the proposed sales would not result in dilution of stockholder equity, riskless trading, or unjust discrimination among stockholders. Applicant believes the proposed sales are consistent and compatible with the intent and spirit of section 22(d) of the Act and Rule 22d-1(i) thereunder and, therefore, qualify for exemptive relief pursuant to section 6(c) of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than January 7, 1985, 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 speicific 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.

John Wheeler,

Secretary.

[FR Doc. 84-33072 Filed 12-19-84; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Application No. 05/05 0200]

Itasca Growth Fund, Inc.; Application for a Small Business Investment Company License

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the SBA Regulations (13 CFR 107.102 (1984)) by Itasca Growth Fund, Inc., 1 NW. Third Street, Grand Rapids, Minnesota 55744 for a license to

operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958 (the Act) as amended (15 U.S.C. 661 et. seq.) and the Rules and Regulations promulgated thereunder.

The officers, directors and shareholder are:

Name, address, and title or relationship	Percent of private capital and other securities owned or to be owned
A. Eugene Radecki, Blandin Paper Company, 115 SW. First Street, Grand Rapids, MN 55744, President and Director	0
Kenneth D. Nordli, First Federal Savings and Loan Association, 1 West Fifth Street, Grand Rapids, MN 55744, Vice President and Director	0
Robert P. Hatten, Norwest Bank Grand, Rapids, N.A., 220 NW. First Avenue, Grand Rapids, MN 55744, Treasurer and Director	0
Steven M. Wilcox, Grand Rapids State Bank, 523 NW. First Avenue, Grand Rapids, MN 55744, Secretary and Director	0
Rolland R. Nelson, Itasca State Bank, 1215 South Pokegama, Grand Rapids, MN 55744, Director	0
Carroll C. Bergerson, 16 Chisholm Trial, Grand Rapids, MN 55744, General Manager	0
Charles K. Blandin Foundation, 100 N. Pokegama Ave., Gand Rapids, MN 55744, Shareholder	94

The Applicant, Itasca, a Minnesota company will begin operations with $1,000,000 and will be a source of equity capital and long term loan funds for qualified small busines concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regultions.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" St., NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Grand Rapids, Minnesota.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 14, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-33160 Filed 12-19-84; 8:45 am]

BILLING CODE 8025-01-M

[License No. 07/07-0092]

MBI Venture Capital Investors, Inc.; Issuance of a Small Business Investment Company License

On October 23, 1984, a notice was published in the **Federal Register** (49 FR 42662) stating that an application has been filed by MBI Venture Capital Investors, Inc., with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1984)) for a license as a small business investment company.

Interested parties were given until close of business November 22, 1984, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 07/07-0092 on December 11, 1984, to MBI Venture Capital Investors, Inc. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 13, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-33161 Filed 12-19-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD-84-092]

Simplified Tonnage Measurement of Certain Small Vessels and Barges

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: The Coast Guard, as a matter of public interest, is presenting this notice to announce the centralization of the simplified tonnage measurement process at Coast Guard Headquarters.

Discussion

Applicants requesting simplified measurement by the Coast Guard may now forward applications to: Commandant (G-MVI-5/SM), U.S. Coast Guard, 2100 Second ST. SW., Washington D.C. 20593.

NVIC 10-84, containing details of this centralization and an attached application form, is available from Commandant (G-MP-4) for $1.00. Applications may also be obtained from any Coast Guard Marine Safety Office or Marine Inspection Office.

Applicants may still continue to obtain this service from the American Bureau of Shipping (47 FR 13947, April 1, 1982).

December 17, 1984.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 33132 Filed 12-19-84; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Cir. Public Debt Series—No. 39-84]

Treasury Notes of December 31, 1986; Series AC-1986

Washington, December 13, 1984.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,000,000,000 of United States securities, designated Treasury Notes of December 31, 1986, Series AC-1986 (CUSIP No. 912827 RR 5). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

1.2. If the interest rate determined in accordance with this circular is identical to the rate on an outstanding issue of United States securities, and the terms and conditions of such outstanding issue are otherwise identical to the terms and conditions of the securities offered by this circular, this shall be considered an invitation for an additional amount of the outstanding securities and this

circular will be amended accordingly. Payment for the securities in that event will be calculated on the basis of the auction price determined in accordance with this circular.

2. Description of Securities

2.1. The securities will be dated December 31, 1984, and will bear interest from that date, payable on a semiannual basis on June 30, 1985, and each subsequent 6 months on December 31 and June 30 until the principal becomes payable. They will mature December 31, 1986, and will not be subject to call for redemption prior to maturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next-succeeding business day.

2.2. The securities are subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Securities registered as to principal and interest will be issued in denominations of $5,000 $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of registered and book-entry securities, and the transfer of registered securities will be permitted. Bearer securities will not be available, and the interchange of registered or book-entry securities for bearer securities will not be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Standard time, Wednesday, December 19, 1984. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, December 18, 1984, and received no later than Monday, December 31, 1984.

3.2. The face amount of securities bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A non competitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue being auctioned prior to the designated closing time for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.5. must be made or completed on or before Monday, December 31, 1984. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with

all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing the United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, December 27, 1984. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for allotted securities for their own accounts and for account of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, December 31, 1984. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20239. The securities must be delivered at the expense and risk of the holder.

5.4. Deliveries of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, and to receive payment for and make delivery of securities on full-paid allotments.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 84-33087 Filed 12-18-84; 8:45 am]

BILLING CODE 4810-40-M

Fiscal Service

[Dept. Circ. 570, 1984 Rev., Supp. No. 4]

Eastern Indemnity Company of Maryland; Surety Companies Acceptable on Federal Bonds; Termination of Authority

Notice is hereby given that the certificate of authority issued by the Treasury to Eastern Indemnity Company of Maryland under sections 9304 to 9308 of Title 31 of the United States Code, to qualify as an acceptable surety on Federal bonds is hereby terminated effective today. The company was listed as an acceptable surety on Federal bonds at 49 FR 27252, July 2, 1984.

With respect to any bonds currently in force with Eastern Indemnity Company of Maryland, bond-approving officers for the Government should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding.

Questions concerning this notice may be directed to the Surety Bond Branch, Finance Division, Financial Management Service, (formerly Bureau of Government Financial Operations), Department of the Treasury, Washington, D.C. 20226, telephone (202) 634-2319.

Dated: December 14, 1984.

W. E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 84-33079 Filed 12-19-84; 8:45 am]

BILLING CODE 4810-35-M

VETERANS ADMINISTRATION

Veterans Administration Wage Committee; Meetings

The Veterans Administration, in accordance with Pub. L. 92-463, gives notice that meetings of the Veterans Administration Wage Committee will be held on:

Thursday, January 3, 1985, at 2:30 p.m.
Thursday, January 17, 1985, at 2:30 p.m.
Thursday, January 31, 1985, at 2:30 p.m.
Thursday, February 14, 1985, at 2:30 p.m.
Thursday, February 28, 1985, at 2:30 p.m.
Thursday, March 14, 1985, at 2:30 p.m.
Thursday, March 28, 1985, at 2:30 p.m.

The meetings will be held in Room 304, Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

The Committee's purpose is to advise the Chief Medical Director on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Veterans Administration and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Pub. L. 92-463, as amended by Pub. L. 94-409, and as cited in 5 U.S.C. 552b(c)(2) and (4).

However, members of the public are invited to submit material in writing to the Chairman for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairman, Veterans Administration Wage Committee, Room 1175, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: December 7, 1984.

By direction of the Administrator:
Rosa Maria Fontanez,
Committee Management Officer.
[FR Doc. 84-33129 Filed 12-19-84; 8:45 am]
BILLING CODE 8320-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Publication of Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas

The National 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 pipeline companies are required to pass through certain portions of their acquisition costs for natural gas to industrial users in the form of 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 sue 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 January 1, 1985. 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. 30585
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 eachof the contiguous 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 ceiling is described in Section III.

State	Dallas per million BTU's
Alabama	4.31
Arizona	3.94
Arkansas	3.96
California	4.16
Colorado [2]	4.20
Connecticut [1]	4.47
Delaware [1]	4.38
Florida	4.27
Georgia [1]	4.38
Idaho [2]	4.20
Illinois	4.10
Indiana [1]	4.15
Iowa [1]	4.04
Kansas [1]	4.04
Kentucky [1]	4.15
Louisiana [1]	4.01
Maine [1]	4.47
Maryland [1]	4.38
Massachusetts	4.41
Michigan [1]	4.15
Minnesota	3.94
Mississippi [1]	4.38
Missouri [1]	4.04
Montana [2]	4.20
Nebraska [1]	4.04
Nevada [1]	4.31
New Hampshire	4.46
New Jersey [1]	4.38
New Mexico	3.84
New York	4.36
North Carolina [1]	4.38
North Dakota [1]	4.04
Ohio	3.83
Oklahoma [1]	4.01
Oregon [1]	4.31
Pennsylvania [1]	4.38
Rhode Island [1]	4.47
South Carolina [1]	4.38
South Dakota [1]	4.04
Tennessee	4.28
Texas	4.84
Utah [2]	4.20
Vermont [1]	4.47
Virginia [1]	4.38
Washington [1]	4.31
West Virginia [1]	4.15
Wisonsin [1]	4.15
Wyoming [2]	4.20

[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 October 1984 was $31.97 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 BUT's by dividing by 5.8. Therefore, the incremental pricing threshold for high cost natural gas, effective January 1, 1985, is $7.17 per million BUT'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 August 1984, September 1984, and October 1984.[1] 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 Price

The price which will become effective January 1, 1985, (shown in Section I) are based on the reported price of No. 6 high sulfur content residual fuel oil, for each of the 48 continguous states, for each of the 3 months, August 1984, September 1984, and October 1984. Reported prices for sales in August 1984 were adjusted by the percent change in the nationwide volume-weighted average price from August 1984 to October 1984. Prices for September 1984 were similarly adjusted by the precent change in the nationwide volume-weighted average price from September 1984 to October 1984. The volume-weighted 3-month average of the adjusted August 1984 and September 1984, and the reported October 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

[1] Large Industrial Users—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.

(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 weight 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 combaination 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 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 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 August 1984, September 1984, and October 1984. The alternative fuel price ceilings for the States in Region G were determined by calculating the volume-weighted average price ceiling 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 cites throughout the United States. The low posted prices for No. 6 residual oil in these cities were used to calculate a 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 December 14, 1984, and dividing that price by the corresponding weighted average price computed from prices published by Platt's for the month of October 1984. A regional lag adjustment factor was similarly 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	
C	*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	
G	*H*
Colorado	Arizona
Idaho	California
Montana	Nevada
Utah	Oregon
Wyoming	Washington

Issued in Washington, D.C., December 18, 1984.

Albert H. Linden, Jr.,

Deputy Administrator, Energy Information Administration.

[FR Doc. 84-33313 Filed 12-19-11:52 am]

BILLING CODE 6450-01-M

NATIONAL COMMISSION ON AGRICULTURAL TRADE AND EXPORT POLICY

National Commission on Agricultural Trade and Export Policy; Administrative Committee; Meeting

The Administrative Committee of the National Commission on Agricultural Trade and Export Policy will meet at 10:00 a.m. on December 19 in Room 1300, Longworth House Office Building, Independence Avenue, Washington, D.C.

The portion of the meeting devoted to the selection of a staff director will be closed to the public, since such portion of the meeting is likely to "disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy."

Kenneth L. Bader,

Chairman.

Editorial Note: This document was received at the Office o f the Federal Register on December 12, 1984. Publication was inadvertently delayed.

[FR Doc. 84-32723 Filed 12-19-84; 12:10 p.m.

BILLING CODE 3410-05-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 246
Thursday, December 20, 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).

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1

CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 49 No. 239 48257.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Thursday, Dec. 13, 1984.

CHANGES IN THE MEETING: Meeting was Canceled.

Listed below is the canceled meeting.

Commission Meeting, Thursday, December 13, 1984, 10:00 a.m.
Third Floor Hearing Room, 1111—18th Street, NW., Washington, D.C.

Partly Open—Partly Closed to the Public

1. Baby Gates Options Briefing
The staff will brief the Commission on the current status of staff activities related to baby gates.

Closed to the Public

2. *Commission Procedures Review*
The Commission and staff will review internal procedures relating to Commission decisionmaking.

Sheldon D. Butts,
Deputy Secretary.
[FR Doc. 84–33186 Filed 12–17–84; 4:36 pm]
BILLING CODE 6355-01-M

2

FEDERAL ENERGY REGULATORY COMMISSION

December 14, 1984.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–4109), 5 U.S.C. 552b:

TIME AND DATE:
December 20, 1984, after the open Commission meeting—approximately 12:00 noon.
This meeting was cancelled on December 17, 1984. This notice appears only as a matter of record.

PLACE: 825 North Capitol Street, NE., Washington, D.C. 20426, Room 9306.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

(1) Oroville-Wyandotte Irrigation District, Project No. 2088
(2) George E. Sansoucy Company, *et al.*,
(3) Panhandle Producing Company, *et al.*
(4) Various Producer-Owned Natural Gas Processing Plants, Docket No. IN83–2–000
(5) South Timbalier Pipeline System, Docket No. IN80–4; Chevron Pipe Line Company, Docket No. IN80–11
(6) Natural Gas Pipeline Company of America, Docket No. IN82–2

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary; Telephone (202) 357–8400

Kenneth F. Plumb,
Secretary.
[FR Doc. 84–33224 Filed 12–18–84; 3:45 pm]
BILLING CODE 6717-01-M

3

FEDERAL ENERGY REGULATORY COMMISSION

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 12/20/84, 49 FR 49015.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m. December 20, 1984.

CHANGE IN THE MEETING: The following docket nos. have been added to the following items:

CAG–23.
CP74–35–002, Pacific Offshore Pipeline Company
CAG–26.
RP83–137–000, Transcontinental Gas Pipe Line Corporation

Kenneth F. Plumb,
Secretary.
[FR Doc. 84–33225 Filed 12–18–84; 3:45 pm]
BILLING CODE 6717-01-M

4

INTERNATIONAL TRADE COMMISSION

[USITC SE–85–02]

TIME AND DATE: 11:00 a.m., January 4, 1985.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Petitions and complaints
(a) Certain convertible rowing exercisers (Docket No. 1123).
(b) Certain double-sided floppy disk drives and components thereof (Docket No. 1124).

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523–0161.

Kenneth R. Mason,
Secretary.
[FR Doc. 84–33196 Filed 12–18–84; 10:55 am]
BILLING CODE 7020-02-M

5

INTERNATIONAL TRADE COMMISSION

[USITC SE–84–59A]

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 49 FR 48259 (12/11/84).

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Friday, December 21, 1984.

CHANGES IN THE MEETING: Addition of agenda item as follows:

2. Petitions and Complaints:
(a) Certain architectural panels (Docket No. 1122).

In conformity with 19 CFR 201.37(b), Commissioners Stern, Liebeler Eckes, Lodwick, and Rohr determined by unanimous vote that Commission business requires the change in subject matter by addition of the agenda item, affirmed that no earlier announcement of the addition to the agenda was possible, and directed the issuance of this notice at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523–0161.

Kenneth R. Mason,
Secretary.
[FR Doc. 84–33197 Filed 12–18–84; 10:55 am]
BILLING CODE 7020-02-M

6

INTERNATIONAL TRADE COMMISSION

[USITC SE–85–01]

TIME AND DATE: 2:00 p.m., January 2, 1985.

PLACE: Room 117, 701 E Street, NW., Washington D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.

2. Minutes.
3. Ratifications.
4. Petitions and complaints.
5. Investigation 701–TA–215/217 [Final] (Oil country tubular goods from Brazil, Korea, and Spain)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523–0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–33198 Filed 12–18–84 10:55 am]

BILLING CODE 7020–02–M

federal register

Thursday
December 20, 1984

Part II

Department of Energy

Nuclear Waste Policy Act of 1982; Availability of Draft Environmental Assessments for Proposed Site Nominations and Announcement of Public Information Meetings and Hearings; Notice

DEPARTMENT OF ENERGY

Nuclear Waste Policy Act of 1982; Availability of Draft Environmental Assessments for Proposed Site Nominations and Announcement of Public Information Meetings and Hearings.

AGENCY: Office of Civilian Radioactive Waste Management, DOE.

ACTION: Notice of availability of draft environmental assessments (EAs); announcement of public information meetings and hearings, and solicitation of comments.

SUMMARY: The Department of Energy (DOE) has published draft EAs for the following nine (9) potentially acceptable sites for a repository for the permanent disposal of spent nuclear fuel and high-level radioactive waste:

Louisiana
- Vacherie dome, Webster Parish and Bienville Parish

Mississippi
- Cypress Creek dome, Perry County
- Richton dome, Perry County

Nevada
- Yucca Mountain, Nye County

Texas
- Deaf Smith County
- Swisher County

Utah
- Davis Canyon, San Juan County
- Lavender Canyon, San Juan County

Washington
- Hanford, Benton County and Franklin County

Written comments are invited. Information meetings will be held to facilitate the public's review of the draft EAs. In addition, public hearings will be held on the draft EAs to receive oral comments. Written and oral comments will be given equal consideration.

DATES: Written comments should be received at DOE by March 20, 1985, to ensure consideration in the preparation of the final environmental assessments.

ADDRESS: Written comments on the draft EAs should be addressed to: Comments—EA, U.S. Department of Energy, ATTN: Comments—EA, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT:

1. (a) For the Richton Dome, Cypress Creek Dome, Vacherie Dome, Deaf Smith County, Swisher County, Davis Canyon, and Lavender Canyon drafts EAs—Jefferson O. Neff, Program Manager, Salt Repository Project Office, Chicago Operations Office, 505 King Avenue, Columbus, OH 43201. Phone: (614) 424–5916.

(b) For the Yucca Mountain draft EA—Donald Vieth, Director, Waste Management Project Office, Nevada Nuclear Waste Storage Investigations, Nevada Operations Office, U.S. Department of Energy, P.O. Box 14100, Las Vegas, Nevada 89109. Phone: (702) 295–3662.

(c) For the Hanford draft EA—O. Lee Olson, Project Manager, Basalt Waste Isolation Project, Richland Operations Office, U.S. Department of Energy, P.O. Box 550, Richland, WA 99352. Phone: (509) 376–7334.

2. Gerald J. Parker, Team Leader, Site Evaluation Team, Siting Division, Office of Geologic Repositories, Office of Civilian Radioactive Waste Management, U.S. Department of Energy, Washington, D.C. 20585. Phone: (202) 252–1116.

3. Robert Mussler, Esq., Deputy Assistant General Counsel for Environment, Office of General Counsel, U.S. Department of Energy, Washington, D.C. 20585. Phone: (202) 252–6947.

SUPPLEMENTAL INFORMATION

I. Previous Notice of Intent

DOE published a Notice of Intent (49 FR 47801) on December 6, 1984, regarding the intention to issue the draft EAs for public review and comment and to conduct public hearings and information meetings.

II. Background

By the end of this century, the United States plans to begin operation of a geologic repository for the permanent disposal of commercial spent nuclear fuel and high-level radioactive waste. Pub. L. 97–425, the Nuclear Waste Policy Act of 1982 (the Act), specifies the process for selecting a repository site and assigns to DOE the responsibility for locating, constructing, operating, closing, and decommissioning the repository.

After the final EAs are issued, the Secretary of Energy will, in accordance with the Act, nominate at least five (5) sites as suitable for characterization, i.e. suitable for futher study. The Secretary of Energy will then recommend not fewer than three (3) of the nominated sites to the President for characterization as candidate sites for the first repository.

As part of the site characterization program, DOE intends to construct one or more exploratory shafts at each of the recommended sites to the depth of the proposed repository and then intends to conduct tests at that depth to determine whether subsurface conditions will allow construction of a repository that will safely isolate radioactive wastes.

After characterization is completed, DOE will again evaluate each site in terms of the guidelines, complete an environmental impact statement, and recommend one site to the President for the first repository. The President may then recommend the site to Congress.

At this point, the host State may issue a notice of disapproval that can be overriden only by a resolution of both Houses of Congress. If the notice of disapproval is not overridden, the President must submit another repository site recommendation within 12 months. If no notice of disapproval is submitted, or if the notice of disapproval is overridden, then, as prescribed by the Act, the site designation is effective, and DOE will proceed to file an application with the NRC to obtain a construction authorization for a repository at that site.

III. Siting Guidelines

In accordance with the Act, DOE issued general guidelines for the recommendation of sites for nuclear waste repositories on December 6, 1984, (49 FR 47714). The guidelines establish performance objectives for a geologic repository system, define the basic technical requirements that candidate sites must meet, and specify how the DOE will implement its site-selection process.

IV. Content of the EAs

The Act requires that DOE prepare EAs to accompany site nominations. The draft EAs contain the following kinds of information and evaluations to meet the requirements of the Act:

- A description of the decision process which led to nomination;
- A description of the site and its surroundings;
- An evaluation of the effects of site characterization at such site on the public health and safety and the environment;
- An assessment of the regional and local impacts of locating the proposed repository at the site;
- An evaluation as to whether the site is suitable for site characterization;
- An evaluation as to whether the site is suitable for development as a repository; and
- A reasonable comparative evaluation of the site with other sites and locations that have been considered.

V. Comment Procedures

A. Availability of Draft EAs

Copies of the draft EAs have been distributed to Federal, State, and local agencies, as well as to organizations

and individuals which have requested information about the nuclear waste repository siting process. Requests for copies of draft EAs should include identification of the draft EA of interest from the above list of locations, and the requestor's name, address, and zip code. A daytime telephone number and area code should be included, if available. Send written requests to:

EA, U.S. Department of Energy, ATTN: EA, 1000 Independence Avenue, SW., Washington, DC 20585

Requests for copies of the draft EAs may also be made by telephone:

Nationwide Toll-Free—800–858–1600
Maryland (outside of Washington, DC area)—800–638–2054
Metropolitan Washington, DC area—530–7700

Copies of all nine draft EAs are available for public inspection at the following DOE Public Reading Rooms at the indicated times Monday through Friday, except Federal holidays and where noted below:

- DOE Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, 8:00 a.m. to 4:00 p.m.
- Albuquerque Operations Office, Kirtland Air Force Base, National Atomic Museum Library, Public Reading Room, Albuquerque, New Mexico 87115, (505) 844–8443, 9:00 a.m. to 5:00 p.m.
- Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois 60439, 8:00 a.m. to 5:00 p.m.
- Idaho Operations Office, 550 2nd Street, Headquarters 199, Idaho Falls, Idaho 83401, (208) 526–0271, 8:00 a.m. to 5:00 p.m.
- Nevada Operations Office, Public Docket Room 2753 S. Highland, Las Vegas, Nevada 89114, (702) 734–3521, 8:00 a.m. to 4:30 p.m.
- Oak Ridge Operations Office, 200 Administration Road, Room G208, Federal Building, Oak Ridge, Tennessee 37830, (615) 576–1218, 8:00 a.m. to 4:30 p.m.
- Richland Operations Office, Hanford Science Center-Rockwell Hanford Operations, 825 Jadwin Avenue, Federal Building, Richland, Washington 99352, (509) 376–8273, Sunday 1:00 p.m. to 5:00 p.m., Monday through Saturday 9:00 to 5:00 p.m.
- San Francisco Operations Office, 1333 Broadway, Wells Fargo Building, Reading Room, Room 240, Oakland, California 94612, (415) 273–4358, 8:30 a.m. to 4:00 p.m.
- Savannah River Operations Office, 211 York Street, N.E., Federal Building, Aiken, South Carolina 29801, (803) 725–3267, 8:30 a.m. to 4:00 p.m.

B. Written Comments

Interested parties are invited to provide written comments on the draft EAs to: Comments—EA, U.S. Department of Energy, ATTN: Comments—EA, 1000 Independence Avenue, SW., Washington, D.C. 20585.

All comments should be received by DOE by March 20, 1985 to ensure consideration in preparing the final EAs. The specific EA being addressed in each comment should be clearly identified.

C. Public Hearings

DOE plans to schedule public hearings in the six states containing potentially acceptable sites to receive comments on the draft EAs. The specific date, time, and location for each hearing, and procedures for the conduct of the hearings, will be announced in a future **Federal Register** notice.

D. Public Meetings

In addition to the public hearings, DOE will also conduct informal public information meetings on the draft EAs in: Minden and Baton Rouge, Louisiana; Richton, Biloxi, and Jackson, Mississippi; Las Vegas, Beatty, and Reno, Nevada; Austin, Tulia and Hereford, Texas; Moab, Monticello, and Salt Lake City, Utah; and Olympia, Richland, and Seattle, Washington.

These meetings will be for the purpose of facilitating the review of the draft EAs by the public and are *not* for the purpose of receiving public comments. The public is encouraged to comment in writing or at the public hearings noted above.

DOE will issue specific information on the time and place of the meetings in the local news media at each location. For additional information on the public information meetings, Messrs. Neff, Olson, or Vieth may be contacted at the addresses and phone numbers listed above.

Issued in Washington, D.C., December 14, 1984.

Robert H. Bauer,

Associate Director for Resource Management, Office of Civilian Radioactive Waste Management.

[FR Doc. 84–33039 Filed 12–19–84; 8:45 am]

BILLING CODE 6450–01–M

federal register

Thursday
December 20, 1984

Part III

Environmental Protection Agency

FY 84/85 Pesticide Registration Standards and Special Reviews and Data Call-In Schedule for Review and/or Issuance; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30085; FRL-2739-7]

FY 84/85 Pesticide Registration Standards and Special Reviews, and Data Call-In Schedule for Review and/or Issuance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice describes measures being implemented to improve the process and schedule for reviewing pesticides during reregistration. It lists pesticides whose Registration Standards were completed in FY 84, as well as those scheduled for review and/or issuance in FY 85. It also announces the availability of Chemical Information Fact Sheets on completed Registration Standards. Information pertinent to the pesticides to be reviewed should be submitted on or before the "Data to be Submitted by" dates in Unit II of this notice; otherwise, there may be insufficient time to incorporate the informaion into the Standard review process. Registration Standards may be purchased from the National Technical Information Service (NTIS) approximately 60 days after their issuance. This notice lists Standards currently available from NTIS. Chemical Information Fact Sheets, providing a summary of the 84P-2956 Registration Standard, may be obtained from EPA through the address listed below. This notice also lists Special Review outputs for FY 85, along with the Data Call-In schedule and requirements as of September 30, 1984.

DATE: Refer to tables for dates by which information should be submitted.

ADDRESSES: 1. By mail submit comments to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of a comment that does not contain CBI must be submitted for inclusion in the public record. Information not designated "confidential" may be disclosed publicly by EPA without prior notice to the submitter.

2. Approximately 60 days after their issuance, Registration Standards may be purchased from the:

National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA, 22152, (703-487-4650).

Prices for paper copies vary depending on length of the document; as of the publication date of this notice, all microfiche copies are $4.50 each. Since prices are subject to change, please call NTIS regarding current document prices before placing your order. NTIS accepts all major credit cards, as well as charges to deposit accounts. Documents may be ordered by supplying NTIS with the document stock number, listed in Unit II of this notice. If the stock number is unlisted, the document may be ordered by the title "Guidance for the Reregistration of Pesticide Products Containing [Name of Chemical]."

FOR FURTHER INFORMATION CONTACT:

By mail: 1. Cheryl Smith, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 1114, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-0592).

2. For additional information on Chemical Information Fact Sheets, and to obtain copies of specific fact sheets, contact: By mail:

Nancy Hemming, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20406.

Office location and telephone number: Rm. 716, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA, 22202, (703-577-7700).

3. For information on status reports on Data Call-in, Registration Standards and Special Review, and to obtain copies of status reports, contact:

By mail: Sherada Hobgood, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Proteciton Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 728, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA, 22202, (703-557-7700).

Status reports are produced on a biannual basis.

SUPPLEMENTARY INFORMATION: The Registration Standards program is EPA's approach to the reassessment and reregistration of pesticides as mandated by Congress in section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The 48,000 pesticide products currently registered by EPA are grouped into 600 distinct active ingredients. The scientific data base underlying each chemical is thoroughly reviewed, and essential but missing scientific studies are identified. The reassessment may; require new testing or retesting to ensure the safety of the compound by contemporary scientific standards. The results of the review are reflected in a Registration Standard, which states the regulatory position resulting from the review, the rationale for that position, additional data needed to complete the assessment, and label warnings or other regulatory restrictions resulting from the review.

A Special Review is initiated when the Agency believes that a pesticide may pose an unreasonable adverse effect on man or the environment.

The purpose of this notice is to inform the public of measures being implemented to improve the process and to announce the schedule for reviewing pesticides under the Registration Standards program. This document lists chemicals reviewed in FY 84 and those currently being reviewed, provides an opportunity for persons to present and elaborate on data pertinent to the reviews, and explains how information resulting from the reviews can be obtained. It provides registrants an opportunity to inform EPA if they are not planning to support the chemicals under review. Registrants should also inform EPA if they are not willing to support specific use patterns for these chemicals. This notice also lists Special Review outputs for FY 84 and scheduled outputs for FY 85, the Data Call-In schedule and list of required data as of September 30, 1984.

The public is encouraged to provide information relevant to the Ageny's review of pesticides. Typically, information should be in one or more of the following categories: human toxicology, residue chemistry, product chemistry, environmental fate, human exposure or ecological effects.

I. The Process and Schedule for Reregistration Review

EPA is implementing measures for reregistration which will serve two purposes:

(1) To assure that key data are available at the time of the initial review.

(2) To move up in the review queue those chemicals which have the greatest

potential for causing unreasonable adverse effects.

A. Assuring That Key Data Are Available for the Initial Review

1. *Chronic toxicity data call-in for food use chemicals.* Since 1981, the Agency has been requiring registrants to generate data to fill gaps in the existing long-term chronic toxicity data base. These data include chronic effects, oncogenicity, teratogenicity, and reproductive effects. These studies generally take the longest time to generate of all those which could be required. They are needed routinely for food use chemicals, and are most likely to form the basis of a Special Review should risk-related concerns be identified. The Agency has been calling in these data for about 70 chemicals per year, which is almost three times the rate at which chemicals are undergoing Registration Standard review. At the current rate, the call-in of chronic toxicity data for food use chemicals would be completed by 1987. However, the Agency has assigned additional resources to this project to complete the notification of registrants in FY 85.

2. *Product chemistry data call-in.* Without adequate and up-to-date product chemistry data, it is difficult for OPP scientists to characterize a chemical adequately so as to identify the types of data needed for a full health and safety assessment. Thus, when the Registration Standard review begins, it is essential that the product chemistry data set for the active ingredient is complete, including the Confidential Statement of Formula. It is also necessary to identify products which contain particular inert ingredients of concern and registrants who are responsible for generating generic chemical data. The product chemistry data call-in will be completed in FY 85.

3. *Require registrants to identify and fill data gaps.* One way to generate data quickly and to reduce the Agency resources spent in identifying data gaps is to require registrants to identify and fill data requirements. The Agency has not yet instituted a Data Call-In program for non-food use chemicals. But under a pilot program in FY 85, registrants of certain non-food use chemicals will be required to apply Agency data guidelines to their chemicals, identify which use patterns they are willing to support and which data are applicable to their chemical's use pattern, determine which data have already been submitted to the Agency, and identify what data gaps remain to be filled. Registrants then must commit to and generate any missing data in advance of Agency review of existing data. Depending on the results of the pilot program, this approach may be expanded to other non-food use chemicals in the future.

B. Assign Priority to Chemicals With the Greatest Potential for Causing Unreasonable Adverse Effects

The current ranking scheme for Registration Standards groups the approximately 600 active ingredients into 48 use clusters based on their predominant use pattern. Each chemical was scored based on an equation taking into account production, potential human exposure, and potential ecological exposure factors. The ranking scheme was heavily weighted toward food uses, as requested by Congress. Once each chemical was rated, each cluster was given a score based on the average score for chemicals in the cluster. Clusters were then ranked in descending order of their scores.

Originally, EPA anticipated that human toxicity would be a factor in the ranking equation. However, upon examination, it was found that for many chemicals there were insufficient data on which to base such a ranking and the effort to review available data in order to assign a score would be too resource-intensive. Thus, the equation was limited to factors such as volume and registered use patterns, which were easily accessible and could act as surrogate indicators of potential risk.

The following revisions to the ordering scheme will be made to ensure that chemicals with the greatest potential to cause unreasonable adverse effects are reviewed first:

1. *Defer low volume or otherwise low priority chemicals.* Some of the chemicals in a use cluster have large market shares and others have very low market shares. Chemicals with inherently limited utility would probably not have increased exposure even with changes in the availability of competing chemicals. Where this is the case, and there is no known hazard associated with the chemical, its review will be deferred.

2. *Accelerate review schedule for chemicals with identified adverse effects.* FIFRA section 6(a)(2) requires registrants to submit data or other information to the Agency which show the chemical to present potentially unreasonable adverse effects. The Agency is currently strengthening its policy regarding the use of sections 6(a)(2) and 3(c)(2)(B) to require registrants to submit data showing certain types of effects, such as excess residues on food or feed crops or ground water contamination, for immediate Agency attention. Depending on the outcome of EPA's review of submitted data, the chemical may be scheduled for early Registration Standard review.

3. *Accelerate review schedule for chemicals with ground water contamination potential.* The Agency has completed the call-in of data necessary to assess the ground water contamination potential of over 140 pesticides. When the data are received, the Agency will assess each chemical's potential for contaminating ground water and pesticides with such potential will be considered for early review.

4. *Accelerate review of chemicals with tolerance problems.* A number of chemicals have tolerances which were set when little or no residue data were available, tolerance exemptions which can no longer be justified, interim tolerances, or theoretical maximum residue concentrations which exceed the acceptable daily intake, based on FDA's market basket of the typical American diet. These chemicals will also be considered for accelerated Registration Standard review.

All of these actions are designed to accelerate the reregistration review of pesticides with the greatest potential for causing concern.

II. Data Submittal and Issuance of Standards and Fact Sheets

Registration Standards were completed for the following chemicals in FY 84:

Aldicarb	Fensulfothion
Amitrole	Fonofos
Anilazine	Heliothis
Captafol	Hypochlorite
Carbaryl	Linuron
Carbofuran	Phorate
Carbophenothion	Potassium Bromide
Chlorobenzilate	Potassium Iodate
Chlorothalonil	Simazine
Chlorpyrifos	Thiram
Daminozide	TPTH
DCNA	Trichlorofon
Dicofol	

The chemicals in the following table are scheduled for Registration Standard review in FY 85; pertinent information should be submitted and Standards issued by the dates listed.

REGISTRATION STANDARD REVIEW IN FISCAL YEAR 1985

Chemical (cluster)	Data to be submitted by	Registration standard to be issued by
Norflurazon (H-3)	Date has passed	11/84
Cyanazine (H-2)	do	12/84
Propachlor (H-3)	do	12/84
Disulfoton (I-2)	do	12/84
Naptalam (H-3)	do	1/85
Demeton (I-1)	do	2/85
Picloram (H-4)	do	2/85
TCC (R-4)	do	2/85

REGISTRATION STANDARD REVIEW IN FISCAL YEAR 1985—Continued

Chemical (cluster)	Data to be submitted by	Registration standard to be issued by
Pendamethalin (H-3)	....do	3/85
Fluchloralin (H-3)	....do	3/85
Omadine-NA (R-11)	....do	3/85
Amitraz (I-3)	....do	4/85
Metribuzin (H-3)	....do	4/85
Thiophanate-Methyl (F-9)	....do	5/85
Sulfuryl Fluoride (I-10)	....do	5/85
Diflubenzuron (I-1)	....do	5/85
Oryzalin (H-3)	....do	6/85
Cyhexatin (I-3)	....do	6/85
Nitrapyrin (R-11)	....do	6/85
Dipropetryn (H-3)	....do	6/85
Acephate (I-1)	....do	6/85
Monocrotophos (I-1)	....do	6/85
3,5 Dibromosalicylanilide (R-4)	Nov. 30, 1984	7/85
Bentazon (H-3)	....do	7/85
Copper sulfate (F-1)	Dec. 21, 1984	7/85
K Permanganate (R-11)	Dec. 28, 1984	8/85
Parathion (I-1)	....do	8/85
Chlordimeform/HCl (I-1)	Dec. 31, 1984	8/85
Fluometuron (H-3)	Jan. 11, 1985	8/85
Perfluidone (H-3)	Jan. 18, 1985	8/85
Landrin (I-2)	Jan. 25, 1985	8/85
Pronamide (H-3)	....do	8/85
Lindane (I-6)	Feb. 28, 1985	9/85
Glyphosate (H-3)	Mar. 1, 1985	9/85
Thiophanate-Ethyl (F-9)	Mar. 8, 1985	10/85
Hyamine 3500 (R-4)	Apr. 8, 1985	11/85
Trifluralin (H-3)	....do	11/85
Methyl bromide (I-9)	Apr. 15, 1985	11/85
Ethylene dichloride (I-9)	Apr. 30, 1985	12/85
Captan (F-1)	May 20, 1985	12/85
Telone (I-9)	....do	12/85
Aldrin (I-10)	May 27, 1985	1/86
Dieldrin (I-10)	....do	1/86
Chlordane (I-10)	June 28, 1985	2/86
Heptachlor (I-10)	....do	2/86
Formaldehyde (R-8)	July 12, 1985	2/86
Hexylene glycol (R-11)	July 19, 1985	2/86
Phosphamidon (I-1)	July 26, 1985	2/86
Dinoseb (H-6)	Aug. 2, 1985	3/86
BTC 2125 (R-4)	Aug. 9, 1985	3/86
Paraquat (H-5)	Aug. 16, 1985	3/86
Benomyl (F-1)	Aug. 23, 1985	3/86
Hexachlorophene (F-3)	Sept. 13, 1985	4/86
Methyl Parathion (I-1)	Sept. 20, 1985	4/86

Upon request, EPA will furnish Chemical Information Fact Sheets, which summarize information about a specific pesticide or group of pesticides. Fact sheets include a description of the chemical, use patterns and formulations, science findings, a summary of the Agency's regulatory position/rationale, and a summary of major data gaps. They are issued if one of the following regulatory actions occurs:

(1) Issuance of a Registration Standard.

(2) Registration of a significantly changed use pattern.

(3) Registration of a new chemical.

Fact sheets have been prepared for Registration Standards issued since June of 1983, and for new chemicals and for chemicals with significantly changed use patterns registered since January 1984. The fact sheets now available are:

Aldicarb
3-Amino-1, 2, 4-Triazole
Anilazine
Arosurf MSF
Butylate
Captafol
Carbaryl
Carbofuran
Carbophenothion
Chlorobenzilate
Chlorothalonil
Chlorpyrifos
Cryolite
Daminozide
Dicamba
2, 6-Dichloro-4-Nitroaniline
Dicofol
Diuron
EPTC
Ethoprop
Fenaminosulf
Fensulfothion
Fonofos
Formetanate HCL
Heliothis
Hypochlorite
Linuron
Naled
Phorate
Potassium Bromide
Potassium Iodate
Simazine
Terbufos
Thiram
Trichlorfon
TPTH

If you wish to be placed on a mailing list for Chemical Information Fact Sheets issued in one or all of the three categories mentioned above, send your name and address to Nancy Hemming at the address given above.

The Registration Standards listed below are available from NTIS. When ordering a Standard, the applicable document stock number should be supplied to NTIS; the numbers assigned thus far are listed below. Alternative names for the chemicals are in parentheses. Use of brand or trade names is not intended as endorsement or approval by EPA of a particular product, nor is their absence intended to signify Agency disapproval.

Chemical	NTIS Stock No.
Aldicarb (Temik)	PB 84-207653.
Aliette (Fosetyl Al)	PB 84-206564.
Aluminum phosphide	PB 82-137514.
Amitrole (3-amino-s-triazole)	
Ammonium sulfamate	PB 82-133570.
Anilazine	PB 84-168301.
Aspon (Thiobencarb)	PB 84-206549.
Atrazine	PB 84-149451.
Avitrol (4-aminopyridine) Bolstar (Sulprofos).	PB 82-133646.
Barium metaborate	PB 84-168376.
Bifenox	PB 82-007.
BKLFI-2 (poly(oxyethylene) ehtyl monoesters of 5- (and 6-) carboxy-4-hexyl-2-cyclohexine-1-octanoic acid-iodine complex).	PB 82-002.
Bromacil	
Butoxicarboxime (Plantpin)	PB 82-177585.
Butylate	540/RS-83-017.
Carbaryl	
Carbofuran (Furadan)	
Carbophenothion	
Carboxin	PB 82-132994.
Chloramben	PB 82-134347.
Chlorobenzilate	PB 85-107605.
Chloroneb	PB 81-123804.
Chloropicrin	
Chlorsulfuron (Glean)	PB 85-122506.
Coumaphos (Co-ral)	PB 82-133570.
Cryolite	
Cycloheximide	PB 84-211945.
Daminozide	
DCNA	PB 84-210178.
Dialifor	PB 82-133638.
Diallate (Avadex)	
Dicamba (Banvel D)	PB 84-243492.
Dichlone	PB 81-207383.
Dicofol (Kelthane)	PB 84-160084.
Dicrotophos	PB 82-204383.
Dimethoate	
Dioxathion	
Diuron	PB 84-210327.
Endosulfan	PB 82-243999.
EPTC	
Ethion	
Ethoprop (Mocap)	PB 84-210194.
Ethoxyquin	PB 82-131418.
Fenaminosulf	
Fensulfothion	
Fonofos (Dyfonate)	PB 84-210186.
Formetanate hydrochloride	PB 84-141456.
Fumarin	PB 81-123612.
Heliothis NPV	
Hexazinone (Velpar)	
Isopropalin	PB 82-131293.
Linuron	
Magnesium phosphide	PB 82-195777.
MCPA	
Metalaxyl (Ridomil)	PB 82-172297.
Methidathion (Supracide)	
Methamidophos	
Methomyl	PB 82-180738.
Methoprene	
Metolachlor	PB 81-123280.
Monuron	
Monuron TCA	PB 84-166669.
Naled (Dibrom)	PB 84-158980.
Naphthalene	PB 82-139437.
Naphthaleneacetic acid	PB 82-131145.
OBPA (10-10'-oxybisphenoxy-arsine)	PB 82-172271.
Phosalone	RS 81-010.
Simazine	PB 84-212349.
Sulfur	
Temephos (Abate)	PB 82-140641.
Terbacil	PB 85-120186.
Terbufos (Counter)	PB 84-210335.
Terrazole	PB 81-126716.
Thiram	PB 85-102705.
Trichlorofon	
Warfarin	PB 82-140716.
Zinc phosphide	PB 85-102499.
6-12	PB 81-234098.

As more Registration Standards are issued, the list of documents available from NTIS will be updated periodically.

III. Special Review Outputs

When scientific studies suggest that a chemical may meet or exceed a risk criterion, the chemical is subject to Special Review. In the initial investigation, if a risk criterion is met, the validation if the trigger studies combined with the exposure analysis produces the Agency's preliminary position on a pesticide's potential risk. The document describing this position is referred to as position document one (PD 1).

After a PD 1 is published, there is a comment period during which stated risks may be rebutted. If all trigger studies are successfully rebutted, the pesticide is returned to the registration process and the Special Review is terminated for all or some of the uses. The results of this phase are incorporated into a second position document (PD 2) which states the Agency's regulatory action for the pesticide. If rebuttals are successful for all or some of the uses, a PD 2 is published as the final document of the Special Review. When rebuttals are not successful, the rebuttal assessment, risk analysis, benefits analysis, risk/benefit synthesis and the proposed regulatory position are presented in a document termed PD 2/3.

The proposed decision (PD 2/3) is submitted to a Scientific Advisory Panel for review of its scientific basis and to the Secretary of Agriculture for comment. These comments, plus any industry or public comments on the

proposed decision, are evaluated. The Agency's assessment of these comments and the final decision on the regulatory action are contained in a document termed PD 4.

The Agency may deviate from the aforementioned procedures and issue documents simultaneously, for example, as long as circumstances necessitate such action and there is compliance with FIFRA.

The following table lists chemicals which were subject to Special Review in FY 84 and the position documents which were issued that year.

SPECIAL REVIEW IN FISCAL YEAR 1984

Chemical	Position document
Alar	PD 1.
Aldicarb	PD 1.
Amitrole	PD 1.
Creosote (non-wood use)	PD 2/3.
Creosote (wood use)	PD 4.
Cypermethrin	PD 4.
DBCP (voluntary cancellation)	PD 4.
Dicofol	PD 1, PD 2/3.
EDB (citrus use)	PD 4.
EDB (grain use)	PD 4.
EDB (use on mangos and other commodities, miscellaneous fruits and vegetables).	PD 4.
Endrin (voluntary cancellation)	None.
Ethalfluralin	PD 1, PD 2/3, PD 4.
Inorganic Arsenicals (wood use)	PD 4.

SPECIAL REVIEW IN FISCAL YEAR 1984—Continued

Chemical	Position document
Larvadex	PD 4.
Linuron	PD 1.
Pentachlorophenol (wood use)	PD 4.

The following table lists chemicals scheduled for Special Review in FY 85 and the position documents scheduled for issuance.

SPECIAL REVIEW IN FISCAL YEAR 1985

Chemical	Position document
Alachlor	PD 1.
Alachlor	PD 2/3.
Alar	PD 2/3.
Aldicarb	PD 2/3.
Captafol	PD 1.
Captan	PD 2/3.
Cyanazine	PD 1.
Dicofol	PD 4.
Inorganic Arsenicals (non-wood use)	PD 2/3.
Pentachlorophenol (non-wood use)	PD 2/3.
Sodium monofluoroacetate (Compound 1080)	PD 4.
Triphenyltin hydroxide (TPTH)	PD 1.

IV. Data Call-In Program

The Data-In Program requires existing registrants of active pesticide chemicals to provide the Agency with needed studies under section 3(c)(2)(B) of FIFRA. Such studies, including chronic toxicology, product chemistry, residue and environmental fate data, are an integral part of the data base used to reassess each chemical during reregistration or to resolve special concerns such as whether the chemical enters ground water.

Under Data Call-In, the Agency:

(1) Determines which types of data are required for each chemical.

(2) Identifies those test categories with no valid data submitted.

(3) Notifies registrants to ensure that needed data are available or are being generated before a chemical is reassessed for reregistration. The four types of long-term toxicological data which are typically requested concern chronic feeding, oncogenicity, reproduction and teratogenicity (commonly referred to as the CORT requirements).

The following table lists the chemicals addressed by the Data Call-In Program as of September 30, 1984, the dates on which notices were sent to registrants, the required studies and their due dates/status.

DATA CALL-IN PROGRAM AS OF SEPT. 30, 1984

Chemical	Date of notice	Data call-in requirements	Due date (status)
Abietylamine	June 24, 1983	None	(3)
Acifluorfen	Sept. 30, 1982	None	(1)
Alachlor	Jan. 5, 1982	O–1s	(2)
Aldicarb	Sept. 21, 1981	T–1s	(2)
Aldrin	Feb. 23, 1984	None	N/A
Ametryn	Aug. 15, 1983	CF–2s; O–2s; R–1s	9/87
		T–2s	11/85
Amitraz	July 14, 1983	None	(4)
Ammonium Polysulfide	Aug. 6, 1983	CF–2s; O–2s; R–1s; T–2s	(5)
Anilazine	Mar. 31, 1983	None	(4)
Asulam	Aug. 26, 1983	None	(1)
Atrazine	July 26, 1982	O–1s; T–1s	(4)
Azinphos methyl	Aug. 4, 1983	None	(1)
Bacillus Thuringiensis	June 24, 1983	None	N/A
Barban	Aug. 26, 1983	CF–2s; O–2s	9/87
		R–1s; T–1s	(2)
		T–1s	11/85
Benomyl	Mar. 18, 1983	Field monitoring	10/84
Bentazon and Sodium Bentazon	July 1, 1982	None	(1)
Bollex	Aug. 31, 1981	None	(1)
Bromoxynil	Mar. 28, 1983	CF–1s; O–1s	4/87
		T–1s	6/85
Bromoxynil (GW)	May 31, 1984	EF (D, Soil ME, MO)	(2)
		EF (D); PC	3/85
Bufencarb	Apr. 15, 1981	CF–2s; O–2s; R–1s; T–1s	(3)
Bufencarb (GW)	July 31, 1984	None	(3)
Butachlor	Mar. 10, 1983	None	(3)
Butylate	Dec. 10, 1981	CF–1s; O–1s; T–2s	(2)
		R–1s	1/86
Calcium Cyanamide	Aug. 11, 1983	CF–2s; O–2s; R–1s; T–2s	(3)
CAMA (Methanearsonate)	Sept. 26, 1983	CF–2s; O–2s	10/87
		T–1s	12/85
Captafol	Sept. 24, 1981	CF–1s; O–2s; R–1s; T–2s	(2)
Carbofuran	Feb. 23, 1981	None	(1)
Carbon Tetrachloride (EDB)	Mar. 16, 1984	R–1s; T–2s	6/86
		PC; RC	4/85
Carbophenothion	Feb. 2, 1981	O–1s	10/88
		T–1s	12/86
CDAA	Dec. 15, 1983	CF–2s; O–2s; R–1s; T–2s	(3); (5)
Chlordane	Feb. 23, 1984	None	N/A
Chlordimeform/Chlordimeform Hydrochloride	Jan. 19, 1982	T–1s	(2)
Chlorfenviphos	Jan. 19, 1984	O–1s; T–1s	(2)
Chlorobenzene	Mar. 30, 1983	None	(4)

DATA CALL-IN PROGRAM AS OF SEPT. 30, 1984—Continued

Chemical	Date of notice	Data call-in requirements	Due date (status)
Chlorobenzilate	July 22, 1982	T-2s	10/84
		R-1s	8/86
		Explosure data	(2)
Chloroform	Nov. 28, 1983	None	(4)
Chloroform (EDB)	May 9, 1984	PC; RC	5/85
Chloronitropropane	July 13, 1983	None	(3)
Chloropropham	Dec. 20, 1983	None	(1)
Chloropropylate	Aug. 15, 1983	None	(3)
Chlorothalonil	Sept. 14, 1981	T-2s	(2)
Chlorpyrifos	Jan. 9, 1981	None	(1)
Chromic Acid	Mar. 29, 1983	None	(4)
Copper Bordeaux (mixture)	Sept. 30, 1981	None	N/A
Copper Carbonate	do	None	N/A
Copper Monohydrate	Sept. 29, 1981	None	N/A
Copper Naphthenates	Sept. 28, 1981	None	N/A
Copper Oxides	Sept. 15, 1981	None	N/A
Copper Oxychloride	do	None	N/A
Copper Quinolinolate	do	None	N/A
Copper Sulfate Basic	Sept. 29, 1981	None	N/A
Crufomate	Aug. 12, 1983	O-1s; R-2s; T-2s	(3); (5)
Cryolite	July 28, 1981	CF-s; O-2s; R-1s; T-2s	(4)
Cyanazine	July 1, 1982	O-1s; T-2s	(2)
		Subchronic 90-day inhalation	(4)
Cycloate	Mar. 28 1984	CF-1s	4/88
		R-1s; T-1s	(2)
		T-1s	6/86
Cycloate (GW)	June 22, 1984	EF (D, MO, FD); PC	(2)
		EF (D)	3/85
		EF (Soil ME)	7/86
Cyhexatin	June 17, 1983	O-1s	(2)
Cyprazine	Jan. 19, 1982	CF-1s; O-2s; R-1s; T-2s	(3); (5)
DAMA (Methanearsonate)	Sept. 26, 1983	CF-2s; O-2s	10/87
		T-1s	12/85
2, 4 DB	July 22, 1982	CF-1s; O-2s; R-1s	8/87
DCNA	Mar. 31, 1983	None	(4)
DCPA	Feb. 27, 1984	O-1s	3/88
		T-1s	5/86
		T-1s	(2)
Demeton	June 10, 1981	None	N/A
Desmedipham	Jan. 6, 1984	CF-2s; O-2s; R-1s	2/88
		T-1s	3/86
		T-1s	(2)
Diazinon	Feb. 18, 1983	T-1s	(2)
Dicamba	Sept. 28, 1982	O-1s; MU; Subchronic toxicity	(4)
Dichlobenil	Aug. 18, 1983	O-2s	9/87
		T-1s	11/85
Dichlorvos	Mar. 23, 1983	MU; In vivo micronucleus assay; Dominant lethal assay	4/85
Diclofop methyl	Apr. 20, 1982	None	(1)
Dieldrin	Feb. 23, 1984	None	N/A
Difenzoquat	Aug. 4, 1983	T-1s	10/85
Diflubenzuron	Jan. 25, 1982	None	(1)
Dimethoate	Nov. 25, 1981	CF-1s; O-2s	12/85
		T-2s; MU; Applicator exposure	(2)
Dinitramine	Aug. 27, 1981	CF-1s; O-2s; R-1s; T-2s; Avian subacute dietary LC50; One cold water fish LC50; One warm water fish LC50; 21-day cataractogenic; Residue and manufacturing process.	(5)
Dinocap	Sept. 1, 1981	O-2s; R-1s; T-1s T-1s	(2) 1/85
Dinoseb (GW, CT)	June 13, 1984	O-1s; R-1s	7/88
		T-1s	9/86
		EF (D, MO); PC	4/85
		EF (Soil ME, FD)	7/86
Dioxathion	Nov. 14, 1981	CF-1s; R-1s; T-2s	(4)
Diphenamid	Feb. 21, 1984	O-1s	3/88
		T-2s	5/86
Diphenamid (GW)	June 26, 1984	EF (D, MO); PC	4/85
		EF (Soil ME, FD)	7/86
Disulfoton	Feb. 27, 1981	O-1s	6/85
		O-1s; T-2s; Neurotox-1s	(2)
2, 2-dithiobis-benzothiazole	Nov. 18, 1983	CF-2s; O-2s; R-1s; T-2s;	(3); (5)
2, 2-dithiobis-benxothiazole (GW)	May 31, 1984	EF; PC	(3); (5)
Dodine	Aug. 13, 1981	CF-1s; O-2s; R-1s; T-2s	(2)
Dormant Oils	July 25, 1983	None	N/A
Dowicide 31:32	Mar. 31, 1983	None	(4)
Dowicil A-40	Sept. 28, 1982	None	(4)
DSMA (Methanearsonate)	Sept. 26, 1983	CF-2s; O-2s	10/87
		T-1s	12/85
EGT	Feb. 1, 1982	None	(3)
Endothall	Mar. 12, 1984	CF-2s; O-2s	4/88
Endrin	Dec. 7, 1981	None	(1)
EPN	Sept. 17, 1984	T-2s	11/86
		O-2s	9/88
		Field study—foliar dislodgeable residues (on all crops for which EPN is registered).	4/86
EPTC	Oct. 29, 1981	CF-1s; O-1s; R-1s; T-1s	(2)
		T-1s	1/85
Ethion	June 18, 1981	CF-1s; O-2s; R-1s	7/85
		T-2s	(2)
Ethiofencarb (GW, CT)	Aug. 30, 1984	None	(3)
Ethofumesate	Nov. 25, 1983	T-1s	2/86
Ethoprop	Feb. 4, 1981	CF-1s; O-2s; R-1s; T-2s	(2)
Ethylene Dichloride	July 2, 1981	T-2s; R-1s	(2)

DATA CALL-IN PROGRAM AS OF SEPT. 30, 1984—Continued

Chemical	Date of notice	Data call-in requirements	Due date (status)
Feriac	Aug. 22, 1983	T-1s	9/87
Fenaminosulf	Mar. 31, 1983	None	(4)
Fensulfothion	Feb. 18, 1981	CF-1s; O-1s	6/87
		T-1s	7/85
Fentin Hydroxide	Nov. 4, 1983	None	(4)
Fenvalerate	Sept. 9, 1981	T-1s	(2)
Ferbam	Sept. 1, 1981	CF-1s; O-2s; R-1s; T-2s	(2)
Fluchloralin	Dec. 1, 1982	T-1s	3/85
Fluometuron	Sept. 8, 1982	CF-1s; O-2s; R-1s	10/86
		T-1s	12/84
Fluometuron (GW)	June 19, 1984	EF (D, Soil ME, MO, FD)	(2)
		PC	4/85
Folpet	Sept. 1, 1981	CF-1s; O-1s	9/85
		CF-1s; R-1s	10/87
		O-1s; T-2s	(2)
Fonofos	Feb. 17, 1981	O-1s	3/87
		T-1s	(2)
Formetanate and Formetanate Hydrochloride	May 14, 1981	CF-1s; O-2s; R-1s; T-2s	(4)
Glyphosate	Aug. 11, 1982	O-1s	(2)
Gossyplure	June 2, 1981	None	N/A
Grandlure Mixture	June 1, 1981	None	N/A
Heliothis Polyhedrosis Virus	May 27, 1981	None	N/A
Heptachlor	Feb. 23, 1984	None	N/A
Hexachlorobenzene	Mar. 30, 1983	None	(4)
Hexachlorophene	Sept. 29, 1982	None	(4)
Hexazinone	N/A	None	(4)
Hexylene Glycol	Apr. 3, 1983	None	(4)
Karbutilate	Feb. 21, 1984	CF-2s; O-2s; R-1s; T-2s	(3); (5)
Kerosene	June 12, 1984	None	N/A
Landrin	Jan. 6, 1981	O-2s	1/87
		T-2s	(2)
Lime	Mar. 31, 1983	None	(4)
Lindane	Feb. 17, 1984	None	N/A
Malathion	Feb. 29, 1984	CF-1s	3/88
		T-1s	5/86
MAMA (Methanearsonate)	Sept. 26, 1983	CF-2s; O-2s; T-1s	(3)
Mancozeb (EBDC)	Jan. 17, 1983	MU	11/85
		ME; Dermal absorption	(2)
Maneb (EBDC)	Jan. 17, 1983	MU; ME; Dermal absorption	3/85
Methazole	June 29, 1983	None	(4)
Methoxychlor	May 23, 1984	T-1s	8/86
Methyl Bromide	Jul. 21, 1981	O-2s	1/87
		R-1s	1/86
Methyl Bromide (EDB)	Mar. 8, 1984	PC; RC	4/85
Methyl Bromide (GW)	May 16, 1984	EF (D, MO)	3/85
		EF (Soil ME, FD)	6/86
Methylene Chloride	Mar. 16, 1984	None	(1)
Methyl Parathion	Sept. 30, 1981	CF-1s; T-2s	(2)
Metiram (EBDC)	Jan. 17, 1983	MU	2/85
		ME; Dermal absorption	12/85
Metribuzin	Sept. 10, 1982	None	(1)
Molinate	Aug. 31, 1983	None	(1)
Monocrotophos	Sept. 30, 1981	O-2s; T-1s	(2)
MSMA (Methanearsonate)	Sept. 26, 1983	CF-2s; O-2s	10/87
		T-1s	12/85
Muscalure	Jan. 17, 1984	None	N/A
Nabam (EBDC)	Jan. 17, 1983	MU; ME; Dermal absorption	2/85
Naled	Apr. 3, 1981	CF-1s; O-2s; R-1s	4/85
		T-1s	(2)
		T-1s	12/84
Napropamide	Aug. 30, 1983	T-1s	9/87
Naptalam	Mar. 30, 1983	None	(4)
2-Naphthol	Aug. 3, 1983	None	(4)
Nicotine and Nicotine Sulfate	Aug. 30, 1983	CF-2s; O-2s; R-1s; T-2s	(2)
Nitralin	Jan. 27, 1982	O-2s; T-1s	(3)
Nitrapyrin	Mar. 29, 1983	None	(4)
Nitrofen	Nov. 28, 1983	None	(3)
Norea	Aug. 25, 1983	CF-2s; O-2s; R-1s	10/87
		T-2s	12/85
Norflurazon	July 25, 1983	T-1s	(2)
OAMA (Methanearsonate)	Sept. 26, 1983	CF-2s; O-2s	10/87
		T-1s	12/85
Oryzalin	Sept. 28, 1982	None	(1)
Ovex	Jan. 5, 1984	None	(3)
Oxadiazon	Aug. 3, 1983	None	(4)
Oxamyl	Aug. 26, 1983	None	(1)
Oxydemeton-Methyl	Aug. 11, 1983	CF-2s; O-2s	9/87
		T-1s	(2)
Oxyfluorofen	May 24, 1982	None	(1)
Parathion	Nov. 4, 1981	CF-1s; T-2s	(2)
Pendimethalin	Sept. 7, 1982	T-1s	(2)
Perfluidone	Sept. 13, 1982	CF-1s; O-2s; R-1s; T-2s	(6)
Permethrin	Aug. 28, 1981	None	(1)
Phenmedipham	Sept. 12, 1983	O-1s	Oct. 1987
		T-1s	(2)
Phorate	Feb. 5, 1981	CF-1s; O-2s; T-2s	(2)
Phosmet	June 20, 1983	O-1s	(2)
Phosphamidon	Sept. 30, 1981	CF-1s; R-1s	Jan. 1986
		T-2s	Mar. 1984
Picloram	Aug. 11, 1983	None	(4)
Piperazine Dihydrochloride	Nov. 22, 1983	None	(6)

DATA CALL-IN PROGRAM AS OF SEPT. 30, 1984—Continued

Chemical	Date of notice	Data call-in requirements	Due date (status)
Piperonyl Butoxide	Sept. 30, 1982	CF-1s; R-1s	Oct. 1987
		O-1s	Nov. 1987
		T-1s	May 1986
		MU	Oct. 1984
		PC	Nov. 1984
		ME	(2)
Pirimicarb	Mar. 29, 1983	None	(3)
Pirimiphos Ethyl	Nov. 18, 1983	None	(4)
Potassium Bifluoride	Mar. 30, 1983	None	(4)
Potassium Iodate	Mar. 31, 1983	None	(4)
Potassium Permanganate	do	None	(4)
Profluralin	July 13, 1982	T-1s	(3)
Prometon	Aug. 22, 1983	CF-2s; O-2s; R-1s	Sept. 1987
Prometryn	Jan. 23, 1984	O-1s	Feb. 1988
		T-1s	Apr. 1986
Pronamide	Oct. 27, 1982	T-1s	(2)
		T-1s	Jan. 1985
Propachlor	Jan. 19, 1983	CF-2s; O-2s; R-1s	Feb. 1987
		T-1s	Apr. 1985
		T-1s	(2)
Propachlor (GW)	May. 31, 1984	EF (D, Soil ME, MO, FD); PC	(2)
Propanil	July 20, 1983	O-1s	Aug. 1987
Propargite	Sept. 28, 1982	None	(1)
Propazine	Aug. 31, 1983	None	(1)
Pyrazon	Nov. 25, 1983	O-1s; R-1s	Dec. 1987
Rotenone	Dec. 13, 1983	None	N/A
Simazine	Dec. 2, 1981	O-1s	(4)
		T-1s	(2)
Sodium Polysulfide	Nov. 23, 1983	CF-2s; O-2s; R-1s; T-2s	(5)
Streptomycin	Apr. 30, 1984	None	N/A
Tabatrex	Sept. 7, 1983	CF-2s; O-2s; R-1s; T-2s	(3); (5)
TCBC	Sept. 30, 1981	CF-1s; O-2s; R-1s; T-2s	(3); (5)
TEPP	Jan. 26, 1981	CF-1s; O-2s; R-1s; T-2s	(3); (5)
Terbufos	Mar. 10, 1981	None	(1)
Terbutryn	Aug. 31, 1983	T-1s	Nov. 1985
Tetradifon	Apr. 1, 1981	None	(5)
Tetrasul	July 26, 1983	None	(3)
Thiram	Aug. 7, 1981	CF-1s; O-2s; R-1s; T-2s	(2)
Toxaphene	July 18, 1984	None	N/A
Treflan (Trifluralin)	Aug. 25, 1982	R-1s	Sept. 1986
		MU	(2)
		T-1s	Nov. 1984
		Ecological effects field monitoring	Nov. 1986
Triadimeform	June 30, 1982	None	(1)
Trichlorfon	Apr. 14, 1981	None	(1)
Triethanolamine Methanearsonate	Sept. 15, 1983	None	(3)
Vendex	Aug. 6, 1983	None	(1)
Vernolate	Nov. 27, 1981	CF-1s; O-1s	Aug. 1987
		R-1s; T-1s	(2)
Zineb (EDBC)	Jan. 17, 1983	MU; ME; Dermal absorption	Feb. 1985
Ziram	Feb. 28, 1984	T-1s	May 1986

"Chemical" column. (1) Under the "Chemical" column, the abbreviation "GW" is used when a data call-in notice was initiated because of possible ground water contamination concerns.

(2) Similarly, "CT" indicates when a notice was sent because of chronic toxicology data gaps.

(3) "EDB" indicates when a notice was sent because of the need to develop more complete data bases on chemicals which are alternatives to EDB.

"Data Call-In Requirements" column. Under the column "Data Call-In Requirements", the following abbreviations are used to represent the studies specified:

(1) CF—chronic feeding.
(2) O—oncogenicity.
(3) R—reproduction.
(4) T—teratogenicity.
(5) PC—product chemistry.
(6) RC—residue chemistry.
(7) EF—environmental fate.
(8) D—degradation.
(9) ME—metabolism.
(10) FD—field dissipation.
(11) MO—mobility.
(12) MU—mutagenicity.

Required tests other than the above are listed beside the applicable chemicals. The number of species for which testing is needed is stated beside the abbreviation or type of test; for example, if testing is needed for one species, this is stated as "1s".

"Due Date (Status)" column. Under the "Due Date (Status)" column, the following numbers denote the information specified:

(1) All CORT data are in Agency files.

(2) Registrant submitted data.

(3) Product(s) were cancelled or discontinued.

(4) Data has been or will be required through Registration Standard.

(5) Product(s) were suspended.

(6) Product use patterns are not subject to CORT requirements.

By the end of FY 85, EPA will have notified all registrants of food use chemicals who must submit chronic toxicity data.

Dated: December 11, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 84-33119 Filed 12-19-84; 8:45 am]

BILLING CODE 6560-50-M

federal register

Thursday
December 20, 1984

Part IV

Environmental Protection Agency

40 CFR Part 233
Amendment to 404 State Program Transfer Regulations; Final Rule

Part IV

Environmental Protection Agency

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 233

[FRL 2734-6]

Amendment to 404 State Program Transfer Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Amendment to rule.

SUMMARY: This amendment modifies the irrigation ditch exemption contained in EPA's Section 404 State Program Regulations, 40 CFR 233.35(a)(3), to ensure consistency with the recently modified Corps of Engineers' regulation on the same subject, 33 CFR 323.4(a)(3). The modification clarifies the extent to which facilities appurtenant to irrigation ditches are included in the exemption. This modification was approved by EPA and adopted by the Corps of Engineers as a final rule following notice and comment rulemaking pursuant to the settlement agreement in *National Wildlife Federation* v. *Marsh*.

EFFECTIVE DATE: December 20, 1984.

FOR FURTHER INFORMATION CONTACT: John W. Meagher, Office of Federal Activities (A-104), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 382-5043.

SUPPLEMENTARY INFORMATION: The regulations of the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) both describe the extent of the Section 404(f) exemption from permit requirements for discharges of dredged or fill materials under the Clean Water Act. In particular, 33 CFR 323.4(a)(3) of the Corps' regulations and 40 CFR 233.35(a)(3) of the EPA regulations address the Section 404(f)(1)(C) exemption relating to irrigation ditches.

These regulatory provisions are intended to be consistent with one another. As a result of the recent settlement agreement in *National Wildlife Federation* v. *Marsh*, No. 82-3632 (D.D.C., complaint filed December 22, 1982), a number of changes, including 33 CFR 323.4(a)(3), were proposed to the Corps' regulations on March 29, 1984. Following rulemaking, the proposed clarification to Section 323.4(a)(3) was approved by EPA and was promulgated by the Corps on October 5, 1984, at 49 FR 39482. Accordingly, to bring its regulations up-to-date, EPA is incorporating the revised exemption language into 40 CFR 233.35(a)(3), effective today. As explained in more detail in the preamble to the Corps' revised regulation at 49 FR 39479, this change is intended to clarify the extent to which facilities related to irrigation ditches are eligible for the irrigation ditch exemption.

I have determined that it is unnecessary to provide notice and comment on this change to 40 CFR 233.35(a)(3), because it merely incorporates a substantive change which has already been the subject of notice and comment rulemaking pursuant to the settlement agreement, and because EPA approved the final irrigation exemption wording pursuant to that rulemaking, in accordance with our responsibility for the administrative interpretation of section 404(f) of the Clean Water Act.

List of Subjects in 40 CFR Part 233

Intergovernmental relations, Water pollution control.

Authority: 33 U.S.C. 1344.

Dated: December 14, 1984.

William D. Ruckelshaus,

Administrator.

Accordingly, EPA is amending 40 CFR Part 233 as follows:

PART 233—404 STATE PROGRAM TRANSFER REGULATIONS

Section 233.35 is amended by revising paragraph (a)(3) to read:

§ 233.35 Activities not requiring permits.

(a) * * *

(3) Construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance (but not construction) of drainage ditches. Discharges associated with siphons, pumps, headgates, wingwalls, weirs, diversion structures, and such other facilities as are appurtenant and functionally related to irrigation ditches are included in this exemption.

* * * * *

[FR Doc. 84-33127 Filed 12-19-84; 8:45 am]

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federal register

Thursday
December 20, 1984

Part V

Environmental Protection Agency

40 CFR Part 261

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; 1,1-Dimethylhydrazine Production Wastes; Proposed Rule and Request for Comments

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[WH-FRL-2692-3]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; 1,1-Dimethylhydrazine Production Wastes

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to amend the list of hazardous wastes promulgated under the Resource Conservation and Recovery Act (RCRA) by adding a group of wastes generated during the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides. The effect of this proposed regulation would be to subject these wastes to the hazardous waste management standards contained in 40 CFR Parts 262 to 266, Part 124, and the permitting requirements of Parts 270 and 271.

DATES: EPA will accept comment on this proposal until February 19, 1985. Any person may request a hearing on this amendment by filing a request with Eileen B. Claussen, whose address appears below by January 22, 1985.

ADDRESSES: Comments should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Comments should identify the regulatory docket "Section 3001/UDMH." Requests for a hearing should be addressed to Eileen B. Claussen, Director, Characterization and Assessment Division, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

The public docket containing the Background Document and all other supporting documentation for this proposed regulation is located in Room S-212A, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20406, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll-free at (800) 424-9346 or at (202) 382-3000. For technical information contact Dr. Cate Jenkins, Office of Solid Waste (WH-562B), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20406, (202) 382-4794.

SUPPLEMENTARY INFORMATION:

I. Background

On May 19, 1980, as part of its regulations implementing Section 3001 of RCRA, EPA published a list of hazardous wastes generated from specific sources. This list has been amended several times, and is published in 40 CFR 261.32. EPA proposes to add to the list four wastes generated during the manufacture of 1,1-dimethylhydrazine (also known as unsymmetrical dimethylhydrazine, or UDMH) from carboxylic acid hydrazides. These wastes are column bottoms from products separation, condensed column overheads from products separation and condensed reactor vent gases, spent filter cartridges from production purification, and condensed column overheads from intermediate separation.

The hazardous constituent in all of these wastes is UDMH, which is present in significant concentrations. UDMH is carcinogenic, teratogenic, and mutagenic. In addition, the condensed column overheads from product separation and condensed vent gases from the reactors contain methanol in sufficient concentrations to make this waste ignitable (flash point=52–55 °F.) See 40 CFR § 261.21(a)(1). Also, the column bottoms from product separation contain sodium hydroxide in sufficient concentrations to make this waste corrosive (pH=13–14). See 40 CFR 261.22(a)(1). These wastes consequently are of particular environmental concern. EPA has evaluated these wastes against the criteria for listing hazardous wastes (40 CFR 261.11(a)(3)), and has determined that: (1) They typically contain high concentrations of UDMH; (2) this toxicant is mobile mismanagement, and may reach environmental receptors, and (3) the wastes are generated in large volumes and have the potential to be mismanaged. UDMH is covered by other EPA regulations (*i.e.*, 40 CFR 261.33(f), as EPA Hazardous Waste No. U098) as well as by regulations of other governmental agencies. The Agency believes, therefore, that these wastes are capable of posing a substantial present or potential threat to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed, and thus are hazardous wastes.

II. Summary of the Proposed Regulation

A. List of Wastes

This proposed regulation would list as hazardous four wastes generated during the production of UDMH from carboxylic acid hydrazides. These wastes are:

- K107—Column bottoms from product separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazines.
- K108—Condensed column overheads from product separation and condensed reactor vent gases from the production of 1, 1-dimethylhydrazine (UDMH) from carboxylic acid hydrazines.
- K109—Spent filter cartridges from product purification from the production of 1, 1-dimethylhydrazine (UDMH) from carboxylic acid hydrazines.
- K110—Condensed column overheads from intermediate separation from the production of 1, 1-dimethylhydrazine (UDMH) from carboxylic acid hydrazines.

Currently, only one manufacturer, Uniroyal Corporation, uses this proprietary process to produce UDMH. Available information in the Section 3007 RCRA Industry Studies data base indicates that approximately 4,970 kkg (metric tons) per year of total wastes would be covered by this proposed regulation.

The major contaminant of concern in these wastes in UDMH, which is currently listed in Appendix VIII of Part 261. The wastes are formed as residuals as several points in an integrated series of reactors and associated purification units using carboxylic acid hydrazide feedstock. The first listed waste (K107) is the column bottoms from the final purification step to produce commercial UDMH, and contains approximately 0.01% UDMH (100 parts per million). Approximately 2,810 kkg of this waste are generated annually and managed by deep well injection.

The second listed waste (K108) is a combination of condensed column overheads from the final product purification and condensed vent gases from the chemical reactors used to synthesize UDMH. This waste contains between 1–10% UDMH (10,000–100,000 parts per million). Approximately 91 kkg are generated annually and also managed by deep well injection.

The third listed waste (K109) is spent filter cartridges from product purification, and is estimated by the Agency to contain between 40–50% UDMH. The filter cartridges used to purify a small fraction of the UDMH manufactured, and have not required disposal yet. Uniroyal intends to dispose of these in a secure landfill.

The fourth listed waste (K110) is from the condensation of separation column overheads from an intermediate purification step before final UDMH synthesis. This waste may contain from a few parts per million to as high as 100 parts per million UDMH, based on a potential for trace contamination. More definitive concentration information

would need to be supplied by Uniroyal if there is any reason to believe that this waste may not contain environmentally significant UDMH concentrations. Approximately 1,250 kkg of this waste are produced annually and currently managed as a hazardous waste by off-site incineration.

The Listing Background Document (available from the Public Docket at EPA Headquarters—see "ADDRESSES" section—and from the EPA Regional Libraries) and the sources cited there describe this production process in detail. Sections of the Background Document, however, are confidential business information (CBI); these sections are not available to the public, and will be deleted.

The Agency has made a preliminary estimate that persons face a one per million increased risk of cancer as a result of a lifetime daily dose of 1.15×10^{-7} milligrams UDMH per kilogram body weight, or 8.05×10^{-6} milligrams for a seventy kilogram man (U.S. EPA, 1980–1984). The basis for this estimate is explained further in the Listing Background Document. The corresponding concentration in drinking water ingested over a lifetime resulting in a one-per-million increased risk of cancer is 4.03×10 milligrams per liter (parts per million), or 4.03×10^{-10} percent.

The concentrations of UDMH in these wastes are many orders of magnitude greater than the levels related to this human health risk. If the condensed column overheads from product separation (the least contaminated waste) were contaminated with even one part per million UDMH, then the concentration would approach one million times the level related to human health risks in drinking water.

UDMH is soluble in water in all proportions (miscible) (U.S. EPA, 1980–1984) and is present in wastes which are liquids. The UDMH in the wastes thus has a high mobility and migratory potential. In addition, under conditions typical of waste mismanagement, UDMH is persistent enough to cause harmful exposures. Only a fraction of the toxicant present in these wastes need migrate and reach environmental receptors to pose the potential for substantial harm.

UDMH's low octanol-water partition coefficient and complete miscibility with water indicate that UDMH in any waste contacting soil may migrate and contaminate ground water without being absorbed onto the soil matrix. UDMH has been shown to leach and migrate in experimental soil columns (Braun, 1983).

The primary degradation mechanism of UDMH in the unsaturated soil zone or aerated surface waters is expected to be oxidation, presumably with dissolved oxygen and free radicals. In the absence of microbial degradation the half-life of UDMH was reported to be 10 to 14 days in ponds and seawaters (Zirrolli, 1983). In anaerobic conditions, such as in ground water, however, UDMH has the potential for persisting for much longer periods. UDMH was found to be extremely stable in distilled water (Braun, 1983).

The potential for aerobic biodegradation of UDMH in water has not been explored thoroughly, but may be minor relative to oxidation under neutral to basic conditions. UDMH oxidation was found to proceed at the same rate in sterile or non-sterile lake water as well as in pure distilled water (Banerjee; 1977, 1981). Under anaerobic conditions, the loss of UDMH with anaerobic bacteria was 26% after a six-day bioassay. Biodegradation of UDMH may also be limited by its toxicity; aerobic bacterial degradation was inhibited when UDMH concentrations were as low as 20 parts per million (Kane, 1983).

UDMH could also be released to the atmosphere by evaporation from spills, leaks, and venting during loading, transfer, storage, or treatment. Evaporation of UDMH from water solutions are expected to be significant (MacNaughton, 1975; Stauffer, 1977). Once volatilized, UDMH may degrade by reaction with hydroxyl radicals (Pitts, 1981), NO_2 or ozone (Tuazon, 1982).

1, 1-Dimethylnitrosamine is a potential degradation product of UDMH in the environment, and has also been determined by the U.S. CAG to be a potential human carcinogen.[1] A major product of the reaction of UDMH with ozone (Tuazon, 1982); however, 1, 1-dimethylnitrosamine appears to degrade rapidly in the atmosphere by sunlight (Hanst, 1977; Callahan, 1979; Tuazon, 1982). The formation of 1,1-dimethylnitrosamine may also result from the oxidation of concentrated aqueous solutions of UDMH (Banerjee, 1981), such as would result from spills. The subsequent environmental degradation of 1, 1-dimethylnitrosamine is expected to be significantly longer than that of UDMH in water and soil (Tate, 1975; Callahan, 1979; Oliver, 1979; Mallik, 1981).

[1] The Agency is not listing 1, 1-dimethylnitrosamine as a toxicant of concern because of uncertainty of the potential degradation pathways of UDMH in the environment. However, the Agency solicits comments as to whether or not 1, 1-dimethylnitrosamine should be included as a toxicant of concern.

The U.S. EPA's Carcinogen Assessment Group (CAG) has determined that UDMH is a potential human carcinogen. For example, when UDMH was administered orally, it produced angiosarcomas, pulmonary adenomas or adenocarcinomas, malignant lymphomas, and kidney adenomas in male and female Swiss mice (Toth; 1972, 1973); tumors in the cecum and blood in Syrian golden hamsters (Toth, 1977); lung tumors in female Swiss mice (Roe, *et al.*, 1967); and liver tumors in rats (Druckrey, *et al.*, 1967).

UDMH is also teratogenic. Teratogenic effects were observed in South African clawed toad larvae, *Xenopus laevis*, following continuous embryonic exposure to UDMH concentrations of 2-20 μg/l (Greenhouse, 1976). UDMH was teratogenic during the neurolation period of embryogenesis, and the malformations affected the head, trunk and tail; the most frequent malformation was tail kinks.

The overall weight of evidence from a variety of microbial and mammalian assays indicates that UDMH is also mutugenic. In numerous Ames *Salmonella* assays, results were generally inconsistent, although most prositive reponses were observed with strain TA98, a frameshift mutant (Bruce, 1979; Parodi *et al.*, 1981; de Flora, 1981). In mutagenesis assays with cultured mouse lymphoma cells, UDMH caused forward mutation to thymidine (Brusick, 1976; Rogers, 1981), but not to ouabain, thioguanine or cytosine arabinoside resistance (Rogers, 1981). Unscheduled DNA synthesis occurred in human embryonic lung cells that were treated with UDMH *in vitro* (Brusick, 1976), and *in vivo* exposure to UDMH inhibited testicular DNA synthesis in mice (Seiler, 1977). *In vivo* treatment of mice also caused DNA fragmentation in liver and lung cells (Parodi, 1981), but did not induce micronuclei in bone marrow cells (Bruce, 1979) or sperm abnormalities (Bruce, 1979; Wyrobek, 1975).

UDMH is rapidly absorbed from the lungs, gastrointestinal tract, injection sites, and skin. Rats exposed to UDMH had grand mal seizures, brain glycogen degradation, and inhibition of glutamic acid decarboxylase (U.S. EPA, 1984).

The potential of this contaminant to cause harm to human health and the environment is described in more detail in the listing Background Document, and the Health and Environmental Effects Profile (available at the RCRA Public Docket at EPA Headquarters (see "ADDRESSES" section) and at EPA Regional Libraries).

In summary, and as detailed in the listing Background Document, these wastes typically contain UDMH at concentrations that are of concern, the toxicant in these wastes is capable of migrating from the waste, persisting in the environment, and reaching environmental receptors, so are capable of causing substantial harm if mismanaged. Therefore, the Agency is proposing to add these wastes to the hazardous waste list in 40 CFR 261.32.

B. Test Methods for Compounds Added to Appendix VII

In 49 FR 38786–38809, October 1, 1984, the Agency proposed test methods (both those newly designed, as well as those previously available in SW–846) for use in detecting specified substances by applicants who wish to conduct waste evaluation in support of delisting petitions, and by owners or operators of hazardous waste management facilities who must conduct ground-water monitoring (see 40 CFR § 264.99) or incinerator monitoring (see 40 CFR § 264.341). These methods will, upon promulgation, be included in 40 CFR Part 261, Appendix III. In this proposal, Method Number 8250 was designated for testing for UDMH.

This method is in "Test Methods for Evaluating Solid Waste: Physical/Chemical Methods", SW–846, 2nd ed., July 1982, as amended; available from: Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 (202) 783–3238, Document Number 055–002–81001–2.

III. CERCLA Impacts

All hazardous wastes designated by today's proposed rule will, if made final, automatically become hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). (See CERCLA Section 101(14).) CERCLA requires that persons in charge of vessels or facilities from which hazardous substances have been released in quantities that are equal to or greater than the reportable quantities (RQs) immediately notify the National Response Center of the release. (See CERCLA Section 103, and 48 FR 23552–23605, May 25, 1983.)

For those hazardous wastes containing constituents which already have been assigned RQs, the RQ assigned to the waste will represent the lowest RQ associated with the hazardous constituents. Since 1,1-dimethylhydrazine,[2] the only hazardous constituent of the four wastes (K107, K108, K109 and K110) has a statutory RQ assigned at one pound, then all four wastes also have proposed statutory RQs of one pound.

IV. State Authority

Once a State receives interim or final authorization, it operates the RCRA program instead of EPA. If promulgated, this listing and the related management standards will not apply in interim authorized States unless the State listed these UDMH wastes at the time it received interim authorization. Unless a State received final authorization on the basis of a universe of hazardous wastes which included these UDMH wastes, this listing and the related standards would not apply in States with final authorization until the State revises its program to add these UDMH wastes to the universe of hazardous wastes and the revision is approved by EPA. The process and schedule for State adoption of these regulations is described in 40 CFR § 271.21, as amended by 49 FR 21678–21682, May 22, 1984.

If this proposed listing is made final, States which now have final authorization would have to revise their programs within one year from the date of promulgation if only regulatory changes are necessary and within two years from the date of promulgation if statutory changes are required. This deadline may be extended in exceptional cases (see 40 CFR 271.21(e)(3)). States now in the process of applying for final authorization would be able to receive final authorization without including these UDMH wastes in their universe of hazardous wastes if the official state application is submitted less than 12 months after this listing, if made final, is promulgated. The date by which States must modify their programs is governed by 40 CFR 271.21(e)(iii).

V. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The total additional incurred cost for disposal of the wastes as hazardous, is less than $2,000, well under the $100 million constituting a major regulation. This cost is insignificant and results from minimal additional compliance requirements as these wastes already are handled as if they were hazardous.

In addition, we do not expect that there will be an adverse impact on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This proposed amendment is not a major regulation; therefore, no Regulatory Impact Analysis is being conducted.

The proposed amendment was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA, and any EPA responses to those comments, are available for public inspection in Room S–212A at EPA.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rule-making for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on small entities.

The hazardous wastes proposed to be listed here are not generated by small entities (as defined by the Regulatory Flexibility Act), and the Agency does not believe that small entities will dispose of them in significant quantities. Accordingly, I hereby certify that this proposed amendment would not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis. (See 5 U.S.C. 603.)

VII. List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Dated: December 14, 1984.

William D. Ruckelshaus,

Administrator.

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For the reasons set out in the preamble, it is proposed to amend Title 40 of the Code of Federal Regulations as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 reads as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922].

2. In § 261.32, add the following waste streams to the subgroup 'Organic Chemicals':

§ 261.32 Hazardous wastes from specific sources.

Industry and EPA hazardous waste No.	Hazardous	Hazard code
*	* * * * *	
K107	Column bottoms from product separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazines.	(C, T)
K108	Condensed column overheards from product separation and condensed reactor vent gases from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazines.	(I, T)
K109	Spent filter cartridges from product purification from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazines.	(T)
K110	Condensed column overheads from intermediate separation from the production of 1,1-dimethylhydrazines (UDMH) from carboxylic acid hydrazines.	(T)
*	* * * * *	

3. Add the following entries in numerical order to Appendix VII of Part 261:

Appendix VII—Basis for Listing Hazardous Waste

EPA hazardous waste No.	Hazardous constituents for which listed
*	* * * * *
K107	1,1-Dimethylhydrazine (UDMH).
K108	1,1-Dimethylhydrazine (UDMH).
K109	1,1-Dimethylhydrazine (UDMH).
K110	1,1-Dimethylhydrazine (UDMH).

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Part VI

Environmental Protection Agency

40 CFR Part 261

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Rule and Request for Comments

ENVIRONMENTAL PROTECTION AGENCY

[WH-FRL-2693-4]

40 CFR Part 261

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to amend its regulations under the Resource Conservation and Recovery Act (RCRA) by listing as hazardous four wastes generated during the production and formulation of ethylenebisdithiocarbamic acid (EBDC) and its salts. The effect of this proposed regulation would be to subject these wastes to the hazardous waste management standards contained in 40 CFR Parts 262–266, Part 124, and the requirements of Parts 270 and 271.

DATES: EPA will accept public comments on this proposed rule until February 4, 1985. Any person may request a hearing on this amendment by filling a request with Eileen B. Claussen, whose address appears below, by January 4, 1985.

ADDRESSES: Comments should be sent to the RCRA Docket Clerk, Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C., 20460. Comments should identify the regulatory docket "Listing EBDC." Requests for a hearing should be addressed to Eileen B. Claussen, Director, Characterization and Assessment Division, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

The public docket for this amendment is located in Room S–212A, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline at (800) 424–9346 or at (202) 382–3000. For technical information contact Dr. Howard Fribush, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C., 20460, (202) 475–6678.

SUPPLEMENTARY INFORMATION:

I. Background

On May 19, 1980, as part of its final and interim final regulations implementing Section 3001 of RCRA. EPA published a list of hazardous wastes generated from specific sources. This list has been amended several times, and is published in 40 CFR 261.32. EPA proposes to add to the list four wastes from the production of ethylenebisdithiocarbamic acid (EBDC) and its salts.[1] These wastes are (1) aqueous wastes from product purification (K123), (2) reactor vent scrubber water (K124), (3) purification solds from filtration, evaporation, and centrifugation operations (K125), and (4) baghouse dust and floor sweepings in milling and packaging operations (K126) from the production or formulation of EBDC and its salts.

The hazardous constituent in these wastes, ethylene thiourea (ETU), is a carcinogen in animals, a potential carcinogen in humans, a teratogen, a mutagen, and also causes thyroid effects. ETU is a contaminant, a degradation product, and a metabolite of EBDC and its salts. The Agency has previously listed as hazardous discarded commercial chemical products, off-specification species, container residues, and spill resideues containing ETU, under 40 CFR 261.33(f) (EPA Hazardous Waste No. U116, Ethylene thiourea). In addition, ETU appears in Appendix VIII.

ETU typically is present in high concentrations in each waste stream. This constituent also is mobile and persistent, and can reach environmental receptors in harmful concentrations if these wastes are mismanaged. The reactor vent scrubber water also is corrosive because it has a pH greater than 12.5. Evaluated against the criteria for listing hazardous wastes (40 CFR 261.11(a)(3)), EPA has determined that these wastes are hazardous because they are capable of posing a substantial present or potential threat to human health and the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

II. Summary of the Regulation

A. List of Wastes

This proposed regulation would list as hazardous four wastes generated during the production and formulation of EBDC and its salts.[2]

These residual wastes are:

- K123—Process wastewater (including sypernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid and its salts.
- K124—Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts.
- K125—Purification solids (including filtration, evaporation, and centrifugation solids) from the production of ethylenebisdithiocarbamic acid and its salts.
- K126—Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenebisdithiocarbamic acid and its sales.

In 1982, four domestic companies were producing EBDC at four locations, with a total annual production capacity of 26,090 kkg (57.4 million pounds). For fungicide use, EBDC compounds are principally sold either as the sodium salt (nabam), the manganese salt (maneb), the zinc salt (zineb), as a mixture of the manganese and zinc salts (mancozeb), as the diammonium salt (amobam), or as the mixed ammonium-zinc salt (metiram, polyram). Production of EBDCs totalled 12,000 kkg (27 million pounds) in 1977, and 9,000 kkg (20 million pounds) in 1982. The total volume of the organic residual wastes from production of EBDC and its salts by the process described here at nameplate capacity is approximately 92,400 kkg (203 million pounds) of process wastewater (EPA Hazardous Waste No. K123), 4,120 kkg (9.06 million pounds) of reactor vent scrubber water (EPA Hazardous Waste No. K124) 1,300 kkg (2.86 million pounds) of purification solids (EPA Hazardous Waste No. K125), and 39 kkg (86,000 pounds) of baghouse dust and floor sweepings (EPA Hazardous Waste No. K126).

EBDC and its sales typically are produced by reacting ethlenediamine with carbon disulfide in the presence of a base (usually sodium hydroxide or ammonium hydroxide), and then adding the desired metal to precipitate the EBDC product. The wastes that are being listed from this operation are formed as residuals at several points in the production of EBDC and its salts. Waste K123 includes any of a collection of aqueous wastes and is formed from either of the following operations: (1) Separation of the aqueous supernate generated after the precipitation of the insoluble EBDC product (formed as either a transition metal salt and/or its thiuramsulfide), (2) concentration of this aqueous supernate in the evaporator, resulting in the formation of an aqueous

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[1] The Agency currently is evaluating other wastes from the production of carbamates and may propose to list additional wastes in the near future.

[2] We considered listing as hazardous wastes the following streams: (1) Spent carbon from the pretreatment or treatment of the wastewater, (2) still bottoms from the stream stripping of the wastewater, (3) sludges from the metals precipitation or separation of the wastewater, and (4) sludges from the biological treatment systems. However, because these waste streams are derived from the waste streams being listed, they are automatically considered hazardous wastes.

waste, and (3) the washing of the product, also producing process wastewater. Waste K124 is formed from the passage of reactor vent gases through a scrubber, typically generating a caustic aqueous waste. Due to the high (greater then 50%) concentration of sodium hydroxide in waste K124, this waste has a pH greater than 12.5. This waste, therefore, meets the corrosivity characteristic specified in 40 CFR 261.22. Waste K125 is the purification solids, formed from the evaporation of water from the mother liquor and from the filtration and centrifugation of the EBDC salt during wastewater treatment. Waste K126 is dust and floor sweepings from milling and packaging operations.

Our proposal to list these wastes is based on the similarity of the production processes employed by the facilities manufacturing EBDC and its salts. The Listing Background Document and the sources cited there describe these production processes in detail.

As derived from both questionnaires and sampling analyses, these wastes typically contain significant concentrations of ETU, a side reactant contaminant and major degradation product of EBDC.[3,4]

EPA hazardous waste Nos.	Estimated concentration of ETU	
	ppm	Percent
K123	50 to 2,500	0.005 to 0.25.
K124	1,000 to 2,000	0.1 to 0.2.
K125	1,000 to 10,000	0.1 to 1.0.
K126	200 to 2,500	0.02 to 025.

In addition, these wastes typically contain other potentially toxic constituents, such as ethylenebisisothiocyanate and carbon disulfide. Ethylenebisisothiocyanate also is a degradation product of EBDC. However, the Agency does not have sufficient toxicity data to propose including these additional compounds as hazardous constituents at the present time. When more information is available, we will determine whether they should be added.

[3] These wastes also contain EBDC at significant concentrations. EBDC, although toxic, is not very persistent (e.g., one of the salts of EBDC, mancozeb, has a half-life of less than one day in sterile water). Therefore, we are not listing it as a constituent of concern. The Agency, however, solicits comment on our decision not to list EBDC as a toxicant of concern.

[4] These levels are considered significant based on the carcinogenicity of ETU and the doses that were required to elicit the carcinogenic response in the study by Graham *et al.* (see the HEEP for ETU). From that study, the Agency's CAG, using doses that ranged from 5–500 ppm, calculated an oncogenic risk to humans from ETU of 10^{-5} from ingestion of 2.8×10^{-4} mg/kg/day. The levels used to calculate the risk are much (one to three orders of magnitude) less than the concentration of ETU in the wastes.

The Agency's Carcinogen Assessment Group (CAG) has identified ETU as potentially carcinogenic. The International Agency for Research on Cancer (IARC) also has indicated that there is evidence that ETU is "probably carcinogenic in humans."

BRL and Innes (as stated in the Health and Environmental Profile (HHEP) for ETU) reported significantly increased incidences of hepatomas in both sexes of two strains of mice and significantly increased incidences of lymphoma in females of one strain when compared with controls. In comparison with pooled controls, dietary administration of ETU at the Maximum Tolerated Dose (MTD) (350 ppm) significantly increased the incidence of thyroid follicular carcinom in both male and female rats (Weisburger, as reported in the HEEP for ETU). Ulland (as stated in the HEEP for ETU) also reported increased thyroid carcinoma incidence in rats fed ETU at the MTD for 18 months. In addition, rats developed thyroid gland carcinomas and adenocarcinomas at dietary levels of 250 and 500 ppm when treated for 1 or 2 years (Graham, as reported in the HEEP for ETU).

Rats and hamsters administered ETU exhibited teratogenic effects. ETU was a potent teratogen in rats at daily oral doses as low as 20–40 mg/kg during gestation with no toxicity to dams (Khera, Chernoff, Teramoto, as reported in the HEEP for ETU). The fetal responses included central nervous system (CNS) abnormalities such as exencephaly, hydrocephaly, hydranencephaly, menigoencephaly, and meningorrhea (Khera, Ruddick, Tryphonas, Chernoff, Mungkornkarn, as reported in the HEEP for ETU). Skeletal anomalies were also observed by these investigators. CNS and skeletal defects were also produced in offspring of hamsters treated with ETU at relatively high single oral dose levels of >1200 mg/kg (Khera), although Lu and Su found fetal abnormalities in hamsters at repeated doses of >120 mg/kg and CNS defects with multiple does of 300 or 360 mg/kg (as reported in the HEEP for ETU). In addition, dermal application of ETU to pregnant rats at a relatively low dose of 50 mg/kg/day for 2 gestational days also resulted in CNS and skeletal abnormalities in fetuses (Stula and Krauss, as reported in the HEEP for ETU).

ETU is mutagenic in some bacteria and yeast systems. ETU was positive in some strains of *Salmonella typhimurium* in the reverse mutation assay to histidine independence (Seiler, Schupbach, Teramoto), in *B. subtilis* spores in the rec assay (Kada), in a cell transformation assay with hamster kidney cells (Daniel and Dehnel), and in the unscheduled DNA synthesis of cultured HeLa cells (Martin and McDermid) (as reported in the HEEP for ETU). ETU also was positive in the mitochondrial DNA petite mutation assay in *Saccharomyces cerevisiae* (Diala, Egilsson) (as reported in the HEEP for ETU).

The Agency's Office of Pesticides Programs has called for additional testing for mutagenicity on both ETU and EBDC and its salts. The National Institute of Occupational Safety and Health (NIOSH) has recommended that ETU handled as a carcinogen and teratogen in the workplace. ETU, therefore, exhibits toxicological properties of regulatory concern. The Listing Background Document and HEEP contain additional details on the health effects of ETU.

The Agency also has data which indicate that EBDC and its salts degrade rapidly to ETU in the waste and the environment. As a result of this rapid breakdown, ETU normally is present with EBDC and its salts in wastes. In addition, mancozeb has a half-life of less than one day in sterile water before degrading to ETU.

Based on the solubility of ETU in water (20 grams per liter at 30 °C), the Agency further believes that ETU is mobile in the environment. ETU will migrate from the matrix of the waste and is expected to be capable of entering the aquatic environment either through runoff or leaching through soil. Based on the volume of waste that could be generated from EBDC production, approximately 231 kkg (0.51 million pounds) of ETU could escape into the environment from waste K123, 8.24 kkg (18,128 pounds) of ETU could escape into the environment from waste K124, 13.0 kkg (28,600 pounds) of ETU could escape into the environment from waste K125, and 0.1 kkg (220 pounds) of ETU could escape into the environment from waste K126.[5] Furthermore, due to the rapid breakdown of EBDC salts to ETU, EBDC wastes containing EBDC salts could produce even more ETU after the wastes are released into the environment.

The Agency also has determined that ETU is persistent in ground water. This is based on data that shows that ETU is

[5] The amount of ETU that could escape into the environment from EBDC wastes is a worst case estimate and is equal to the amount of ETU in the waste. These figures are calculated as follows: Percent of ETU in the waste multiplied by the total volume of wastes produced. Thus, the amount of ETU in waste K123 is 92,400 kkg×0.25%=231 kkg.

stable to hydrolysis in distilled water for at least 40 days (see the HEEP for ETU). If waste disposal sites are improperly designed or managed—for example, sited in areas with highly permeable soils or constructed without effective natural or artificial liners—it is likely that ETU could escape from EBDC wastes to surface water or ground water. As indicated by the high solubility of ETU in water and moderate solubility in other polar solvents such as methanol, ethanol, ethylene glycol, and pyridine, ETU, if improperly disposed, may be dissolved by the solvents found in mixed wastes and leach out of these wastes into ground water. The Agency, therefore, believes that ETU from EBDC wastes which are improperly managed, is likely to enter and remain in the environment, posing substantial risk.

Moreover, the Agency believes that current industry waste management practices do not adequately protect human health and the environment from significant exposure to ETU. For example, centrifuge solids, which contain high levels of ETU, typically are disposed of in a sanitary landfill. These practices do not prevent ETU from leaching from these wastes and contaminating surface water and ground water at significant levels.

EBDC wastewaters typically are processed in wastewater treatment systems. The Agency has data, however, which indicates that significant amounts of ETU can survive wastewater treatment (see the HEEP for ETU). In addition, ETU can inhibit activated sludge treatment of wastewaters. The ETU present significantly inhibits nitrification from occurring within the activated sludge, a process which is critical to the efficacy of the sludge, and thus, to wastewater treatment. It follows from this that ETU can inhibit nitrification in the receiving stream, thus interfering with the natural ecological development of the stream. Wastewater treatment of EBDC wastes containing significant amounts of ETU therefore, is not likely to remove the ETU, contaminating the environment with a highly mobile, persistent carcinogen and environmental toxicant. The Listing Background Document and the HEEP contain additional details on the management, fate, and transport of ETU.

Consequently, by virtue of the high concentrations of ETU in these wastes, which are generated in large volumes, the mobility of ETU via leaching and runoff, and its persistence in ground water, EPA has determined that these wastes pose a substantial present or potential hazard to human health and the environment, when improperly stored, transported, disposed of, or otherwise managed. The Agency, therefore, is proposing to add these wastes to the hazardous waste list in 40 CFR § 261.32.

III. Regulatory Status of Hazardous Wastewaters

Under the existing hazardous waste regulations, tanks that are treating or storing hazardous wastewaters are exempt from the Parts 264 and 265 management standards when the treatment unit is part of a wastewater treatment facility that is subject to regulation under either section 402 or section 307(b) of the Clean Water Act. Treatment units, such as concrete basins, which may or may not be in-ground, routinely provide for certain steps in a wastewater treatment process such as equalization, neutralization, aeration (in biological treatment facilities), settling (in both biological and physical/chemical treatment facilities), flocculation or treated wastewater storage prior to recycling. Where such units are constructed primarily of non-earthen materials designed to provide structural support, they are defined as tanks for purposes of the hazardous waste regulations. See 40 CFR 260.10 (definition of "tank"). In applying this definition, the Agency has provided guidance that a unit is to be evaluated as if it were free-standing and filled to its design capacity with the material it is intended to hold. If the walls or shell of the unit alone provide sufficient structural support to maintain the structural integrity of the unit under these conditions, the unit is considered to be a tank. Alternatively, if the unit is not capable of retaining its structural integrity without supporting earthen materials, it is considered to be a surface impoundment.

Therefore, when wastewaters, including those covered by the listing proposed today, are stored or treated in containment devices which qualify as tanks, these devices are presently exempt from the Parts 264 and 265 management standards.

IV. Test Methods for Compounds Added to Appendix VII

In 49 FR 38786–38809, Monday, October 1, 1984, the Agency proposed test methods (both those newly designed, as well as those previously available in SW–846—see below) for use in detecting specified substances by applicants who wish to conduct waste evaluations in support of delisting petitions, and by owners or operators of hazardous waste management facilities who must conduct ground-water monitoring (see 40 CFR 264.99) or incinerator monitoring (see 40 CFR 264.341). These test methods will, upon promulgation, be included in 40 CFR Part 261, Appendix III. In this proposal, Method Numbers 8250 and 8330 were designated for testing for the presence and concentration of ETU.

These methods are in "Test Methods for Evaluating Solid Waste: Physical/Chemical Methods", SW–846, 2nd ed., July 1982, as amended; available from: Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, (202) 783–3238, Document number: 055–002–81001–2.

V. CERCLA Impacts

The hazardous wastes designated by today's proposed rule will, if made final, automatically become hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). (See CERCLA section 101(14).) CERCLA requires that persons in charge of vessels or facilities from which hazardous substances have been released in quantities that are equal to or greater than the reportable quantities (RQs) immediately notify the National Response Center of the release. (See CERCLA section 103 and 48 FR 23552, May 25, 1983.)

For those hazardous wastes containing constituents which have already been assigned RQs, the RQ assigned to the waste will represent the lowest RQ associated with the constituents. Since ETU, the only hazardous constituent of all four wastes has a statutory RQ of one pound,[6] all four of these wastes also have statutory RQs of one pound. (See 48 FR 23552–23605.)

VI. State Authority

Once a State receives interim or final authorization, it operates the RCRA program instead of EPA. If promulgated, this listing and the related management standards will not apply in interim-authorized States unless the State listed these EBDC wastes at the time it received interim authorization. Unless a State received final authorization on the basis of a universe of hazardous wastes which included these EBDC wastes, this listing and the related standards would not apply in States with final authorization until the State revises its program to add these EBDC wastes to the universe of hazardous wastes and the revision is approved by EPA. The process and schedule for State adoption of these regulations is described in 40 CFR 271.21, as amended by 49 FR 21678–21682, May 22, 1984.

[6] Criteria are currently being developed for potential carcinogens such as ETU to adjust the one pound RQ to a level adequately protective of human health and the environment.

If this proposed listing is made final, States which now have final authorization would have to revise their programs within one year from the date of promulgation if only regulatory changes are necessary, and within two years from the date of promulgation if statutory changes are required. This deadline may be extended in exceptional cases (see 40 CFR 271.21(e)(3)). States now in the process of applying for final authorization would be able to receive final authorization without including these EBDC wastes in their universe of hazardous wastes if the official state application is submitted less than one year after this listing, if made final, is promulgated. The date by which States must modify their programs is governed by 40 CFR 271.21(e)(iii).

VII. Regulation of EBDC Compounds Under FIFRA

EBDC compounds are used as fungicides and, therefore, are subject to regulation under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The statutory test under FIFRA is a risk-benefit balance: Products are "registered" (authorized) if they generally will not cause any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of use. Accordingly, pesticides which present substantial risks can be approved if benefits outweigh risks. (See FIFRA sections 3(c)(5) and 2(bb).) The amount of information on which this decision is based has increased as the techniques to assess risks have improved. Moreover, many pesticide products, including some containing EBDCs, were approved under statutory criteria which preceded the current test.

The burden of proof is on the proponents of registration to demonstrate that a pesticide meets the statutory test. If the Agency decides to cancel a pesticide's registration, proponents of the pesticide are afforded opportunities to contest the Agency's determination.

The Agency issued a notice on August 10, 1977 (42 FR 40618) informing the public that evidence of hazards from the use of EBDCs (and ETU) warranted an in-depth evaluation of risks and benefits. On October 14, 1982, the Office of Pesticides and Toxic Substances concluded that, while there was valid and significant evidence of hazards, additional data was necessary to decide whether or not to cancel EBDCs, and registrations could continue with mandatory restrictions on use practices. Additional hazard data has been requested from registrants. The Agency believes that the decision to list EBDC waste streams for which a different statutory standard applies, is fully consistent with the treatment of EBDC pesticides under FIFRA.

VIII. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The total additional incurred cost for disposal of the wastes as hazardous is approximately $33.100, well under the $100 million constituting a major regulation. This cost is insignificant and results from minimal additional compliance requirements, as these wastes are already being managed as if they were RCRA hazardous wastes.

In addition, we do not expect that there will be an adverse impact on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Since this proposal is not a major regulation, no Regulatory Impact Analysis is being conducted.

This amendment was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA responses to those comments are available for public inspection in Room S-212A at EPA.

IX. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on small entities.

The hazardous wastes proposed to be listed here are not generated by small entities (as defined by the Regulatory Flexibility Act), and the Agency does not believe that small entities will dispose of them in significant quantities. Accordingly, I hereby certify that this proposed regulation would not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis. (See 5 U.S.C. 603).

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Dated: December 14, 1984.

William D. Ruckelshaus,

Administrator.

For the reasons set out in the preamble, it is proposed to amend Title 40 of the Code of Federal Regulations as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 reads as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In § 261.32, add in numerical order the following waste streams to the subgroup "Organic Chemicals":

§ 261.32 Hazardous wastes from specific sources.

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
•	• • • • •	
K123	Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid and its salts.	(T)
K124	Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts.	(C, T)
K125	Purification solids (including filtration, evaporation, and centrifugation solids) from the production of ethylenebisdithiocarbamic acid and its salts.	(T)
K126	Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenebisdithiocrabamic acid and its salts.	(T)
•	• • • • •	

3. Add the following entries in numerical order to Appendix VII of Part 261:

Appendix VII—Basis for Listing Hazardous Waste

EPA hazardous waste No.	Hazardous constituents for which listed
•	• • • • •
K123	Ethylene thiourea.
K124	Ethylene thiourea.
K125	Ethylene thiourea.
K126	Ethylene thiourea.
•	• • • • •

[FR Doc. 84-33123 Filed 12-19-84; 8:45 am]

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federal register

Thursday
December 20, 1984

Part VII

Environmental Protection Agency

40 CFR Part 262

Hazardous Waste Management System; Standards Applicable to Generators of Hazardous Waste; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 262

[SW FRI 2664-4]

Hazardous Waste Management System; Standards Applicable to Generators of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is today promulgating an amendment to the hazardous waste management regulations under the Resource Conservation and Recovery Act (RCRA). This amendment allows generators of hazardous wastes to accumulate up to 55 gallons of hazardous waste, or one quart of acutely hazardous waste listed in 40 CFR 261.33(e), in satellite areas at the generator's facility. Generators can accumulate wastes in satellite areas provided that: (1) The wastes are placed in containers that are in good condition; (2) the wastes are compatible with their containers; and (3) the containers are marked with the words "Hazardous Wastes" or other words that identify the contents. Any amount in excess of 55 gallons of hazardous waste or one quart of acutely hazardous waste must be managed in accordance with the requirements of 40 CFR 262.34(a) or transported to a storage area regulated under 40 CFR Parts 264 or 265 within three days of the accumulation of that amount.

EFFECTIVE DATE: This final rule becomes effective June 20, 1985.

ADDRESSES: The public docket for this final rule is located in Room S-269C, U.S Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460 and is available for viewing from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Chaz Miller, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, Washington, D.C. (202) 382-4535, or the RCRA Hotline at (800) 424-9346 or (202) 382-3000.

SUPPLEMENTARY INFORMATION:

I. Background

On February 26, 1980, May 19, 1980, and November 19, 1980, EPA promulgated regulations pursuant to the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. 6901, *et seq.* The regulations established a system to manage hazardous waste, including standards for generators of hazardous waste (40 CFR Part 262, 45 FR 12732, 45 FR 33142 and 47 FR 1251). In § 262.34(a) of the regulations, EPA allows generators to accumulate hazardous waste onsite for up to 90 days without obtaining a storage permit if they accumulate the waste in accordance with certain standards. These standards include requirements for the use of tanks and containers, personnel training, and the preparation of contingency plans. In establishing these standards, EPA assumed accumulation generally occurred at one or two discrete locations within an industrial facility. EPA also assumed the § 262.34 requirements would apply to storage buildings, sheds, and other central areas where wastes are accumulated.

In response to this provision, members of the regulated community pointed out that within an industrial complex there may be dozens of places where hazardous wastes are initially generated and collected during daily operations prior to consolidation. The regulation, as originally written, made no distinction between the initial accumulation of hazardous waste at various points of generation ("satellite" accumulation) and the accumulation at a central storage area where these wastes are consolidated for on-site management or transportation off-site. As a result, the standards for 90-day accumulation applied to both areas, regardless of the amount of waste in the satellite areas.

In response to these points, EPA raised the issue, in the preamble to the November 19, 1980, Federal Register notice amending § 262.34 (45 FR 76624), of whether a distinction should be drawn between satellite accumulation areas and central storage areas. EPA expressed the view that the requirements of § 262.34(a) apply to all types of accumulation areas, but requested comments on this issue. Various groups responded that there is a major difference between a satellite area which is used to accumulate wastes as they are generated and central storage areas which receive and are used to accumulate wastes from numerous satellite areas. These commenters supported a reduction or deletion of regulatory requirements for the initial accumulation of hazardous wastes at or near points of generation.

In response to these comments, on January 3, 1983 (48 FR 118), EPA proposed to amend § 262.34 by adding a new subsection (c) to § 262.34 that would allow generators to accumulate up to 55 gallons of hazardous waste (except for acutely hazardous waste as listed in 40 CFR 261.33(e)) at each satellite area for any length of time without complying with the 90-day accumulation standards. Generators could accumulate wastes under this provision provided that: (1) The wastes were placed in containers which were in good condition, (2) the wastes were compatible with their containers, and (3) the containers were marked with the words "Hazardous Wastes" or other words that identify their contents. Within 72 hours of accumulating over 55 gallons, the generator would be required to comply with all applicable requirements under RCRA for further management of any waste in excess of 55 gallons.

II. Comments on Proposed Rule and EPA Response

EPA received 95 comments on the proposed amendment to § 262.34. The majority of the commenters favored the proposal without exception. These commenters said the proposed rule would fit in with presently established industrial practices without causing any adverse effect on human health or the environment. Most of the remaining commenters favored some aspects of the proposal.

Commenters raised four major issues about the proposed rule: (1) The amount of hazardous waste allowed to accumulate at on-site satellite areas; (2) the requirement to remove the amount of hazardous waste over 55 gallons to the central storage area within 72 hours of its accumulation; (3) the need for a definition of satellite area; and (4) the exclusion of acutely hazardous waste from this rule and the effect of this exclusion on laboratories. In addition, commenters raised issues concerning the application of this rule to small generators, the absence of training and contingency plan requirements for satellite areas, the application of this rule to state hazardous waste regulations, and the absence of a requirement that containers of certain wastes be covered. Finally, one commenter objected to the proposal on the grounds that it would be more burdensome than the present regulations because it would require additional recordkeeping of waste quantities and accumulation time. These comments are discussed in detail below.

A. The Amount of Hazardous Waste Allowed to Accumulate

In the January 3, 1983, preamble, EPA discussed several alternatives it had considered before deciding on the 55 gallon limit. These alternatives included accumulation by weight (200 kilograms) and accumulation by time (10 days).

EPA requested comments on these alternatives as opposed to the 55 gallon accumulation limit. Commenters did not support either alternative. Several specifically stated that either option would be burdensome and unworkable.

As an alternative to the 55 gallon limit at each satellite area, a number of commenters suggested a limit on the total amount of hazardous wastes allowed in satellite areas at a generator's facility. Commenters suggested various means of doing this, including a limitation on the number of specific wastes in satellite areas and a total limit on the amount of hazardous waste in satellite areas at the facility. Other commenters suggested a higher limit than 55 gallons at any particular satellite area. These commenters cited the availability of reusable shipping bins of up to 110 gallons in capacity. Finally, several commenters urged EPA to apply this rule to the accumulation of the initial 55 gallons instead of applying it only to the amount in excess of that accumulation.

After considering all the comments, EPA has decided not to change the 55 gallon threshold for accumulation of hazardous wastes. EPA believes that the accumulation at satellite areas of amounts of up to 55 gallons of non-acutely hazardous waste is reasonable and safe and does not pose a threat to human health or the environment. Accumulation of the amount in excess of 55 gallons is covered by this rule and, after three days, by the requirements of § 264.34(a) or by the requirements of Parts 264 or 265. Most commenters from the regulated community supported the 55 gallon level as meeting their needs since satellite areas are normally used to manage one waste generated by an individual industrial process and commenters said they typically use a 55 gallon drum to store this waste before removing it to a central storage area.

EPA believes that it is the amount in excess of 55 gallons that must be regulated under the requirements of §262.34(a) or Parts 264 or 265. EPA is establishing minimal requirements covering the accumulation of less than 55 gallons of nonacutely hazardous wastes in satellite accumulation areas because these amounts do not pose a significant threat to human health or the environment. A spill at an industrial site of 55 gallons or less of nonacutely hazardous waste is easy to control and clean up because of the small amount of waste involved. In addition to the lack of environmental threat, the widespread use of the 55 gallon drum makes it the most practicable threshold level for satellite accumulation. EPA is convinced that amounts up to 55 gallons of nonacutely hazardous wastes can be safely managed at satellite accumulation sites without the full requirements of § 264.34(a). Because the weight of evidence suggests limited use by the regulated community of containers larger than 55 gallons and because spills of 110 gallons of nonacutely hazardous wastes would pose a greater environmental threat, EPA does not believe that the satellite accumulation level should be higher than 55 gallons.

Finally, EPA is not limiting the total amount of hazardous waste that could be accumulated at various satellite areas at a generator's facility because EPA does not believe that there is a strong environmental basis for such a requirement. Today's rule is intended to allow accumulations to set a limit that can be safely accumulated and removed (i.e., 55 gallons for hazardous waste and one quart for actutey hazardous waste), thus, alleviating more frequent movement of smaller quantities of hazardous waste within the generator's facility. A total facility amount limitation would contravene that purpose. In addition, the practical effect of such a requirement would be to discriminate against those facilities with many initial points of waste generation, forcing them to select some satellite areas for accumulation of 55 gallons, while immediately removing wastes generated at other satellite areas to central storage areas. Limiting the total amount of wastes accumulated under this rule would present enforcement difficulties for EPA and administrative complexities for the regulated community without providing any significant additional protection to human health and the environment.

B. The 72 Hour Transportation Requirement

Several commenters argued that the proposed requirement to move the amount of hazardous waste over 55 gallons to a central storage area within 72 hours was an insufficient amount of time. These commenters argued the rule is too restrictive because of management scheduling problems and three-day holidays. Other commenters argued the 72 hour period was unenforceable without a requirement to label the containers with the date and time the excess amount began accumulating.

EPA believes the proposed 72 hour period allows generators adequate lead time to manage the excess waste in accordance with the requirements of § 262.34(a). Most facilities should be aware of process waste generation rate and should be able to arrange for the removal of any excess accumulation within that time frame. In addition, good management should be able to use advance scheduling to manage the excess waste in spite of a three-day holiday.

However, EPA agrees that this rule will be difficult to enforce without any indication of when excess amounts began accumulating. Thus, EPA is requiring that containers be marked with the date when the excess accumulation began. This requirement will not impose any undue burden on the regulated community since EPA is not requiring special labels or any additional internal recordkeeping. Marking the container clearly with the date excess accumulation begins will be sufficient. In addition, EPA is changing the time requirement from 72 hours to three days. The added precision of both the date and time of day is unnecessary and this change lessens the additional burden imposed by the labelling requirement. Finally, industry can avoid the labelling requirement completely by moving containers prior to the accumulation of more than 55 gallons.

C. The Definition of Satellite Area

Several commenters requested guidance on the definition of satellite areas on the grounds that EPA has not adequately defined what it means by satellite areas. Others argued the concept is unenforceable without a precise regulatory definition. One commenter raised the possibility of a generator storing 55 gallon drums 5 feet apart along the wall of his facility in an attempt to circumvent further regulatory responsibilities.

Satellite areas are those places where wastes are generated in the industrial process or the laboratory and where those wastes must initially accumulate prior to removal to a central area. This point of accumulation is under the control of the operator of the process that is generating the waste. In order to clarify the meaning of "satellite areas" EPA has added language to this rule delineating the meaning of satellite areas. Certainly the example given by the commenter, of a row of full 55 gallon drums spaced 5 feet apart along the factory wall, does not meet the requirements established by this regulation.

D. The Exclusion of Acutely Hazardous Wastes From This Rule and Its Impact on Labs

A number of commenters raised questions about the exclusion of acutely hazardous wastes listed in § 261.33(e)

from the proposed rule. These commenters argued there is no basis for the exclusion, that there is a danger from moving these wastes through the plant site to a central storage area and that these wastes are safer at the satellite area than in a central area where other, possibly incompatible, wastes will be stored. Some commenters argued in favor of limiting acutely hazardous wastes at satellite areas to a lower accumulation amount than other hazardous wastes. These commenters felt it is acceptable to allow accumulations of up to one gallon at satellite areas before requiring management under § 262.34(a).

EPA specifically requested comments on the effect of the satellite accumulation rule on laboratories. EPA stated that this proposed rule, together with the small generator rule of § 261.5, would alleviate most of the operational problems associated with the accumulation of hazardous waste by laboratories. Most of the comments presented on this issue, however, concerned the exclusion of acutely hazardous waste from the satellite accumulation rule. The commenters argued this exclusion is unnecessarily burdensome for laboratories. They claimed that laboratory workers are especially well trained in handling hazardous wastes and that the cost of transporting these wastes to a central storage point is high, while there is no corresponding benefit to the environment. One commenter suggested allowing acutely hazardous wastes from satellite areas at laboratories to be placed in 500 gram containers. This commenter argued that most laboratory chemicals are delivered in 500 gram containers which would make suitable storage vessels for the wastes. Coupled with the training given to laboratory workers in recognizing the hazards associated with chemicals, this commenter's proposal would give laboratories the necessary flexibility to handle acutely hazardous wastes in a safe manner without being burdened by the immediate removal of these wastes to the central storage area.

After considering these comments, EPA believes a blanket exclusion of acutely hazardous wastes from this rule is unnecessary because of the problems posed by the almost constant accumulation of small amounts of acutely hazardous waste through the workplace. Accordingly, EPA is changing the exclusion of acutely hazardous wastes as proposed to allow the accumulation of one quart of these acutely hazardous wastes at each satellite area. This change will give laboratories and other generators of acutely hazardous wastes the opportunity to accumulate small amounts of acutely hazardous waste at the satellite area before managing the wastes under § 262.34(a) or moving the wastes to a storage area regulated under the requirements of Part 264 or Part 265. It also recognizes that acutely hazardous wastes should be handled with extra precaution and should not be allowed to accumulate at satellite areas to the extent that other hazardous wastes are allowed to accumulate.

EPA has selected an accumulation limit of one quart since it is the volumetric equivalent of the one kilogram threshold used in other parts of the RCRA regulations (*e.g.*, 40 CFR 261.5) to distinguish the application of the regulations to acutely hazardous and nonacutely hazardous waste. One quart was chosen instead of one kilogram as the threshold for accumulation of acutely hazardous waste consistent with the volume threshold for satellite accumulation of nonacutely hazardous waste and because of the complete opposition by commenters to the use of a weight measure as the initial threshold for the accumulation of hazardous wastes. Finally, this limitation accommodates laboratories who choose to move acutely hazardous waste in the workplace in 500 gram, liter, or quart-sized containers.

E. Small Generators and Satellite Accumulation

Several commenters questioned the relationship between this rule and the small quantity generator rule of § 261.5. The latter rule exempts generators of less than 1000 kilograms per month of (nonacutely) hazardous waste from the hazardous waste management regulations, including 40 CFR Part 262. It also exempts generators of less than one kilogram of acutely hazardous waste per month from regulation. Accordingly, those facilities covered by the small quantity generator rule are not subject to any of the requirements of the satellite accumulation rule so long as they do not generate more than 1000 kilograms of hazardous waste (or one kilogram of acutely hazardous waste) per month. Conversely, if the facility generates more than 1000 kilograms of hazardous waste (or one kilogram of acutely hazardous waste), it is subject to all hazardous waste management regulations including those for accumulation in satellite areas.

F. Other Issues

Several commenters raised other issues. The first issue concerns EPA's decision not to require worker training or contingency plans for wastes in satellite areas. In the January 3, 1983, preamble, EPA discussed the relationship between its proposed satellite accumulation rule and the Occupational Safety and Health Administration's (OSHA) proposed regulations covering hazardous materials in the workplace. EPA stated it should retain the responsibility for some regulations on the accumulation of hazardous waste in the workplace because OSHA does not specifically regulate hazardous wastes as defined under RCRA or deal specifically with aspects of accumulation that affect human health and the environment outside the workplace. This would include such aspects as the condition of the containers used for accumulation. OSHA does, however, regulate other activities, such as the training of employees of manufacturing industries who work with hazardous materials and safety procedures that closely parallel contingency plans. OSHA promulgated its "Hazard Communication" regulations on November 25, 1983 (48 FR 53280). The management of all RCRA hazardous wastes, including contingency plan and training plan requirements, is specifically exempted from these regulations (29 CFR 1910.1200(b)(5)(i)). As a result, the OSHA regulation does not duplicate EPA's regulation in any respect.

Several commenters stated that EPA should require contingency plans and training plans for the satellite areas. EPA believes, however, that since only one waste will normally be accumulated at each satellite area, and since only limited quantities are allowed to accumulate, contingency plans and training plans are not necessary. As EPA stated in the January 3, 1983, preamble, these requirements were intended for more centralized, higher volume accumulations of waste. When waste generated in a satellite area is transported to a storage area regulated under § 262.34(a) or Parts 264 or 265, the training and contingency plan requirements will apply.

Several commenters questioned EPA's decision not to make the satellite accumulation rule a requirement for authorized States. One commenter argued that by failing to make this rule a requirement for authorized States, EPA is making it possible for States to have hazardous waste regulations that are not consistent with Federal regulations. Consistency between EPA and State hazardous waste management regulations is explained by 40 CFR 271.4 which establishes three areas where State regulations cannot be inconsistent

with EPA's hazardous waste regulations. The failure of a State to adopt the satellite accumulation regulation does not fit within any of the three areas indicating "inconsistency" with the Federal program. Further, section 3009 of RCRA allows States to be more stringent in their regulations than EPA. The Agency would consider a State that does not provide an analogue to § 262.34(c) to allow for satellite accumulation to be implementing a more stringent program. Thus, States need not provide for satellite accumulation of hazardous waste.

A third issue was raised by a commenter who suggested that EPA require covers on containers of certain wastes in order to reduce potential fire hazard that might be associated with the accumulation of flammable waste solvents. EPA agrees with this commenter and is requiring all containers holding hazardous wastes in satellite accumulation areas to be covered except when necessary to add or remove waste. This requirement should not place added burdens on the regulated community since commenters assert, and EPA's own information confirms, that covering containers is common industrial practice.

The final issue raised by a commenter is that the proposed satellite accumulation rule would actually lead to an increase in recordkeeping in order to ensure and demonstrate compliance with the waste accumulation limits and the three day time period requirements. EPA does not agree. There are no additional internal recordkeeping requirements caused by this regulation. Although the final regulation requires that containers be labelled with the date excess accumulation begins, this can be accomplished by merely marking the containers and avoided completely by removing the containers before excess accumulation begins. Further, since recordkeeping requirements for contingency plans do not apply to satellite accumulation areas, there is actually a decrease in recordkeeping.

III. Today's Amendment

After reviewing all of the comments received on the proposed rule, EPA is today promulgating the rule as originally proposed, with the four exceptions of allowing the accumulation in a satellite area of up to one quart of those acutely hazardous wastes listed in § 261.33(e), requiring the generator to mark the containers with the date the excess accumulation began, requiring that containers holding hazardous waste be covered except when they are opened to add or remove waste, and adding additional language delineating the meaning of a satellite area.

IV. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions thereto take effect six months after their promulgation. In addition, 5 U.S.C. 553 of the Administrative Procedure Act requires that substantive rules not become effective until at least 30 days after promulgation unless there is good cause for shortening the period. Accordingly, these amendments will become effective six months after publication in the **Federal Register**.

V. Compliance With Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not result in an effect on the economy of $100 million or more, nor will it result in an increase in costs or prices to industry. There will be no adverse impact on the ability of U.S. based enterprises to compete with foreign based enterprises in domestic or export markets. Because this amendment is not a major regulation, no Regulatory Impact Analysis is being conducted.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

VI. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information collection request contained in a proposed rule or final rule. This rule will not impose any new information collection requirements on the regulated community. In fact, this rule will reduce the information collection requirements contained in the cleared OMB request #2050–0011.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis for all proposed rules to assess their impact on small entities. No regulatory analysis is required, however, when the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The economic impact of this regulation will be to reduce the costs of complying with EPA's hazardous waste management regulations for generators of hazardous waste, including those which are small entities. Accordingly, I hereby certify, pursuant to 5 U.S.C. 601(b), that this rule will not have a significant economic impact on a substantial number of small entities.

VIII. List of Subjects in 40 CFR Part 262

Hazardous materials, packaging and containers, reporting and recordkeeping requirements, Security measures, Surety bonds, Waste treatment and disposal, water supply.

Dated: December 14, 1984.

William Ruckelshaus,

Administrator.

Title 40 of the Code of Federal Regulations Part 262 is amended as follows:

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

1. The authority citation for Part 262 reads as follows:

Authority: Secs. 1006, 2002, 3002, 3003, 3004 and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, (RCRA), 42 U.S.C. 6905, 6912, 6922, 6923, 6924, 6925.

2. In § 262.34, paragraph (c) is added to read as follows:

§ 262.34 Accumulation time.

* * * * *

(c)(1) A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in § 261.33(e) in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with paragraph (a) of this section provided he:

(i) Complies with §§ 265.171, 265.172, and 265.173(a) of this chapter; and

(ii) Marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

(2) A generator who accumulates either hazardous waste or acutely hazardous waste listed in § 261.33(e) in excess of the amounts listed in paragraph (c)(1) of this section at or near any point of generation must, with respect to that amount of excess waste, comply within three days with paragraph (a) of this section or other applicable provisions of this chapter. During the three day period the generator must continue to comply with paragraphs (c)(1)(i)–(ii) of this section. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

[FR Doc. 84–33124 Filed 12–19–84; 8:45 am]
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federal register

Thursday
December 20, 1984

Part VIII

Department of the Treasury

Customs Service

19 CFR Part 10

Caribbean Basin Initiative and Generalized System of Preferences; Final Rules

Part VIII

Department of the Treasury

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

[T.D. 84-237]

Customs Regulations Amendments Relating to Caribbean Basin Initiative and Generalized System of Preferences

Correction

In FR Doc. 84-31863 beginning on page 47986 in the issue of Friday, December 7, 1984, make the following corrections:

1. On page 47993, first column, line 11, Sec. 10.192, "Claims" should read "claim"; and line 18, Sec. 10.197, "cost" should read "costs".

§ 10.195 [Corrected]

2. On page 47994, second column, § 10.195(a)(2)(ii)(D), line sixteen, "or" should read "of".

§ 10.197 [Corrected]

3. On page 47995, second column, § 10.197, heading, second line, "ir" should read "in".

BILLING CODE 1505-01-M

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19 CFR Part 10

[T.D. 84-238]

Customs Regulations Amendments Relating to Caribbean Basin Initiative and Generalized System of Preferences

Correction

In FR Doc. 84-31864 beginning on page 47995 in the issue of Friday, December 7, 1984, make the following corrections:

1. On page 47996, first column, Background, second paragraph, second line "1985" should read "1995".

§ 10.198 [Corrected]

2. On page 48001, third column, Declaration of Exporter and the lines beneath it were inadvertently repeated (on page 48002) and should be removed.

BILLING CODE 1505-01-M

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Part IX

Department of Transportation

Federal Aviation Administration

14 CFR Ch. I

Petitions for Rulemaking; Extension of Comment Period

Regulations

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-84-12A]

Petitions for Rulemaking; Extension of Comment Period; Air Transport Association (ATA)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Extension of comment period on petition for rulemaking.

SUMMARY: The FAA has received a petition for rulemaking from the ATA proposing that the FAA adopt an administrative review mechanism and require certificated airports to submit all proposed airport use restrictions to the FAA for review as to lawfulness before implementation. Under the proposal, the FAA would publish them in the **Federal Register** and, if necessary, temporarily suspend the proposed restrictions in order to call a public hearing to receive comments from interested persons. The FAA published the petition in the **Federal Register** on October 25, 1984 (49 FR 43020), with the comment period closing December 24, 1984. Based on requests for extension of the comment period, the FAA is extending the comment period for an additional 30 days.

DATES: Comments on the petition must identify the petition docket number 24246 and be received on or before: January 25, 1985.

ADDRESS: Send comments on the petition in triplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. 24246, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

SUPPLEMENTARY INFORMATION: The FAA has received requests for extension of the comment period on the subject proposal from the National Organization to Insure a Sound-controlled Environment (N.O.I.S.E.) and the United States Conference of Mayors. N.O.I.S.E. is an organization of cities, citizen groups, and individuals affected by and concerned with aviation noise. It asserts that the process contemplated by the ATA petition would result in a major reshaping of the relationships between the Federal Government, represented by the FAA, and State and local governments who are airport proprietors. N.O.I.S.E. contends that exploring, defining, and commenting on such a program will require considerable amounts of time. It states that the timing of the comment period is extremely difficult for State and local governments, because of local elections and the occurrence of both Thanksgiving and Christmas during the comment period.

N.O.I.S.E. also states that for national and regional city organizations, as well as community and citizen organizations, the response process is slow, often requiring study by a committee, submission of a recommendation to a membership, and approval of a position before comment. It cites specific examples of groups it considers will need further time to prepare their comments, including the United States Conference of Mayors. For these reasons, N.O.I.S.E. requested an extension of the comment period for an additional 90 days.

The United States Conference of Mayors, in its request for an extension, stated that the proposed rule is of great concern to Mayors across the country. It asserts that, with the press of other business and the holiday season, the short comment period is insufficient. It states that the issues raised by the proposed rulemaking should be fully reviewed through the appropriate Conference policy process, and that the Conference Transportation and Communications Committee meets next on January 18, 1985, at which time the proposal will be placed on the agenda. The Conference requests an extension of the comment period until February 28, 1985.

The FAA has considered these requests for extension of the comment period and does not consider extensions of the length requested to be warranted. it is concerned, however, that all interested persons have an adequate opportunity to comment. In view of the concerns raised by N.O.I.S.E. and the United States Conference of Mayors, the FAA believes it would be appropriate to extend the comment period for an additional 30 days.

Accordingly, the comment period on the petition of the ATA published in the **Federal Register** on October 25, 1984 (49 FR 43020) is extended until January 25, 1985.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C. on December 18, 1984.

Edward P. Faberman,

Deputy Chief Counsel, Federal Aviation Administration.

[FR Doc. 84-33319 Filed 12-19-84; 12:14 pm]

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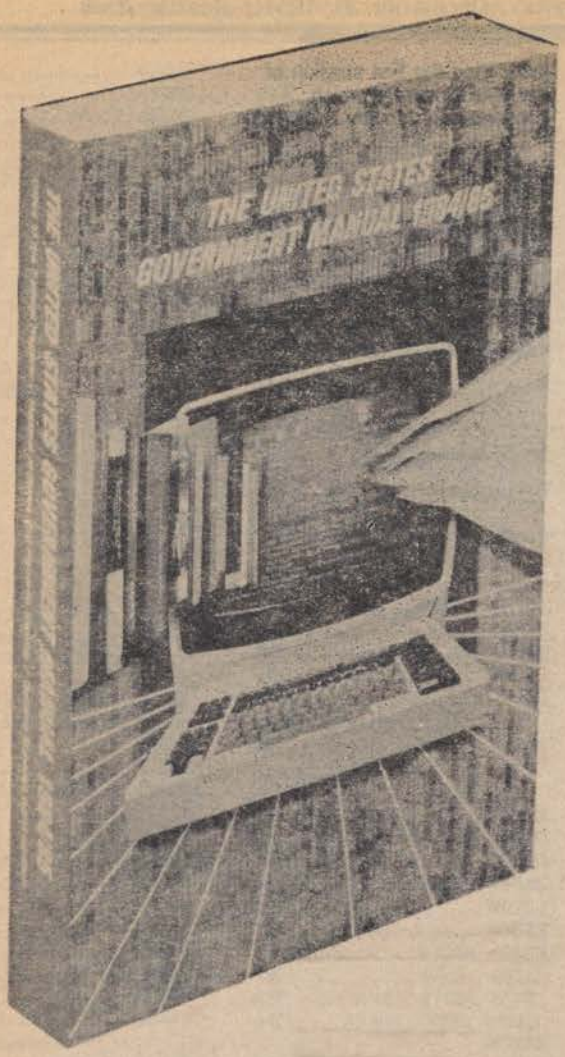
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