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Friday
January 4, 1985

Selected Subjects

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Selected Subjects

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 531 and 536

Appeal Rights for Denial of Within-Grade Increases and Termination of Grade or Pay Retention

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is amending its regulations concerning employee within-grade increases and grade and pay retention so they conform with the law. Specifically, the proposed changes address the appeal rights of employees who are denied within-grade increases because they receive negative acceptable level of competence determinations or whose grade or pay retention benefits are terminated because they decline a reasonable offer of another position.

EFFECTIVE DATE: January 4, 1985.

FOR FURTHER INFORMATION CONTACT: Donald J. Winstead, (202) 632–4634.

SUPPLEMENTARY INFORMATION: A review of OPM regulations has indicated that the alternative appeals procedures provided for in the final sentence of 5 CFR 531.410(d) and in 5 CFR 536.302(e) is beyond OPM's regulatory authority, since the law does not authorize OPM to create additional appeals mechanisms. These provisions were promulgated in error and must be deleted.

Within-Grade Increases

5 CFR 531.410 deals with an agency's reconsideration of a determination that an employee's performance is not at an acceptable level of competence as required by § 5335 of title 5, United States Code. Paragraph (d) of § 531.410 provided an appeal to the Merit Systems Protection Board (MSPB), unless the employee was covered by a collective bargaining agreement. In this case, the determination was reviewable only "in accordance with the terms of the agreement." The provision for challenging the agency denial of a within-grade increase through the negotiated grievance procedure if the collective bargaining agreement so provides is contrary to the law.

Section 7103(a)(9) of title 5, United States Code, defines grievance, in part, as any complaint concerning "any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment." Conditions of employment are defined in § 7103(a)(14) as "personnel policies, practices, and matters * * * affecting working conditions, except that such term does not include policies, practices and matters * * * to the extent that such matters are specifically provided for by Federal statute."

Denial of a within-grade increase is a matter specifically covered by Federal statute and subject to a statutory procedure providing for a reconsideration by the employee's agency and, if the decision is affirmed, for an appeal to MSPB. (See 5 U.S.C. 5335(c).) OPM's regulatory authority is limited to procedures relating to the agency's reconsideration decision. It does not extend to procedures concerning the appeals following the reconsideration decision.

The last sentence of § 531.410(d) does not establish procedures governing the employee's request for reconsideration, but instead creates an alternate procedure not provided for by the law, namely, the challenge through the negotiated grievance procedure. This sentence exceeds the authority to regulate procedures relating to the agency's reconsideration decision vested in OPM by Congress. We are therefore deleting it from § 531.410 so our regulation reflects the applicable statutory provisions.

Grade and Pay Retention

5 CFR 536.302 deals with an employee's right to appeal the termination of grade or pay retention benefits because employees decline a reasonable offer of a position the grade or pay of which is equal to or greater than their retained grade or pay. Paragraph (a) of § 536.302 provides an appeal to OPM, unless the employee is in "an exclusively recognized bargaining unit." In this case, paragraph (e) of § 536.302 prohibits the employee from appealing to OPM if the grievance procedure of the agreement by which he or she is covered provides for review under the negotiated grievance and arbitration procedures. The provision for challenging the termination through the negotiated grievance procedure is contrary to the law.

As discussed in connection with within-grade increases, a negotiated grievance procedure may not cover matters "specifically provided for by Federal statute." (See 5 U.S.C. 7103(a)(14)(C).) Termination of retained grade or pay is a matter specifically covered by Federal statute and subject to a statutory procedure providing for an appeal to OPM. (See 5 U.S.C. 5366(a).) This statute authorizes OPM to prescribe procedures by which an employee may appeal to OPM. Section 536.302(e), however, creates an alternate procedure not provided for by the law, namely, the challenge through the negotiated grievance procedure. Rather than regulating the procedures by which employees may appeal to OPM, this provision divests OPM of the responsibility vested in it by Congress—an action that is not authorized. We are therefore deleting paragraph (e) so our regulations will reflect the applicable statutory provisions.

I find that there is good reason to make this revision effective in less than 30 days (5 U.S.C. 553(d)(3)). The regulations are effective immediately since this change results from an interpretation of law rather than a discretionary policy decision.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have significant economic impact on a substantial number of small entities because these regulations are on administrative practices that will affect only the Federal Government.

List of Subjects in 5 CFR Parts 531 and 536

Administrative practice and procedure, Government employees, Wages.

Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, OPM amends 5 CFR Parts 531 and 536 as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

Subpart D—Within-Grade Increases

1. The authority citation for § 531.410 continues to read as follows:

Authority: 5 U.S.C. 5335 and 5338, E.O. 11721, as amended, Section 402, unless otherwise noted.

2. In Part 531, paragraph (d) of § 531.410 is revised to read as follows:

§ 531.410 Within-Grade Increases.

* * * * *

(d) When a negative determination is sustained after reconsideration, an employee shall be informed in writing of the reasons for the decision and of his or her right to appeal the decision to the Merit Systems Protection Board.

PART 536—GRADE AND PAY RETENTION

Subpart C—Miscellaneous Provisions

3. The authority citation for Part 536 continues to read as follows:

Authority: 5 U.S.C. 5361–5366, Pub. L. 95–454, 92 Stat. 1111.

§ 536.302 [Amended]

4. In Part 536, paragraph (e) of § 536.302 is removed and paragraph (f) is redesignated as paragraph (e).

[FR Doc. 85–175 Filed 1–3–85; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 46

Regulations (Other Than Rules of Practice) Under the Perishable Agricultural Commodities Act, 1930

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; correction.

SUMMARY: This docket adds clarifying citations in 49 FR 23825 on June 8, 1984 and 49 FR 45735 on November 20, 1984 of the **Federal Register.** Center headings for §§ 46.46 and 46.47 were inadvertently omitted.

EFFECTIVE DATE: December 31, 1984.

FOR FURTHER INFORMATION CONTACT: John D. Flanagan, Assistant Chief, P.A.C.A. Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, Phone (202) 447–3212.

SUPPLEMENTARY INFORMATION: 1. Undesignated Center Heading for § 46.46 is added to read as follows:

Statutory Trust

46.46 Statutory Trust.

2. Undesignated Center Heading for § 46.47 is added to read as follows:

OMB Control No.

46.47 OMB Control No. 0581–0031.

(Sec. 15, 46 Stat. 537; 7 U.S.C. 499o)

Dated: December 31, 1984.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85–196 Filed 1–3–85; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 910

[Lemon Reg. 497]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 230,000 cartons during the period January 6–12, 1985. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

DATES: Effective for the period January 6–12, 1985.

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

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

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

This action is consistent with the marketing policy currently in effect. The committee met publicly on December 28, 1984, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that lemon demand is good on smaller sizes and weak on larger sizes of fruit.

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

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

Section 910.797 is added as follows:

§ 910.797 Lemon Regulation 497.

The quantity of lemons grown in California and Arizona which may be handled during the period January 6, 1985, through January 12, 1985, is established at 230,000 cartons.

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

Dated: December 31, 1984.

D.S. Kuryloski,

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

[FR Doc. 85–336 Filed 1–3–85; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 72

[Docket No. 83-097]

Texas (Splentic) Fever in Cattle; Addition to List of Approved Dipping Pesticides

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the "Texas (Splenetic) Fever in Cattle" regulations by adding Ciodrin® to the list of pesticides officially approved for dipping cattle to rid them of ticks prior to their interstate movement. This action is necessary in order to provide an alternative pesticide which is safe and effective for such treatment of livestock. This document also makes changes in the regulations to clarify that animals may be dipped by thoroughly wetting their entire skin by immersion in a chemical solution in a dip vat, or by thoroughly wetting their entire skin with a chemical solution using a spray dip machine or a hand-held sprayer.

EFFECTIVE DATE: February 4, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. E.R. Mackery, Special Diseases Staff, VS, APHIS, USDA, Federal Building, Room 821, 6505 Belcrest Road, Hyattsville, Maryland 20782, 301–436–8438.

ADDRESS: An environmental impact analysis has been prepared on the use of Ciodrin and is available by contacting Dr. G. O. Schubert, Assistant Senior Staff Veterinarian, VS, APHIS, USDA, Federal Building, Room 820, 6505 Belcrest Road, Hyattsville, Maryland 20782, 301–436–8438.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR 72, among other things, regulate the interstate movement of cattle infested with or exposed to certain specified species of ticks. Sections 72.6 and 72.7 of the regulations require certain cattle to be dipped with a permitted dip before they are moved interstate in order to ensure that they are not infested with ticks. Section 72.13(b) of the regulations lists the brands of "permitted dips" permitted by the Department for such dipping. The "permitted dips" are proprietary brands of specific pesticides at prescribed concentrations.

Proprietary brands of the "permitted dips" listed in § 72.13(b) are allowed to be used for the purposes of Part 72 only when approved by the Deputy Administrator, Veterinary Services (VS), in accordance with § 72.13(c) of the regulations. Before a "permitted dip" is specifically approved for such use, VS requires that, among other things, the product be registered for such use under the provisions of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended (7 U.S.C. 135 *et seq.*) In addition, before a dip can be specifically approved as a "permitted dip," its efficacy and stability must have been demonstrated and trials must have been conducted to determine that its concentration can be maintained and that under actual field conditions the dipping of cattle in a bath of specific strength will effectively eradicate ticks without injury to the animals dipped.

Ciodrin® is a biodegradable, organophosphorous compound, which has been registered by the Environmental Protection Agency since April 24, 1963, under the provisions of FIFRA for use against face flies, stable flies, horn flies, ticks, and lice. Both the efficacy and stability of Ciodrin® have been demonstrated. In trials conducted by the Department, it has been shown that the concentration of Ciodrin® can be maintained. Extensive field trials have also demonstrated that dipping cattle with Ciodrin® in a concentration of 0.44 to 0.54 percent effectively eradicate ticks without injury to the animals.

On June 14, 1983, a document was published in the **Federal Register** (48 FR 27256–27257) which proposed to add Ciodrin® to the list of pesticides officially approved for dipping cattle to rid them of ticks prior to their interstate movement. It was proposed to allow Ciodrin® to be used only if used in a concentration of 0.44 to 0.54 percent and only if used in accordance with the EPA approved label. These provisions are adopted as a final rule along with other changes in the regulations discussed below.

The document of June 14, 1983, invited the submission of written comments on or before August 15, 1983. One comment was received. The commenter wrote to advise the Department that Brahman cattle (*Bos indicus* blood) are sensitive to organophosphorous compounds. The Department agrees that Brahman cattle are sensitive to such compounds. Further, the EPA label for the use of Ciodrin® states that it should not be used on cattle with *Bos indicus* blood, and, as noted above, Ciodrin® is approved only if used in accordance with the EPA label. Under these circumstances, no changes are made in the final rule based on the comment.

Also, it should be noted that the label for use of Ciodrin® states that it should not be used in a dip vat. Ciodrin® was intended to be sprayed on animals with a spray dip machine or a hand-held sprayer.

Prior to the effective date of this document, a technical reading of the regulations would have indicated that dipping could have been allowed only by immersing an animal in a chemical solution in a dip vat. However, the regulations have long been interpreted to also allow dipping to be accomplished by thoroughly wetting the entire skin of an animal with a chemical solution using a spray dip machine or a hand-held sprayer. Further, all three methods are widely used in the livestock industry and livestock treated by any of these methods are deemed by the industry to have been "dipped." Also, the chemical solution used in each case, whether it is used as a bath or a spray, is called a "dip."

Under these circumstances, changes are made to clarify that animals may be dipped by thoroughly wetting their entire skin by immersion in a chemical solution in a dip vat, or by thoroughly wetting their entire skin with a chemical solution using a spray dip machine or a hand-held sprayer.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this action will not have any effect on the economy, will not cause any increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprise to compete with foreign-based enterprises in domestic or export markets.

Additionally, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities because this action only provides for the use of an additional "permitted dip" as an option for treatment of cattle infested with or exposed to ticks.

Alternatives

Two alternatives were considered:

1. To list Ciodrin® as a permitted dip.
2. Not to list Ciodrin® as a permitted dip.

Alternative 1 is adopted because it provides another approved insecticide

for use as a "permitted dip" for cattle infested with or exposed to ticks. APHIS believes that as large a number of permitted dips as possible should be available to the industry in the interests of effective disease control. Choosing alternative 1, therefore, maximizes net benefits to society (i.e., the use of another effective insecticide) without any additional cost. If alternative 2 had been adopted, this insecticide, which has been proven effective against ticks and which has been registered for that use by EPA, could not be made available. This would be detrimental to ongoing efforts to eradicate Texas (Splenetic) Fever in cattle in the United States.

List of Subjects in 9 CFR Part 72

Animal diseases, Animal pests, Cattle, Quarantine, Transportation, Texas fever, Splenetic fever, Ticks.

PART 72—TEXAS (SPLENETIC) FEVER IN CATTLE

Accordingly, 9 CFR Part 72 is amended as follows:

§ 72.6 [Amended]

1. In § 72.6, "in a permitted dip" is changed to "with a permitted dip".

§ 72.7 [Amended]

2. In § 72.7, "in a permitted dip" is changed to "with a permitted dip".

3. In the first sentence of § 72.13(a), "in a permitted dip and at places where proper facilities are provided for dipping" is changed to "with a permitted dip and at places where proper equipment is provided for dipping".

4. In § 72.13(b), a new paragraph (4) is added to read as follows:

§ 72.13 Permitted dips and procedures.

* * * * *

(b) * * *

(4) Approved proprietary brands of organophosphorous insecticides (Ciodrin®) if used in a concentration of 0.44 to 0.54 percent and if used in accordance with the EPA approved label.

* * * * *

5. In the second sentence of § 72.13(c), "in a bath of definite strength" is changed to "with a solution of definite strength".

§ 72.16 [Amended]

6. In the second sentence of § 72.16, "a properly equipped dipping vat" is changed to "proper dipping equipment."

§ 72.18 [Amended]

7. In § 72.18 (a), (b), and (c), "when dipping facilities are not available", wherever it appears, is changed to "when dipping equipment is not available".

8. A new § 72.25 is added to read as follows:

§ 72.25 Dipping methods.

Dipping is accomplished by thoroughly wetting the entire skin by either immersion in a chemical solution in a dip vat, or by spraying with a chemical solution using a spray-dip machine or a hand-held sprayer.

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111–113, 115, 117, 120, 121, 123–128, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d))

Done at Washington, D.C., this 28th day of December, 1984.

K. R. Hook,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85–312 Filed 1–3–85; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Parts 72 and 73

[Docket No. 84–110]

Coumaphos (Co-Ral®); Approval for Treatment of Cattle

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations by adding the flowable form of coumaphos (Co-Ral®) to the list of pesticides officially approved for the treatment of cattle prior to interstate movement to rid them of fever ticks and to rid them of scabies mites. This action is warranted since it has been determined that the flowable form of coumaphos is a safe and effective pesticide for such treatment of livestock.

EFFECTIVE DATE: February 4, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. G.O. Schubert, Special Diseases Staff, VS, APHIS, USDA, Federal Building, Room 820, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8438.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 72, among other things, regulate the interstate movement of certain cattle because of ticks which are vectors of splenetic or tick fever. Section 72.13(b) of the regulations sets forth certain permitted dips and procedures for the dipping of certain cattle before they are moved interstate in order to ensure that they are not infected with fever ticks. Also, the regulations in 9 CFR Part 73, among other things, regulate the interstate movement of certain cattle because of scabies, a contagious skin disease caused by mites. Section 73.10(a) of the regulations sets forth certain permitted dips for the treatment of cattle affected with or exposed to scabies.

A document published in the **Federal Register** on August 21, 1984 (49 FR 33134–33135) proposed to amend §§ 72.13(b) and 73.10(a) of the regulations by adding the flowable form of coumaphos (Co-Ral®) to the list of pesticides officially approved for the treatment of cattle prior to interstate movement to rid them of fever ticks and to rid them of scabies mites. Comments were solicited for 60 days after publication. No comments were received. The rationale set forth in the proposal still provides a basis for the amendments. Therefore, the regulations are amended as proposed.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a major rule. The Department has determined that this rule will not have a significant effect on the economy; will not cause any increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The regulations in 9 CFR Parts 72 and 73 already allow solutions of coumaphos (Co-Ral®) from the wettable powder form to be used for treatment of cattle prior to interstate movement to rid them of fever ticks and to rid them of scabies mites. This document allows solutions from the flowable form of coumaphos to be used for such purpose. It does not appear that this rule will have a significant effect on the amount of coumaphous used under the regulations in 9 CFR Parts 72 and 73.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects

9 CFR Part 72

Animal diseases, Animal pests, Cattle, Quarantine, Splenetic fever, Texas fever, Ticks, Transportation.

9 CFR Part 73

Animal diseases, Animal pests, Cattle, Mites, Quarantine, Scabies, Transportation.

Accordingly, 9 CFR Parts 72 and 73 are amended as follows:

PART 72—TEXAS (SPLENETIC) FEVER IN CATTLE

1. The authority for Part 72 reads as follows:

Authority: Secs. 4–7, 23 Stat. 32, as amended, secs. 1 and 2, 32 Stat. 791, secs. 1–4, 33 Stat. 1264, 21 U.S.C. 111–113, 115, 117, 120, 121, 123–126; 7 CFR 2.17, 2.51, and 371.2(b).

§ 72.13 [Amended]

2. Paragraph (b)(2) of § 72.13 is amended by adding "or flowable form" after "wettable powder".

PART 73—SCABIES IN CATTLE

4. The authority for Part 73 reads as follows:

Authority: Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111–113, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 73.10 [Amended]

5. Paragraph (a)(3) of § 73.10 is amended by adding "or flowable form" after "wettable powder".

Done at Washington, D.C., this 28th day of December, 1984.

K.R. Hook,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85–247 Filed 1–3–85; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 113

[Docket No. 84–103]

Viruses, Serums, Toxins, and Analogous Products; Standard Requirements for Feline Calicivirus Vaccine, Feline Rhinotracheitis Vaccine, Bursal Disease Vaccine, Pseudorabies Vaccines, Parvovirus Vaccines, Canine Parainfluenza Vaccine, and Tenosynovitis Vaccine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: These amendments codify in the regulations the Standard Requirements for evaluating Feline Calicivirus Vaccine, Feline Rhinotracheitis Vaccine, Bursal Disease Vaccine, Pseudorabies Vaccines, Parvovirus Vaccines, Canine Parainfluenza Vaccine, and Tenosynovitis Vaccine for purity, safety, potency, and efficacy. Such codification assures uniformity and general availability of such Standard Requirements to all licenses, applicants, and to the general public.

FOR FURTHER INFORMATION CONTACT: Dr. David F. Long, Chief Staff Veterinarian, Veterinary Biologics Staff, VS, APHIS, USDA, Room 829, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8674.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This final 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 action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512–1 to implement Executive Order 12291 and has been classified as a "Nonmajor Rule."

The final rule will not have a significant effect on the economy and will 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.

Certification Under the Regulatory Flexibility Act

Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not result in an adverse economic impact on a substantial number of small entities. Small entities are defined as independently owned firms not dominant in the field of veterinary biologics manufacturing.

Background

Standard Requirements consist of test methods, procedures, and criteria established by Veterinary Services for evaluating biological products for purity, safety, potency, and efficacy. Until such Standard Requirements are developed by Veterinary Services and are codified in the regulations (9 CFR Part 113), the test methods, procedures, and criteria to be used in the evaluation of a product are developed by the licensees and are written into the applicable Outlines of Production which are required to be filed with Veterinary Services.

When Standard Requirements for a biological product have been developed by Veterinary Services, they are proposed for codification in the regulations.

Development of these standards is accomplished through cooperative efforts involving academic institutions, research organizations, licensees and applicants, and the National Veterinary Services Laboratories.

Each of the test methods proposed in these amendments has been used for evaluation of at least two currently licensed products.

Such codification assures uniformity and general availability of such Standard Requirements to all licensees, applicants, and to the general public.

These amendments contain the Standard Requirements for all licensed products containing live and modified live canine parainfluenza virus or tenosynovitis virus; modified live and killed pseudorabies virus or parvovirus; and killed feline calicivirus, feline rhinotracheitis virus, or bursal disease virus.

Comments Received

On May 21, 1984, a notice of proposed rulemaking was published in the **Federal Register** at 49 FR 21339 discussing this revision and soliciting comments.

Comments were received from eight licensed manufacturers and from National Veterinary Services Laboratories. None opposed adoption of the proposed amendment. The following is a discussion of the comments received regarding the proposed rulemaking.

Two licensees proposed deleting the restriction in 9 CFR 113.130, 113.131, 113.132, 113.133, and 113.134 which would limit vaccine to the fifth passage from Master Seed. Such limit is considered necessary to ensure that changes in immunogenicity through cultural passage of the viruses do not occur. One would be unlikely to detect small but significant changes in protective ability when using small numbers of animals or in vitro procedures in performing potency tests. The proposed fifth passage limit does not unduly restrict the amount of production seed which can be prepared without recourse to a new Master Seed. Therefore, the proposed deletion of the restriction was not accepted.

One manufacturer, while agreeing to the proposed rulemaking, suggested increasing the interval between the original immunogenicity test and the repeat test in 9 CFR 113.134, 113.151, 113.152, 113.153, and 113.154 from 3 to 5 years. In support of this suggestion, he stated that in some cases 18 months can elapse from the completion of the original immunogenicity test and the time the product is marketed. The extended time suggested would allow for evaluation of the product and enable the company to realize a profit before incurring the expense of another immunogenicity test. The repeat immunogenicity test was established at 3 year to allow for early detection of any change that may occur with the Master Seed during storage and to correct as early as possible any unexpected or adverse reaction caused by the licensed product that could be traced back to the Master Seed. In most cases the repeat Master Seed immunogenicity test is conducted with less than half the number of animals used in the initial test, which significantly reduces the expense of conducting the repeat test. The Agency believes that conducting the repeat immunogenicity test at 3 years rather than 5 years has good scientific merit. Therefore, the Agency believes that it is in the best interest of the licensee and the user of these products not to make a change in the requirement.

Two licensees objected to the proposal that a repeat immunogenicity test must be conducted on Parvovirus Vaccine, Killed Virus, proposed in 9 CFR 113.134. This repeat test is considered to be necessary because, unlike other killed virus vaccines, the proposed serial potency test consists of an in vitro procedure which might not reflect loss of protective ability due to continued storage. This test system closely resembles those applied t live vaccines, where retests have been considered essential to ensure continued immunogenicity. Therefore, this suggestion was not accepted.

One licensee requested that the immunogenicity test in 9 CFR 113.134 be changed to any method acceptable to Veterinary Services. For products where extensive work has been done to establish measures of immunogenicity with in vitro procedures to evaluate market serials, specific test requirements are considered essential. Evaluation of the killed virus vaccine would be essentially identical with modified live virus vaccines recommended for the same purpose. Therefore the specific immunogenicity test in 9 CFR 113.134 has been retained.

One licensee suggested that the sixteenfold reduction in hemagglutinating activity required in the virus identity test in 9 CFR 113.134(c)(2) is excessive. An eight fold reduction was recommended as adequate. Since certain vaccines may be rejected at the sixteenfold level and since an eightfold decrease is sufficient to confirm the virus identity, the suggested change was adopted.

One licensee suggested that the minimum prechallenge period in the potency tests specified in 9 CFR 113.130(d)(2)(iii) and 113.131(d)(2)(iii) be reduced from 21 to 14 days. Veterinary Services agrees that this would be less costly and equally effective. Therefore, this change was adopted.

Four manufacturers recommended a wider range in virus content be used in the conduct of serum neutralization tests. If a test were conducted using more or less virus than specified, a no-test would result. Additionally, certain acceptable new test methods respond adequately with less virus than the minimum 100 $TCID_{50}$ specified. Therefore, the range was changed from 100 to 300 $TCID_{50}$ to 50 to 300 $TCID_{50}$ in 9 CFR 113.133(c)(2)(ii), 113.134(b)(1), 113.151(b)(1), 113.152(c)(1), and 113.153(b)(1).

One manufacturer recommended publication of a specific progeny protection test in 9 CFR 113.132(c). Because of the variations in age and differences in breed response, it is necessary that procedures for such tests be based on the label recommendations for each product. Therefore this recommendation was not adopted.

Three manufacturers recommended that in vitro or mouse potency tests be utilized in 9 CFR 113.133(c) with a second stage pig protection test. This would eliminate the need for pigs to conduct the first stage potency test. Reduced costs and animal welfare concerns were cited as the expected benefits. A substitute test of this nature would be accepted under the provisions of 9 CFR 113.4, if it were shown to be correlated with host animal (pig) protection. However, laboratory animals have not been shown to be adequately reliable in evaluating potency of these vaccines. Therefore, this suggestion was not adopted.

Two manufacturers recommended that the host animal challenge potency test in 9 CFR 113.130(d)(2) and 113.131(d)(2) be changed to measurement of serological response or in vitro measurement of antigen mass. Neither of the suggested procedures have been shown to be reliable methods for determining protective capability. Therefore, this suggestion was not adopted.

One manufacturer suggested deletion of the requirement to inactivate serum used in the tests described in 9 CFR 113.133(c)(2)(i) and (iv) because inactivation has been shown to destroy complement which enhances the response. These enhanced values, however, are not correlated with protection. Standard laboratory practice for virus neutralization of pseudorabies virus includes inactivation of serum in the test procedure. Therefore, this change was not adopted.

One manufacturer proposed that, because of frequent non-specific virus inhibition, pigs should be considered susceptible even if positive at the 1:2 dilution as specified in 9 CFR 113.133 (c)(2) (ii) and (v). Pigs seropositive at 1:2 could also be nonsusceptible resulting in an anamnestic response instead of the immunizing values sought. Problems associated with nonspecific inhibition are not sufficiently frequent to justify the risk of inadequate product evaluation that could occur if such test animals were used. Therefore, this proposal was not adopted.

Two licensees requested that tests other than measurement of fecal hemagglutinins be permitted in 9 CFR 113.134(b)(3)(i) and 113.152(c)(3)(i). The Agency approved the addition of provisions to accept tests of equal sensitivity.

One licensee suggested substitution of an increase in temperature from an established baseline for the 103.4°F specified in 9 CFR 113.134(b)(3)(i) and 113.152(c)(3)(i). Establishment of baseline values in 25 dogs is considered to be unduly demanding and expensive. The specified temperature is considered to be high enough to assure presence of infection in the challenged animals. Therefore, this suggestion was not adopted.

One licensee suggested deletion of the virus identity test in 9 CFR 113.134(c)(3) since the potency test serves to confirm identity. The in vitro procedure specified would not identify the organism. Therefore, this suggestion was not adopted.

One licensee recommended increasing the minimum acceptable serological response specified in 9 CFR 113.134(b)(4)(iv) and 113.152(c)(4)(iv) from 1:16 to 1:50. Response at 1:50 has been shown to be required to assure protection from infection, while response at 1:16 demonstrates protection from disease. Since the product is recommended for protection against disease, this recommendation was not accepted.

One licensee suggested that the 21 day postchallenge observation period specified in 9 CFR 113.167(c)(3) be reduced to 14 days. After review of test results, the Agency agreed to the change.

One licensee commented that five pigs (4 vaccinates and one control) would be adequate to evaluate serial potency of Pseudorabies Vaccine as specified in 9 CFR 113.133(c)(2) and that a titer of 1:4 in the 4 vaccinates would demonstrate adequate serum neutralization response. The number of vaccinates specified is statistically the smallest acceptable number. Also, 5 controls are essential to conduct the challenge trail specified in 9 CFR 113.133(c)(2)(vi). Since all, or nearly all, the pigs would survive in each test, the additional five pigs would not result in an excessive test cost. Extensive studies have been conducted that indicate that a 1:4 titer would not be adequate to ensure protection.

In order to ensure that a vaccine would be efficacious, a titer of 1:8 or higher in at least four of five pigs is necessary. The remaining acceptable pig with a titer of at least 1:4 is needed to prevent rejection of a serial due to the individual unresponsiveness of a test pig which is commonly seen.

National Veterinary Service Laboratories suggested that the prechallenge period for the potency tests in 9 CFR 113.130(d)(2)(iii) and 9 CFR 113.131(d)(2)(iii) could be reduced from 21 days to 14 days resulting in lower cost without reducing the effectiveness of the test. This change was adopted.

The safety tests specified in 9 CFR 113.134(c)(1), 113.151(c)(1), 113.152(c)(1), and 113.153(c)(1) were noted to be redundant. The general requirements in 9 CFR 113.120 and 113.135 included in the introductory statements regarding test requirements for release specify the same tests. Therefore, the redundant safety test statements were deleted.

List of Subjects in 9 CFR Part 113

Animal biologics.

PART 113—STANDARD REQUIREMENTS

Part 113 is amended by adding nine new sections to read:

§ 113.130 Feline Calicivirus Vaccine, Killed Virus.

Feline Calicivirus Vaccine, Killed Virus, shall be prepared from virus-bearing cell culture fluids. Only Master Seed which has been established as pure, safe, and immunogenic shall be used for preparing seeds for vaccine production. All serials of vaccine shall be prepared from the first through the fifth passage from the Master Seed.

(a) The Master Seed shall meet the applicable general requirements prescribed in § 113.120.

(b) The Master Seed shall be tested for chlamydial agents as prescribed in § 113.43.

(c) The immunogenicity of vaccine prepared from the Master Seed in accordance with the Outline of Production shall be established by a method acceptable to Veterinary Services. Vaccine used for this test shall be at the highest passage from the Master Seed and prepared at the minimum preinactivation titer specified in the Outline of Production.

(d) *Test requirements for release.* Each serial and subserial shall meet the applicable general requirements prescribed in § 113.120 and the special requirements provided in this paragraph. Any serial or subserial found unsatisfactory by a prescribed test shall not be released.

(1) *Safety.* Vaccinates used in the potency test in paragraph (d)(2) of this section shall be observed each day during the prechallenge period. If unfavorable reactions occur, including oral lesions, which are attributable to the vaccine, the serial is unsatisfactory. If unfavorable reactions occur which are not attributable to the vaccine, the test is inconclusive and may be repeated. If the test is not repeated, the serial is unsatisfactory.

(2) *Potency.* Bulk or final container samples of completed product shall be treated for potency as follows:

(i) Eight feline calicivirus susceptible cats (five vaccinates and three controls) shall be used as test animals. Throat and nasal swabs shall be collected from each cat and individually tested on susceptible cell cultures for the presence of feline calicivirus. Blood samples shall be drawn and individual serum samples tested for neutralizing antibody. The cats shall be considered suitable for use if all swabs are negative for virus isolation and all serums are negative for calicivirus antibody at the 1:2 final dilution in a 50 percent plaque reduction test or other test of equal sensitivity.

(ii) The five cats used as vaccinates shall be administered one dose of vaccine by the method recommended on the label. If two doses are recommended, the second dose shall be given after the interval recommended on the label.

(iii) Fourteen or more days after the final dose of vaccine, the vaccinates and controls shall each be challenged intranasally with virulent feline calicivirus furnished or approved by Veterinary Services and observed each day for 14 days postchallenge. The rectal temperature of each animal shall be taken and the presence or absence of clinical signs, particularly lesions on the oral mucosa, noted and recorded each day.

(iv) If three of three controls do not show clinical signs of feline calicivirus infection other than fever, the test is inconclusive and may be repeated.

(v) If a significant difference in clinical signs cannot be demonstrated between vaccinates and controls using a scoring system approved by Veterinary Services and prescribed in the Outline of Production, the serial is unsatisfactory.

§ 113.131 Feline Rhinotracheitis Vaccine, Killed Virus.

Feline Rhinotracheitis Vaccine, Killed Virus, shall be prepared from virus-bearing cell culture fluids. Only Master Seed which has been established as pure, safe, and immunogenic shall be used for preparing seeds for vaccine production. All serials of vaccine shall be prepared from the first through the fifth passage from the Master Seed.

(a) The Master Seed shall meet the applicable general requirements prescribed in § 113.120.

(b) The Master Seed shall be tested for chlamydial agents as prescribed in § 113.43.

(c) The immunogenicity of vaccine prepared from the Master Seed in accordance with the Outline of Production shall be established by a method acceptable to Veterinary Services. Vaccine used for this test shall be at the highest passage from the Master Seed and prepared at the minimum preinactivation titer specified in the Outline of Production.

(d) *Test requirements for release.* Each serial and subserial shall meet the applicable general requirements prescribed in § 113.120 and the special requirements provided in this paragraph. Any serial or subserial found unsatisfactory by a prescribed test shall not be released.

(1) *Safety test.* Vaccinates used in the potency test in paragraphs (d)(2) of this section shall be observed each day during the prechallenge period. If unfavorable reactions occur which are attributable to the vaccine, the serial is unsatisfactory. If unfavorable reactions occur which are not attributable to the vaccine, the test is inconclusive and may be repeated. If the test is not repeated, the serial is unsatisfactory.

(2) *Potency test.* Bulk or final container samples of completed product shall be tested for potency as follows:

(1) Eight feline rhinotracheitis susceptible cats (five vaccinates and three controls) shall be used as test

animals. Throat and nasal swabs shall be collected from each cat and individually tested on susceptible cell cultures for the presence of feline rhinotracheitis virus. Blood samples shall be drawn and individual serum samples tested for neutralizing antibody. The cats shall be considered suitable for use if all swabs are negative for virus isolation and all serums are negative for rhinotracheitis virus antibody at the 1:2 final dilution in a 50 percent plaque reduction test or other test of equal sensitivity.

(ii) The five cats used as vaccinates shall be administered one dose of vaccine by the method recommended on the label. If two doses are recommended, the second dose shall be given after the interval recommended on the label.

(iii) Fourteen or more days after the final dose of vaccine, the vaccinates and controls shall each be challenged intranasally with virulent feline rhinotracheitis virus furnished or approved by Veterinary Services and observed each day for 14 days postchallenge. The rectal temperature of each animal shall be taken and the presence or absence of clinical signs noted and recorded each day.

(iv) If three of three controls do not show clinical signs of feline rhinotracheitis virus infection other than fever, the test is inconclusive and may be repeated.

(v) If a significant difference in clinical signs cannot be demonstrated between vaccinates and controls using a scoring system approved by Veterinary Services and prescribed in the Outline of Production, the serial is unsatisfactory.

§ 113.132 Bursal Disease Vaccine, Killed Virus.

Bursal Disease Vaccine, Killed Virus, shall be prepared from virus-bearing cell culture fluids or embryonated chicken eggs. Only Master Seed which has been established as pure, safe, and immunogenic shall be used for preparing seeds for vaccine production. All serials shall be prepared from the first through the fifth passage from the Master Seed.

(a) The Master Seed shall meet the applicable requirements prescribed in § 113.120.

(b) Each lot of Master Seed shall be tested for pathogens by the chicken embryo inoculation test prescribed in § 113.37, except that, if the test is inconclusive because of a vaccine virus override, the chicken inoculation test prescribed in § 113.36 may be conducted and the virus judged accordingly.

(c) The immunogenicity of vaccine prepared in accordance with the Outline of Production shall be established by a method acceptable to Veterinary Services. Vaccine used for this test shall be at the highest passage from the Master Seed and prepared at the minimum preinactivation titer specified in the Outline of Production. The test shall establish that the vaccine, when used as recommended on the label, is capable of inducing an immune response in dams of sufficient magnitude to provide significant protection to offspring.

(d) *Test requirements for release.* Each serial and subserial shall meet the applicable general requirements prescribed in § 113.120 and the special requirements in this paragraph. Any serial or subserial found unsatisfactory by a prescribed test shall not be released.

(1) *Safety.* Vaccinates used in the potency test in paragraph (d)(2) of this section shall be observed each day during the prechallenge period. If unfavorable reactions attributable to the vaccine occur, the serial is unsatisfactory. If unfavorable reactions which are not attributable to the vaccine occur, the test is inconclusive and may be repeated. If the test is not repeated, the serial is unsatisfactory.

(2) *Potency.* Bulk or final container samples of completed product from each serial shall be tested for potency using the two-stage potency test provided in this paragraph.

(i) *Vaccinates.* Inject each of 21 susceptible chickens 14 to 28 days of age, properly identified and obtained from the same source and hatch, with one dose of vaccine by the route recommended on the label and observe for at least 21 days.

(ii) *Controls.* Retain at least 10 additional chickens from the same source and hatch as unvaccinated controls.

(iii) *Challenge.* Twenty-one to 28 days postvaccination, challenge 20 vaccinates and 10 controls by eyedrop with a virulent infectious bursal disease virus furnished or approved by Veterinary Services.

(iv) *Postchallenge period.* Four days postchallenge, necropsy all chickens and examine each for gross lesions of bursal disease. For purposes of this test, gross lesions shall include peribursal edema and/or edema and/or macroscopic hemorrhage in the bursal tissue. Vaccinated chickens showing gross lesions shall be counted as failures. If at least 80 percent of the controls do not have gross lesions of bursal disease in a stage of the test, that stage is considered inconclusive and may be repeated. In a valid test, the results shall be evaluated according to the following table:

Stage	Number of vaccinates	Cumulative number of vaccinates	Cumulative total number of failures for—	
			Satisfactory serial	Unsatisfactory serial
1	20	20	3 or less	6 or more.
2	20	40	8 or less	9 or more

(v) If four or five vaccinates show lesions of bursal disease in the first stage, the second stage may be conducted in a manner identical to the first stage. If the second stage is not conducted, the serial is unsatisfactory.

(vi) If the second stage is used, each serial shall be evaluated according to the second part of the table on the basis of cumulative results.

§ 113.133 Pseudorabies Vaccine, Killed Virus.

Pseudorabies Vaccine, Killed Virus, shall be prepared from virus-bearing cell culture fluids. Only Master Seed which has been established as pure, safe, and immunogenic shall be used for preparing seeds for vaccine production. All serials of vaccine shall be prepared from the first through the fifth passage from the Master Seed.

(a) The Master Seed shall meet the applicable general requirements prescribed in § 113.120.

(b) The immunogenicity of vaccine prepared from the Master Seed in accordance with the Outline of Production shall be established by a method acceptable to Veterinary Services. Vaccine used for this test shall be at the highest passage from the Master Seed and at the minimum preinactivation titer provided in the Outline of Production.

(c) *Test requirements for release.* Each serial and subserial shall meet the applicable general requirements prescribed in § 113.120 and the special requirements provided in this paragraph. Any serial or subserial found unsatisfactory by a prescribed test shall not be released.

(1) *Safety.* Vaccinates used in the potency test in paragraph (c)(2) of this

section shall be observed each day during the prechallenge period. If unfavorable reactions occur, including neurological signs, which are attributable to the vaccine, the serial is unsatisfactory. If unfavorable reactions occur which are not attributable to the vaccine, the test is inconclusive and may be repeated. If the test is not repeated, the serial is unsatisfactory.

(2) *Potency.* Bulk or final container samples of completed product shall be tested for potency as follows:

(i) Ten pseudorabies susceptible pigs (five vaccinates and five controls) shall be used as test animals. The animals shall be at the minimal age recommended for vaccination. Blood samples shall be drawn and individual serum samples inactivated and tested for neutralizing antibody.

(ii) A constant virus-varying serum neutralization test in cell culture using 50 to 300 $TCID_{50}$ of virus shall be used. Pigs shall be considered susceptible if there is no neutralization at 1:2 final serum dilution. Other tests of equal sensitivity acceptable to Veterinary Services may be used.

(iii) The five pigs used as vaccinates shall be administered one dose of vaccine as recommended on the label. If two doses are recommended, the second dose shall be given after the interval recommended on the label.

(iv) Fourteen days or more after vaccination, blood samples shall be drawn and individual serum samples inactivated and tested for pseudorabies virus neutralizing antibody by the method used to determine susceptibility.

(v) *Test interpretation.* If the controls have not remained seronegative at 1:2, the test is inconclusive and may be repeated. If at least four of the five vaccinates in a valid test have not developed titers of at least 1:8, and the remaining vaccinate has not developed a titer of at least 1:4, the serial is unsatisfactory, except as provided in paragraph (c)(2)(vi) of this section.

(vi) *Virus challenge test.* If the results of a valid serum neutralization test are unsatisfactory, the vaccinates and controls may be challenged with virulent pseudorabies virus furnished or approved by Veterinary Services. The animals shall be observed each day for 14 days postchallenge. If four of five controls do not develop central nervous system signs or die, the test is inconclusive and may be repeated. In a valid test, if two or more of the vaccinates develop clinical signs or die, the serial is unsatisfactory.

§ 113.134 Parvovirus Vaccine, Killed Virus (Canine).

Parvovirus Vaccine, Killed Virus, recommended for use in dogs, shall be prepared from virus-bearing cell culture fluids. Only Master Seed which has been established as pure, safe, and immunogenic shall be used for vaccine production. All serials of vaccine shall be prepared from the first through the fifth passage from the Master Seed.

(a) The Master Seed shall meet the applicable general requirements prescribed in § 113.120.

(b) The immunogenicity of vaccine prepared in accordance with the Outline of Production shall be established as follows:

(1) Twenty-five parvovirus susceptible dogs (20 vaccinates and 5 controls) shall be used as test animals. Blood samples drawn from each dog shall be individually tested for neutralizing antibody against canine parvovirus to determine susceptibility.

A constant virus-varying serum neutralization test in cell culture using 50 to 300 $TCID_{50}$ of virus shall be used. Dogs shall be considered susceptible if there is no neutralization at a 1:2 final serum dilution. Other tests of equal sensitivity acceptable to Veterinary Services may be used.

(2) A viral hemagglutination test or another test acceptable to Veterinary Services shall be used to measure the antigenic content of vaccine produced at the highest passage from the Master Seed before the immunogenicity test is conducted. The 20 dogs used as vaccinates shall be injected with a predetermined dose of vaccine by the method recommended on the label. To confirm the dosage calculations, five replicate tests shall be conducted on a sample of the vaccine used. If two doses are used, five replicate confirming tests shall be conducted on each dose.

(3) Fourteen days or more after the final dose of vaccine, the vaccinates and the controls shall be challenged with virulent canine parvovirus furnished or approved by Veterinary Services and the dogs observed each day for 14 days. Rectal temperature, blood lymphocyte count, and feces for viral detection shall be taken from each dog each day for at least 10 days postchallenge and the presence or absence of clinical signs noted and recorded each day.

(i) The immunogenicity of the vaccine shall be evaluated on the following criteria of infection: temperature >103.4 °F; lymphopenia of >50 percent of prechallenge normal; clinical signs such as diarrhea, mucus in feces, or blood in feces; and viral hemagglutinins at a level of >1:64 in a 1:5 dilution of feces or a test of equal sensitivity. If at least 80 percent of the controls do not show at least three of the four criteria of infection during the observation period, the test is inconclusive and may be repeated.

(ii) If at least 19 of the 20 vaccinates do not survive the observation period without showing any more than one criterion of infection described in subparagraph (3)(i), of this section, the Master Seed is unsatisfactory.

(4) The Master Seed shall be retested for immunogenicity in 3 years unless use of the lot previously tested is discontinued. Only five susceptible dogs (four vaccinates and one control) need to be used in the retest. Susceptibility shall be determined in the manner provided in paragraph (b)(1) of this section.

(i) Each vaccinate shall be injected with a predetermined quantity of vaccine virus as provided in paragraph (b)(2) of this section.

(ii) Fourteen to 21 days after the last vaccination, a second serum sample shall be drawn from each dog and tested for neutralizing antibody to canine parvovirus in the same manner used to determine susceptibility.

(iii) If the control has not remained seronegative at 1:2, the test is inconclusive and may be repeated.

(iv) If three of the four vaccinates in a valid test do not develop titers based upon final serum dilution of at least 1:16, and the remaining vaccinate does not develop a titer of at least 1:8, the Master Seed is unsatisfactory, except as provided in subparagraph (4)(v) of this section.

(v) If the results of a valid SN test are unsatisfactory, the vaccinates and the control may be challenged as provided in paragraph (b)(3) of this section. If at least three of the four criteria of infection are not shown, the test is inconclusive and may be repeated, except that if any of the vaccinates show more than one criterion of infection, the Master Seed is unsatisfactory.

(5) An Outline of Production change shall be made before authority for use of a new lot of Master Seed shall be granted by Veterinary Services.

(c) *Test requirements for release.* Each serial and subserial shall meet the requirements prescribed in § 113.120 and in this paragraph. Any serial or subserial found unsatisfactory by a prescribed test shall not be released.

(1) *Potency.* Bulk or final container samples of completed product shall be tested for antigenic content using the method used in paragraph (b)(2) of this section. To be eligible for release, each serial and each subserial shall have an

antigenic content sufficiently greater than that used in the immunogenicity test to assure that, when tested at any time within the expiration period, each serial and subserial shall have an antigenic content equal to the amount used in such immunogenicity test.

(2) *Virus identity.* Bulk or final container samples shall be tested for virus identity by conducting a hemagglutination test using duplicate samples and pretreating one with specific canine parvovirus antibody. If there is not at least an eightfold reduction in hemagglutinating activity, the hemagglutination is considered to be nonspecific and the serial is unsatisfactory.

§ 113.151 Canine Parainfluenza Vaccine.

Canine Parainfluenza Vaccine shall be prepared from virus-bearing cell culture fluids. Only Master Seed which has been established as pure, safe, and immunogenic shall be used for preparing seeds for vaccine production. All serials of vaccine shall be prepared from the first through the fifth passage from the Master Seed.

(a) The Master Seed shall meet the applicable general requirements prescribed in § 113.135 and the requirements in this section.

(b) Each lot of Master Seed shall be tested for immunogenicity. The selected virus dose shall be established as follows:

(1) Twenty-five canine parainfluenza susceptible dogs (20 vaccinates and 5 controls) shall be used as test animals. Nasal swabs shall be collected from each dog on the day the first dose of vaccine is administered and individually tested on susceptible cell cultures for the presence of canine parainfluenza virus. Blood samples shall also be drawn and individual serum samples tested for neutralizing antibody. Dogs shall be considered susceptible if all swabs are negative for virus isolation and if all serums are negative for canine parainfluenza antibody at a 1:2 final dilution in a constant virus-varying serum neutralization test using 50 to 300 $TCID_{50}$ of canine parainfluenza virus.

(2) A geometric mean titer of vaccine produced at the highest passage from the Master Seed shall be established before the immunogenicity test is conducted. The 20 dogs used as vaccinates shall be administered a predetermined quantity of vaccine virus. Five replicate virus titrations shall be conducted on a sample of the vaccine virus dilution used to confirm the dosage administered. If two doses are used, five replicate confirming titrations shall be conducted on each dose.

(3) Three to 4 weeks after the final dose of vaccine, all dogs shall be bled for serum antibodies and nasal swabs shall be collected for canine parainfluenza virus isolation. On the same day, all vaccinates and controls shall be challenged with canine parainfluenza virus furnished or approved by Veterinary Services.

(4) The rectal temperature of each dog shall be taken and the presence of respiratory or other clinical signs of canine parainfluenza virus infection noted and recorded each day for 14 consecutive days postchallenge. Nasal swabs shall be collected from each dog each day for at least 10 consecutive days postchallenge. Individual swabs shall be tested for virus isolation by culture in canine parainfluenza virus susceptible cells for at least 7 days. Results shall be evaluated according to the following criteria:

(i) If five of five controls have not remained seronegative at a final serum dilution of 1:2 during the prechallenge period, the test is inconclusive and may be repeated.

(ii) If more than one vaccinate shows febrile response, respiratory or other clinical signs of canine parainfluenza virus infection; or, if less than 19 of 20 vaccinates show serum neutralization titers of 1:4 or greater; or, if there is not a significant reduction in virus isolation rate in vaccinates when compared with controls, the Master Seed is unsatisfactory.

(5) The Master Seed shall be retested for immunogenicity in 3 years unless use of the lot previously tested is discontinued. Only five vaccinates and five controls need to be used in the retest: *Provided,* That five of five vaccinates and five of five controls shall meet the criteria prescribed in paragraph (b)(4) of this section.

(6) An Outline of Production change shall be made before authority for use of a new lot of Master Seed shall be granted by Veterinary Services.

(c) *Test requirements for release.* Each serial and subserial shall meet the applicable general requirements prescribed in § 113.135 and the requirements in this paragraph. Any serial or subserial found unsatisfactory by a prescribed test shall not be released.

(1) *Virus titer requirements.* Final container samples of completed product shall be tested for virus titer using the titration method used in paragraph (b)(2) of this section. To be eligible for release, each serial and each subserial shall have a virus titer sufficiently greater than the titer of vaccine virus used in the immunogenicity test prescribed in paragraph (b) of this section to assure that, when tested at any time within the expiration period, each serial and subserial shall have a virus titer at least $10^{0.7}$ greater than that used in the immunogenicity test but not less than $10^{2.5}$ $TCID_{50}$ per dose.

§ 113.152 Parvovirus Vaccine (Canine).

Parvovirus Vaccine recommended for use in dogs shall be prepared from virus-bearing cell culture fluids. Only Master Seed which has been established as pure, safe, and immunogenic shall be used for preparing seeds for vaccine production. All serials of vaccine shall be prepared from the first through the fifth passage from the Master Seed.

(a) The Master Seed shall meet the applicable general requirements prescribed in § 113.135 and the requirements in this section.

(b) The Master Seed shall be tested for reversion to virulence in dogs using a method acceptable to Veterinary Services. If a significant increase in virulence is seen within five backpassages, the Master Seed is unsatisfactory.

(c) Each lot of Master Seed shall be tested for immunogenicity. The selected virus dose shall be established as follows:

(1) Twenty-five canine parvovirus susceptible dogs (20 vaccinates and 5 controls) shall be used as test animals. Blood samples drawn from each dog shall be individually tested for neutralizing antibody against canine parvovirus to determine susceptibility. Dogs shall be considered susceptible if there is no neutralization at a 1:2 final serum dilution in a constant virus-varying serum neutralization test in cell culture using 50 to 300 $TCID_{50}$ of canine parvovirus.

(2) A geometric mean titer of the vaccine produced at the highest passage from the Master Seed shall be established before the immunogenicity test is conducted. The 20 dogs used as vaccinates shall be administered a predetermined quantity of vaccine virus by the method recommended on the label. To confirm the dosage calculations, five replicate virus titrations shall be conducted on a sample of the vaccine virus dilution used. If two doses are used, five replicate confirming titrations shall be conducted on each dose.

(3) Fourteen days or more after the final dose of vaccine the vaccinates and the controls shall be challenged with virulent canine parvovirus furnished or approved by Veterinary Services and the dogs observed each day for 14 days. Rectal temperature, blood lymphocyte count, and feces for viral detection shall

be taken from each dog each day for at least 10 days postchallenge and the presence or absence of clinical signs noted and recorded each day.

(i) The immunogenicity of the Master Seed shall be evaluated on the following criteria of infection: temperature >103.4 °F; lymphopenia of >50 percent of prechallenge normal; clinical signs such as diarrhea, mucus in feces, or blood in feces; and viral hemagglutinins at a level of >1:64 in a 1:5 dilution of feces or a test of equal sensitivity. If at least 80 percent of the controls do not show at least three of the four criteria of infection during the observation period, the test is inconclusive and may be repeated.

(ii) If at least 19 of the 20 vaccinates do not survive the observation period without showing more than one criterion of infection described in subparagraph (c)(3)(i), of this section, the Master Seed is unsatisfactory.

(4) The Master Seed shall be retested for immunogenicity in 3 years unless use of the lot previously tested is discontinued. Five susceptible dogs (four vaccinates and one control) may be used in the retest. Susceptibility shall be determined in the manner provided in paragraph (c)(1) of this section.

(i) Each vaccinate shall be administered a predetermined quantity of vaccine virus as provided in paragraph (c)(2) of this section.

(ii) Fourteen to 21 days after the last vaccination, a second serum sample shall be drawn from each dog and tested for neutralizing antibody to canine parvovirus in the same manner used to determine susceptibility.

(iii) If the control has not remained seronegative at 1:2, the test is inconclusive and may be repeated.

(iv) If three of the four vaccinates in a valid test do not develop titers of at least 1:16 final serum dilution, and the remaining vaccinate does not develop a titer of at least 1:8, the Master Seed is unsatisfactory, except as provided in paragraph (c)(4)(v) of this section.

(v) If the results of a valid SN test are unsatisfactory, the vaccinates and the control may be challenged as provided in paragraph (c)(3) of this section. If at least three of the four criteria of infection are not shown in the control dog, the test is inconclusive and may be repeated, except that if any of the vaccinates show more than one criterion of infection, the Master Seed is unsatisfactory.

(5) An Outline of Production change shall be made before authority for use of a new lot of Master Seed shall be granted by Veterinary Services.

(d) *Test requirements for release.* Each serial and subserial shall meet the applicable general requirements prescribed in § 113.135 and the requirements in this paragraph. Any serial or subserial found unsatisfactory by a prescribed test shall not be released.

(1) *Virus titer requirements.* Final container samples of completed product shall be tested for virus titer using the titration method used in paragraph (c)(2) of this section. To be eligible for release, each serial and each subserial shall have a virus titer sufficiently greater than the titer of vaccine used in the immunogencity test in paragraph (c) of this section to assure that, when tested at any time within the expiration period, each serial and subserial shall have a virus titer of $10^{0.7}$ greater than that used in the immunogenicity test, but not less than $10^{2.5}$ ID_{50} per dose.

§ 113.153 Pseudorabies Vaccine.

Pseudorabies Vaccine shall be prepared from virus-bearing cell culture fluids. Only Master Seed which has been established as pure, safe, and immunogenic shall be used for preparing seeds for vaccine production. All serials of vaccine shall be prepared from the first through the fifth passage from the Master Seed.

(a) The Master Seed shall meet the applicable general requirements prescribed in § 113.135 and the requirements in this section.

(b) Each lot of Master Seed shall be tested for immunogenicity. The selected virus dose shall be established as follows:

(1) Twenty-five pseudorabies susceptible pigs (20 vaccinates and 5 controls) of the youngest age for which the vaccine is recommended, shall be used as test animals. Blood samples shall be taken from each pig and the serums inactivated and individually tested for neutralizing antibody against pseudorabies virus. Pigs shall be considered susceptible if there is no neutralization at a 1:2 final serum dilution in a constant virus-varying serum neutralization test using 50 to 300 $TCID_{50}$ pseudorabies virus.

(2) A geometric mean titer of the vaccine produced at the highest passage from the Master Seed shall be established before the immunogenicty test is conducted. The 20 pigs used as vaccinates shall be administered a predetermined quantity of vaccine virus by the method recommended on the label. To confirm the dosage administered, five replicate virus titrations shall be conducted on a sample of the vaccine virus dilution used.

(3) Fourteen to 28 days postvaccination, the vaccinates and controls shall be challenged with virulent pseudorabies virus furnished or approved by Veterinary Services and observed each day for 14 days.

(i) If at least four of the five controls do not develop severe central nervous system signs or die, the test is inconclusive and may be repeated.

(ii) If at least 19 of the 20 vaccinates in a valid test do not remain free of signs of pseudorabies, the Master Seed is unsatisfactory.

(4) The Master Seed shall be retested for immunogenicity in 3 years unless use of the lot is discontinued. Only five vaccinates and five controls need to be used in the retest. Susceptibility and age requirements shall be as provided in paragraph (b)(1) of this section.

(ii) Fourteen to 28 days postvaccination, a blood sample shall be taken from each pig and the serum inactivated and tested for neutralizing antibody to pseudorabies virus by the same method used to determine susceptibility.

(iii) If the five controls have not remained seronegative at 1:2, the test is inconclusive and may be repeated.

(iv) If at least four of the five vaccinates in a valid test have not developed titers of 1:8 final serum dilution or greater and the remaining vaccinate a titer of 1:4 or greater, the Master Seed is unsatisfactory, except as provided in paragraph (b)(4)(v).

(v) If the results of a valid neutralization test are unsatisfactory, the vaccinates and controls may be challenged as provided in paragraph (b)(3) of this section. If at least four of five controls do not develop severe central nervous system signs or die, the test is inconclusive and may be repeated. If all five of the vaccinates in a valid test do not remain free of signs of pseudorabies, the Master Seed is unsatisfactory.

(5) An Outline of Production change shall be made before authority for use of a new lot of Master Seed shall be granted by Veterinary Services.

(c) *Test requirements for release.* Each serial and subserial shall meet the applicable general requirements prescribed in § 113.135 and the requirements in this paragraph.

(2) *Virus titer requirements.* Final container samples of completed product shall be titrated by the method used in paragraph (b)(2) of this section. To be eligible for release, each serial and subserial shall have a virus titer sufficiently greater than the titer of the vaccine used in the immunogenicity test prescribed in paragraph (b) of this section to assure that, when tested at any time within the expiration period,

each serial and subserial shall have a virus titer at least $10^{0.7}$ greater than that used in the immunogenicity test, but not less than $10^{2.5}$ $TCID_{50}$ per dose.

* * * * *

§ 113.167 Tenosynovitis Vaccine.

Tenosynovitis Vaccine shall be prepared from virus-bearing cell culture fluids or embryonated chicken eggs.

Only Master Seed which has been established as pure, safe, and immunogenic shall be used for preparing seeds for vaccine production. All serials of vaccine shall be prepared from the first through the fifth passage from the Master Seed.

(a) The Master Seed shall meet the applicable general requirements prescribed in § 113.135, except (a)(3)(ii) and (c), and the special requirements in this section.

(b) Each lot of Master Seed shall be tested for:

(1) Pathogens by the chicken inoculation test prescribed in § 113.36.

(2) Lymphoid leukosis virus contamination as follows:

(i) Each of at least 10 3-week-old or older lymphoid leukosis free chickens from the same source and hatch shall be injected intra-muscularly with an amount of Master Seed equal to 100 label doses of vaccine. At least 15 chickens of the same source and hatch shall be used as controls: 5 or more shall be unvaccinated and serve as negative controls; 5 or more shall be injected with subgroup A lymphoid leukosis virus; and 5 or more with subgroup B lymphoid leukosis virus. Each group of control chickens shall be held isolated from each other and from the vaccinates.

(ii) Twenty-one to 28 days postinoculation, blood samples shall be taken from each chicken and the serum separated using a technique conducive to virus preservation. These serums shall be used as inocula in the complement fixation for avian lymphoid leukosis (COFAL) test prescribed in § 113.31.

(iii) Serums from the vaccinates shall be tested separately, but serums within each control group may be pooled. A valid test shall have positive COFAL reactions from each virus inoculated group and negative reactions from the uninoculated controls. If any of the chickens injected with the Master Seed have positive COFAL test reactions in a valid test, the Master Seed is unsatisfactory.

(3) Identity using the following agar gel immunodiffusion test. The undiluted Master Seed may be used as test antigen or the Master Seed may be inoculated onto the chorio-allantoic membrane (CAM) of fully susceptible chicken embryos and the infected CAMs ground and used as antigen. A known tenosynovitis antiserum and a known tenosynovitis antigen shall be used in the test. A precipitin line shall form between the test antigen and the known antiserum in the center well which shows identity with the line formed between the antiserum and the known antigen, or the Master Seed is unsatisfactory.

(4) Safety using the following chicken test:

(i) For vaccines intended for use in chickens less than 14 days of age, Master Seed equal to 10 label doses shall be administered subcutaneously to each of 25 1-day-old tenosynovitis susceptible chickens.

(ii) For vaccines intended for use only in chickens 14 days of age or older, Master Seed equal to 10 label doses shall be administered subcutaneously to each of 25 4-week-old or older tenosynovitis susceptible chickens.

(iii) The vaccinates shall be observed each day for 21 days. If unfavorable reactions occur which are attributable to the vaccine, the Master Seed is unsatisfactory. If unfavorable reactions occur which are not attributable to the vaccine, the test is inconclusive and may be repeated.

(c) Each lot of Master Seed shall be tested for immunogenicity. The selected virus dose shall be established as follows:

(1) Tenosynovitis susceptible chickens, of the same age and from the same source shall be used as test birds. Vaccines intended for use in very young chickens shall be administered to chickens of the youngest age for which the vaccine is recommended. Vaccines intended for use in older chickens shall be administered to 4-week-old or older chickens. Twenty or more vaccinates shall be used for each method of administration recommended on the label. Ten or more chickens shall be held as unvaccinated controls.

(2) A geometric mean titer of the vaccine produced at the highest passage from the Master Seed shall be established using a method acceptable to Veterinary Services before the immunogenicity test is conducted. A predetermined quantity of vaccine virus shall be administered to each vaccinate. Five replicate virus titrations shall be conducted on an aliquot of the vaccine virus to confirm the dose.

(3) Twenty-one to 28 days postvaccination, each vaccinate and control shall be challenged by injecting virulent virus furnished or approved by Veterinary Services into one foot pad. The vaccinates and controls shall be observed each day for 14 days. If at least 90 percent of the controls do not develop swelling and discoloration in the phalangeal joint area of the injected foot pad typical of infection with tenosynovitis virus, the test is inconclusive and may be repeated. If at least 19 of 20, 27 of 30, or 36 of 40 vaccinates do not remain free from these signs, disregarding transient swelling which subsides within 5 days postchallenge, the Master Seed is unsatisfactory.

(4) The Master Seed shall be retested for immunogenicity in 3 years unless use of the lot is discontinued. Only one method of administration recommended on the label need be used in the retest. The vaccinates and controls shall meet the criteria prescribed in paragraph (c)(3) of this section.

(5) An Outline of Production change shall be made before authority for use of a new lot of Master Seed shall be granted by Veterinary Services.

(d) *Test requirements for release.* Each serial and subserial shall meet the applicable general requirements prescribed in § 113.135, except (c), and the requirements in this paragraph.

(1) *Purity.* Final container samples of completed product from each serial shall be tested for pathogens by the chicken inoculation test prescribed in § 113.36.

(2) *Safety.*

(i) Final container samples of completed product from each serial shall be safety tested as follows:

(A) For vaccines intended for use in very young chickens, each of 25 1-day-old tenosynovitis susceptible chickens shall be vaccinated with the equivalent of 10 doses by one method recommended on the label.

(B) For vaccines intended for use in older chickens, each of 25 4-week-old or older tenosynovitis susceptible chickens shall be vaccinated with the equivalent of 10 doses by one method recommended on the label.

(ii) The vaccinates shall be observed each day for 21 days. If unfavorable reactions occur which are attributable to the product, the serial is unsatisfactory. If unfavorable reactions occur in more than two vaccinates which are not attributable to the product, the test is inconclusive and may be repeated. If the test is not repeated, the serial is unsatisfactory.

(3) *Virus titer requirements.* Final container samples of completed product shall be titrated by the method used in paragraph (c)(2) of this section. To be eligible for release, each serial and subserial shall have a virus titer sufficiently greater than the titer of the vaccine virus used in the immunogenicity test prescribed in

paragraph (c) of this section to assure that, when tested at any time within the expiration period, each serial and subserial shall have a virus titer $10^{6.7}$ greater than that used in the immunogenicity test, but not less than $\log 10^{2.0}$ titration units (PFU or ID_{50}) per dose.

(4) *Identity.* Bulk or final container samples of completed product from each serial shall be tested for identity as prescribed in paragraph (b)(3) of this section and shall meet the criteria stated therein.

(37 Stat. 832–833 (21 U.S.C. 151–158))

Done at Washington, D.C., this 28th day of December 1984.

K.R. Hook,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85–311 Filed 1–3–85; 8:45 am]

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9 CFR Part 113

[Docket No. 84–105]

Viruses, Serums, Toxins, and Analogous Products; Revision of Standard Requirements for the Detection of Extraneous Agents in Vaccines Prepared Using Cells and Ingredients of Animal Origin; Relaxation of Testing Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: These revisions amend the Standard Requirements for the detection of extraneous agents in vaccines prepared using Master Seeds, cells, and ingredients of animal origin. Such vaccines consist mostly of virus vaccines. The amendments will relax the test requirements for tumorigenicity and oncogenicity in cells used in making vaccines. Test procedures for detecting extraneous agents are currently codified in the general requirements for cells and ingredients. By adding new sections, 9 CFR 113.46 and 113.47, specific test procedures will be standardized and incorporated by reference in the ingredient requirement standards for live vaccines. This will simplify and streamline future testing of vaccines prior to release.

EFFECTIVE DATE: These amendments will become effective January 4, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. Peter L. Joseph, VS, APHIS, USDA, Room 836, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–7760.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 and have been assigned OMB control number 0579–0013.

Executive Order 12291

These actions have been reviewed under USDA procedures established in Secretary's Memorandum No. 1512–1 to implement Executive Order 12291 and have been classified as "Nonmajor Rule."

The rules will not have a significant effect on the economy and will 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 final rule represents the culmination of a cyclical review of 9 CFR 113.50–55. This review is required by Executive Order 12291. As outlined elsewhere in these Supplementary Information paragraphs, the changes in the regulation resulting from the review were proposed in November of 1982 (47 FR 53884). The Comment period was reopened in June of 1984 (49 FR 23862). This final rule will be reviewed again within 5 years as part of the ongoing review process.

Certification Under the Regulatory Flexibility Act

Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service (Agency), has determined that this action will not have a significant economic impact on a substantial number of small entities. A small entity is defined as a business which is independently owned and operated and is not dominant in the field of veterinary biologics manufacturing.

Background

Current procedures for testing Master Seeds, cells, and ingredients of animal origin used in the preparation of vaccines are repeated in several parts of the Standard Requirements. Such Master Seeds, cells, and ingredients of animal origin are used almost exclusively in the production of virus vaccines. Many of these testing procedures have been used for a number of years and no longer reflect the state-of-the-art in laboratory testing. Since these methods were codified in the Standard Requirements, new procedures have evolved which are more sensitive and specific for detecting extraneous agents. Newer materials and techniques have been developed for identifying viruses used in the production of biological products. Experience in production of virus vaccines has clarified and increased our knowledge of test methods and types of cells to be used when testing cell lines for purity.

On November 30, 1982, APHIS published in the **Federal Register** (47 FR 53884) a rulemaking notice to revise the Standard Requirements for the detection of extraneous agents in vaccines prepared using cells and ingredients of animal origin. The purpose of the proposed rulemaking was to amend and update the requirements for the detection of extraneous agents in Master Seeds, cells, and ingredients of animal origin used in the preparation of biological products. The notice proposed to relax the test requirements for tumorigenicity and oncogenicity in 9 CFR 113.52 for cell lines used in making vaccines. Some procedures for testing cells and ingredients of animal origin used in the preparation of vaccines are repeated in several parts of the Standard Requirements. The notice proposed to eliminate the repetition by codifying test procedures in two new Standard Requirements and incorporate, by reference, these procedures in applicable general requirements.

The public comment period for the proposed standards was scheduled to end on January 31, 1983. From comments received, it was evident that the changes as proposed were not sufficiently clear as written and could in fact increase the testing requirements contrary to the intent.

Due to the number of comments received, including requests to extend the comment period, the Agency decided to republish the proposed rulemaking incorporating acceptable changes. This allowed for an additional 60-day comment period. Comments received during the second 60-day comment period have been considered.

Comments Received

The Agency received 11 comments from licensed manufacturers and 1 government agency. All those responding supported adoption of the proposed rulemaking.

Two firms accepted the proposal as written. The other respondents favored the proposal but suggested changes or inclusion of additional requirements which are discussed below.

1. Two comments recommended changing 9 CFR 113.46 (a) and (b) and 113.47(a) to permit a range of 4–7 days from the last subculture rather than 7 days from the last subculture. The Agency agrees that some viruses replicate better in nonconfluent cell culture and thus require a shorter culture period. Therefore, 9 CFR 113.47(a) is amended to provide for a shorter culture period for parvoviruses. Most other viruses detected by 9 CFR 113.46 (a) and (b) require at least 7 days for adequate replication. The flexibility for extending beyond 7 days is written into the regulation.

2. One comment suggested that a range of 100–500 $FAID_{50}$ of the positive control virus is needed in 9 CFR 113.47(a)(1)(i) for some viruses to be tested. The proposal provided for "approximately 100 $FAID_{50}$." The Department agrees that the regulations should be more flexible and therefore changes it to read "approximately 100–300 $FAID_{50}$," and thus provides for this flexibility.

3. One comment suggested a change in 9 CFR 113.47(a) to require three monolayers. The firm believes that 12 monolayers are excessive and not necessary. In making this change, the minimum area of cells that will be observed in the test will remain unchanged at 6 cm^2. It has been determined that this change does not significantly affect the performance of the test. Therefore, the Agency agrees and has changed 9 CFR 113.47(a)(1) (i), (ii), and (iii) accordingly.

4. Another comment suggested deleting test requirements for bovine virus diarrhea virus in canine cells. It is known that this virus can replicate in canine cells and, therefore, could be a contaminant. Therefore, the Agency disagrees with the comment.

5. Two comments recommended that some viruses are more readily detected by techniques other than the direct fluorescent antibody technique. The Agency is in partial agreement. The requirement to test for canine coronavirus has, therefore, been deleted from 9 CFR 113.47(b). This virus can be readily detected by tests provided in 9 CFR 113.46.

6. Other comments recommended reinstating the requirement for all firms to test for rabies virus. Based on comments received on the original proposed rulemaking, 47 FR 53884, the Agency had proposed an exemption for those firms which do not manufacture a rabies virus vaccine. The Agency now agrees that due to the public health significance of this virus, all cells used in the production of veterinary biologics should be tested. In order to reduce the risk to personnel of those firms which do not manufacture a rabies virus vaccine, 9 CFR 113.47(b)(6) will read "Firms that do not have rabies virus on premises either for research or production purposes are exempt from having to produce positive rabies virus control monolayers. Fixed positive rabies virus control monolayers will be provided by the National Veterinary Services Laboratories."

7. One comment suggested deleting paragraph (b)(5) of 9 CFR 113.47. The comment implies that if canine cells are tested for reovirus, it is unnecessary to test Vero cells. This is a valid interpretation of the regulation and a change has been made for clarity. However, all primary cells, cell lines, and Master Seed viruses must be tested for reovirus. If the applicable regulation does not require testing in cells of canine origin, then Vero is the cell of choice for testing for reovirus. Therefore, the requirement for testing for reovirus in Vero cells cannot be deleted.

8. Several firms objected to the requirement in 9 CFR 113.52(f) to test ". . . each subculture used to produce product. . . ." The Agency agrees that it was not the intent to subject each subculture of the cell line to the same tests required for the Master Cell Stock. Therefore, this has been deleted from 9 CFR 113.52(f). The option to test final container samples was inadvertently omitted in paragraph (d) of 9 CFR 113.52 in the proposal. The option has been properly reinstated in this paragraph in the final rule. The Agency also agrees that the maintenance period for cell cultures should be reduced from 28 days to 21 days in 9 CFR 113.52 (e)(1), (e)(3) and (4), and (f). Appropriate changes have been made. This is adequate time for the growth of an extraneous virus adapted to a cell line. Also, in this section a recommendation was made to add paragraph (f)(1)(v) to require testing a cell line of porcine origin if not specified in other requirements. The suggestion was made because of the widespread use of trypsin in cell cultures. Although trypsin may contain a contaminant virus(es); i.e., porcine parvovirus, the possibility of replication and the virus adapting in a nonporcine cell line is remote. The requirements to test cell lines in 9 CFR 113.52 are minimum requirements. This does not preclude the firm conducting additional tests to ensure the purity of a cell line used in vaccine production. Another comment suggested that the regulations should require that sera used in maintenance media be screened for antibodies. This is considered to be good laboratory practice used by all firms working with cell cultures. The Agency believes that it would be too restrictive to regulate the method, its frequency, or for which agents a batch of sera should be tested for antibodies.

9. Concerning 9 CFR 113.53, one comment asked for assurance that data generated by the manufacturer of an ingredient of animal origin is acceptable in lieu of firm testing. The opening paragraph states in part ". . . tested as prescribed in this section by the licensee or a laboratory acceptable to VS." Therefore, test data generated by a manufacturer of an ingredient of animal origin is acceptable. The firm is responsible for maintaining a record of the results of tests conducted by the manufacturer of the ingredients. One comment suggested changing the incubation period in 9 CFR 113.53(c)(3) from 28 days to 21 days. The Agency does not object and the appropriate change has been made. One comment suggested increasing the maintenance period in 9 CFR 113.53(d)(2) from 14 to 21 days while another suggested a range of 14 to 21 days. This test is for the detection of porcine parvovirus in trypsin. The Agency believes that 14 days is sufficient to detect this agent. Firms are encouraged to do more stringent testing when indicated. The regulation as written provides for flexibility in maintenance period and for subculturing more than once as deemed necessary. A range of 14 to 21 days written into the regulation would be restrictive. In paragraph (c)(2) of this section, a change has been made to read in part ". . . 3.75 ml or 15 percent . . . ." This was done for clarification. Also, in paragraph (d)(1) "phosphate buffer saline" has been changed to "suitable diluent" to remove an unnecessary restriction.

10. Concerning 9 CFR 113.55, one comment suggested that the opening paragraph as written may be in conflict with other sections of the Standard Requirements. The wording has been changed in the initial paragraph for clarification to allow for different tests when specified in a filed Outline of Production or in other Standard Requirements. One comment suggested adding requirements for testing with additional cell lines. As previously indicated, these amendments are intended to provide minimum testing requirements for extraneous agents and do not preclude the firm conducting other tests it deems appropriate to ensure purity.

The Agency has carefully reviewed all comments received and made appropriate changes consistent with the intent of the regulations. After due consideration of all relevant matters,

including the proposal set forth in the above notice and under authority in the Virus-Serum-Toxin Act of March 4, 1913 (21 U.S.C. 151–158), the amendment of Part 113, Subchapter E, Chapter 1, Title 9 of the Code of Federal Regulations, as published in the above notice, is hereby adopted as follows:

List of Subjects in 9 CFR Part 113

Animal biologics.

PART 113—STANDARD REQUIREMENTS

1. Sections 113.46 and 113.47 are added as follows:

§ 113.46 Detection of cytopathogenic and/or hemadsorbing agents.

The tests for detection of cytopathogenic and/or hemadsorbing agents provided in this section shall be conducted when prescribed in an applicable Standard Requirement or in the filed Outline of Production for a product.

(a) *Test for cytopathogenic agents.* One or more monolayers that are at least 6 cm^2 and at least 7 days from the last subculture shall be tested as provided in this paragraph.

(1) Stain each monolayer with a suitable cytological stain.

(2) Examine the entire area of each stained monolayer for evidence of inclusion bodies, abnormal number of giant cells, or other cytopathology indicative of cell abnormalities attributable to an extraneous agent.

(b) *Test for hemadsorbing agents.* One or more monolayers that are at least 6 cm^2 and at least 7 days from the last subculture shall be tested as provided in this paragraph.

(1) Wash the monolayer with several changes of phosphate buffered saline.

(2) Add an adequate volume of a 0.2 percent red blood cell suspension to uniformly cover the surface of the monolayer. Suspensions of washed guinea pig, human type "O," and chicken red blood cells shall be used. These suspensions may be mixed prior to adding to the monolayer or they may be used separately on separate monolayers.

(3) Incubate the monolayer at 4 °C for 30 minutes, wash with phosphate buffered saline, and examine for hemadsorption.

(4) If no hemadsorption is apparent, repeat step (b)(2) of this section and incubate the monolayers at 20–25 ° C for 30 minutes, wash with phosphate buffered saline, and examine again for hemadsorption. If desired, separate monolayers may be used for each incubation temperature.

(c) If specific cytopathology or hemadsorption attributable to an extraneous agent is found, the material under test is unsatisfactory and shall not be used to prepare biological products. If an extraneous agent is suspected because of cytopathology or hemadsorption and cannot be eliminated as a possibility by additional testing, the material under test is unsatisfactory.

113.47 Detection of extraneous agents by the fluorescent antibody technique.

The test for detection of extraneous agents by the fluorescent antibody technique provided in this section shall be conducted when prescribed in an applicable Standards Requirement or in a filed Outline of Production for a product.

(a) Monolayers, at least 7 days after subculturing, shall be processed and stained with the appropriate antiviral fluorescein-conjugated antibody as specified in paragraph (b) of this section, except that for the detection of parvovirus, the monolayers may be stained as early as 4 days.

(1) Three groups of one or more monolayers shall be required for each specific virus prescribed in paragraph (b) of this section.

(i) At the time of the last subculturing, one group of test monolayers shall be inoculated with approximately 100–300 $FAID_{50}$ of the specific virus as positive controls.

(ii) One group of monolayers shall be the "material under test."

(iii) One group of monolayers of the same type of cell as the test monolayer shall be prepared separately with cells that have been tested as prescribed in §§ 113.51 or 113.52 (whichever is applicable) as negative controls.

(2) Each group of monolayers shall have a total area of at least 6 cm^2.

(3) Positive control monolayers may be fixed before 7 days if fluorescence is enhanced by so doing. Monolayers that are so treated shall be stained at the same time as the material under test.

(b) The antiviral fluorescein-conjugated antibody to be used shall depend on the type of cells required for testing for extraneous agents as specified in an applicable Standard Requirement or in a filed Outline of Production. Specific antiviral fluorescein-conjugated antibody shall be applied to each type of cell specified for the test in accordance with the following list. Additional antiviral fluorescein-conjugated antibody may be specified for use by the Deputy Administrator. Specific anti-viral fluorescein-conjugated antibody to be applied to cell types not listed shall be as specified by the Deputy Administrator. When a specific antiviral fluorescein-conjugated antibody is listed for application to more than one type of cell, it need only be applied to the most susceptible cell type used in propagation of the potential extraneous agent(s).

(1) Canine cells shall be tested for:
(i) Canine distemper virus;
(ii) Canine parvovirus;
(iii) Reovirus;
(iv) Rabies virus; and
(v) Bovine virus diarrhea virus.

(2) Feline cells shall be tested for:
(i) Feline panleukopenia virus;
(ii) Rabies virus;
(iii) Bovine virus diarrhea virus; and
(iv) Coronavirus.

(3) Bovine cells shall be tested for:
(i) Bovine virus diarrhea virus;
(ii) Bovine parvovirus;
(iii) Bovine adenoviruses; and
(iv) Rabies virus.

(4) Porcine cells shall be tested for:
(i) Transmissible gastroenteritis virus;
(ii) Porcine adenovirus;
(iii) Porcine parvovirus;
(iv) Bovine virus diarrhea virus; and
(v) Rabies virus.

(5) Vero cells:
(i) Reovirus (if not tested for in canine cells).

(6) Firms that do not have rabies virus on premises either for research or production purposes are exempt from having to produce positive rabies virus control monolayers. Fixed positive rabies virus control monolayers will be provided by the National Veterinary Services Laboratories.

(c) After staining, each group of monolayers shall be examined for the presence of specific fluorescence attributable to the presence of extraneous agents.

(1) If the material under test shows any evidence of specific viral fluorescence, it is unsatisfactory; *Provided*, That, if specific fluorescence attributable to virus being tested for is absent in the positive control monolayers, the test is inconclusive and may be repeated.

(2) If the fluorescence of the monolayers inoculated with the specific virus as positive controls is equivocal, or if the negative monolayers show equivocal fluorescence indicating possible viral contamination, or both, the test shall be declared inconclusive, and may be repeated; *Provided*, That, if the test is not repeated, the material under test shall be regarded as unsatisfactory.

3. Sections 113.51, 113.52, 113.53, and 113.55 are revised to read as follows:

§ 113.51 Requirements for primary cells used for production of biologics.

Primary cells used to prepare biological products shall be derived from normal tissue of healthy animals. When prescribed in an applicable Standard Requirement or in the filed Outline of Production, each batch of primary cells used to prepare a biological product shall be tested as prescribed in this section. A batch of primary cells found unsatisfactory by any prescribed test shall not be used. A serial of biological product shall not be released if produced from primary cells that are found unsatisfactory by any prescribed test.

(a) Final container samples of completed product or samples of the final pool of harvested material or samples of each subculture of cells used to prepare the biological product shall be shown free of mycoplasma as prescribed in § 113.28. The sample for testing shall consist of at least 75 cm^2 of actively growing cells or the equivalent in harvest fluids; *Provided*, That all sources of cells in the batch of primary cells are represented.

(b) Final container samples of completed product or samples of the final pool of harvested material or samples of each subculture of cells used to prepare the biological product shall be shown free of bacteria and fungi as prescribed in § 113.26 or § 113.27 (whichever is applicable).

(c) A monolayer at least 75 cm^2 from each batch of primary cells or each subculture of primary cells used to prepare a biological product shall be shown free of extraneous agents as prescribed in this paragraph.

(1) The test monolayer shall be maintained using the medium (with additives) and under conditions similar to those used to prepare biological products.

(i) Monolayers of avian origin shall be maintained for at least 14 days and shall be subcultured at least once during the maintenance period. All but the last subculture shall result in a new monolayer of at least 75 cm^2. The last subculture shall meet the minimum area requirement specified in §§ 113.46 and 113.47.

(ii) Monolayers not of avian origin shall be maintained for at least 28 days and shall be subcultured at least twice during the maintenance period. All but the last subculture shall result in a new monolayer of at least 75 cm^2. The last subculture shall meet the minimum area requirement specified in §§ 113.46 and 113.47.

(2) Monolayers shall be examined regularly throughout the required maintenance period for evidence of the presence of cytopathogenic agents. If evidence of a cytopathogenic agent is found, the batch of primary cells is unsatisfactory.

(3) At the conclusion of the required maintenance period, monolayers shall be tested for:

(i) Cytopathogenic and/or hemadsorbing agents as prescribed in § 113.46;

(ii) Extraneous agents by the fluorescent antibody technique as prescribed in § 113.47.

§ 113.52 Requirements for cells lines used for production of biologics.

When prescribed in an applicable Standard Requirement or in a filed Outline of Production each cell line used to prepare a biological product shall be tested as prescribed in this section. A cell line found unsatisfactory by any prescribed test shall not be used. A serial of biological product shall not be released if produced from a cell line that is found unsatisfactory by any prescribed test.

(a) *General requirements.* (1) A complete record of the cell line shall be kept, such as, but not limited to, the source, passage history, and medium used for propagation.

(2) A Master Cell Stock (MCS) shall be established at a specified passage level for each cell line. The passage level and identity of the MCS and the highest passage level (MCS + n) intended for use in the preparation of a biological product shall be specified in the Outline of Production for the product.

(3) Sufficient 1.0 ml or larger aliquots of MCS and MCS + n shall be prepared, kept in a frozen state, and made available to Veterinary Services (VS) upon request for performing the tests prescribed in this section.

(4) Each lot of cells shall be monitored for the characteristics determined to be normal for the cell line, such as, but not limited to, microscopic appearance, growth rate, acid production, or other observable features.

(b) The MCS shall be shown to be of the same species of origin as that reported in paragraph (a)(1) of this section by the following method:

(1) At least four monolayers with a total area of at least 6 cm^2 shall be grown to at least 80 percent confluency.

(2) The monolayers shall be removed from their media, processed, stained, and examined.

(i) At least four monolayers shall be stained with an antispecies fluorescein-conjugated antibody unrelated to the species of origin of the MCS.

(ii) At least two monolayers shall be stained with an antispecies fluorescein-conjugated antibody specific to the species of origin of the MCS.

(iii) All monolayers shall be examined for evidence of specific fluorescence.

(3) If specific fluorescence is not found in the monolayers stained with the conjugate specific to the species of origin of the MCS, the cell line is unsatisfactory and shall not be used for vaccine production.

(4) If nonspecific fluorescence is found in the monolayers stained with conjugate from an unrelated species of origin or other results make the test results equivocal, the procedure shall be repeated until either specific fluorescence is found only in the monolayers stained with conjugate specific to the species of origin of the MCS and not in the control monolayers or specific fluorescence cannot be identified and the MCS is declared unsatisfactory.

(5) Alternate tests to determine the species of origin of the MCS may be used if approved by VS.

(c) The MCS and either each subculture of cells used to prepare a biological product or the final pool of harvested material (with or without the stabilizer) or final container samples of completed product for each serial of such product shall be shown to be free of mycoplasma as prescribed in § 113.28. The sample for testing shall consist of at least 75 cm^2 of actively growing cells or the equivalent, in harvest fluids. The cells shall represent all sources of cells in the batch.

(d) The MCS and either each subculture used to prepare a biological product or the final pool of harvested material for each serial of such product or final container samples of completed product for each serial of such product shall be tested for bacteria and fungi as prescribed in § 113.26 or § 113.27 (whichever is applicable). If bacteria or fungi are found in the MCS, the MCS shall not be used. If bacteria or fungi are found in a subculture, the subculture shall not be used.

(e) A monolayer at least 75 cm^2 from each MCS shall be shown free of extraneous agents as prescribed in this paragraph.

(1) The test monolayer shall be maintained for at least 21 days using the medium (with additives) intended for growth and maintenance and under conditions similar to those used to prepare biological products.

(2) Cells shall be subcultured at least two times during the maintenance period. All but the last subculture shall result in at least one new monolayer of at least 75 cm^2. The last subculture shall meet the minimum area requirement

specified in §§ 113.46 and 113.47 and paragraph (f) of this section.

(3) Monolayers shall be examined regularly throughout the 21-day maintenance period for evidence of the presence of cytopathogenic agents. If evidence of a cytopathogenic agent is found, the MCS is unsatisfactory.

(4) At the conclusion of the 21-day maintenance period, monolayers shall be tested for:

(i) Cytopathogenic and/or hemadsorbing agents as prescribed in § 113.46; and

(ii) Extraneous agents by the fluorescent antibody technique as prescribed in § 113.47.

(f) At the conclusion of the 21-day maintenance period provided in paragraph (e) of this section, at least one monolayer of at least 75 cm^2 shall also be shown free of extraneous agents as prescribed in this paragraph.

(1) Alternately freeze and thaw the monolayer(s) three times. Centrifuge the disrupted cells at no greater than 2,000 x g for no more than 15 minutes to remove cellular debris. Divide the supernatant into equal aliquots and dispense 1.0 ml onto each of at least one monolayer (at least 75 cm^2) of:

(i) Vero (African green monkey kidney) cell line;

(ii) Embryonic cells, neonatal cells, or a cell line of the same species of origin as the MCS if different than provided in paragraph (f)(1)(i) of this section;

(iii) Embryonic cells, neonatal cells, or a cell line of the species for which the vaccine is recommended if different than provided in paragraph (f)(1)(ii) of this section; and

(iv) Embryonic cells, neonatal cells, or a cell line of bovine origin if not specified in paragraphs (f)(1) (ii), and (iii) of this section.

(2) The monolayers of cells specified in paragraphs (f)(1) (i), (ii), (iii), and (iv) of this section shall be maintained for at least 14 days after inoculation with the aliquot of disrupted MCS. Monolayers shall be subcultured at least once during the maintenance period. All but the last subculture shall result in a new monolayer of at least 75 cm^2. The last subculture shall meet the minimum area requirement specified in §§ 113.46 and 113.47.

(3) Monolayers shall be examined regularly throughout the 14-day maintenance period for evidence of the presence of cytopathogenic agents. If evidence of a cytopathogenic agent is found, the MCS is unsatisfactory.

(4) At the conclusion of the 14-day maintenance period, monolayers shall be tested for:

(i) Cytopathogenic and/or hemadsorbing agents as prescribed in § 113.46; and

(ii) Extraneous agents by the fluorescent antibody technique as prescribed in § 113.47.

(g) The karyology of cells lines used in the production of biologics shall be examined as follows. A minimum of 50 mitotic cells shall be examined at both the MCS and MCS+n. The modal number in the MSC+n shall not exceed plus or minus 15 percent of the modal number of the MCS. Any marker chromosomes present in the MSC shall persist at the MCS+n. If the modal number exceeds the limits and/or the marker chromosomes do not persist (through the MCS+n passage level), the cell line shall not be used for vaccine production.

(h) If direct or indirect evidence exists that a cell line which is intended for use in the preparation of a vaccine may induce malignacies in the species for which the product is intended, that cell line shall be tested for tumorigenicity/oncogenicity by a method acceptable to VS.

§ 113.53 Requirements for ingredients of animal origin used for production of biologics.

Each lot of ingredient of animal origin which is not subjected to heat sterilization or other sterilization methods acceptable to Veterinary Service (VS), such as, but not limited to serum and albumin, used to prepare a biological product shall be tested as prescribed in this section by the licensee or a laboratory acceptable to VS. Results of all tests shall be recorded by the testing laboratory and made a part of the licensee's records. A lot of ingredients found unsatisfactory by any prescribed test shall not be used to prepare a biological product. A serial of biological product shall not be released if produced using an ingredient that is found unsatisfactory by any prescribed test.

(a) Samples of each lot of ingredient of animal origin which is not subjected to heat sterilization, used to prepare a biological product shall be shown free of mycroplasma by the method prescribed in § 113.28.

(b) Samples of each lot of ingredient or animal origin which is not subjected to heat sterilization or other sterilization methods acceptable to VS used to prepare a biological product shall be shown free of bacteria and fungi as prescribed in § 113.26.

(c) Samples of each lot of ingredient of animal origin, except porcine trypsin, which is not subjected to heat sterilization or other viricidal procedure acceptable to VS used in the preparation of biological products shall be tested as prescribed in this paragraph:

(1) Monolayers at least 75 cm^2 of Vero (African green monkey kidney) cell line and of primary cells or a cell line of the same species of origin as the ingredient shall be used in the test. Cell lines used shall have been found satisfactory when tested as prescribed in § 113.52 and primary cells used shall have been found satisfactory when tested as prescribed in § 113.51.

(2) At least 3.75 ml or 15 percent of the ingredient shall be used in the growth medium for the preparation of at least 75 cm^2 test monolayers. The ingredient shall also be used in the growth medium when monolayers are subcultured. If the ingredient being tested is cytotoxic when tested in this manner, other procedures may be used if approved by VS.

(3) The test monolayers shall be maintained for at least 21 days.

(4) Cells shall be subcultured at least two times during the maintenance period. All but the last subculture shall result in at least one new monolayer of at least 75 cm^2. The last subculture shall meet the minimum area requirements specified in §§ 113.46 and 113.47.

(5) Monolayers shall be examined regularly throughout the 21-day maintenance period for evidence of cytopathogenic agents. If evidence of a cytopathogenic agent is found, the ingredient is unsatisfactory.

(6) At the conclusion of the 21-day maintenance period, monolayers shall be tested for:

(i) Cytopathogenic and/or hemadsorbing agents as prescribed in § 113.46; and

(ii) Extraneous agents by the fluorescent antibody technique as prescribed in § 113.47.

(d) Each lot of porcine trypsin which has not been treated to inactivate porcine parvovirus (PPV) in a manner acceptable to VS shall be tested for PPV as prescribed in this paragraph.

(1) Not less than 5.0 grams of trypsin shall be dissolved in a volume of suitable diluent sufficient to fill a centrifuge angle head. After centrifuging for 1 hour at 80,000 x g, the pellet material shall be reconsituted in distilled water and inoculated into a flask containing 75 cm^2 of a 30 to 50 percent confluent monolayer culture of primary porcine cells or a porcine cell line of proven equal PPV susceptibility. An additional flask of cells shall be held as a negative control.

(2) The test and control monolayers shall be maintained for at least 14 days

and subcultured at least once during the maintenance period.

(3) At the end of the 14-day maintenance period, and 4 to 7 days after the last subculturing, monolayers shall be tested for the presence of porcine parvovirus by the fluorescent antibody technique as prescribed in § 113.47(c).

(e) A sample of serum from each donor horse used to produce a lot of equine serum used in the preparation of biological products recommended for use in horses shall be tested at a laboratory approved by Veterinary Services using the Coggins test for equine infectious anemia antibodies. If antibodies to equine infectious anemia are found, the lot of serum is unsatisfactory.

§ 113.55 Detection of extraneous agents in Master Seed Virus.

Unless otherwise prescribed in a Standard Requirement or in a filed Outline of Production, each Master Seed Virus (MSV) shall be tested as prescribed in this section. A MSV found unsatisfactory by any prescribed test shall not be used. A serial of biological product shall not be released if produced from a MSV that is found unsatisfactory by any prescribed test.

(a) At least a 1.0 ml aliquot per cell culture of MSV shall be dispensed onto monolayers (at least 75 cm^2 in area) of:

(1) Vero (African green monkey kidney) cell line;

(2) Embryonic cells, neonatal cells, or a cell line of the species for which the vaccine is recommended; and

(3) Embroynic cells, neonatal cells, or a cell line of the species of cells in which the MSV is presently being propagated if different than prescribed in paragraphs (a)(1) and (a)(2) of this section. Cell lines used shall have been found satisfactory when tested as prescribed in § 113.52 and primary cells used shall have been found satisfactory when tested as prescribed in § 113.51. If the MSV is cytopathic for or causes hemadsorption in the cells in which it is to be tested, the MSV shall be neutralized with monospecific antiserum supplied or approved by Veterinary Services (VS) or counteracted by a method approved by VS.

(b) At least one monolayer of each cell type used in the test shall be maintained as an uninoculated control.

(c) Each monolayer shall be maintained at least 14 days.

(d) Cells shall be subcultured at least once during the maintenance period. All but the last subculture shall result in at least one new monolayer at least 75 cm^2. The last subculture shall meet the minimum area requirement specified in §§ 113.46 and 113.47.

(e) Monolayers shall be examined regularly throughout the 14-day maintenance period for evidence of cytopathogenic agents. If evidence of a cytopathogenic agent is found, the MSV is unsatisfactory.

(f) At the conclusion of the 14-day maintenance period, monolayers shall be tested for:

(1) Cytopathogenic and/or hemadsorbing agents as prescribed in § 113.46;

(2) Extraneous agents by the fluorescent antibody technique as prescribed in § 113.47.

(37 Stat. 832–833 (21 U.S.C. 151–158))

Done at Washington, D.C., this 28th day of December 1984.

K. R. Hook,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85-310 Filed 1-3-85; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL RESERVE SYSTEM

12 CFR Part 201

Extensions of Credit by Federal Reserve Banks; Changes in Discount Rate

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended its Regulation A, "Extensions of Credit by Federal Reserve Banks," for the purpose of reducing discount rates. The action is designed to bring the discount rate into more appropriate alignment with short-term market interest rates. It was taken in the general context of the moderation of growth in economic activity since mid-year, continued relative stability or declines in sensitive commodity prices, and strength of the dollar internationally. M1 and M2 have remained within desired longer run ranges, but growth in M1 has on average been relatively sluggish in recent months.

EFFECTIVE DATE: The changes were effective on the dates specified below.

FOR FURTHER INFORMATION CONTACT: William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202/452–3257).

SUPPLEMENTARY INFORMATION: Pursuant to the authority of 5 U.S.C. 553 (b)(3)(B) and (d)(3), these amendments are being published without prior general notice of proposed rulemaking, public participation, or deferred effective date. The Board has for good cause found that current economic and financial considerations required that these amendments must be adopted immediately.

List of Subjects in 12 CFR Part 301

Banks, banking; Credit, Credit unions; Foreign banks.

Pursuant to sections 10(b) and 14(d) of the Federal Reserve Act (12 U.S.C. 347b and 357) Part 201 is amended as set forth below:

PART 201—[AMENDED]

1. Section 201.51 is revised to read as follows:

§ 201.51 Short term adjustment credit for depository institutions.

The rates for short term adjustment credit provided to depository institutions under § 201.3(a) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	8	Dec. 24, 1984.
New York	8	Do.
Philadelphia	8	Do.
Cleveland	8	Do.
Richmond	8	Do.
Atlanta	8	Do.
Chicago	8	Do.
St. Louis	8	Do.
Minneapolis	8	Do.
Kansas City	8	Do.
Dallas	8	Do.
San Francisco	8	Do.

2. Section 201.52 is revised to read as follows:

§ 201.52 Extended credit to depository institutions.

(a) The rates for seasonal credit extended to depository institutions under § 201.3(b)(1) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	8	Dec. 24, 1984.
New York	8	Do.
Philadelphia	8	Do.
Cleveland	8	Do.
Richmond	8	Do.
Atlanta	8	Do.
Chicago	8	Do.
St. Louis	8	Do.
Minneapolis	8	Do.
Kansas City	8	Do.
Dallas	8	Do.
San Francisco	8	Do.

(b) The rates for other extended credit provided to depository institutions under sustained liquidity pressures or where there are exceptional circumstances or practices involving a particular institution under § 201.3(b)(2) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	8	Dec. 24, 1984.
New York	8	Do.
Philadelphia	8	Do.
Cleveland	8	Do.
Richmond	8	Do.
Atlanta	8	Do.
Chicago	8	Do.
St. Louis	8	Do.
Minneapolis	8	Do.
Kansas City	8	Do.
Dallas	8	Do.
San Francisco	8	Do.

Note.—These rates apply for the first 60 days of borrowing. A 1 percent surcharge applies for borrowing during the next 90 days, and a 2 percent surcharge applies for borrowing thereafter. Where credit provided to a particular depository institution is anticipated to be outstanding for an unusually prolonged period, the time period in which each rate under the structure is applied may be shortened, and the rate may be established on a more flexible basis, taking into account rates on market sources of funds.

By order of the Board of Governors of the Federal Reserve System, Decembr 28, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-197 Filed 1-3-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-CE-26-AD; Amdt. 39-4974]

Airworthiness Directives; Beech Models 65-88, 65-90, 65-A90, B90, C90, E90, 100, A100, and B100 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Beech Models 65-88, 65-90, B90, C90, E90, 100, A100 and B100 airplanes. It supersedes AD 81-12-01 and requires replacement of all cast acrylic cabin windows with stretched acrylic windows. Failures of cast acrylic windows continued to occur although they were inspected per AD 81-12-01. Removal of the cast acrylic windows from service will preclude the safety hazards associated with these failures.

Compliance: As prescribed in the body of the AD.

EFFECTIVE DATE: February 6, 1985.

ADDRESSES: Beech Service Bulletin No. 2011 applicable to this AD may be obtained from Beech Aircraft Corporation, Wichita, Kansas 67201. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Don Campbell, Aerospace Engineer, Airframe Branch, ACE-120W, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION: AD 81-12-01, Amendment 39-4126 (46 FR 29925, 29926) requires inspection of cast acrylic windows on Beech Models 65-88, 65-90, 90, and 100 Series airplanes to prevent failures of these windows. Despite the inspections required by this AD, five additional failures have occured subsequent to its issuance. In view of this adverse service history it is obvious that AD 81-12-01 has not been effective. Cabin window blowouts are hazardous because of the danger of flying plexiglass. Also, there exists the physiological distress of rapid decompression, both to passengers and crew. Loss of airplane control due to pilot incapacitation may result. To prevent such safety hazards, Beech issued Service Bulletin No. 2011 which calls for replacement of all cast acrylic windows with stretched acrylic windows within one year. Accordingly, a proposal to amend Part 39 of the Federal Aviation Regulations to include an AD superseding AD 81-12-01 on certain Beech Model 65-88, 65-90, 65-A90, B90, C90, E90, 100, A100, and B100 airplanes was published in the **Federal Register** on September 26, 1984, (49 FR 37786, 37787). It would require repetitive inspection and eventual replacement of cast acrylic windows by stretched acrylic windows within one year on these airplanes in accordance with the Beech Service Bulletin. Interested persons have been afforded an opportunity to comment on the proposal.

Two commentors responded and both concurred with the proposed AD. No comments were received on the cost determination. Accordingly, the proposal is adopted without change.

There are approximately 1,134 airplanes affected by the proposed AD. Labor, material and downtime for replacing all the cast acrylic windows is estimated to be $2,700 per airplane for a total cost of $3.06 million. The cost per airplane is less than the threshold significant cost amount for those small entities operating one airplane. The FAA has determined, on the basis of the aircraft registration records, that less than 5% of the owners of the affected airplance own more than one of the affected aircraft and may incur a cost greater than the significant amount threshold. Therefore, I certify that this proposed action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location given under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR Section 39.13) is amended by adding the following new AD.

Beech: Applies to Models 65-88, (S/Ns LP-1 through LP-26, LP-28 and LP-30 through LP-47); 65-90, 65-A90, B90 and C90 (S/Ns LJ-1 through LJ-660); E90, (S/Ns LW-1 through LW-178); 100 and A100, (S/Ns B-1 through B-226); and B100 (S/Ns BE-1 through BE-8) certificated in any category in which *all* cast acrylic windows have not been replaced with stretched acrylic windows.

Compliance: Required as indicated, unless already accomplished. To prevent failures of a cast acrylic window and resulting decompression and possible occupant injury, accomplish the following:

(a) Within 50 hours time-in-service (TIS) after the effective date of this AD or 300 hours TIS after the last inspection per AD 81-12-01 whichever occurs later, and each 300 hours TIS thereafter, and within 50 hours TIS after any stripping and repainting in the area of the window:

(1) Visually inspect each cast acrylic window in accordance with Beech Service Bulletin No. 2011 (SB 2011).

(2) If the above inspection discloses any crack, fissure, stress craze or scratch in any window, prior to further pressurized flight, replace this window with a stretched acrylic window of the appropriate part number specified in Paragraph (b).

(b) Within one calendar year after the effective date of the AD, replace each cast acrylic window with one of the stretched acrylic windows listed below.

Window	Beech part No.
Oval, baggage area	50-440014-837 or -838.
Cockpit, side, standard	50-420066-317 or -318.
Cockpit, side, oversize	50-420066-353 or -354.
Round, Cabin	50-420013-1053.

Note: After installing a stretched acrylic window make an appropriate entry in the Aircraft Maintenance Record which, along with previous entries, clearly shows each location at which a stretched acrylic window has been installed.

(c) Upon installation of all stretched acrylic windows per Paragraph (b), this AD is no longer applicable.

(d) Compliance with Paragraphs (a) and (b) is not required if the pressurization system is deactivated as follows, and the aircraft is operated in accordance with this limitation:

(1) Secure the "Test/Dump" switch in the "Dump" position: and

(2) Fabricate a placard, "CABIN PRESSURIZATION PROHIBITED" of 3/16-inch or larger letters and install it on the control panel adjacent to pressurization system controls; and

(3) Insert a copy of this AD in the "Limitations" section of the airplane flight manual.

(4) Make an appropriate entry in the Aircraft Maintenance Record showing compliance with this paragraph.

(5) The provisions of this paragraph may be accomplished by the holder of at least a private pilot certificate issued under Part 61 of the Federal Aviation Regulations on any airplane owned or operated by that person, provided the airplane is not used in air carrier service.

(e) Aircraft may be flown unpressurized in accordance with FAR 21.197 to a location where the inspections/repairs required by this AD can be performed.

(f) An equivalent method of compliance with this AD may be used when approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4400.

This AD supersedes AD 81-12-01, Amendment 39-4126.

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

This amendment becomes effective February 6, 1985.

Issued in Kansas City, Missouri, on December 20, 1984.

Murray E. Smith,

Director, Central Region.

[FR Doc. 85-238 Filed 1-3-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 84-CE-38-AD, Amdt. 39-4975]

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Models EMB-110P1 and EMB-110P2 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), AD T84-24-53, applicable to EMBRAER Model EMB-110P1 and EMB-110P2 airplanes and codifies the corresponding emergency AD telegram dated December 9, 1984, into the **Federal Register**. This AD requires visual inspection of parts of the aircraft empennage and correction of any unsatisfactory conditions found during that inspection. The horizontal stabilizer separated from one of the applicable airplanes and resulted in an accident. The inspections required by this AD will detect and correct unsatisfactory conditions which reduce the structural integrity of the empennage.

EFFECTIVE DATE: January 17, 1985, to all persons except those to whom it has already been made effective by telegraphic AD from the FAA dated December 9, 1984.

Compliance: As prescribed in the body of the AD.

ADDRESSES: EMBRAER Service Bulletin (SB) 110-53-019 dated March 29, 1983, applicable to this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), Post Office Box 343-CEP, 12.200, Sao Jose Dos Campos, Sao Paulo, Brazil. A copy of this information and a copy of AD 83-14-09 Amendment No. 39-4692, referenced herein, is also contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Ben Davis, ACE-120A, Manager, Airframe Branch, Atlanta Aircraft Certification Office, FAA, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763-7407.

SUPPLEMENTARY INFORMATION: Recently, the horizontal stabilizer assembly separated from an EMBRAER Model EMB-110P1 airplane causing loss of airplane control and a resultant accident. Based on preliminary accident investigation findings the FAA determined that the visual inspection of the airplane empennage for loose rivets, wear of components, corrosion, cracks or structural deformation is mandatory. Also, the FAA determined that any unsatisfactory conditions must be corrected prior to further flight and reported to the FAA to enable the FAA to monitor the effectiveness of this action and to establish any additional necessary action in a timely manner. The FAA determined that this is an unsafe condition that may exist in other airplanes of the same type design, that an emergency condition existed, that immediate corrective action was required, that notice and public procedure thereon were impractical and contrary to the public interest and that good cause existed to issue an immediately effective AD. Accordingly, on December 9, 1984, telegraphic AD T84-24-53 implementing this action was issued and transmitted to all known U.S. owners of EMBRAER Models EMB-110P1 and EMB-110P2 airplanes. Since the unsafe condition described herein may still exist on other EMBRAER Model EMB-110P1 and EMB-110P2 airplanes, the AD is being published in the **Federal Register** as an amendment to Part 39 of the Federal Aviation Regulations (14 CFR Part 39) to make it effective to all persons who did not receive the telegram notification.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR Section 39.13) is amended by adding the following new AD.

EMBRAER: Applies to Models EMB-110P1 and EMB-110P2 airplanes certificated in any category.

Compliance: Required within the next ten (10) hours time-in-service, unless previously accomplished within the last fifty (50) hours time-in-service.

To preclude possible structural failure of the empennage assembly, accomplish the following:

(a) Unless the structural reinforcements and rivet replacements specified in paragraphs (d) and (e) of AD 83-14-09 (Amendment 39-4692) have already been accomplished, repeat the inspections of the horizontal stabilizer front attachment and fuselage bulkhead 33 area in accordance with paragraph (a) of AD 83-14-09.

(b) If loose rivets or cracks of any length are found during the inspections required by paragraph (a), prior to further flight, replace the rivets in accordance with paragraph (b) of AD 83-14-09 and repair cracks in accordance with paragraph (c)(2) of AD 83-14-09 notwithstanding the three inch crack criteria of that paragraph.

(c) Visually inspect the following components for loose attachments, excessive wear, corrosion, cracks and structural deformation:

(1) Forward horizontal stabilizer attachment, including the fuselage and stabilizer attach fittings and attachment hardware.

(2) Aft horizontal stabilizer attachment, including the fuselage and stabilizer attach fittings, attach links and all attachment hardware.

(3) All elevator to stabilizer hings fittings, including all bearings/bushings and attachment hardware.

(4) Security of elevator mass balance weight assemblies.

(5) Left and right elevator Bellcrank assemblies and attachment hardware.

(6) Left and right elevator torque tube assemblies and all attachment hardware.

(7) Elevator trim tab hinges.

(8) Elevator trim tab actuator, bearings, push rod assembly and all attachment hardware.

(9) Elevator trim tab free play, measured at the trailing edge, should not exceed airplane maintenance manual limits.

(d) Prior to further flight correct any unsatisfactory conditions found as a result of the inspections required by paragraph (c) in accordance with the airplane maintenance manual.

(e) Report any unsatisfactory conditions, within 24 hours, to the FAA, Airframe Branch, Atlanta Aircraft Certification Office; Telephone (404) 763-7407. (Reporting authorized by OMB clearance number 21200056).

(f) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(g) An equivalent means of compliance with this AD may be used if approved by the Manager, FAA, Atlanta Aircraft Certification Office, 1075 Inner Loop Road, College Park, Georgia 30337.

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

This amendment becomes effective on January 17, 1985, to all persons except those to whom it has already been made effective immediately by telegraphic AD T84-24-53 issued December 9, 1984.

Issued in Kansas City, Missouri, on December 24, 1984.

Murray E. Smith,

Director, Central Region.

[FR Doc. 85-236 Filed 1-3-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-ANE-22; Amdt. 39-4970]

Airworthiness Directives; Hamilton Standard Model 23LF-335 and -371 Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires repetitive dye penetrant inspections on Hamilton Standard Model 23LF-335 and -371 variable pitch propellers. The AD is needed to detect cracks in the propeller blades/counterweights which could result in loss of a propeller blade/counterweight and possible engine separation from the aircraft.

DATES: Effective—January 3, 1985.

Compliance schedule—As prescribed in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register on January 3, 1985.

ADDRESSES: The applicable Alert Service Bulletin (ASB) No. A27 may be obtained from: Hamilton Standard, Division of United Technologies Corporation, Windsor Locks, Connecticut 06096.

A copy of Hamilton Standard ASB No. A27 is contained in the Rules Docket, Office of Regional Counsel, FAA, Attn: Rules Docket No. 84-ANE-22, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Martin Buckman, Engine and Propeller Standards Staff, ANE-110, Aircraft Certification Division, New England Region, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803, (617) 273-7079.

SUPPLEMENTARY INFORMATION: The FAA has determined that damaging blade/counterweight stresses can be generated during landing reversal operations of the Hamilton Standard Model 23LF-335 and -371 varible pitch propellers installed on the British Aerospace HP137 aircraft. The stresses may result in cracks forming in the blade/counterweights. The high stresses are caused by "reverse flutter" induced during the propeller landing reversal operation. "Reverse flutter" is characterized by high torsional vibration in the outboard area of the blade. In addition, the blade counterweights experience forced vibration. Cracks have been discovered by an operator of the British Aerospace HP 137. This condition can lead to the loss of the propeller blade/counterweight which may result in engine separation from the aircraft. Since this condition is likely to exist or develop in other model 23LF-335 and -371 propellers when using reverse thrust on landing, an AD is being issued which requires repetitive dye penetrant inspections of the blades/counterweights on the Hamilton Standard Model 23LF-335 and -371 variable pitch propellers. The inspection intervals are associated with the number of propeller reversal operations after landing.

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

Conclusion: The FAA has determined that this regulation only involves 13 aircraft and will cost approximately $250 per inspection per aircraft. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291, and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT"**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

Hamilton Standard: Applies to Hamilton Standard Model 23LF-335 and -371 variable pitch propellers installed on, but not limited, to British Aerospace HP137 aircraft certificated in any category.

Compliance is required within the next 20 hours time in service or before the next propeller landing reversal, whichever occurs first, following the effective date of this AD, unless already accomplished, and at every 50 propeller landing reversals thereafter.

To detect cracks in the blades/counterweights which could cause possible propeller failure, accomplish the following:

(a) Clean and inspect for cracks in the propeller blades and counterweights in accordance with section 2, paragraphs A and B of Hamilton Standard ASB No. A27, Revision 1, November 1, 1984, or FAA approved equivalent.

(b) Blades and counterweights found to have evidence of cracks must be removed from service and replaced with a serviceable assembly prior to further flight.

Aircraft may be ferried in accordance with the provisions of Federal Aviation Regulations (FARs) 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine and Propeller Standards Staff, ANE-110, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552[a][1]. All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Hamilton Standard, Division of United Technologies Corporation, Windsor Locks, Connecticut 06096. These documents also may be examined at the Office of the Regional Counsel, FAA, Attn: Rule Docket No. 84-ANE-22, 12 New England Executive Park, Burlington, Massachusetts 01803.

This amendment becomes effective on January 3, 1985.

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

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

Jack A. Sain,

Acting Director, New England Region.

[FR Doc. 84-34021 Filed 12-31-84; 3:32 pm]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-75-AD; Amdt. 39-4971]

Airworthiness Directives: McDonnell Douglas Model DC-9-10, -20, -30, -40, -50, and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires inspection, and modifications if necessary, of the main landing gear (MLG) attach fittings on certain McDonnell Douglas DC-9 series airplanes. This AD would require repetitive inspections of the MLG attach fittings fabricated from 7075-T73 forging alloy. This action is prompted by reports of MLG fitting cracks, the failure of which could result in significant damage to the wing MLG supporting/fitting structures and subsequent collapse of the main landing gear.

DATES: Effective January 27, 1985. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

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. Michael N. Asahara, Sr., Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2826.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) to require repetitive inspections of the main landing gear (MLG) attach fittings on certain McDonnell Douglas DC-9 series airplanes was published in the **Federal Register** September 6, 1984 (49 FR 35127). The comment period for the proposal closed on October 26, 1984.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the four comments which were received. Three commenters felt that paragraph F. of the proposed AD should be revised to allow operators with 7075-T73 MLG attach fittings with more than 37,000 landings, to continue in service as long as repetitive inspections are performed at 3,600 landings and no cracks are detected. The FAA concurs and paragraph F. of the AD has been rewritten to allow the various operators the option to either accomplish required terminating action or to continue repetitive inspections. The fourth commenter (the manufacturer) suggested that various editorial changes be made for clarification and consistency. The FAA concurs and these changes have been incorporated in this AD.

It is estimated that 120 airplanes (2 units per aircraft) of the U.S. registry will be affected by this AD and will require approximately 40 manhours per airplane to accomplish the required rework and modifications, and 13 manhours per airplane to accomplish the repetitive inspections. Average labor cost is $40 per hour. Based on these figures, the total cost impact of this AD is estimated to be $254,400. 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.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the proposed rule, with the changes 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 (AD):

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9-10, -20, -30, -40, -50, C-9 (Military) series airplanes, certificated in all categories, which have accomplished Option I of McDonnell Douglas DC-9 Service Bulletin 57-125, Revision 2, or prior issues and have installed MLG attach fitting fabricated from forging alloy 7075-T73.

Specific corresponding factory serial numbers for the production effectivity are listed in McDonnell Douglas DC-9 Service Bulletin 57-148, Revision 1, dated June 8, 1983, hereinafter referred to as SB 57-148, R1. Compliance is required as indicated, unless previously accomplished. To detect cracks and prevent failure of the MLG attach fitting and its interrelated structure, accomplish the following:

A. For aircraft with fittings having 15,000 to 19,999 landings, inspect the affected MLG attach fittings for cracks within 3,600 additional landings in accordance with SB 57-148, R1.

B. For aircraft with fittings having 20,000 or more landings, inspect the affected MLG attach fitting for cracks within 1,800 additional landings, in accordance with SB 57-148, R1.

C. Repetitive inspections must be performed at 3,600 landings intervals until replaced with a new fitting or preventative modification is accomplished in accordance with SB 57-148, R1.

D. If an MLG attach fitting is found cracked, the affected MLG attach fitting(s) must be reworked in accordance with SB 57–148, R1, or later FAA approved revisions, prior to further flight.

E. If cracks are found in locations in the fitting(s) other than those identified in SB 57–148, R1, replace the fitting(s) before further flight in accordance with SB 57–125, R4, Option 1, or rework in a manner approved by the Manager, Los Angels Aircraft Certification Office, FAA, Northwest Mountain Region.

F. If preventative modification is not accomplished prior to 37,000 landings, continue repetitive inspections at 3,600 landing intervals, until such time terminating action is accomplished.

G. Completion of the preventative modification in accordance with SB 57–148, R1, or the replacement of cracked fitting(s) in accordance with SB 57–125, R4, or later FAA approved revisions, constitutes terminating action for this AD.

H. Alternative inspections, modifications, or other actions which provide an equivalent level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA Northwest Mountain Region.

I. Upon request of operator, an FAA Maintenance Inspector, subject to prior approval of the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for that operator.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to 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 the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective January 27, 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 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 significant economic effect on a substantial number of small entities because few, if any, Model DC–9 series 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 13, 1984.

Raymond A. Salazar,

Acting Director, Northwest Mountain Region.

[FR Doc. 85–237 Filed 1–3–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 24417; Amdt. No. 1285]

Air Traffic and General Operating Rules; 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 effective 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 Purchase—

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 public 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*

Bentonville, AR—Bentonville Muni, VOR-A Amdt. 7
Bentonville, AR—Bentonville Muni, VOR/DME-B, Orig.
Arcata-Eureka, CA—Arcata, VOR RWY 13, Amdt. 6
Arcata-Eureka, CA—Arcata, VOR/DME RWY 1, Amdt. 5
Newnan, GA—Newnan Coweta County, VOR/DME-A, Amdt. 4
Glasgow, MT—Glasgow Intl, VOR RWY 12, Amdt. 2
Glasgow, MT—Glasgow Intl, VOR RWY 30, Amdt. 2
Ainsworth, NE—Ainsworth Muni, VOR RWY 17, Amdt. 6, Cancelled
Ainsworth, NE—Ainsworth Muni, VOR RWY 17, Orig.
Ainsworth, NE—Ainsworth Muni, VOR RWY 35, Amdt. 2, Cancelled
Ainsworth, NE—Ainsworth Muni, VOR RWY 35, Orig.
Thedford, NE—Thomas County, VOR RWY 8, Amdt. 3
Clinton, NC—Sampson County, VOR/DME-A, Amdt. 3
New Holstein, WI—New Holstein Muni, VOR/DME-A, Amdt. 1

** * * Effective January 17, 1985*

Akron, OH—Akron-Canton Regional, VOR RWY.23, Amdt. 5

Effective December 20, 1984

Fergus Falls, MN—Fergus Falls Muni-Einar Mickelson Fld, VOR RWY 17, Amdt. 6
Fergus Falls, MN—Fergus Falls Muni-Einar Mickelson Fld, VOR RWY 35, Amdt. 8
Fergus Falls, MN—Fergus Falls Muni-Einar Mickelson Fld, VOR/DME RWY 31, Amdt. 3

** * * Effective December 19, 1984*

Richmond, VA—Richard Evelyn Byrd Intl, VOR RWY 25, Amdt. 12

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

** * * Effective February 14, 1985*

Gainsville, GA—Lee Gilmer Memorial, LOC RWY 4, Amdt. 2

** * * Effective December 13, 1984*

Corvallis, OR—Corvallis Muni, LOC RWY 17, Amdt. 3

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

** * * Effective February 14, 1985*

Arcata-Eureka, CA—Arcata, NDB-A, Amdt. 6
Gainesville, GA—Lee Gilmer Memorial, NDB RWY 4, Amdt. 2
Bellaire, MI—Antrim County, NDB RWY 2, Amdt. 9, Cancelled
Bellaire, MI—Antrim County, NDB RWY 2, Orig.
Glasgow, MT—Glasgow Intl, NDB RWY 30, Orig.
Bassett, NE—Rock County, NDB RWY 31, Amdt. 1
Valentine, NE—Miller Field, NDB RWY 31, Amdt. 4
Clinton, NC—Sampson County, NDB RWY 6, Amdt. 3
Hickory, NC—Hickory Muni, NDB RWY 24, Amdt. 2
Kelso, WA—Kelso-Longview, NDB-A, Amdt. 2
New Richmond, WI—New Richmond Muni, NDB RWY 13, 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*

Arcata-Eureka, CA—Arcata, ILS RWY 31, Amdt. 25
Jackson, MS—Allen C Thompson Field, ILS RWY 15L, Amdt. 4
Charlotte, NC—Charlotte/Douglas Intl, ILS RWY 36L, Amdt. 8
Hickory, NC-Hickory Muni, ILS RWY 24, Amdt. 4
Portland, OR—Portland Intl, ILS RWY 10R, Amdt. 27

** * * Effective January 17, 1985*

Akron, OH—Akron-Canton Regional, ILS RWY 1, Amdt. 32
Akron, OH—Akron-Canton Regional, ILS RWY 19, Amdt. 2
Akron, OH—Akron-Canton Regional, ILS RWY 23, Amdt. 5

** * * Effective December 20, 1984*

Tampa, FL—Tampa Intl, ILS RWY 36L, Amdt. 13

** * * Effective December 19, 1984*

Richmond, VA—Richard Evelyn Byrd Intl, ILS RWY 7, Amdt. 24

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

** * * Effective January 17, 1985*

Akron, OH—Akron-Canton Regional, RADAR-1, Amdt. 16

** * * Effective December 19, 1984*

Richmond, VA—Richard Evelyn Byrd Intl, RADAR-1, Amdt. 9

(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 28, 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. 85-239 Filed 1-3-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 121, 127, and 135

[Docket No. 18510; SFAR No. 38-1]

Special Federal Aviation Regulation No. 38 Certification and Operating Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment extends the effectiveness of Special Federal Aviation Regulation (SFAR) No. 38. In 1978, the FAA promulgated SFAR 38 as an interim regulation to address regulatory questions arising from

legislation that resulted in economic deregulation of the air transportation industry, and from the Civil Aeronautics Board's (CAB) scheduled demise (or "sunset") on December 31, 1984. Having generally reviewed the FAA regulations to determine the most appropriate regulatory response to the Airline Deregulation Act of 1978 and the termination of CAB functions attendant on the CAB sunset, the FAA concludes that it is appropriate to extend the termination date of SFAR 38 to allow time for the FAA, in separate rulemaking, to propose and receive comments on certain revisions to present SFAR 38.

DATES: Effective January 1, 1985, the termination date for SFAR 38 is extended to June 1, 1985. Comments must be received on or before March 5, 1985.

ADDRESSES: Send comments on the rule in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn. Rules Docket (AGC-204), Docket No. 18510, 800 Independence Avenue, SW, Washington, D.C. 20591, or deliver comments in duplicate to: FAA Rules Docket, Room 916, 800 Independence Avenue, SW, Washington, D.C. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. David Catey, Project Development Branch, Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Ave., SW, Washington, D.C., 20591; telephone (202) 472-4621.

SUPPLEMENTARY INFORMATION

Background

On December 12, 1978, the FAA promulgated SFAR 38 in consequence of the Airline Deregulation Act of 1978 (Pub. L. 95-304, 33 U.S.C. 857-14). That Act embodies the Congressional intent that the Federal Government diminish its involvement in regulating the economic aspects of the airline industry. To accomplish this, Congress directed that the Civil Aeronautics Board (CAB) be abolished, and in anticipating its sunset, the CAB curtailed or suspended much of its regulatory activity. On October 4, 1984, additional legislation was enacted further defining the process for CAB sunset.

Because some aspects of FAA safety regulation rest upon CAB definitions and authority, the FAA found it necessary in 1978 to adopt an interim measure to provide for an orderly transition from CAB and FAA interlocking authority, to a regulatory regime with no CAB in existence. SFAR 38 set out FAA certification and operating requirements applicable to all "air commerce" and "air transportation" operations for "compensation or hire". (SFAR 38 does not address Part 133 external load operations, Part 137 agriculture aircraft operations, or Part 91 training and other special purpose operations.) The FAA has reviewed SFAR 38 and has concluded that it should be revised and clarified and that its effectiveness should be continued until at least May 1, 1986, to give the FAA time to review all of its regulations in a post-CAB sunset light. A proposed revision of SFAR 38 will soon be published for public comment in the **Federal Register**. This amendment merely extends the termination date of SFAR 38 to June 1, 1985, to allow adequate time for receipt and consideration of public comment on the proposed revisions to present SFAR 38 which are being undertaken in separate rulemaking.

Good Cause Justification for Immediate Adoption

The termination date for SFAR 38, and for the operating certificates issued under SFAR 38, is January 1, 1985. The reasons which justified the adoption of SFAR 38 still exist. Therefore, it is in the public interest to extend the termination date of SFAR 38 from January 1, 1985, to June 1, 1985. This action is necessary to permit continued operations under operating certificates issued under SFAR 38 and to avoid confusion in the administration of FAA regulations regarding operating certificates and operating requirements.

In addition, since this amendment continues in effect the provisions of a currently effective SFAR and imposes no additional burden on any person, I find that notice and public procedures hereon are unnecessary, impracticable, and contrary to the public interest, and that the amendment may be made effective in less than 30 days. However, interested persons are invited to submit such comments as they may desire regarding this amendment. Communications should identify the docket number and be submitted in duplicate to the address specified above. All communications received on or before the close of the comment period will be considered by the Administrator, and this amendment may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties.

Trade Impact Statement

The FAA finds that this amendment will have no impact on international trade.

Regulatory Flexibility Determination

The FAA finds that the amendment will have no significant economic impact on small entities.

The FAA has determined that this document involves a rule change which imposes no additional burden on any person. Accordingly, it has been determined that: the rule change does not involve a major rule under Executive Order 12291; it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and its anticipated impact is so minimal that full regulatory evaluation is not required.

List of Subjects

14 CFR Part 121

Aviation safety, Safety, Air carriers, Air transportation, Aircraft, Airmen.

14 CFR Part 127

Aircraft, Air carriers, Airworthiness, Airmen.

14 CFR Part 135

Air carriers, Aviation safety, Safety, Air transportaion, Air taxis, Airworthiness, Airmen, Aircraft.

Adoption of the Amendment

In consideration of the foregoing, Parts 121, 127 and 135 of the Federal Aviation Regulations are amended as follows, effective January 1, 1985.

By amending Special Federal Aviation Regulation No. 38 in 14 CFR Parts 121, 127, and 135, to change the termination date from "January 1, 1985," to "June 1, 1985."

(Secs. 313, 601, 603, 604 and 1102, Federal Aviation Act of 1958 as amended (49 U.S.C. 1354, 1421, 1423, 1424, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)).

Issued in Washington, D.C. on December 27, 1984.

Donald D. Engen,

Administrator.

[FR Doc. 84-34022 Filed 12-31-84; 3:32 pm]

BILLING CODE 4910-13-M

CIVIL AERONAUTICS BOARD

14 CFR Ch. II

Transfer, Removal, and Reissuance of Regulations to Transportation Department

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Transfer.

SUMMARY: On January 1, 1985, most of the authority of the CAB will transfer to the Department of Transportation. Consequently, most of the Board's existing rules will be administered by DOT after January 1. This notice identifies those rules transferred to DOT, those to be reissued by DOT, and those which are revoked.

DATES: Adopted: December 28, 1984.
Effective: January 1, 1985.

FOR FURTHER INFORMATION CONTACT: John Craig Weller, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202 673-5442, (after January 8, 1985, (202) 472-5577).

SUPPLEMENTARY INFORMATION: The Airline Deregulation Act of 1978 (ADA) provided for the gradual transition from an airline industry that was largely controlled by government regulation to one largely controlled by the marketplace. As a part of the final phase of this process, the Civil Aeronautics Board will cease to exist on December 31, 1984, and most of its remaining authority will be transferred to the Department of Transportation. Some of this authority, such as oversight of international air transportation, was included in the ADA; the remainder, such as domestic fitness and consumer protection, was included in the Civil Aeronautics Board Sunset Act of 1984.

This notice lists the current rules administered by the Civil Aeronautics Board and the disposition of those rules upon transfer. While this notice is being issued by the Board, DOT has been consulted and concurs.

In general, one of three things will happen. First, the rules in Subchapter A—Economic Regulations (except for Parts 245 and 246), Subchapter D—Special Regulations (except for Part 370), Subchapter E—Organization (except for Part 385), and Subchapter F—Policy Statements, will transfer intact to DOT and will retain the current numbers.

Most of the rules in Subchapter B—Procedural Regulations, and Part 385 of Subchapter E, are being reissued by DOT to reflect its new organizational structure. *See*, Notice 84-17, 49 FR 46006, November 21, 1984. For the most part, the organization and numbering of these reissued rules will remain the same as the present CAB rules.

Parts 245 and 246 are being revoked because the underlying statutory authority for them expires. Part 310b concerning public access to Board meeting is being revoked since there will no longer be Board meetings. Parts 312 and 370 are being revoked because DOT already has regulations covering these areas. A final rule for each of these actions is being issued separately.

In addition, DOT is in the process of consolidating all of the Board's antitrust rules, now found in various sections of the Board's rules, into a new Part 303. A notice of proposed rulemaking concerning the antitrust rules should be issued shortly, but the new consolidated rules will not be in effect until after the Board's sunset.

This notice, of course, has no substantive effect on the rules or those subject to them; it merely provides a convenient reference source for the disposition of the Board's rules after sunset.

Accordingly, the following listed rules of the Civil Aeronautics Board will be affected as indicated on January 1, 1985.

Part	Title	Disposition
	Subchapter A—Economic Regulations	
200	Definitions and instructions	Transfer to DOT.
201	Applications for certificates of public convenience and necessity.	Do.
202	Certificates authorizing scheduled route service: Terms, conditions, and limitations.	Do.
203	Waiver of Warsaw Convention liability limits and defenses.	Do.
204	Data to support fitness determinations.	Do.
205	Aircraft accident liability insurance.	Do.
206	Certificates of public convenience and necessity: Special authorizations.	Do.
207	Charter trips and special services	Do.
208	Terms, conditions, and limitations of certificates to engage in charter air transportation.	Do.
211	Applications for permits to foreign air carriers.	Do.
212	Charter trips by foreign air carriers.	Do.
213	Terms, conditions, and limitations of foreign air carrier permits.	Do.
214	Terms, conditions, and limitations of foreign air carrier permits authorizing charter air transportation only.	Do.
215	Names of air carriers and foreign air carriers.	Do.
216	Commingling of blind sector traffic by foreign air carriers.	Do.
217	Reporting data pertaining to civil aircraft charters performed by U.S. certificated and foreign air carriers.	Do.
218	Lease by foreign air carrier or other foreign person of aircraft with crew.	Do.
218	Tariffs	Do.
222	Intermodal cargo services by foreign air carriers.	Do.
223	Free and reduced-rate transportation.	Do.
228	Embargoes on property	Do.
231	Exemption from schedule filing	Do.
232	Transportation of mail, review of orders of Postmaster General.	Do.
235	Reinvestment of gains derived from the sale or other disposition of flight equipment.	Do.
240	Inspection of accounts and property.	Do.
241	Uniform system of accounts and reports.	Do.
245	Reports of ownership of stock and other interests.	Revoked.
246	Reports of stock ownership of affiliates of air carriers.	Do.
247	Direct airport-to-airport mileage records.	Transfer to DOT.
248	Submission of audit and reconciliation reports.	Do.
249	Preservation of air carrier records	Do.
250	Oversales	Do.
251	Prohibited interests, interlocking relationships.	Do.
252	Smoking aboard aircraft	Do.
253	Notice of terms of contract of carriage.	Do.
254	Domestic baggage liability	Do.
261	Filing of agreements	Do.
263	Participation of air carrier associations in Board proceedings.	Do.
270	Criteria for designating eligible points.	Do.
287	Exemption and approval of certain interlocking relationships.	Do.
288	Exemption of air carriers for military transportation.	Do.
291	Domestic cargo transportation	Do.
292	Classification and exemption of Alaskan air carriers.	Do.
294	Canadian charter air taxi operators.	Do.
296	Indirect air transportation of property.	Do.
297	Foreign air freight forwarders and foreign cooperative shippers associations.	Do.
298	Exemptions for air taxi operations	Do.
299	Exemption from section 408 for aircraft acquisitions.	Do.
	Subchapter B—Procedural Regulations	
300	Rules of conduct in Board proceedings.	Reissued by DOT.
302	Rules of practice in Board proceedings.	Do.
305	Rules of practice in informal nonpublic investigations.	Do.
310	Inspection and copying of Board opinions, orders, and records.	Do.
310a	Access to systems of records—regulations and exemptions implementing the Privacy Act of 1974.	Do.
310b	Public access to Board meetings	Revoked.
311	Classification and declassification of national security information and material.	Reissued by DOT.
312	Implementation of the National Environmental Policy Act.	Revoked.
313	Implementation of the Energy Policy and Conservation Act.	Reissued by DOT.
314	Employee Protection Program	Do.
315	Information submitted in section 408 applications.	Transfers to DOT.
316	Collection of claims owed the United States.	Reissued by DOT.
320	Procedures for awarding Japanese charter authorizations.	Do.
321	Unused authority procedures	Transfer to DOT.
323	Terminations, suspensions, and reductions of service.	Reissued by DOT.
324	Procedures for compensating air carriers for losses.	Do.
325	Essential air service procedures	Do.
326	Procedures for bumping subsidized air carriers from eligible points.	Do.
	Subchapter C—[Reserved]	
	Subchapter D—Special Regulations	
370	Employee responsibility and conduct.	Revoked.
372	Overseas military personnel charters.	Transfer to DOT.
373	Implementation of the Equal Access to Justice Act.	Do.
374	Implementation of the Consumer Credit Protection Act with respect to air carriers and foreign air carriers.	Do.
374a	Extension of credit by airlines to Federal political candidates.	Do.
375	Navigation of foreign civil aircraft within the United States.	Do.

Part	Title	Disposition
377	Continuation of expired authorizations by operation of law pending final determination of applications for renewal thereof.	Do.
379	Nondiscrimination in federally assisted programs of the Board—Effectuation of Title VI of the Civil Rights Act of 1964.	Do.
380	Public charters	Do.
382	Nondiscrimination on the basis of handicap.	Do.
	Subchapter E—Organization	
384	Statement of organization, delegation of authority, and availability of records and information.	Do.
385	Delegations and review of action under delegation; nonhearing matters.	Reissued by DOT.
387	Organization and operation during emergency conditions.	Transfer to DOT.
389	Fees and charges for special services.	Do.
	Subchapter F—Policy Statements	
396	Guidelines for individual determinations of essential air transportation.	Do.
399	Statements of general policy	Do.
400-1199	(Reserved)	

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 85-261 Filed 1-3-85; 8:45 am]

BILLING CODE 6320-01-M

14 CFR Part 245

[Reg. ER-1403; Amdt. No. 7 to Part 245]

Reports of Ownership of Stock and Other Interests

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB revokes its rule requiring reports of ownership of stock, or other interests, in air carriers or other persons engaged in phases of aeronautics. This action is required because the statutory authority for this section expires on January 1, 1985.

DATES: *Adopted:* December 28, 1984. *Effective:* January 1, 1985.

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

SUPPLEMENTARY INFORMATION: The Civil Aeronautics Board will cease to exist at the end of 1984 and most of its present authority and rules will transfer to the Department of Transportation on January 1, 1985. However, pursuant to the Civil Aeronautics Sunset Act of 1984, sections 407 (b) and (c), and section 409 of the Federal Aviation Act are abolished on January 1, 1985. These sections of the Act provide the statutory basis for Parts 245 and 246 of the Board's Economic Regulations. For that reason, the Board is revoking Parts 245 and 246, effective January 1, 1985.

Because this action is required by the statutory changes made by Congress, the Board finds for good cause that notice and comment are not required and that this rule may become effective when posted at the **Federal Register**.

List of Subjects in 14 CFR Part 245

Air carriers, Banks, Reporting and recordkeeping requirements, Securities.

Accordingly, the Civil Aeronautics Board amends 14 CFR Chapter II, *Civil Aeronautics Board*, as follows:

PART 245—[REMOVED]

1. The authority for Part 245 is:

Authority: Secs. 204, 407, 409, Pub. L. 85-726, as amended; 72 Stat. 743, 766, 768; 49 U.S.C. 1324, 1377, 1379.

2. 14 CFR Part 245, *Reports of ownership of stock and other interests*, is removed and reserved.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-34024 Filed 12-31-84; 3:40 pm]

BILLING CODE 6320-01-M

14 CFR Part 246

[Reg. ER-1404; Amdt. No. 3 to Part 246]

Reports of Stock Ownership of Affiliates of Air Carriers

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB revokes its rule requiring reports of ownership of stock by affiliates of air carriers. This action is required because the statutory authority for this section expires on January 1, 1985.

DATES: *Adopted:* December 28, 1984. *Effective:* January 1, 1985.

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

SUPPLEMENTARY INFORMATION: For the reasons explained in ER-1403, adopted today, the Board revokes its rules in 14 CFR Part 246 concerning reporting of stock interests by affiliates of air carriers.

List of Subjects in 14 CFR Part 246

Air carriers, Holding companies, Reporting and recordkeeping requirements, Securities.

Accordingly, the Civil Aeronautics Board amends 14 CFR Chapter II, *Civil Aeronautics Board*, as follows:

PART 246—[REMOVED]

1. The authority for Part 246 is:

Authority: Secs. 204, 407, 409, Pub. L. 85-726, as amended; 72 Stat. 743, 766, 768; 49 U.S.C. 1324, 1377, 1379.

2. 14 CFR Part 246, *Reports of stock ownership of affiliates of air carriers*, is removed and reserved.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-34025 Filed 12-31-84; 3:40 pm]

BILLING CODE 6320-01-M

14 CFR Part 291

[Reg. ER-1402; Economic Regulations; Amdt. No. 17 to Part 291; Docket 42585]

Domestic Cargo Transportation

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB changes the applicability of its rules for domestic all-cargo air transportation to include air transportation wholly within the States of Alaska and Hawaii. The change is required by the Civil Aeronautics Board Sunset Act of 1984. All-cargo air transportation within those States will now be subject to the same liberal rules as in other States.

DATES: *Adopted:* December 28, 1984. *Effective:* February 4, 1985.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the Assistant General Counsel for Regulations and Enforcement, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590, (202) 426-4723.

SUPPLEMENTARY INFORMATION: The Board's rules in 14 CFR Part 291 relieve domestic all-cargo carriers from many statutory requirements in accordance with the policy of the cargo deregulation amendment in 1977 (Pub. L. 95-163) and the Airline Deregulation Act (Pub. L. 96-504). In accordance with the cargo deregulation amendments, these rules do not apply to air transportation wholly within the States of Alaska and Hawaii.

Congress has now, however, decided that all-cargo air transportation in these States should be treated as it is in all other interstate and overseas air transportation. The Civil Aeronautics Board Sunset Act of 1984 eliminates the distinction created by the cargo deregulation amendments. In view of this statutory charge, Transamerica has

asked that our rules be changed to allow cargo carriers in Alaska and Hawaii to operate under the more liberalized rules of Part 291.

We agree with Transamerica that the exclusion of all-cargo air transportation in Alaska and Hawaii should be eliminated because there is no legal or economic justification to continue the distinction. By Order 84-12-118 the Board removed the conditions on section 418 certificates restricting all-cargo operations in those States. In the show cause order preceding the certificate condition removal, the Board stated that it would change its rules to reflect the changed statutory intent. The Board has received no comments on the proposed changes. The Board is changing the definition in § 291.2 to remove the limitation on applicability of Part 291 for all-cargo air transportation wholly within Alaska and Hawaii.

The statutory changes become effective on January 1, 1985. Because of this change in statutory intent and so that carriers and shippers can take advantage of this change as soon as possible, the Board for good cause finds that notice and public procedures are unnecessary and contrary to the public interest. For the same reasons, the Board finds that there is good cause to make the rule effective less than 30 days after publication in the **Federal Register.**

List of Subjects in 14 CFR Part 291

Air carriers, Antitrust, Freight, Insurance, Reporting requirements.

PART 291—[AMENDED]

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 291, *Domestic Cargo Transportation,* as follows:

1. The authority for Part 291 is:

Authority: Secs. 102, 204, 401, 407, 408, 416, 418, Pub. L. 85-726, as amended, 72 Stat. 740, 743, 766, 767; 91 Stat. 1284, 49 U.S.C. 1302, 1324, 1371, 1377, 1378, 1386, 1388.

2. The definitions in § 291.2 of "all-cargo air carrier," "all-cargo air service," and "domestic cargo transportation" are revised to read:

§ 291.2 Definitions.

* * * * *

"All-cargo air carrier" or "section 418 carrier" means an air carrier holding an all-cargo air service certificate issued under section 418 of the Act to provide domestic cargo transportation.

"All-cargo air service" means domestic cargo transportation performed by any carrier holding a certificate issued under section 418 of the Act.

* * * * *

"Domestic cargo transportation" means the carriage by aircraft in interstate or overseas air transportation of property or mail, or both.

* * * * *

By The Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

[FR Doc. 85-259 Filed 1-3-85; 8:45 am]

BILLING CODE 6320-01-M

14 CFR Part 310b

[Reg. PR-265; Amdt. No. 1 to Part 310b]

Public Access to Board Meetings

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB revokes its rule implementing the Government in the Sunshine Act. This action is taken because the CAB will go out of existence on December 31, 1984.

DATES: *Adopted:* December 28, 1984. *Effective:* January 1, 1985.

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

SUPPLEMENTARY INFORMATION: The Civil Aeronautics Board will cease to exist at the end of 1984 and most of its present authority and rules will transfer to the Department of Transportation on January 1, 1985. Part 310b of the Board's Procedural Regulations sets forth the Board's rules implementing the Government in the Sunshine Act. These rules provide, in general, for public access to Board meetings. Because the Board will cease to exist at the end of the year, the Board's last meeting will be on December 31, 1984. After that time, there will be no need for the provisions of Part 310b.

Because this action affects only a rule of agency procedure, notice and comment are not required. In addition, because it reflects changes in the law made by Congress, the Board finds it may become effective when posted at the **Federal Register.**

List of Subjects in 14 CFR Part 310b

Sunshine Act.

Accordingly, the Civil Aeronautics Board amends 14 CFR Chapter II, *Civil Aeronautics Board,* as follows:

PART 310b—[REMOVED]

1. The authority for Part 310b is:

Authority: Sec. 204(a), Federal Aviation Act of 1958, as amended; 72 Stat. 743; 49 U.S.C. 1324; 5 U.S.C. 552(g), 90 Stat. 1244.

2. 14 CFR Part 310b, *Public access to Board meetings,* is removed and reserved.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-34026 Filed 12-31-84; 3:40 pm]

BILLING CODE 6320-01-M

14 CFR Part 312

[Regulation PR-266; Amdt. No. 3 to Part 312]

Implementation of the National Environmental Policy Act

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB revokes its rule implementing the National Environmental Policy Act. This rule will be superseded by DOT policy after the Board's sunset.

DATES: *Adopted:* December 28, 1984. *Effective:* January 1, 1985.

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

SUPPLEMENTARY INFORMATION: The Civil Aeronautics Board will cease to exist at the end of 1984 and most of its present authority and rules will transfer to the Department of Transportation on January 1, 1985. Part 312 of the Board's Procedural Regulations sets forth the Board's rules implementing the National Environmental Policy Act. The Department of Transportation already has in existence a parallel policy covering all of its operations. DOT Order 5610.1C. This policy will supersede the provisions of Part 312, and, therefore, they are no longer necessary.

Because this action affects only a rule of agency procedure, notice and comment are not required. In addition, because it reflects changes in the law made by Congress, the Board finds it may become effective when posted at the **Federal Register.**

List of Subjects in 14 CFR Part 312

Administrative practice and procedure, Environmental impact statements.

Accordingly, the Civil Aeronautics Board amends 14 CFR Chapter II, *Civil Aeronautics Board,* as follows:

PART 312—[REMOVED]

1. The authority for Part 312 is:

Authority: Secs. 102, 204, Pub. L. 85-726, as amended, 72 Stat. 740, 743; 49 U.S.C. 1302, 1324; National Environmental Policy Act of 1969, 83 Stat. 352, *et seq.*, 42 U.S.C. 4321, *et seq.*

2. 14 CFR Part 312, *Implementation of the National Environmental Policy Act*, is removed and reserved.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-34028 Filed 12-31-84; 3:40 pm]

BILLING CODE 6320-01-M

14 CFR Part 370

[Regulation SPR-196; Amdt. No. 4 to Part 370]

Employee Responsibility and Conduct

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB revokes its rule concerning employee responsibility and conduct. Those CAB employees who transfer to DOT after sunset will be covered by existing DOT regulations, including those governing responsibility and conduct.

DATES: *Adopted:* December 28, 1984. *Effective:* January 1, 1985.

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

SUPPLEMENTARY INFORMATION: The Civil Aeronautics Board will cease to exist at the end of 1984 and most of its present authority and rules will transfer to the Department of Transportation on January 1, 1985. All those present Board employees associated with this transferring authority will also go to DOT. Once there, they will be governed by the existing DOT regulations concerning employee responsibility and conduct in 49 CFR Part 99. Thus, the Board's rules on employee conduct in Part 370 will no longer be necessary.

Because this action concerns only a rule of agency procedure, notice and public comment are not required. Furthermore, because this action is required by changes in the law made by Congress, the Board finds for good cause that this rule should become effective when posted at the **Federal Register.**

List of Subjects in 14 CFR Part 370

Conflict of interests.

Accordingly, the Civil Aeronautics Board amends 14 CFR Chapter II, *Civil Aeronautics Board*, as follows:

PART 370—[REMOVED]

1. The authority for Part 370 is:

Authority: E.O. 11222, 30 FR 6469, 3 CFR, 1965 Supp.; 5 CFR 735.101 *et seq.*; secs. 201, 202, 204 of the Federal Aviation Act, 72 Stat. 741, 742, 743; 49 U.S.C. 1321, 1322, 1324.

2. 14 CFR Part 370, *Employee responsibilities and conduct*, is removed and reserved.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-34027 Filed 12-31-84; 3:40 pm]

BILLING CODE 6320-01-M

14 CFR Part 399

[PS-114; Amdt. No. 89 to Part 399; Docket 42538]

Statements of General Policy

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB is amending its policy statement concerning unrealistic scheduling to include air taxis. The CAB has authority under section 411 of the Federal Aviation Act to prohibit unfair and deceptive practices and an unfair methods of competition by all air carriers. This amendment puts air taxis on notice that this policy also applies to them. This action is taken in response to a comment by Air BVI.

DATES: *Adopted:* December 31, 1984. *Effective:* January 1, 1985.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the Assistant General Counsel for Regulations and Enforcement, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 472-5577.

SUPPLEMENTARY INFORMATION: In PS-111, 49 FR 40567, October 17, 1984, the Board amended 14 CFR 399.81 to state that the CAB will consider unrealistic scheduling of flights by any certificated air carrier providing scheduled passenger air transportation to be an unfair or deceptive method of competition within the meaning of section 411 of the Federal Aviation Act of 1958, as amended.

The applicability of § 399.81(a) was, based on Part 234, which had only applied to certificated air carriers. In drafting the language of the policy statement, the Board did not mean to imply that air taxis were free to engage in unrealistic scheduling practices. Before that final rule was adopted, Air BVI filed comments in Docket 27891 asking the Board to explicitly prohibit commuter carriers from engaging in unrealistic scheduling practices. It alleged that one of its commuter competitors has published schedules that it cannot possibly perform based on the number of aircraft in its fleet. Air BVI argued that such actions violated section 411 and that commuters should be covered by the policy statement.

Rather than incorporating Air BVI's suggestion in PS-111, the Board decided to request comments on whether air taxis should be included in the policy statement. This request was made in PSDR-84, 49 FR 40568, October 17, 1984. The only comment filed was by Air BVI, who supported the Board's proposal. Since there was no opposition to the proposal and because the Board has authority to act against air taxis under section 411, the Board is hereby adopting the changes as proposed.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96-534, the Board certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule will merely put air taxis on notice that unrealistic scheduling will be considered a violation of section 411 of the Act. The Board currently has this authority under section 411 and could take action against such violations without this policy statement. No comments were filed in response to the Regulatory Flexibility statement in the notice of proposed rulemaking.

List of Subjects in 14 CFR Part 399

Administrative practice and procedure, Advertising, Air carriers, Airports, Antitrust, Archives and records, Consumer protection, Freight forwarders, Grant programs—Transportation, Hawaii, Intergovernmental relations, Motor carriers, Puerto Rico, Railroads, Reporting requirements, Travel agents and Virgin Islands.

PART 399—[AMENDED]

Accordingly, the Civil Aeronautics Board amends 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 of 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.

2. Paragraph (a) of § 399.81 is amended by removing the word

"certificated," so that it reads as follows:

§ 399.81 Unrealistic or deceptive scheduling.

(a) It is the policy of the Board to consider unrealistic scheduling of flights by any air carrier providing scheduled passenger air transportation to be an unfair or deceptive practice and an unfair method of competition within the meaning of section 411 of the Act.

(b) * * *

Phyllis T. Kaylor,

Secretary.

All Members concurred except Vice Chairman McConnell and Member Morales who disapproved. Member Morales filed the following dissenting statement with which Vice Chairman McConnell agreed:

Morales, Member Dissenting

Carriers derive no economic benefit from unrealistic scheduling. All market incentives encourage carriers to make good faith efforts to operate their published schedules. Perhaps the best evidence that the marketplace is operating properly is that few, if any, abuses have occurred. This would indicate that not only should the statement not be broadened but that the original policy statement is unnecessary, and therefore should be eliminated. Should a carrier be so self-destructive as to publish schedules it knowingly cannot meet—and is able to survive the natural remedy of the marketplace—then section 411 will provide sufficient authority for governmental intervention.

Diane K. Morales.

[FR Doc. 85-254 Filed 1-3-85; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 965

[Docket No. N-84-1486; FR 2067]

PHA-Owned or Leased Projects; Maintenance and Operation; Completion of Energy Audits

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Extension of deadline.

SUMMARY: This notice advised PHAs that the deadline date for completion of energy audits of PHA-owned public housing projects is being extended until March 5, 1985.

FOR FURTHER INFORMATION CONTACT: Charles Ashmore, Office of Public Housing, Room 4130, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, telephone (202) 755-6640. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

On November 14, 1983 at 48 FR 51785, HUD proposed to amend certain sections of 24 CFR Part 865 dealing with (1) the conversion of mastermetered utilities to individual metering in existing PHA-owned public housing projects and (2) the conduct and completion of energy audits.

(Effective December 13, 1983, all Parts of Chapter VIII, Title 24 of the Code of Federal Regulations that relate to public and Indian housing were transferred to Chapter IX of Title 24, and Part 865 was redesignated as Part 965. (48 FR 44071, 55452) For ease of reference, however, sections of the current rule are identified in this Notice by their earlier Part 865 designation.)

In the preamble of the November 14, 1983 proposed rule (48 FR 51786), HUD indicated that (1) it was proposing to amend § 865.310(a) to extend the completion date for energy audits conducted under § 865.304 from May 7, 1983 (three years from the effective date of the current rule) to December 31, 1984, and (2) it had determined that, under 24 CFR 899.101(a), there was good cause to waive the May 7, 1983 deadline date for completion of the audits, pending publication of a final rule amending § 865.310(a).

HUD based its determination to extend the deadline to December 31, 1984, on the need to give PHAs a reasonable opportunity to complete their energy audits, since the Department had not issued necessary instructions on how to conduct an approved energy audit until late 1982.

This Notice

This Notice advises PHAs that the December 31, 1984 deadline date for completion of energy audits is extended to March 5, 1985. Unforeseen delays have prevented the Department from publishing the final rule in 1984. We now anticipate that the final rule will be published in early 1985, but will not become effective until after 30 calendar days of continuous session of Congress.

The Department believes that retention of the December 31, 1984 deadline would be justified on the following bases: (1) PHAs were put on notice with regard to the December 31, 1984 deadline date by the preamble and regulatory text of the proposed rule, and by instructions from HUD Field Offices; (2) adherence to the December 31, 1984 deadline was not dependent upon issuance of a final rule, since energy audits submitted in accordance with that deadline are subject to the regulations and Departmental Handbooks currently in effect; and (3) PHAs have already benefited from the waiver of the initial completion deadline date of May 7, 1983 and have had a reasonable opportunity—over 4½ years—to complete the required energy audits. However, in order to assure that no PHA is adversely affected by the delay in publication of a final rule, HUD has decided to extend the deadline date for completion of the PHA energy audits to March 5, 1985.

The energy audit requirements have been approved by OMB and assigned approval number 2502-0271.

Dated: December 21, 1984.

Warren T. Lindquist,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 85-94 Filed 1-3-85; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

Approval of Permanent Program Amendment to the New Mexico Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of an amendment to the New Mexico permanent regulatory program (hereinafter referred to as the New Mexico program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment establishes regulations concerning mine access and haul roads. At New Mexico's request, OSM is deferring a decision on the blaster training, examination, and certification program, which had previously been included with this amendment.

After providing opportunity for public comment and conducting a thorough review of the program amendment in accordance with 30 CFR 732.17, the Secretary of the Interior has decided that the amendment meets the requirements of SMCRA.

The Federal rules at 30 CFR Part 931 which codify decisions concerning the New Mexico program are being amended to implement this action.

The final rule is being effective made immediately in order to expedite the State program amendment process and encourage States to conform their programs to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

EFFECTIVE DATE: January 4, 1985.

FOR FURTHER INFORMATION CONTACT: Robert Hagen, Field Office Director, Office of Surface Mining, 219 Central Avenue, NW., Albuquerque, New Mexico 87102; Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary approved the New Mexico program on December 31, 1980 conditioned on the correction of twelve deficiencies. Information pertinent to the general background, revisions, modifications, and amendments to the permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the December 31, 1980, **Federal Register** (45 FR 86459–86490).

II. Submission of Program Amendments

By letter dated June 5, 1984, New Mexico submitted a proposed program amendment to modify its regulations for mine roads performance standards and to add a program for the training, examination and certification of blasters working in surface coal mining operations.

In the July 16, 1984, **Federal Register** (49 FR 28742), OSM announced receipt of the proposed amendment, opened a public comment period and set a tentative public hearing date of August 10, 1984. Since no requests were made, the scheduled public hearing was not held. The public comment period ended August 15, 1984, without receipt of any comments.

On July 27, 1984, and October 1, 1984, New Mexico submitted revisions correcting typographical and format errors present in the original June 6, 1984, submission.

By letter dated November 27, 1984, OSM notified New Mexico of certain deficiencies in the proposed blaster certification program regulations, and advised the State that final approval could not be granted until New Mexico submitted its proposed training program and examination for OSM review and approval. In a letter dated December 6, 1984, New Mexico requested that OSM proceed with approval of the roads regulations, while deferring action on the blaster certification program portion of the amendment. Since New Mexico has obtained OSM approval (49 FR 20287) of an extension of the deadline for submission of its blaster training, examination and certification program until March 4, 1985, OSM has granted this request.

III. Director's Findings

A. General Findings

In accordance in with SMCRA and 30 CFR 732.15 and 732.17, the Director finds that the amendment to Coal Surface Mining Commission (CSMC) Rule 80–1 as submitted by New Mexico on June 6, 1984, and revised on October 1, 1984, meets the requirements of SMCRA and the Federal regulations, as discussed below. As noted in the preceding section, action on the portion of the original submission relating to the blaster certification program is being deferred until New Mexico submits additional programmatic materials. At that time OSM will resume processing of the New Mexico blaster certification program as a separate notice of rulemaking.

In the October 1, 1984, Round 2 decision in *In Re: Permanent Surface Mining Regulation Litigation II* (Civil Action No. 79–1144), the U.S. District Court for the District of Columbia remanded the Federal regulations concerning road classification. Therefore, the proposed New Mexico road regulations were reviewed using the general standard of consistency with SMCRA. The Director finds the proposed New Mexico roads rules to be as stringent as the SMCRA requirements. When new Federal roads regulations are issued, the Director will again review the New Mexico rules to determine whether they are no less effective than the Federal rules.

B. Specific Findings

New Mexico has proposed to amend its definition of "road" at CSMC 80–1–1–5. The Director finds the revised definition to be in accordance with the requirements in section 515 of SMCRA.

New Mexico has adopted regulations at CSMC 80–1–20–150 and CSMC 80–1–20–151 to replace the ones affirmatively disapproved as part of the original New Mexico program decision document. See 30 CFR 931.12 (n). CSMC 80–1–20–150 establishes a road classification system, sets general performance standards,and specifies design, construction, location, maintenance, and reclamation requirements for all roads. CSMC 80–1–20–151 establishes additional standards and criteria, including certification by a registered professional engineer, to be met for all primary roads. Both sections are intended to insure that the construction, maintenance and postmining conditions of roads will control or prevent erosion, siltation, and water pollution; and control or prevent damage to fish and wildlife, their habitat, public or private property, stream beds, and water flows. The Director finds the new regulations to be in accordance with section 515(b) (17) and (18) of SMCRA.

IV. Public Comments

Of the Federal agencies invited to comment on the proposed amendments, responses were received from the Environmental Protection Agency, the Fish and Wildlife Service and the Soil Conservation Service. None provided any substantive comments, nor were any other public comments received.

The disclosure of Federal agency comments is made pursuant to section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(10)(i).

V. Director's Decision

Based on the above findings, the Director is approving the New Mexico road regulations submitted as an amendment to the New Mexico program on June 6, 1984, as corrected by the submission of October 1, 1984. The Director is amending Part 931 of 30 CFR Chapter VII to implement this decision.

VI. Procedural Requirements

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it

will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 931

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: December 28, 1984.

Wesley R. Booker,

Acting Director, Office of Surface Mining.

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

PART 931—NEW MEXICO

Part 931 of Title 30 is amended by adding a new paragraph (d) at 30 CFR 931.15 as follows:

§ 931.15 Approval of amendments to State regulatory program.

* * * * *

(d) The following amendment is approved effective January 4, 1985: New Mexico's revised definition of "road" as contained in New Mexico Coal Surface Mining Commission (CSMC) Rule 80-1-1-5, the general road requirements at CSMC 80-1-20-150, the primary road requirements at CSMC 80-1-20-151, and the revised Table of Contents reflecting these changes, all as submitted on June 6, 1984, and corrected on October 1, 1984.

[FR Doc. 85-215 Filed 1-3-85; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

Modification of Timber Sale Extension Policy

AGENCY: Forest Service, USDA.

ACTION: Notice of interim policy and request for comments.

SUMMARY: This proposal would modify the 1983 Forest Service timber sale contract extension policy in order to accommodate the effects of the Federal Timber Sale Contract Payment Modification Act.

DATES: Comments must be received by March 5, 1985.

ADDRESSES: Send written comments to R. Max Peterson, Chief (2400), Forest Service, USDA, P.O. Box 2417, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: David M. Spores, Timber Management Staff, (202) 447-4051.

The public may inspect all written submissions made pursuant to this notice during regular business hours in the office of the Director, Timber Management Staff, Room 3207, South Agriculture Building, 12th and Independence Ave., SW., Washington, DC 20013.

SUPPLEMENTARY INFORMATION:

Background

On December 7, 1983, at 48 FR 54812, the Forest Service, at the direction of the President, established a program to extend certain timber sale contracts. Timber sale purchasers prepared Multi-Sale Extension Plans to implement this program. The Federal Timber Contract Payment Modification Act of October 16, 1984, (98 Stat. 2213; 16 U.S.C. 618) authorizes and directs the Secretary of Agriculture to permit a purchaser to return to the Government a prescribed volume of timber subject to certain timber sale contracts upon paying a buy-out price. The Act ratifies the 1983 extension program, and allows a purchaser to buy-out a sale even though the sale was extended under the 1983 extension program. However, the Act prohibits the Forest Service from including, as a condition of extensions, additional contract provisions for calculating damages in the event of subsequent default of sales extended under that program.

The Act affirms the implementing policy for the 1983 extension program which prohibits the grant of any further extensions for sales extended under that program. However, contract term adjustments under terms of a timber sale contract are permissible in addition to the extensions.

The 1983 extension program allows timber sale contracts to be added to, or removed from, the harvest schedule of a Multi-Sale Extension Plan only in the following situations:

(1) Sale of a purchaser's entire business, or merger with another firm.

(2) Forest Service approval of a third-party agreement whereby another party assumes the sale(s).

(3) Cancellation of a sale because of:

(a) Mutual agreement,

(b) Catastrophic damage,

(c) Prevention of damage to the environment, or

(d) Legislation designating some or all of the sale area as Wilderness.

Therefore, the 1983 extension policy must be modified to accommodate the requirements of the Federal Timber Contract Payment Modification Act.

The Forest Service intends to modify implementing policy for timber sale contract extensions as follows:

1. Existing timber sale contract provisions for calculating default damages shall be retained in contracts extended under the 1983 program. Contracts already extended under the program will be amended to replace the new default damages provision with the previous default damages provision.

2. For convenience in administering contracts extended as part of a Multi-Sale Extension Plan, contracts shall be extended from the date they would have terminated without taking into account any right to contract term adjustment to which the purchaser has thereafter become entitled. Any such contract term adjustment shall be added, along with any other contract term adjustment to which the purchaser becomes entitled during the 5-year extension, to the contract termination date otherwise established by extension.

3. Purchasers will be allowed to delete contracts bought-out under the Federal Timber Contract Payment Modification Act from Multi-Sale Extension Plans within 60 days of the date the purchaser is released from further obligation to cut, remove, and pay for timber under a bought-out contract. If any contract in a Multi-Sale Extension Plan is deleted, however, the plan has to be further amended to remain in conformity with the implementing policy respecting minimum harvest schedules.

4. No sales may be added to Multi-Sale Extension Plans except as provided under current instructions.

Purchasers of Forest Service timber sales need to know the Forest Service policy with respect to the Multi-Sale Extension Program so that they can decide which sales to return to the Government pursuant to the Federal Timber Contract Payment Modification Act (98 Stat. 2213; 16 U.S.C. 618). Section 2(a)(6)(A), (B) of the Act requires that the final rules for implementation of the Act be published within 90 days of the enactment of the Act and that a purchaser must submit any buy-out request within 90 days of publication of such rules. There is not enough time before this information is needed to provide an opportunity for public comment. Because it would be impracticable and contrary to the public interest to delay modification of the 1983 Multi-Sale Extension Program, an interim Manual directive consistent with this notice is being issued so that the direction will be timely and in

compliance with the Federal Timber Contract Payment Modification Act.

Comments received from the public on this policy will be analyzed and considered in the formulation and preparation of the final amendment to Chapter 2400—Timber Management of the Forest Service Manual.

Dated: December 31, 1984.

Jerome A. Miles,

Acting Chief Forest Service, USDA.

[FR Doc. 85-264 Filed 1-3-85; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

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

Correction

In FR Doc. 84-33115 beginning on page 49460 in the issue of Thursday, December 20, 1984, make the following correction:

§ 52.1670 [Corrected]

On page 49461, first column, in § 52.1670(c)(71), eight lines from the bottom, "[the date of today's publication]" should read "December 20, 1984".

BILLING CODE 1505-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1312

[Ex Parte No. 435]

Modify Rules Governing Tariff Amendments

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting revised rules to: (1) Permit an increase in the number of supplemental tariff pages authorized; (2) allow "periodical" tariffs to remain in effect for two years; and (3) authorize delayed tariff transmission to subscribers when they agree to it in writing in advance. This action, which is necessary due to an increase in the number of amendments to tariffs, will allow carriers and agents to publish revisions more promptly and minimize tariff costs, to the benefit of users as well as compilers.

EFFECTIVE DATE: This decision will be effective February 4, 1985.

FOR FURTHER INFORMATION CONTACT: Lawrence Herzig, (202) 275-7151.

SUPPLEMENTARY INFORMATION: This proceeding was instituted by a notice of proposed rules, published in the **Federal Register** at 47 FR 42126, to consider proposals for the revision of certain Commission regulations pertaining to the filing of amendments to tariffs.

The adopted revised rules shown in the appendix will permit an increase in the amount of supplemental material which may be filed to tariffs and allow delayed transmission to subscribers when such transmission is agreed upon in writing in advance.

Additional information is contained in the Commission's decision. For a copy of it write to: TS Infosystems, Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (D.C. Metropolitan area) or toll-free (800) 424-5403.

This notice is issued under the authority of Section 10762 of the Interstate Commerce Act (49 U.S.C. 10762 and Section 553 of the Administrative Procedure Act (5 U.S.C. 553).

List of Subjects in 49 CFR Part 1312

Buses, Freight forwarders, Maritime carriers, Motor carriers, Passenger vessels, Pipelines, Railroads.

Decided: December 11, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

Appendix

Chapter X of Title 49 of the Code of Federal Regulations is amended as follows:

PART 1312—REGULATIONS FOR THE PUBLICATION POSTING AND FILING OF TARIFFS, SCHEDULES AND RELATED DOCUMENTS

1. In § 1312.18, paragraphs (e)(1) and (e)(2) are revised to read as follows:

§ 1312.18 Supplements.

* * * * *

(e) *Number of supplements, pages permitted and duration of tariffs.* (1) Except as otherwise provided, the total number of pages of effective regular supplements may not exceed 70 percent of the number of original pages. There is no separate limit on the number of supplements.

(2) The restriction on the number of supplemental pages does not apply to a tariff which is reissued within two years, provided the following notation is shown on the title page of the original tariff:

"A reissue of this tariff will become effective no later than ————."

The date of the next reissue shall be shown, and the notation may not be changed or cancelled.

* * * * *

2. In § 1312.6, paragraphs (a)-(c) are revised to read as follows:

§1312.6 Furnishing copies of tariff publications.

(a) *Definitions.* "Subscriber," as used in this section means any party other than carrier participants in the tariff that is voluntarily furnished, or any party that requests that it be furnished, one or more copies of a particular tariff with or without subsequent amendments or reissues of that tariff.

(b) *Sending new publications to subscribers.* (1) The publishing carrier or agent shall send each newly-issued tariff, supplement, or loose-leaf page as requested to each subscriber by first class mail, or other means requested in writing by the subscriber.

(2) Newly-issued tariffs, supplements, or loose-leaf pages shall be sent to each subscriber not later than the time the copies for official filing are sent to the Commission except that with the advance, written permission of the subscriber any publication may be sent not later than 5-working days after the time the copies are sent to the Commission.

(3) Carriers or agents may, if acceptable to a subscriber, furnish only specific portions of original tariffs and amendments affecting those portions.

(c) Certification. The letter of transmittal accompanying the copies to the Commission shall contain the following certification:

"I certify that compliance with 49 CFR 1312.6 has been [in the case of advance agreements by the subscriber to delayed transmission 'will be'] made."

* * * * *

[FR Doc. 85-208 Filed 1-3-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 40918-4168]

Foreign Fishing; Poundage Fee Schedule

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NOAA implements the 1985 poundage fee schedule for foreign vessels fishing in the fishery conservation zone (FCZ). Under this fee schedule, foreign vessels will pay for 23.7 percent of the FY 1984 Magnuson Fishery Conservation and Management Act (Magnuson Act) costs. This rule is need to comply with section 204(b)(10) of the Magnuson Fishery Conservation and Management Act costs.

EFFECTIVE DATE: January 1, 1985.

ADDRESS: Copies of a draft regulatory impact review may be obtained from Fees, Permits and Regulations Division, F/M12 at the telephone number below.

FOR FURTHER INFORMATION CONTACT: Alfred J. Bilik, 202-634-7432.

SUPPLEMENTARY INFORMATION: NOAA implements a schedule of fees for fishing during 1985 by foreign vessels in the fishery conservation zone. The new schedule should result in fee collections of about $40.3 million.

Background

Section 204(b)(10) of the Magnuson Fishery Conservation and Management Act (Magnuson Act) (16 U.S.C. 1801 *et seq.*) states, in part, "The fees * * * shall be at least in an amount sufficient to return to the United States an amount which bears to the total cost of carrying out the provisions of this Act * * * during (FY 1984) the same ratio as the aggregate quantity of fish harvested by foreign fishing vessels within the fishery conservation zone during (1983) bears to the aggregate quantity of fish harvested by both foreign and domestic fishing vessels within such zone and the territorial waters of the United States during (1983)."

Foreign fee schedules are established for each calendar year following the provisions of section 204(b)(10). On October 17, 1984, NOAA published for public comments at 49 FR 60615 a proposed schedule of poundage fees for foreign fishing in 1985. Under this proposal, NOAA estimated the FY 1984 costs of carrying out the purposes of the Magnuson Act as $171.0012 million. Of this amount, at least $40.698 million was proposed to be recovered from foreign fishing fees. The foreign fee portion of the total costs is calculated from the ratio of the foreign catch in 1983 to the total catch that year in the FCZ and territorial waters, which was 23.8 percent. NOAA estimated that about $0.1 million would be recovered by permit fees and therefore proposed that the balance of $40.6 million be recovered by poundage fees. The poundage fees were apportioned by species based on proposed exvessel values. Estimates of the catch of each species in 1985 were used to determine the total exvessel value of the foreign catch in 1985. The ratio of the $40.6 million to be recovered by poundage fees to the total exvessel value of the estimated 1985 foreign catch determined a proposed fee rate of 24.2 percent of the adopted value of each species. NOAA received public comments on this proposal until November 16, 1984, and now responds to these comments and adopts this final rule to set the 1985 foreign fishing poundage fees. Readers should refer to 49 FR 40615 and the documents referenced therein for a detailed explanation of the proposed rule.

Public comments

Nine sources provided comments on the proposed rule and the draft regulatory impact review. In addition, NOAA received one ex parte communication from the Japan Fisheries Association (JFA) which is included in the record of these comments. Two comments were received after November 16, but considered for this rule.

The JFA has provided other comments since May 15, 1984, through October 30, 1984, which it claimed to be exempt from procedures of the rulemaking process because of alleged rights accorded to JFA under the settlement Agreement for *Japan Fisheries Association* v. *Baldrige et al.* of March 30, 1984. It continues to contend that this "instant rate-making proceeding" is illegal *ab initio* because of systematic violations of the Settlement Agreement. The JFA claims that NOAA has not consulted as required by the Settlement Agreement, principally on the methodology for developing the valuation for species fees. On October 5, 1984, the NOAA Assistant General Counsel for Fisheries informed legal counsel for JFA that he does not agree that the consultation has not occurred. Nevertheless, NMFS provided two additional weeks for further discussion prior to publishing the proposed rule (49 FR 40615) on October 17, 1984. It also agreed to receive JFA's ex parte communication of November 15, 1984, during the comment period to provide further evidence of its compliance with the terms of the Settlement Agreement. On December 6, 1984, JFA added to its ex parte communication of November 15. NOAA believes the Settlement Agreement only concerns a consultation process which does not prohibit the Agency from proposing a methodology based on the best information held by the Agency.

The JFA was informally requested to provide data for valuation of the species on May 15, 1984, and all other fishing countries were similarly provided that opportunity on July 6, 1984. NOAA's proposed fees reflected consideration of the information provided by the countries which responded to this request. Recently, the JFA provided valuations of certain species in selected Japanese markets. This as well as price information from the other countries which was not referenced by the source as published information or otherwise released for disclosure is not included in the public record of this rulemaking but is considered in this final rule.

Public comments were received on behalf of: Joint Trawlers (North America) Limited [JTR], the Embassy of the German Democratic Republic [GDR], the Japan Fisheries Association [JFA], Scan Ocean, Inc. [SC], the Embassy of the Polish People's Republic [PPR], the Fisheries Agency, Ministry of Agriculture, Forestry, and Fisheries, Government of Japan [GOJ], the Korean Deep Sea Fisheries Association [KDSFA], and the staff of the North Pacific Fishery Management Council [NPFMC], and the New England Fishery Management Council [NEFMC]. An additional comment is the ex parte communication of November 15, 1984, by JFA which contains the essential written comments on the proposed rule provided by JFA and is herein cited by the same source. The comments and the Agency's responses below are ordered according to the relevant important issues raised and the sources are cited by their above designations.

1. Methods and Data for Determining the Foreign Portion of the Magnuson Act Costs

Several comments were directed at the application and timeliness of statistics used to determine the foreign share of the fiscal year (FY) 1984 Magnuson Act costs. All the comments were from the JFA and the GOJ.

a. *Comment.* The statistics used to calculate the foreign share of the costs are not statistics for the fiscal year for which Magnuson Act costs are to be

recovered. A change is recommended to either use statistics for the same fiscal year for which the costs are determined or to grant a credit against future fees after catch data are available.

Response: NOAA reiterates its January 5, 1984, response (49 FR 595) to this comment on the timeliness of the statistics. The U.S. fisheries statistics program operates on a calendar year basis, where published data become available in April of the following year. This is already an accelerated schedule. Final statistics for a fiscal year would not be available until the following late December or January, or possibly later because the NMFS Office of Data Information and Management would be required to incorporate a new requirement in addition to its existing calendar year program. Implementing this recommendation could delay publication of the annual fee schedules and involve greater program costs during a period of reduced Federal budgets.

NOAA does not agree to grant a credit against future fees based on more current data after implementing a fee schedule. Congress was informed of asynchronization between the statistics and the Magnuson Act costs during its consideration of the fees provisions of the American Fisheries Promotion Act. It did not amend this provision as a result. It is NOAA's view that granting credits against future fees would be contrary to the intent of Congress.

b. *Comment:* A recreational catch of 271,621 mt is underestimated in the fee schedule. The JFA calculated 406,206 mt for the recreational catch, based on some assumed average weights of recreationally caught fish in 1979 and the number of fish caught in 1980.

Response: The original calculation of the foreign catch ratio was based on preliminary 1980 estimates for the recreational catch on the Atlantic, Gulf and Pacific coasts. The estimated U.S. recreational catch has been recalculated and revised using final data from the 1982 Atlantic, Gulf and Pacific Marine Recreational Fishery Statistics Surveys (MRFSS) conducted by NMFS, and preliminary 1981 Western Pacific and 1979 Caribbean MRFSS data. The new total recreational catch for U.S. waters, which includes internal waters, is estimated to be 294,542 mt and is adopted for the final schedule. This estimate excludes the recreational catch for Alaska, for which data have never been available. Approximately 221,640 mt were taken by recreational fishermen in the FCZ and territorial sea only. The increase in the catch over the previous estimate represents a decrease of 0.1 percent in the ratio of foreign catch to total U.S. catch.

The recreational catch calculated by the JFA is not accepted because of the recent availability of final 1982 data for the NMFS calculation and JFA's incorrect assumptions of the average weights for the recreational catch off the Pacific coast.

c. *Comment.* Coast Guard costs for Magnuson Act enforcement should be restricted to only those costs incurred in the FCZ. Sixty-four percent of the domestic catch is in the territorial waters. Sixty-four percent, or $20.8 million, should be deducted from the Coast Guard's domestic fisheries enforcement costs to arrive at total Coast Guard Magnuson Act costs of $77.3 million rather than $95.9 million.

Response. Section 204(b)(10) of the Magnuson Act requires foreign fees to be assessed in "an amount sufficient to return to the United States an amount which bears to the *total* cost of carrying out the provisions of the Act . . ." (emphasis added). Any costs incurred in enforcing the provisions of the Act, regardless of the location of the enforcement effort, are justified.

The Coast Guard enforces only Federal regulations. The Magnuson Act accounts for the vast majority of all Federal fisheries regulations enforced by the Coast Guard. To allow for enforcement under other laws, ten percent of the total costs attributed to fisheries enforcement are deducted. This the Coast Guard considers to be a generous estimate of the actual costs for enforcement of other laws. No more refined method exists for computing these costs.

There is no justification for assuming that the ratio of enforcement costs is directly related to the amount of fish caught in territorial waters. Since most Coast Guard fisheries enforcement efforts are directed to the Magnuson Act and occur in the FCZ, this assumption is inaccurate. For example, catch statistics reveal that the primary fishery in territorial waters is for menhaden, a domestic fishery that involves no Coast Guard enforcement activity. The Federal costs for enforcement of the menhaden fishery are zero which bears no relation to the large amount of menhaden caught.

Section 204(b)(10) emphasizes that the domestic catch in the territorial waters is to be used in computing the catch ratio. If presumed territorial waters enforcement costs for the domestic fisheries were to be deducted, then domestic catch in territorial waters should also be deducted before calculating the catch ratio. This would have the effect of increasing the fees charged foreign vessels, since over 60 percent of the domestic harvest is taken in territorial waters. This would change the foreign share of Magnuson Act costs from the proposed 23.8 percent to 38.1 percent.

2. Comments on Costs of Carrying Out the Purposes of the Magnuson Act

A number of the comments on the methods for determining and attributing costs of carrying out the purposes of the Magnuson Act are restatements of comments of fee schedules published since 1982. Two sources (JFA, NPFMC) provided these comments. Many comments addressed prior Agency interpretations and decisions made to carry out the fee provisions of the amendment of the Magnuson Act by the American Fisheries Promotion Act. The final rules to implement the 1982 poundage fee schedule, 47 FR 625 on January 6, 1982, and the 1983 fee schedule at 48 FR 27075 on June 12, 1983, provide detailed explanations of the Agency's positions on significant questions, and readers are referred to these documents for detailed and supplementary discussions.

In its general comments, the JFA objected to inclusion of costs incurred under other legislative authorities costs incurred outside of Magnuson Act jurisdiction, and costs claimed to be specifically exempted. The NPFMC, on the other hand, questioned justification of a decision by NOAA not to collect more in fees than the minimum amounts required by law and why NOAA considered only Federal costs since the State of Alaska incurs significant costs directly related to the management of FCZ fisheries under the Magnuson Act.

Response: The Magnuson Act does not limit recoverable costs to Magnuson Act authorizations. NOAA interprets its foreign fee language to refer to all costs of "carrying out the provisions of the Act . . ." including costs under other authorizations, but which nevertheless serve to carry out the provisions of the Act. For example, the Coast Guard has no specific Magnuson Act appropriations authorization, and yet ninety percent of its at-sea fisheries enforcement is estimated to be in support of the Magnuson Act and over 60 percent of these fisheries enforcement activities are related to foreign fishing. NOAA believes that Congress did not intend that Coast Guard enforcement costs and similar costs under other authorizations should be ignored when estimating Magnuson Act costs.

NOAA recognizes that Magnuson Act costs are not exclusively incurred by the

Federal government (see 48 FR 27025). States and universities conduct research on species managed under the Act. NOAA has tried to identify non-Federal costs for all the fisheries managed under the Act and believes that it does not have sufficient information at this time to recover such costs uniformly. Therefore, it has confined cost determinations to the indirect costs to the Federal government for supporting State and academic programs which in turn serve to carry out provisions of the Act. Examples are appropriate Pub. L. 88–309 funds and NOAA support of the Sea Grant program.

The recommendation that costs be confined to areas of Magnuson Act jurisdiction suggests that fees should recoup only Magnuson Act costs incurred for fisheries conservation, management, and enforcement within the FCZ and the migratory range of anadromous species of fish beyond the FCZ. In cases in which benefits of programs are shared between fisheries in the territorial waters and the FCZ, costs should be apportioned in proportion to the respective foreign and domestic catches in each zone. NOAA does not agree that costs should be apportioned between the FCZ and territorial waters. The examples cited in the comments are studies being conducted in support of fishery management plans prepared or being developed under Title III of the Magnuson Act and therefore are appropriate Magnuson Act costs. There is nothing in the Magnuson Act to imply that such costs should not be considered as part of the total costs.

Comments on specific elements of FY84 cost estimates were submitted by JFA and are addressed as follows:

a. *Comment.* Twenty-five percent of the Foreign Language Services Branch costs are not justifiable costs.

Response. This Branch translates scientific and technical documents as well as local and regional newspapers and trade publications. The information gleaned from this work helps Magnuson Act scientists to devleop information for managing stocks and helps NMFS estimate market data for foreign nations.

b. *Comment.* Twenty-five percent of the International Fisheries Development and Services Branch costs are not justifiable Magnuson Act costs.

Response. This Branch spends 25 percent of its time on the foreign fishing allocation process alone. The fact that NMFS includes a share of these costs this year shows that cost estimates are reviewed each year.

c. *Comment.* A 21.3 percent cost increase in the Northeast Fisheries Center's Plankton Ecology and Biometrics task is not justified.

Response. The Center increased the resources applied to this task. The Act requires that management decisions be based on the ". . . best scientific information available." This redirection of resources obtains better information on the resources managed.

d. *Comment.* A 106 percent cost increase in the Northeast Fisheries Center's Habitat Conservation Field and Laboratory Research Monitoring and Assessments is not justified.

Response. NMFS has published a habitat policy which directly links its habitat conservation responsibilities to NMFS fishery management responsibilities. A holistic approach to fisheries management *must* consider habitat issues. The Center implemented the policy (and adjusted its Magnuson Act costs accordingly) in FY 1984.

e. *Comment.* An unexplained 13 percent increase in Magnuson Act costs attirbuted to General Support at the Northeast Fisheries Center (NEC) is not justified.

Response. The Magnuson Act costs of the NEC increased as a proportion of the Center's total funding. General Support increased accordingly.

f. *Comment.* A 172-percent increase in Magnuson Act costs for Status of Stocks at the Northwest Fisheries Center is not justified.

Response. The Center reviewed its 1984 costs and merged two FY 1983 tasks:

8L1AGA	$211.4K/6.90 FTE
8L1AGB	$556.2K/18.26 FTE
	767.6K/24.26 FTE
Into one FY 1984 task:	
8L1AGA	811.9K/26.31 FTE

The new task is directed towards determining the status of stocks for Magnuson Act purposes.

g. *Comment.* A 16 percent increase in the share of the Management Fund allocated to the Magnuson Act by the Northeast Region is not justified.

Response. In FY 1983, the Northeast Region's Management Fund had two components: General Support and EXAD.

Forty-three percent of the general support cost was attributable to the Magnuson Act in 1983. By 1984, the EXAD component was transferred to another NOAA element. In FY 1984, 41 percent General Support costs of the Region are allocated to the Magnuson Act. The share of General Support allocated to the Magnuson Act thereby decreased by 2 percent.

h. *Comment.* The allocation of 100 percent of the costs of the Billfish tasks and of the groundfish analysis task by the Southwest Fisheries Center is not justified, given 1983 allocations of billfish (24.6%) and groundfish (82.8%).

Response. In the FY 1983 billfish task, $60,000 of a task total of $114,100 was allocated to the Act. That is 41.6 percent not 24.6 percent. In the FY 1984 billfish task, $31,900 is allocated to the Act. That results in a $28,100 reduction in cost. The groundfish task was restructured to provide information requested by the Pacific Fishery Management Council. The increase in the share of this task allocated to the Act is justified.

i. *Comment.* Magnuson Act costs for the Northeast Region were overstated by at least $150,000 due to errors in the allocation of costs (e.g. Pub. L. 88–309 costs, Pub. L. 89–304 costs; Striped Bass study costs, and Lobster study costs). Other costs are erroneously attributed to the Act: Southeast Center (Gulf Reef Fish, Gulf Stone Crab, South Atlantic Shrimp), and Northwest Center (Dungness [sic] Crab Salmon). Pub. L. 88–309 and Pub. L. 89–304 costs should not be allocated to the Act.

Response. Previous responses have addressed Pub. L. 88–309 and 88–304 cost appropriateness as well as the validity of recovering costs associated with the execution of a fisheries management plan for any species covered by the Act. Lobster and Striped Bass and any other species for which management plans exist or information is developed in support of management under the Magnuson Act meet this test.

j. *Comment.* Pure sloppiness resulted in an overstatement of 1984 Magnuson Act costs of $400,000 in the Northeast Region.

Response. There was an overstatement of the Magnuson Act costs of the Northeast Region by $900,000 in the proposed rule for the 1984 fees. That figure was corrected in the final 1984 fees. The Northeast Region's FY 1984 cost data were adjusted prior to publication of the 1985 NPR; however, the adjustment was overstated. The correct Magnuson Act cost total for the Region is $3,267,000 (no observer costs are included). The 1984 Magnuson Act costs reflected in the proposed rule were *$3,155,300.* They should be *$3,267,000.*

k. *Comment.* NOAA–NMFS cost allocation is judgmental.

Response. NOAA continues to believe that within the legal framework and within policy guidelines, managers responsible for conducting the programs are best able to determine which components are attributable to Magnuson Act purposes. That is why each Region and Center prepares its own estimates of the costs of the Act.

l. *Comment.* Percentage allocations of an organization's budget to the Act do not change over time or when resources are added.

Response. Percent allocations are changed when appropriate.

m. *Comment.* Cost allocations are not documented.

Response. Our files have been and are available for inspection. Every decision can be traced by a reviewer understanding the relationships between planning, budgeting and accounting.

n. *Comment.* Current Year Operating Plans (CYOPs) vary between regions; changes are never explained.

Response. The CYOP process was designed for, and is used for, purposes other than the Magnuson Act. Changes in the system are made outside the context of the fee-setting process and are explainable. There is no requirement in the Magnuson Act to develop a separate cost accounting system for the fees.

o. *Comment.* Cost allocations can not be replicated.

Response. We believe reviewers familiar with the accounting, planning, and budgeting process could replicate our cost allocations.

p. *Comment.* Certain items were improperly included in Magnuson cost estimates.

Response.

NWR CYOP310, 311, NWC CYOP 910.	88–309/89–304 see above. Called "U.S.-Canada Salmon;" most funds are expended in collecting data for salmon management. A large share of the costs is used to determine the high seas interception of salmon by foreign fishing fleets.
NEC [sic], NER	Accounting errors and observer costs problems are explained above. The error occurred in correcting the Northeast Region's costs.
F/M1 [sic]	The State-Federal report noted in the comments was produced by the Office of Fisheries Management (code F/M1) to document fisheries management cooperation between the States and the Federal Government.

q. *Comment.* Coast Guard overhead costs related to COOP and MSA were adjusted for vessel and aircraft costs but not for shore, administration, and other expenses.

Response. Coast Guard has reviewed this comment and agrees that the COOP and MSA overhead costs should be adjusted. Although it has been very conservative in allocating overhead to Magnuson Act costs, and a detailed analysis would show the deduction to be less than the 3.8 percent proposed by JFA, it has accepted the figure to avoid delaying the implementation of the 1985 fee schedule. Coast Guard FY84 Magnuson Act costs are reduced by 90 percent of $1,215,467 which is the Magnuson Act portion of the overhead costs in question. The total Coast Guard costs are reduced to $94,781,514. Future figures may include a lower percentage for COOP and MSA costs.

As a result of these comments and a separate review of the costs, NOAA makes the following changes in FY84 Magnuson Act costs:

i. Costs for the Washington office (WO) are increased by $30,825 to adjust WO Resource Investigations and EXAD (MAFAC Travel) costs.

ii. Costs for the Northeast Region are increased by $111,700 to correct an error in deduction for observer costs in that region's summary of costs.

iii. The NMFS subtotal is revised from $63,175.7K to $63,318.2K.

iv. Coast Guard costs are reduced to $94,781,514.

3. Methods of Determining Poundage Fees by Species

This section pertains to the methods used by NOAA to set fees for harvests of different species.

a. *Comment.* There were comments on the NOAA proposal for 1985 to forego adjustments of fees for management purposes [i.e. management factors]. The KDSFA endorsed that proposal, but the NPFMC favored the flexibility offered by management factors and cited a potential use for such factors. Management factors could allow Councils to adjust poundage fees from the NMFS determined levels for management purposes (so long as the total amounts to be collected from a foreign fishery remained at the amounts required by law.) Still other comments (from JTR, GDR, PPR) implicitly favored a continuation of such factors to reduce fees and allow their fleets to conduct economic joint operations with U.S. fishermen through lower fee costs for associated directed fisheries. Lastly, there was one comment (JFA) that NOAA is indirectly continuing the concept of management factors by selecting the highest ratios of Alaska groundfish prices to the Alaska pollock price to value a species in the proposed schedule.

Response: The NOAA decision to forego management factors presently applies only to 1985, and is not intended to imply that such factors are illegal or would not be of value in future schedules, provided that their management effects and the appropriate magnitudes of such factors were thoroughly evaluated. This decision in 1985 precludes the specific adjustments in the proposed fees requested by some sources to provide special economic consideration for foreign fleets which are also buying fish from U.S. fishermen.

The ratios proposed in the proposed rule to value Alaska groundfish are not an attempt to continue management factors in a different form. The ratio for each species was selected according to the criteria noted in that rule, which were to avoid adversely affecting the negotiating positions of U.S. fishermen and to avoid a loss of U.S. fee collections for managing the fisheries, which could be solely attributed to the increased fees. The ratios were determined from price data from four significant but distinct markets—the Korean market, the Tokyo Central Wholesale Market (TCWM), the Alaska joint venture market, and Alaska domestic landings. The relative pricing between species in each market is taken to represent the distribution of total value of that market among the species. With the exception of the set of price ratios for U.S. landings, NOAA does not believe that fees based on a price ratio derived from any one of the other three markets could be a sole cause of a reduction in foreign fishing. Certain adjustments are made in the valuation of some species in this final rule, but these adjustments result from new information rather than a view that continuation of the proposed price would reduce the foreign catch. NOAA's views on using joint venture prices as the standard for setting fees are developed further below.

b. *Comment.* There were general recommendations (by JFA and GOJ) that NOAA adopt joint ventures prices, where available, as the reference values to determine the fees because such prices represent the "fair market value" on the fishing grounds and result from arms length negotiations. JFA contends, in its expansion of the ex parte comment, that if joint venture prices were lower than the "fair market" value, joint ventures would have grown more rapidly and the inducements of the fish and chips policy would not have been needed to increase the U.S. harvest.

A contrary recommendation (by the PPR) was not to adopt joint venture prices for Pacific whiting because the Polish market price (which reflects the joint venture price) is governmentally controlled. Markets outside of the PPR for Pacific whiting do not exist at those prices.

Response: The proposed rule discussed the reasons for NOAA's decision to not use average joint venture prices as the standard to value various species of fish harvested by foreign vessels. NOAA believes joint ventures represent a lower cost operation and an effort to gain credit under the Magnuson Act's criteria for direct foreign allocations. In fact, JFA later argues against adopting the 1983 flatfish joint venture price because higher prices paid by Taiwan joint ventures did not reflect the market and bias the data.

Poundage fees are not assessed for fish received from U.S. vessels. Thus, a cost which would be recovered by a foreign fishing vessel is not part of the joint venture cost structure. In 1985, NOAA proposes to make poundage fees directly proportional to the exvessel values. Thus, it is appropriate to compare ratios of joint venture prices in a fishery to derive the relative price relationships between species in that fishery, but inappropriate to adopt the joint venture price as the exvessel value of the fish harvested by a foreign vessel.

NOAA does not agree that the lower prices for U.S. harvested fish would cause a country with fishing traditions to abandon its harvesters in favor of U.S. fish harvesters. There are major social issues which a country and its industry would weigh against the economic benefits of lower priced supplies. Moreover, in the case of Japan, there are existing price distinctions in the markets which could permit foreign fees to be recovered without loss in competitiveness on the market. (See response to comment c.)

With regard to the PPR's comment, NOAA notes that the average joint venture prices for Pacific whiting in the Pacific groundfish fishery were greater than the selected value. The average joint venture price was not selected because, lacking other information, qualitatively and on balance NOAA believed it would reduce the recovery of management costs in the fishery. A NOAA decision to value Pacific whiting below the price proposed, however, could establish a basis which could be used against U.S. joint venture fishermen in negotiations with their foreign partners and could be interpreted as a management factor to induce greater foreign fishing effort in that fishery.

c. *Comment.* JFA contends that a pollock exvessel price of $0.0555/pound deduced from Japan's mothership processed surimi price is arbitrary and without substance. It recommends that NOAA adopt the average $0.042/pound joint venture (J/V) price in 1983 because 280,000 mt of J/V catch should represent all levels of exvessel prices for pollock. JFA goes on to say that the J/V price is valid because it is not subsidized since Japan joint venture partners have never provided nets and fuel to U.S. fishermen without reimbursement.

Response. The asumed levels of profit markup and value added are appropriate assumptions for deriving the fee price of $0.0555/lb. for Alaska pollock. (The assumed average yield rate of 25 percent surimi from a whole pollock block is a rate accepted by the industry). Because the price for pollock will determine the share of the 1985 fee burden for foreign vessels in the Alaska groundfish fisheries, NOAA checked these assumptions by comparing this derived price with a joint venture price that *foreign vessels* would negotiate. NOAA believes that poundage fees and observer costs for the fishing vessel would be added to the average U.S. joint venture price if a foreign processor bought the fish from an independent foreign fishing vessel (which would recover these costs in that sale). The foreign fishing vessel's price would be $0.055/pound ($0.042/pound plus $0.013/pound for foreign fees and observer costs). The agreement in prices using the two methods supports NOAA's assumptions concerning profit markup and value added. This comparison was stressed in the proposed rule but not addressed in any comments until JFA added to its exparte communication on December 6.

In deriving the price for Alaska pollock, NOAA also considered the following. The difference between trawler-processed, mothership-processed, and joint-venture processed surimi products on the Japanese markets indicates a pseudo-quality distinction by Japanese consumers. JFA contends that market price distinctions are only based on quality. However, Taiyo Fisheries Co., Ltd., recently announced plans to eliminate the differential between surimi produced in the Japanese direct fisheries and surimi produced by joint ventures. It cited partly improved quality and partly reduced supplies as the reasons. (*Pacific Fishing*, November 1984). NOAA questions arguments that joint venture products are of lesser quality because Japanese directed harvest and the U.S. harvest rely on the same resource, and are generally processed by the same personnel and equipment. The fact that distinctions existed at all and that quantities of surimi were sold in each of the three categories suggest that there are cost savings which producers may pass on to the consumer. For joint venture products, NOAA believes the savings to include the costs of fees. The selection of the mothership prices as a reference price was recognition that other nations, mainly Korea, fished pollock in substantial amounts, and that such marked price distinctions may not exist in other markets.

Therefore, NOAA adopts as final Alaska pollock and Pacific whiting exvessel values of $122/mt.

d. *Comment.* Tokyo Central Wholesale Market (TOWM) prices are not appropriate to determine representative prices for catch taken in the FCZ (JFA). The reasons given are that these statistics include catches taken in the Soviet and Japanese 200-mile zones as well, that the fish or fish products auctioned in the TOWM tend to be higher quality, and that data for the frozen fish classifications for pollock, arrowtooth flounder, and other flatfish are not available. JFA states that fish taken and frozen in the FCZ are marketed and auctioned at producing district markets of local fishing ports, at consumer district markets, or sold directly to users, mainly distributors, by producers. JFA also notes that the TOWM statistics do not include prices for frozen blocks of whole pollock but only for frozen surimi.

Response. NOAA does not agree that TOWM prices should not be considered. TOWM prices were the best information available to NMFS for pollock on the Japanese markets when the NPR was developed. During the comment period, the JFA provided additional prices in the Ishinomaki wholesale market for various flounder species taken in the FCZ and this information is considered in a following discussion of the fees for flounders. It did not, however, provide market prices for frozen pollock blocks and some other groundfish species, although it did recommend exvessel

values for the species without reference to source. Therefore, the available TOWM prices are included as the best information for the remaining species of Alaska groundfish.

NOAA believes that the variable in the production of frozen fish blocks from the FCZ and the Soviet and Japanese fishing grounds in the difference in costs of transporting the products. Those costs would not be expected to vary by species and the ratio method used to compare the relative values in different markets would tend to cancel average transportation costs. The inference that fish or fish products taken in the FCZ are inferior to frozen fish products produced off Japan and the Soviet Union is not supported since some unspecified quantity of frozen groundfish from the FCZ is auctioned in the TOWM along with products from other fishing grounds. Therefore, NOAA continues to believe that the relative values determined by comparing TOWM prices for pollock with TOWM prices for other Alaska groundfish are reasonable bases for determining the corresponding poundage fees.

The JFA contention that the TOWM price for frozen pollock is the price for the Japanese statistical product "frozen surimi" is correct. A possible result would be incorrect comparisons of frozen blocks produced at different product recovery rates. This difference could be as high as a factor of two, and, if taken into account, could double fees for the other species using the ratio method adopted by NOAA for valuation of Alaska groundfish. The ratios derived from TOWM prices were compared with the corresponding ratios derived for comparable products in other markets, and NMFS found no evidence to support application of the doubling factor. Moreover, only two of the proposed species fees were based on ratios derived from the TOWM prices. These were the fee for Atka mackerel and the fee for Alaska flatfish (which is further discussed in comment e.)

NOAA compared ratios of the exvessel values proposed by JFA and found relative agreement with the NOAA proposal, except for other rockfish (JFA higher), Atka mackerel (JFA lower) and flatfish. The adopted price of pollock is the key to determining how the entire 1985 fee costs will be divided between Alaska and the other foreign fisheries. A comparison shows that the exvessel values proposed in 1985 would result in 92.5% of the total fees being assigned to the Alaska fisheries. This compares to 86.0% under the 1984 schedule, but 95.3% if management values had not been used in 1984 to modify the base values for determining fees. Thus, NOAA believes this is a reasonably consistent distribution of the fees from year to year, even though it reduces slightly the portion of the fee burden for the Alaska fisheries in 1985 from what the fees would have been in 1984 had these fees been based on exvessel values alone.

e. *Comment.* The ratio selected for determining the value of flounders caught in the Bering Sea and Aleutian Islands Groundfish fishery (BSA) is incorrect because the product recovery yield is different from that of surimi and because the composition of the flounders catch in the FCZ is mainly lower priced flounders such as yellowfin sole and flathead sole (JFA/GOJ). The higher ratio for flounders determined from J/V catches in the Gulf of Alaska groundfish fishery is not justified because of the small catch in that J/V fishery. A uniform price of $130/mt (or 5.9 /lb) for all Alaska flounder is recommended. This is the average 1984 joint venture price in the Alaska fisheries. Another comment (KDSFA) was that fees for flatfish and Pacific cod be maintained at the 1984 rates.

Response. NOAA has carefully reviewed the information provided as a result of comments on the NPR and the supplementary price information recently provided by JFA under the Settlement Agreement. Specifically, JFA provided prices for foreign arrowtooth flounder, flathead sole, rock sole, yellowfin sole, Alaska plaice, and Greenland turbot. NOAA also considered a report produced by the Northwest and Alaska Fisheries Center on the estimated 1983 catch of flatfish by species and area in foreign and joint-venture groundfish fisheries in the BSA and GOA fisheries.[1] The price and composition information was merged in a more detailed analysis of the weighted values of the flatfish catches in Alaska. The values of the flatfish catches were sorted according to the three designations in the Alaska EMPs—yellowfin sole, Greenland turbot (including arrowtooth flounder), and flounders. Using the ratio method, the calculations show exvessel values of $132/mt for flatfish caught in the Gulf of Alaska, $132/mt for other flounders caught in the BSA, $115/mt for Greenland turbot including arrowtooth flounder caught in the BSA, and $59/mt for yellowfin sole. Therefore, NOAA accepts the JFA recommendation of $130/mt for all Alaska flatfish. This price should not affect the negotiating position of U.S. fishermen. NOAA has no new information to support a change in the Pacific cod value, however.

f. *Comment.* The 50-percent increase in the fee for Pacific squid is excessive. This species is different from coastal squid caught off Japan and Korea. An increase in the squid fee in the same proportion as the average increase in total fees over 1984 fees is recommended. (JFA).

Response: The increase in the proposed fee for Pacific squid results from information provided by the Korean industry on fish taken in the FCZ. The increase is not based on squid prices in the TOWM, or other sources. Comments on the proposed fee have not provided new information to justify a reduction in the valuation of Pacific squid or determine differently the percentages of the exvessel value to be recovered by fees. Therefore, NOAA adopts a final exvessel value of $226/mt for Pacific squid.

g. *Comment.* The 50-percent increase in the fee for snails is also excessive. The JFA contends there is no new information to support such an increase and the snail resource is underutilized. It recommends a fee increase in proportion to the average increase in fees over the 1984 fees.

Response: The exvessel value for snails proposed for 1985 is $256/mt and the same as the value adopted in 1984 fee schedule. The increase in fees results from the decision to forego management factors in 1985. The reduction in the base values used to determine species feew caused by the decision to forego management factors causes a large increase in the rate at which the fees are assessed against the value. This increase is required if NOAA is to collect the target costs. A decision to adopt this recommendation would, in effect, reintroduce a management factor to encourage greater foreign utilization of the snail resource. Because there was no information provided to indicate that the exvessel value of $256/mt is not correct, NOAA therefore adopts that exvessel value for 1985.

h. *Comment.* The JFA comments as in comment g above that the fee for seamount groundfish is similarly increased as a result of the decision to forego management factors. It notes that this fishery is underutilized and recommends a fee increase in proportion to the average overall increase in fees over 1984.

Response: The increase indeed results from the 1985 NOAA decision on management factors. Therefore, the

[1] Nelson, Russell, Jr., Janet Wall, and Jerald Berger, 1984. Summary of U.S. observer sampling of foreign and joint-venture fisheries in the Northeast Pacific Ocean and Eastern Bering Sea, 1983.

NOAA reply is the same as the reply to comment g. Any adjustment of the fee for seamount groundfish must be based on information to indicate that the proposed value of $397/mt is not appropriate. NOAA received no information to so indicate.

i. *Comments.* Three comments (JTR, GDR, and SC) favored a fee of about $25/mt for Atlantic mackerel. This would maintain the fee at the 1984 level. The sources stated that doubling the mackerel fee would affect the economic feasibility of mackerel operations between a U.S. company and the GDR because of its worldwide availability and the strength of the U.S. dollar.

Response: The large fee increase results because the fee for Atlantic mackerel is based on its exvessel value rather 50 percent of the value as in 1984. The exvessel value of $221/mt proposed for 1985 is significantly less than the 1984 value of $321/mt. Because the net effect of NOAA's action not to apply management factors is a large increase in the rate of assessment, fishing vessels fishing for underutilized species will see a corresponding increase in their fees. NOAA again reviewed the range of exvessel values considered in proposing its fee for Atlantic mackerel, and believes supplemental comments by JTR present appropriate price arguments for reducing the exvessel value for Atlantic mackerel to $190/mt.

Comment: The Southwest Regional Office recommends adoption of the highest estimates of 1983 U.S. exvessel prices for Guam, American Samoa, and the Northern Marianas for the Western Pacific pelagic species.

Response: This recommendation is in part, adopted. The prices adopted, however, are prices for domestic catch landed in American Samoa, which is the likely port of landing of the foreign catch. This corrects underevaluation of prices for dolphin fish and wahoo in former fee schedules.

The adopted prices are:

Dolphin fish	$5,515/mt
Wahoo	$2,206/mt
Marlin	$1,654/mt
Other billfish	$1,985/mt
Sharks	$1,103/mt

Comments on Other Issues

There were other comments by JFA and NPFMC concerning the adequacy of the proposed schedule in relation to the Magnuson Act, the Administrative Procedure Act, the National Environmental Policy Act, and other applicable law.

The Magnuson Act requirement that the Secretary of Commerce (Secretary) consult with the Secretary of State was satisfied. Meetings were held on the fee schedule on March 8, April 5, and July 16, 1984, to discuss development of the 1985 fee schedule. Representatives of the Department of State as well as the Coast Guard attended these meetings and representatives of the Department of State advised NMFS that issues of concern to the Department were resolved to their satisfaction. State Department received a copy of the final draft of the schedule and offered no additional comments.

NOAA continues in the view expressed in prior years that the language of the Magnuson Act together with recent understandings of international law provide the authority to collect fees in excess of costs. It disagrees with the interpretation that the language simply provides a margin for error. NOAA has not exercised this authority because it believes more information is needed, but yet unavailable, to assess the effects of fees which would exceed the minimum amounts required by law.

NOAA agrees that the section 204(b)(10) of the Magnuson Act provides discretionary authority to the Secretary to assess fees on foreign vessels which process U.S. harvested fish. Such vessels currently pay permit fees but no poundage fees. The decision for 1985 not to access fees in addition to permit fees for joint ventures extends similar decisions in prior schedules, but does not imply that NOAA lacks this authority. Increasing enforcement requirements for insuring compliance of a growing number of foreign joint venture vessels with regulations and conditions of their permits provide a basis for considering such fees in the future. NOAA believes the form of fees, if directly related to the U.S. harvest, should take into account the appropriate provisions of Section 303 and 304 of the Magnuson Act. NOAA will consult with Regional Fishery Management Councils prior to any broad policy decisions which would affect the fees as they are currently structured, consistent with comments by the NPFMC and the NEFMC. There is no opportunity prior to implementing 1985 fees to establish the variable fee structure suggested by the NEFMC, however.

As noted in previous responses (see 48 FR 27075 at page 27079 and 47 FR 625 at page 628), NOAA determined that the fee schedule represents a programmatic function with no potential for significant environmental impacts. Therefore, no National Environmental Policy Act (NEPA) documents have been prepared for fee schedules. Environmental considerations are discussed in fishery management plans and NEPA documents for the fisheries.

Commenters believe that the fees as proposed cause fish not to be harvested. However, the underlying analysis for NOAA's decision to forego management factors in 1985 also illustrates that varying fees within the ranges used in fee schedules since 1981 (i.e., about ±50 percent), did not discernably affect the harvest of the fish, or cause fish to remain unharvested.

NOAA's response to a contention that the provisions of the Independent Offices Appropriation Act (IOAA) apply to foreign fishing fees was published at 48 FR 27025. NOAA General Counsel remains of the view that the IOAA does not apply because of the American Fisheries Promotion Act amendment of the Magnuson Act.

There were also several comments on the draft regulatory impact review which questioned the analysis of net benefits, citing specifically the estimated $8.9 million cost to the United States. This cost figure results from the estimated differential costs to consumers and a reduction in fee revenues compared to the consumer effects and fee collections under the 1984 fee schedule. The major portion of this cost is the reduced foreign share of the cost. This is a target amount specified by "formula" in the Magnuson Act. While the $8.9 million might be recovered by exercising the authority to collect fees in excess of costs, as noted earlier, NOAA has not developed the necessary information to recover "economic rent."

Summary

The foregoing summarizes the relevant issues raised during the public comment period. As in former years, NOAA has considered comments, responded to them, and made appropriate changes prior to adopting the final rule. In summary, these changes are:

1. The U.S. recreational catch is changed from 271,621 mt to 294,542 mt. The ratio of the foreign catch to the total catch in U.S. waters is thereby changed from 28.8 to 23.7 percent.

2. Coast Guard costs have been reduced from $95,875,434 to $94,781,514 after a deduction for COOP and MSA function costs from the overhead costs.

3. The total FY 1984 Magnuson Act costs are therefore reduced from $171,001.2K to $170,049.8.

4. As a result of the above changes, the 1985 foreign fishing fee target amount is reduced from $40.7 to $40.3 million of which $40.2 million are to be collected as poundage fees.

5. A uniform exvessel value is adopted for all Alaska flatfish. The final value is $130/mt.

6. The exvessel value of $190/mt is adopted for Atlantic mackerel.

7. Western Pacific billfish values for dolphinfish, wahoo, marlin, other billfish, and sharks are increased to $5,515/mt, $2,206/mt, $1,654/mt, $1,985/mt, and $1,103/mt respectively.

8. No other changes are made in the exvessel values proposed in 49 FR 60615.

9. As a result of the above changes, principally the large reduction in the Alaska flatfish value, the rate of fee assessment is increased from 24.2 to 25.9 percent of these final exvessel values.

This fee schedule has been prepared prior to specifications of available TALFFs and subsequent allocations to foreign countries. It contains certain estimates of the foreign catches in 1985. Changes in allocations in 1985 may affect NOAA's ability to collect the total fee target. NOAA does not presently foresee any adjustment of fees in 1985 to compensate for fee collection shortfalls.

Classification

NOAA prepared a draft regulatory impact review (RIR) that discussed the economic consequences and impacts of the proposed fee schedule and its alternatives. Copies of the RIR are available at the above address. Based on the RIR, the Administrator, NOAA, determined that the proposed schedule does not constitute a major rule under E.O. 12291. The regulatory impact review demonstrates that the fee schedule complies with the requirements of section 2 of E.O. 12291.

The General Counsel for the Department of Commerce certified that the proposed fee schedule will not have a significant economic impact upon a substantial number of small entities for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This certification was forwarded to the Chief Counsel for Advocacy of the Small Business Administration. Because the fee schedule will not have a significant economic impact upon a substantial number of small entities, a regulatory flexibility analysis was not prepared.

NOAA Directive 02-10 published at 45 FR 49312 (July 24, 1980) adopts internal procedures to implement the National Environmental Policy Act (NEPA), as amended (42 U.S.C. 4321 *et seq.*). Under those procedures, programatic functions with no potential for significant environmental impacts are generally excluded from NEPA requirements.

The fee schedule has no direct impact on the fishery resources in the FCZ. At the most, a fee schedule might affect the harvesting strategy of foreign fishing vessels; however, the schedule meets the criterion that fees should minimize disruption of traditional fishing patterns because the 1985 fees are more directly related to ex-vessel values. Since this fee schedule will not prevent the harvesting of the available total-allowable level of foreign fishing (TALFF), and the environmental impact of harvesting the TALFF is described for each fishery management plan, no further environmental assessment is necessary.

The 30-day delay in implementation required by the Administrative Procedure act is waived so that the fee schedule can be in place on January 1, 1985. If no schedule is in place, foreign fishing vessels will not be allowed to harvest fish, and the U.S. Treasury consequently will lose revenues. Furthermore, an interruption in fishing for foreign vessels already in the FCZ would be costly to the foreign fishing companies, since their vessels would be incurring fixed operating costs while being forced to sit idle until the 30-day period elapsed.

This final rule has no information collection provisions for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subject in 50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting requirements.

Dated: December 28, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management.

PART 611—[AMENDED]

For the reasons above, 50 CFR Part 611 is amended as follows:

1. The authority citation for Part 611 reads as follows:

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

2. Table 1 of § 611.22 is revised to read as follows:

§ 611.22 Fee schedule for foreign fishing.

* * * * *

TABLE 1 TO § 611.22 SPECIES AND POUNDAGE FEE

[Dollars per metric ton, unless otherwise noted]

Species	Poundage
Atlantic and Gulf Fisheries	
1. Butterfish	160
2. Hake, red	96
3. Hake, silver	102
4. Herring, river	46
5. Mackerel, Atlantic	49
6. Other finfish, Atlantic	69
7. Squid, *Illex*	57
8. Squid, *Loligo*	114
9. Atlantic Shark	110
10. Shrimp, royal red	(1)
Alaska Fisheries	
11. Pollock, Alaska	32
12. Cod, Pacific	73
13. Pacific ocean perch	100
14. Other rockfish (Alaska)	94
15. Mackerel, Atka	52
16. Squid, Pacific	59
17. Flatfish, Gulf of Alaska and Bering Sea and Aleutian Islands	34
18. Sablefish, Gulf of Alaska	159
Bering Sea and Aleutian Islands	84
19. Other species	39
20. Snails	66
Pacific Fisheries	
21. Whiting, Pacific	32
22. Sablefish	143
23. Pacific ocean perch	124
24. Other rockfish	119
25. Flounders	155
26. Mackerel, jack	56
27. Other species	154
Western Pacific Fisheries	
28. Coral	[2]53
29. Wahoo	103
30. Dolphin fish	1,428
31. Wahoo	571
32. Sharks, Pacific	286
33. Striped marlin	428
34. Pacific billfish	514
35. Pacific swordfish	514

[1] Reserved.
[2] Dollars per kilogram.

[FR Doc. 84-34029 Filed 12-31-84; 4:00 pm]

BILLING CODE 3510-22-M

50 CFR Parts 611 and 672

[Docket No. 41046-4174]

Foreign Fishing, Groundfish of the Gulf of Alaska

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

ACTION: Interim notice of 1985 initial specifications.

SUMMARY: As an interim measure, NOAA adopts 1985 initial fishing specifications for the Gulf of Alaska groundfish fishery which were proposed on November 8, 1984 (49 FR 44655). These specifications are being adopted on an interim basis to allow the public and the North Pacific Fishery Management Council an additional 30-day comment period before final 1985 specifications are adopted. Adoption of these interim specifications will allow domestic and foreign fisheries to proceed without undue interruption.

DATES: This notice is effective January 1, 1985, and continues effective until superseded by a final notice of 1985 initial specifications. Comments are

invited on these interim specifications until February 4, 1985.

ADDRESS: Comments may be addressed to Robert W. McVey, Director, Alaska Region, NMFS, P.O. Box 1668, Juneau, AK 99802, or delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska. Copies of the plan team document upon which the initial specifications are based as well as the December 1984 Council recommendations may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; 907–274–4563.

FOR FURTHER INFORMATION CONTACT: Robert W. McVey, 907–586–7221; or Janet Smoker (Fishery Biologist), 907–586–7230.

SUPPLEMENTARY INFORMATION:

Background

Optimum yields (OYs) for groundfish species in the Gulf of Alaska are established by the fishery management plan (FMP) for Groundfish of the Gulf of Alaska. The FMP was implemented by rules appearing at 50 CFR 611.92 and Part 672. These rules establish the procedure by which the reserve, domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and total allowable level of foreign fishing (TALFF) are determined annually for each target species and the "other species" category. Consistent with this procedure, NOAA issued a notice (49 FR 44655, November 8, 1984) that solicited public comment on preliminary fishing specifications for the Gulf of Alaska groundfish target species and the "other species" category and apportionments of optimum yields (OY) between DAP, JVP, reserves, and TALFF for the 1985 fishing year (Table 1).

TABLE 1.—INTERIM INITIAL (AS OF JAN. 1 EACH YEAR) APPORTIONMENTS OF GROUNDFISH OPTIMUM YIELDS IN THE GULF OF ALASKA AMONG DOMESTIC ANNUAL PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP), RESERVES, AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF). ALL FIGURES ARE IN METRIC TONS. OY = DAH + RESERVE + TALFF; DAH = DAP + JVP

Species	Area	OY	DAH	DAP	JVP	Reserves	TALFF
Pollock	Western/Central	400,000	192,023	2,023	190,000	80,000	127,977
	Eastern	16,600	5	5	0	3,320	13,275
Pacific cod	Western	16,560	6,565	600	5,965	3,312	6,683
	Central	33,540	16,891	8,691	8,200	6,708	9,941
	Eastern	9,900	120	120	0	1,980	7,800
Flounders	Western	10,400	1,200	400	800	2,080	7,120
	Central	14,700	4,486	1,486	3,000	2,940	7,274
	Eastern	8,400	300	300	0	1,680	6,420
Pacific ocean perch	Western	2,700	2,160	2,160	0	540	0
	Central	7,900	6,320	6,320	0	1,580	0
	Eastern	875	136	136	0	175	564
Sablefish	Western	1,670	1,336	1,336	0	334	0
	Central	3,060	2,448	2,448	0	612	0
	West Yakutat	1,680	1,344	1,344	0	336	0
	East Yakutat	1,135	1,135	1,135	0	0	0
	Southeast Outside	1,435	1,435	1,435	0	0	0
Atka Mackerel	Western	4,678	3,400	0	3,400	936	342
	Central	20,836	500	0	500	4,167	16,169
	Eastern	3,186		0	0	637	2,549
Rockfish	Entire Gulf	7,600	4,712	2,947	1,765	1,520	1,368
Thornyhead	Entire Gulf	3,750	50	40	10	750	2,950
Squid	Entire Gulf	5,000	110	100	10	1,000	3,890
Other Species	Entire Gulf	28,780	1,550	150	1,400	5,756	21,474
Total		604,385	248,226	33,176	215,050	120,363	235,796

At its December 5–8, 1984, meeting, the North Pacific Fishery Management Council (Council) reviewed public comments received on the preliminary specifications along with analyses of resource surveys and commercial fishery data. The Council recommended to the Secretary of Commerce (Secretary) numerous changes to those specifications with modified OY numbers and a reduction of TALFF to zero for all species. Given the magnitude of recommended changes and the public interest, the Secretary is seeking additional comment from industry and other members of the public on the proposed 1985 specifications and on the Council's recommendations.

Revised recommendations from the Council are anticipated following the Council meeting scheduled to be held February 3–6, 1985. Final specifications will be adopted and a notice published in the **Federal Register** subsequent to February 6, 1985.

Other Matters

This action is taken under 50 CFR 611.92(c) and 672.20 and complies with Executive Order 12291.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: December 31, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84–34031 Filed 12–31–84; 5:03 pm]

BILLING CODE 3510-22-M

50 CFR Part 611

[Docket No. 41276–4176]

Foreign Fishing

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

ACTION: Notice of initial specifications.

SUMMARY: 50 CFR 611.20(c) requires that the specifications of optimum yield (OY) and initial estimates of U.S. harvests and TALFFs (total allowable levels of foreign fishing) be published at the beginning of the relevant fishing year. Therefore, NOAA issues this notice presenting the numbers, as of January 1, 1985, for this coming year for all foreign fisheries.

DATES: Effective January 1, 1985. Comments will be accepted until January 31, 1985.

ADDRESSES: As provided in 50 CFR 611.20(c), at any time during the year, for current apportionments, contact the

appropriate NMFS Regional Director or the Office of Fisheries Management, F/M1, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC 20235.

Send comments on the interim initial specifications for groundfish of the Gulf of Alaska or of the Bering Sea and Aleutian Islands area to Robert W. McVey, Director, Alaska Region, NMFS, P.O. Box 1668, Juneau, AK 99802, or deliver them to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska

FOR FURTHER INFORMATION CONTACT: Donna D. Turgeon (Regulations Coordinator), 202 634–7432, or, for Alaska groundfish, Robert W. McVey, 907–586–7221.

SUPPLEMENTARY INFORMATION: This notice announces initial specifications for 1985 for all fisheries.

At its December 5–8 1984, meeting, the North Pacific Fishery Management Council (Council) reviewed public comments, analyses of resource surveys, and commercial fishery data. The Council has recommended changes to the preliminary 1985 specifications pubished at 49 FR 44655, November 8, 1984.

In the Gulf of Alaska groundfish fishery, the Council recommends modifying OYs and reducing TALFF to zero. It also recommends substantially lower TALFFs in the Bering Sea and Aleutian Islands area groundfish fishery. Therefore, in these fisheries, the numbers in the table below are interim initial specifications and the public is invited to comment on them and the proposed reductions for an additional 30 days.

Comments will be considered by the Council at its February 3–6, 1984, meeting and final 1985 specifications will be published shortly thereafter.

Initial (as of January 1, each year) optimum yield (OY) or total allowable catch [1] (TAC), estimated domestic annual harvest (DAH), estimated domestic annual processing (DAP), joint venture processing (JVP), reserve, and total allowable level of foreign fishing (TALFF), all in metric tons.

[1] TAC means total allowable catch determined annually within an established range of a multi-year, multi-species OY for the Bering Sea and Aleutian Islands area groundfish complex.

Species	Species code	Areas	OY or TAC [1]	DAH	DAP	JVP	Reserve	TALFF
1. Northwest Atlantic Ocean Fisheries:								
A. Hake fisheries:								
Hake, silver	104	NW Atlantic 1–4 [2]	30,000	20,600	5,600		0	9,400
		NW Atlantic 5	13,000	9,000	2,000		0	4,000
Hake, red	105	NW Atlantic 1–4	16,000	13,000	13,000	0	0	3,000
		NW Atlantic 5	6,000	500	500	0	3,000	2,500
B. Mackerel fishery:								
Atlantic mackerel	204		83,500	26,500	7,300	13,400	26,500	26,500
C. Trawl fishery:								
Herring, river	309		8,000	7,900	7,900	0	0	100
Other finfish	499		247,000	200,200	180,000	20,200	0	46,800
D. Squid fishery:								
Squid, long-finned	502		21,125	17,875	13,000	4,875	0	3,250
Squid, short-finned	504		15,750	13,500	5,000	8,500	0	2,250
E. Butterfish fishery:								
Butterfish [3]	212		up to 16,000	up to 13,800	11,000		0	up to 2,200
2. Atlantic and Gulf Fisheries:								
A. Atlantic billfish and sharks fishery:								
Sharks	469		6,150	5,000			0	1,150
B. Royal red shrimp fishery	630		177.8	111.6			0	66.2
3. Western Pacific Ocean Fisheries:								
A. Seamount Groundfish Fishery:			2,000	0	0	0	0	2,000
Armorheads	200							
Alfonsins	201							
Other groundfish	499							
B. Pacific Billfish and Sharks Fishery:								
Swordfish	264	West Coast	318.4	[4] 350.2			0	0
		Hawaii & Midway	93.6	5.9			8.8	78.9
		Guam & N. Marianas	4.1	0.2			0.4	3.5
		American Samoa	2.4	0			0	2.4
		U.S. Possessions	28.1	0			0	28.1
Blue marlin	260	West Coast						
		Hawaii & Midway	612.0	603.4			8.6	0
		Guam & N. Marianas	26.9	3.0			23.9	0
		American Samoa	37.2	2.3			0	34.9
		U.S. Possessions	76.3	0			0	76.3
Black marlin	253	West Coast						
		Hawaii & Midway	97.7	[4] 104.7			0	0
		Guam & N. Marianas	0.6	0			0.1	0.5
		American Samoa	5.3	0			0	5.3
		U.S. Possessions	6.2	0			0	6.2
Striped marlin	261	West Coast	43.2	[4] 47.5			0	0
		Hawaii & Midway	223.2	67.9			15.5	139.8
		Guam & N. Marianas	5.0	0.3			0.5	4.2
		American Samoa	7.8	0			0	7.8
		U.S. Possessions	46.6	0			0	46.6
Sailfish	252	West Coast						
Spearfish	262	Hawaii and Midway	47.2	23.4			1.9	17.4
		Guam & N. Marianas	4.8	0.2			0.5	4.1
		American Samoa	3.5	1.3			0	2.2
		U.S. Possessions	14.3	0			0	14.3
Sharks	263, 265, 266, 267, and 469.	West Coast	27.6	[4] 30.4			0	0
		Hawaii & Midway	1,111.6	0			111.1	=1,000.5
		Guam & N. Marianas	31.9	0			0	31.9
		American Samoa	101.6	0			0	101.6
		U.S. Possessions	651.4	0			0	651.4
Wahoo	255	West Coast						

Species	Species code	Areas	OY or TAC [1]	DAH	DAP	JVP	Reserve	TALFF
		Hawaii & Midway	288.9	[14] 317.8				0
		Guam & N. Marianas	25.1	27.6				0
		American Samoa	4.8	2.8				2.0
		U.S. Possessions						
Mahi mahi	237	West Coast						
	238	Hawaii & Midway	105.0	[14] 115.5			0	0
		Guam & N. Marianas	18.9	[14] 20.8			0	0
		American Samoa	6.4	4.4			0	2.0
		U.S. Possessions						
4. Alaska Fisheries:								
A. Bering Sea and Aleutian Islands Groundfish Fishery [Source: Interim notice issued December 28, 1984 (49 FR 50402)]								
Pollock	701	Bering Sea [2]	[1] 1,100,000	281,326	6,826	274,500	(*)	653,674
		Aleutians [2]	[1] 100,000	10,300	300	10,000	(*)	74,700
Yellowfin sole	720		[1] 288,700	60,076	3,076	57,000	(*)	185,319
Turbots	721 and 118		[1] 50,000	2,000	0	2,000	(*)	40,500
Other flatfish	129		139,640	22,907	907	22,000	(*)	95,957
Pacific cod	702		[1] 210,000	102,940	62,940	40,000	(*)	75,560
Pacific ocean perch [5]	780	Bering Sea	[1] 680	578	578	0	(*)	0
		Aleutians	[1] 3,800	2,410	100	2,310	(*)	[1] 820
Other rockfish	849	Bering Sea	[1] 1,120	620	600	20	(*)	332
		Aleutians	[1] 5,500	540	5	535	(*)	4,135
Sablefish	703	Bering Sea	[1] 2,600	2,079	1,979	100	(*)	131 (*)
		Aleutians	3,360	517	100	417	(*)	2,339
Atka mackerel	207		37,700	32,045	0	32,045	(*)	0 (*)
Squid	509		[1] 10,000	30	0	30	(*)	8,470
Other species [4]	499		[1] 46,700	3,800	1,000	2,800	(*)	35,998
B. Snail fishery:								
Snails (meats)	673		3,000	0	0	0	0	3,000
C. Gulf of Alaska Groundfish fishery (Source: FEDERAL REGISTER of January 4, 1985):								
Pollock	701	Western/Central [6]	400,000	192,023	2,023	190,000	80,000	127,977
		Eastern [6]	16,600	5	5	0	3,320	13,275
Pacific cod	702	Western	16,560	6,565	600	5,965	3,312	6,683
		Central	33,540	16,891	8,691	8,200	6,708	9,941
		Eastern	9,900	120	120	0	1,980	7,800
Flounders	129	Western	10,400	1,200	400	800	2,080	7,120
		Central	14,700	4,486	1,486	3,000	2,940	7,274
		Eastern	8,400	300	300	0	1,680	6,420
Pacific ocean perch [5]	780	Western	2,700	2,160	2,160	0	540	0
		Central	7,900	6,320	6,320	0	1,580	0
		Eastern	875	136	136	0	175	564
Other rockfish [7]	849		7,600	895	395	500	1,520	5,185
Sablefish [8]	703	Western	1,670	1,336	1,336	0	334	0
		Central	3,060	2,448	2,448	0	612	0
		West Yakutat [8]	1,680	1,344	1,344	0	336	0
		East Yakutat [8]	1,135	1,135	1,135	0	0	0
		Southeast Outside [8]	1,435	1,435	1,435	0	0	0
Atka mackerel	207	Western	4,678	3,400	0	3,400	936	342
		Central	20,836	500	0	500	4,167	16,169
		Eastern	3,186	0	0	0	637	2,549
Squid	509		5,000	110	100	10	1,000	3,890
Rockfish	849		7,600	4,712	2,947	1,765	1,520	1,368
Thornyhead rockfish	749		3,750	50	40	10	750	2,950
Other species [4]	499		28,780	1,550	150	1,400	5,756	21,474
5. Northeast Pacific Ocean Fishery (Source: FEDERAL REGISTER of January 4, 1985):								
Pacific whiting	704		175,000	95,000	10,000	85,000	35,000	45,000
Sablefish	703		13,600	13,600	13,600	[10]	0	[10]
Pacific ocean perch (POP)	780		1,550	1,550	1,550	[10]	0	[10]
Shortbelly rockfish	850		10,000	3,400	3,400	[10, 12]	0	6,600 [10, 12]
Jack mackerel	208		12,000	12,000	12,000	10,000	0	[10]
Rockfish, other than POP	849		[13]			0		[10]
Other species	499		[13]					[10]
Flatfish	129		[13]			0		[10]

[1] *TAC* means total allowable catch determined annually within an established range of a multi-year, multi-species OY for the Bering Sea and Aleutian Islands area groundfish complex.
[2] *Bering Sea* means fishing areas I, II, and III in Figure 2, Appendix II of 50 CFR 611.9; *Aleutian* means fishing area IV in Figure 2, Appendix II of 50 CFR 611.9; *Northwest Atlantic* means foreign fishing areas 1 to 4 or 5 in Figure 1, Appendix II of 50 CFR 611.9.
[3] For the butterfish fishery, JVP is conditional and TALFF is determined by a fixed percentage of the amount of other species allocated to foreign fishing vessels under § 655.21(b)(3)(iii).
[4] The category "other species" includes sculpins, sharks, skates, eucliachon, smelts, capelin, and octopus. The OY for Gulf of Alaska "other than species" equals 5% of the OYs for target species.
[5] The category "Pacific ocean perch" includes *Sebastes alutus* (Pacific ocean perch), *S. polyspinus* (northern rockfish), *S. aleutianus* (rougheye rockfish), *S. borealis* (shortraker rockfish), and *S. zacentrus* (sharpchin rockfish).
[6] See figure 1 of § 611.92(a) for description of regulatory areas and districts.
[7] The category "other rockfish" includes all fish of the genus *Sebastes* except the category "Pacific ocean perch" as defined in footnote 5 above, and *Sebastolobus* thornyhead rockfish.
[8] Excludes values for the Southeast Inside District, which is not governed by these regulations.
[9] 15% of the TAC, or 300,000 metric tons, is apportioned to the initial pooled reserve and the remaining TAC is apportioned to DAP, JVP, and TALFF. The reserve may be apportioned to DAP, JVP, or TALFF as needed. TALFF's for Pacific ocean perch, other rockfish, and sablefish in the Aleutian Islands area contain amounts from the initial pooled reserve.
[10] In the foreign trawl and joint venture fisheries for Pacific whiting, incidental catch allowance percentages (based on TALFF) and incidental retention allowance percentages (based on JVP) follow: sablefish 0.173%, Pacific ocean perch 0.062%, rockfish excluding POP 0.738%, flatfish 0.1%, jack mackerel 3.0%, and other species 0.5%. In foreign trawl and joint venture fisheries, "other species" means all species, including nongroundfish species, except Pacific whiting, sablefish, Pacific ocean perch, rockfish excluding POP, flatfish, jack mackerel, and prohibited species. In a foreign trawl or joint venture fishery for species other than Pacific whiting, incidental allowance percentages will be stated in the conditions of the foreign fishing permit. See § 611.70(c)(2) for application of incidental retention allowance percentages to joint venture fisheries.
[11] Of this 1,550 metric tons, 600 metric tons is for the Vancouver subarea and 950 metric tons is for the Columbia subarea. Pacific ocean perch from other subareas are included in the OY for "other species". See § 663.21(a)(3).
[12] If no joint venture processing or foreign directed fishery is conducted, shortbelly rockfish will be included in the "rockfish, other than POP" category.
[13] No numerical OY; no JVP or TALFF is allowed. See footnote 10 for incidental catch.
[14] Estimated DAH exceeds OY for this fishery.

This action is authorized by 50 CFR Part 611 and complies with E.O. 12291.

List of Subjects in 50 CFR Parts 611

Fish, Fisheries, Foreign relations, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*, unless otherwise noted.

Dated: December 31, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84-34032 Filed 12-31-84; 5:11 pm]

BILLING CODE 3510-22-M

50 CFR Part 663

[Docket No. 41155-4175]

Pacific Coast Groundfish Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of final fishery specifications for 1985.

SUMMARY: This notice announces the 1985 management specifications for Pacific coast groundfish caught in the fishery conservation zone (3–200 nautical miles from shore) and territorial waters (0–3 nautical miles from shore) off the coasts of Washington, Oregon, and California. This notice contains specifications for the acceptable biological catch as well as for optimum yield and its distribution among domestic and foreign fishing operations for groundfish as required in the regulations implementing the Pacific Coast Groundfish Fishery Management Plan.

EFFECTIVE DATE: January 1, 1985.

ADDRESSES: T. E. Kruse, Acting Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way N.E., BIN C15700, Seattle, WA 98115; or, E. C. Fullerton, Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: T. E. Kruse at 206–526–6150 or E. C. Fullerton at 213–548–2575.

SUPPLEMENTARY INFORMATION:

Background

The Pacific Coast Groundfish Fishery Management Plan (FMP) was approved by the Assistant Administrator for Fisheries, NOAA, on January 4, 1982. The FMP and its implementing regulations at 50 CFR Part 663 (47 FR 43964, October 5, 1982) state that management specifications for groundfish included in the FMP will be evaluated each calendar year, that preliminary specifications will be published in the **Federal Register**, public comment will be requested, and final specifications for the succeeding calendar year will be published on December 1 or as soon as practicable thereafter. The management specifications for the acceptable biological catch (ABC), an estimate of the annual catch that could be taken without jeopardizing a resource's productivity, include all groundfish species (Table 1). The specifications for the optimum yields (OYs), which are based on socioeconomic as well as biological factors and thus are not necessarily equal to the ABC, are made only for Pacific whiting, sablefish, Pacific ocean perch, shortbelly rockfish, widow rockfish, and, north of 39° N. latitude, jack mackerel (Table 2). The OYs for these six species set the maximum amounts of fish (in round weight) that may be taken and retained or landed each year from the fishery conservation zone (3–200 nautical miles) and the territorial sea (0–3 nautical miles) off Washington, Oregon, and California.

The OY for each of these six species is divided into components that are reassessed near July and November each year. The domestic annual harvest (DAH), which consists of estimates of domestic annual processing (DAP) and joint venture processing (JVP), is based on the needs of the domestic fishing and processing industry as determined by bi-annual surveys. The total allowable level of foreign fishing (TALFF) is the remainder, if any, after domestic needs (DAH) have been subtracted from the OY. A reserve is established for Pacific whiting to accommodate any underestimates in DAH. The OYs and ABCs may be changed during the year under the procedures outlined in the regulations at 50 CFR 663.22.

The preliminary specifications were announced in the **Federal Register** on November 28, 1984 (49 FR 46771) and public comment was invited through December 13, 1984. No comments were received. The Pacific Fishery Management Council (Council) reviewed the preliminary specifications for 1985, received public comments, and made recommendations for final 1985 specifications at its November 28–29, 1984 meeting in Seattle, Washington. The Council recommended four changes to the preliminary specifications which are described below. All other ABC and OY designations remain the same as proposed in the preliminary specifications. The final ABC and OY specifications for 1985 are listed in Tables 1 and 2.

Pacific whiting—The JVP for Pacifc whiting was decreased by 35,000 mt, from 120,000 mt to 85,000 mt, thus lowering DAH to 95,000 mt, and increasing TALFF correspondingly from 10,000 mt to 45,000 mt. (A typographical error in the preliminary specifications listed DAH at 20,000 mt rather than 120,000 mt.) It appears that the preliminary estimate of 120,000 mt for JVP may have been too high. Applications from some of the countries which earlier indicated an interest in JVP for whiting have not been forthcoming. Representatives of those countries and potential American counterpart companies have expressed uncertainties about their joint venture whiting operations. The JVP was lowered with the understanding that the 35,000 mt reserve could be available to the joint venture industry later in the season if not needed by shore-based processors. Further, only half of the TALFF can be allocated at the beginning of the season. If it appears that DAH is too low, adjustments could be made later in the season to supplement DAH before further allocations of TALFF are made.

Sablefish—A revised estimate of stock size indicated that the 1985 ABC should be lower than in 1984 (reduced from 13,400 mt to 12,300 mt). The preliminary OY was set at 130 percent of ABC as in 1983 and 1984. In view of the reduction in the 1985 ABC, total landings in 1983 and 1984 which were close to the 13,400 mt ABC but below the 17,400 mt OY, and the fact that similar levels of fishing have been associated with stress of sablefish stocks in Alaska, the Council decided to reduce OY from the preliminary 16,000 mt to 13,600 mt which is 110 percent of the 1985 ABC. Early predictions of 1985 landings indicate that this lower OY will not restrict domestic landings. DAP, DAH, and OY are equal for sablefish.

Widow rockfish—After extensive public comment requesting continuity in the fishery even at the expense of future productivity, and mindful of severe limitations on alternate fisheries, the Council agreed to maintain the 1985 OY for widow rockfish at 9,300 mt, the same as in 1984 and 26 percent above the preliminary 1985 ABC of 7,400 mt. DAP, DAH and OY are equal for widow rockfish.

Shortbelly rockfish—The preliminary DAH for shortbelly rockfish was listed in error at 10,000 mt, but is corrected here to 3,400 mt.

TABLE 1.—FINAL ESTIMATES OF ABC FOR 1985 IN METRIC TONS (MT) FOR THE CALIFORNIA/WASHINGTON REGIONS BY INPFC AREAS

Species	Vancouver [1]	Columbia	Eureka	Monterey	Conception	Total
Roundfish:						
Lingcod	1,000	4,000	600	1,100	400	7,000
Pacific Cod	2,200	900	[2]	[2]	[2]	3,100
Pacific Whiting						[3] 175,000
Sablefish				[4] 2,500		[3] 12,300
Rockfish:						
Pacific Ocean Perch	600	950	[2]	[2]	[2]	1,550
Shortbelly						[3] 10,000
Widow						[3] 7,400
Other Rockfish [5]:						
Bocaccio	[2]	[2]	[2]	4,100	2,000	6,100
Canary	600	2,100	600	[2]	[2]	3,500
Chilipepper	[2]	[2]	[2]	1,300	1,000	2,300
Yellowtail	600	2,100	300	[2]	[2]	3,000
Remaining Rockfish	800	3,700	1,900	4,300	3,300	14,000
Flatfish:						
Dover Sole	2,400	11,500	8,000	5,000	1,000	27,900
English Sole						[3] 1,500
Petrale Sole	600	1,100	500	800	200	3,200
Other Flatfish (except arrowtooth flounder)	700	3,000	1,700	1,800	500	7,700
Other Fish [6]						
Jack Mackerel						[7] 12,000
Others	2,500	7,000	1,200	2,000	2,000	14,700

[1] U.S. portion.
[2] These species are not common nor important in the areas footnoted. Accordingly, for convenience, Pacific cod is included in "Other" category for the areas footnoted and rockfish species are included in the "Remaining Rockfish" category for the areas footnoted only.
[3] Total all areas.
[4] Monterey Bay only.
[5] "Other rockfish" means rockfish species at § 663.2, as amended, which do not have a numberical OY.
[6] "Other fish" includes sharks, skates, ratfish, morids, grenadiers, jack mackerel, arrowtooth flounder, and, in the Eureka, Monterey, and Conception area, Pacific cod. "Other fish" is part of the "other species" category listed at § 663.2.
[7] North of 39° N. latitude.

TABLE 2.—FINAL SPECIFICATIONS OF OY AND ITS DISTRIBUTION FOR 1985

[In thousands of metric tons]

Species	Total OY	DAP	JVP [1]	DAH	Reserve	TALFF [1]
Pacific whiting	175.0	10.0	85.0	95.0	35.0	45.0
Sablefish	[2] 13.6	13.6	0.0	13.6	0.0	0.0
Pacific ocean perch	[3] 1.55	1.55	0.0	1.55	0.0	0.0
Shortbelly rockfish	10.0	3.4	0.0	3.4	0.0	6.6
Widow rockfish	9.3	9.3	0.0	9.3	0.0	0.0
Jack mackerel	12.0	2.0	10.0	12.0	0.0	0.0
Other species	[4]					

[1] In the foreign trawl and joint venture fisheries for Pacific whiting, incidental catch allowance percentages (based on TALFF) and incidental retention allowance percentages (based on JVP) are: sablefish 0.173%, Pacific ocean perch 0.062%, rockfish excluding Pacific ocean perch 0.736%, flatfish 0.1%, jack mackerel 3.0%, and other species 0.5%. In foreign trawl and joint venture fisheries, "other species" means all species, including non-groundfish species, except Pacific whiting, sablefish, Pacific ocean perch, rockfish excluding Pacific ocean perch, flatfish, jack mackerel, and prohibited species. In a foreign trawl or joint venture fishery for species other than Pacific whiting, incidental allowance percentages will be stated in the conditions and restrictions to the foreign fishing permit. See § 611.70(c)(2) for application of incidental retention allowance percentages to joint venture fisheries.
[2] Of this 13,600 metric tons, 2,500 metric tons is for part of the Monterey subares. See § 663.21(a)(2).
[3] Of this 1,550 metric tons, 600 metric tons is for the Vancouver subarea and 950 metric tons is for the Columbia subarea. Pacific ocean perch from other subareas are included in the OY for "other species." See § 663.21(a)(3).
[4] The total OY for "other species" is that amount of fish that may be lawfully harvested and/or processed under § 611.70 and Part 663. See § 663.2 for species listing.

Classification

These final specifications are made under the authority of 50 CFR 663.24. This action is in compliance with Excutive Order 12291 and is covered by the Regulatory Flexibility Analysis prepared for the authorizing regulations.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 663

Administrative practice and procedures, Fish, Fisheries, Fishing.

Dated: December 31, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84-34033 Filed 12-31-84; 5:03 pm]

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Proposed Rules

Federal Register
Vol. 50, No. 3
Friday, January 4, 1985

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

Retirement

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: The Office of Personnel Management (OPM) proposes to revise its interim regulations that describe how Federal agencies file debt claims with OPM when agencies want to recover debts out of money due the debtor from the Civil Service Retirement and Disability Fund (the Fund). Uniform procedures for debt claims resulted from a class action suit (*Rhinehart* v. *Seneca, et al.*, CA No. 78–2472, (D.D.C.)) filed in 1978 on behalf of persons who had been affected by OPM's collection, for other agencies, from their refunds or annuities.

Agencies are responsible for giving due process to the debtor. They must also meet time limits for making claims when the payment due a debtor is a one time payment, such as a refund of the debtor's contributions to the Fund. The proposed regulations will clarify and strengthen current instructions to agencies and add instructions on processing fraud claims. Where necessary, changes have also been made to conform with the Debt Collection Act of 1982 (Pub. L. 97–365, enacted October 25, 1982) and the final Federal Claims Collection Standards (FCCS) that were published jointly by the General Accounting Office and the Department of Justice on March 9, 1984 (4 CFR 101.1 *et seq.*, 49 FR 8889).

DATE: Comments must be received on or before March 5, 1985.

ADDRESS: Send comments to Lucretia F. Myers, Assistant Director for Pay and Benefits Policy, Compensation Group, P.O. Box 57, Washington, D.C. 20044; or deliver to OPM, Room 4351, 1900 E Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Patricia A. Rochester, (202) 632–4634.

SUPPLEMENTARY INFORMATION: On August 25, 1981, the Office of Personnel Management (OPM) published interim regulations describing how agencies file debt claims they want to recover from civil service retirement benefits [46 FR 42835]. The interim regulations provided a 60-day public comment period.

Comments were received from 10 Federal agencies and 1 labor organization. The following summarizes the changes proposed as a result of the comments and suggestions.

1. *Comment:* One agency suggested that the scope of the regulations should be expanded to include Members of Congress and Congressional employees.

Response: In response to this suggestion, an amendment is proposed for § 831.1802 to include "Members." Congressional employees are specifically included in the definition of "employee" for the purposes of the civil service retirement law in 5 U.S.C. 8331(1)(C).

2. *Comment:* Several agencies felt the definition of "agency" in § 831.1803 excluded both legislative and judicial branch agencies.

Response: We propose to amend definitions of "agency" and "employee" and add a definition for "Member" to make it clear that all branches of the United States Government are covered.

3. *Comment:* A labor organization suggested that we change the definition of "debtor" to "an employee who has been separated from service" who owes a debt.

Response: We did not adopt this suggestion. The key to recovering an agency debt from the Fund is whether the debtor has money due and payable. It is possible to have money due and payable from the Fund without being separated from service (e.g., a reemployed annuitant, or an employee who is transferred to a position that isn't covered by the Civil Service Retirement System (CSRS)).

4. *Comment:* An agency suggested that $100 minimum for administrative offset under § 831.1804(b) of the interim rules be reduced to $40.

Response: We recognize the importance of administrative offset for recovering small claims. When we established the $100 minimum, we considered the processing costs of both the creditor agency and OPM. Considering the processing costs of two agencies, we don't believe it is cost-effective to recover claims of less than $100. We propose to amend the section (proposed 5 CFR 831.1804(a)), however, to exempt debts due for unpaid health benefits premiums accruing while employees are on leave-without-pay. These employees are deemed to consent to the collection (see 5 CFR 890.502(b)), so processing costs are minimal.

5. *Comment:* Four agencies recommended that § 831.1804(c) of the interim rules, requiring an agency to exhaust all other means of recovery, be deleted. The language could be interpreted to mean that each claim must be reduced to a court judgment.

Response: We agree that this provision could be misinterpreted. Accordingly, we dropped the language requiring agencies to exhaust all other means of recovery and identified the conditions for requesting an offset (proposed §831.1804).

6. *Comment:* Several agencies felt that debts should be collected from the Fund whether or not debtors apply for benefits. They felt the requirement that an application for benefits be filed before offset is effected under § 831.1804(e) of the interim rules should be eliminated.

Response: We can't accept this recommendation. This requirement is based on Comptroller General decisions that say a retirement account isn't available for offset until the individual applies for a refund of the lumpsum credit or for an annuity. (See 39 Comp. Gen. 203.) Section 831.1806(b)(2) provides that such debt claims be held for recovery later when an application is received, provided the agency initiated the collection by filing a claim with OPM prior to expiration of the 10-year statute of limitations (4 CFR 102.4(c)).

7. *Comment:* Several agencies felt the 30-day time limit on submission of the Standard Form 2806, "Individual Retirement Record," combined with the maximum of an additional 180 days (120 days plus an optional 60-day extension) for filing a complete debt claim is inadequate for some claims.

Response: Except for the 10-year statute of limitations, the proposed regulations have no time limit for filing claims against an individual's annuity (4 CFR 102.3(b)(3)). Annuity payments continue without reduction until a complete debt claim is received, so the

annuitant isn't harmed by the lack of a time limit. The time limit for sending the Standard Form 2806 to OPM has been increased to 60 days where the separating employee works for the agency owed the debt.

8. *Comment:* One agency noted that § 831.1805(g) of the interim rules could be interpreted to mean that a court judgment only partially fulfills OPM requirements for due process. The agency felt that a court judgment should satisfy all of the due process required to recover the debt.

Response: The proposed regulations (§ 831.1805(b)(1)) make it clear that the amount specified in a court judgment will be collected without requiring further due process.

9. *Comment:* One agency felt that § 831.1805(a) of the interim rules doesn't clearly identify the time limits that apply when the debtor doesn't work for the agency owed the debt.

Response: The proposed regulations (§ 831.1805(c)(1)) clarify the time limits applicable in this situation.

10. *Comment:* A labor organization suggested that OPM describe (1) how the agency should send the notice to a debtor and (2) the time limit for the debtor's response.

Response: We didn't adopt this suggestion. When using administrative offset, agencies must comply with the requirements of 4 CFR 102.3. Under §102.3(b), each agency must have its own regulations spelling out the procedures the agency will follow in dealing with the debtor.

11. *Comment:* A labor organization suggested § 831.1806(a)(2)(ii) be amended so that it is clear debtors can receive a refund of any retirement contributions in excess of the total debt when the amount of the debt is known. This way the debtor won't have to wait until the agency sends its debt claim to OPM (potentially a minimum of 210 days from the date of separation) before receiving contributions over and above the amount of the debt.

Response: Proposed § 831.1806(a)(2)(ii) provides for payment of the balance of the retirement contributions when the agency certifies the amount of the debt. We also propose a new § 831.1805(b)(5)(i) to require agencies to notify OPM of the amount of the debt as soon as it is known.

12. *Comment:* One agency objected to the 60-day limitation on extensions under § 831.1806(b) to allow creditor agencies to complete debt claims against refunds. The agency said that delays are frequently caused by uncooperative debtors.

Response: We didn't allow an additional extension even though we understand the concerns about completing procedures before the time expires. Agencies don't need the debtor's cooperation or consent to process debt claims. Based on the provisions of 4 CFR 102.3, agencies should give debtors written notice of the nature and amount of the debt and the agency's intention to collect by offset. Notice of the debt should include a definite time period to request an opportunity to (1) inspect/copy agency records, (2) ask the agency to review its decision, and (3) establish a written agreement to repay. Once the agency has sent the notice and the allotted time period has expired, the agency may file its debt claim even though the debtor has never responded.

13. *Comment:* Several agencies commented on the reference to fraud cases in § 831.1807(a). One suggested that OPM say who determines whether fraud is involved. One said that it wasn't clear whether the regulations covered claims involving fraud because 4 CFR 101.3 excludes fraud claims from the procedures in the FCCS.

Response: To clarify the application of the proposed regulations to fraud claims, we amended § 831.1807(a) and added a new § 831.1808 covering the procedure for handling fraud claims. For purposes of this regulation, fraud claims are claims so designated by the Attorney General. Section 101.3 of Title 4, Code of Federal Regulations, directs agencies to refer to Justice any claim involving an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other Party having an interest in the claim. Justice will decide whether to retain the claim for collection by litigation or refer it back to the agency to process under the FCCS. Further guidance on processing fraud claims will be published in the Federal Personnel Manual when final regulations are issued.

14. *Comment:* One agency suggested that § 831.1807(b) be amended to say that OPM *will* rather than *may* collect a valid debt.

Response: We have adopted the suggestion in proposed § 831.1807(a).

In addition to the changes proposed as a result of the comments and suggestions on the interim regulations, we are proposing—

(1) An amendment in § 831.1806(b)(2) to conform with the FCCS position on the collection of debts outstanding more than 10 years. The FCCS allows an agency to give debtors due process and submit claims against their retirement benefits in anticipation of a future time when benefits may be payable. Filing a claim with OPM within the 10-year statute of limitations meets the requirement to "initiate" the claim. OPM will flag debtors' accounts in anticipation of the day they become eligible for payments from the fund. We will collect the debt even if more than 10 years have lapsed since the debt claim accrued.

(2) An amendment to § 831.1806 (b) and (d) to conform with 5 CFR 550.1106(d)(2). Part 550 of Title 5, Code of Federal Regulations, describes requirements a creditor agency must meet so that the paying agency can (1) be assured of adequate certification that debtors were given the required due process, (2) begin collections and (3) notify debtors of the proposed action by providing them with a copy of the debt claim form.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because these regulations concern administrative practices and will affect only the Federal Government.

List of Subjects in 5 CFR Part 831

Administrative practice and procedure, Claims, Disability benefits, Firefighters Government employees, Income taxes, Intergovernmental relations, law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

Donald. J. Devine,

Director.

Accordingly, OPM proposes to revise Subpart R of 5 CFR Part 831 to read as follows:

PART 831—RETIREMENT

* * * * *

Subpart R—Agency Requests to OPM for Recovery of a Debt from the Civil Service Retirement and Disability Fund

Sec.

Authority: 5 U.S.C. 8347.

Subpart R—Agency Requests to OPM for Recovery of a Debt From the Civil Service Retirement and Disability Fund

§ 831.1801 Purpose.

This subpart prescribes the procedures to be followed by a Federal agency when it requests the Office of Personnel Management (OPM) to recover a debt owed to the United States by administrative offset against money due and payable to the debtor from the Civil Service Retirement and Disability Fund (the Fund). This subpart also prescribes the procedures that OPM must follow to make these administrative offsets.

§ 831.1802 Scope.

This subpart applies to agencies, employees, and Members, as defined by § 831.1803.

§ 831.1803 Definitions.

For purposes of this subpart, terms are defined as follows—

"Act" means the Federal Claims Collection Act of 1966 as amended by the Debt Collection Act of 1982 and implemented by 4 CFR 101.1 *et seq.*, the Federal Claims Collection Standards (FCCS).

"Administrative offset" means withholding money payable from the Fund to satisfy a debt to the United States under 31 U.S.C. 3716.

"Agency" means any Executive department, Military department, Government corporation or independent establishment as defined in Chapter I of title 5, United States Code, the U.S. Postal Service, the U.S. Postal Rate Commission, the U.S. House of Representatives, the U.S. Senate, or other legislative branch agency, and any agency or Court of the judicial branch.

"Annuitant" has the same meaning as in section 8331(9) of title 5, United States Code.

"Annuity" means the monthly benefit payable to an annuitant or survivor annuitant.

"Compromise" has the same meaning as in 4 CFR Part 103.

"Consent" means the debtor has agreed in writing to administrative offset after receiving notice of all rights under 31 U.S.C. 3716 and this subpart.

"Creditor agency" means the agency owed the debt.

"Debt" means an amount owed to the United States on account of loans insured or guaranteed by the United States, and other amounts due the United States from fees, duties, leases, rents, royalties, services, sales of real or personal property, overpayments, fines, penalties, damages, interest, taxes, forfeitures, and all other similar sources.

"Debt claim" means an agency request for recovery of a debt in a form approved by OPM.

"Debtor" means a person who owes a debt, including an employee, former employee, Member, former Member, or the survivor of one of these individuals.

"Employee" has the same meaning as in section 8331(1) of title 5, United States Code, and includes reemployed annuitants and employees of the U.S. Postal Service.

"Fraud claim" means any debt designated by the Attorney General (or designee) as involving an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim.

"Fund" means the Civil Service Retirement and Disability Fund established under 5 U.S.C. 8348.

"Lump-sum credit" has the same meaning as in section 8331(8) of title 5, United States Code.

"Member" has the same meaning as in section 8331(2) of title 5, United States Code.

"Net annuity" means annuity after excluding amounts required by law to be deducted. For example, Federal and State income taxes are excluded up to the maximum amount that the individual is entitled to for all dependents. Other examples of exclusions are group health insurance premiums (including amounts deducted for Medicare) and group life insurance premiums.

"Paying agency" means the agency that employs the debtor and authorizes the disbursement of his or her current pay account.

"Refund" means the payment of a lump-sum credit to an individual who meets all requirements for payment and files application for it.

§ 831.1804 Conditions for requesting an offset.

An agency may request that money payable from the Fund be offset to recover any valid debt when all of the following conditions are met:

(a) The debt is $100 or more (unless it accrued because of failure to pay health benefits premiums while in nonpay status or when salary was not sufficient to cover premiums);

(b) The debtor has failed to pay all of the debt on demand, or the creditor agency has collected as much as possible from payments due the debtor from the paying agency; and

(c) The creditor agency sends a debt claim to OPM (under § 831.1805(b) (1) through (4), as appropriate) after doing one of the following:

(1) Obtaining a court judgment for the amount of the debt;

(2) Following the procedures required by 4 CFR 102.4;

(3) Following the procedures required by 5 U.S.C. 5514 and § 550.1106 of this title; or

(4) Following the procedures agreed upon by the creditor agency and OPM, if it is excepted by § 831.1805(b)(4) from the completion of procedures prescribed by § 831.1805(b)(3).

§ 831.1805 Agency processing for non-fraud claims.

(a) *Where to submit the debt claim, judgment or notice of debt.* (1) *Creditor agencies that are not also the debtor's paying agency.* (i) If the creditor agency knows that the debtor is employed by the Federal Government, it should send the debt claim to the debtor's paying agency for collection.

(ii) If some of the debt is unpaid after the debtor separates from the paying agency, the creditor agency should send the debt claim to OPM as described in paragraph (b) of this section.

(2) *Creditor agencies that are also the debtor's paying agency.* Ordinarily, debts owed the paying agency should be offset under 31 U.S.C. 3716 from any final payments (salary, accrued annual leave, etc.) due the debtor. If a balance is due after offsetting the final payments or the debt is discovered after the debtor has been paid, the paying agency may send the debt claim to OPM as described in paragraph (b) of this section.

(b) *Procedures for submitting a debt claim, judgment or notice of debt to OPM.* (1) *Debt claims for which the agency has a court judgment.* If the creditor agency has a court judgment against the debtor specifying the amount of the debt to be recovered, the agency should send the debt claim and two certified copies of the judgment to OPM.

(2) *Debt claims previously processed under 5 U.S.C. 5514.* If the creditor agency has adjudicated a debt claim under section 5514, it should:

(i) Notify the debtor that the claim is being sent to OPM for collection from the Fund; and

(ii) Send the debt claim to OPM with two copies of the paying agency's certification of the amount collected and one copy of the notice to the debtor that the claim was sent to OPM.

(3) *Debt claims not processed under 5 U.S.C. 5514, reduced to court judgment, or expected by paragraph (b)(4) of this section.* If the debt claim has not been adjudicated under section 5514, reduced to court judgment or excepted by paragraph (b)(4) of this section, the creditor agency must:

(i) Comply with the procedures required by 4 CFR 102.4;

(ii) Complete a debt claim, as described in 4 CFR 102.4, that certifies in writing—

(A) That the debt is owed to the United States;

(B) The amount and reason for the debt;

(C) The date the Government's right to collect the debt first accrued;

(D) The action(s) taken under 4 CFR 102.3, including any required hearing or review, and the date(s) the action(s) was taken (unless the debtor consents to or acknowledges the offset in writing, or acknowledges receipt of the required procedures in writing, and the appropriate documentation is attached to the debt claim);

(E) That the agency has complied with the applicable statutes, regulations, and OPM procedures; and

(F) The number and amount of each installment, whether additional interest may accrue, and the commencing date of the first installment, if the collection must be made in installment ; and

(iii) Certify that if a competent administrative or judicial authority issues an order directing OPM to pay a debtor an amount previously paid to the agency (regardless of the reasons behind the order), the agency will reimburse OPM or pay the debtor directly within 15 days of the date of the order. (OPM may, at its discretion, decline to collect other debt claims sent by an agency that does not abide by this certification.)

(4) *Debt claims excepted from the procedure described in paragraph (b)(3) of this section.* Creditor agencies follow specific procedures approved by OPM, rather than those described in paragraph (b)(3) of this section, for the collection of:

(i) Debts due because of the employee's failure to pay health benefits premiums while in nonpay status or when salary was not sufficient to cover the cost of premiums;

(ii) Unpaid Federal taxes by Internal Revenue Service levy;

(iii) No more than 6 months of retroactive premiums due because of the annuitant's election of Part B, Medicare coverage; or

(iv) Overpayments of military retired pay that annuitants elect in writing to have withheld from their annuity.

(5) *Notice of debt.* When a creditor agency cannot immediately send a debt claim, it should notify OPM of the existence of the debt so that OPM will not pay the lump-sum before the debt claim reaches OPM.

(i) The notice to OPM must include a statement that the debt is owed to the United States, when the debt first accrued, and the basis and amount of the debt, if known. If the amount of the debt is not known, the agency must establish the amount and notify OPM in writing as soon as possible after submitting the notice.

(ii) The creditor agency may either notify OPM by making a notation in column 8 [Remarks] under "Fiscal Record" on the Standard Form 2806, if the SF 2806 is in its possession, or if not, by submitting a separate document identifying the debtor by name, giving his or her date of birth, social security number, and date of separation if known.

(c) *Time limits for sending records and debt claims to OPM.* (1) *Creditor agencies that are not also the debtor's paying agency.* Other than filing the debt claim prior to expiration of the applicable statute of limitations (4 CFR 102.4(c)), there is no time limit for sending a claim to OPM. But, if a refund is payable, OPM must receive the debt claim or notice of the debt claim before the refund is paid.

(2) *Creditor agencies that are also the debtor's paying agency.* Within 60 days after the debtor has separated or is no longer covered by the Civil Service Retirement System, the creditor agency must send to OPM (i) the debtor's Standard Form 2806, "Individual Retirement Record," and (ii) the debt claim or the notice of debt described in paragraph (b)(5) of this section.

§ 831.1806 OPM processing.

(a) *Refunds—incomplete debt claims.* (1) If a creditor agency sends OPM notice of a debt or an incomplete debt claim, OPM will withhold the amount of the debt, but will not make any payment to the creditor agency for 120 days to allow the creditor agency to send in a complete debt claim. OPM will notify the creditor agency that (i) the procedures in this subpart and 4 CFR 102.4 must be followed, and (ii) a debt claim must be completed and returned to OPM within 120 days of the date of OPM's notice to the creditor agency. Upon request, OPM will grant the creditor agency one extension of up to 60 days if the request for extension is received before the lump-sum payment has been made. The extension will commence on the day after the 120-day period expires so that the total time the refund is held will not exceed 180 days.

(2) During the period allotted the creditor agency for sending OPM a complete debt claim, OPM will handle the debtor's application for refund under section 8342(a) of title 5, United States Code, in one of two ways.

(i) If the amount of the debt is known, OPM will notify the debtor of the debt claim against his or her lump-sum credit, withhold the amount of the debt, and pay the balance to the debtor.

(ii) If the amount of the debt is not known, OPM will not pay any amount to the debtor until the creditor agency certifies the amount of the debt, submits a complete debt claim, or the time limit for submission of the debt claim expires, whichever comes first.

(b) *Refunds—complete debt claims.* (1) *When an application has been received from the debtor.* When the creditor agency submits a complete debt claim in accordance with § 831.1805(b)(1), (2), (3), or (4), the debt will be collected from the refund and any balance will be paid to the debtor. OPM will send the debtor a copy of the debt claim, judgment, consent, or other document, and will notify the debtor that the creditor agency was paid.

(2) *When an application has not been received from the debtor.* If a debtor has not filed application for a refund or annuity, OPM will retain the debt claim for future recovery. OPM will make the collection whenever an application is received, provided the creditor agency *initiated* the administrative offset before the statute of limitations expires. (See 4 CFR 102.3(b)(3) and 102.4(c).) OPM will notify the creditor agency if it does not have an application from the debtor so that the agency may take action to recover the debt. If recovery is completed, the creditor agency must notify OPM to void the debt claim being held for future recovery.

(c) *Annuities—incomplete debt claims.* If a creditor agency sends OPM notice of a debt or an incomplete debt claim against a debtor who is receiving an annuity, OPM will not act to offset the annuity. OPM will notify the creditor agency to follow the procedures in 4 CFR 102.4 and complete a debt claim to send to OPM. The time limit specified in paragraph (a) of this section does not apply to debt claims against an annuity.

(d) *Annuities—complete debt claims.* When the creditor agency sends OPM a complete debt claim, OPM will mail the debtor a copy of the claim along with notice of intended payment to the creditor agency. Deductions from the annuity will begin with the next available annuity payment.

(e) *Limitations on OPM review.* In no case will OPM review—

(1) The merits of a creditor agency's decision will regard to reconsideration, compromise, or waiver; or

(2) The creditor agency's decision that a hearing was not required in any particular proceeding.

§ 831.1807 Limitations on withholdings.

Where possible, OPM will collect a valid debt claim in full from the debtor's refund or annuity. However, if an annuity is involved and the debt claim must be collected in installments, the creditor agency is limited to the deductions specified below unless the debtor consents to a larger deduction.

(a) Collections based upon a court judgment against the debtor are limited to a maximum of 25 percent of net annuity; and

(b) All other collections are limited to a maximum of 15 percent of net annuity.

§ 831.1808 Special processing for fraud claims.

(a) *Agency processing.* (1) *Submitting fraud claims to Justice.* An agency should send any claim indicating fraud, presentation of a false claim, or misrepresentation by the debtor or any other party interested in the claim, or any claim based in whole or part on conduct violating the antitrust laws, to the Department of Justice (Justice) for possible treatment as a fraud claim. (4 CFR 101.3)

(2) *Time limit for submitting debtor's records to OPM.* If the debtor is separated or separates while Justice is reviewing the claim, the paying agency must send the SF 2806 to OPM, as required by § 831.1805(c)(2). The agency where the claim arose must send OPM notice that a claim is pending with Justice. (See § 831.1805(b)(5) for instructions on giving OPM notice.)

(b) *Department of Justice processing.* (1) The Attorney General or a designee will decide whether a debt claim sent in by an agency will be reserved for collection by Justice as a fraud claim. Upon receiving a possible fraud claim to be collected by offset from the Fund, the Attorney General or a designee must notify OPM. The notice to OPM must contain the following:

(i) The name, date of birth and social security number of the debtor;

(ii) The amount of the possible fraud claim, if known;

(iii) The basis of the possible fraud claim; and

(iv) A statement that the claim is being considered as a possible fraud claim, the collection of which is reserved to Justice.

(2) While 180 days of the date of either notice from the agency that a claim is pending with Justice (paragraph (a)(2) of this section) or notice from Justice that it has received a possible fraud claim (paragraph (b)(1) of this section) whichever is earlier, the Attorney General or designee must (i) file a complaint seeking a judgment on the claim and send a copy of the complaint to OPM; or (ii) as provided in 4 CFR 101.3, refer the claim to the agency where the claim arose and submit a copy of the referral to OPM. The agency where the claim arose must then begin the administrative collection of the claim under 4 CFR 102.4 and send the claim to OPM as required in § 831.1805.

(c) *OPM processing against refunds.* (1) Upon receipt of a notice under paragraph (a)(2) or (b)(1) of this section, whichever is earlier, OPM will (i) withhold the amount of the debt claim, if known; (ii) notify the debtor that the amount of the debt will be withheld from the refund for at least 180 days from the date of the notice that initiated OPM processing; and (iii) pay the balance to the debtor. If the amount of the debt claim is not known, OPM will notify the debtor that a debt claim may be offset against his or her refund and that OPM will not pay any amount until either the amount of the debt claim is established, or the time limit for filing a complaint in court or submitting the debt claim expires, whichever comes first.

(2) If the Attorney General files a complaint and notifies OPM within the applicable 180-day period, OPM will continue to withhold payment of the lump-sum credit until there is a final judgment.

(3) If the Attorney General refers the claim to the agency where the claim arose (creditor agency) and notifies OPM within the applicable 180-day period, OPM will notify the creditor agency to comply with the requirements of 4 CFR 102.4 and complete the debt claim form. The form must be sent to OPM within 120 days of the date of OPM's notice to the creditor agency. At the request of the creditor agency, one extension of time of not more than 60 days will be granted, as provided by § 831.1806(a).

(4) If OPM is not notified that a complaint has been filed or that the claim has been referred to the creditor agency within the applicable 180-day period, OPM will pay the balance of the refund to the debtor.

(d) *OPM processing against annuities.* If the debtor has filed an annuity claim, OPM will not take action against the annuity. OPM will continue to pay the annuity unless and until there is a final judgment for the United States or submission of a complete debt claim.

(e) *OPM collection and payment of the debt.* (1) If the United States obtains a judgment against the debtor for the amount of the debt or the creditor agency submits a complete debt claim, OPM will collect and pay the debt as provided in §§ 831.1806 and 831.1807.

(2) If the suit or the administrative proceeding results in a judgment for the debtor without establishing a debt to the United States, OPM will pay the balance of the refund to the debtor upon receipt of a certified copy of the judgment or administrative decision.

[FR Doc. 85-174 Filed 1-3-85; 8:45 am]
BILLING CODE 6325-01-M

FEDERAL ELECTION COMMISSION

11 CFR Ch. I

[Notice 1984-21]

Rulemaking Petition: Notice of Availability

AGENCY: Federal Election Commission.

ACTION: Rulemaking petition: Notice of availability.

SUMMARY: On November 6, 1984, Common Cause filed a Petition for Rulemaking with the Commission. The petition is available for public inspection in the Commission's Public Records Office. Statements in support of or in opposition to the petition must be filed on or before February 4, 1985.

DATE: Comments must be received on or before February 4, 1985.

ADDRESS: Comments should be addressed to: Ms. Susan Propper, Assistant General Counsel, 1325 K Street, N.W., Washington, D.C. 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Propper, Assistant General Counsel, 1325 K Street, N.W., Washington, D.C. 20463, (202) 523-4143 or (800) 424-9530.

SUPPLEMENTARY INFORMATION:

Rulemaking Petition: Notice of Availability

On November 6, 1984, Common Cause filed a petition for Rulemaking with the Federal Election Commission. Petitioner requests that the Commission initiate a rulemaking to address the issues raised by the use of "soft money" in elections. Common Cause uses the term "soft money" to refer to "funds that are raised by presidential campaigns and national and congressional political party organizations purportedly for use by state and local party organizations in nonfederal elections, from sources who would be barred from making such contributions in connection with a federal election, *e.g.* from corporations and labor unions and from individuals who have reached their federal contribution limits." (Common Cause Petition at p. 1.) In its petition, Common Cause asserts that " 'soft money' in fact

is not being raised or spent solely for nonfederal election purposes." (*Id.*) Rather, Common Cause alleges that "[s]uch funds are being channeled to state parties with the clear goal of influencing the outcome of federal elections." (*Id.*) Petitioner states that this practice undermines "the disclosure provisions of federal campaign finance laws. Very substantial sums of money are being channeled to and through state parties in order to influence federal elections without these sums being disclosed as contributions or expenditures under the federal law." (*Id.* at p. 2.) Therefore, the Common Cause Petition requests that the Commission "initiate a rulemaking proceeding to establish what broader administrative tools, such as additional disclosure requirements, are needed to facilitate the Commission's effective enforcement of the current laws * * *" (*Id.* at p. 3).

Copies of the Petiton for Rulemaking are available for public inspection at the Commission's Public Records Office, 1325 K Street, N.W., Washington, D.C. 20463, between the hours of 9:00 a.m. and 5:00 p.m.

Statements in support of or in opposition to the Petition for Rulemaking must be filed with the Commission by February 4, 1985.

Dated: December 20, 1984.

Lee Ann Elliott,

Federal Election Commission.

[FR Doc. 85-417 Filed 1-3-85; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-NM-81-AD]

Airworthiness Directives: Gates Learjet Models, 23, 24, 25, 28, 29, 35, 36, 35A, 36A Series Airplanes

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to amend an existing airworthiness directive (AD) applicable to certain Gates Learjet Models 23, 24, and 25 series airplanes. This amendment would require that each airplane's stall prevention system be adjusted to preclude the potential for a hazardous aerodynamic stall. This AD also provides for the installation of a handling qualities improvement kit as an alternate means of compliance.

DATE: Comments must be received no later than February 15, 1985.

ADDRESSES: The applicable service information may be obtained from Gates Learjet Corporation, P.O. Box 7707, Wichita, Kansas 67277. This information may also be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Sorensen, Aerospace Engineer, Wichita Aircraft Certification Office, ACE-160W, FAA, Central Region, Room 100, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4432.

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 Docke 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: Airworthness Rules Docket No. 84-NM-81-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion: Airworthiness Directive (AD) 80-19-11 was made effective by airmail letter dated September 4, 1980, to all known owners and operators of the affected Learjet airplanes. It was published in the **Federal Register** on October 9, 1980 (45 FR 65999). The AD requires several changes to the Airplane Flight Manuals, and several inspections of the airplanes. The AD was issued to ensure that the crew was proposed additional instructions for the safe operation of the airplane and to ensure that the airplane's automatic flight control and stall warning systems were properly adjusted.

The AD, however, did not require adjustment of the stall prevention (pusher) system with regard to actuation angle of attack because, at the time the AD was issued, noi procedure had been developed to assure proper stall speed (pusher speed). Consequently, in lieu of mechanically resetting each pusher, only the operational speeds of the appropriate planes were adjusted. The intent at that time was to reset each pusher when the processes and mechanics of the reset had been defined and verified.

That process has now been defined and approved by the FAA as Gates Learjet Airplane Modification Kit (AMK) 84-5. With installation of AMK 84-5, the pusher actuation speed (stall speed) will be consistent with the increase performance speeds and assure that hazardous aerodynamic stall will not be encountered.

Gates Learjet has also developed AMK 83-4 which is a handling qualities improvement kit. It may be installed in lieu of AMK 84-5 and improves the airplane handling qualities and aerodynamic stall characteristics to the point that pusher speeds are reduced to the original speeds and the original pre-AD 80-19-11 airplane performance figures are acceptable.

This amendment is being proposed to complete the intent of AD 80-19-11 and to ensure that hazardous aerodynamic stalls will not occur. The aerodynamic stall will be prevented by either increasing the pusher actuation speed or by modifying the aerodynamics of the airplane.

Approximately 100 airplanes would be affected by this AD. It would take aproximately 30 manhours per airplane to accomplish the required actions of installing AMK 84-5. The average labor cost would be $38 per manhour. The modificatiion parts are estimated to cost $1,147 per airplane. The loss associated with two days of down time is estimated to be $1,000 per airplane. Based on these figures, the total cost impact of this AD is estimated to be $328,700.

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 FAA proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by amending Amendment 39-3932 (45 FR 65999; October 6, 1980), AD 80-19-11, by adding a new paragraph H), which reads as follows:

(H) On or before February 28, 1986, accomplish the requirements of paragraphs 1. or 2., below, on Learjet Models 23, 24, 24A, 24B, 24B-A, 24D-A, 25, 25A, 25B, 25C, with unmodified wings, at an FAA certificated maintenance repair station, and insert in the appropriate sections of the Airplane Flight Manual (AFM) the permanent AFM revision pertaining to procedures and performance associated with Airplane Modification Kit (AMK) 83-4 or 84-5. The limitations and performance information required by paragraphs (A)3., (A)7., (A)8., (A)9., (A)10., (A)11., and (A)12. of this AD are superseded by the AFM revision included with these kits.

1. Incorporate AMK 83-4 to improve airplane handling qualities and aerodynamic stall characteristcs, or

2. Incorporate AMK 84-5 to make the stall prevention system (pusher) operation consistent with the airplane performance and limitations.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to the Gates Learjet Corporation, P.O. Box 7707, Wichita, Kansas 67277. These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington.

(Sec. 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 doucment (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, Gates Learjet Model 23, 24, or 25 series 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 indentified under the caption **"FOR FURTHER INFORMATION CONTACT."**

Issued in Seattle, Washington, on December 13, 1984.

Raymond A. Salazar,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-242 Filed 1-3-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 84-CE-36-AD]

Airworthiness Directives; Piper Models PA-31/PA-31-300, PA-31-325, PA-31-350, PA-31-350 T-1020, PA-31P, PA-31T, PA-31T1, PA-31T2, PA-31T3 T-1040 and PA-42 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new Airworthiness Directive (AD), applicable to certain models of Piper PA-31 series and PA-42 series airplanes. It would require visual inspection of the main and nose landing gear struts and the replacement of upper bearing retaining pins. Field reports have been received of distorted, distressed or sheared landing gear upper bearing retaining pins which resulted in separation of the strut piston tube and wheel. Additionally, certain airplanes may have main and nose landing gear upper bearings with rough surfaces or ridges which could score strut housing walls, generate aluminum dust and cause premature wear of strut components. The inspections and pin replacement will prevent strut damage or separation.

DATES: Comments must be received on or before February 16, 1985.

ADDRESSES: Piper Service Bulletin (SB) No. 779A, dated July 16, 1984, applicable to this AD, may be obtained from Piper Aircraft Corporation, 3000 Medulla Road, Lakeland, Florida 33803 or the Rules Docket at the address below.

Send comments on the proposal in duplicate to Federal Aviation Administration Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 84-CE-36-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 am and 4 pm, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Charles L. Perry, ACE-120A, Aerospace Engineer, Airframe Branch, Atlanta Aircraft Certification Office, FAA, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763-7407.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. 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's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-CE-36-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Comments Invited

Discussion: There have been two instances of main landing gear separation on Piper Model PA-31-350 airplanes. Investigations indicated that the landing gear strut upper bearings, which also are strut extension stops, had separated when the upper bearing retaining pins failed. The failure of these pins allow the bearing to separate from the piston tube and permits unrestricted extension of the piston from the strut housing. Loss of the piston tube and wheel results. In addition, it has been determined by the manufacturer that other models of the PA-31 and certain PA-42 Series airplanes may have main and nose landing gear upper bearings with rough surfaces or ridges which may score strut housing walls, generate aluminum dust and cause premature wear of strut components. This damage can cause fluid leakage, loss of strut pressure and shock absorbing capability. As a result, Piper Aircraft Corporation issued Service Bulletin No. 779A, dated July 16, 1984, which recommends replacement of the upper bearing retaining pins with improved harder pins and provides instructions for the inspection of the landing gear struts on all affected airplanes. In addition, it recommends inspection of the upper bearings on certain airplanes, and replacement of the upper bearings as required. Since the condition described is likely to exist or develop in other Piper Models PA-31/PA-31-300, PA-31-325, PA-31-350, PA-31-350 T-1020, PA-31P, PA-31T, PA-31T1, PA-

31T2, PA-31T3 T-1040, and PA-42 airplanes of the same type disign, an AD is being proposed. The proposal would require replacement of the main and nose landing gear strut upper bearing retaining pins, visual inspection of the main and nose landing gear strut assemblies and if necessary, replacement of the upper bearings or housing assembly.

The FAA has determined there are apporximately 4900 airplanes affected by the proposed AD. The cost of inspection and modification of these airplanes in accordance with the proposed AD is approximately $240 per airplane. The total cost is estimated to be $1,176,000 to the private sector. The cost of the upper bearing retaining pin replacement and inspections required by the proposal is so small that the cost of compliance to any small entity/ operating these airplanes will not have a significant financial impact on that small entity. Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

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 AD:

Piper: Applies to Models PA-31/PA-31-300 and PA-31-325 (S/Ns 31-2 through 31-8312014); PA-31-350 (S/Ns 31-5001 through 31-8352042); PA-31-350 T-1020 (S/Ns 31-8153001 through 31-8353007); PA-31P (S/Ns 31P-1 through 31P-7730012); PA-31T (S/Ns 31T-7400002 through 31T-8120104); PA-31T1 (S/Ns 31T-7804001 through 31T-8304003 and 31T-1104004 through 31T-1104006); PA-31T2 (S/Ns 31T-8166001 through 31T-8166071, 31T-8166073, and 31T-8166076); PA-31T3 T-1040 (S/Ns 31T-8275001 through 31T-8375003); and PA-42 (S/Ns 42-7800001 through 42-8001106) airplanes certificated in any category.

Compliance: Required within the next one hundred (100) hours time-in-service after the effective date of this AD, unless already accomplished.

To preclude loss of the landing gear, accomplish the following:

(a) On all applicable airplanes, remove each piston tube assembly from its strut housing in accordance with instructions in the appropriate Maintenance Manual.

(1) Inspect the interior walls of each strut housing for abnormal wear or damage (gouges, scoring, ridges, non-concentric wear). Replace housing assembly if such wear or damage is indicated.

(2) Remove and replace the retaining pins connecting the upper bearing to the piston tube in accordance with either paragraph (a)(4)(i) or (a)(4)(ii) of this AD. The bearing and piston tube are drilled to allow slip fit, and the pins should come out easily. Seizing or deformation of pins is an indication of the damage described in paragraph (a)(4)(i), below.

(3) On Models PA-31/PA-31-300 and PA-31-325, (S/Ns 31-2 through 31-8312014); PA-31-350, (S/Ns 31-5001 through 31-8352042); PA-42, (S/Ns 42-7800001 through 42-8001106); PA-31P, (S/Ns 31P-1 through 31P-7730012); PA-31T, (S/Ns 31T-7400002 through 31T-8020068); PA-31T1, (S/Ns 31T-7804001 through 31T-8004055); PA-31T2, (S/Ns 31T-8166001 through 31T-8166013) airplanes only:

Remove the upper bearing and inspect the area shown in Sketch A of Piper Service Bulletin No. 779A dated July 16, 1984. If ridges are found in the designated inspection area, replace the bearing. Inspect replacement bearings in accordance with Sketch A prior to installation.

(4) Visually inspect the pin holes in the piston tube.

(i) If holes are found to be elongated, deformed, chamferred, or out of tolerance (holes should be concentric with nominal dimension of .250-.251), or if standard Piper Part Number 01821-06 or 01821-07 pins cannot be pressed easily into holes, install oversize pins in accordance with either Piper Kit 764 417 or Piper Kit 764 418.

(ii) If holes are acceptable, replace pins with new harder retaining pins, Piper Part Number 01821-06 or Piper Part Number 01821-07, as applicable for the strut involved.

(5) Reassemble the strut, replacing all seals, rings and wipers with new parts per applicable parts catalog and reinstall landing gear in accordance with appropriate Maintenance Manual.

(b) Aircraft may be flown in accordance with FAR 21.197 to a location where this AD can be accomplished.

(c) An equivalent method of compliance with this AD may be used if approved by the Manager, Atlanta Aircraft Certification Office, ACE-115A, FAA Central Region, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763-7428.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a) 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and § 11.85 of the Federal Aviation Regulations (14 CFR 11.85))

Issued in Kansas City, Missouri, on December 24, 1984.

Murray E. Smith,

Director, Central Region.

[FR Doc. 85-241 Filed 1-3-85; 8:45am]

BILLING CODE 4910-13-M

CIVIL AERONAUTICS BOARD

14 CFR Part 223

[EDR-428A; Procedural Regulations; Docket 39794]

Free and Reduced Rate Transportation

Dated: December 31, 1984.

AGENCY: Civil Aeronautics Board.

ACTION: Termination of rulemaking.

SUMMARY: The CAB is terminating a rulemaking that proposed to amend its rules on free and reduced rate transportation to provide for summary modification or withdrawal of certain exemptions granted to foreign air carriers. Among other things, Part 223 exempts United States and foreign air carriers from tariff filing requirements to permit them to offer free or reduced rate transportation to travel agents or other promoters of air transportation. The proposed rule would have made this exemption to foreign air carriers subject to withdrawal or modification where the Board finds it in the public interest. This action is taken at the Board's initiative.

DATES: Adopted: December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the Assistant General Counsel, Regulations and Enforcement, U.S. Department of Transportation, C-50, 400 Seventh St. SW., Washington, D.C. 20590, (202) 426-4723.

SUPPLEMENTARY INFORMATION: Part 223 governs free and reduced rate air transportation by U.S. and foreign air carriers to travel agents and other transportation-related professionals for promotional purposes. The current rules provide substantial flexibility to carriers. See, ER-1149, 44 FR 52173, September 7, 1979 and ER-1181, 45 FR 46797, July 11, 1980. Based upon reports that at least one foreign government was following restrictive policies on the provision of free and reduced rate transportation by U.S. carriers, the Board proposed in EDR-428, 46 FR 36714, July 15, 1981, to make the exemption granted to foreign air carriers subject to withdrawal or modification without hearing as the public interest may require.

Suminam Airways, Ltd., British Airways, Ltd., Air France and the

International Air Transportation Association (IATA) filed comments in opposition to the proposed rule. Generally speaking, these parties argued that foreign governments have substantial freedom to set rules for free and reduced rate transportation originating in their countries, and that so long as their rules are applied equally to their carriers and foreign carriers, U.S. carriers are not being unfairly disadvantaged. They argued that to the extent that there are problems, individual action or bilateral negotiations are a more appropriate response.

TWA and the National Air Carrier Association filed comments in support of the proposed rule. They generally agreed with the Board's analysis in EDR-428.

The Board has decided to terminate the rulemaking proceeding. As was noted in the NPRM, the Board's proposal was the result of a particular problem involving a specific foreign country. Since that time, there has not been a recurrence of the problem. As opponents of the proposed rule have pointed out, foreign governments generally have substantial control over the provision of free and reduced rate air travel originating in their countries. Moreover, it is clear that policies of foreign governments vary widely. For example, Surinam Airways claims that its government follows the Board's liberal approach, while some of the European countries appear to be less liberal.

In these circumstances, the Board finds that the public interest would be best served by approaching problems of foreign government policies on free and reduced rate travel on a case-by-case basis, through means other than rulemaking. This approach will give due recognition to foreign governments, as well as U.S. prerogatives in the area, and to the variations in policies from government to government. Of course, should circumstances change, the Board (and the Department of Transportation) will reconsider the need for a specific rule in this area.

Accordingly, the Civil Aeronautics Board terminates the rulemaking proceeding begun EDR-428 and closes Docket 39747.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 85-257 Filed 1-3-85; 8:45 am]

BILLING CODE 6320-01-M

14 CFR Part 323

[PDR-80A; Procedural Regulations; Docket 40903]

Terminations, Suspensions, and Reductions of Service

Dated: December 31, 1984.

AGENCY: Civil Aeronautics Board.

ACTION: Termination of rulemaking.

SUMMARY: The CAB is terminating a rulemaking that proposed to require airlines to file a notice 30 days before reducing, terminating or suspending air service between a U.S. and a foreign point. The Board found that there are many ways for air carriers that wish to apply for the service to find out about such service reductions. In addition, the proposed reporting requirement would have discouraged incumbents from continuing to provide service. Finally, there have been no significant problems on this issue in the last 2 years. This action is taken at the Board's initiative.

DATES: Adopted: December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie or Gwyneth Jones, Office of the Assistant General Counsel, Regulations and Enforcement, U.S. Department of Transportation, C-50, 400 Seventh St. SW, Washington, D.C. 20590, (202) 426-4723.

SUPPLEMENTARY INFORMATION: Before 1982, the Board's rules in Part 323 required air carriers to provide 60 days notice before terminating or suspending the last nonstop or single-plane service in a foreign market. The Board subsequently eliminated the notice requirement in PR-244, 47 FR 7393, February 19, 1982.

The Board presently has no other rule or policy that requires an airline to provide notice that it has, or is about to, terminate, suspend or reduce service in foreign markets. In many cases, such notice is unnecessary because there are several carriers currently providing service. In other, limited designation, foreign markets, there is only one carrier that has been selected by the Board to provide service. If that carrier reduces, suspends or terminates service in that market, a replacement carrier must first apply to the Board before it can provide that service. Because there is no formal notification, the Board was concerned that rights to fly limited designation routes could lie dormant when a carrier reduced or terminated service even though there were carriers willing to provide the service. For example, in the spring of 1982 just before its bankruptcy, Braniff terminated its service between Houston, Texas and Acapulco, Mexico. The suspension was brought to the Board's attention only by chance through pleadings in another proceeding.

In PDR-80, 47 FR 36433, September 20, 1982, the Board requested comment on whether a notice requirement should be reinstated. The Board tentatively found that the notice would be beneficial because it would give the Board an opportunity to consider what, if any action to take, and give potential replacement carriers time to apply for the route and prepare to begin service. At the same time, the Board tentatively found that the notice would not reduce carriers' operational flexibility nor would be unduly burdensome.

Under the proposal, carriers would be required to report their plans to end foreign air transportation on a route 30 days before implementation or when they notify a generally-distributed schedule publication such as the Official Airline Guide, whichever occurred first. The proposal contained no service requirements or provisions for answers or replies, because the Board would not require a carrier to continue service.

Comments were filed by five civic parties (Commonwealth of Puerto Rico, City of Houston & Houston Chamber of Commerce, Dallas-Ft. Worth, Calgary Transportation Authority, and Edmonton Air Services Authority), six airlines (Delta, Northwest, Pan Am, Republic, USAir, and Western) and the United States Department of State.

The State Department supported the proposed notice because it would help avoid disruption of U.S. flag service. The five civic parties supported the proposal, but recommended that additional notices be sent to the cities affected by service reductions so that they could act immediately to secure replacement service. The Calgary and Edmonton Transportation Authorities noted that the proposed notice would not be available to the public since it would be sent directly to the Director of the Bureau of International Aviation rather than the Dockets Section. They suggested that the notice be served on both the mayor and the transportation authority. The other civic parties make similar suggestions and also recommended longer notice periods, from 60 to 90 days.

Pan Am, Republic and Western supported the proposed notice, but argued that the application to changes in single plane service was overboard. They argued that changes in single-plane service between interior U.S. and gateway points, between foreign points where online connecting service is still

provided, dual flight numbering and change of gauge might trigger the notice.

Delta, Northwest, and USAir opposed the proposal as unnecessary and contrary to deregulation. Northwest noted that interested parties regularly monitor the activities of other carriers and can easily learn of suspensions from public sources.

This notice terminates the rulemaking begun by PDR-80. The Board agrees that carriers that are interested in taking over limited-designation routes regularly monitor the routes and activities of the incumbent. In addition, potential replacements as well as civic parties can learn of the suspension from the OAG and other public sources. At this stage of deregulation, carriers and communities should be expected to watch out for their own business interests either by monitoring potential new markets or keeping close watch on the service offered.

Second, since the NPRM was issued in 1982, the problems envisioned have not materialized. The proposal was issued mainly in response to the market disruptions that occurred shortly before Braniff filed for bankruptcy. Since that time, even in the absence of a notice requirement, the Board has been able to respond quickly to service suspensions and terminations and thereby avoid the types of market disruptions that prompted the Board's initial concern.

After more careful consideration, the Board finds that the reporting requirement would not have been useful in many cases. Carriers in financial trouble rarely make such damaging public disclosures in advance. In other cases, decisions to reduce or suspend service are made on short notice. Finally, the reporting requirement would have reduced carrier flexibility and thus could have discouraged continuation of service in marginal markets.

List of Subjects in 14 CFR Part 323

Air carriers, Essential air service.

Accordingly, the Civil Aeronautics Board terminates the rulemaking proceeding begun by PDR-80 and closes Docket 40903.

(Secs. 204, 401, 407, and 411, Pub. L. 85-726, as amended, 72 Stat. 743, 754, 766, 769; 49 U.S.C. 1324, 1371, 1377, 1381)

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

[FR Doc. 85-258 Filed 1-3-85; 8:45 am]

BILLING CODE 6320-01-M

14 CFR Part 383

[SPDR-71A; Docket 34997]

Consumer Protection for Scheduled-Service Tours; Termination of Rulemaking

AGENCY: Civil Aeronautics Board.

ACTION: Termination of rulemaking.

SUMMARY: The CAB is terminating a rulemaking proceeding concerning consumer protection rules for scheduled service tours because there have been few problems in this area. An advance notice of proposed rulemaking was issued in response to a petition by Steven Morrison and by general concerns raised by the Federal Trade Commission. The rulemaking is being terminated on the Board's initiative.

DATED: December 28, 1984.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the Assistant General Counsel, Regulations and Enforcement, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590; (202) 426-4723.

SUPPLEMENTARY INFORMATION: The Board issued an advance notice of proposed rulemaking (SPDR-71) concerning consumer protection rules for scheduled service tours. The ANPRM was issued in response to a petition filed by Steven K. Morrison and concerns raised by the Federal Trade Commission. The ANPRM asked for comments on whether the Board has jurisdiction over such tours, whether regulation is needed and if so, what type of remedial scheme would be most appropriate.

A number of comments were filed. The comments were split between those favoring regulation and those opposing it. The opponents argued that new regulation in this area is contrary to the goals of deregulation. They stated that there has never been governmental interference in these tours and that there is no demonstrable need for intervention. Pan Am argued that Board intrusion could create compounded government regulation at duplicative cost to the taxpayer and the industry.

Others, such as Delta, argued that competition rather than regulation is the most effective and efficient way to protect against consumer abuse. Delta noted that scheduled carrier tours are closely identified with the carrier. The carriers can screen operators and set up internal methods of quality control such as not paying the operator until the passenger returns. If there is a problem, it argued that carriers can respond in a flexible way or give a refund. In any event, Delta argued that carriers must maintain passenger goodwill and will take steps to ensure passenger satisfaction. Eastern and TWA stated that they provide similar protections.

Those supporting the proposed rule argued that there is a need for regulation in this area. They argued that the Board has legal authority to regulate all aspects of tours sold with air transportation. ACTOA stated that the legislative history of section 411 of the Federal Aviation Act, as amended, makes clear that the Board has jurisdiction over all persons who sell air transportation, as well as direct and indirect air carriers. It noted that at least one court has found that a scheduled-service tour is "in air transportation" when the seller deliberately intermixes the air and land portion in its sales. In any event, it argued that the Board has rulemaking authority under section 204 of the Act if the subject of the rulemaking furthers a purpose of the Act, prevents an evil enumerated in the Act, or is reasonably related to a purpose of the Act.

These commenters argued that, as a matter of policy, the Board should regulate all tours sold or solicited with air transportation. They stated that the problems experienced by consumers on scheduled-service tours are the same as those experienced on charter tours. ACTOA stated that since the Board does not keep track of the number of scheduled tour passengers and does not break down its statistics by the type of carrier, there is no basis to say that charter tours have traditionally generated more complaints than scheduled carrier tours. Assuming, arguendo, that charter tours actually precipitated more complaints than scheduled service tours, ACTOA argued that the reason is the passenger's subjective bias against charters. ACTOA concluded that consumer remedies for unsatisfied performance of package tours should be the same irrespective of the legal status of the offeror of such tickets.

The Board finds that no additional regulation is needed in this area. The comments overwhelmingly opposed regulating this area. There have been few consumer complaints filed with the Board. The Board finds that such rules are unnecessary because the air carriers offering the tours have been responsive to complaints and that there have not been the same abuses as with Public Charters. Moreover, in view of the fact that the ANPRM was published in July, 1979, the comments do not reflect the most current information on this issue and would not provide a sufficient basis to support the issuance of an NPRM.

Related Items

Transamerica filed a motion to consolidate this rulemaking with Docket 37169, which proposed to prohibit the inclusion of a force majeure clause in charter contracts between a direct air carrier and a charter operator. Transamerica requested that the Board consider the two rulemakings at the same time in order to decide whether the proposed prohibition should also be extended to scheduled service tours. Because the Board has decided to terminate the scheduled service tour rulemaking, we are denying Transamerica's petition. Docket 37169 is still pending and will be dealt within the final rule on charter air transportation.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 605(b)) requires agencies to consider whether their proposed rules would have a significant economic impact on a substantial number of small entities. The Act applies only to rulemaking proceedings begun after January 1, 1981. Because SPDR-71 was adopted July 19, 1979, the Act does not apply.

List of Subjects in 14 CFR Part 383

Air carriers; Charter flights; Consumer protection; Investigations; Penalties; Trade practices.

Accordingly the Civil Aeronautics Board takes the following actions:

1. The rulemaking proceeding begun in Docket 34977 is terminated and the Docket closed.

2. Transamerica's motion to consolidate Docket 34997 with Docket 37169 is denied.

(Secs. 204, 401, 402, 404, 411, and 416 of Pub. L. 85-726, as amended, 72 Stats. 743, 754, 757, 760, 769, 771; 49 U.S.C. 1324, 1371, 1372, 1374, 1381, and 1386)

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

[FR Doc. 85-260 Filed 1-3-85; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 884 and 886

Abandoned Mine Land Reclamation Programs; State Reclamation Plan Amendments

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining (OSM) Reclamation and Enforcement is proposing revisions to the requirements in 30 CFR 884.15 concerning amendments or revisions to State Abandoned Mine Land Reclamation Plans (AMLR), Under Title IV of the Surface Mining Control and Reclamation Act (SMCRA) of 1977, Pub. L. 95-87, States having approved abandoned mine land reclamation plans are eligible to receive grants from OSM to reclaim lands and water damaged by mining prior to August 3, 1977. Current regulations do not specifically address whether a State must amend its AMLR plan in response to regulatory changes adopted by OSM. To correct this situation, OSM is proposing that either OSM or a State can initiate procedures for amending State AMLR plans. This will ensure that State AMLR plans can be adjusted to meet changes in the Act or regulations.

DATE: Written Comments: Accepted until 5:00 p.m. February 4, 1985.

Public Meetings: Scheduled on request only.

ADDRESSES: Written comments: Hand deliver to the Office of Surface Mining, U.S. Department of the Interior; Administrative Record, (AMLR), Room 5315-L, 1951 Constitution Avenue, NW, Washington, D.C. 20240.

Public Meetings: OSM offices in Washington, D.C. and all OSM Field Offices.

FOR FURTHER INFORMATION CONTACT: Jim Fary, Abandoned Mine Land Reclamation Division, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW, Room 5401-L, Washington, D.C. 20240, Telephone (202) 343-7960.

SUPPLEMENTARY INFORMATION:

I. Public Commenting Procedures

Written Comments

Written comments shall be specific, pertaining only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Commenters are requested to submit five copies of their comments (See **"ADDRESSES"**). Comments received after the time indicated under "dates" or at locations other than the addresses listed above under **"ADDRESSES"** will not necessarily be considered or included in the Administrative Record for the final rulemaking.

Public Meetings

Persons wishing to meet with OSM representatives to discuss these proposed rules may request a meeting at any OSM office by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."**

II. Background

Title IV of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87 establishes an abandoned mine land program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or Federal law.

Each State, having within its borders coal mined lands eligible for reclamation under Title IV of SMCRA, may submit to the Department a State reclamation plan demonstrating its capability for administering an abandoned mine reclamation program. Title IV provides that the Department may approve the plan once the State has an approved regulatory program under Title V of SMCRA. If the Secretary determines that a State has developed and submitted a program for reclamation and has the necessary State legislation to implement the provisions of Title IV, the Secretary shall grant the State exclusive responsibility and authority to implement the provisions of the approved plan. Section 405 of SMCRA (30 U.S.C. 1235) contains the requirements for State reclamation plans.

The Secretary has adopted regulations that specify the content requirements of a State reclamation plan and the criteria for plan approval (30 CFR Part 884, 47 FR 28600-28601, June 30, 1982). Under these regulations, the Director of the Office of Surface Mining is required to review the plan and solicit and consider comments of other Federal agencies and the public. If the State plan is disapproved, the State may resubmit a revised reclamation plan at any time.

Upon approval of the State reclamation plan, the State may submit to the Office on an annual basis an application for funds to be expended in that State on specific reclamation projects which are necessary to implement the State reclamation plan as approved. Such annual requests are reviewed and approved by OSM in

compliance with the requirements of 30 CFR Part 886.

To codify information applicable to individual States under SMCRA, including decisions on State reclamation plans, OSM has established a new Subchapter T of 30 CFR Chapter VII. Subchapter T consists of parts 900 through 953.

Procedures for amending State reclamation plans are found at 30 CFR 884.15. They specify that a State may submit at any time a proposed amendment to the Director. If the proposed revision or amendment changes the objectives, scope or major policies followed by the State in the conduct of its reclamation program, the Director is to follow the procedures in 30 CFR 884.14 in approving or disapproving the submission. These regulations, however, do not address whether the Director, on his own initiative, can require States to amend their State reclamation plans in response to regulatory, statutory, or other changes.

This rulemaking proposes adding this authority for the Director in order to ensure that all State AML Plans reflect current regulatory and statutory provisions.

III. Discussion of Proposed Rules

Based on the preceding discussion, OSM is proposing to revise 30 CFR 884.15 to clarify the Director's authority to require States to revise their reclamation plans in response to changes in the Act, the Secretary's regulations or other significant events. The revised section provides that the Director may request that a State initiate procedures to amend their reclamation plans and that the Director may establish, after consultation with the State, a timetable which is consistent with established administrative and legislative procedures in the State for submitting an amendment to the reclamation plan. Failure to amend the reclamation plan within the specified time could result in either the suspension of the AMLR Plan, reduction, suspension or termination of existing grants or the withdrawal from consideration of all future grant applications.

Editorial changes in §§ 884.16 (suspension of plan) and 886.18 (termination of grants) have also been proposed to implement procedures in the proposed regulations.

IV. Procedural Matters

Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The proposed revisions to §§ 884.15, 884.16, 886.18 of the abandoned mine regulations would not result in 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 foreign markets; nor would they increase costs or prices for consumers, individual industries, Federal, State, Tribal or local governmental agencies or geographic regions.

There would be no significant demographic effects, direct cost, indirect costs, nonquantifiable costs, competitive effects, enforcement costs or aggregate effects on small entities.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

OSM has prepared an environmental assessment (EA) on this rule that reached the conclusion that this rule should not significantly affect the quality of the human environment. The EA is on file in the OSM Administrative Record Room 5315, 1100 "L" Street NW, Washington, D.C.

List of Subjects in 30 CFR Parts 884 and 886

Grant programs-natural resources, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Dated: November 8, 1984.

Garrey E. Carruthers,

Assistant Secretary, Land and Minerals Management.

For the foregoing reasons, OSM proposed to amend 30 CFR 884.15 and 16 and 886.18 as follows:

PART 884—[AMENDED]

1. 30 CFR 884.15 is revised as follows:

§ 884.15 State reclamation plan amendment.

(a) A State may, at any time, submit to the Director a proposed amendment or revision to its approved reclamation plan. If the amendment or revision changes the objectives, scope or major policies followed by the State in the conduct of its reclamation program, the Director shall follow the procedures set out in § 884.14 in approving or disapproving an amendment or revision of a State reclamation plan.

(b) The Director shall promptly notify the State of all changes in the Act, the Secretary's regulations or other circumstances which will require an amendment to the State reclamation plan.

(c) The State shall promptly notify OSM of any conditions or events that prevent or impede it from administering its State reclamation program in accordance with its approved State reclamation plan.

(d) State reclamation plan amendments may be required by the Director when—

(1) Changes in the Act or regulations of this chapter result in the approved State reclamation plan no longer meeting the requirements of the Act or this chapter; or

(2) Conditions or events change the State's implementation or administration of the approved State reclamation plan; or

(3) Conditions or events indicate that the approved State reclamation plan no longer meets the requirements of the Act or this chapter; or

(4) The State is not conducting its State reclamation program in accordance with the approved State reclamation plan.

(e) If the Director determines that a State reclamation plan amendment is required, the Director, after consultation with the State, shall establish a reasonable timetable which is consistent with established administrative or legislative procedures in the State for submitting an amendment to the reclamation plan.

(f) Failure of a State to submit an amendment within the timetable established or to make reasonable or diligent efforts in that regard may result in either the suspension of the reclamation plan under § 884.16, reduction, suspension or termination of existing AML grants under § 886.18, or the withdrawal from consideration for approval of all grant applications submitted under § 886.15.

§ 884.16 [Amended]

2. 30 CFR 884.16 is amended by revising paragraph (a) as follows:

* * * * *

(a) The Director may suspend a State reclamation plan in whole or in part, if he determines that—

(1) Approval of the State regulatory program has been withdrawn in whole or in part; or

(2) The State is not conducting the State reclamation program in

accordance with its approved State reclamation plan; or

(3) The State has not submitted a reclamation plan amendment within the time specified under § 884.15.

* * * * *

§ 886.18 [Amended]

1. 30 CFR 886.18 is amended by adding to paragraph (a)(7) as follows:

* * * * *

(7) If an agency fails to submit a reclamation plan amendment as required by § 884.15, OSM may reduce, suspend, or terminate in whole or in part all existing AML grants or may refuse to process all future grant applications.

* * * * *

(Pub. L. 95–87, 30 U.S.C. 1235)

[FR Doc. 85–95 Filed 1–3–85; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 913

Permanent State Regulatory Program of Illinois; Consideration of Modification of Deadline for Conditions of Approval

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: At the State's request, the Office of Surface Mining (OSM) is considering modifying the deadline for Illinois to meet two conditions of approval of its State permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The conditions concern sediment ponds and covering coal seams with water.

DATE: Written comments not received on or before 4:00 p.m. February 4, 1985, will not necessarily be considered.

ADDRESSES: Written comments must be mailed or hand-delivered to: Office of Surface Mining, Springfield Field Office, 600 E. Monroe Street, Room 20, Springfield, Illinois 62701.

FOR FURTHER INFORMATION CONTACT: Mr. James Fulton, Field Office Director, Office of Surface Mining, 600 E. Monroe Street, Room 20, Springfield, Illinois 62701; Telephone: (217) 492–4495.

SUPPMENTARY INFORMATION:

Background

The Illinois program was conditionally approved by the Secretary of the Interior on June 1, 1982 (47 FR 23858). Information pertinent to the general background, revisions, modifications and amendments to the proposed program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the June 1, 1982 **Federal Register.**

Under 30 CFR 732.13(j), the Secretary may conditionally approve a State permanent regulatory program which contains minor deficiencies where the deficiencies are of such a size and nature as to render no part of the program incomplete, the State is actively proceeding with steps to correct the deficiencies, and the State agrees to correct the deficiencies according to a schedule set forth in the notice of conditional approval. The schedule is established in consultation with the State based on the time required for changes to be adopted under State procedures or legislative schedules.

In accepting the Secretary's conditional approval, Illinois agreed to satisfy conditions (a), (d) and (e) by December 1, 1982 and conditions (b) and (c) by June 1, 1983. Conditions (a), (d) and (e) have been removed (48 FR 23412, May 25, 1983, and 48 FR 51619, November 10, 1983).

On May 23, 1983, Illinois requested a six-month extension of the June 1, 1983 deadline to satisfy conditions (b) and (c). August 19, 1983, OSM announced the decision to extend the deadline to December 1, 1983 (48 FR 37625).

On December 1, 1983, Illinois requested a further extension of the deadline for satifying conditions (b) and (c), until June 1, 1984. In its request, the State pointed to certain developments in the litigation on the approval of the Illinois program. The State noted that the United States District Court for the Central District of Illinois had granted, on November 30, 1983, the Secretary's motion to remand the *Illinois South Project* v. *Watt* (Civ. No. 82–2229) case to the Secretary for review in light of legal developments that have occurred since the approval date. Conditions (b) and (c) concern subjects that are directly at issue in the litigation and which may be affected by the Secretary's review on remand. In order to avoid rulemaking proceedings which may prove to be unnecessary, the State requested a six-month extension of the December 1, 1983 deadline. On February 22, 1984, OSM announced the decision to extend the deadline to June 1, 1984 (49 FR 6487).

On May 31, 1984, Illinois requested a further extension of the deadline, until November 30, 1984. The State noted that the conditions are directly affected by two cases which are still unresolved—*Illinois South Project* v. *Watt* and *Illinois Department of Mines and Minerals* v. *Watt*. The State indicated that it had hoped that the cases would have been resolved by June 1, 1984, but as they have not been, Illinois requested that possibly unnecessary rulemaking proceedings be delayed for six months. In the interim, Illinois stated that it would continue to enforce its regulations in accordance with the Federal regulations. On August 24, 1984, OSM announced the decision to extend the deadline to November 30, 1984 (49 FR 33645).

Condition (b) stipulates that Illinois must amend its program to require a cover of the pit floor and highest coal seam with a minimum of ten meters (33 feet) of water, and that pending completion of the above, Illinois may not use its authority to approve covering with less than 10 meters of water or the approval will terminate. Condition (c) stipulates that Illinois must amend its program to demonstrate that Illinois understands that at the present time the best technology currently available for sediment control is sedimentation ponds and should Illinois wish to approve any other technology, the State will first send the proposal to OSM for review and approval as either an experimental practice or a program amendment. Furthermore, pending completion of the above Illinois may not use its authority to approve situation structures other than sedimentation ponds or the approval will terminate.

Proposal To Extend Deadline

On November 28, 1984, Illinois requested a further extension of the deadline until May 30, 1985. The State noted that the remaining conditions were and remain directly affected by two cases which are still unresolved: *Illinois South Project et al.* v. *Watt* and the Federal District Court Case of the *Illinois Department of Mines and Minerals* v. *Watt*. The State indicated that it had hoped the cases would have been resolved by the November deadline, but unfortunately must again request an extension until May 30, 1985, to pursue rulemaking. Illinois stated hopefully this six month period will be sufficient time for the litigation to be resolved and the exact nature of the rulemaking to be delineated.

In accordance with the State's request, OSM is proposing that the deadline for the State to meet these conditions be extended until May 30, 1985. OSM requests comments on this proposed extension.

Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant

to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 16, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paper Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 913

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*

Dated: December 28, 1984.

Wesley R. Booker,

Acting Director, Office of Surface Mining.

[FR Doc. 85-213 Filed 1-3-85; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 938

Public Comment and Opportunity for Public Hearing on Proposed Modifications of the Pennsylvania Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; notice of receipt of permanent program modification; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing procedures for the public comment period and for a public hearing on the adequacy of proposed amendments to the Pennsylvania Permanent Regulatory Program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) submitted to OSM by Pennsylvania for the Director's approval. The amendments are intended to satisfy two conditions of the Secretary's approval of the Pennsylvania program. The two conditions, listed at 30 CFR 938.11(d) and 938.11(k), pertain to prime farmland requirements for proposed mining operations in the anthracite region and to bond release procedures. The State also submitted proposed changes to its permitting and blasting regulations.

This notice sets forth the times and locations that the Pennsylvania program and proposed amendments are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program elements, and the procedures that will be followed at the public hearing.

DATES: Written comments from members of the public not received by 4:30 p.m. on January 24, 1985, will not necessarily be considered in the Director's decision on whether the proposed amendments satisfy the criteria for approval.

A public hearing on the proposed amendments has been scheduled for 2 p.m. on January 22, 1985. Any person interested in making an oral or written presentation at the hearing should contact Mr. Robert Biggi at the address and telephone number listed below by January 15, 1985. If no person has contacted Mr. Biggi by this date to express an interest to participate in this hearing, the hearing will not be held.

ADDRESSES: The public hearing will be held at the Penn Harris Motor Inn and Convention Center, at the Camp Hill bypass at U.S. 11 and 15, Camphill, Pennsylvania, in the Keystone—A Convention Room. Written comments and requests for an opportunity to speak at the public hearing should be sent to Mr. Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, 101 South 2nd St., Suite L-4, Harrisburg, Pennsylvania 17101, Telephone: (717) 782-4036.

Copies of the Pennsylvania program, the proposed modification to the program and all written comments received in response to this notice will be available for public review at the OSM Field office above and the OSM Headquarters office listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays: Office of Surface Mining, 1100 "L" Street, NW, Room 5315, Washington, D.C., Telephone: (202) 343-5351.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, 101 South 2nd St., Suite L-4, Harrisburg, Pennsylvania 17101, Telephone: (717) 782-4036.

SUPPLEMENTARY INFORMATION:

I. Background on Conditional Approval

Under 30 CFR 732.13(i), the Secretary may conditionally approve a State permanent regulatory program which contains minor deficiencies where the deficiencies are of such a size and nature as to render no part of the program incomplete, the State is actively proceeding with steps to correct the deficiencies, and the State agrees to correct the deficiencies according to a schedule set in the notice of conditional approval. The curing of each deficiency is a condition of the approval. Steps to terminate the conditional approval must be taken if the conditions are not met according to the schedule. The dates are established in consultation with the State, based on the regulatory and administrative needs of the State's permanent program and SMCRA and the time required for changes to be adopted under State procedures or legislative schedules.

II. Background on Pennsylvania State Program

On February 29, 1980, the Secretary of the Interior received a proposed regulatory program from the State of Pennsylvania. On October 22, 1980, following a review of that proposed program as outlined in 30 CFR Part 732, the Secretary of the Interior disapproved the program. The State resubmitted its program on January 25, 1982, and, subsequently the Secretary approved the program conditioned on the correction of minor deficiencies. Information pertinent to the general background of the permanent program submission, as well as the Secretary's findings, the disposition of comments and explanations of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982 Federal Register (47 FR 33050). Additionally, on April 20, 1983, the United States District Court for the Middle District of Pennsylvania in *Pennsylvania Coal Mining Association* v. *Watt*, Civil No. 82-1129, remanded to the Secretary for correction the provision in the Pennsylvania program concerning the timing of the bond release hearing and the decision. Pursuant to 30 CFR 732.17(e), the Secretary notified Pennsylvania by a letter dated June 7, 1983, that a State program amendment was required to revise the State provision. In the **Federal Register** (48 FR 27102) dated June 13, 1983, OSM

announced its intention to impose new condition (k) on the approval of the Pennsylvania program to comply with the District court decision. The State responded to OSM's June 7, 1983 letter on July 27, 1983 and advised OSM that it would amend its regulations (PA 88.171) to rectify the matter. In the **Federal Register** dated September 6, 1983 (48 FR 40223), OSM imposed condition (k).

Submission of Program Amendments

On November 2, 1984, the Pennsylvania Department of Environmental Resources (DER) submitted program amendments to satisfy the requirements of OSM conditions of approval of the Pennsylvania program listed at 30 CFR 938.11(d) and 938.11(k).

Condition (d) stipulates that Pennsylvania must submit to the Secretary copies of promulgated regulations, or otherwise amend its program to require (1) that the applicant conduct a prime farmland investigation prior to mining in the anthracite region which is not less effective than 30 CFR 779.27, 783.27 (now cited at 30 CFR 785.17(b)), and in accordance with section 507(b)(16) of SMCRA; (2) that the applicant obtain with respect to prime farmland, a negative determination when proposing to mine coal in the anthracite region which is not less effective than 30 CFR 786.19(1) and section 510(d)(1) of SMCRA; and (3) the prohibition of bond release for anthracite mining operations until after the soil productivity for prime farmland has been returned to a level of yield comparable with non-mined prime farmland which is no less effective than 30 CFR 807.12(e)(2)(iii) (now cited at 30 CFR 800.40(c)(2)) in accordance with section 519(c)(2) of SMCRA.

Condition (k) stipulates that Pennsylvania must submit to the Secretary a copy of promulgated regulations or other amendments to its program to contain provisions no less effective than 30 CFR 800.40 (b)(2) and (f) to require the State to hold a bond release hearing or informal conference within 30 days after it is requested and that a decision be rendered within 30 days after the hearing or informal conference has been held.

In addition to amendments to satisfy conditions (d) and (k), Pennsylvania also submitted for OSM's approval proposed changes amending Sections 88.24, 88.30, 88.134, 88.135, 88.136, 88.137, 88.491 of Pennsylvania's regulations.

A specific listing of the proposed regulatory amendments submitted by the State is provided below:

Chapter 86

Section 86.37—(a)(13)—amended by adding references to Chapter 88 to satisfy OSM condition for primacy as required by 30 CFR part 938.11(d)(1) which requires the applicant to conduct a prime farmland investigation prior to mining in the anthracite region.

Section 86.171—revised to meet OSM conditions for primacy as required by 30 CFR 938.11(k) which requires a bond release hearing or informal conference within 30 days after it is requested and that a decision be rendered within 30 days after the hearing or informal conference.

Section 86.172(d)(2)(iii)—amended by adding reference to Chapter 88 to satisfy OSM condition for primacy as required by 30 CFR 938.11(d)(3) which prohibits bond release for anthracite operations until after the soil productivity for prime farmland has been returned to a level of yield comparable with non-mined prime farmland.

Chapter 88

Subchapter A: Anthracite Coal Mining Activities Application Requirements, Premining Resources

Section 88.1 Definitions—the following definitions were added to satisfy OSM conditions for primacy as required by 30 CFR 938.11(d) (1), (2) and (3) requiring prime farmland requirements for anthracite operations:

Cropland
Historically used for cropland
Prime farmland
Soil survey

Section 88.24 Geology

(b)(4)—The requirement to analyze for marcasite has been deleted.

Section 88.30 Description of Land Use

(a) (1)—changed for clarification [the map requirement of old (a)(1) is now included in (a)].

(a) and old (1)—added to clarify the content requirements of the statement and map required under paragraph (a).

Section 88.31 Maps and Plans

(a)(7)—revised to add the location and elevation of springs and wells to the mapping requirements.

Section 88.32 Prime Farmland Investigation

—Added to meet OSM conditions for primacy as required by 30 CFR 938.11(d) (1) and (2) requiring prime farmland requirements for anthracite surface mine operations.

Section 88.61 Prime Farmlands

—Added to comply with OSM conditions for primacy to meet the requirements of 30 CFR 938.11(d)(3) requiring prime farmland standards for anthracite surface mines.

Subchapter B: Surface Anthracite Coal Mines, Minimum Environmental Protection Performance Standards

Section 88.129 Revegetation: Standards for Successful Revegetation

—Added to comply with OSM conditions for primacy to meet the requirements to 30 CFR 938.11(d) (3) regarding prime farmland standards for anthracite surface mines.

Section 86.134 Blasting: General Requirements

(a)—clarification (storage and handling are covered by regulation of blasting in Pennsylvania).

(e)—clarification (replaces term "proximity" with set distance "500 feet").

Section 86.135 Blasting: Surface Blasting Requirements

(c)(1)—revised to define the distance from the operation for a warning.

(f)(2)—clarification (reference to Pennsylvania blasting regulations).

(h)—clarification (defines what the three mutually perpendicular directions are).

Section 88.136 Blasting: Near Underground Mines

(a)—clarification (replaces term "proximity" with a set distance "500 feet").

(c)—clarification regarding safety measures.

Section 86.137 Blasting: Records of Blasting Operations

(18)—clarification—the term "sketch" has been replaced with the term "arrangement" to be more precise regarding the information required.

(19)—old 19 deleted (information concerning the number of persons in the blasting crew). New (19) is old 20 renumbered.

Subchapter C: Antracite Bank Removal and Reclamation, Minimum Environmental Protection Performance Standards

Section 86.217 Vegetation: Standards for Successful Vegetation

—Added to comply with OSM conditions for primacy to meet the requirements of 30 CFR 938.11(d)(3) regarding prime farmland standards

for anthracite bank removal operations.

Subchapter D: Anthracite Refuse Disposal, Minimum Enivironmental Standards

Section 88.330 Revegetation: Standards for Successful Revegetation

—Added to comply with OSM conditions for primacy to meet the requirements of 30 CFR 938.11(d)(3) regarding prime farmland standards for anthracite disposal operations.

Subchapter E: Coal Processing Facilities

Section 88.381 General requirements

(b)(2)—clarification of reference.
(c)(6)—clarification of reference.
(c)(8)—added to comply with OSM conditions for primacy to meet the requirements of 30 CFR 938.11(d)(1), (2) and (3) regarding land use and prime farmland standards for anthracite coal processing facilities.
(c)(9)—change of number.

Subchapter F: Anthracite Underground Mines

Section 88.491 Minimum Requirements for Information on Environmental Resources

(i)(1)—revised to require landowner names and boundary information for anthracite underground mines.
(i)(13)—clarification (misprint).
(i)(22)—added to require surface feature information for the permit area and 1000 feet of permit area.
(i)(23)—clarification (number change).
(j)—clarification—the term "maps" added.
(k)—added to meet OSM conditions for primacy as required by 30 CFR 938.11(d) (1) and (2) requiring prime farmland requirements for anthracite underground operations.

Section 88.492 Minimum Requirements for Reclamation and Operation Plan

(m)—added to comply with OSM conditions for primacy to meet the requirements of 30 CFR 938.11(d)(3) requiring prime farmland standards for anthracite underground operations.

Section 88.493 Minimum Environmental Protection Performance Standards

(8)—added to comply with OSM conditions for primacy to meet the requirements of 30 CFR 938.11(d)(3) requiring prime farmland standards for anthracite underground operations.

The proposed amendments are available for review, in full text, at the addresses listed above. The Secretary seeks public comment on whether the proposed modifications to the Pennsylvania permanent program listed above satisfy OSM conditions of approval (d) and (k) and meet the criteria for approval of State program amendments at 30 CFR 732.15 and 732.17. If the Secretary determines the proposed modifications are consistent with SMCRA and no less effective than OSM's regulations, the amendments will be approved, and 30 CFR 938 modified accordingly.

Additional Determinations

1. *Compliance With the National Environmental Policy Act:* The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Compliance With the Regulatory Flexibility Act:* The Secretary hereby determines that this proposed rule will not have a significant economic impact on small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

3. Compliance With Executive Order No. 12291: On August 28, 1981, the Office of Management and Budget (OMB) granted the Office of Surface Mining exemption from sections 3, 4, 6, and 8 of Executive Order 12291 for all actions taken to approve, or conditionally approve, State regulatory program, actions, or amendments. Therefore, a Regulatory Impact Analysis and regulatory review by OMB is not needed for this program amendment.

List of Subjects in 30 CFR Part 938

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

(Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*)

Dated: December 28, 1984.

Wesley R. Booker,

Acting Director, Office of Surface Mining.

[FR Doc. 85-212 Filed 1-3-85; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

Disposal of National Forest System Timber

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed rule.

SUMMARY: These proposed rules implement the buy-out provisions of the Federal Timber Contract Payment Modification Act. They set forth procedures by which entitlement to the benefits provided by the Act can be established and prescribe how required payments will be determined.

DATE: Comments must be received by February 4, 1985.

ADDRESS: Send written comments to R. Max Peterson, Chief, (2400), Forest Service, USDA, P.O. Box 2417, Washington, DC 20013.

The public may inspect all written submissions made pursuant to this notice during regular business hours in the Office of the Director of the Timber Management Staff, Room 3207, South Agriculture Building, 12th and Independence Ave., SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David M. Spores, Timber Management Staff, (202) 447-4051.

SUPPLEMENTARY INFORMATION:

Background

The Federal Timber Contract Payment Modification Act of October 16, 1984, (98 Stat. 2213; 16 U.S.C. 618) authorizes and directs the Secretaries of Agriculture and the Interior to permit a Purchaser to return to the Government a volume of certain timber sale contracts.

The proposed rule will provide guidance to purchasers of National Forest timber and to Forest Service personnel on implementing the Act by establishing a new Subpart E, Timber Contract Payment Modification Program, in Part 223 of Title 36 of the Code of Federal Regulations.

These proposed rules will apply only to Forest Service contracts. However, the Act provides that similar rules be issued by the Secretary of the Interior for Bureau of Land Management timber sale contracts.

The Forest Service and Bureau of Land Management have engaged in extensive consultation and coordination during the development of their respective rules in order to achieve as much consistency as possible. Because of different statutory authorities and operating procedures, complete consistency is not possible. However, considerable uniformity has been achieved, and the Agencies will make further efforts to make the final rules of the two Departments as uniform as possible.

On August 26, 1983, at 48 FR 38862, the Forest Service, at the direction of the President, established a program to extend certain timber sale contracts. The new Act ratifies that extension program. Purchasers may buy out sales extended under the 1983 program. However, the Act prohibits the Forest

Service from including new contract provisions for calculating default damages for sales extended under that program.

In implementing the 1983 extension program, the Forest Service required Purchasers to submit Multi-Sale Extension Plans. Purchasers who buy out timber sales included in Multi-Sale Extension Plans must revise their plans to reflect the bought-out sales. Forest Service guidelines related to the revision of Multi-Sale Extension Plans will be modified to accommodate the effects of the Federal Timber Contract Payment Modification Act. The guideline changes will be announced in the Federal Register so that they may be available to interested parties.

The Forest Service proposes to implement the buy-out provisions of the Federal Timber Contract Modification Act as explained in this section. In addition, the Forest Service Manual will be amended to provide the following guidance for administration of the buy-out program.

1. *Regional Foresters Authority.* The Regional Forester to whom an application for contract buy-out is submitted will review the application so as to verify data submitted and determine the applicable buy-out costs and volume entitlement. Applications to buy out contracts not meeting the buy-out requirements will be rejected. A Regional Forester who reviews an application shall coordinate data verification and calculation of buy-out charges and volume entitlement with the Bureau of Land Management if the Purchaser's request for buy-out includes sales from both agencies. Action on a Purchaser's buy-out request may be delegated by the Regional Forester to a Forest Supervisor for Purchasers holding only national forest timber on a single national forest.

2. *Verification of Purchaser's Net Book Worth.* Regional Foresters shall develop a sample audit program to verify Net Book Worth data submitted by Purchasers.

3. *Responsibility of Contracting Officers.* Contracting Officers shall review the timber sales included in applications for buy-out. They shall recommend Regional Forester acceptance or rejection of each such sale for buy-out. They shall notify Purchasers in writing of the measures necessary to complete work to Logical Stopping Points on partially performed sales. The objective is to place partially performed sales in a condition which minimizes the risk that significant resource damage will occur, pending resale of the included timber.

4. *Eligibility of Partially Performed Contracts.* A Purchaser will be able to buy out a partially perfomed contract only after remedying any aspect in which contractual performance to date was not in full compliance with the contract terms. The general rule is that work performed on partially cut units will be completed before a partially performed contract can be bought out. However, if the Contracting Officer determines, upon request, that the remaining timber can be incorporated into a logical economic unit when the timber is resold, the Contracting Officer may accept return of a partially harvested unit. For example, a cutting unit planned for logging to two highlead settings may be accepted if logging to only setting is completed and the unlogged area constitutes an economic unit for resale. The Forest Service might also approve buy-out for a unit involving several landings in which planned cutting is completed to less than all landings but (1) where the areas served by the landings that have been used are entirely cut in accordance with the contract requirements and (2) the remaining portion of the unit constitutes an economic unit when the timber is resold. Generally, all timber tributary to a landing on which falling of tributary timber has begun must be yarded before the sale may be accepted for buy-out.

a. *Logical Stopping Points.* If a Purchaser's operations have created a need for additional work, such as contractually required erosion control or brush disposal, this work must be completed before the remainder of the contract can be bought out. Similarly, if work has begun on a timber sale road, the work must be completed at least to the point that soil exposed by the road construction and the roadbed are stabilized; where excavation is under way this may require completion of excavation on the section of the road in order to permit proper drainage. Likewise, such work as stream protection and measures to allow fish passage and wildlife movement must be completed before a contract is eligible for buy-out. The Contracting Officer, after consultation with the Purchaser, shall determine the Logical Stopping Points for such work.

b. *Completion of Cutting Units.* If the Contracting Officer determines that completion of a partially harvested unit or a part of such a unit is necessary before the remainder of the contract can be bought out, the Purchaser may, upon agreement of the Contracting Officer, fulfill this obligation by falling, yarding, and decking the timber if the remaining timber is not subject to rapid deterioration and is suitable for resale. Such volume will be subject to the Buy-Out Charge. If these conditions are not met, the Purchaser must remove the timber from the sale area at current contract rates in order to buy out the contract. In addition, the Purchaser must meet other contract requirements such as erosion control and slash disposal for the unit.

c. *Deterioration Loss.* A partially performed sale with felled timber which has deteriorated shall not be accepted for buy-out unless the Purchaser, in addition to the Buy-Out Charge, pays for the volume affected by deterioration at current market rates. The Forest Service will establish the value and volume of deteriorated timber. The volume estimated to have deteriorated will be included in the contract volume upon which the Buy-Out Charge is calulated.

5. *Average Market Yield Rates.* The Chief will furnish Regional Foresters the current value of the "average market yield of outstanding Treasury obligations with remaining years to maturity of five years." This information is calculated monthly by the Treasury Department and is available upon request. The rate has varied between 11⅝ and 13½ percent during 1984. The December 1984 rate is 11½ percent.

6. *Public Disclosure.* No assurance can be provided that the material submitted, including a showing of Net Book Worth, can be protected from public disclosure. All requests for information submitted pursuant to the Federal timber Contract Payment Modification Act will be handled pursuant to the Freedom of Information Act (5 U.S.C. 552, as amended).

Regulatory Impact

The Federal Timber Contract Payment Modification Act directs the Secretary of Agriculture and the Secretary of the Interior to publish final regulations implementing the act within 90 days of its enactment. Because of this legislated timeframe, review by the Director of the Office of Management and Budget in advance of publication of this proposed rule is impracticable. This action has been submitted for review pursuant to Executive Order 12291. The Department of Agriculture has determined that this regulation is not a major rule. It implements those portions of the Federal Timber Contract Payment Modification Act that allow Purchasers of Forest Service timber sale contracts to return certain of these contracts to the Secretary of Agriculture upon satisfaction of specified conditions and payments. The Federal Timber Contract Payment Modification Act is intended to prevent a large number of potential

insolvencies among Purchasers of Federal timber, to preserve the employment generated by the forest products industry, and to avoid financial disruption to communities economically dependent upon the industry.

The only discretion available to the Secretary under the Act is in establishing administrative procedures to implement the buy-out provisions of the Act. The implementing procedures proposed in this rule seek to minimize further cost to both the Government and Purchasers by:

1. Limiting procedures to those set forth in the Act as much as possible;

2. Following standard Forest Service contracting practice and procedure wherever possible;

3. Providing cost effective methods for administering the buy-out provisions; and,

4. Minimizing delay and disruption to the ongoing timber management program and to Purchasers of timber sales.

Separately from the provisions of the Act, the procedures proposed by this rule will not have an annual effect on the economy of $100 million or more, will not result in major increases in costs for consumers, individual industries, Federal, State, or local Government agencies or geographic regions, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, and the ability of United States-based industries to compete with foreign-based enterprises in domestic or export markets.

The Assistant Secretary of Agriculture for Natural Resources and Environment has determined that this rule, separately from the provisions of the Act, will not have significant economic impacts on a substantial number of small entities. The Act applies equally to small and large entities and establishes the qualifications and the calculation of the amount to be paid or arrangements to be made in order to buy out a Federal timber contract.

Based on environmental analysis, this proposed rule will not significantly affect the environment. An environmental impact statement is not required under the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping provisions that are included in this proposed rule will be submitted to the Office of Management and Budget (OMB) pursuant to the procedures of 5 CFR Part 1320. Reporting and recordkeeping provisions will not be effective until OMB approval has been obtained.

List of Subjects in 36 CFR Part 223

Exports, Government contracts, National forests, Reporting and recordkeeping requirements, and Timber.

PART 223—[AMENDED]

For the reasons set out in the preamble, Part 223 of Chapter II, Title 36, Code of Federal Regulations is proposed to be amended as follows:

1. Revise the authority citation for Part 223 to read as follows:

Authority: Sec. 14, Pub. L. 94-588, 90 Stat. 2958, 16 U.S.C. 472a, unless otherwise noted. Subpart E also issued under sec. 2, Pub. L. 98-478, 98 Stat. 2213, 16 U.S.C. 618.

2. Add a new Subpart E to read as follows:

Subpart E—Federal Timber Contract Payment Modification Program

Sec.

Subpart E—Federal Timber Contract Payment Modification Program

§ 223.170 Definitions.

The terms used in this subpart have the following meaning:

"Act"—The Federal Timber Contract Payment Modification Act.

"Affiliates"—Business concerns or individuals are Affiliates if directly or indirectly, (1) either one controls or has the power to control the other, or (2) one or more third parties controls or has the power to control both. In determining whether or not affiliation exists, consideration shall be given to all appropriate factors, including, but not limited to, common ownership, common management, and contractual relationships. Concerns affiliated at any time during the period of June 1, 1984, to the date of the Purchaser's buy-out application shall be considered Affiliates for purposes of determining Purchaser's Net Book Worth and Volume Entitlement. The effect of joint venture agreements upon affiliation will be determined on a case-by-case basis, based upon the nature of the relationship established by the joint venture.

"Buy-Out Cost," Buy-Out Charge"—The payment prescribed by § 223.173 of this subpart for each one thousand board feet of Net Merchantable Sawtimber, or equivalent, to be bought out. It does not include any payments, deposits, claims, or costs required by or under the timber sale contracts involved or payments for deterioration of felled timber on the ground.

"Conditionally Returned Contract"—An otherwise qualified timber sale contract under which harvest or road construction required by the contract has begun, but on which either harvest operations or road construction have not yet been completed to a Logical Stopping Point and on which the Purchaser has yet to complete specified requirements before the contract can be bought out.

"Contract Overbid"—The difference between the weighted average advertised contract rate for the Net Merchantable Sawtimber and the weighted average rate the Purchaser bid for the Net Merchantable Sawtimber.

"Contracting Officer"—The designated Forest Service officer having authority to make decisions relating to the timber sale contract.

"Current Delivered Log Cost"—The Forest Service or Bureau of Land Management estimate as of October 16, 1984, (developed to determine the Purchaser's Loss on a timber sale) of the cost, including payment at current contract rates, to a Purchaser of average efficiency to produce and deliver logs from that sale.

"Current Delivered Log Value"—The Forest Service or Bureau of Land Management estimate as of October 16, 1984, (developed in order to determine a Purchaser's Loss on a timber sale) of the value of delivered logs from that sale.

"Defaulted Contract"—An uncompleted Forest Service timber sale contract that has expired, or has been abandoned or repudiated by the Purchaser, or has been cancelled by the Forest Service pursuant to a breach of the contract by the Purchaser. The date of default in such circumstances is the date of expiration, abandonment, repudiation or cancellation, as applicable.

"Effective Purchaser Credit"—Unused earned Purchaser Credit that does not exceed "Current Contract Value" minus "Base Rate Value" as defined in Forest Service timber sale contracts.

"Independent Certified Public Accountant"—An individual, or partnership of individuals, licensed under State law to render an opinion on the correctness of financial statements and not an employee of the applicant or of an Affiliate of the applicant.

"Logical Stopping Point"—The point of accomplishment, as determined by the Contracting Officer after consultation with the Purchaser, to which Purchaser must timely complete contractually required work. Such point shall, as determined by the Forest Service, include removal of felled timber or payment for deterioration to felled timber.

"Net Book Worth"—The excess of assets (using historical cost-basis accounting principles) over liabilities, as determined through consistently applied and generally accepted accounting standards. For a corporation, Net Book Worth represents the shareholders' equity. For a partnership, Net Book Worth represents the sum of the partners' capital accounts. For a proprietorship, Net Book Worth represents the owner's properietorship account for that business concern. The worth so determined, however, shall be adjusted if necessary so as to exclude any asset or liability arising from any outstanding, uncut Federal timber sale contract. For a Purchaser with Affiliates, Net Book Worth shall be consolidated for that Purchaser and its Affiliates.

"Net Merchantable Sawtimber"—That volume of timber included in Forest Service timber sales characterized as "logs" or "sawlogs" and meeting the utilization standards stated in provisions A–2, AT–2, or 2 of Forest Service timber sale contracts.

"Purchaser"—An individual or entity holding either: (1) A Qualifying Contract; of (2) a Qualified Defaulted Contract.

"Purchaser Credit"—The credit earned pursuant to a Forest Service timber sale contract for construction of specified roads or as otherwise provided in such contracts.

"Purchaser's Loss"—The result of subtracting the Current Delivered Log Value from the Current Delivered Log Cost on a Qualifying Contract or on a Qualified Defaulted Contract held by the same party or an Affiliate both on June 1, 1984, and on the date application for buy-out is made.

"Purchaser's Aggregate Loss"—The total Purchaser's Loss determined for a Purchaser and its Affiliates on all its or their Qualifying Contracts and Qualified Defaulted Contracts.

"Qualified Defaulted Contract"—An otherwise Qualifying Contract which was defaulted after January 1, 1981, and which meets the following conditions:

(1) Settlement for damages has not been reached between the Purchaser and the United States.

(2) The Purchaser's Aggregate Loss as determined under these rules exceeds 50 percent of the Purchaser's Net Book Worth.

"Qualifying Contract"—A Forest Service timber sale contract bid prior to January 1, 1982, for an original contract period of 10 years or less, and which is still in effect both on June 1, 1984, and on the date application for buy-out is made.

"Volume Entitlement"—The aggregate volume of Bureau of Land Management and Forest Service Net Merchantable Sawtimber that may be bought out under the Act.

§ 223.171 Application for contract buy-out.

(a) *Contents.* Within 90 days of final publication of these rules, any Purchaser making application for contract buy-out shall provide the Regional Forester of the Region in which the Purchaser holds the greatest volume of National Forest timber under contract, the following information:

(1) Names and addresses of all Affiliates.

(2) (i) A list of all Forest Service and Bureau of Land Management Qualifying Contracts and Qualified Defaulted Contracts held by the Purchaser and its Affiliates on January 1, 1982.

(ii) A list of all Forest Service and Bureau of Land Management Qualifying Contracts and Qualified Defaulted Contracts held by the Purchaser and its Affiliates on both June 1, 1984, and the date the application for buy out is made.

These lists shall show the timber sale name, contract number, contract date, and Net Merchantable Sawtimber volume remaining under contract as of January 1, 1982, and at the date application for buy-out is made. The Net Merchantable Sawtimber volume remaining under contract is determined by subtracting the volume removed and paid for as of the specified date from the advertised contract volume.

(3) If Purchaser claims eligibility for a Buy-Out Cost less than the maximum Buy-Out Cost prescribed by Section 2(a)(3)(A)(iii) of the Act (16 U.S.C. 618(a)(3)(A)(iii)), Purchaser shall provided a certification of combined Net Book Worth of itself and its Affiliates, together with supporting data therefore, as prescribed by § 223.171(b).

(4) A list of Qualifying Contracts and Qualified Defaulted Contracts held by the Purchaser and its Affiliates as of June 1, 1984, and on the date of application for buy-out that the Purchaser requests to buy out. The total Net Merchantable Sawtimber volume requested to be bought out shall be within the Purchaser's Volume Entitlement. The contracts shall be arranged in the order of preference for buy-out.

(5) If Purchaser is in bankruptcy, approval of the application by the Bankruptcy Court.

(6) If Purchaser requests use of the alternate method for payment of Buy-Out Cost available pursuant to § 223.176, Purchaser shall provide the written statements required by subsection (b) of that section.

(b) *Election to Certify Net Book Worth.* A Purchaser electing to certify Net Book Worth shall submit the following as part of its application for contract buy-out:

(1) A special purpose statement certified by an Independent Certified Public Accountant stating the Net Book Worth of the Purchaser and its Affiliates. Net Book Worth shall be reported as of the end of the most recently completed fiscal-year quarter for the Purchaser and its Affiliates.

(2) A copy of the most recent annual income statement and balance sheet of the Purchaser and Affiliates. If more than 3 months have elapsed since completion of such fiscal year, the Purchaser shall also supply an income statement for the period from the end of the fiscal year to the end of the most recently completed fiscal-year quarter and a balance sheet as of the end of such quarter.

(3) The name, address, and telephone number of the Independent Certified Public Accountant certifying the special purpose statement.

(4) An agreement that the Purchaser (i) will retain for 3 years the accounting records used to develop its financial statements for the determination of Net Book Worth, and (ii) will make such information available, upon request, for Forest Service verification and for Office of Inspector General review.

(5) A statement signed by the Purchaser or, in the case of a corporate Purchaser, by its chief operating officer, certifying that the special purpose statement as to the Purchaser's Net Book Worth is true and correct; that the statement is made within the scope of 18 U.S.C. 1001; and that the submitted financial statements of the Purchaser and its Affiliates (i) accurately reflect the operating results for the period covered, (ii) are a true and correct representation of the financial condition of the Purchaser and its Affiliates as of the date indicated, and (ii) are in accordance with accounting standards generally applied in the forest products industry.

(c) *Determination of eligibility*—The Regional Forester to whom the application for contract buy-out is

submitted shall determine (1) the qualification for buy-out of contracts listed, (2) Volume Entitlement, (3) Purchaser's Loss of each Qualifying Contract and on each Qualified Defaulted Contract, and (4) Purchaser's Aggregate Loss. The Regional Forester shall notify the Purchaser of those determinations. If the Regional Forester determines that any contract elected for buy-out is not a Qualifying Contract or is not a Qualified Defaulted Contract, or is ineligible to be a Conditionally Returned Contract, the Purchaser shall have 10 days after receipt of notification from the Regional Forester of this determination in which to submit a revised list of qualifying Contracts and Qualified Defaulted Contracts for which buy-out is elected.

§ 223.172 Volune entitlement.

(a) *Basis for entitlement.* Volume Entitlement shall be based on the total volume of Net Merchantable Sawtimber held by Purchaser and Affiliates as of January 1, 1982, in otherwise Qualifying Contracts and Qualified Defaulted Contracts, including Bureau of Land Management contracts, open as of June 1, 1984. For purposes of determining Volume Entitlement, the party holding the contract as of January 1, 1982, need not be the same party holding the contract as of June 1, 1984.

(b) *Holders of more than 27.3 million board feet.* A Purchaser and Affiliates holding more than 27.3 million board feet of Net Merchantable Sawtimber in Qualifying Contracts, Qualified Defaulted Contracts, and in qualifying Bureau of Land Management contracts as defined in 49 FR 47513 as of January 1, 1982, are entitled to buy out up to 55 percent of such sawtimber volume up to a maximum of 200 million board feet.

(c) *Holders of 27.3 million board feet or less.* A Purchaser and Affiliates holding a total of 27.3 million board feet or less of Net Merchantable Sawtimber in Qualifying Contracts, Qualified Defaulted Contracts, and in qualifying Bureau of Land Management contracts as defined in 49 FR 47513 as of January 1, 1982, are entitled to buy out up to 15 million board feet of such timber volume or one contract, whichever is greater in volume.

(d) *Volume exceptions.* (1) Only where a Purchaser and Affiliates could not otherwise attain its or their percentage of volume eligibility for buy-out, and provided the maximum volume of 200 million board feet is not exceeded, the percentage limitation of Paragraph (b) of this section or the volume limitation of paragraph (c) of this section may be exceeded by a volume amount not to exceed the volume of the smallest contract requested for buy-out by the Purchaser and Affiliates.

(2) If a Purchaser and Affiliates cannot otherwise attain its or their full volume eligibile for buy-out, Purchaser may buy out of a Qualifying Contract by paying, in addition to the Buy-Out charge, current contract rates under the contract for so much of the volume in the contract as would cause the total volume being bought out by the Purchaser and its Affiliates to exceed 200 million board feet of Net Merchantable Sawtimber.

§ 223.173 Buy out cost.

(a) *Calculation with net book worth.* The Buy-Out Cost shall be as follows:

(1) If a Purchaser's Aggregate Loss exceeds 100 percent of Net Book Worth, the Buy-Out Cost shall be $10 for each thousand board feet to be bought out;

(2) If a Purchaser's aggregate Loss is between 50 percent and 100 percent of Net Book Worth, the Buy-out Cost for each thousand board feet shall be either 10 percent of the Contract Overbid for each contract affected, or $10, whichever is more;

(3) If a Purchaser's aggregate Loss is 50 percent or less of Net Book Worth, the Buy-Out Cost shall be determined on the basis of percentages in 25 million board feet increments according to the following scale:

(i) For the first 125 million board feet, the Buy-Out Cost for each thousand board feet shall be either 15 percent of the Contract Overide for each contract affected, or $10, whichever is more;

(ii) For any amount above 125 million board feet to 150 million board feet, the Buy-Out Cost for each thousand board feet shall be either 20 percent of the Contract Overbid for each contract affected, or $10, whichever is more;

(iii) For any amount above 150 million board feet to 175 million board feet, the Buy-Out Cost for each thousand board feet shall be either 25 percent of the Contract Overbid for each contract affected, or $10, whichever is more;

(iv) For any amount above 175 million board feet to 200 million board feet, the Buy-Out Cost for each thousand board feet shall be either 30 percent of the Contract Overbid for each contract affected, or $10, whichever is more.

(b) *Calculation without net book worth.* If a Purchaser and its Affiliates elect not to supply the Net Book Worth information required in § 223.171(b), the applicable Buy-Out Cost shall be as prescribed by paragraph (a)(3) of this section.

§ 223.174 Conditions for return of timber sale contracts.

(a) *Contracts returned in full.* Qualifying Contracts bought our pursuant to this subpart which have had no harvesting or road construction work performed shall be returned in full.

(b) *Conditionally returned contracts.* A Conditionally Returned Contract included in Purchaser's application under § 223.171(a)(4) shall be subject to discretion of the Regional Forester either: (1) To reject return of the contract because the remaining unharvested volume is substantially unrepresentative of the original sale as a whole in terms of species, logging costs, or other appropriate criteria, and because accepting the returns of such a contract would seriously disadvantage the Government; or (2) to accept the return after compliance by the Purchaser with conditions prescribed by the Contracting Officer.

(c) *Logical Stopping Points.* A Conditionally Returned Contract will be accepted for buy-out after the Purchaser has completed contractual obligations for the units on which harvest has begun, including road construction, to Logical Stopping Points. The Purchaser shall return in full cutting units on which harvest has not begun. A Logical Stopping Point shall include removal of any felled timber on the ground at current contract rates or payment for the volume of such timber affected by deterioration at current market rates. The volume and value of deteriorated timber shall be established by the Forest Service. Such payment shall be in addition to payment of Buy-Out Cost for the volume of timber affected by deterioration.

(d) *Remedy for breach.* Before the Forest Service will accept a Conditionally Returned Contract for buy-out, a Purchaser shall remedy any contract breach or other aspect in which work performed to date is not in full compliance with the terms of the contract. A contract in breach only because of failure to pay extension deposits or interest on extension deposits shall become eligible for buy-out upon payment of the full amount of interest due up to the date the Purchaser's buy-out application is received by the Forest Service.

(e) *Time limits.* After consultation with the Purchaser respecting each Conditionally Returned Contract, the Contracting Officer will establish reasonable dates for the Purchaser to complete such contracts to a Logical Stopping Point. Such dates will be specified as part of the approval of the conditional return. Failure to complete

requirements within the established time shall result in rejection of a Conditionally Returned Contract unless the delay is caused by factors beyond control of the Purchaser.

(f) *Notification of conditions.* Upon notification from the Contracting Officer of the conditions that must be met in order for a Conditionally Returned Contract to be accepted, a Purchaser may, within 10 days submit an amended buy-out application subtituting other Qualifying Contracts or Qualified Defaulted Contracts.

(g) *Final Volume for Buy-Out Cost.* To determine the Buy-Out Cost for a Conditionally Returned Contract, the Contracting Officer will compute the final volume by substracting the Net Merchantable Sawtimber volume paid for from the advertised Net Merchantable Sawtimber volume. The Net Merchantable Sawtimber volume paid for shall include volume removed and paid for as a condition for buy-out of the contract.

§ 223.175 Return of contracts.

(a) *Release from further obligations.* The Forest Service shall release a Purchaser from further obligation to cut, remove, and pay for timber under a returned contract upon:

(1) Payment or arrangement for payment (§ 223.176) of the applicable Buy-Out Cost;

(2) Timely payment of any Government claim against the Purchaser that arose under the contract prior to buy-out; and,

(3) Timely completion of the conditions prescribed by the Contracting Officer if the contract is a Conditionally Returned Contract (§ 223.174).

(b) *Contracts without harvest.* Contractual obligations on a contract under which harvest has not begun shall be held in abeyance as of the date of Regional Forester receives a Purchaser's completed application for contract buy-out pursuant to § 223.171. The period of abeyance shall continue until the contract is released pursuant to paragraph (a) of this section or until the contract is determined to be unqualified for buy-out. If a contract is determined to be unqualified for buy-out, the Purchaser shall be responsible for payment obligations and interest accruals arising during the period of abeyance.

(c) *Contracts with harvest.* A contract under which harvest has begun will remain in full force and effect until release pursuant to paragraph (a) of this section.

§ 223.176 Alternate method of payment.

(a) *Quarterly buy-out payments.* If a Purchaser is unable to obtain sufficient credit at reasonable rates and terms to finance the Buy-Out Cost, the Purchaser, upon payment of 5 percent of the Buy-Out Cost, may execute a promissory note in form satisfactory to the Secretary to pay the remainder of the Buy-Out Cost in equal quarterly payments over a period of not to exceed 5 years at an interest rate adjusted at each payment equal to the average market yield of outstanding Treasury obligations with remaining years to maturity of 5 years. To guarantee payment, Purchaser must provide an acceptable surety bond on a form provided by the Forest Service, or provide an irrevocable letter of credit, or securities of the United States, in an amount sufficient to cover the entire buy-out payment.

(b) *Eligibility establishment.* To establish inability to obtain sufficient credit elsewhere, a Purchaser must provide a written statement from three State or Federally chartered lending institutions. One of these statements must be from a lending institution with whom the Purchaser usually transacts business and must so state. Each statement must show that the Purchaser has, upon application in form and detail acceptable to the lending institution, been denied a loan from that lending institution for all or part of the amount equal to the Buy-Out Cost at an interest rate within 4 percentage points above the current average market yield of outstanding Treasury obligations with remaining years to maturity of 5 years. The statement must be signed by an authorizing officer of the institution.

§ 223.177 Credits against buy-out charges.

A Contracting Officer may permit certain unobligated credits in a timber sale account of Forest Service contracts to be bought-out to be credited against the Buy-Out Charge as determined by the Contracting Officer. Examples of such credits include earned, unused Effective Purchaser Credit and unencumbered cash deposits.

§ 223.178 Buy-out payments.

(a) *Determination of purchaser's buy-out cost.* The Regional Forester to whom the application for contract buy-out is submitted will obtain the Bureau of Land Management authorized officer's determination of the purchaser's loss on any Bureau of Land Management qualifying contracts included in the application for use with the Purchaser's Aggregate Loss on Forest Service contracts (§ 223.171)(c)), to determine the Buy-Out Cost (§ 223.173) for Forest Service timber sale contracts.

(b) *Purchaser Payment.* The Purchaser shall make Buy-Out Cost payments for Forest Service contracts within 30 calendar days of billing by the Regional Forester.

Dated: December 31, 1984.

John B. Crowell, Jr.,

Assistant Secretary for Natural Resources and Environment.

[FR Doc. 85-285 Filed 1-3-85; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-6-FRL-2748-2]

Approval and Promulgation of State Implementation Plan; Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: By this Notice EPA proposes to promulgate a federal compliance date for the Texas lead State Implementation Plan (SIP) for El Paso County for compliance with certain lead pollution control measures at the ASARCO primary lead smelter in El Paso. This action is pursuant to the requirements of section 110(c) of the Clean Air Act (hereinafter referred to as the Act). EPA previously approved most of the Texas lead SIP for El Paso, but disapproved a specific compliance date, on August 13, 1984 (49 FR 32184).

DATE: Comments and any request for a public hearing on this action must be received or postmarked on or before February 4, 1985.

ADDRESSES: Comments and requests for public hearing should be addressed to: John Hepola, EPA, State Implementation Plan Section (6AW-AS), 1201 Elm Street, Dallas, Texas 75270. Attention: Docket No. 6A-84-01.

The rulemaking file, including the Technical Support Document, may be inspected at the following locations between 8:00 am and 4:30 pm on weekdays, and a reasonable fee may be charged for copying:

U.S. Environmental Protection Agency, Central Docket Section, West Tower, Lobby, Gallery No. 1, 401 M Street, SW., Washington, D.C. 20460

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

El Paso City Health Department, 222 South Campbell, El Paso, Texas 79901.

FOR FURTHER INFORMATION CONTACT: Keith Baugues, State Implementation Plan Section, EPA, Dallas, Texas 75270. Telephone (214) 767–1518. (FTS) 729–1518.

SUPPLEMENTARY INFORMATION:

I. Introduction

Today's action is in response to a court ordered schedule resulting from a Settlement Agreement reached on July 26, 1983 between EPA and the Natural Resources Defense Council, Inc. (NRDC et al v. Ruckelshaus et al, Civil Action No. 82–2137) in the U.S. District Court for the District of Columbia. The State of Texas submitted a final lead SIP for El Paso on June 29, 1984, which EPA approved on August 13, 1984 (49 FR 32184), except for a disapproval of one compliance date which the State had included in the SIP. For SIPs or portions of SIPs which EPA has disapproved, EPA is required by the Settlement Agreement to propose a federal SIP by October 1, 1984. This notice is proposing a federal compliance date for the installation of certain control measures required by the Texas lead SIP for El Paso, and requests public comments on EPA's proposed actions.

II. Background

On October 5, 1978, EPA promulgated a National Ambient Air Quality Standard (NAAQS) for lead of 1.5 ug/m^3, averaged over a calendar quarter. Pursuant to the requirements of section 110(a) of the Act, states were then to submit a SIP to implement the standard. If a State's SIP does not conform to the requirements of section 110(a), EPA is required to prepare and publish a SIP which does meet those requirements. When the states and EPA did not complete these actions, the Natural Resources Defense Council (NRDC) and others sued EPA in July, 1982. In settling the suit, EPA and the other parties negotiated schedules for prompt completion of action on the SIPs.

In July 1983, the federal government signed an agreement with NRDC and other plaintiffs which called for certain lead SIPs (including the Texas lead SIP for El Paso) to be submitted to EPA in time to allow EPA to propose approval of the SIP by January 3, 1984. The Texas Air Control Board (TACB) developed a draft lead SIP for El Paso which required the implementation of RACT measures at the ASARCO-El Paso smelter. After review of the draft lead control plan and regulations for El Paso which TACB submitted to EPA on September 8, 1983, EPA proposed approval of the draft SIP and regulations on December 29, 1983 (48 FR 57336). The State submitted a final lead control plan for the El Paso area in a letter dated June 20, 1984, which differed in some respects from the draft. The final lead control plan is described below, along with EPA's action. The plan also included Texas Air Control Board regulations for El Paso County applicable to lead smelters, including the ASARCO facility. The ASARCO lead control plan, the El Paso County lead smelter regulations, and the public comments concerning EPA's December 1983 **Federal Register** proposal, are discussed in EPA's "Evaluation Report for the Texas Lead SIP for the El Paso Area," dated June 1984, which is available for review at the addresses listed in the **ADDRESSES** section of this notice. EPA's final approval/disapproval of the El Paso lead SIP was published in the **Federal Register** on August 13, 1984 (49 FR 32184). The final rulemaking on the El Paso lead SIP approved most of the SIP, including approval of the State's commitments to do further studies to determine what additional control measures (beyond reasonably available control technology) the State will adopt and implement to fully demonstrate attainment in all areas in El Paso. The currently approved Texas lead SIP provides for attainment of the lead NAAQS in all areas of El Paso by August 13, 1987 except for a limited area directly around the ASARCO-El Paso lead smelter (please see the August 13, 1984 FR notice). The only part of the El Paso lead SIP which was disapproved concerned the final compliance date for the requirements of Rule 113.53, dealing with the installation of secondary hoods on the copper converters, ducting, a particulate matter control device and emission limitations at the ASARCO-El Paso smelter.

III. Disapproval of Compliance Date

On August 13, 1984, EPA disapproved a compliance date listed in the TACB approved regulations for El Paso County, the date being the final compliance date for the requirements of Texas Rule 113.53, as contained in Rule 113.122. In the September 1983 draft Texas regulations which EPA proposed to approve in December 1983, the final compliance date was December 31, 1984, which EPA considered to be expeditious. At that time, EPA explained that both the State and EPA believed that secondary hoods were necessary for the control of lead emissions at the smelter, were considered necessary for the attainment of the lead standard in El Paso and were currently available for installation. EPA had previously proposed on July 20, 1983 (48 FR 33112), to require secondary hoods to be installed at certain smelters with arsenic emissions, which included the ASARCO-El Paso smelter. The deadline for installation of the hooding to meet the arsenic regulations is 2 years after promulgation *or sooner* if feasible, as required by § 112 of the Act. The deadline in Texas' proposed lead regulations was well within the deadline which will be required by EPA's arsenic regulations which are expected to be promulgated by late 1984 or early 1985. On February 17, 1984, the Texas Air Control Board approved revised regulations which required the installation of secondary hoods on the copper converters, ducting, a particulate matter control device and emission limitations by February 28, 1989 *or* by two years from EPA promulgation of the arsenic NESHAP for low-arsenic throughput copper smelters, *whichever date is sooner*. Section 110 of the Act requires attainment of the NAAQS by three years from EPA's final approval of a lead SIP which will be August 13, 1987 for the Texas-El Paso lead SIP.

IV. EPA Proposed Action

By this notice, EPA is proposing a federal promulgation of August 13, 1987, or by two years from EPA promulgation of the arsenic NESHAP for low-arsenic-throughput smelter, whichever is sooner for compliance with the requirements of Rule 113.53. The deadline date for installation of all other reasonably available control technology (RACT) lead control measures at the ASARCO-El Paso lead smelter is as specified in the approved Texas lead SIP. A separate Technical Support Document explains EPA's determination that the installation of secondary hoods on the copper converters at the ASARCO-El Paso smelter should be by August 13, 1987, and explains EPA's reasons for agreeing with Texas' initial determination that the secondary hoods are reasonable control technology for the control of lead emissions. EPA believes the technology is currently available for installation, especially since air curtain secondary hoods were installed in 1982 at an ASARCO copper smelter in Tacoma, Washington, and air curtain secondary hoods have been in place for the past 4 years at copper smelters in Japan for the purpose of controlling copper converter secondary emissions. The Technical Support Document concerning this matter, plus previous Evaluation Reports developed by Region 6 concerning the past EPA actions on the Texas-El Paso lead SIP, can be reviewed at the addresses listed in the **ADDRESSES** section of this notice. Interested parties are invited to

comment on all aspects of this proposal. Comments and any request for a public hearing on this action should be submitted to the address listed in the front of this notice. Public comments postmarked by the date of 30 days after publication of this proposal will be considered in any final action EPA takes on this proposal.

Pursuant to section 307(d)(1)(B) of the Act, EPA has established a docket (No. 6A-84-01), which is available for public inspection and copying at EPA's Washington, D.C. Headquarters Office and the Region 6 office listed under "ADDRESSES" above.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities (See 46 FR 8709). In addition this federal promulgation does not have a significant economic impact on a substantial number of small entities because it effects only one large source.

Under Executive Order 12291, EPA must judge whether or not a regulation is "major" and therefore subject to the requirements of regulatory impact analysis. In accordance with the definition of a major rule (E.O. 12291, section 1(b)), this proposed regulation is not judged to be major because: The annual effect on the economy of the earlier installation of the control equipment is less than $100 million; the increase in costs or prices for various agents is not major; and, the effects on competition, employment, investment, productivity, innovation, and foreign trade are not significant.

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

List of Subjects in 40 CFR Part 52

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

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

Dated: September 26, 1984.

Dick Whittington,

Regional Administrator.

PART 52—[AMENDED]

For the reasons set out in the preamble, Subpart SS, Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is proposed to be amended by adding a new section § 52.2304 as follows:

Subpart SS—Texas

Section 52.2304 is added as set forth below:

§ 52.2304 Lead Control Plan: Federal Compliance Date for Requirements of Rule 113.53

(a) The requirements of section 110 of the Clean Air Act are not met regarding the final compliance date, as found in Rule 113.122, for the requirements of Rule 113.53.

(b) Texas Air Control Board Rule 113.53 was adopted by the Board on February 17, 1984, and approved by the Administrator as a requirement of the State Implementation Plan on August 13, 1984. The owner or operator of any copper or zinc smelter located in El Paso County, Texas, shall comply with the requirements of Rule 113.53 no later than August 13, 1987, or by two years after the date of final action by the Administrator of the National Emission Standards for Hazardous Air Pollutants for inorganic arsenic from low-arsenic-throughput smelters, whichever is sooner. The date of February 28, 1989, found in Texas Air Control Board Rule 113.122 for final compliance with Rule 113.53, is disapproved.

[FR Doc. 85-88 Filed 1-3-85; 8:45 am]

BILLING CODE 6560-50-M

LEGAL SERVICES CORPORATION

45 CFR Part 1601

By-Laws of the Legal Services Corporation

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: Since September the Legal Services Corporation has received comments concerning both substantive and procedural issues involving revisions to existing regulations and regulations newly put in place. After deliberation, the Board of Directors of the Corporation at its December 20, 1984 meeting decided to republish this Part of the regulations, along with four others, for further consideration and comment. This Part 1601, concerning by-laws of the Corporation, was previously adopted by the Board on May 19, 1984, and published in final form in the Federal Register on June 4, 1984, 49 FR 23050. The regulation is currently in effect as published here.

DATE: Comments must be received on or before February 4, 1985.

ADDRESS: Comments may be submitted to Office of General Counsel, Legal Services Corporation, 733 Fifteenth Street, N.W., Room 601, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Richard N. Bagenstos, Acting Deputy General Counsel, (202) 272-4010.

SUPPLEMENTARY INFORMATION:

List of Subjects in 45 CFR Part 1601

Administrative practice and procedure, Organization and functions (government agencies), Seals and insignias.

For the reasons set out above, Part 1601 is set forth in its entirety below:

PART 1601—BY-LAWS OF THE LEGAL SERVICES CORPORATION

Subpart A—Nature, Powers, and Duties of Corporation: Definitions

Sec.

Subpart B—Offices and Agents

Subpart C—Board of Directors

Subpart D—Meetings of Directors

Subpart E—Committees

Subpart F—Officers

Authority: Sec. 1008(e), 88 Stat. 387 (42 U.S.C. 2996g(e)).

Subpart A—Nature, Powers, and Duties of Corporation; Definitions

§ 1601.1 Nature of the corporation.

Legal Services Corporation is the corporation established by section 1003 of the Legal Services Corporation Act, 42 U.S.C. 2996b. The Act establishes the Corporation in the District of Columbia as a private, nonmembership, nonprofit corporation for the purpose of providing financial support for legal assistance in non-criminal proceedings or matters to persons financially unable to afford legal assistance. Except as otherwise specifically provided in the Act, the Corporation shall not be considered a department, agency, or instrumentality of the United States Government.

§ 1601.2 Powers and duties.

The powers and duties of the Corporation are as set forth in the Act. The powers of the Corporation include, to the extent consistent with the Act, the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act, D.C. Code, Title 29, Chapter 10, other than the power to cease corporate activities.

§ 1601.3 Definitions.

As used in these By-Laws, except where the context otherwise requires (a) "Act" means the Legal Services Corporation Act, 42 U.S.C. 2996–2996(1), Pub. L. 93–355, approved July 25, 1974, 88 Stat. 378, as amended by Pub. L. 95–222, approved December 28, 1977, 91 Stat. 1619;

(b) "Board" means the Board of Directors of the Corporation;

(c) "Corporation" means the Legal Service Corporation established by section 1003 of the Act, 42 U.S.C. 2996(b);

(d) "Director" means a voting member of the Board of Directors appointed by the President of the United States;

(e) The pronouns "he," "him," and "his" mean, respectively, "he or she," "him or her," and "his or her";

(f) "Member of the Board" means a Director or the President of the Corporation;

(g) "Member of the immediate family" means, with respect to any individual, a spouse, child, parent, brother, or sister of such person, or a spouse or relative of any of the foregoing who has the same home as such person;

(h) "Person" means an individual, corporation, association, partnership, trust, or other entity;

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

(j) "Telegraph" for purposes of these By-Laws refers to any means of record communication for transmitting messages to a distant point including, but not limited to, express mail, bonded carrier with one day service, electronic communication capable of transmitting a written message.

Subpart B—Offices and Agents

§ 1601.4 Principal office.

The Corporation shall maintain its principal office in the District of Columbia.

§ 1601.5 Agent.

The Corporation shall maintain a designated agent in the District of Columbia to accept service of process for the Corporation.

§ 1601.6 Other offices and agents.

The Corporation may also have offices and agents at such other places, either within or without the District of Columbia, as the business of the Corporation may require.

Subpart C—Board of Directors

§ 1601.7 General powers.

The property, affairs, and business of the Corporation shall be managed by and under the direction of the Board, subject to the provisions of the Act.

§ 1601.8 Number, terms of office, and qualifications.

(a) The Board shall consist of eleven Directors. The President of the Corporation shall serve as a non-voting *ex officio* member of the Board. The Directors shall be appointed by the President of the United States, by and with the advice and consent of the Senate. No more than six of the Directors shall be of the same political party. A majority of the Directors shall be members of the bar of the highest court of a state. None of the Directors shall be a full-time employee of the United States.

(b) The term of office of each Director shall be three years. Each Director shall continue to serve until his successor is appointed and qualified. The term of each Director shall be computed from the date of termination of the preceding term. Any Director appointed to fill a vacancy occurring prior to the expiration of the term for which such Director's predecessor was appointed shall be appointed for the remainder of such term. No Director shall be reappointed to more than two consecutive terms immediately following such Director's initial term.

(c) As of the date on which these By-Laws, as revised, shall become effective, the terms of the Directors of the Board shall expire on the following dates: the terms of six Directors of the Board shall expire on July 13, 1984; the terms of the other five Directors of the Board shall expire on July 13, 1986.

§ 1601.9 The Chairman and Vice Chairman of the Board.

(a) Annually or at such other time as there may be vacancies in such offices, the Board shall elect a Chairman and Vice Chairman of the Board from among its voting members, each of whom shall serve at the pleasure of the Board, or until his successor has been duly elected in his stead, or until he shall resign or otherwise vacate his office or Board membership.

(b) The Chairman of the Board shall, if present, preside at all meetings of the Board, shall carry out all other functions required of him by the Act and these By-Laws, and shall perform such other duties as from time to time may be assigned to him by the Board.

(c) The Vice Chairman of the Board shall, in the absence of the Chairman, preside at meetings of the Board and shall, for purposes of these By-Laws, be considered the Chairman of any meeting at which he so presides. In addition, the Vice Chairman shall carry out all other functions required of him by these By-Laws and shall perform such other duties as from time to time may be delegated to him by the Chairman or assigned to him by the Board.

§ 1601.10 Qualification.

A person shall be deemed to have qualified as a Director when upon appointment or selection, as the case may be, he has affirmed or executed a statement to discharge his duties faithfully, which statement shall be in such form as provided by the Board.

§ 1601.11 Outside interests of directors.

(a) No member of the Board may participate in any decision, action, or recommendation with respect to any matter which directly benefits such member or pertains specifically to any firm or organization, other than the Legal Services Corporation, with which such member is then associated or has been associated within a period of two years. For the purposes of this paragraph

(1) A member of the Board shall be deemed "associated" with a firm or organization if he

(i) Is serving or has served within the past two years as a Director, officer, trustee, employee, consultant, attorney, agent or partner thereof, or in any of such other capacities as the Board may from time to time determine,

(ii) Is negotiating or has any arrangement concerning prospective employment therewith or,

(iii) Has or has had, within the past two years, any direct or indirect financial or ownership interest therein; and

(2) The term "member of the Board" includes a member of the immediate family of a member of the Board. If a member of the Board violates this paragraph in connection with any transaction, he may be liable to the Corporation for damages.

(b) Pursuant to procedures to be established by the Board from time to time, each member of the Board, upon assuming office and at least annually thereafter, shall file with the Secretary a statement identifying any firm or organization with which he is then or has been within the past two years associated (as defined in paragraph (a) of this section) and the nature of the association. In the event the association is a result of a financial or ownership interest, that fact shall be reflected in the statement, but the member need not reveal the degree of financial interest. Such statements shall be available for public inspection.

§ 1601.12 Removal.

(a) A Director may be removed by a vote of seven Directors at a meeting of the Board, or by a vote of two-thirds of the number of Directors where the total number of Directors then in office is less than eleven, for persistent neglect of or inability to discharge duties, for malfeasance in office, or for offenses involving moral turpitude, and for no other cause.

(b) When a Director shall fail to attend three consecutive meetings of the Board, or a majority of the meetings held during a one-year period, the Secretary shall notify him in writing that the agenda for the next meeting of the Board will include the question of whether he should be removed for persistent neglect of or inability to discharge his duties.

(c) Except as provided in paragraph (b) of this section, the Board shall consider whether a Director shall be removed only when five or more Directors, or at least 40 percent of the Directors where the total number of Directors then in office is less than eleven, have stated in writing that they believe there is reasonable cause for such action, giving specific allegations in support of such belief.

(d) A Director may not be removed unless—

(1) Notice of the basis of removal has been given to such Director at least thirty days before a vote is taken concerning his removal and

(2) The Director has been afforded the opportunity to contest his removal by making written submissions to the other members of the Board and by appearing in person, with or without counsel present, at the meeting at which the vote concerning removal is taken.

§ 1601.13 Resignation.

A Director may resign at any time by giving written notice of his resignation to the President of the United States, with a copy being sent to the President of the Corporation and to the Chairman of the Board. A resignation shall take effect at the time received by the President of the United States, unless another time is specified therein. The acceptance of a resignation shall not be necessary to make it effective.

§ 1601.14 Compensation.

Directors shall be entitled to receive compensation at appropriate rates prescribed by the Board not in excess of the per diem equivalent of the rate of Level V of the Executive Schedule, specified from time to time in § 5316 of Title 5 U.S.C., for their services on the Board or on any committee thereof, and reimbursement for travel, subsistence, and other expenses necessarily incurred in connection therewith. A Director shall not serve the Corporation in any other capacity or receive compensation for such services, except as authorized by the Board. In no event shall a Director receive compensation in more than one capacity.

Subart D—Meetings of Directors

§ 1601.15 Meetings.

(a) Meetings of the Board shall be held at least four times a year. An annual meeting shall be held on the last Friday of January of each year at such hour and place as shall be determined by a majority of the Directors. All other meetings shall be held at such intervals and at such locations as shall be determined by a majority of Directors. Notice of the place and time of a meeting shall be mailed to each Director at least seven (7) days before the date of the meeting or shall be telegraphed, charges prepaid, at least five (5) days before the date of the meeting, unless a majority of the Directors determines that Corporation business requires a meeting on fewer than the specified days notice. In that event, notice shall be mailed or telegraphed at the earliest practicable time.

(b) In the event a majority of the Directors of the Board agree to postpone a meeting, notice of such postponement shall be mailed to each Director at least five (5) days before the scheduled date for such meeting or shall be telegraphed or delivered at least three days before such scheduled date.

§ 1601.16 Special meetings.

Directors may participate in a special meeting of the Board by means of conference telephone or by any means of communication by which all persons participating in the meeting are able to hear one another and by which interested members of the public are able to hear and identify all persons participating in the meeting. Special meetings of the Board may be called by the Chairman of the Board or may be called upon receipt by him of a written request from at least 40 percent of the Directors then in office or from the President of the Corporation and at least 30 percent of the Directors then in office. Notice of any such meeting shall be mailed to each Director at least seven days before the date on which the meeting is to be held. Notice may also be sent to each Director by telegraph, charges prepaid, or delivered to him but, in either case, not later than the fifth day before the date on which the meeting is to be held. A majority of the Directors may determine that Corporation business requires a meeting on fewer than the specified days notice. In that event, notice shall be given at the earliest practicable time. Every such notice shall specify the place, day, and hour of the meeting and the general nature of the business to be transacted.

§ 1601.17 Notice and waiver of notice.

(a) Notice of a meeting of the Board when mailed shall be deemed given when deposited with the United States Postal Service, first-class postage paid, addressed to the Director at his address appearing on the books of the Corporation or supplied by him for the purpose of this notice. Notice which is

delivered to a Director shall be delivered at such address to a person having apparent authority to accept such delivery. Notice by telegraph shall be sent, charges prepaid, to such address.

(b) A waiver of notice of a meeting must be in writing and signed by the Director entitled to such notice and submitted by that Director to the Clairman of the Board or the Secretary of the Corporation, whether before or after the time of such meeting. Attendance of a Director at any meeting shall constitute a waiver by him of notice of such meeting, except where he attends for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or covened.

§ 1601.18 Agenda.

For each meeting, the Chairman of the Board or the President of the Corporation shall cause to be prepared a working agenda of matters to be discussed at the meeting, and shall include the agenda in the notice of the meeting required to be sent to all Directors by § 1601.15 and § 1601.16. Any matters appearing on the agenda which the Chairman of the Board or the President believes should be discussed in an executive session in accordance with § 1601.22 shall be so noted.

§ 1601.19 General notice.

(a) Except as otherwise specifically provided in these By-Laws, general notice of any meeting of the Board shall be mailed to each Director at least seven (7) days before the date of the meeting, or shall be telegraphed or delivered not later than five (5) days before the date of the meeting, unless a majority of the Directors determines by a recorded vote that Corporation business requires a meeting on fewer than the specified days notice. In that event, general notice shall be given at the earliest practicable time.

(b) General notice shall include:

(1) The time, place, and subject matter of the meeting;

(2) Whether the meeting or a portion thereof will be closed to public observation; and

(3) The name and telephone number of a person designated to respond to requests for information about the meeting. An amended announcement shall be issued of any change in the information provided by a general notice in accordance with the requirements of 5 U.S.C. 552b and Corporation regulations issued thereunder. Notice of any such change shall be given in the manner prescribed by regulation and at the earliest practicable time.

(c) General notice shall be posted at the offices of the Corporation in an area to which the public has access and filed for publication in the **Federal Register**. Reasonable effort shall be made to send the notice to the governing board of every recipient.

§ 1601.20 Organization of Directors meetings.

At each meeting of the Board, the Chairman of the Board, or in his absence the Vice Chairman, shall preside. The Secretary of the Corporation shall act as secretary at all meetings of the Board. In the absence from any such meeting of the Secretary, the chairman of the meeting shall appoint a person to act as secretary of the meeting.

§ 1601.21 Quorum, manner of acting, and adjournment.

(a) At each meeting of the Board, the presence of a majority of the Directors in office, but in no event less than four (4) Directors, shall constitute a quorum for the transaction of business. Except as otherwise specifically provided by law or these By-Laws, the vote of a majority of the Directors present at the time of a vote, provided that a quorum is present at such time , shall be the act of the Board. If a quorum is present when a meeting is convened at which an action is subsequently voted upon, the action shall be the valid action of the Board, unless a Director suggests the absence of a quorum and there is, in fact, no quorum then present. A Director who is present at a meeting of the Board but who is required to abstain from participation in the vote upon any matter, whether he remains in the meeting or withdraws there from during the vote, may be counted for purposes of determining whether or not a quorum is present, and if a quorum is present, the vote of a majority of the then voting Directors shall be the act of the Board.

(b) A majority of the Directors present at a duly convened meeting, whether or not they shall comprise a quorum, may temporarily adjourn the meeting. Whenever a meeting is temporarily adjourned to a date not more than five business days follwing such adjournment, it shall not be necessary to give any notice of the adjourned meeting or of the business to be transacted thereat otherwise than by an announcement at the meeting at which such ajournment is taken.

(c) Each Director shall be entitled to one vote. Voting rights of Directors may not be exercised by proxy.

§ 1601.22 Public meetings; executive sessions.

All meetings of the Board shall be open to the public unless a majority of all of the Directors in office determines by a recorded vote to close a meeting or any portion of a meeting to public observation pursuant to the Corporation's regulations implementing 5 U.S.C. 552b. That part of the meeting closed to the public shall be known as an executive session. The Chairman of the meeting shall announce the general subject of the executive session prior thereto.

§ 1601.23 Public participation.

By written request in advance of a meeting, members of the public may seek to be invited by the Chairman to address that meeting. Members of the public may address a meeting of the Board upon invitation of the Chairman of the meeting, under terms and conditions established by him, unless the Board otherwise directs.

§ 1601.24 Emergency proceedings.

Not withstanding any other provisions in these By-Laws, in the event that the Directors are rendered incapable of conducting a meeting by the acts or conduct of any members of the public present at the meeting, the Directors may thereupon determine by a recorded vote of a majority of the number of Directors present at the meeting to remove the meeting to a different location and to invite representatives of the public and media to attend the proceedings at the new location. The emergency proceedings at the new location shall be recorded by means of an electronic recording adequate to record fully the emergency proceeding, or a transcript of the emergency meeting shall be made by a certified court reporter. A written statement summarizing the proceedings at the emergency meeting shall be made available to the public following the close of the emergency proceedings. The Corporation will also make available a copy of the entire transcript or electronic recording produced pursuant to this Section to any person upon request at the actual cost of duplication or transcription. The activities of the emergency proceedings shall be reported at the next scheduled meeting of the Board.

§ 1601.25 Minutes.

The minutes of each meeting of the Board, including an executive session, shall record the names of the Directors present, the actions taken and the result of each vote. If there is a division on a

vote, the minutes shall record the vote of each Director. Minutes shall reflect discussions held in executive session, including as much information as possible about those discussions without compromising the purpose for which such meeting was closed to the public. A copy of the minutes of each meeting shall be supplied to each Director in advance of the next meeting and shall be presented for approval by the Board at such meeting. The minutes of each meeting shall be available for inspection by the public in the form approved by the Directors.

§ 1601.26 Action by directors without a meeting.

Any action which may be taken at a meeting of the Board may be taken without a meeting, if a consent in writing, setting forth the action to be taken, is signed by all of the Directors and general notice of the proposed action is published in the manner prescribed by § 1601.19 on or before the date when such consents are first solicited. Any such action so taken shall be included on the agenda of the next meeting of the Board for discussion, ratification, or such other action as may be indicated by the circumstances.

Subpart E—Committees

§ 1601.27 Establishment and appointment of committees.

The Board has established the following permanent committees: Audit and Appropriations Committee; Operations and Regulations Committee; and Provision for the Delivery of Legal Services Committee. The Board may by resolution of a majority of the Directors in office establish (and thereafter dissolve) such other executive, standing, or temporary committees as the Board may deem appropriate to perform such functions as it may from time to time disignate. The authority of any such committee shall expire at the time specificed in such resolution. The Board may appoint Directors to serve on such committees, including one to serve as the chairman, or may delegate to the Chairman of the Board the authority to make such appointments. A person appointed as a member of the committee shall serve as such only at the pleasure of the Board. Each committee shall consist of two or more Directors. The Chairman of the Board shall be an *ex officio* voting member of each committee.

§ 1601.28 Committee procedures.

(a) Except as otherwise provided in these By-laws or in the resolution establishing the committee, a majority of the voting members thereof, or one-half of such members if their number is even, shall constitute a quorum; provided, that if the Chairman of the Board is present, he may be counted for quorum purposes. The vote of a majority of the voting members present at the time of a vote (or one-half of such members if their number is even), if a quorum is present at such time, shall be the act of the committee. Meetings of each committee shall be called by the chairman of the committee or any two members of the committee with notice thereof provided to each committee member, including the Chairman of the Board.

(b) Notice of a committee meeting shall be provided to members of the committee in the manner required for notice of special meetings of the Board by § 1601.16 and § 1601.17(a). Notice may be waived in the manner described in § 1601.17(b). The agenda for the meeting shall be prepared in accordance with § 1601.18, and general notice of the meeting shall be given in accordance with § 1601.19.

(c) All meetings of a committee shall be open to the public unless a majority of all of the Directors then in office determine by a recorded vote to close a meeting or any portion of a meeting to public observation pursuant to the Corporation's regulations implementing 5 U.S.C. 552b.

(d) Minutes shall be kept of each committee meeting in the manner described in § 1601.25. The minutes shall be available for inspection by the public.

(e) Any Director and the President of the Corporation shall have access to the records of any committee irrespective of whether he is a member of the committee.

Subpart F—Officers

§ 1601.29 Officers.

The officers of the Corporation shall be a President, a Vice President, a Secretary, a Treasurer, a Comptroller and such other officers as the Board determines to be necessary. The President of the Corporation shall be elected by a majority of the Directors in office. Other officers shall be appointed by the President after consultation with the Board. The officers shall have such authority and perform such duties, consistent with the Act and these By-Laws, as may from time to time be determined by the Board or, with respect to the other officers, by the President of the Corporation consistent with any such determination of the Board. The President of the Corporation shall provide supervision and direction to the other officers in the performance of their duties.

§ 1601.30 Appointment, term of office, and qualifications.

The President of the Corporation shall be elected for a term not to exceed three years. Each officer of the Corporation other than the President shall be appointed for a term not to exceed three years. An officer shall be elected or appointed whenever a vacancy arises. Each officer shall hold his office until his successor shall have baeen duly elected or appointed in his stead or until he shall resign or shall have been removed in the manner provided in § 1601.31. Any two offices may be held by the same person, except the offices of the President of the Corporation and Secretary.

§ 1601.31 Removal.

The President of the Corporation may be removed by a majority of the Directors in office, and any other officer may be removed by the President after consultation with the Board, but any such removal shall be without prejudice to the contract rights, if any, of the person so removed.

§ 1601.32 Resignation.

Any officer may resign at any time by giving a written notice of his resignation to the Chairman of the Board. An officer other than the President shall also submit written notice of his intention to resign to the President. Such resignation shall take effect at the time received, unless another time is specified therein. The acceptance of such resignation shall not be necessary to make it effective.

§ 1601.33 The President.

(a) The President of the Corporation shall be its Chief Executive Officer and shall have the responsibility and authority, in accordance with the Act, rules and regulations promulgated pursuant to the Act and these By-Laws, subject to the direction of and policies established by the Board, for (1) the day-to-day administration of the affairs of the Corporation; (2) the appointment of such employees of the Corporation as he determines necessary to carry out the purposes of the Corporation and the removal of such empoyees; (3) the making of grants and the entering into of contracts; and (4) the exercise of such other powers incident to the office of the President of the Corporation and the performance of such other duties as the Board may from time to time prescribe.

(b) The President of the Corporation shall be a member of the bar of the highest court of a state and shall be a nonvoting *ex officio* member of the Board of Directors.

§ 1601.34 The Vice President.

The Vice President shall have such powers and perform such duties as the President may from time to time prescribe, consistent with any such determinations of the Board. In the absence of and upon delegation by the President, the Vice President shall perform the duties of the President, and when so acting, shall have all the powers of, and shall subject to all restrictions upon, the President.

§ 1601.35 The Secretary.

The Secretary shall:

(a) Ensure that all notices are duly given in accordance with the Act and these By-Laws;

(B) Be the custodian of the seal of the Corporation and affix such seal to all document the execution of which is authorized by the Board or by any officer or employee of the Corporation to whom the power to authorize the affixing of such seal shall have been delegated;

(c) Keep, or cause to be kept, in books provided for the purpose, minutes of the meetings of the Board;

(d) Ensure that the books, reports, statements and all other document and records required by law are properly kept and filed;

(e) Sign such instruments as require the signature of the Secretary; and

(f) In general, perform all the duties incident to the office of the Secretary and such other duties as from time to time may be assigned to him.

§ 1601.36 The Treasurer.

The Treasurer shall:

(a) Have charge and custody of, and be responsible for, all funds and securities of the Corporation and (with the exception of petty cash) deposit all such funds and securities in such banks, trust companies or other depositaries as shall be selected in accordance with the provisions of these By-Laws;

(b) Receive, and give receipts for, moneys due and payable to the Corporation from any source whatsoever;

(c) Sign such documents as shall require the signature of the Treasurer;

(d) Render to the Board at each meeting of all of the Directors in office and at such times as the Board may require a report on the financial condition of the Corporation; and

(e) In general, perform all the duties incident to the Office of Treasurer and such other duties as from time to time may be assigned to him. The Treasurer shall give a bond for the faithful discharge of his duties in such sum and with such sureties as the Board shall determine.

§ 1601.37 The Comptroller.

The Comptroller shall keep or cause to be kept full and correct records and accounts of the business, transactions, receipts and disbursements of the Corporation and, at all reasonable times, shall exhibit such records and accounts to any Director upon application at the office of the Corporation where such records are kept, and shall perform all the duties incident to the Office of Comptroller and such other duties as from time to time may be assigned to him.

§ 1601.38 Compensation.

The President shall be compensated at rates determined by the Board, but not to exceed the rate of Level V of the Executive Schedule specified in section 5316 of Title 5, U.S.C. The compensation of each officer other than the President shall be fixed by the President, after consultation with the Board, at a rate not to exceed the rate of Level V of the Executive Schedule referenced above. Not officer of the Corporation may receive any salary or other compensation for services from any sources other than the Corporation during his period of employment by the Corporation, except as authorized by the Board.

§ 1601.39 Prohibition against using political test or qualification.

No political test or political qualification shall be used in selecting, appointing, promoting or taking any other personnel action with respect to any officer, agent or employee of the Corporation.

§ 1601.40 Outside interests of officers and employees.

The Board may from time to time adopt rules and regulations governing the conduct of officers or employees with respect to matters in which they have any interest adverse to the interests of the Corporation. Such rules and regulations may forbid an officer or employee from participating in corporate action with respect to any contract, grant, transaction or other matter in which, to the knowledge of such officer or employee, he or any member of his immediate family has any interest, financial or otherwise, unless:

(a) Such officer of employee makes full disclosure of the circumstances to the Board or its delegate and the Board or its delegate determines that the interest is not so substantial as to affect the integrity of the services of such officer or employee, or

(b) On the basis of standards to be established in such rules and regulations, the interest is too remote or too inconsequential to affect the integrity of such services. Such rules and regulations may also establish appropriate limits and reasonable prohibitions upon—

(1) The ownership by an officer or employee, or member of his immediate family, of securities of any firm, corporation or other entity doing a substantial volume of business with the Corporation;

(2) The present or future association by an officer or employee (or former officer or former employee), or member of his immediate family, with any firm, corporation or other entity doing a substantial volume of business with the Corporation; and

(3) The conduct or transaction of any corporate-related business or affairs by the Corporation through its officers, employees or agents with any former officers or employees of the Corporation or with any entities with which or persons with whom any former officer or employee is associated.

Subpart G—Deposits and Accounts

§ 1601.41 Deposits and accounts.

All funds of the Corporation, not otherwise employed, shall be deposited from time to time in general or special accounts in such banks, trust companies or other depositories as the Board may select, or as may be selected by an officer, agent or employee of the Corporation to whom such power has been delegated by the Board. For the purpose of deposit and for the purpose of collection for the account of the Corporation, checks, drafts and other orders for the payment of money that are payable to the order of the Corporation may be endorsed, assigned and delivered by any officer of the Corporation designated by the Board.

Subpart H—Seal

§ 1601.42 Seal.

The Corporation shall have a corporate seal, which shall include the words "Established by Act of Congress July 25, 1974" and shall be in the form adopted by the Board.

Subpart I—Fiscal Year

§ 1601.43 Fiscal year.

The fiscal year of the Corporation shall begin on October 1.

Subpart J—Indemnification

§ 1601.44 Indemnification.

(a) The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any

threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation), by reason of the fact that he is or was a Director, officer, employee or agent of the Corporation, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding, if he acted in good faith and in a manner he reasonably believed to be in the best interests of the Corporation and, with respect to any criminal action, suit or proceeding, had no reasonably cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in the best interests of the Corporation and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(b) The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor, by reason of the fact that he is or was a Director, officer, employee or agent of the Corporation, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in the best interests of the Corporation, except that no indemnification shall be made in respect to any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Corporation, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

(c) To the extend that a Director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in the defense of any action, suit or proceeding referred to in paragraphs (a) and (b) of this section or in the defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

(d) Any indemnification under paragraphs (a) and (b) of this section (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the Director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in paragraphs (a) and (b) of this section, respectively. Such determination shall be made (1) by the Board by a majority vote of a quorum consisting of Directors eligible to vote who were not parties to such action, suit or proceeding, or (2) if such quorum is not obtainable or, even if obtainable, a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion.

(e) Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Board in any case upon receipt of an undertaking by or on behalf of the Director, officer, employee or agent to repay such amount, unless it shall ultimately be determined that he is entitled to be indemnified by the Corporation as authorized in this section.

(f) The indemnification provided by this section shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled under any By-Law, agreement or vote of disinterested Directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Subpart K—Amendments

§ 1601.45 Amendments.

These By-Laws may be amended by a vote of a majority of the Directors in office, provided, that:

(a) Such amendment is not inconsistent with the Act;

(b) The notice of the meeting at which such action is taken shall have stated the substance of the proposed amendment;

(c) The notice of such meeting shall have been mailed, telegraphed or delivered to each Director at least five (5) days before the date of the meeting; and

(d) Whenever feasible, the proposed amendment shall have been published in the **Federal Register** at least thirty (30) days before the meeting and interested parties shall have been afforded a reasonable opportunity to comment thereon.

Dated: December 27, 1984.

Richard N. Bagenstos,

Acting Deputy General Counsel.

[FR Doc. 85-178 Filed 1-3-85; 8:45 am]

BILLING CODE 6820-35-M

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45 CFR Part 1612

Restrictions on Lobbying and Certain Other Activities

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: Since September the Legal Services Corporation has received comments concerning both substantive and procedural issues involving revisions to existing regulations and regulations newly put in place. After deliberation, the Board of Directors of the Corporation at its December 20, 1984 meeting decided to republish this Part of the regulations, along with four others, for further consideration and comment. This Part 1612, concerning restrictions on lobbying and certain other activities, was previously adopted by the Board on April 28, 1984, and published in final form in the **Federal Register** on May 31, 1984, 49 FR 22651. The regulation is currently in effect as published here.

DATE: Comments must be received on or before February 4, 1985.

ADDRESS: Comments may be submitted to Office of General Counsel, Legal Services Corporation, 733 Fifteenth Street, N.W., Room 601, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Richard N. Bagenstos, Acting Deputy General Counsel, (202) 272-4010.

SUPPLEMENTARY INFORMATION: On February 24, 1984, the Legal Services Corporation published in the **Federal Register** (49 FR 6943) a proposed rule revising Part 1612—Restrictions on Certain Activities. Interested parties were given 30 days, until March 26, 1984, in which to submit comments. A total of 218 comments were received and considered. Of these, 144 were received within the comment period, and the remainder thereafter. Of the comments, 56 were from programs funded by LSC; 13 from Congress; 20 from bar associations; 20 from state officials; 63 from legal and political foundations and coalitions; 12 from government agencies;

and 34 from private attorneys, firms and citizens.

This revision of Part 1612 is partially a result of reports and opinions of the General Accounting Office (GAO) with reference to the Corporation's lobbying regulations dating back to August, 1980. In response to a request from a member of Congress in February, 1981, the GAO reviewed certain memoranda obtained from the Corporation to determine whether it had violated Federal anti-lobbying laws.

In its opinion, dated May, 1, 1981, the GAO held that the memoranda indicated that the Corporation had itself engaged, and had allowed its grant recipients to engage, in lobbying activities prohibited by Federal law. It recommended for the third time that the Corporation revise its regulations to prohibit such activity. In a letter dated May 11, 1981, LSC's president at that time stated that immediate steps would be undertaken to comply with the GAO recommendation. No new regulations were considered, however, until 1982, and regulations governing grassroots lobbying were finally promulgated in March, 1983.

In 1983, Congress again asked the GAO to render an opinion as to whether the Corporation and its recipients had violated restrictions imposed by Congress on training and coalition building activities, and on advocating or opposing ballot measures, initiatives and referenda. An interim report was rendered dated September 19, 1983, indicating that such violations had in fact occurred. The finding of that report were confirmed in GAO testimony before the Senate Labor and Human Resources Committee, April 11, 1984. Significantly, that report found the violative activity reached a sufficiently high level in 1981 as to result in a reduction in the number of cases handled by some program attorneys.

The GAO in its report stated that it was recommending to the Corporation that it take appropriate action to amend its regulations governing the activities of fund recipients and corporate officials in order to prohibit expenditures on the activities which it found to violate the lobbying restrictions.

The regulation also results from certain restrictions imposed on recipients in Pub. L. 98–166 in terms of lobbying activities. These restrictions grew out of oversight hearings conducted by the Senate Committee on Labor and Human Resources. First, it adopted restrictions to bar the Corporation and its recipients from using Federal funds for publicity or propaganda intended to influence a legislative or administrative decision. Specifically, Congress sought to prohibit grassroots campaigns.

Secondly, the restrictions were intended to bar communications or services intended to influence a decision by an administrative agency except in the provision of legal assistance with respect to a particular claim, application or case.

Third, the language was to bar any lobbying in support of or in opposition to any referendum, initiative, constitutional amendment or similar procedure. This represented a reemphasis of what the Congress has deemed to be explicitly prohibited under previous law. Similarly, all attempts to influence an authorization or appropriation of legal services funding, or oversight of the Corporation or a recipient is prohibited.

Fourth, the restrictions were designed to prohibit communications to Federal, State and local legislatures to influence legislation except (1) where the purpose of the communication was to bring a specific problem to the attention of the legislators after exhaustion of judicial and administrative relief, subject to certain conditions; (2) in response to requests from a Federal, State or local official; or (3) as a communication requesting introduction of a private relief bill.

Finally, Pub. L. 98–166 required records of time spent on lobbying and prohibited Corporation funds from being used to pay for administrative or related costs of an activity prohibited by the restriction. In other words, the prohibitions that Congress had set out could not be circumvented by a claim that all lobbying was being funded by other sources of funds, while ignoring the fact that the rent or other overhead supporting a prohibited activity were paid from LSC funds.

This rule establishes new subsections concerning prohibited organizing activity (§ 1612.3), activity prohibited in connection with training (§ 1612.4), administrative representation under Pub. L. 98–166 (§ 1612.6), legislative representation under Pub. L. 98–166 (§ 1612.7) and the posting of notices concerning these restrictions (§ 1612.9). Former § 1612.3 concerning the attorney-client relationship has been renumbered § 1612.2(c) since it solely relates to the activities proscribed by that section. The regulation on public demonstrations (§1612.2), legislative and administrative representation (formerly § 1612.4, renumbered § 1612.5) and enforcement (formerly § 1612.5, renumbered § 1612.8) are modified to better achieve the statutory purpose of strictly limiting the use of Legal Services Corporation funds for these activities. The significant changes effected by the regulation are summarized below:

Title

The title of Part 1612 is changed to specifically mention lobbying so as to facilitate the reader's finding the regulations governing legislative and administrative representation.

Definitions

The definition of "legal assistance activities" is modified to clarify that the term covers the use of Corporation or recipient resources by a subrecipient. In response to comments requesting clarification, the phrase "or while on official travel" has been added to § 1612.1(a)(1).

The Term "legislation" is defined to make clear that it encompasses all potential actions (whether formally pending or not) of the Congress and any other body of elected officials acting in a legislative capacity as opposed to their actions as an adjudicatory body. Specifically mentioned is action on constitutional amendments, treaties and intergovernmental agreements, approval of appointments or budgets proposed by an executive branch official, simple resolutions not having the force of law, and approval or disapproval of executive action. In response to comments, Indian Tribal Councils are excluded from the term "legislative."

Public Demonstrations, Boycotts, Strikes, Etc.

Sections 1612.2 and 1612.3 are combined and the following statement of old § 1612.3(b) is deleted: "Nothing in this part shall prohibit an attorney from . . . attending a public demonstration, picketing, boycott or strike for the purpose of providing legal assistance to a client." Section 1612.2(c)(2) makes clear that the prohibition on participation in demonstrations, strikes, etc. does not prohibit an attorney from fulfilling his professional responsibilities to a client.

Thus, the deletion of old § 1612.3(b) does not impose an additional prohibition upon attorneys—it merely removes an express permission to attend such demonstrations, etc., when unnecessary to fulfill professional responsibilities to a client.

Organizing

A new § 1612.3 implements the restrictions of section 1007(b)(7) of the Act on the use of Corporation funds to initiate the formation, or act as an organizer, of any association, federation or similar entity. The regulation makes clear that no funds may be used for

publicizing an organization or defraying the costs of any meeting at which persons are urged to form or join any organization. The regulation does not restrict a recipient from providing advice or assistance to eligible clients concerning the laws applicable to formation or operation of an organization, as long as the organization does not have as a substantial purpose the exercise of influence with respect to legislation, elections or ballot propositions. Language has been inserted in response to comments to indicate that organizations of legal service delivery personnel or of eligible clients solely organized for the improvement of legal services delivery are not covered by the prohibition. The last provision implements the restrictions of sections 1006(e) and 1007 (a)(5), (a)(6), (b)(6) and (b)(7) concerning political or lobbying activity.

Training

A new § 1612.4 is adopted to implement section 1007(b)(5) and the related provision of Pub. L. 98–166 prohibiting the conduct of training programs for the purpose of advocating particular public policies or encouraging political activities, labor activities, etc. In accordance with Pub. L. 98–166, the conduct of training programs for the purpose of disseminating information about public policies, labor or political activities, etc. is likewise prohibited. New language has been inserted in § 1612.4(a)(2)(v) to clarify that this provision applies to all funds made available by the Corporation under authority of Pub. L. 98–166. Training programs whose purpose is to encourage the formation of coalitions or organizations to advocate particular public policies or which involve the development of legislative strategy are specifically prohibited, in accordance with the Comptroller General's legal opinion of September, 1983. The limitations of § 1612.7(b)(2) on the use of Corporation grant proceeds to pay for outside training for activities which are prohibited or severely limited by law is extended to inhouse training events. The regulation incorporates the provisions of Pub. L. 98–166 making clear that it does not prohibit the training of attorneys or paralegals to prepare them to advise an eligible client of his or her rights under a statute or regulation already enacted, or to explain the nature of the legislative process to an eligible client. Subsection 1612.4(b)(2) is modified to clarify that advice concerning the nature of the legislative process does include discussion of a lobbying strategy for a particular bill.

Legislative and Administrative Representation

Two new sections are created to describe the rules peculiar to the use of 1984 appropriated funds in legislative (§ 1612.7) and administrative representation (§ 1612.6). The rules applicable otherwise are retained in § 1612.5 (formerly § 1612.4). The revisions in 1612.5 summarized below are made in recognition that the general rule of section 1007(a)(5) is that the use of Legal Services Corporation funds for legislative and administrative lobbying is prohibited unless it falls within one of three carefully defined exceptions. Congress has repeatedly indicated since 1977 through oversight hearings and appropriations riders containing reference to the language of the Kramer amendment to H.R. 3480 that it believes legal services programs have interpreted section 1007(a)(5) as authorizing more lobbying activity than intended.

First, § 1612.5 is made applicable to the introduction, amendment, enactment, defeat, repeal or signing of any legislation. Subsection 1612.5(a)(1) is amended to conform to § 1612.5(f)(2) which provides that a recipient's employee is not to solicit or arrange a request from a governmental agency or public official in order to create a right to make representations to that agency or official. Further, in conformance with § 1612.5(f), the authority to respond to official requests is limited to requests concerning "a specific matter" and does not authorize communications with persons other than the requesting party, or agents or employees of such party.

Subsection 1612.5(a)(2) is revised to make it clear that legislative or administrative representation of a client is only authorized where it is necessary to secure relief concerning a particular legal right or responsibility with respect to which the client has sought legal representation.

The documentation requirements of § 1612.5(b) are modified to conform to the language of § 1612.5(g) so as to reduce the number of different forms and procedures with which a recipient must comply. The client retainer required by § 1612(b)(2) is modified to include a statement in the client's own words of the legal problem on which he or she seeks representation. The purpose of requiring a retainer is to insure that the work done conforms to the desires of the client and to facilitate Corporation auditing of grantee compliance with the strict terms of section 1007(a)(5)(A). The retainer will be more useful for these purposes if there is a clear record at the commencement of representation of the client's description of the legal problem for which the attorney finds it necessary to seek relief from the legislature or administrative agency.

In response to comments which indicated that the requirement as proposed would necessitate a more sophisticated knowledge of the law than could reasonably be expected of eligible clients, the Corporation has modified the subsection to limit the matter which must be expressed in the client's own words to "the matter on which relief is sought."

A new requirement is added, as required by Pub. L. 98–166, that the recipient maintain records of the time and the direct and indirect expenses associated with lobbying activity. Such activity includes time spent formulating positions and strategy as well as time spent in direct communication with officials. These records are required with respect to legislation and rulemaking matters, but not with respect to representation in adjudicatory proceedings. The records are required regardless of the source of funds involved and must specify the source. For all employees who are registered lobbyists, or who spend over ten percent of their time lobbyings full time logs will be required. These time logs are necessary to ensure the completeness of the records furnished pursuant to the terms of Pub. L. 98–166 and to enable the Corporation to enforce section 1010(c) of the Act which prohibits the use of private non-Corporation funds for purposes prohibited by the Act.

The authorization for full time legislative offices is deleted in light of the fact that lobbying activity is an exceptional, rather than a routine, function of a legal services program.

Section 1612.5(c) makes it clear that no Corporation funds are to be used to pay dues to organizations a substantial purpose of which is to take positions on pending legislative or administrative matters. To make it clear that the provision is not intended to prevent the payment of dues to bar associations, an express exception is stated. The circumstances in which advocating the support or defeat of legislative or administrative measures is authorized are strictly limited under the Act. It is not appropriate for recipients to pay dues to others to engage in lobbying outside those parameters, nor is it appropriate for a recipient to delegate to another organization its limited authority to lobby under section 1007(a)(5). It should be noted that the provision does not address the payment of dues to organizations for whom policy advocacy is a minor purpose.

The regulation also clarifies that LSC grant funds may not be used to pay for transportation to legislative or administrative proceedings of persons other than witnesses entering formal appearances on behalf of the recipient's client or attorneys or other employees engaged in permitted representational activities. In response to comments, the exception is extended to clarify that when necessary, it is appropriate to pay transportation costs for the client's attendance. Payment of administrative costs associated with a prohibited activity is an unauthorized use of LSC grant funds. The regulations also prevent expenditure of LSC grant funds for an event if a primary purpose of the expenditure is to facilitate lobbying activity that would be prohibited if conducted with LSC funds. This is simply an elaboration of the basic rule that only those costs which further the purpose of legal assistance to eligible clients within the guidelines of the Act may be charged against the LSC grant. If the primary purpose of the expenditure is furtherance of an objective that is not an authorized use of LSC funds, the expenditure is not an authorized cost of the LSC grant. The Corporation gives deference to the recipient's characterization of the purpose of all expenditures but recipients must document fully the purpose of any expenditure associated with attendance at a conference if the attending employee takes leave while out of town to engage in lobbying activities. Costs associated with an event that gives participants a block of time to engage in lobbying activities will be questioned.

Finally, § 1612.5(c) prohibits the use of LSC grant proceeds to assist others to attempt to influence legislation through providing those so engaged with the benefit of legislative liaison activities. This follows General Services Administration Contract Cost Principles and Procedures which disallow the expense of legislative liaison activities "except to the extent that such activities do not relate to lobbying or related activities * * *." It should be noted that the Defense Acquisition Regulations disallow as a cost of defense contracts "any legislative liaison activities." The language of this subsection has been revised to clarify that assisting others to influence legislation is the prohibited activity, and not legislative liaison *per se*.

Publicity or Propaganda

This section of the regulations was added in March 1983, in response to recommendations from the Comptroller General dating back to late 1980. As the Comptroller General stated clearly in his May 1, 1981, opinion, section 1007(a)(5) of the Legal Services Corporation Act does not authorize recipient employees to engage in indirect or grassroots lobbying activity. That section authorizes direct communication with public officials in three defined circumstances, but does not authorize other lobbying activity such as organizing coalitions or engendering communications from the public favoring or opposing changes in public policy. Such activity is not "* * * necessary to the provision of legal advice and representation with respect to such client's legal rights and responsibilities * * *."

Section 1612.5(d) extends the prohibition against publicity or propaganda to that designed to support proposed rules or regulations under consideration by an administrative agency or ligislation under consideration by a county or municipal legislative body. This change is required by Pub. L. 98–166 and would, in any case, serve to conserve scarce legal services resurces for legal representation as opposed to public relations. The regulation is also modified to prohibit communications containing a suggestion that the reader participate in or contribute to a demonstration, march, rally, fundraising drive, lobbying, letter writing or telephone campaign to influence legislation or rulemaking. This, too, follows the Defense and Federal Procurement Regulations. The objective of the proscription against publicity or propaganda is to prevent the use of federal funds to stimulate grassroots lobbying. Accomplishing this objective requires that the prohibition extend beyond solicitation of letters to legislators to solicitation of other efforts to persuade a legislator such as through participation in a march, rally or fundraising to support advertising. In either case, public funds are being used artifically to stimulate public pressure on the legislative process.

Section 1612.5(e) is modified to limit the distribution of publications concerning legislative proposals to attorneys, recipient staff and eligible clients who have sought representation in a matter relating to the proposed legislation. The emphasis is on representation of eligible clients who request representation on a specific matter, rather than distribution to all eligible clients in a service area, using limited resources for other than direct representative.

Administrative Representation

Section 1612.5(f) and 1612.6, concerning administrative representation under Pub. L. 97–377 and 98–166 respectively, have been revised in response to numerous comments to allow for provision of legal assistance in limited categories of rulemaking. Administrative representation is authorized in adjudicatory proceedings affecting an eligible client's legal rights with respect to particular applications, claims and cases. A number of comments indicated that, in some cases, rulemaking and adjudicatory functions overlap in administrative proceedings. Others indicated that certain rulemaking functions were carried on in response to decisions in specific adjudications, and others pointed to the need to bring the peculiar impact of a rule on a particular client to the attention of the rulemaker. The revision was made in § 1612.5(f)(2)(c) to permit representation in a rulemaking proceeding in such circumstances, but not in instances in which the rulemaking affects the client, in a manner similar to a significant segment of the public whose interests have probably already been articulated to the rulemaker. It is not intended to provide a blanket permission for the provision of legal assistance in all rulemaking proceedings, but only to permit the assertion of the specific claim, application or case by a specific client concerning a legal right or responsibility.

Section 1612.6 was further amended in response to comments to make clear that informal negotiations to resolve a particular claim, application or case and response to requests from an official concerning a matter before an agency is authorized.

The requirement of old § 1612.4(g)(1) for a special retainer agreement in administrative cases funded under Pub. L. 97–377 is deleted in light of the new client retainer requirement of Part 1611 applicable to all forms of representation. In addition, the reference in § 1612.5(g)(2) to requests for legislative drafting is deleted since such time-consuming work for a public official, as opposed to an eligible client, is not contemplated by § 1612.5(f).

Subsection 1612.5(h)(4) concerning direct contact with elected officials is deleted in light of the substantial restrictions imposed on such contact. Subsection 1612.5(h)(3) is modified to make clear that it does not authorize unsolicited advice, advice to groups on communications with officials, the composition of communications for the client's use, or publications or training on lobbying techniques. Such restrictions are necessary to avoid the abuse of the authority to offer advice that has occurred in the past. Further, these are matters dealt with elsewhere

in the regulations depending upon which appropriations are utilized, and those provisions are not overridden by the provisions of § 1612.5(h).

Proposed § 1612.5(h)(5) has been deleted from the rule on the basis that it was confusing and unnecessary. No substantive conclusion should be drawn from the fact of its deletion. The permissibility of communication with a governmental agency to request funding depends on the terms of the applicable appropriations law.

Legislative Representation Under Pub. L. 98-166

Section 1612.7 is a new section to implement the provisions of Pub. L. 98-166 with respect to communication with elected officials. No such communications are permitted in connection with (1) authorizations or appropriations for the Corporation or a recipient; (2) oversight proceedings concerning the Corporation or any recipient; or (3) any referenda, initiative, constitutional amendment or similar procedure while under consideration by a legislative body. The regulation defines "similar procedure" to mean legislative consideration of any measure requiring subsequent ratification by the electorate or a measure concerning the structure of government itself (such as a constitutional amendment or a reapportionment measure). There are not exceptions for communications in this area.

Subsection 1612.7(b) prohibits communication concerning legislation (other than that specified in § 1612.7(a)) except for the sole purpose of bringing a specific and distinct legal problem to the official's attention after exhaustion of adminstrative and judicial relief. As required by Pub. L. 98-166, section 1612.7(c) requires a project director's written approval of the communication, a statement of each client's specific legal interest, and the director's determination that the communication is authorized by his or her governing board's policy and has not resulted from participation in a coordinated effort to contact officials on the subject. The regulation requires the director to certify that the communication was prepared by the attorney and client without consulting with persons "who are participating in a coordinated effort to influence legislation." The indicated language was included on the basis of comments which stated that the language of the proposed rule would have the effect of prohibiting programs from taking advantage of outside expertise. The new language makes it clear that he intent is to prohibit recipient employees from drafting communications to elected officials in consultation with persons engaged in organized efforts to influence legislation.

Section 1612.7(d) implements the requirement of Pub. L. 98-166 that the recipient's governing body adopt policies to guide the director in his or her approval of communications bringing legal problems to the attention of officials. The regulation stipulates that such policies shall require periodic reports to the governing body, take into account the recipient's priorities determined under Part 1620 and prohibit solicitation of client requests to communicate with elected officials. Subsection 1612.7(e) permits requests to introduce private relief bills allowing claims against a government and § 1612.7(f) permits responses to requests from officials to comment on proposed legislation subject to the requirements of § 16125(f). In response to comments, that section was changed from the proposed rule to delete the one percent ceiling on resources expended in response to requests from officials, and substitute language making such responses subject to the program's priorities and demands of client service on the program's time. This limitation recognizes that the primary purpose of LSC grants is to respond to client requests for representation rather than requests from elected officials. Legal services attorneys must avoid becoming staff to elected officials.

Subsection 1612.7(g) makes clear that the requirements of § 1612.5 apply to the use of funds made available under Pub. L. 98-166.

Miscellaneous

Section 1612.8 concerning enforcement is amended to make clear that a less drastic remedy than termination of funding or denial of refunding may be imposed as a sanction for violation of this part, such as recovery of questioned costs. The language of the section is reorganized to clarify that suspension or termination of employment of a Corporation employee is not subject to the requirements of section 1011 of the Act.

In response to comments the requirements of § 1612.8(c)(3) (previously § 1612.5(b)(3)) that a recipient consult with the Corporation's General Counsel before determining the appropriate sanction to be imposed for violation of this part has been changed to a requirement that the Corporation's Office of Compliance and Review be informed within 30 days of any sanction imposed for violation of this Part. This clarifies that the Corporation is not directly involved in personnel decisions of programs, but only is concerned with assuring that programs comply with the Act and regulations. A new section, § 1612.8(c)(4), is added to reqüire programs to submit records of the investigation of alleged violations on a quarterly basis to the Office of Compliance and Review.

Finally, a new § 1612.9 is added which would require each recipient to post a notice prepared by the Office of Compliance and Review summarizing the restrictions of this part and stating that complaints of violations may be reported to the Office of Compliance and Review.

List of Subjects in 45 CFR Part 1612

Administrative representation, Legal services, Lobbying, Publicity, Reporting and recordkeeping requirements.

For the reasons set out above, Part 1612 is set forth below in its entirety:

PART 1612—RESTRICTIONS ON LOBBYING AND CERTAIN OTHER ACTIVITIES

Sec.

Authority: Secs. 1006(b)(5), 1007(a) (5), (6) and (7), 1011, 1008(e), Legal Services Corporation Act of 1974, as amended (42 U.S.C. 2996e(b)(5), 2996f(a) (5), (6) and (7), 2996j, 2996g (e)); Pub. L. 95-431, 92 Stat. 1021; Pub. L. 96-68, 93 Stat. 416; Pub. L. 96-536, 94 Stat. 3166; Pub. L. 97-161, 96 Stat. 22; Pub. L. 97-377, 96 Stat. 1874; Pub. L. 98-166, 97 Stat. 1071.

§ 1612.1 Definitions.

(a) "Legal assistance activities," as used in this part, means any activity:

(1) Carried out during an employee's working hours or while on official travel;

(2) Using resources provided by the Corporation or a recipient, directly or through a subrecipient; or

(3) That, in fact, provides legal advice or representation to an eligible client.

(b) "Legislation", as used in this part, means any potential action of the Congress, any State legislature or other body of elected official acting in a legislative capacity (including action on constitutional amendments, the ratification of treaties and intergovernmental agreements, approval of appointments and budgets, adoption

of resolutions not having the force of law, and approval or disapproval of actions of the executive). The term includes proposals for legislative action but it does not include those actions of a legislative body which adjudicate the rights of individuals under existing laws (such as action taken by a local council sitting as a Board of Zoning Appeals). "Legislature" as used herein does not include any Indian Tribal Council.

§ 1612.2 Public demonstrations and other activities.

(a) While carrying out legal assistance activities under the Act no employee shall:

(1) Knowingly participate in any public demonstration, picketing, boycott, or strike, except as permitted by law in connection with the employee's own employment situation; or

(2) Intentionally exhort, direct, or coerce others to engage in such activities, or otherwise usurp or invade the rightful authority of a client to determine what course of action to follow.

(b) While employed under the Act, no employee shall, at any time:

(1) Knowingly participate in any rioting or civil disturbance activity in violation of an outstanding injunction of any court of competent jurisdiction or any other illegal activity that is inconsistent with an employee's responsibilities under the Act, Corporation regulations, or the Code of Professional Responsibility; or

(2) Intentionally exhort, direct, or coerce to engage in such activities, or otherwise usurp or invade the rightful authority of a client to determine what course of action to follow.

(c) Nothing in this section shall prohibit an attorney from:

(1) Informing and advising a client about legal alternatives to litigation or the lawful conduct thereof; or

(2) Fulfilling the professional responsibilities of an attorney to a client.

§ 1612.3 Organizing.

No funds made available by the Corporation may be used to initiate the formation, or to act as an organizer, of any association, federation, coalition, network, alliance, or any similar entity. No funds may be employed for any publicity or any meeting to advocate that anyone organize or join any organization. This section shall not be interpreted to prevent recipients and their employees from providing legal advice or assistance to eligible clients who desire to plan, establish or operate organizations, such as by preparing articles or incorporation and by-laws. This section shall not apply to organizations composed solely of persons engaged in the delivery of legal services to the indigent organized solely for the purpose of improving the effectiveness of such legal services; nor shall it apply to organizations composed exclusively of eligible clients formed solely to advise a legal services program about the delivery of legal services. Such legal advice or assistance may not be provided, however, in the formation of an organization, a substantial purpose of which is to influence legislation, elections or ballot propositions.

§ 1612.4 Training.

(a) No funds made available by the Corporation may be used to support or conduct training programs for the purpose of:

(1) Advocating or opposing particular public policies; or

(2) Encouraging or facilitating:

(i) Political activities (including formation of organizations or coalitions, a substantial purpose of which is to advocate or oppose particular public policies);

(ii) Labor or antilabor activities;

(iii) Boycotts, picketing, strikes or demonstrations;

(iv) Development of strategies to influence legislation or rulemaking; or

(v) With respect to funds made available by the Corporation under the authority of Pub. L. 98–166, the dissemination of information about such activities or pubic policies.

(b) Nothing in this section shall be construed to prohibit the training of attorneys or paralegal personnel necessary to prepare them to:

(1) provide adequate legal assistance to eligible clients;

(2) Advise any eligible clients as to the nature of the legislative process, in general, as opposed to discussing a lobbying strategy for a particular bill; or

(3) Inform any eligible client of his rights under any statute, order or regulation already enacted.

(c) No recipient shall expend Corporation funds for training or educational activities or utilize Corporation funds to pay for programs or individuals to participate in outside training or eductional activities in areas in which program involvement is prohibited (such as political activities or voter registration, etc.) or in areas wherein only limited and incidental activities are allowed (such as lobbying) under the Act, other applicable Federal law, Corporation regulations, guidelines or instructions.

§ 1612.5 Legislative and administrative representation.

(a) No funds made available by the Corporation shall be used, at any time, directly or indirectly, to support activities intended to influence the issuance, amendment, or revocation of any executive order or administrative order or regulation of a Federal, State or local agency, or to undertake to influence the introduction, amendment, enactment, defeat, repeal or signing of any legislation or State proposals by initiative petition, except that:

(1)(i) An employee may respond to a request from a governmental agency or a legislative body, committee, or member made to the employee or to a recipient to testify, draft or review measures or to make representation to such agency, body, committee or member on a specific matter;

(ii) The exception for responses to officials does not authorize communication with anyone other than the requesting party or an agent or employee of such party. No employee of the recipient shall, directly or indirectly, solicit or arrange a request from any official to testify or otherwise make representations in connection with legislation.

(2) An employee may engage in such activities at the request of an eligible client of a recipient, to the extent such activities are necessary to the provision of legal advice and representation to a client who has sought such legal advice and representation with respect to particular legal rights and responsibilities which would be affected by particular legislation or administrative measures, but no employee shall solicit a client in violation of professional responsibilities for the purpose of making such representation possible; or

(3) An employee may engage in such activities if a governmental agency, legislative body, committee, or member thereof is considering a measure directly affecting the activities under the Act of the recipient or the Corporation. This exception extends only to appropriations or other measures directed to the Corporation, or the recipient or its employees. The expenditure of funds appropriated under Pub. L. 97–377 and 98–166 are subject to the further limitations set forth in paragraphs (f) and (g) of this section, and § 1612.6 and § 1612.7.

(b) Recipients shall adopt procedures and forms to document that the legislative and administrative activities in which they engage fall within the activities permitted in paragraph (a) of

this section. Such documentation shall include:

(1) With respect to activities permitted under paragraph (a)(1) of this section, a written request directed to the recipient and signed by an official of the governmental agency or a member of the legislative body or committee making the request which states the type of representation or assistance requested and identifies the executive or administrative order or regulation, or legislation, to be addressed. Such documentation shall also include the written approval of the recipient's project director (or his or her designee) authorizing the communications requested;

(2) With respect to activities permitted under paragraph (a)(2) of this section, a retainer agreement, signed by the client or clients represented, or by an official of the client group in the case of a group client, which agreement shall specify the legislative or administrative measure on which representation is sought, (appearance at a hearing, legislative drafting, etc.), and which shall include a statement of the client's direct interest in a particular legislative or administrative measure to be addressed and a statement by the client in the client's own words of the matter on which relief is sought; or

(3) With respect to activities permitted under paragraph (a)(3) of this section, a written statement signed by the recipient's project director authorizing the initiation of such activities.

(4) Recipients shall obtain the documentation required by this section prior to undertaking any of the activities permitted by paragraphs (a) or (f) of this section, except that recipients may respond to an oral request made pursuant to paragraphs (a)(1) or (g)(2) of this section in the absence of a written request provided that the fact, nature, and circumstances of the request are subsequently documented in writing signed by the requesting authority.

(5) The recipient shall maintain records, in the manner specified by the Corporation, of the direct and indirect expenses, time spent on, and the sources of the funds supporting, all lobbying or related activity, regardless of the sources of the funds employed. In addition, the recipient shall require all employees who are registered lobbyists or who devote over ten (10) percent of their time to lobbying or related activities to maintain a time log accounting for all working hours.

(6) Recipients shall submit quaterly reports, in a form prescribed by the Corporation, describing their legislative and administrative advocacy activities conducted pursuant to these regulations, together with such supporting documentation as required by the Corporation.

(c) No funds made available by the Corporation shall be used to:

(1) Maintain separate offices for the sole purpose of engaging in legislative activity;

(2) Pay dues to any organization (other than a bar association), a substantial purpose or function of which is to take positions on matters pending before legislative or administrative bodies;

(3) Pay for transportation to legislative or administrative proceedings of persons other than employees engaged in activities permitted under this section or witnesses entering appearances in such proceedings on behalf of clients of the recipient, except that such funds may be used to transport the client where necessary and appropriate. This subsection does not authorize payment of transportation expenses for employees not actually engaged in permitted representation activities;

(4) Pay, in whole or in part, for the conduct of, or transportation to, an event if a primary purpose of the expenditure is to facilitate lobbying or any other activity which would be prohibited if conducted with funds made available by the Corporation;

(5) Pay for administrative or related costs associated with any activity prohibited by this part; or

(6) Assist others, through legislative liaison activities, to influence legislation in a manner that would be prohibited if undertaken with funds made available by the Corporation. Legislative liaison activities include but are not limited to attending legislative sessions or committee hearings, gathering information regarding pending legislation, and analyzing the effect of pending legislation.

(d) Notwithstanding the provisions of paragraph (a) of this section, recipients shall not use funds made available by the Corporation for publicity or propaganda purposes designed to support or defeat proposed legislation, or rules or regulations under consideration by any Federal, State, county or municipal legislative or administrative body, including any commission, authority or government corporation with rulemaking authority. For purposes of this regulation, "publicity or propaganda" means any oral, written or electronically transmitted communication or any advertisement, telegram, letter, article, newsletter, or other printed or written matter or device which contains a direct suggestion, or, when taken as a whole, an indirect suggestion to the public at large or to selected individuals to contact public officials in support of or in opposition to pending or proposed legislation, rules or regulations, or to contribute to or participate in any demonstration, march, rally, fundraising drive, lobbying campaign, letter writing or telephone campaign for the purpose of influencing such legislation, rules or regulations.

(e) No funds made available by the Corporation shall be used to support the preparation, production, and dissemination of any article, newsletter, or other publication or written matter for general distribution or other form of mass communication which contains any reference to proposed or pending legislation unless:

(1) The publication does not contain any publicity or propaganda prohibited by paragraph (d) of this section;

(2) The recipient has adopted a policy requiring the recipient's project director, or his or her designee, to review each publication produced by the recipient prior to its dissemination for conformity to these regulations;

(3) The recipient provides a copy of any such material produced by the recipient to the Corporation within 30 days after publication; and

(4) Such funds are used only for costs incident to the preparation, production, and dissemination of such publications to recipients, recipient staff and board members, private attorneys representing eligible clients, eligible clients who have sought representation in a matter related to the legislation and the Corporation, as opposed to the public at large, or eligible clients generally.

(f)(1) Notwithstanding the provisions of paragraph (a) of this section, no funds made available to a recipient by the Corporation under the authroity of Pub. L. 97–377 shall be used, directly or indirectly, to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or other device, intended or designed to influence any decision by a Federal, State, or local agency, except, where legal assistance is provided by an employee of a recipient to an eligible client on a particular application, claim, or case, which directly involves the client's legal rights and responsibilities, or to influence any Member of Congress or any other Federal, State, or local elected official in connection with any Acts, bills, resolutions, or similar legislation, or any referendum, initiative, constitutional amendment, or any similar procedure of the Congress, any State Legislature, any local council, or any similar governing body, except that

this subsection shall not preclude such funds from being used in connection with communications made in response to any Federal, State, or local official on a special matter.

(2) None of the funds made available by the Corporation under the authority of Pub. L. 97–377 shall be used, directly or indirectly, to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or other device, intended or designed to influence any decision by a Federal State or local agency, commission, authority or government corporation, except for:

(i) The provision of legal assistance to an eligible client in an adjudicatory proceeding, or informal negotiations, directly involving that client's legal rights or responsibilities with respect to a particular application, claim or case;

(ii) A response to a request from a Federal, State or local official made directly to that official or his agent or employee; or

(iii) Such legal assistance to an eligible client in a rulemaking proceeding as is necessary to assert a specific claim, application, or case directly involving the client's legal rights.

(3) The exception for communications to officials does not authorize communication with anyone other than the requesting party or an agent or employee of such party. No employee of the recipient shall, directly or indirectly, solicit, or arrange a request from any official to testify or otherwise make representations in connection with legislaiton .

(g) Recipients shall adopt procedures and forms to document that the legislative and administrative activities in which they engage utilizing funds made available under the authority of Pub. L. 97–377 fall within the activities permitted under paragraph (f) of this section. With respect to activities in response to a request from a Federal, State, or local elected official, such documentation shall include a written request signed by the official making the request which states the type of communication requested (testimony, legal analysis, etc.) and identifies the legislative measure to be addressed. Such documentation shall also include the written approval of the recipient's project director (or his or her designee) authorizing the communications requested.

(h) Nothing in this section is intended to prohibit an employee from:

(1) Communicating with a governmental agency for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, practices, or plicies;

(2) Informing a client about a new or proposed statute, executive order, or administrative regulation consistent with the requirements of paragraphs (d) and (e) of this section;

(3) Responding to an individual client's request for advice only with respect to the client's own communications to officials unless otherwise prohibited by the Act, Corporation regulations or other applicable law. This provision does not authorize publications or training of clients on lobbying techniques or the composition of a communication for the client's use; or

(4) Making direct contact with the Corporation for any purpose.

§ 1612.6 Administrative representation under Pub. L. 98–166.

None of the funds made available by the Corporation under the authority of Pub. L. 98–166 shall be used, directly or indirectly, to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or other device, intended or designed to influence any decision by a Federal, State or local agency, commission, authority or government corporation, except for:

(a) The provision of legal assistance to an eligible client in an adjudicatory proceeding, or informal negotiations, directly involving that client's legal rights or responsibilitis with respect to a particular application, claim or case;

(b) A response to a request from a Federal, State or local official made directly to that official or his agent or employee; or

(c) Such legal assistance to an eligible client in a rulemaking proceeding as is necessary to assert a specific claim, application, or case directly involving the client's legal rights.

§ 1612.7 Legislative representation under Pub. L. 98–166.

(a) None of the funds made available by the Legal Services Corporation under the authority of Pub. L. 98–166 may be used to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or any other device directly or indirectly intended to influence any Member of Congress or any other Federal, State or local elected nonjudicial official:

(1) In connection with any referendum, initiative, constitutional amendment, or any similar procedure of the Congress, any State legislature, any local council, or any similar governing body acting in a legislative capacity. The term "similar procedure" as used in this part refers to legislative consideration of matters which by law must be ratified by a vote of the electorate or matters relating to the structure of government itself, such as a plan for reapportionment;

(2) In connection with inclusion of any provision in a legislative measure appropriating funds to, or defining or limiting the functions or authority of, the recipient or the Corporation; or

(3) To influence the conduct of oversight proceedings concerning the recipient or the Corporation.

(b) None of the funds made available by the Legal Services Corporation under the authority of Pub. L. 98–166 shall be used to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or any other device intended or designed to influence any Member of Congress or any other Federal, State or local elected official in connection with any Act, bill, resolution or similar legislation not described in paragraph (a) of this section, except that an employee of a recipient may, upon the request of a client or clients, communicate directly with a Federal, State or local elected official for the sole purpose of bringing a specific and distinct legal problem to the attention of such official if the project director of chief executive of such recipient has determined, prior to such communication:

(1) That the client or each such client is in need of relief that can be provided by the legislative body with which the official is associated; and

(2) That appropriate judicial and administrative relief have been exhausted and has documented the effort to obtain such judicial and administrative relief.

(c) In connection with each communication authorized by paragraph (b) of this section, the project director shall maintain the following documentation:

(1) The content of each such communication;

(2) The basis for the two determinations specified in paragraph (b) of this section;

(3) The director's written approval of such communication, setting forth the basis of his determination that such communication is authorized under the policies of the recipient's governing board adopted pursuant to paragraph (d) of this section;

(4) A retainer in the form specified in § 1612.5(b) setting forth the specific legal interest of each client at whose request the communication was undertaken;

(5) The director's determination that such communication is not the result of participation in a coordinated effort to communicate with elected officials on the subject matter. The determination shall include the director's certification that the communication was prepared by the attorney and client without consulting with persons who are participating in a coordinated effort to influence legislation.

(d) The governing body of a recipient shall adopt a policy by July 1, 1984, to guide the director of the recipient in determining when to approve a communication to a Federal, State or local official under paragraph (c) of this section. The policy adopted shall:

(1) Require periodic reports to the governing body on the communications approved, which shall include a report on the exhaustion of judicial and administrative relief;

(2) Ensure that staff does not solicit requests to undertake communications with elected officials nor participate in a coordinated effort to provide communications on a particular subject;

(3) Require that, in determining the amount of effort to be expended in preparing the communication, the director take into account the recipient's priorities in resource allocation.

(e) Notwithstanding the prohibition in paragraph (b) of this section of communications to elected officials that do more than bring a problem to the official's attention, a project director may approve a communication to an elected official requesting introduction of a specific "private relief bill," which for purposes of this part means a bill allowing a claim against a government for which there is no other remedy.

(f) Funds made available by the Corporation under the authority of Pub. L. 98-166 may be used to respond to request from Federal, State and local officials in accordance with the limitations of § 1612.5(f) to the extent compatible with meeting the demands for client service and priorities set by the recipient pursuant to Part 1620 of these regulations or to the extent compatible with the provision of support services to recipients relating to the delivery of legal assistance.

(g) Funds made available by the Corporation under the authority of Pub. L. 98-166 are subject to the requirements of § 1612.5 (b), (c), (d), (e), (g) and (h) unless inconsistent with the provisions of this section.

§ 1612.8 Enforcement.

(a) The Corporation shall have authority:

(1) To suspend or terminate the employment of an employee of the Corporation who violates the provisions of this part; and

(2) To impose such sanctions as are appropriate (including but not limited to recovery of questioned costs) for the enforcement of this regulation against a recipient which fails to ensure that its employees refrain from activities proscribed by the Act or by this part.

(b) The Corporation shall have authority in accordance with the procedures set forth in Parts 1606, 1623 and 1625 of these regulations to suspend or terminate financial assistance or deny refunding to a recipient which fails to ensure that its employees refrain from activities proscribed by the Act or by this part.

(c) A recipient shall:

(1) Advise employees about their responsibilities under this part; and

(2) Establish procedures, consistent with the notice and hearing requirements of section 1011 of the Act, for determining whether an employee has violated a provision of this part; and shall establish a policy for determining the appropriate sanction to be imposed for a violation, including:

(i) Administrative reprimand if a violation is found to be minor and unintentional, or otherwise affected by mitigating circumstances;

(ii) Suspension and termination of employment; and

(iii) Other sanctions appropriate for the enforcement of this regulation; and

(3) Inform the Office of Compliance and Review within 30 days of imposing any sanction on any person for violation of this part.

(4) Make available to the Corporation the records of its investigation of any allegation of violations whether or not any sanctions were imposed. Such records shall be submitted on a quarterly basis to the Office of Compliance and Review.

§ 1612.9 Posting of notices.

By August 1, 1984 each recipient shall post conspicuously in each of its offices a notice provided by the Corporation's Office of Compliance and Review briefly summarizing the activities prohibited by these regulations. Such notice shall include a statement that apparent violations may be reported to the Officeof Compliance and Review and the address and telephone number of that office.

Dated: December 27, 1984.

Richard N. Bagenstos,

Acting Deputy General Counsel.

[FR Doc. 85-177 Filed 1-3-85; 8:45 am]

BILLING CODE 6820-35-M

45 CFR Part 1614

Private Attorney Involvement

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: Since September the Legal Services Corporation has received comments concerning both substantive and procedural issues involving revisions to existing regulations and regulations newly put in place. After deliberation, the Board of Directors of the Corporation at its December 20, 1984 meeting decided to republish this Part of the regulations, along with four others, for further consideration and comment. This Part 1614, concerning private attorney involvement, was previously adopted by the Board on April 28, 1984, and published in final form in the **Federal Register** on May 21, 1984, 49 FR 21328. The regulation is currently in effect as published here.

DATE: Comments must be received on or before February 4, 1985.

ADDRESS: Comments may be submitted to Office of General Counsel, Legal Services Corporation, 733 Fifteenth Street, N.W., Room 601, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Richard N. Bagenstos, Acting Deputy General Counsel, (202) 272-4010.

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

Section 1614.1 adopts a previous Board resolution defining "substantial amount" as at least twelve and one-half percent (12½%) of the recipient's Legal Services Corporation annualized basic field award. This definition of substantial amount was previously incorporated in Instruction 83-6. In response to comments, a waiver provision was added to the regulation to permit a recipient to request relief from the requirement when "the nature of the population served, and the available

attorney population" make compliance impossible. Recipients of migrant or Native American funding are to use their best efforts to meet the requirements or the Corporation must be satisfied that private legal involvement is not feasible.

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

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

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

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

The regulation defines a wide range of activities permitted to involve the private bar in the delivery of legal assistance to eligible clients. The primary consideration is, of course, that the highest quality of civil legal services be provided to the clients in an effective and economical manner. In response to comments, § 1614.3(a)(1) has been modified to clarify that modified *pro bono* programs are considered permissible in fulfilling the PAI requirement. The regulation outlines specific methods to be undertaken by recipients to involve private attorneys in providing such legal assistance and states the components various systems should include.

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

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

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

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

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

List of Subjects in 45 CFR Part 1614

Legal services, Private attorneys.

For the reasons set out above, 45 CFR Part 1614 is set forth below in its entirety:

PART 1614—PRIVATE ATTORNEY INVOLVEMENT

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

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

§ 1614.1 Purpose.

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

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

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

§ 1614.2 General policy.

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

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

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

§ 1614.3 Range of activities.

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

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

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

(3) Support provided by the recipient in furtherance of activities undertaken pursuant to this Section including the provision of training, technical assistance, research, advice and counsel; or the use of recipient facilities, libraries, computer-assisted legal research systems or other resources.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) They shall accurately identify and account for:

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

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

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

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

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

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

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

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

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

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

(iv) Staff time records.

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

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

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

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

(10) Each recipient which utilizes a compensated private bar mechanism, whether judicare, contract, or some

other form, shall develop a system which includes:

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

(ii) A procedure to determine net encumbrances;

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

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

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

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

§ 1614.4 Procedure.

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

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

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

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

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

§ 1614.5 Prohibition of revolving litigation funds.

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

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

Dated: December 27, 1984.

Richard N. Bagenstos

Acting Deputy General Counsel.

[FR Doc. 85-178 Filed 1-3-85; 8:45 am]

BILLING CODE 6820-35-M

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45 CFR Part 1620

Priorities in Allocation of Resources

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: Since September the Legal Services Corporation has received comments concerning both substantive and procedural issues involving revisions to existing regulations and regulations newly put in place. After deliberation, the Board of Directors of the Corporation at its December 20, 1984 meeting decided to republish this Part of the regulations, along with four others, for futher consideration and comment. This Part 1620 concerning Priorities in allocation of resources, was previously adopted by the Board on March 30, 1984, and published in final form in the **Federal Register** on May 9, 1984, 49 FR 19657. The regulation is currently in effect as published here.

DATE: Comments must be received on or before February 4, 1985.

ADDRESS: Comments may be submitted to Office of General Counsel, Legal Services Corporation, 733 Fifteenth Street, N.W., Room 601, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Richard N. Bagenstos, Acting Deputy General Counsel, (202) 272-4010.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation published a proposed rule revising Part 1620 of its regulations governing the process of setting priorities for the allocation of resources on January 9, 1984 (49 FR 1088). Interested parties were given 30 days, until February 8, 1985, to submit comments on the proposed revisions. Sixty (60) comments were received and thoroughly considered.

Section 1620.1 Purpose and 1620.3 Access. A number of comments expressed opposition to the added phrase "substantially equal access." Most noted that program, client and geographic differences made it virtually imposible to attain truly equal access, particularly in light of reduced funding levels. There was also confusion over the newly articulated mandate that eligible clients are entilted to "the same types of services and level of representation." There was a concern that such language would prohibit otherwise legitimate preferences such as for the handicapped, the elderly, etc.

"Equal access" does not mean "idential access". The spirit of the revision is to provide a strong mandate for priority setting. It does not require that clients be ranked on the basis of their financial resources, but it does permit distinct differences in resources to justify differences in access. Each program must do its best to provide the highest level of access possible. Each program is to set its own priorities according to its appraisal of the needs of the eligible client community it serves. Once the priorities are set, however, the proposed rule intends that all eligible clients have a reasonably equal opportunity to avail themselves of the range of services offered by the program.

In reponse to comments, the language of § 1620.3 has been modified in the final rule to make it clear that equal access is not to be considered an absolute standard, but is to be interpreted in light of the Act's requirement of economical and effective delivery of legal services, as well as in light of differing service needs and priorities in different sub-areas of a program's service area.

Section 1620.2 Procedure. This section, which establishes the procedure to be followed in setting priorities, has been modified in response to comments to eliminate the requirement of a needs assessment, and to replace it with the requirement of an appraisal as appeared in the old rule. Comments received indicated that a needs assessment was a complicated and expensive procedure, and that most programs had insufficient resources to carry it out. Therefore, the Corporation decided to remove that requirement, at least until such time as it can provide the necessary assistance to meet it.

The words "the governing body of" have been added to the opening language of § 1620.2(a) to indicate that priority-setting is a policy determination to be carried out by a program's board.

and is not a staff function. A number of comments opposed the inclusion of the private bar among those whose opinions concerning priorities should be solicited. The most frequent objections to such input were that the private bar tended to be either hostile to or ignorant of the needs of eligible clients. The Croporation, however, encourages the involvement of the private bar as a policy matter in an attempt to broaden knowledge of the concern for the legal problems of eligible clients and to provide additional resources to meet those needs.

There were comments opposing the language in § 1620.2(c) which stated that each program's report on its priority setting activities "shall be submitted to the Corporation for approval and shall be available to the public. This language was apparently interpreted to mean that the Corporation would have to approve the actual priorities set. The comments were of the opinion that this was an undue and unwarranted centralization of the Corporation's authority.

The intent of this subsection, however, is to ensure that programs actually carry out the mandate of the Act to set priorities based on the needs of eligible clients in the service area. The Corporation's role is limited to assuring itself that programs have complied with that section of the Act. Therefore, to make it clear that the Corporation's role is procedural rather than substantive, the word "approval" has been changed to "acceptance". It should be further noted that that word "acceptance" relates to the report submitted, and not to the priorities themselves. Note that in the final rule § 1620.2(c) has been renumbered § 1620.4(b).

Some comments were received on the language in § 1620.2(c) concerning a "case acceptance schedule". The thrust of the responses waa that the term was not sufficiently defined. Some were concerned that this was to be pre-determined and therefore unrealistic, while others expressed approval if the intention was to make such a schedule a compliance reporting device. This is intended to be a device to a program's compliance with its priorities, as well as an aid to staff in the determination of cases appropriate for acceptance under the priorities set by the program.

A number of comments were critical of the deletion of the phrase "the general effect of the resolution of a particular category of cases or matters on eligible clients in the area served" from old subsection (b)(7). Most stated that the deleted language provided guidance on the use of scarce resources and that its absence, along with the "equal access" mandate, would impede the effectiveness of the priority-setting process. This modification, however, was proposed to complement the Corporation's policy that priorities should be based on the right of the individual client to legal assistance as opposed to an approach that makes a judgment as to which cases may have the most impact on an eligible class of clients.

Section 1620.3 Access. A recipient shall allocate resources consistent with the purposes and requirements of the Act, regulations, guidelines and instructions, including § 1620.2 of these regulations, so as to substantially provide that all potentially eligible clients in the recipient's service area have reasonably equal access to the same type of services and level of representation to the maximum extent economically practical. Type of services may vary as required to meet different priorities in different parts of the recipient's service area, and level of representation may vary based on differences in client financial resources. Availability of services should be reasonably proportional to the distribution of eligible clients by county or parish within the recipient's service area. Where a recipient serves an area that is not easily defined by parish of county jurisdictions, other units of political subdivision should be utilized.

Section 1620.4 Implementation. This newly designated section contains § 1620.5 from the proposed rule and § 1620.2(c) from the proposed rule, as discussed above.

Section 1620.5 Annual Review. The word "annual" has been added to highlight the periodic nature of the review. Further, the language has been modified to clarify that the priorities are to be reviewed "by the governing body of the recipient". This is in response to comments which interpreted the language of the proposed rule to mean that the Corporation would conduct the annual review. Such a reading is contrary to the intent of that section, and consequently the language has been modified to clarify it.

In addition, the word "distribution" has been added to the list of changes to be considered, to clarify that it is not merely the size and needs of the eligible client population in a service area which be considered, but also their distribution within such area.

List of Subjects in 45 CFR Part 1620

Legal services.

For the reasons set out in the preamble, 45 CFR Part 1620 is set forth below in its entirety:

PART 1620—PRIORITIES IN ALLOCATION OF RESOURCES

Sec.

Authority: Sec. 1007(a)(2) Legal Services Corporation Act of 1974, as amended (42 U.S.C. 2996f(a)(2)).

§ 1620.1 Purpose.

This part is designed to ensure that a recipient, through policy and plans adopted by its governing body, takes into account the view of eligible clients, staff, the private bar and other interested persons in establishing priorities for allocating its resources in an economical and effective manner, consistent with the purposes and requirements of the Act and other provisions of Federal law; it is further designed to ensure that all potential eligible clients are provided substantially equal access to the same types of services and levels of representation, unless differences in level of services are based on differences in *client* finanical resources.

§ 1620.2 Procedure.

(a) The governing body of a recipient shall adopt procedures for establishing priorities in the allocation of its resources. The procedures adopted shall:

(1) Include an effective appraisal of the needs of eligible clients in the geographic areas served by the recipient, and their relative importance, based on information received from potential or current eligible clients solicited in a manner reasonably calculated to obtain the attitude of all significant segments of the client population, as well as input from the recipient's employees, governing body members, the private bar, and other interested persons. In addition to substantive legal problems, the appraisal shall address the need for outreach, training of the recipient's employees, and support services;

(2) Insure an opportunity for participation by all significant segments of the client community and the recipient's employees in the setting of priorities, in the development of the report required by § 1620.4(b), and in the annual review required by § 1620.5, and provide an opportunity for comment by interested members of the public.

(b) The following factors shall be among those considered by the recipient in establishing priorities:

(1) The appraisal described in paragraph (a)(1) of this section;

(2) The population of eligible clients in the geographic areas served by the recipient, including all significant segments of that population with special legal problems or special difficulties of access to legal services;

(3) The resources of the recipient;

(4) The availability of another source of free or low-cost legal assistance in a particular category of cases or matters;

(5) The availability of other sources of training, support, and outreach services;

(6) The relative importance of particular legal problems of the clients of the recipient;

(7) The susceptibility of particular problems to solution through legal processess; and

(8) Whether legal efforts by the recipient will complement other efforts to solve particular problems in the area served.

§ 1620.3 Access.

A recipient shall alllocate resources consistent with the purposes and requirements of the Act, regulations, guidelines and instructions, including § 1620.2 of these regulations, so as to substantially provide that all potentially eligible clients in the recipient's service area have reasonably equal access to the same type of services and level of representation to the maximum extent economically practical. Type of services may vary as required to meet different priorities in different parts of the recipient's service area, and level of representation may vary based on differences in client financial resources. Availability of services should be reasonably proportional to the distribution of eligible clients by county or parish within the recipient's service area. Where a recipient serves an area that is not easily defined by parish or county jurisdictions, other units of political subdivision should be utilized.

§ 1620.4 Implementation.

(a) The governing body of a recipient shall establish policies and procedures that assure clients and the Corporation that cases which are accepted for representation of eligible clients substantially comply with the priorities adopted by the recipient.

(b) By June 30, 1984, each recipient shall prepare an initial written report describing its priorities, how they were devoloped, the resultant case acceptance schedule, and the implications of those priorities for the allocation of its resources and the composition, training, and support of its personnel. This report shall be submitted to the Corporation for acceptance and shall be available to the public.

§ 1620.5 Annual review.

Priorities shall be reviewed by the governing body of the recipient at least annually. After the initial report described in § 1620.4(b) each recipient shall submit to the Corporation an annual report summarizing the review of priorities, the date of the most recent appraisal, the timetable for the future appraisal of needs and evaluation of priorities, and mechanisms which will be utilized to ensure effective client participation in priority-setting, and any changes in priorities. The report shall also include a copy of the case acceptance schedule adopted as a result of the priority review and assessment of the changes made in current operations of the recipient as a result of the priority review. The following factors shall be among those considered in determining whether the recipient's priorities should be changed:

(a) The extent to which the objectives of the recipient's priorities have been accomplished;

(b) Changes in the resources of the recipient;

(c) Changes in the size, distribution, or needs of the eligible client population; and

(d) Implementation of § 1620.3.

Dated: December 27, 1984.

Richard N. Bagenstos,

Acting Deputy General Counsel.

[FR Doc. 85-179 Filed 1-3-85; 8:45 am]

BILLING CODE 6820-35-M

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45 CFR Part 1622

Public Access to Meeting Under the Government in the Sunshine Act

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: Since September the Legal Services Corporation has received comments concerning both substantive and procedural issues involving revisions to existing regulations and regulations newly put in place. After deliberation, the Board of Directors of the Corporation at its December 20, 1984 meeting decided to republish this Part of the regulations, along with four others, for further consideration and comment. This Part 1622, concerning public access to meetings under the Government in the Sunshine Act, was previously adopted by the Board on July 9, 1984, and published in final form in the **Federal Register** on August 2, 1984, 49 FR 30939. The regulation is currently in effect as published here.

DATE: Comments must be received on or before February 4, 1985.

ADDRESS: Comments may be submitted to Office of General Counsel, Legal Services Corporation, 733 Fifteenth Street, NW., Room 612, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Richard N. Bagenstos, Acting Deputy General Counsel, (202) 272-4010.

SUPPLEMENTARY INFORMATION: On May 29, 1984, the Legal Services Corporation published in the **Federal Register** (49 FR 22348) a proposed rule which would revise the Corporation's regulations implementing the Sunshine Act.

Interested parties were given thirty days, until June 28, 1984, in which to submit comments on the proposed rule. Six comments were received on or before that date and four comments were received after the close of the comment period. All ten comments were given full consideration. The final rule contains no modifications in response to those comments.

The only change made between the proposed and final versions is a technical change in paragraph (g) of § 1622.6. The word "significantly" is removed after the word "likely" and inserted after the word "frustrate". This change does not change the substance of the paragraph. It is merely a correction of English usage, the need for which was discovered when the regulation was reviewed for final publication in the **Federal Register.**

The comments received opposed three basic provisions of the proposed rule contained in §§ 1622.2, 1622.4, and 1622.9.

Section 1622.2 Definitions. The comments received opposed the new definition of the term "public observation". Commentators argued that the definition acted to limit or reduce public comment and participation in Board meetings. The definition, however, does not restrict public comment, but merely clarifies the term "public observation". The Sunshine Act does not create any right of participation for observers of meetings. The Corporation's By-laws always have left participation to the invitation of the Chairman of the meeting. The proposed rule provided for an orderly method by which public comment may proceed. Therefore, no change was made in the proposed regulation.

Section 1622.4 Puplic announcement of meetings: Comments received on this section opposed the change in the sending of notices of meetings to the governing bodies of recipients rather than to each recipient of funds. The

commentators believed that this change would result in recipients not receiving timely notice of meetings.

The Corporation's primary relationship is with the governing body of a recipient. Therefore, it is appropriate that notice be sent by the Corporation to the governing body. The language of the regulation does not preclude additional notice. No change was made in the proposed regulation.

Section 1622.9 Emergency proceedings. The comments received on this section opposed the provision for emergency proceedings. The comments argued that the provision violates the Sunshine Act in that the emergency proceedings are a closed meeting and that notice of any change in the place of the meeting must be made seven days prior to the change of the meeting place. Several comments advocated the removal of disruptive members of the audience. Several other comments argued that the provision was to broad in that it neither defined when emergency proceedings could be instituted with sufficient specificity to avoid abuse nor defined who would be allowed to attend the emergency proceedings.

The emergency proceedings provision is intended to allow the Board to conduct Corporation business in that unusual circumstance when the conduct of members of the public renders the Board incapable of conducting its business. The phrase "rendered incapable of conducting a meeting" implies that the disruption is of an extraordinary magnitude such that any attempts at order have failed.

The phase "representatives of the public and media" ensures that the removed proceedings will be observed by the public, and together with the additional safeguards provided in paragraph (c) of the section, ensures that the meeting is an open meeting within the spirit and letter of the Sunshine Act.

The argument that seven days' notice is required by the Sunshine Act is not well founded. The Sunshine Act provides that for each meeting "the agency shall make public announcement, at least one week before the meeting, of the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by this agency to respond to requests for information about the meetings." 5 U.S.C. 552b(e)(1). This notice requirement applies to the initial setting of the meeting. Indeed, the Sunshine Act provides for meetings on less than one week's notice where the members of the agency determine, by a recorded vote, that agency business requires a meeting to be called at an earlier date. 5 U.S.C. 552b(e)(1). The public announcement requirement under the Sunshine Act is also a requirement under the Corporation's regulations, 45 CFR 1622.4, and should be fulfilled prior to the meeting in which the emergency proceedings are implemented.

The implementation of emergency proceedings is not the setting of a meeting, and does not change the time, date or subject matter of a meeting, nor does it change whether the meeting is open or closed. The implementation of emergency proceedings merely changes the place of the meeting. Under the Sunshine Act, "[t]he time or place of a meeting may be changed following the public announcement required [by 5 U.S.C. 552b(e)(1)] only if the agency publicly announces such change at the earliest practicable time." 5 U.S.C. 552b(e)(2). The public announcement requirements of 5 U.S.C. 552b(e)(1) do not apply to the changes in the place of the meeting made by the implementation of the emergency proceedings provision. Therefore, action taken pursuant to the emergency proceedings provision does not require seven days prior notice.

The comment suggesting expulsion of disruptive observers implies the use of force. Such action in an already tense atmosphere would cause a confrontational situation that may escalate into violence endangering the safety of non-disruptive observers and the Board members. By moving the meeting from the disruption, the Corporation has elected the least confrontational option that will allow the Board to conduct its business and at the same time adhere to the Sunshine Act.

For the foregoing reasons, the Corporation has made no changes in § 1622.9 in response to comments received.

List of Subjects in 45 CFR Part 1622

Legal services, Sunshine Act.

For the reasons set out in the preamble, 45 CFR Part 1622 is set forth below in its entirety.

PART 1622—PUBLIC ACCESS TO MEETINGS UNDER THE GOVERNMENT IN THE SUNSHINE ACT

Sec.

Authority: Sec. 1004(g), Pub. L. 95–222, 91 Stat. 1619 (42 U.S.C. 2996c(g)).

§ 1622.1 Purpose and scope.

This Part is designed to provide the public with full access to the deliberations and discussions of the Board of Directors of the Legal Services Corporation, committees of the Board, and state Advisory Councils, while maintaining the ability of those bodies to carry out their responsibilities and protecting the rights of individuals.

§ 1622.2 Definitions.

"Board" means the Board of Directors of the Legal Services Corporation.

"Committee" means any formally designated subdivision of the Board established pursuant to § 1601.27 of the By-Laws of the Corporation.

"Council" means a state Advisory Council appointed by a state Governor or the Board pursuant to section 1004(f) of the Legal Services Corporation Act of 1974, 42 U.S.C. 2996c(f).

"Director" means a voting member of the Board or a Council. Reference to actions by or communications to a "Director" means action by or communications to Board members with respect to proceedings of the Board, committee members with respect to proceedings of their committees, and council members with respect to proceedings of their councils.

"General Counsel" means the General Counsel of the Corporation, or, in the absence of the General Counsel of the Corporation, a person designated by the President to fulfill the duties of the General Counsel or a member designated by a council to act as its chief legal officer.

"Meetings" means the deliberations of a quorum of the Board, or of any committee, or of a council, when such deliberations determine or result in the joint conduct or disposition of Corporation business, but does not include deliberations about a decision to open or close a meeting, a decision to withhold information about a meeting, or the time, place, or subject of a meeting.

"Public observation" means the right of any member of the public to attend and observe a meeting within the limits of reasonable accommodations made availabe for such purposes by the Corporation, but does not include any right to participate unless expressly invited by the Chairman of the Board of Directors, and does not include any right to disrupt or interfere with the disposition of Corporation business.

"Publicly available" for the purposes of § 1622.6(e) means to be procurable either from the Secretary of the Corporation at the site of the meeting or from the Office of Government Relations at Corporation Headquarters upon reasonable request made during business hours.

"Quorum" means the number of Board or committee members authorized to conduct Corporation business pursuant to the Corporation's By-laws, or the number of council members authorized to conduct its business.

"Secretary" means the Secretary of the Corporation, or, in the absence of the Secretary of the Corporation, a person appointed by the Chairman of the meeting to fulfill the duties of the Secretary, or a member designated by a council to act as its secretary.

§ 1622.3 Open meetings.

Every meeting of the Board, a committee or a council shall be open in its entirety to public observation except as otherwise provided in § 1622.5.

§ 1622.4 Public announcement of meetings.

(a) Public announcement shall be posted of every meeting. The announcement shall include:

(1) The time, place, and subject matter to be discussed;

(2) whether the meeting or a portion thereof is to be open or closed to public observation; and

(3) the name and telephone number of the official designated by the Board, committee, or council to respond to requests for information about the meeting.

(b) The announcement shall be posted at least seven calendar days before the meeting, unless a majority of the Directors determines by a recorded vote that Corporation business requires a meeting on fewer than seven days notice. In the event that such a determination is made, public announcement shall be posted at the earliest practicable time.

(c) Each public announcement shall be posted at the offices of the Corporation in an area to which the public has access, and promptly submitted to the Federal Register for publication. Reasonable effort shall be made to communicate the anouncement of a Board or committee meeting to the chairman of each council and the governing body of each recipient of funds from the Corporation, and of a council meeting to the governing body of each recipient within the same state.

(d) An amended announcement shall be issued of any change in the information provided by a public announcement. Such changes shall be made in the following manner:

(1) The time or place of a meeting may be changed without a recorded vote.

(2) The subject matter of a meeting, or a decision to open or close a meeting or a portion thereof, may be changed by recorded vote of a majority of the Directors that Corporation business so requires and that no earlier announcement of the change was possible. An amended public announcement shall be made at the earliest practicable time and in the manner specified by § 1622.4 (a) and (c). In the event that changes are made pursuant to § 1622.4(d)(2), the amended public announcement shall also include the vote of each Director upon such change.

§ 1622.5 Grounds on which meetings may be closed or information withheld.

Except when the Board or council finds that the public interest requires otherwise, a meeting or a portion thereof may be closed to public observation, and information pertaining to such meeting or portion thereof may be withheld, if the Board or council determines that such meeting or portion thereof, or disclosure of such information, will more probably than not:

(a) Relate solely to the internal personnel rules and practices of the Corporation;

(b) Disclose matters specifically exempted from disclosure by statute (other than the Freedom of Information Act, 5 U.S.C. 552): Provided, That such statute

(1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(2) Establishes particular types of matters to be withheld;

(c) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(d) Involve accusing any person of a crime or formally censuring any person;

(e) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(f) Disclose investigatory records compiled for the purpose of enforcing the Act or any other law, or information which if written would be contained in such records, but only to the extent that the production of such records or information would

(1) Interfere with enforcement proceedings,

(2) Deprive a person of a right to a fair trial or an impartial adjudication,

(3) Constitute an unwarranted invasion of personal privacy,

(4) Disclose the identity of a confidential source,

(5) Disclose investigative techniques and procedures, or

(6) Endanger the life or physical safety of law enforcement personnel;

(g) Disclose information the premature disclosure of which would be likely to frustrate significantly implementation of a proposed Corporation action, except that this paragraph shall not apply in any instance where the Corporation has already disclosed to the public the content or nature of its proposed action, or where the Corporation is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(h) Specifically concern the Corporation's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Corporation of a particular case involving a determination on the record after opportunity for a hearing.

§ 1622.6 Procedures for closing discussion or withholding information.

(a) No meeting or portion of a meeting shall be closed to public observation, and no information about a meeting shall be withheld from the public, except by a record vote of a majority of the Directors with respect to each meeting or portion thereof proposed to be closed to the public, or with respect to any information that is proposed to be withheld.

(b) A separate vote of all the Directors shall be taken with respect to each meeting or portion thereof proposed to be closed to the public, or with respect to any information which is proposed to be withheld; except, a single vote may be taken with respect to a series of meetings or portions thereof which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series.

(c) Whenever any person's interest may be directly affected by a matter to be discussed at a meeting, the person may request that a portion of the meeting be closed to public observation by filing a written statement with the Secretary. The statement shall set forth the person's interest, the manner in which that interest will be affected at the meeting, and the grounds upon

which closure is claimed to be proper under § 1622.5. The Secretary shall promptly communicate the request to the Directors, and a recorded vote as required by paragraph (a) of this section shall be taken if any Director so requests.

(d) With respect to each vote taken pursuant to paragraph (a) through (c) of this section, the vote of each Director participating in the vote shall be recorded and no proxies shall be allowed.

(e) With respect to each vote taken pursuant to paragraph (a) through (c) of this section, the Corporation shall within one business day, make publicly available:

(1) A written record of the vote of each Director on the question;

(2) A full written explanation of the action closing the meeting, portion(s) thereof, or series of meetings, together with a list of all persons expected to attend the meeting(s) or portion(s) thereof and their affiliation.

§ 1622.7 Certification by the General Counsel.

Before a meeting or portion thereof is closed, the General Counsel shall publicly certify that, in his opinion, the meeting may be closed to the public and shall state each relevant exemption. A copy of the certification together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting and the persons present, shall be retained by the Corporation.

§ 1622.8 Records of closed meetings.

(a) The Secretary shall make a complete transcript or electronic recording adequate to record fully the proceedings of each meeting or portion thereof closed to the public, except that in the case of a meeting or any portion thereof closed to the public pursuant to paragraph (h) of § 1622.5, a transcript, a recording, or a set of minutes shall be made. Any such minutes shall describe all matters discussed and shall provide a summary of any actions taken and the reasons therefor, including a description of each Director's views expressed on any item and the record of each Director's vote on the question. All documents contained in connection with any action shall be identified in the minutes.

(b) A complete copy of the transcript, recording, or minutes required by paragraph (a) of this section shall be maintained at the Corporation for a Board or committee meeting, and at the appropriate Regional Office for a council meeting, for a period of two years after the meeting, or until one year after the conclusion of any Corporation proceeding with respect to which the meeting was held, whichever occurs, later.

(c) The Corporation shall make available to the public all portions of the transcript, recording, or minutes required by paragraph (a) of this section that do not contain information that may be withheld under § 1622.5. A copy of those portions of the transcript, recording, or minutes that are available to the public shall be furnished to any person upon request at the actual cost of duplication or transcription.

(d) Copies of Corporation records other than notices or records prepared under this Part may be pursued in accordance with Part 1602 of these regulations.

§ 1622.9 Emergency proceedings.

(a) In the event that the Directors are rendered incapable of conducting a meeting by the acts or conduct of any members of the public present at the meeting, the Directors may thereupon determine by a recorded vote of the majority of the number of Directors present at the meeting to remove the meeting to a different location and to invite representatives of the public and media to attend the proceeding at the new location.

(b) The emergency proceedings at the new location shall be recorded by means of an electronic recording adequate to record fully the emergency proceedings, or a transcript of the emergency proceedings shall be made by a certified court reporter.

(c) In the event that the actions of members of the public present at the meeting necessitate action pursuant to § 1622.9 (a), the Corporation shall also—

(1) Make a written statement summarizing the proceedings at the emergency proceedings available to the public at the close of the emergency proceedings;

(2) Make the entire transcript of electronic recording produced pursuant to paragraph (b) of this section available for public inspection within a reasonable time after the close of the emergency proceedings. A copy of the transcript or recording shall be furnished to any person upon request at the actual cost of duplication or transcription.

(3) Report the activities of the emergency proceedings at the next scheduled meeting of the Board.

(d) Actions taken pursuant to this section shall not be construed to be actions taken pursuant to § 1622.6 (Procedure for closing discussion or withholding information). Action taken pursuant to this section does not create any right to withhold any information regarding the emergency proceedings or action taken therein.

§ 1622.10 Reporting to Congress.

The Corporation shall report to the Congress annually regarding its compliance with the requirements of the Government in the Sunshine Act, 5 U.S.C. 552(b), including a tabulation of the number of meetings open to the public, the number of meetings or portions of meetings closed to the public, the reasons for closing such meetings or portions thereof, and a description of any litigation brought against the Corporation under 5 U.S.C. 552(b), including any costs assessed against the Corporation in such ligitation.

Dated: December 27, 1984.

Richard N. Bagenstos,

Acting Deputy General Counsel.

[FR Doc. 85-182 Filed 1-3-84; 8:45 am]

BILLING CODE 6820-35-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1057

[Ex Parte No. MC-43 (Sub-No. 16)]

Lease and Interchange of Vehicles (Identification Devices)

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file comments to notice of proposed rulemaking.

SUMMARY: In a decision served December 12, 1984 (49 FR 48576, December 13, 1984), the Commission proposed to amend Title 49 of the Code of Federal Regulations in order to avoid carrier liability for the acts of others upon termination of a lease agreement if, for any reason, the equipment continues to display the carrier's identification. In response to a petition, this notice extends the time for filing comments to that proposal from January 14, 1985 until March 4, 1985.

DATE: Comments must be received by March 4, 1985.

ADDRESS: Send comments (original and 15 copies) to: Ex Parte No. MC-43 (Sub-No. 16), Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT:

Paul W. Schach, (202) 275-7885

or

Howell I. Sporn, (202) 275-7691.

SUPPLEMENTARY INFORMATION: By letter filed December 17, 1984, the Interstate Carriers Conference (Conference), which filed the petition requesting institution of this rulemaking proceeding, has requested that the time for filing comments in this proceeding be extended until March 4, 1985. The Conference states that the regulations proposed by the Commission in the notice of proposed rulemaking differs substantially from those it proposed and, accordingly, its members need to discuss and consider them. The Conference also states that the holiday season, which falls during the comment period, makes consultation among members and preparation of comments difficult. It requests that we extend the comment period until after the next regularly scheduled meeting of its Executive Committee in mid-February, 1985. On December 24, 1984, the American Trucking Associations, Inc., filed a letter in support of the Conference's request for an extension.

The requested extension of time is warranted. An extension until March 4, 1985, will not unduly delay the resolution of issues in this proceeding, and will afford the Conference sufficient time to analyze and comment on the proposed regulations.

It is ordered:

The date for filing comments is extended to March 4, 1985.

Decided: December 28, 1984.

By the Commission, Reese H. Taylor, Jr., Chairman.

James H. Bayne,

Secretary.

[FR Doc. 85-204 Filed 1-3-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

Review of Regulations Implementing the Endangered Species Act Exemption for Certain Raptors; Raptor Propagation Permits; Federal Falconry Standards

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Intent and Request for Comments.

SUMMARY: By regulation published July 8, 1983 (48 FR 31600) effective August 8, 1983, the Fish and Wildlife Service amended regulations concerning falconry permits (50 CFR 21.28), Federal falconry standards (50 CFR 21.29), a special purpose raptor propagation permit (50 CFR 21.27), and creating a new raptor propagation permit (50 CFR 21.30). Pursuant to these amended regulations raptor propagators and most falconers could purchase, sell, or barter captive-bred raptors, including raptors otherwise "exempt" from such activities by virtue of protections under the Endangered Species Act of 1973 and the Migratory Bird Treaty Act. During the comment period, the Fish and Wildlife Service received numerous comments concerning effects of implementation of the proposed rule.

In accordance with its responsibilities to protect wildlife, including raptor species, the Fish and Wildlife Service will review the regulations governing the possession, sale, purchase, barter, and use of raptors. In particular the Fish and Wildlife Service solicits public comment concerning its review of regulations published in 50 CFR Part 21.

DATE: Public comments on this notice must be received in writing by February 4, 1985.

ADDRESSES: Comments may be mailed to Director (LE), Fish and Wildlife Service, P.O. Box 28006, Washington, D.C. 20005, or delivered weekdays to the Division of Law Enforcement, Fish and Wildlife Service, 3rd Floor, 1375 K Street, NW, Washington, D.C., between 8:00 a.m. and 4:00 p.m. Comments should bear the identifying notation REG 21-02-13.

FOR FURTHER INFORMATION CONTACT: Kathleen King, Division of Law Enforcement, Fish and Wildlife Service, P.O. Box 28006, Washington, D.C. 20005, telephone: (202) 343-9242.

List of Subjects in 50 CFR Part 21

Birds, special purpose permits, falconry permits, Federal falconry standards, raptor propagation permits.

Dated: December 21, 1984.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-211 Filed 1-3-85; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

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

ACTION: Notice of public hearings.

SUMMARY: The Gulf of Mexico and South Atlantic Fishery Management Councils will hold public hearings in conjunction with their Council meetings to comment on proposed changes to the draft amendment to the fishery management plan for coastal migratory pelagics (mackerels).

DATES: The hearings on January 9 and 30, 1985, will be convened at 1:30 p.m., adjourning at approximately 2:30 p.m. The hearing on January 16, 1985, will be convened at 7:30 p.m., adjourning at approximately 10:00 p.m.

ADDRESSES: The hearings will take place at the following locations:

January 9, 1985—Sheraton Plaza Royale, 3777 North Expressway, Brownsville, Texas.

January 16, 1985—Westshore Inn, 5303 West Kennedy Boulevard, Tampa, Florida.

January 30, 1985—Southpark Building, Suite 306, 1 Southpark Circle, Charleston, South Carolina.

FOR FURTHER INFORMATION CONTACT: Wayne Swingle, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Florida 33609, phone 813-228-2815.

Dated: December 31, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 85-248 Filed 1-3-85; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 50, No. 3
Friday, January 4, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Summer Food Service Program for Children; Program Reimbursement Rates for 1985

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the annual adjustments to the reimbursement rates for meals served in the Summer Food Service Program for Children. These adjustments reflect changes in the Consumer Price Index and are required by the statute governing the Program.

EFFECTIVE DATE: January 1, 1985.

FOR FURTHER INFORMATION CONTACT: Stanley C. Garnett, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302, (703) 756-3620.

SUPPLEMENTARY INFORMATION:

Classification: This notice has been reviewed under Executive Order 12291 and has not been classified as major because it will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices, and will not have a significant economic impact on competition, employment, investment, productivity, innovation or on the ability of U.S. enterprises to compete with foreign-based enterprises in domestic or foreign markets. This notice has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this notice will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

Background

Pursuant to section 13 of the National School Lunch Act (42 U.S.C. 1761) and the regulations governing the Summer Food Service Program for Children (7 CFR Part 225), notice is hereby given of adjustments in Program payments for meals served to children participating in the Summer Food Program for Children during the 1985 Program. Adjustments are based on changes in the food away from home series of the Consumer Price Index for All Urban Consumers for the period November 1983 through Nobember 1984. The new reimbursement rates in cents are as follows:

MAXIMUM PER MEAL REIMBURESMENT RATES

Operating costs	
Breakfast	64.75
Lunch or Supper	152.50
Supplement	40.00

MAXIMUM PER MEAL REIMBURESMENT RATES—Continued

Administrative costs	
a. For meals served at rural or self-preparation sites:	
Breakfast	7.75
Lunch or Supper	14.50
Supplement	4.00
b. For meals served at other types of sites:	
Breakfast	6.25
Lunch or Supper	12.00
Supplement	3.00

The total amount of payments to State agencies for disbursement to Program sponsors will be based upon these Program reimbursement rates and the number of meals of each type served. The above reimbursement rates, before being rounded-off to the nearest quarter-cent, represent a 3.97 per cent increase during 1984 (from 324.8 in November 1983 to 337.7 in November 1984) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

Definitions

The terms used in this Notice shall have the meanings ascribed to them in the regulations governing the Summer Food Service Program for Children (7 CFR Part 226).

(Catalog of Federal Domestic Assistance Programs No. 10.559)

(Sec. 2, Pub. L. 96-166, 91 Stat. 1325, (42 U.S.C. 1761); (sec. 5, Pub. L. 96-627, 92 Stat. 3620, (42 U.S.C. 1761); (sec. 809, Pub. L. 97-35, 95 Stat. 627, (42 U.S.C. 1761))

Dated: December 31, 1984.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 85-313 Filed 1-3-85; 8:45 am]

BILLING CODE 3410-30-M

CIVIL AERONAUTICS BOARD

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed, Week Ended December 21, 1984

Subpart Q Application

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the Board may process the application by expedited procedures. Such Procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
Dec. 17, 1984	42701	Arrow Air, Inc. and Frontier Horizon, Inc., c/o Lawrence D. Wasko, Seamon, Wasko & Dzmerl, Suite 300, 1211 Connecticut Ave., NW., Washington, D.C. 20036.

Date filed	Docket No.	Description
		Joint application of Arrow Air, Inc. and Frontier Horizon, Inc. pursuant to Sections 401 and 412 of the Act and Subpart Q of the Board's Procedural Regulations for transfer of certain certificates of public convenience to engage in scheduled foreign air transportation of persons, property and mail from Arrow to Frontier Horizon, consisting of: (1) The certificate for Route 387 authorizing foreign air transportation between Tampa, Florida and London, United Kingdom; and (2) The certificate for Route 402 authorizing foreign air transportation between Denver, Colorado and London, United Kingdom; Conforming Applications, Motions to Modify Scope and Answers may be filed by January 14, 1985.
Dec. 18, 1984	42705	Pacific Alaska Airlines, Inc., c/o Robert C. Lester, 1621 Connecticut Avenue, NW., Suite 350, Washington, D.C. 20009. Application of Pacific Alaska Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations applies for a certificate of public convenience and necessity for an indefinite term to perform scheduled interstate air transportation of person, property and mail between the terminal point Fairbanks, Alaska and the terminal point Barter Island (Kaktovik), Alaska. Conforming Applications, Motions to Modify Scope and Answers may be filed by January 15, 1985.
Dec. 20, 1984	42706	British Caledonian Airways Limited, c/o Leonard N. Bebchick, Suit 700, 1220 Nineteenth St., NW., Washington, D.C. 20036. Application of British Caledonian Airways Limited pursuant to Section 402 of the Act and Subpart Q of the Board's Procedural Regulations requests an amendment of its foreign air carrier permit issued pursuant to Order 82-12-118 so as to grant it the additional route authority to serve New York, New York. Answer may be filed by January 16, 1985.
Do	42709	Haiti Air, c/o Ronald H. Brown, Patton, Boggs & Blow, 2550 M Street, NW., Washington, D.C. 20037. Application of Haiti Air pursuant to Section 402 of the Act and Subpart Q of the Board's Procedural Regulations requests a foreign air carrier permit to enable Haiti Air to engage in scheduled foreign air transportation of persons, property, and mail as follows: (a) Between Port-au-Prince, Haiti and Miami, Florida and (b) Between Port-au-Prince, Haiti and New York, New York. Conforming Applications Motions to Modify Scope and Answers may be filed by January 17, 1985.
Dec. 21, 1984	42715	Las Vegas Express Airlines, Inc., c/o Nathaniel P. Breed, Jr., Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, D.C. 20036. Application of Las Vegas Express Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations applies for a certificate of public convenience and necessity authorizing it to engage in scheduled air transportation of passengers, property, and mail between any point in the United States and any other point in the United States. Conforming Applications, Motions to Modify Scope and Answers may be filed by January 18, 1985.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 85-253 Filed 1-3-85; 8:45 am]

BILLING CODE 6320-01-M

CAB form 433—Foreign Air Carrier Application for Statement of Authorization; Proposed Collection of Information

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Proposed Collection of Information under the Paperwork Reduction Act (44 U.S.C. 35).

SUMMARY: The Civil Aeronautics Board is requesting the Office of Management and Budget's approval to extend the collection of information in CAB Form 433, "Foreign Air Carrier Application for Statement of Authorization." OMB approval is required under the Paperwork Reduction Act of 1980.

DATED: December 27, 1984.

FOR FURTHER INFORMATION CONTACT: Mary P. Wray, Bureau of International Aviation, Civil Aeronautics Board, Washington, D.C., 20428, (202) 673-5878.

SUPPLEMENTARY INFORMATION: Agency Clearance Officer From Whom a Copy of the Collection of Information is Available: Robin A. Caldwell (202) 673-5922.

How Often the Collection of Information Must Be Filed: On Occasion.

Who is Asked or Required to Report: Foreign Air Carriers.

Estimate of Number of Annual Responses: 170

Estimate of Number of Annual Hours Needed to Complete the Collection of Information: 85.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 85-263 Filed 1-3-85; 8:45 am]

BILLING CODE 6320-01-M

[Docket No. 42585; Order 84-12-118]

Petition of Transamerica Airlines, Inc. for Rulemaking and Other Relief to Implement Section 9(a) of the CAB Sunset Act of 1984; Order Amending Certificates

Adopted by the Civil Aeronautics Board at its Office in Washington, D.C., on the 28th day of December, 1984.

By Order 84-11-90, served November 28, 1984, the Board directed all interested persons to show cause why it should not amend all section 418 all-cargo air service certificates outstanding as of January 1, 1985, to remove, as of that date, the conditions prohibiting intra-Alaska and intra-Hawaiian service. The condition, set forth in each section 418 certificate, generally reads as follows: (1) Nothing in this certificate shall be construed as authorizing all-cargo air service between any pair of points both of which are within the State of Alaska or the State of Hawaii.

The order provided that its findings and conclusions would become final if no objections were filed by December 12, 1984. No timely objections were filed. In a late-filed comment, MarkAir, Inc., an Alaskan air carrier, requests clarification that the removal of the certificate restriction authorizes only interstate cargo carriage between points within Alaska or Hawaii, not the carriage of purely intrastate traffic.

Clarification is not necessary. Section 418 certificates by their terms limit the authority granted to "air transportation" as defined in the Act, the "intra-Alaska" service discussed in Order 84-11-90 is therefore clearly so limited.

As no substantive objections have been raised to our show cause order, we will make it final.

Accordingly,

1. We grant the motion of MarkAir, Inc. to file a late comment in this proceeding;

2. We amend, effective January 1, 1985, all section 418 all-cargo air service certificates issued and outstanding as of that date by removing the condition, described above, which prohibits intra-Alaska and intra-Hawaii service.

3. This order shall be served on all certificated air carriers; and

4. This order shall be published in the **Federal Register.**

All Members concurred.

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

[FR Doc. 85-262 Filed 1-3-85; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Sodium Gluconate From the European Communities; Preliminary Results of Administrative Review of Suspension Agreement

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of administrative review of suspension agreement.

SUMMARY: The Department of Commerce has conducted an administrative review of the agreement suspending the countervailing duty investigation on sodium gluconate from the European Communities. The review covers the period November 1, 1982, through October 31, 1983.

As a result of the review, the Department has preliminarily determined that the signatories have complied with the terms of the suspension agreement and that their combined shipments constituted more than 85 percent of the imports of sodium gluconate into the United States from the European Communities during the period of review. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: January 4, 1985.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Lorenza Olivas, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone (202) 37–2786.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 1984, the Department of Commerce ("the Department") published in the Federal Register (49 FR 18589) the final results of its last administrative review of the agreement suspending the countervailing duty investigation on sodium gluconate from the European Communities ("the EC") (46 FR 58132, November 30, 1981). The Department also announced its intent to conduct the next administrative review. As required by section 751(a)(1) of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of the chemical sodium gluconate from the EC. Such merchandise is currently classifiable under item 437.5250 of the Tariff Schedules of the United States Annotated. The review covers the period November 1, 1982 through October 31, 1983 and two programs: production refunds and export restitution payments. Funds for these programs are provided through the Guidance and Guarantee Fund operated under the Common Agricultural Policy of the EC.

The review covers the original signatory to the agreement, Joh. A. Benckiser GmbH of West Germany, and the supplemental signatory, Akzo Chemie Nederland B.V. of the Netherlands. Akzo did not become subject to the terms of the agreement until June 1, 1983; however, the firm responded to our questionaire for the entire period of review.

Analysis of Programs

(1) Production Refunds

The EC provides production refunds to companies involved in the transformation of certain agricultural goods into manufactured products. Dextrose and glucose, ingredients used in the production of sodium gluconate, are manufactured products of corn and potatoes and are eligible for production refunds. Akzo and Benckiser received no production refunds for merchandise shipped to the United States during the period of review.

(2) Restitution Payments

Restitution payments are fixed on a periodic basis and granted when the world price of sodium gluconate is lower than the EC "market" price. Benckiser did not apply for or receive export restitution payments or any equivalent payments under this program from the EC for merchandise shipped to the United States during the period of review. Akzo reported the receipt of restitution payments for the period October 1, 1982 through December 31, 1982. Akzo, however, was not subject to the terms of the suspension agreement during the period in which the firm received payments.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that Akzo and Benckiser have complied with the terms of the suspension agreement for the period November 1, 1982, through October 31, 1983. The agreement can remain in force only so long as shipments covered by it account for at least 85 percent of exports of such merchandise to the United States. Our information indicates that Akzo and Benckiser accounted for more than 85 percent of the imports into the United States of EC sodium gluconate during the review period.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: December 26, 1984.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 85–248 Filed 1–3–85; 8:45 am]

BILLING CODE 3510–DS–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1985; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1985 a commodity to be produced by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: January 4, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On September 28, 1984 the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (49 FR 38325) of proposed additions to Procurement List 1985, October 19, 1984 (49 FR 41195).

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodity listed

below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodity listed.

c. The actions will result in authorizing small entities to produce the commodity procured by the Government.

Accordingly, the following commodity is hereby added to Procurement List 1985:

Class 8340

Cover, Tent: 8340–00–262–2397

E.R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 85–159 Filed 1–3–85; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1985; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1985 commodities to be produced by and services to be provided by workshops for the blind and other severely handicapped.

DATE: Comments must be received on or before: February 6, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1985, October 19, 1984 (49 FR 41195):

Class 7110

Chalkboard, Portable: 7110–00–132–6650, 7110–00–843–7917

SIC 0782

Grounds Maintenance, Federal Building, 2800 Cottage Way, Sacramento, California

SIC 7331

Mailing Service, National Endowment for the Humanities, 1100 Pennsylvania Avenue, N.W., Room 202, Washington, D.C.

SIC 7349

Janitorial/Custodial, Naval Communications Unit (Cheltenham), Washington, D.C.

Janitorial/Custodial, Indiana Dunes National Lakeshore, 1100 North Mineral Springs, Porter, Indiana

Janitorial/Custodial, U.S. Army Reserve-Kukowski Center, Donaldson Center, Perimeter Road, U.S. Army Reserve Center, 2201 Laurens Road & 1003 Grove Road, Suite B & C, Greenville, South Carolina.

E.R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 85–160 Filed 1–3–85; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Army

Distribution of Section 10721 Tenders; Procedural Change

AGENCY: Military Traffic Management Command, Army Department, DOD.

ACTION: Notice of procedural change.

SUMMARY: Effective February 1, 1985, the Military Traffic Management Command (MTMC) will amend the current procedure for the distribution of less-load freight tenders (less-load tenders are applicable to general commodity freight shipments weighing less than 10,000 pounds and/or air cargo general commodity shipments weighing less than 1,000 pounds). For Notice of current procedure see **Federal Register**, Vol. 48, No. 238, Friday, December 9, 1983. Under the amended procedure, MTMC area commands at Bayonne, NJ and Oakland, CA will discontinue the distribution of individual less-load tender copies to Department of Defense shipping installations. Carriers filing less-load tenders having an origin territorial application (Blocks 11A(1)(2) and/or 11B(1)(2) of tender form) encompassing more than one shipping installation will be required to mail or deliver tender copies, imprinted with distribution date and distribution number assigned by Headquarters, Military Traffic Management Command, to all shipping installations within the geographical area designated in the carrier tender. Subsequent to the assignment of the distribution number, the Directorate of Inland Traffic, Headquarters, Military Traffic Management Command will mail a dated and numbered tender copy, letter of instruction, and installation address list to the issuing carrier. The issuing carrier will continue to produce the requisite number of tender copies, but will now mail or deliver them to the applicable shipping installations. All tender copies must be legible, including the Headquarters, Military Traffic Management Command official distribution number and date, and all Department of Defense shippers covered by the tender must be furnished a copy of the tender. Carriers cannot send tender copies to preferred shippers to the exclusion of all other eligible shippers. Repeated failure to furnish Department of Defense shippers with the requisite number of tender copies will subject the tender to removal from further consideration in routing of Department of Defense less-load freight traffic. Additionally, carriers are reminded that when making reference in their tender to their own tariff(s), as a governing publication for the development of less-load rates, rules, or points of service, they are required to furnish without cost a copy of that tariff to any Department of Defense installation using the tender.

FOR FURTHER INFORMATION CONTACT: Mr. Allen Kirby, Chief, Transit and Tariff Branch, Headquarters, Military Taffic Management Command, ATTN: MT–INN–T, 5611 Columbia Pike, Falls Church, VA 22041. Telephone: (202) 756–1149/1567.

SUPPLEMENTARY INFORMATION: As a result of deregulation, the Military Traffic Management Command has experienced a steady increase in freight tender filings. Additionally, more carriers now have broad coverage operating authority permitting unrestricted service between all points in the United States. Consequently, less-load tenders now offer broader geographical coverage than ever before. This has impacted upon the Military Traffic Management Command's ability to provide timely distribution of tenders to Department of Defense shippers. Since Transportation Officers are only authorized to use carriers' tenders that have been distributed by the Military Traffic Management Command, carriers are denied timely access to less-load freight shipments due to our current distribution procedure. Many less-load carriers have indicated a desire to

perform the distribution function themselves as a means to make their tenders available to Transportation Offices on a more timely basis. We believe this suggestion has merit, particularly in light of the competitive nature of the less-load traffic market. Adoption of this new procedure will expedite the distribution of less-load tenders, giving carriers quicker access to military freight traffic. To facilitate an orderly transfer to the new procedure, the Military Traffic Management Command's area commands may advance the start date by mutual agreement with the issuing carrier.

Nelson H. Maier, Jr.

Colonel, General Staff, Director of Inland Traffic, HQ, Military Traffic Management Command.

[FR Doc. 85-123 Filed 1-3-85; 8:45 am]

BILLING CODE 3710-92-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ST81-176-002, et al.]

ANR Pipeline Company, et al.; Extension Reports

December 28, 1984.

The companies listed below have filed extension reports pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. Three other symbols are used for transactions pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations. A "G(HS)" indicates transportation, sale or assignments by a Hinshaw pipeline; A "G(LT)" indicates transportation by a local distribution company, and a "G(LS)" indicates sales or assignments by a local distribution company.

Any person desiring to be heard or to make any protests with reference to said extension report should on or before January 10, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No.	Transporter and seller	Recipient	Date filed	Part 284 subpart	Effective date
ST81-176-002 [1]	ANR Pipeline Co., 500 Renaissance Center, Detroit, MI 48243	Delhi Gas Pipeline Corp	11-27-84	B	2-5-85
ST81-186-002 [1]	Transcontinental Gas Pipe Line Corp., P.O. Box 1396, Houston, TX 77251	Union Gas Co	11-23-84	B	2-19-85
ST81-206-002 [1]	GHR Pipeline Corp., 523 N. Belt East, Suite 600, Houston, TX 77060	El Paso Natural Gas Co	11-27-84	C	2-23-85
ST81-263-002	United Gas Pipe Line Co., P.O. Box 1478, Houston, TX 77001	Valero Transmission Co	11-30-84	B	3-01-85
ST83-217-001 [1]	Michigan Consolidated Gas Co., 500 Griswold St., Detroit, MI 48226	ANR Pipeline Co	11-21-84	G	1-18-85
ST83-269-001 [1]	Trunkline Gas Co., P.O. Box 1642, Houston, TX 77001	Louisiana Industrial Gas Supply System	11-19-84	B	2-15-85
ST83-294-001	Houston Pipe Line Co., P.O. Box 1188, Houston, TX 77001	Florida Gas Transmission Co	11-19-84	C	2-26-85
ST83-304-001	Trunkline Gas Co., P.O. Box 1642, Houston, TX 77001	Houston Pipe Line Co	11-16-84	B	2-16-85
ST84-628-001	Red River Pipeline, 1700 Pacific Ave., Dallas, TX 75201	Transwestern Pipeline Co	11-20-84	C	3-01-85

[1] These extension reports were filed after the date specified by the Commission's Regulation, and shall be the subject of a further Commission order.

Note.—The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.

[FR Doc. 85-267 Filed 1-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-147-000]

Arkansas Louisiana Gas Company, a Division of Arkla, Inc.; Request Under Blanket Authorization

December 31, 1984.

Take notice that on December 4, 1984, Arkansas Louisiana Gas Company, a division of Arkla, Inc. (Applicant), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP85-147-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate sales taps on four jurisdictional lines to permit direct retail sales of gas to end-users under the certificate issued in Docket No. CP82-384-000, as amended in Docket No. CP82-384-001, 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.

It is stated that Applicant proposes to construct and operate a sales tap on its Line BT-1 in Garland County, Arkansas, to enable Applicant to deliver gas to Maurice Hilton, who it is estimated would use approximately 90 Mcf per year for residential purposes. Applicant further proposes to construct and operate a sales tap on its Line BM-21 in Faulkner County, Arkansas, to enable Applicant to deliver gas to Connie Glover and James Thronbrough, who it is estimated would use approximately 90 Mcf per year for residential purposes. Applicant also proposes to construct and operate a sales tap on its Line AM-187 in Jefferson County, Arkansas, to enable Applicant to deliver gas to David Myhand, who it is estimated would use approximately 90 Mcf per year for residential purposes. Applicant also proposes to construct and operate a sales tap on its Line F-5-F in Lincoln

Parish, Louisiana, to enable Applicant to deliver gas to twenty-five domestic customers initially requesting service, who it is estimated would use approximately 2,750 Mcf per year for residential purposes.

Applicant states that the proposed sales taps would all be retail sales of gas for use and consumption in the ordinary course of its retail gas business in the area. The gas would be delivered from Applicant's general system supply, which it is stated is adequate to provide the service.

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 Regulation under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-277 Filed 1-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6068-001]

The California Department of Water Resources; Surrender of Exemption

December 28, 1984.

Take notice that the California Department of Water Resources, Exemptee for the proposed Las Flores Power Plant Project No. 6068, has requested that its exemption be terminated. The exemption was issued on June 16, 1982. The project would have been located on an existing outlet pipe from Mojave Siphon below Cedar Springs Dam on the West Fork of Mojave River, in San Bernardino County, California.

The Exemptee filed the request on November 19, 1984, and the exemption from licensing for Project No. 6068 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 exemption 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. 85-268 Filed 1-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-144-000]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

December 31, 1984.

Take notice that on December 3, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP85-144-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Cytemp Specialty Steel (Cyclops Corp.) (Cytemp) under the certificate issued in Docket No. CP83-76-000 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.

Columbia proposes to transport up to 2.6 billion Btu equivalent of natural gas per day for Cytemp through June 30, 1985. Columbia states that the gas to be transported would be purchased from Petrobank Operating Company (Petrobank) and would be used as process fuel in Cytemp's Bridgeville, Pennsylvania, plant.

It is indicated that Columbia has released certain gas supplies of Petrobank and that these supplies are subject to the ceiling price provisions of sections 102, 103, 107 and 108 of the Natural Gas Policy Act of 1978. It is further indicated that Cytemp has made arrangements to purchase this released gas from Petrobank. Columbia states that it would receive the gas from Petrobank and redeliver the gas to Columbia Gas of Pennsylvania, Inc. (CPA), the distribution company serving Cytemp, near Bridgeville, Pennsylvania. Columbia states it would charge 29.93 cents per dt equivalent of gas as set forth in its Rate Schedule TS-1 of Columbia's FERC Gas Tariff. Columbia states that it would retain 2.43 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas, as set forth in Columbia's Rate Schedule TS-1.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-276 Filed 1-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-169-002]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

December 31, 1984.

Take notice that on December 13, 1984, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia 25325, filed in Docket No. CP84-169-002 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to continue to transport up to 3 billion Btu of natural gas per day on behalf of Proctor and Gamble Manufacturing Company (P&G) through June 30, 1985, under the certificate issued in Docket No. CP83-76-000 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.

Columbia states that the current authorization to transport gas to P&G's Baltimore, Maryland, plant expired November 1, 1984. Columbia further states that in all other respects the transportation arrangement would remain the same.

Any person or the Commission's staff may, within 45 days after issuance of the instance notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall

be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-279 Filed 1-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-173-000]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

December 31, 1984.

Take notice that on December 13, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP85-173-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Harbison-Walker Refractories, Division of Dresser Industries, Inc. (Harbison-Walker), under the certificate issued in Docket No. CP83-76-000 pursuant to Section 7 of the Natural Gas Act, all as more fully described in the request which is on file with the Commission and open to public inspection.

It is indicated that pursuant to the terms of an August 23, 1984, gas purchase and sales agreement, Harbison-Walker acquired volumes of gas from Texaco Inc. (Texaco) for use as process gas at Harbison-Walker's Grantsville, Maryland, plant. In order for Harbison-Walker to receive its gas, it is explained that Harbison-Walker has entered into a gas transportation agreement with Columbia. It is indicated that Columbia would receive up to 8 billion Btu of natural gas per day from Texaco in Clinton County, Pennsylvania, and redeliver gas, less retainage, to Columbia Gas of Maryland, Inc., Grantsville for further transportation to Harbison-Walker's plant. It is stated that Columbia began transporting the gas on behalf of Harbison-Walker on October 10, 1984, pursuant to § 157.209 of the Columbia's Regulations. Columbia herein proposes to transport 650 million Btu of gas on an average day and 237 billion Btu on an annual basis on behalf of Harbison-Walker through June 30, 1985. Columbia states that it would charge 29.93 cents per dt equivalent for gas it transports hereunder; this rate is set forth in Rate Schedule TS-1 of Columbia's FERC. Gas Tariff. In addition, Columbia states it would retain a percentage of the total quantity of gas delivered into its system for company-use and unaccounted-for gas. This percentage as reflected in Rate Schedule TS-1, is currently 2.43 percent.

In addition, Columbia proposes to undertake certain filing requirements to implement the "flexible authority" provision of its transportation agreement as to sources of gas and/or receipt delivery points. It is stated that Columbia would file the following information, within 30 days of the addition or deletion of any gas suppliers and/or receipt delivery points.

1. Copy of the gas purchase contract between the seller and the end-user;

2. Statement as to whether the supply is attributable to gas under contract to and released by a pipeline or distributor and if so, identification of the parties, and specification of the current contract price;

3. Statement of the Natural Gas Policy Act of 1978 (NGPA) pricing categories of the added supply, if released gas, and the volumes attributable to each category.

4. Statement that the gas is not committed or dedicated within the meaning of NGPA section 2(18);

5. Location of the receipt/delivery points being added or deleted. For deletions provide the name of the producer/supplier;

6. Where an intermediary participates in the transaction between the seller and the end-user, the information required by § 157.209(c)(1)(ix) of the Commission's Regulations.

7. Identity of any other pipeline involved in the transportation.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-280 Filed 1-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-156-000]

Conoco Inc.; Application for Blanket Limited-Term Certificate of Public Convenience and Necessity With Pre-Granted Abandonment

December 31, 1984.

Take notice that on December 26, 1984, Conoco Inc. (Conoco), P.O. Box 2197, Houston, Texas 77252, filed an application pursuant to Sections 4 and 7 of the Natural Gas Act, 15 U.S.C. 717c, 717f and the provisions of 18 CFR Part 157, for a blanket limited-term certificate of public convenience and necessity and other authorizations enabling Conoco to conduct a limited-term spot sales marketing program, hereinafter referred to as Conoco's Special Marketing Program (Conoco SMP), all as more fully set forth in the application on file with the Commission and open to public inspection.

Conoco requests approvals that will (1) authorize the limited-term sale of natural gas in interstate commerce for resale by Conoco; (2) authorize blanket limited-term partial abandonment; (3) authorize abandonment of sales of natural gas made pursuant to the requested certificate upon expiration of the term of such sales; (4) authorize transportation of natural gas by interstate and intrastate pipeline companies able and willing to participate in Conoco SMP; and (5) authorize abandonment of the transportation service allowed upon expiration of the term of the Conoco SMP. The blanket certificate and other authorizations are necessary for the implementation of a limited-term flexible marketing program. Under Conoco SMP, Conoco proposes to sell on a spot basis contractually committed natural gas qualifying for NGPA Sections 102, 103, 107 or 108 rates. Applicant will seek temporary releases of gas from the purchasers to whom it is committed in order to meet market demand for spot sales. Releasing purchasers will be given relief from take-or-pay obligations for any volumes of gas released and sold under Conoco SMP if contractually obligated.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 14, 1985 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rule of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered 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 a petition to intervene in accordance with the Commission's Rules.

Under this procedure herein provided for, unless Applicant is otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-281 Filed 1-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST79-26-003, et al.]

Louisiana Resources Co., et al.; Extension Reports

December 31, 1984.

The companies listed below have filed extension reports pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. Three other symbols are used for transactions pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations. A "G(HS)" indicates transportation, sale or assignments by a Hinshaw pipeline; A "G(LT)" indicates transportation by a local distribution company, and a "G(LS)" indicates sales or assignments by a local distribution company.

Any person desiring to be heard or to make any protests with reference to said extension report should on or before January 24, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No. and transporter/seller	Recipient	Date filed	Part 284 subpart	Effective date
ST79-26-003 Louisiana Resources Co., P.O. Box 3102, Tulsa, OK 74101 [1]	Florida Gas Transmission Co	12-03-84	D	03-01-85
ST81-181-002 Transok, Inc., P.O. Box 3008, Tulsa, OK 74101	United Gas Pipe Line Co	12-03-84	C	03-15-85
ST81-201-002 Transok, Inc., P.O. Box 3008, Tulsa, OK 74101	Southern Natural Gas Co	12-03-84	C	03-26-85
ST81-264-002 Colorado Interstate Gas Co., P.O. Box 1087, Colorado Springs, CO 80944.	Texas Gas Transmission Corp	12-13-84	G	03-16-85
ST82-331-002 Valero Transmission Co., P.O. Box 500, San Antonio, TX 78292	Texas Eastern Transmission Corp	12-03-84	C	03-04-85
ST82-336-002 Valero Transmission Co., P.O. Box 500, San Antonio, TX 78292 [1]	United Gas Pipe Line Co	12-03-84	C	03-01-85
ST83-298-001 Houston Pipe Line Co., 1200 Travis, Box 1188, Houston, TX 77001	Natural Gas Pipeline Co. of America	12-10-84	C	03-10-85
ST83-299-001 Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102 [1]	Southern Natural Gas Co	12-12-84	G	03-08-85
ST83-308-001 Valero Transmission Co., P.O. Box 500, San Antonio, TX 78292	Texas Eastern Transmission Corp	12-03-84	C	03-28-85
ST83-316-001 Southern Natural Gas Co., P.O. Box 2563, Birmingham, AL 35202	Northern Natural Gas Co	12-10-84	G	03-09-85
ST83-320-001 Natural Gas Pipeline Co. of America, P.O. Box 1208, Lombard, IL 60148	Houston Pipe Line Co	12-07-84	B	03-10-85
ST83-365-001 Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102	Southern Natural Gas Co	12-12-84	G	04-13-85
ST83-429-001 Producer's Gas Co., 4925 Greenville Ave., Dallas, TX 75206	Florida Gas Transmission Co	12-04-84	D	04-01-85
ST84-631-001 Delhi Gas Pipeline Corp., 1700 Pacific Ave., Dallas, TX 75201 [1]	Transwestern Pipeline Co	12-06-84	C	03-01-85

[1] These extension reports were filed after the date specified by the Commission's Regulation, and shall be the subject of a further Commission order.

Note.—The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.

[FR Doc. 85-282 Filed 1-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-136-000]

Montana-Dakota Utilities Co.; Request of Blanket Authorization

December 31, 1984.

Take notice that on November 30, 1984, Montana-Dakota Utilities Co. (MDU), 400 North Fourth Street, Bismarck, North Dakota 58501, filed in Docket No. CP85-136-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate a new sales tap under the certificate issued in Docket Nos. CP83-1-000 and CP83-1-001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in its request which is on file with the Commission and open to public inspection.

MDU states that it proposes to add a new sales tap to Phillips Petroleum Company (Phillips) on its transmission system in Williams County, North Dakota, in connection with its Rate Schedule T-3 program. MDU explains that the proposed sales tap would be used to deliver natural gas to Phillips to provide fuel to a field gathering compressor. The compressor would be used by Phillips for gathering gas and that condensate and oil well gas to be ultimately processed at a natural gas processing plant. It is stated that since the deliveries would be performed on a best-efforts basis, the terms of *Amendment of Stipulation and Agreement in Settlement of Remaining Issues* approved by the Commission's order issued February 19, 1982, regarding MDU's curtailment plan in Docket No. RP76-91 is inapplicable. MDU states that the proposed sales tap would be used to deliver up to 92,000 Mcf of natural gas annually. MDU estimates the cost for the tap would be $5,000 and would be 100 percent reimbursed by the end-user.

Any person or the Commission's staff may, within 45 days after issuance fo the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205

of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-283 Filed 1-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-106-000]

Montaup Electric Co.; Order Accepting for Filing and Suspending Rates, Granting Intervention, Granting Summary Disposition in Part, and Establishing Hearing Procedures

Issued December 31, 1984

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

On November 5, 1984,[1] Montaup Electric Company (Montaup) tendered for filing a proposed two-step increase in its rates for firm power service to two affiliated and three nonaffiliated wholesale customers.[2] The proposed Step One rates would increase revenues by approximately $16.6 million (7.5%) for the calendar year 1985 test period. The proposed Step Two rates would result in an additional increase of approximately $1 million, representing a total increase of $17.6 million (8%) for the same period. Montaup requests effective dates of January 5 and January 6, 1985, for the Step One and Step Two rates, respectively. However, in the event that the Commission suspends both steps for the same period, Montaup requests that the proposed Step One rates be deemed withdrawn.

Montaup concurrently submitted for filing proposed revisions to three agreements under which (1) Blackstone Valley Electric Company (Blackstone) and Eastern Edison Company (Eastern Edison) rent 115 kV transmission facilities to Montaup and (2) Montaup rents certain transmission facilities to Eastern Edison.[3] Montaup also proposes to make changes in the fuel adjustment clause pursuant to Order No. 352 to provide for recovery of charges related to economy purchases.

Notice of Montaup's filing was published in the **Federal Register**,[4] with comments due on or before November 27, 1984. The Department of Public Utilities of the Commonwealth of Massachusetts (MDPU) and the Attorney General of Massachusetts separately filed timely interventions, protests, and requests for a five month suspension. In support of their suspension requests, the MDPU and Massachusetts Attorney General cite various cost of service issues, including: (1) an alleged double recovery of costs associated with Seabrook Unit No. 2 as CWIP and as cancellation costs; (2) the authorization of cancellation costs associated with Seabrook Unit No. 2, the status of which is currently unknown; (3) the inclusion of an adjustment factor in Montaup's suppliers' estimated purchased power capacity costs; (4) the recovery of costs associated with the cancelled Pilgrim Unit No. 2 in the cost of service; and (5) the claimed rate of return.

On November 27, 1984, Montaup's three nonaffiliated customers (Customers) filed a motion to intervene, protest, request for a five month suspension, and motion for summary disposition. The Customers seek summary disposition with regard to: (1) Montaup's recovery of cancellation costs for Seabrook Unit No. 2; (2) Montaup's adjustment to purchased power costs to account for errors in the suppliers' estimates; and (3) that portion of the increase representing purchased power costs for Maine Yankee Atomic Power Company (Maine Yankee) that are being collected, subject to refund, pending the conclusion of Maine Yankee's ongoing rate case. In support of their request for a maximum suspension, the Customers raise the same issue cited by the MDPU and Massachusetts Attorney General, and raises various additional cost of service issues.[5]

On November 30, 1984, the Attorney General of the State of Rhode Island and the Rhode Island Division of Public Utilities and Carriers (Rhode Island) filed an untimely motion to intervene and request for a five month suspension, raising many of the same issues cited above.[6] Rhode Island states that it filed its intervention late because notice of Montaup's filing was not received until November 23, 1984, and time was needed to review the filing and develop a position prior to preparing its pleading.

On December 12, 1984, Montaup filed a response to the interventions filed by the MDPU, the Massachusetts Attorney General, the Customers, and Rhode Island. While not opposing the interventions, the company does oppose the Customers' requests for summary disposition and the various requests for a five month suspension and it denies the allegations made in support of those requests. However, in its response, Montaup requests summary disposition to reduce its claimed regulatory expense and to correct an acknowledged error relating to sales to Hingham.

Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely notice and motions to intervene serve to make the MDPU, Massachusetts Attorney General, and Customers parties to this proceeding. We also note that Rhode Island has a legitimate interest in the outcome of this proceeding. Furthermore, given the relatively short delay in seeking to intervene and the early stage of this proceeding, we believe that granting Rhode Island's motion would result in no undue prejudice or delay. Accordingly, we find that good cause exists to grant Rhode Island's untimely motion to intervene.

We shall deny the Customers' request for summary disposition as to Montaup's proposed recovery of amortized cancellation costs for Seabrook Unit No. 2, Montaup's adjustment to its purchased power expense estimates, and Montaup's use of Maine Yankee's suspended rates, being collected subject to refund, as a basis for purchased power cost estimates. We find that these issues present questions of fact or law more appropriately resolved on the basis of an evidentiary hearing. However, in light of Montaup's specific requests, we shall grant summary disposition to reduce the claimed

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[1] On November 6, 1984, the Company submitted corrections to its original transmittal letter, as well as two typographical changes to its filing.

[2] Montaup's affiliated customers are Eastern Edison Company in Massachusetts and Blackstone Valley Electric Company in Rhode Island. The nonaffiliated customers are the Town of Middleborough in Massachusetts and Pascoag Fire District and Newport Electric Corporation in Rhode Island. *See* Attachment for rate schedule designations.

[3] The revisions to the facilities rental agreements would increase the return on common equity components used in the formula rates under the rental agreements from 16.20% to 16.75%.

[4] 49 FR 45805 (1984).

[5] The issues raised include: (1) the allegedly discriminatory use of billing demand ratchets; (2) demand and billing units estimates; (3) regulatory expenses; (4) insufficient explanation of the determination of deferred taxes arising from past flow-through; and (5) estimates of purchased power costs.

[6] Rhode Island also raises issues as to Montaup's sales estimates and the inclusion of CWIP in rate base.

regulatory expense and to credit the cost of service with revenues from sales made to Hingham. We shall not require the company to refile its rates to reflect these summary dispositions at this time, given the relative dollar impact.

Our preliminary review of Montaup's filing and the pleadings indicates that the proposed rates, as well as the proposed revisions to the facilities rental agreements and the fuel adjustment clause, have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we shall accept Montaup's submittal for filing and we shall suspend it as ordered below.

In *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982), we explained that, where our preliminary examination indicates that proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in *West Texas*, we would generally impose a five month suspension. Here, our examination suggests that Step One and Step Two of the proposed increase may result in substantially excessive revenues. Accordingly, we shall suspend the proposed Step Two rates for five months from the proposed effective date, to become effective, subject to refund, on June 6, 1985, and we shall deem withdrawn the proposed Step One rates, as requested by the company. We further find that the proposed revisions to the facilities rental agreements may not result in substantially excessive revenues. Therefore, we shall suspend those revisions for one day from 60 days after filing, to become effective, subject to refund, on January 6, 1985.

The Commission orders:

(A) Rhode Island's motion to intervene out of time is hereby granted, subject to the Commission's Rules of Practice and Procedure.

(B) Summary disposition is hereby ordered, as noted in the body of this order, with respect to: (1) Montaup's claimed regulatory expense; and (2) the credit for sales made to Hingham. All other requests for summary disposition are hereby denied.

(C) Montaup's submittal is hereby accepted for filing. The Step Two rates are suspended for five months, to become effective on June 6, 1985, subject to refund, the Step One rates are deemed to have been withdrawn; and the facilities rental agreements changes are suspended for one day from 60 days after filing, to become effective on January 6, 1984, subject to refund.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of Montaup's submittal.

(E) The Commission staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(F) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(G) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

ATTACHMENT—RATE SCHEDULE DESIGNATIONS

Designation	Description/other party
(1) Seventeenth Revised Sheet No. 4 under FPC Electric Tariff, Original Volume No. 1 (Supersedes Sixteenth Revised Sheet No. 4).	Phase II Rates.
(2) Sixteenth Revised Sheet No. 6 under FPC Electric Tariff, Original Volume No. 1 (Supersedes Fifteenth Revised Sheet No. 6).	Fuel Clause.
(3) Supplement No. 17 to Rate Schedule FERC No. 64 (Supersedes Supplement No. 15).	Revised Exhibit A—Rates for Contract Demand Service/ Pascoag Fire District.
(4) Supplement No. 7 to Rate Schedule FERC No. 75 (Supersedes Supplement No. 6).	Revised Exhibit A—Rates for Contract Demand Service/ Town of Middleborough.
(5) Supplement No. 5 to Rate Schedule FERC No. 76 (Supersedes Supplement No. 4).	Revised Exhibit A—Rates for Contract Demand Service/ Newport Electric Corp.
(6) Supplement No. 7 to Rate Schedule FERC No. 58 (Supersedes Supplement No. 6).	Revised Cost of Capital/Fall River Electric Light Co.
Eastern Edison Co.	
(7) Supplement No. 13 to Rate Schedule FERC No. 5 (Supersedes Supplement No. 12).	Revised Cost of Capital/ Montaup Electric Co.

ATTACHMENT—RATE SCHEDULE DESIGNATIONS—Continued

Designation	Description/other party
Blackstone Valley Electric Co.	
(8) Supplement No. 13 to Rate Schedule FPC No. 21.	Revised Cost of Capital/ Montaup Electric Co.

[FR Doc. 85-284 Filed 1-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. EL84-14-00 and EL84-19-001]

Nantahala Power and Light Co.; Refund Report

December 31, 1984.

Take notice that on December 17, 1984, Nantahala Power and Light Company (Nanatahala) submitted for filing a refund report in Docket Nos. EL84-14-000 and EL84-19-000 pursuant to a Commission order issued on November 14, 1984.

Nantahala states that it has revised the COSAC rate tariffs for the apportionment of energy entitlements for purchased power. In compliance with the above order, refunds totaling $205,695.22, inclusive of the appropriate interest, were made on December 14, 1984.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before January 16, 1985. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-285 Filed 1-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-109-000]

Niagara Mohawk Power Corp.; Order Accepting for Filing and Suspending Rates, Noting Interventions, Ordering Summary Disposition, and Establishing Hearing Procedures

Issued: December 31, 1984.

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

On November 7, 1984, as amended on November 20, 1984,[1] Niagara Mohawk Power Corporation (Niagara) tendered for filing a proposed increase in its rates to the Power Authority of the State of New York (PASNY) for the firm transmission of power to PASNY's large industrial preference customers.[2] The proposed rates would increase revenues by about $3 million (112%) over the current rates, which have been in effect since February 10, 1961, based on the 12 month test period ending on March 31, 1986. Niagara also submitted a letter of understanding between Niagara and PASNY that contains rate change procedures designed to phase in gradually increases in Niagara's transmission rates up to its current cost levels. Under the agreement, the proposed rates are to reflect an increase of 50% of the difference between the present rates and the rates that Niagara justified in its current cost of service study. The agreement further provides that a second step increase is to be proposed to be effective on or about January 1, 1986 which is to reflect 80% of the difference between the current rates and Niagara's cost of service for calendar year 1986; a third increase is to be proposed to be effective on or about January 1, 1987 which is to recover the full cost of service for calendar year 1987. The second and third step increases are to be timely filed under Part 35 of the Commission's regulations. Niagara requests an effective date of January 7, 1985.

Notice of the filing was published in the **Federal Register**,[3] with comments due on or before November 30, 1984. Timely motions to intervene were filed by PASNY and three representatives of industrial consumers of PASNY power, Niagara Hydropower Industries (Niagara Hydropower),[4] FMC Corporation (FMC), and Occidental Chemical Corporation and Olin Corporation (Occidental and Olin). PASNY, Niagara Hydropower, and FMC raise no particular substantive issues. Occidental and Olin request a hearing to resolve issues, including: Niagara's use of a 12 CP method of allocating transmission rate base and operation and maintenance expenses, the claimed cash working capital requirement, and Niagara's claimed rate of return on common equity.

[1] The November 20, 1984 amendments were designed to correct the billing units per customer used to calculate the revenue requirement. The company states that these corrections result in a decrease of the total revenue requirement.

[2] See Attachment for rate schedule designations.

[3] 49 FR 46193 (November 23, 1984).

[4] Niagara Hydropower represents Airco Carbon Division; Airco Industrial Gases Division; ARCO Metals Company; Atlas Steel Casting Company; E.I. duPont de Nemours and Company; FMC Corporation; General Abrasive Division; SKW Alloys, Inc.; and TAM Ceramics, Inc.

Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[5] the timely unopposed motions to intervene serve to make PASNY, Niagara Hydropower, FMC, and Occidental and Olin parties to this proceeding.

We find that Niagara has included unappropriated, undistributed subsidiary earnings (Account No. 216.1) in its capital structure. This treatment is contrary to well-established Commission precedent.[6] Amounts recorded in Account 216.1 should not be included in the capital structure for ratemaking purposes because they do not represent available cash proceeds. The capital structure should represent the sources of funds used to finance rate base. Because Account 216.1 does not represent cash received or generated by the company, it cannot be a source of financing for its rate base. Although we will therefore order summary disposition with respect to this issue, we will not require the company to refile its rates at this time, given the relatively small revenue effect of this decision.

Our preliminary analysis of Niagara's filing and the pleadings indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept Niagara's submittal for filing and suspend the proposed rates, as ordered below.

In *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982), we explained the Commission's suspension policy, noting that rate filings would ordinarily be suspended for one day where our preliminary review indicates that the proposed rates may be unjust and unreasonable, but may not generate substantially excessive revenues, as defined in *West Texas*. Our review of Niagara's proposed rates suggests that they may not generate substantially excessive revenues. Therefore, we shall suspend the proposed rates for one day. Because the November 20 amendment to the filing resulted in a smaller rate increase request, we shall permit waiver of the notice requirements and measure the suspension period from the originally proposed effective date to allow the rates to become effective, subject to refund, on January 8, 1985.

[5] 18 CFR 385.214.

[6] *E.g., Holyoke Water Power Company, et al.*, 28 FERC ¶ 61,361 (1984); *Minnesota Power & Light Company*, Opinion No. 155, 21 FERC ¶ 61,233 (1982); *United Gas Pipe Line Company*, Opinion No. 99, 13 FERC ¶ 61,044 (1980).

The Commission orders:

(A) Summary disposition is hereby ordered with respect to the elimination of unappropriated, undistributed subsidiary earnings (Account No. 216.1) from Niagara's capital structure. The company shall reflect this summary disposition in its compliance cost of service and rates at the conclusion of this proceeding.

(B) Niagara's submittal is hereby accepted for filing and waiver of notice is granted; the proposed rates are suspended for one day, to become effective on January 8, 1985, and subject to refund.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of Niagara's rates.

(D) The Commission staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(E) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding, to be held within approximately fifteen (15) days after service of top sheets, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure (18 CFR Part 385).

(F) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

Kenneth F. Plumb,

Secretary.

ATTACHMENT—RATE SCHEDULE DESIGNATIONS

Designation	Description
(1) Supplement No. 3 to Rate Schedule FPC No. 19.	Rates for transmission of replacement and expansion power.
(2) Exhibit A to Supplement No. 3 to Rate Schedule FPC No. 19.	Letter of understanding dated Nov. 2, 1984.

[FR Doc. 85-286 Filed 1-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-138-000]

Panhandle Eastern Pipe Line Co.; Request Under Blanket Authorization

December 31, 1984.

Take notice that on November 30, 1984, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP85-138-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Capitol Records, Inc. (Capitol), under the certificate issued in Docket No. CP83-83-000 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.

Panhandle proposes to transport up to 7,000 Mcf of natural gas per day for Capitol until the earlier of March 13, 1986, or the termination of authorization under Part 157 of the Commission's Regulations. Panhandle states that the gas to be transported would be purchased by Capitol from Hadson Petroleum Corporation (Hadson) and delivered to Panhandle at an existing interconnection between Hadson and Panhandle in Dewey County, Oklahoma. Panhandle further states it would transport the gas and deliver it to Illinois Power Company (IPC) at an existing interconnection in Morgan County, Illinois, and that IPC would deliver the gas to Capitol in Jacksonville, Illinois. It is indicated that IPC is the local distributor serving Capitol at Jacksonville. It is claimed Capitol would use the gas for boiler fuel and space heating.

For this transportation Panhandle states it would charge Capitol 42.0 cents per million Btu, plus 1.24 cents per million Btu for the Gas Research Institute surcharge. In addition Panhandle would retain 4 percent of the gas for fuel and unaccounted-for line loss.

Panhandle further requests flexible authority to add or delete sources of supply or receipt/delivery points on behalf of the same end-user, at the same location, within the same maximum daily and annual volumes, and under the same terms and conditions as the proposed service. Within 30 days of the addition or deletion of any gas suppliers and/or receipt/delivery points, Panhandle proposes file the following information, where applicable to the changes in service:

(i) Copy of the gas purchase contract between the seller and the end-user;

(ii) Statement as to whether the supply is attributable to gas under contract to and released by a pipeline or distributor, and if so, identification of the parties, and specification of the current contract price;

(iii) Statement of the Natural Gas Policy Act of 1978 (NGPA) pricing categories of the added supply, if released gas, and the volumes attributable to each category;

(iv) Statement that the gas is not committed or dedicated within the meaning of NGPA section 2(18);

(v) Location of the receipt/delivery points being added or deleted, and the name of the producer/supplier.

(vi) Where an intermediary participates in the transaction between the seller and the end-user, the information required by § 157.209(c)(1)(ix) of the Commission's Regulations.

(vii) Identity of any other pipeline involved in the transportation.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-287 Filed 1-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-140-000]

Panhandle Eastern Pipe Line Co.; Request Under Blanket Authorization

December 31, 1984.

Take notice that on December 3, 1984, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP85-140-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization of abandon by sale to Ohio Valley Gas Corporation (Ohio Valley) the Winchester, Indiana, #2 measurement and regulator station 2578-G (No. 2 station) and appurtenant facilities located in Randolph County, Indiana, under the abandonment authorization issued in Docket No. CP83-83-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is stated that the #2 station was used to deliver gas to Ohio Valley, but Applicant has determined that the Winchester, Indiana, #1 measurement and regulator station is now sufficient to effect needed deliveries to Ohio Valley. It is further stated that the underground take-off of the #2 station has been capped to prevent leaking. Applicant explains that Ohio Valley has consented to the abandonment and is willing to acquire the #2 station and appurtenant facilities for a nominal payment of $10. It is stated that these facilities would give Ohio Valley greater flexibility in operating its systems.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-288 Filed 1-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-155-000]

Panhandle Eastern Pipe Line Co.; Request Under Blanket Authorization

December 31, 1984.

Take notice that on December 7, 1984, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77001, filed in Docket No. CP85-155-000 a request pursuant to § 157.205 of the Commission Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Caterpillar Tractor Company (Caterpillar) under the Natural Gas Act,

all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Specifically, Panhandle proposes to transport gas on behalf of Caterpillar pursuant to a transportation agreement dated November 1, 1984, among Panhandle, Caterpillar, and Village of Morton Gas Company (Morton) (Agreement). Panhandle states that the Agreement provides for Panhandle to receive a transportation quantity of up to 1,900 Mcf of gas per day on an interruptible basis, at an existing point of interconnection between Panhandle and Union Texas Products Corporation (seller) in Major County, Oklahoma. Panhandle states that it would then transport and redeliver such gas, less a four percent reduction for fuel, to Morton (at an existing point of receipt in Tazewell County, Oklahoma) which in turn would make ultimate delivery to Caterpillar for its end-use as boiler fuel at its Morton parts distribution center. Morton is an existing jurisdictional customer of Panhandle and Caterpillar is an existing end-use customer of Morton, it is explained.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-289 Filed 1-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4915-001]

Plumas County Flood Control and Water Conservation District; Surrender of Preliminary Permit

December 38, 1984.

Take notice that Plumas County Flood Control and Water Conservation District, Permittee for the Soda Creek Water Power Project, FERC No. 4915, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 4915 was issued on May 29, 1984, and would have expired on October 31, 1985. The project would have been located on Soda Creek, in Plumas County, California.

The Permittee filed the request on November 26, 1984, and the preliminary permit for Project No. 4915 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. 85-270 Filed 1-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7467-002]

Southern California Edison Co.; Surrender of Preliminary Permit

December 28, 1984.

Take notice that Southern California Edison Company, Permittee for the Salmon Creek Hydroelectric Project, FERC No. 7467, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 7467 was issued on March 2, 1984, and would have expired on February 28, 1986. The project would have been located on Salmon Creek, tributary of the Kern River, in Tulare County, California.

The Permittee filed the request on December 10, 1984, and the preliminary permit for Project No. 7467 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. 85-271 Filed 1-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-194-000]

Southwestern Electric Power Co.; Filing

December 28, 1984.

Take notice that on December 21, 1984, Southwestern Electric Power Company ("SWEPCO") tendered for filing proposed rate increases applicable to the City of Siloam Springs, Arkansas ("Siloam Springs"). SEPCO has proposed a phased rate increase based upon a rate based which includes construction work in progress (CWIP) to the extent permitted under the Commission's regulations. Step B Rates, proposed to be effective on February 21, 1985 or the commercial operation date of Henry W. Pirkey Unit No. 1, whichever is later, would increase revenues from jurisdictional sales by $1,573,113 based on a test year ending March 31, 1986. Step A Rates, proposed to be effective on February 20, 1985 or the commercial operation date of Henry W. Pirkey Unit No. 1, whichever is later, would increase revenue from jurisdictional sales by $1,388,423, based on a test year ending March 31, 1986. The only difference between the two sets of rates is the return on common equity which the rates are designed to produce.

SWEPCO states that it seeks to increase its rates for jurisdictional service in order to recover its costs of service and to earn a fair return on its investment in utility property and thereby attract the capital it needs in order to complete construction of new generating and transmission capability.

Copies of the filing have been served on Siloam Springs and on the Arkansas Public Service Commission.

Any person desiring to be heard or to protest the application 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 the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before January 14, 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-272 Filed 1-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-185-000]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Application

December 31, 1984.

Take notice that on December 19, 1984, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001,

filed in Docket No. CP85-185-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to institute a blanket offsystem sales program to alleviate take-or-pay exposure and to increase Applicant's ability to compete with other pipeline and producer special marketing programs (SMP) and discount sales rates, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant requests Commission authorization to implement a sales program which provides Applicant with: (1) Blanket authority to make interruptible sales of gas through December 31, 1985, to offsystem customers who are eligible to purchase gas under any pipeline or producer SMP, any pipeline discount pricing program, and any other non-traditional marketing program on an automatic, self-implementing basis; (2) blanket authority to make interruptible sales of gas through December 31, 1985, to any off-system customer subject to prior notice and protest procedures.

It is said that Applicant and its customers are being confronted with a serious decline in sales which is causing a large increase in Applicant's take-or-pay exposure to its producer suppliers. Applicant states that it needs to purchase an average volume of 2,550,000 Mcf of gas per day or 931 Bcf during calendar year 1985 to avoid the incurrence of additional take-or-pay liabilities. It is asserted that for the past six months Applicant's purchase requirements have declined steadily, and Applicant currently projects that its purchase requirements for calendar year 1985 will be no more than 817 Bcf.

It is said that the decline in sales and related purchase requirements to date has resulted in substantial take-or-pay exposure to Applicant. It is further said that as of October 31, 1984, Applicant's invoiced take-or-pay liability was $433.4 million. Applicant states that as sales and related purchase requirements decline further in 1985, there would be a corresponding increase in Applicant's take-or-pay liability during the year with little or no opportunity to make up outstanding take-or-pay balances.

It is asserted that Applicant has taken a number of steps to deal with critical levels of take-or-pay exposure on its system. Applicant states that it has implemented the Emergency Gas Purchase Policy (EGPP) on May 1, 1983, in an attempt to reduce the weighted average cost of gas Applicant purchases for system supply. It is said that under the EGPP, Applicant purchases a higher percentage of old, lower-priced gas and a smaller percentage of new, higher-priced gas and recognizes reasonable take-or-pay levels to maintain necessary cash flows to producers. It is said further that Applicant has also undertaken an SMP program, TEMPRO, and numerous self-implementing transportation arrangements as a means of marketing surplus gas which it releases from its contracts with producers. Applicant states that none of these efforts have enabled it to avoid the incurrence of further take-or-pay liabilities.

Applicant claims that the blanket offsystem sales authorization requested herein would open up additional opportunities for Applicant to market gas. Applicant claims further that existing onsystem programs such as the EGPP, sales under Applicant's Rate Schedule R, and TEMPRO have not opened up enough new markets or maintained enough old markets to eliminate Applicant's take or pay exposure. It is said that Applicant must look to marginal and new markets off its system as the most viable means of increasing takes from its producers and must be able to serve the markets that do become available without regulatory delay. Such markets, it is said, have been opened to competition by producers in the Commission's SMP orders and should also be opened to competition by pipelines. It is said that in order to compete effectively for these markets, the pipelines must have sufficient regulatory flexibility to sell the desired volumes at competitive prices.

Applicant states that the program would benefit Applicant's existing customers by providing take-or-pay relief and by providing revenue credits for Account No. 191 for gas sold under the program. The program, it is said, would also provide a means of ensuring higher takes to Applicant's producers.

It is said that the gas available for sale under this program would be of gas from Applicant's general system supply that is surplus to Applicant's system sales requirements. It is said further that in this way all producers would have an opportunity to increase their level of sales whether or not they have implemented a special marketing program of their own and the availability of gas would not depend upon the willingness of the producer to release the gas for sale at competitive prices.

Applicant states that gas sold under this program would be available only to offsystem customers. Applicant is requesting blanket authority to make sales to offsystem customers who are eligible to purchase gas under any pipeline or producer SMP, any pipeline discount pricing program, or any other non-traditional marketing program. It is said that such markets include interstate pipelines, intrastate pipelines, Hinshaw pipelines, local distribution companies and end users. These markets, it is said, have already been opened to gas for gas competition on a self-implementing basis by the Commission in its producer SMP orders.

Sales to offsystem customers who are not eligible to purchase gas under any pipeline or producer SMP, any pipeline discount pricing program, or any other non-traditional marketing program, would be made only after compliance with 15 day prior notice and protest procedures. Applicant states that it would include the following information in the notice:

(a) The indentity of the intended purchaser;

(b) The intended purchaser's use of the gas;

(c) The location where the intended purchaser would use the gas;

(d) The identity of the intended purchaser's other gas suppliers;

(e) The total sales quantity and estimated maximum daily delivery amount;

(f) The applicable sales price through the term of the sales of period; and

(g) The identity of any third party transporter(s).

The notice, it is said, would be served on pipelines or distributors who directly or indirectly serve the potential offsystem sales customer and a 15-day notice period would run from the date of service.

Applicant proposes to charge a negotiated rate for each offsystem sale. The negotiated rates would range from a floor price equal to Applicant's WACOG (the current average cost of purchased gas reflected on Tariff Sheet No. 21) plus variable costs plus 5 cents for credit to Account No. 191 plus the Gas Research Institute (GRI) surcharge plus any downstream third party transportation charges incurred by Applicant in delivering the gas to the offsystem customer to a ceiling price equal to the applicable 100% load factor rate (including gas costs) in the zone in which the gas is delivered to or for the account of the offsystem customer plus the GRI surcharge and any downstream third party transportation charges incurred by Applicant in delivering the gas to offsystem customer. This range, it is said, would provide Applicant the flexibility necessary to price the gas at competitive levels.

It is said that under Applicant's proposal, both the floor and ceiling

prices for offsystem sales would recover all variable costs associated with the sale and would make a contribution of 5 cents towards recovery of fixed costs which would be credited to Account No. 191. It is said further that both the GRI surcharge and any downstream third party transportation charges incurred by Applicant in delivering the gas would be collected from the offsystem customer. Applicant states that the rates proposed would not shift any costs to onsystem customers and are thus consistent with the public interest.

Applicant proposes to credit to Account No. 191 the gas revenues Applicant receives from the offsystem sales. Applicant also proposes to credit to a non-interest bearing subaccount of Account No. 191, for flow-through to its jurisdictional customers, an additional 5 cents per Mcf of gas sold offsystem. It is stated that any revenues collected in excess of the revenue designated for crediting and recovery of variable costs would be retained by Applicant.

Applicant states that any third party transportation services rendered on behalf of Applicant's offsystem sales customers would be performed on a self-implementing basis in accordance with the Commission's regulations under section 311 of the Natural Gas Policy Act of 1978 (NGPA), Order No. 60, or Nos. 319, 319–A, or 234–B. It is further stated that in the event that third party transportation to any offsystem sales customer may be restricted because of the system supply requirement under Part 284 of the Commission's Regulations, Applicant requests that the system supply requirement be waived so that the offsystem sales gas can be moved to any eligible purchaser on a self-implementing basis.

It is said that to enable Applicant to compete on an equal footing with sales by producers under special marketing programs, applicant requests a limited-term exemption from the incremental pricing rules under Title II of the NGPA with regard to sales under this blanket offsystem sales program. It is further said that such an exemption is necessary to prevent or alleviate special hardship, inequity or unfair distribution of burdens. Applicant states that absent an exemption, Applicant would be placed at an unfair disadvantage in competing with producers for sales to certain customers in marginal gas markets. Applicant states further that as a result, Applicant and its customers would be denied the rate and take-or-pay benefits otherwise available from the offsystem sales proposed herein.

Applicant states that it is willing to submit monthly reports containing information similar to that required for the monthly reports under special marketing programs. The reports would be filed 45 days after the end of the month in which the offsystem sales transaction occurred; and Applicant would include in such reports the name of each purchaser under the program, the volumes of gas sold in each transaction, the price for each sale, a description of the eligibility requirements applicable to each sale, and a description of the transportation arrangements for delivering the gas to the purchaser. It is further stated that should the Commission deem it beneficial, Applicant would be willing to participate in quarterly status conferences with the Commission Staff and interested parties to review the operation of the program.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 18, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–290 Filed 1–3–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI85–53–000, et al.]

Texaco Oils Inc. (Successor in Interest to Dome Petroleum Corp.; Certificate Applications by Successor in Interest

December 28, 1984.

Take notice that on November 26, 1984, Texaco Oils Inc. (Texaco) of P.O. Box 2100, Denver, Colorado 80201, as successor in interest to Dome Petroleum Corp. (Dome), filed applications to amend certain certificates currently held by Dome to show Texaco as certificate holder and to redesignate the related docket numbers and rate schedules as listed in the attached Appendix.

On November 1, 1983, Texaco Oils Inc. acquired by assignment the interest of Dome Petroleum Corp. in certain properties as described in the attached Appendix.

Any person desiring to be heard or to make any protest with reference to said applications should on or before January 9, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

APPENDIX

	GRS No. and Docket No.	Contract date	Field	County, State	Purchaser
1	CI85-53-000	Dec. 1, 1969	Kinta	Pittsburg, OK	Arkla.
2	CI85-54-000	July 21, 1970	Witcherville Area	Sebastian, AR	Do.
3	CI85-55-000	Apr. 19, 1974	Ringwood	Major, OK	Ringwood.
4	CI85-56-000	Oct. 29, 1969	Hugoton (Evalyn-Cordit)	Seward, KS	Northern Natural.
5	CI85-57-000	June 13, 1962	Kinta	La Flore, OK	Arkla.
6	CI85-58-000	Mar. 26, 1974	Ross	Crawford, AR	Do.
7	CI85-59-000	June 20, 1983	Wilburton	Latimer, OK	Do.
8	CI85-60-000	July 29, 1957	Blanco Pictured Cliffs	Rio Ariba, NM	El Paso.
9	CI85-61-000	May 25, 1978	Marlow	Stephens, OK	Arkla.
10	CI85-62-000	May 10, 1977	Gage	Ellis, OK	Panhandle.
11	CI85-63-000	Sept. 22, 1970	Cruce	Stephens, OK	Lone Star.
12	CI85-64-000	Aug. 25, 1960	Cedarville	Major, OK	ANR.
13	CI85-65-000	Nov. 19, 1976	Mocane-Laverne	Beaver, OK	Panhandle.
14	CI85-66-000	Jan. 16, 1972	Cedardale Northeast	Woodward, OK	Northern Nat.
15	CI85-67-000	Aug. 22, 1978	North Weatherford	Custer, OK	ANR.
16	CI85-68-000	June 15, 1956	Ignacio Blanco	La Plata, CO	Northwest P/L.
17	CI85-69-000	May 16, 1977	do	do	Do.
18	CI85-70-000	May 6, 1977	do	do	Do.
19	CI85-71-000	May 16, 1977	do	do	Do.
20	CI85-72-000	Nov. 18, 1977	do	do	Do.
21	CI85-73-000	Dec. 28, 1976	do	do	Do.
22	CI85-74-000	Nov. 18, 1977	do	do	Do.
23	CI85-75-000	Feb. 23, 1971	Okeene Northwest	Major, OK	ANR.
24	CI85-76-000	Dec. 27, 1972	do	do	Do.
25	CI85-77-000	June 15, 1973	do	do	Do.
26	CI85-78-000	May 6, 1954	Greenwood	Morton, KS	Colorado Interstate.
27	CI85-79-000	Mar. 1, 1978	Bird Canyon	Sublette, wy	Northwest P/L.
28	CI85-80-000	Dec. 2, 1959	Aztec Fruitland	Rio Ariba, NM	El Paso.
29	CI85-81-000	Aug. 12, 1959	Hugoton	Seward, KS	Northwest Central P/L.
30	CI85-82-000	May 1, 1964	San Juan Basin area	San Juan, NM	Northwest P/L.
31	CI85-83-000	Sept. 30, 1976	Undesignated Gallup	Rio Arriba, NM	El Paso.
32	CI85-84-000	Sept. 1, 1978	Boysen	Fremont, WY	MDU.
33	CI85-85-000	June 22, 1976	WAW Pictured Cliffs	San Juan, NM	Do.
34	CI85-86-000	Sept. 7, 1976	do	do	Do.
35	CI85-87-000	Aug. 31, 1962	Borthero NW	Meade, KS	Panhandle.
36	CI85-88-000	Mar. 15, 1963	Harper Ranch	Clark, KS	Northern Nat.
37	CI85-89-000	June 14, 1961	do	do	Do.
38	CI85-90-000	Jan. 18, 1956	Ignacio Blanco	La Plata, CO	Northwest P/L.
39	CI85-91-000	June 19, 1973	Winchester	Eddy, NM	El Paso.
40	CI85-92-000	Oct. 16, 1964	Ignacio Blanco	La Plata, CO	Northwest P/L.

[FR Doc. 85-274 Filed 1-3-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP85-146-000]

Transcontinental Gas Pipe Line Corporation; Request Under Blanket Authorization

December 31, 1984.

Take notice that on December 3, 1984, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP85-146-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to establish an additional point of delivery for Public Service Electric and Gas Company (Public Service) and to construct and operate certain appurtenant facilities, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is stated that Public Service is currently a Rate Schedule CD-3 sales customer of Transco. It is further stated that pursuant to the service agreement between Transco and Public Service, dated November 12, 1970, Public Service has a contract demand allocation of 411,527 Mcf per day. Transco asserts that the existing tariff does not prohibit the addition of the proposed delivery point.

Transco states that by amendment to such service agreement, it has agreed to install a new point of delivery (East Camden delivery point) for Public Service located in Camden County, New Jersey, at approximate milepost 5.74 on Transco's 16-inch lateral extending from its Trenton-Woodbury lateral in Burlington County, New Jersey, to Richmond, Philadelphia County, Pennsylvania (Richmond lateral). Transco asserts that the East Camden delivery point will be designed for a maximum daily rate of up to 25,000 Mcf of gas per day and that Public Service's total CD-3 contract demand allocation would remain at 411,527 Mcf of gas per day. Transco states that deliveries at the East Camden delivery point will be offset by a corresponding reduction in its deliveries at Public Service's Camden gas plant located in Camden, New Jersey. Transco further states that the gas it proposes to deliver at the East Camden delivery point would be used by Public Service for system supply.

Transco asserts that it has sufficient system capacity to accomplish deliveries at the East Camden delivery point without detriment or disadvantage to its other gas sales customers. Transco further asserts that the addition of the East Camden delivery point would have no effect on its peak day or annual volumetric deliveries to Public Service or any other existing sales customer. It is stated, however, that the addition of such delivery point would allow Transco to maintain adequate pressure on the Richmond lateral to effectuate deliveries of gas as required by Public Service in this portion of its distribution system and would provide an alternative point of delivery in the event of pipeline failure. Transco asserts that it would construct, install and operate at the East Camden delivery point, a tap, sales meter and regulating station and other appurtenant facilities.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall

be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-291 Filed 1-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST85-147-000, et al.]

Transcontinental Gas Pipe Line Corp., et al.; Self-Implementing Transactions

December 31, 1984.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 or Part 157 of the Commission's Regulations and Secs. 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA). The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline pursuant to § 284.102 of the Commission's Regulations.

A "C" indicates transportation by an intrastate pipeline pursuant to § 284.122 of the Commission's Regulations. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and expiration date for the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline to § 284.142 of the Commission's Regulations and Section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline pursuant to § 284.163 of the Commission's Regulations and Section 312 of the NGPA.

An "F(157)" indicates transportation by an interstate pipeline for an end-user pursuant to § 157.209 of the Commission's Regulations.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to a blanket certificate issued under § 284.221 of the Commission's Regulations.

Kenneth F. Plumb,

Secretary.

Docket No.[1]	Transporter and seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBtu) [3]
ST85-147	Transcontinental Gas Pipe Line Corp	Saber Refining Co	11-02-84	F(157)		
ST85-148	Transcontinental Gas Pipe Line Corp	Diamon Glass Co	11-02-84	F(157)		
ST85-149	Panhandle Eastern Pipe Line Co	Teepak, Inc	11-02-84	F(157)		
ST85-150	Michigan Gas Storage Co	St. Regis Paper Co	11-02-84	F(157)		
ST85-151	Michigan Gas Storage Co	General Foods Manufacturing Corp	11-02-84	F(157)		
ST85-152	Northern Natural Gas Co	Producer's Gas Co	11-02-84	B		
ST85-153	Michigan Gas Storage Co	Michigan Paperboard Corp	11-02-84	F(157)		
ST85-154	Transcontinental Gas Pipe Line Corp	City of Greer, South Carolina	11-02-84	B		
ST85-155	Columbia Gulf Transmission Co	Natural Gas Pipeline Co. of America	11-02-84	G		
ST85-156	Natural Gas Pipe Line Co. of America	Mississippi River Transmission Corp	11-05-84	G		
ST85-157	Valero Transmission Co	Natural Gas Pipeline Co. of America	11-05-84	C		
ST85-158	Valero Transmission Co	Valero Industrial Gas Co	11-05-84	C		
ST85-159	Texas Eastern Transmission Corp	Owens-Illinois, Inc	11-05-84	F(157)		
ST85-160	National Fuel Gas Supply Corp	Pine-Roe Natural Gas Co., Inc	11-05-84	B		
ST85-161	United Gas Pipe Line Co	Unit Gas Transmission Co	11-07-84	B		
ST85-162	United Gas Pipe Line Co	American Pipeline Co	11-07-84	B		
ST85-163	United Gas Pipe Line Co	Delta Gas, Inc	11-07-84	B		
ST85-164	United Gas Pipe Line Co	Madison Transmission Co., Inc	11-07-84	B		
ST85-165	Northwest Central Pipeline Corp	Georgia-Pacific Corp	11-06-84	F(157)		
ST85-166	United Gas Pipe Line Co	Southern Gas Co	11-07-84	B		
ST85-167	Trunkline Gas Co	Panhandle Eastern Pipe Line Co	11-08-84	G		
ST85-168	Mountain Fuel Resources, Inc	Northwest Pipeline Corp	11-07-84	G		
ST85-169	Panhandle Eastern Pipe Line Co	General Foods Manufacturing Corp	11-07-84	F(157)		
ST85-170	Natural Gas Pipe Line Co. of America	Transcontinental Gas Pipe Line Corp	11-09-84	G		
ST85-171	Northern Natural Gas Co	Delhi Gas Pipeline Corp	11-09-84	B		
ST85-172	Northern Natural Gas Co	Northern Illinois Gas Co	11-09-84	B		
ST85-173	Southern Natural Gas Co	Alabama Gas Corp	11-09-84	B		
ST85-174	Transcontinental Gas Pipe Line Corp	National Can Corp	11-13-84	F(157)		
ST85-175	Valero Transmission Co	American Pipeline Co	11-13-84	C		
ST85-176	Tennessee Gas Pipe Line Co	UGI Corp	11-13-84	B		
ST85-177	Panhandle Eastern Pipe Line Co	Eastern Illinois University	11-13-84	F(157)		
ST85-178	Panhandle Eastern Pipe Line Co	Kellogg Co	11-13-84	F(157)		
ST85-179	Panhandle Eastern Pipe Line Co	Firestone Tire and Rubber Co	11-13-84	B		
ST85-180	Natural Gas Pipe Line Co. of America	MidVen Pipeline Co	11-15-84	B		
ST85-181	Down Pipeline Co	Texas Industrial Energy Co	11-16-84	C		
ST85-182	Valero Transmission Co	Transcontinental Gas Pipe Line Corp	11-16-84	C		
ST85-184	El Paso Natural Gas Co	Transwestern Pipeline Co	11-16-84	G		
ST85-185	Northern Central Pipe Line Corp	Cincinnati Gas and Electric Co	11-13-84	B		
ST85-186	Panhandle Eastern Pipe Line Co	Capitol Records, Inc	11-16-84	F(157)		
ST85-187	Delhi Gas Pipe Line Corp	ANR Pipeline Co	11-9-84	C		
ST85-188	United Gas Pipe Line Corp	Panhandle Eastern Pipe Line Co	11-9-84	G		
ST85-189	Northwest Pipe Line Corp	Northwest Central Pipeline Corp	11-13-84	G		
ST85-190	Northern Natural Gas Co	Arcadian Corp	11-19-84	F(157)		
ST85-191	Panhandle Eastern Pipe Line Co	Georgia-Pacific Corp	11-16-84	F(157)	4-29-85	3.00
ST85-192	Oklahoma Natural Gas Co	Northern Natural Gas Co	11-29-84	C	4-29-85	
ST85-193	Northern Natural Gas Co	Georgia Pacific Corp	11-20-84	F(157)		
ST85-194	Consolidated Gas Transmission Corp	Cranberry Pipeline Corp	11-13-84	B		
ST85-195	Texas Gas Transmission Corp	Texas Eastern Transmission Corp	11-13-84	G		
ST85-196	Transcontinental Gas Pipe Line Corp	Brooklyn Union Gas Co	11-23-84	B		
ST85-197	Transcontinental Gas Pipe Line Corp	Valero Transmission Co	11-23-84	B		
ST85-198	Transcontinental Gas Pipe Line Corp	Southern Natural Gas Co	11-23-84	G		
ST85-199	Transcontinental Gas Pipe Line Corp	Valero Industrial Gas Co	11-23-84	B		
ST85-200	Southern Natural Gas Co	Transcontinental Gas Pipe Line Corp	11-20-84	G		
ST85-201	Northern Natural Gas Co	Robinson Brick Co	11-23-84	F(157)		
ST85-202	Panhandle Gas Co	Public Service Electric and Gas Co	11-21-84	D		
ST85-203	Columbia Gas Transmission Corp	Corning Glass Works	11-21-84	F(157)		
ST85-204	Panhandle Gas Co	Consolidated Edison Co. of NY, Inc	11-21-84	D		

—Continued

Docket No.[1]	Transporter and seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate [2] MMBtu [2]
ST85-205	Panhandle Gas Co	Long Island Lighting Co	11-21-84	D		
ST85-206	Panhandle Gas Co	The Brooklyn Union Gas Co	11-21-84	D		
ST85-207	Kentucky West Virginia Gas Co	PPG Industries, Inc	11-20-84	F(157)		
ST85-208	Panhandle Eastern Pipe Line Co	United Gas Pipe Line Co	11-21-84	G		
ST85-209	Columbia Gas Transmission Corp	Penn Dairies, Inc	11-21-84	F(157)		
ST85-210	Columbia Gas Transmission Corp	Glidden C & R	11-21-84	F(157)		
ST85-211	Columbia Gas Transmission Corp	Harbison-Walker Refractories	11-21-84	F(157)		
ST85-212	Columbia Gas Transmission Corp	Northern Ohio Sugar Co	11-21-84	F(157)		
ST85-213	Columbia Gas Transmission Corp	Penn Dairies, Inc	11-21-84	F(157)		
ST85-214	Columbia Gas Transmission Corp	Owens-Illinois, Inc	11-21-84	F(157)		
ST85-215	Columbia Gas Transmission Corp	Harrisburg Hospital	11-21-84	F(157)		
ST85-216	Columbia Gas Transmission Corp	The Babcock & Wilcox Co	11-21-84	F(157)		
ST85-217	Columbia Gas Transmission Corp	Harbison-Walker Refractories	11-21-84	F(157)		
ST85-218	Columbia Gas Transmission Corp	Dana Corp	11-21-84	F(157)		
ST85-219	Columbia Gas Transmission Corp	Cyclops Corp	11-21-84	F(157)		
ST85-220	Columbia Gas Transmission Corp	Harrisburg Hospital	11-21-84	F(157)		
ST85-221	Northern Natural Gas Co	Arco Oil & Gas Co	11-26-84	F(157)		
ST85-222	Sea Robin Pipeline Co	Tennessee Gas Pipeline Co	11-27-84	G		
ST85-223	Texas Gas Transmission Corp	Washington Gas Light Co	11-28-84	B		
ST85-224	Oklahoma Natural Gas Co	Northern Natural Gas Co	11-29-84	C	4-29-84	24.32
ST85-225	Panhandle Eastern Pipe Line Co	Kansas Industrial Energy Supply Co	11-29-84	B		
ST85-226	Panhandle Eastern Pipe Line Co	Kal Kan Foods, Inc	11-29-84	F(157)		
ST85-227	Panhandle Eastern Pipe Line Co	Caterpillar Tractor Co	11-29-84	F(157)		
ST85-228	Trunkline Gas Co	Amoco Gas Co	11-29-84	B		
ST85-229	United Gas Pipe Line Co	Air Products and Chemicals, Inc	11-30-84	F(157)		
ST85-230	Louisiana Resources Co	United Gas Pipe Line Co	11-29-84	C	4-29-85	16.44
ST85-231	Michigan Gas Storage Co	Mueller Brass Co	11-30-84	F(157)		
ST85-232	Columbia Gas Transmission Corp	Ashland Oil, Inc	11-30-84	F(157)		
ST85-233	Columbia Gas Transmission Corp	Carpenter Technology Corp	11-30-84	F(157)		
ST85-234	Columbia Gas Transmission Corp	Dauphin County Home & Hospital	11-30-84	F(157)		
ST85-235	Columbia Gas Transmission Corp	Armstrong World Industries, Inc	11-30-84	F(157)		
ST85-236	Columbia Gas Transmission Corp	Ampco Pittsburgh	11-30-84	F(157)		
ST85-237	Columbia Gas Transmission Corp	Allied Corp	11-30-84	F(157)		
ST85-238	Columbia Gas Transmission Corp	PPG Industries, Inc	11-30-84	F(157)		
ST85-239	Columbia Gas Transmission Corp	The John Hopkins Hospital	11-30-84	F(157)		
ST85-240	Columbia Gas Transmission Corp	Corning Glass Works	11-30-84	F(157)		
ST85-241	Columbia Gas Transmission Corp	CCX Industries, Inc	11-30-84	F(157)		
ST85-242	Columbia Gas Transmission Corp	Dauphin County Home & Hospital	11-30-84	F(157)		
ST85-243	Columbia Gas Transmission Corp	CCX Industries, Inc	11-30-84	F(157)		
ST85-244	Columbia Gas Transmission Corp	Ashland Oil, Inc	11-30-84	F(157)		
ST85-245	Columbia Gas Transmission Corp	Armstrong World Industries, Inc	11-30-84	F(157)		
ST85-246	Columbia Gas Transmission Corp	Allied Corp	11-30-84	F(157)		
ST85-247	Columbia Gas Transmission Corp	Carpenter Technology Corp	11-30-84	F(157)		
ST85-248	GHR Pipeline Corp	Transcontinental Gas Pipe Line Corp	11-30-84	C		
ST85-249	ANR PipeLine Co	Transcontinental Gas Pipe Line Corp	11-30-84	G		
ST85-250	United Gas Pipe Line Co	Cincinnati Gas & Electric Co	11-30-84	B		

[1] The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.
[2] The intrastate pipeline has sought Commission approval of its transportation rate pursuant to § 284.123(b)(2) of the Commission's Regulations (18 CFR 284.123(b)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 85-275-Filed 1-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-582-001]

Union Electric Co.; Order Accepting for Filing and Suspending Rates, Noting Intervention, Denying Motion To Reject, Granting Waiver of Notice, Establishing Hearing Procedures, and Denying Motion To Consolidate With Prejudice

Issued: December 31, 1984

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

On August 2, 1984, Union Electric Company (UE) tendered for filing a motion to amend its filing in Docket No. ER84-146-000 to increase its transmission rates and level of service to the City of Malden, Missouri (Malden).[1] By letter dated October 1, 1984, from the Director of the Commission's Office of Electric Power Regulation, UE was informed that its submittal of August 2, 1984, constituted a rate schedule filing pursuant to Part 35 of the Commission's regulations. In addition, UE was informed that its submittal was deficient with respect to certain of the Commission's filing requirements. On November 1, 1984, UE filed the required data to complete the filing in this docket.[2]

The instant submittal provides that Malden's maximum transmission demand is to increase from 5,000 KW to 11,000 KW for a one year period beginning on June 1, 1984, and return to 5,000 KW for the next three years of the term. The company states that this change is required by Malden to enable it to receive power and energy from the Cities of Springfield and Sikeston, Missouri, in addition to their receipts from the Southwestern Power Administration. The proposed rates would increase the transmission demand charge from $17.64/KW/year to $18.34/KW/year and maintain a $20.00/day billing and scheduling fee and the current provision for recovering other out-of-pocket costs incurred in providing the service. The submittal provides that the rates are to be updated annually. UE requests waiver of the notice requirements so that the instant submittal may become effective on June 1, 1984, the date on which the provision of the additional transmission service to Malden commenced.

[1] In Docket No. ER84-146-000, Union filed revised requirements rates and transmission rates for Malden. That filing was accepted for filing and suspended and set for hearing by order issued on February 6, 1984 (26 FERC ¶ 61,147). The cost data used in support of the instant submittal is based on the same time period (1982) and methodology as that in Docket No. ER84-146-000.

[2] The rate schedule designation is: Union Electric Company, Supplement No. 1 to Rate Schedule FERC No. 106.

Notice of the first filing was published in the **Federal Register**,[3] with comments due on or before September 5, 1984. Malden filed a timely protest and motion to intervene, objecting to: (1) the alleged use of original plant costs instead of depreciated costs; (2) use of system peak load under allegedly adverse conditions instead of system capacity; (3) the company's income tax computation; and (4) certain terms and conditions of the filing, including limitations on availability and notice and sources of power. Malden further states that it signed the tendered agreement only with the understanding that that agreement was subject to Commission approval after a hearing at which Malden would have the opportunity to contest the proposed transmission rates and terms and conditions. On September 13, 1984, Malden filed a motion to consolidate Docket Nos. ER84–582–000 and ER84–146–000, noting the similarity of issues, identity of parties, and the support of the Commission's trial staff and UE. On September 26, 1984, UE filed a response to Malden's protest and motion to intervene, denying the allegations made by Malden with respect to the filing, but not opposing intervention.

Notice of UE's completed filing was published in the **Federal Register**,[4] with comments due on or before November 26, 1984. On November 13, 1984, Malden filed a motion to reject the filing, alleging that UE repeated an error in the calculation of its annual fixed charge, which it agreed in Docket No. ER84–146–000 overstated the charge. On November 26, 1984, UE filed a response opposing Malden's motion to reject, claiming that the issue raised should be left for hearing and that the motion constitutes an improper use of confidential information, inasmuch as the agreement to which Malden refers was made during settlement discussions. On December 10, 1984, Malden filed a reply to UE's response, claiming that its motion to reject was based on data provided by the company in response to the deficiency letter in this docket.[5]

Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), Malden's timely and unopposed motion to intervene serves to make it a party to this proceeding.

Although apparently based in part on information provided by UE in this docket, Malden's claim of error in UE's proposed annual fixed charge is not supported by any reference to a formal admission or determination of the issue on its merits in Docket No. ER84–146–000. In fact, UE asserts that the adjustment to which Malden refers was negotiated pursuant to settlement discussions in that docket. Moreover, even if a determination as to the issue raised by Malden had been made on the record, we would not find rejection of the entire filing to be an appropriate remedy. Since no formal admission or determination on this issue has been made, summary disposition would also be inappropriate. Accordingly, Malden's motion to reject will be denied.

Our preliminary review of UE's submittal and the pleadings indicates that the proposed transmission rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the submittal for filing and suspend it as ordered below.

In *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982), we noted that rate filings would ordinarily be suspended for a nominal period where preliminary review indicates that the rates may be unjust and unreasonable, but may not generate substantially excessive revenues, as defined in *West Texas*. In this case, our examination suggests that UE's proposed rates may not generate substantially excessive revenues. In support of its request for waiver of the notice requirements, UE states that the additional transmission service was provided to Malden as of June 1, 1984, in response to a request from Malden, which was not received by UE until May 15, 1984, thereby allowing no time for the sixty day prior notice. We also note that the proposed effective date is not opposed by Malden. Accordingly, we find that good cause exists to grant waiver of the notice requirements and suspend the submittal for a nominal period, to become effective, subject to refund, on June 1, 1984.

As to the request for consolidation of this docket with Docket No. ER84–146–000, we note that a settlement resolving all issues in Docket No. ER84–146–000 was filed on December 4, 1984. In light of the advanced stages of that proceeding, we will not consolidate Docket No. ER84–146–000 with this docket at this time. However, under Rule 503 of our Rules of Practice and Procedure (18 CFR 385–503), the Chief Administrative Law Judge retains the authority to consolidate these dockets at a later time, should that appear warranted.

We note that the proposed submittal includes provisions for the annual updating of the demand charge and for the recovery of unspecified out-of-pocket costs. In its November 1 filing, UE stated that it does not know at this time what additional costs may be incurred. By this order, we inform UE that any changes in the stated proposed rates will require timely filings pursuant to Part 35 of our regulations.

The Commission orders:

(A) Malden's motion to reject is hereby denied.

(B) UE's request for waiver of the notice requirements is hereby granted for good cause shown.

(C) UE's filing is hereby accepted for filing and suspended for a nominal period, to become effective, subject to refund, on June 1, 1984.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly secs. 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of UE's rate filing.

(E) Malden's motion for consolidation is hereby denied without prejudice.

(F) The Commission staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(G) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(H) The Secretary shall promptly publish this order in the **Federal Register**.

[3] 49 FR 33491 (1984).

[4] 49 FR 45795 (1984).

[5] We note that replies to answers do not lie under our Rules of Practice and Procedure (18 CFR 385.213). Nevertheless, we will consider Malden's later pleading to the extent that it clarifies the basis for its motion to reject.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-276 Filed 1-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-11-001]

K N Energy, Inc.; Notice of Revised Change in FERC Gas Tariff

December 31, 1984.

Take notice that on December 17, 1984, K N Energy, Inc. (K N), tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1. The purpose of the filing is to comply with a directive stated in Ordering Paragraph (D) of the Commission's Order issued November 30, 1984 in this docket requiring K N to file a revised tariff sheet to reflect the removal of the cash working capital allowance included in K N's general rate increase application filed on October 31, 1984 in Docket No. RP85-11-000. As a result of the instant filing, the jurisdictional cost of service in Docket No. RP85-11-000 will be reduced by approximately $187,400.

Substitute Twenty-First Revised Sheet No. 4 is proposed to be substituted for an to replace Twenty-First Revised Sheet No. 4, as filed with the Commission on October 31, 1984. K N requests that Substitute Twenty-First Revised Sheet No. 4 be made effective as of May 1, 1985, the effective date previously assigned to Twenty-First Revised Sheet No. 4 per Order Paragraph (A) of the Commission's Order issued November 30, 1984 in Docket No. RP85-11-000.

Copies of the filing have been served upon K N's jurisdictional customers, interested State Commissions and all parties.

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 and 385.214). All such petitions or protests should be filed on or before January 8, 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. 85-297 Filed 1-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-54-000]

Louisiana-Nevada Transit Co.; Notice of Tariff Filing

December 31, 1984.

Take notice that on December 19, 1984, Louisiana-Nevada Transit Company (LNT) tendered for filing its FERC Gas Tariff, First Revised Volume No. 1 in accordance with the requirements of Section 154.61 of the Federal Energy Regulatory Commission's (Commission) regulations. This tariff is an initial filing and is accompanied by LNT's statement and reasons supporting the proposed rate.

This tariff will permit LNT to offer transportation service on its interstate facilities under the Blanket Certificate sought by LNT by application made on December 7, 1984 in Docket No. CP85-160-000. LNT has not previously offered this service on these facilities. All transportation performed under this tariff will comply with the requirements of Section 157.209 of the Commission's regulations.

LNT proposes that its tariff herein become effective concurrently with the effective date of the Blanket Certificate sought in Docket No. CP85-160-000. LNT requests pursuant to Sections 154.22 and 154.51 of the Commission's regulations waiver of notice requirements in order to permit this service to commence concurrently with the effective date of the Blanket Certificate sought in Docket No. CP85-160-000.

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 and 385.214). All such petitions or protest should be filed on or before January 8, 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. 85-298 Filed 1-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-4314-000, et al.]

Mesa Petroleum Co.; Certificate Application by Successor in Interest

December 28, 1984.

Take notice that on March 12, 1984, Mesa Petroleum Co., (Mesa) of P.O. Box 2009, Amarillo, Texas 79189, filed an application for certificates of public convenience and necessity to continue sales being made under permanent certificates of public convenience and necessity heretofore issued to Mesa, as Agent for Tema Oil Company, and Tenneco Oil Company, Agent for Tema, in the dockets listed in the attached Appendix. The application is a result of the transfer of 50% interest in the oil and gas properties and contracts and agreements relating thereto from Tema, a Texas General Partnership, to Mesa.

Effective December 31, 1983, Tema was dissolved, and 50% of all of the oil and gas properties of Tema were transferred to Mesa, including 50% of all of the related facilities and gas sales contracts from and under which sales of natural gas are being made pursuant to permanent certificates heretofore issued to Tema in the dockets listed in the attached Appendix.

Mesa requests that the Commission issue to it permanent certificate of public convenience and necessity to continue sales being made under permanent certificates issued to Tema in each of the dockets listed in the attached Appendix by substituting Mesa, in lieu of Tema, as the certificate holder.

Any person desiring to be heard or to make any protest with reference to said applications should on or before January 9, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the

protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant's to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

APPENDIX

New: Mesa Petroleum Co., FERC gas rate schedule Nos.	Certificate docket No.	Former: Mesa Petroleum Co., (Operator), *et al.*, Agent for Tema Oil Co., FERC gas rate schedule No.	Purchaser
113	G-12309	113	Northern Natural Gas Co.
114	C162-494	114	Do.
115	C162-908	115	Do.
116	C163-159	116	Do.
117	G-4316	117	Panhandle Eastern Pipe Line Co.
118	C179-442	118	Cities Service Gas Co.
119	C179-442	119	Mobil Oil Corp.
120	C179-442	120	Northern Natural Gas Co.
121	G-4314-000	121	Panhandle Eastern Pipe Line Co.
122	G-10803	122	Colorado Interstate Gas Co.
123	C179-442	123	Panhandle Eastern Pipe Line Co.
124	C161-24	124	Do.
125	C161-73	125	Colorado Interstate Gas Co.
126	C162-477	126	Northern Natural Gas Co.
127	C162-540	127	Panhandle Eastern Pipe Line Co.
128	C179-442	128	Colorado Interstate Gas Co.
129	C167-269	129	Panhandle Eastern Pipe Line Co.
130	C167-228	130	Colorado Interstate Gas Co.
131	C170-101	131	Colorado Interstate Gas Co.
132	C175-521	132	Cities Service Gas Co.
133	C176-791	133	Colorado Interstate Gas Co.
134	C178-161	134	Do.
135	C176-671	135	Do.
164	C184-272-000	355	Lone Star Gas Co.
165	C184-273-000	356	Do.
166	C184-274-000	357	Michigan-Wisconsin Pipe Line Co.
167	C184-275-000	358	Lone Star Gas Co.
168	C184-276-000	359	Natural Gas Pipeline Co. of America.
169	C184-277-000	360	Panhandle Eastern Pipeline Co.
170	C184-278-000	361	Michigan-Wisconsin Pipe Line Co.
171	C184-279-000	362	Do.
172	C184-280-000	363	Panhandle Eastern Pipeline Co.
173	C184-281-000	364	Colorado Interstate Gas Co.
174	C184-282-000	365	Cities Service Gas Co.
175	C184-283-000	366	Phillips Petroleum Co.
176	C184-284-000	367	Do.
177	C184-285-000	368	Panhandle Eastern Pipeline Co.
178	C184-286-000	369	Northern Natural Gas Co.
179	C184-287-000	370	Colorado Interstate Gas Co.
180	C184-288-000	371	Natural Gas Pipeline of America.
181	C184-289-000	372	Panhandle Eastern Pipeline Co.
182	C184-290-000	373	Colorado Interstate Gas Co.
183	C184-291-000	374	Natural Gas Pipeline Co. of America.
184	C184-292-000	375	Kansas-Nebraska Natural Gas Co., Inc.
185	C184-293-000	376	Northern Natural Gas Co.
186	C184-294-000	377	Colorado Interstate Gas Co.
187	C184-295-000	378	Michigan-Wisconsin Pipe Line Co.
188	C184-296-000	380	Panhandle Eastern Pipeline Co.
189	C184-297-000	381	Do.
190	C184-298-000	382	Do.
191	C184-299-000	383	Transwestern Pipeline Co.
192	C184-300-000	384	Arkansas Louisiana Gas Co.
193	C184-301-000	385	Warren Petroleum Corp.
194	C184-301-000	386	Natural Gas Pipeline Co. of America.
195	C184-302-000	387	Northern Natural Gas Co.
196	C184-303-000	388	Arkansas Louisiana Gas Co.
197	C184-304-000	389	Arkansas Louisiana Gas Co.
198	C184-305-000	390	Oklahoma Natural Gas Co.
199	C184-306-000	391	Horizon Oil and Gas.
200	C184-307-000	392	Kansas-Nebraska Natural Gas Co., Inc.
201	C184-308-000	393	Natural Gas Pipeline Co. of America.
202	C184-309-000	394	Northern Natural Gas Co.
203	C184-310-000	395	Panhandle Eastern Pipeline Co.
204	C184-311-000	396	Cities Service Gas Co.
205	C184-312-000	398	Northern Natural Gas Co.
206	C184-313-000	399	Michigan-Wisconsin Pipe Line Co.
207	C184-314-000	400	Colorado Interstate Gas Co.
208	C184-315-000	401	Michigan-Wisconsin Pipe Line Co.
209	C184-315-000	402	Arkansas Louisiana Gas Co.
210	C184-317-000	403	Oklahoma Natural Gas Co.
211	C184-318-000	404	Northern Natural Gas Co.
212	C184-319-000	405	Michigan-Wisconsin Pipe Line Co.
213	C184-320-000	407	Do.
214	C184-321-000	408	Do.
215	C184-322-000	409	Panhandle Eastern Pipeline Co.
216	C184-323-000	410	Colorado Interstate Gas Co.
217	C184-324-000	411	Michigan-Wisconsin Pipe Line Co.
218	C184-325-000	412	Michigan-Wisconsin Pipe Line Co.
219	C184-326-000	413	Northern Natural Gas Co.
220	C184-327-000	414	Michigan-Wisconsin Pipe Line Co.

APPENDIX—Continued

Now: Mesa Petroleum Co., FERC gas rate schedule Nos.	Certificate docket No.	Former: Mesa Petroleum Co., (Operator), *et al.*, Agent for Tema Oil Co., FERC gas rate schedule No.	Purchaser
221	CI84-328-000	415	Panhandle Eastern Pipeline Co.
222		434	

[FR Doc. 85-269 Filed 1-3-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP82-71-015]

Northern Natural Gas Co., Division of InterNorth, Inc.; Notice of Filing

December 31, 1984.

Take notice that on December 13, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern) tendered for filing the following sheets to become a part of its FERC Gas Tariff, Third Revised Volume No. 1:

Substitute Eleventh Revised Sheet No. 21

Substitute Fifth Revised Sheet No. 22

According to 318.103(b)(2)(iii) of the Commission's regulations (18 CFR § 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until December 21, 1984.

Any person desiring to be heard or to protest said filing should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with the Commission's Rules of Practice & Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before January 8, 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. 85-299 Filed 1-3-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA85-1-59-002]

Northern Natural Gas Co.; Notice of Purchased Gas Cost Adjustment Rate Change

December 31, 1984.

Take notice that on December 20, 1984, Northern Natural Gas Company (Northern) tendered for filing, as part of Northern's FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2, the following tariff sheets:

Third Revised Volume No. 1

Substitute Thirty-Fifth Revised Sheet No. 4a

Substitute Twenty-Sixth Revised Sheet No. 4b

Original Volume No. 2

Substitute Thirty-Fifth Revised Sheet No. 1c

Such substitute tariff sheets are filed to reflect the revised tariff sheets filed on November 16, 1984 in Docket Nos. RP85-5-000 and RP85-5-001 by Northwest Alaskan Pipeline Company (Northwest Alaskan) with the Federal Energy Regulatory Commission to reflect the reduction in the cost of Canadian gas imported from Pan Alberta Gas Ltd. pursuant to the terms of an amended gas purchase contract with Northern to be effective November 1, 1984.

Such substitute tariff sheets are also filed to reflect the revised tariff sheets filed on November 16, 1984 in Docket No. RP85-25-000 by Northern Border Pipeline Company (Northern Border) with the Federal Energy Regulatory Commission to implement a new depreciation method to levelize the transportation charges through October, 1996 to Northern and other Northern Border shippers resulting in a reduction in the estimated Calendar Year 1985 transportation charges.

Northern requests that the Commission grant any waivers of its regulations as may be required to permit the above substitute tariff sheets to be accepted for filing and made effective on December 27, 1984.

The Company states that copies of the filing have been mailed to each of the Gas Utility 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, NE, Washington, DC, 20426, in accordance with the Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before January 8, 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. 85-300 Filed 1-3-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP85-51-000]

Panhandle Eastern Pipe Line Co.; Notice of Change in Tariff

December 31, 1984.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on December 17, 1984, tendered for filing First Revised Sheet No. 43-5 to its FERC Gas Tariff, Original Volume No. 1. According to Section 381.103(b) (2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until December 26, 1984.

Panhandle states that this tariff sheet is being filed pursuant to Commission Opinion No. 226 and Docket No. RP84-85-000 issued September 28, 1984, 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 reflects the change ordered in Opinion No. 226 that collection of the GRI funding unit be remitted to GRI within fifteen (15) days of receipt.

An effective date of January 1, 1985 is proposed for First Revised Sheet No. 43–5.

Copies of this filing were served on Panhandle's jurisdictional customers and respective state regulatory 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, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before January 8, 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. 85–301 Filed 1–3–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP85–55–000]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

December 31, 1984.

Take notice that Southern Natural Gas Company (Southern) on December 20, 1984, tendered for filing First Revised Sheet No. 45J to its FERC Gas Tariff, Sixth Revised Volume No. 1, with a proposed effective date of January 1, 1985.

Southern states that its First Revised Sheet No. 45J is being filed to effect the requirement in the Commission's Opinion No. 226 that collections of the Gas Research Institute (GRI) funding unit be remitted to the GRI within fifteen (15) days rather than thirty (30) days as Southern's tariff presently provides.

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 the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such petitions or protests should be filed on or before January 8, 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. 85–302 Filed 1–3–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. G–6183–000, et al.]

The Superior Oil Co., et al.; Applications for Certificates, Abandonments of Service and Petitions to Amend Certificates[1]

December 28, 1984

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interestate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before January 10, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .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 petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
G-6183-000, 12/7/84	The Superior Oil Company, Post Office Box 1521, Houston, Texas 77001.	El Paso Natural Gas Company, Levelland Field, Hockley County, Texas.	(2)	
C161-1147-003, D, 8/4/83	Sun Oil Company, Post Office Box 20, Dallas, Texas 75221.	Michigan Wisconsin Pipe Line Company, Various Fields, Dewey and Woodward Counties, Oklahoma.	(3)	
C161-1469-000, E, 11/13/84	Odeco Oil & Gas Company (Successor In Interest To Sun Exploration and Production Company), P.O. Box 61780, New Orleans, Louisiana 70161.	Transcontinental Gas Pipe Line Corporation, Ship Shoal Block 113 Field.	(3)	
C164-573-000, D, 7/29/83	Guld Oil Corporation, P.O. Box 2100, Houston, Texas 77252.	Columbia Gas Transmission Corporation, Deep Lake Field, Cameron Parish, Louisiana.	(3)	
C170-63-001, 11/28/84	Exxon Company, U.S.A., Post Office Box 2180, Houston, Texas 77252-2180.	Trunkline Gas Company, South Timbalier Block 172, Offshore Louisiana.	(3)	
C179-526-001, E, 11/21/84	Phillips Petroleum Company (Successor In Interest To Phillips Oil Company), 336 HS&L Building, Bartlesville, Oklahoma 74004.	Transcontinental Gas Pipe Line Corporation, West Cameron Block 22, Offshore Louisiana.	(3)	
C182-265-003, D, 11/13/84	Kerr-McGee Corporation, P.O. Box 25861, Oklahoma City, Oklahoma 73125.	Transcontinental Gas Pipe Line Corporation, Proposed "B" Platform located in Ship Shoal Area Block 238.	(3)	
C185-45-000, A, 11/16/84	Sohio Petroleum Company, P.O. Box 4587, Houston, Texas 77210.	Tennessee Gas Pipeline Company, Eugene Island Block 329, Offshore Louisiana.	(3)	
C185-46-000, A, 11/19/84	Exxon Corporation, P.O. Box 2180, Houston, Texas 77252-2180.	Southern Natural Gas Company, Flomaton Field, Escambia County, Alabama.	(3)	
C185-52-000, F, 11/21/84	Champlin Petroleum Company (Par. Successor In Interest To Amoco Production Company), Four Allen Center, 1400 Smith Street, Suite 1500, Houston, Texas 77002.	Amoco Gas Company, Matagorda Island OCS Block 623, Offshore Federal Domain.	(13)	
C185-100-000, A, 11/30/84	Houston Oil & Minerals Corporation, P.O. Box 2511, Houston, Texas 77001.	Tennessee Gas Pipeline Company, North Magnolia City Field, Jim Wells County, Texas.	(11)	

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI85-136-000, F, 12/7/84	Texas Inc. (Partial Successor In Interest To Sun Exploration and Production Company), P.O. Box 2100, Denver, Colorado 80201.	K N Energy Inc., Bradshaw Field, Hamilton County, Kansas.	(13)	
CI85-137-000, F, 12/3/84	Grace Petroleum Corporation (Successor In Interest To Cleary Petroleum Corporation), 6501 North Broadway, Oklahoma City, Oklahoma 73116.	Arkansas Louisiana Gas Company, Lacy Field, Kingfisher and Blaine Counties, Oklahoma.	(14)	
CI85-148-000, F, 12/17/84	Mitchell Energy Corporation (Successor In Interest To Sun Exploration and Production Company), Post Office Box 4000, The Woodlands, Texas 77387-4000.	Natural Gas Pipeline Company of America, Boonsville Field, Wise County, Texas.	(15)	
CI85-149-000, A, 12/18/84	Conoco Inc., P.O. Box 2197, Houston, Texas 77252	ANR Pipeline Company, Eugene Island Block 208 "H" Platform, Offshore Louisiana.	(16)	

[1] Applicant is filing to change delivery point.
[2] The non-productive acreage which is the subject of this partial abandonment application was surrendered and released of record by Sun Oil Company.
[3] Effective November 1, 1983, Sun Exploration and Production Company assigned its interest in certain blocks within the Ship Shoal Block 113 Field to Odeco Oil & Gas Company.
[4] By assignment Gulf conveys to Tesoro Petroleum Corporation their interest in the state of Louisiana Lease No. 2353 down to, but not below 15,000 feet beneath the surface of the ground.
[5] Applicant is filing to add production.
[6] Effective December 31, 1983, Phillips Oil Company assigned to Applicant, its working interest in the West Cameron Area, Block 22, Offshore Louisiana.
[7] Sales have never occurred from the proposed "B" production platform located in Ship Shoal Area Block 238. Gas from the block will be sold and delivered to Transco at the other delivery point.
[8] Applicant is filing under Gas Purchase and Sales Agreement dated August 6, 1984.
[9] Applicant is filing under Gas Purchase Contract dated December 1, 1972.
[10] By Exchange Agreement dated July 25, 1984, Amoco Production conveyed to Champlin a 6.5 percent interest in oil and gas production from Matagorda Island, Block 623.
[11] Applicant is filing under Gas Purchase and Sales Agreement dated November 15, 1984.
[12] Applicant has acquired by assignment the interest of Sun Exploration and Production Company, Bradshaw Field, Hamilton County, Kansas.
[13] On November 1, 1973, Grace acquired Cleary Petroleum Corporation, a Delaware corporation.
[14] Mitchell, by assignment dated June 11, 1984, to be effective May 1, 1984, acquired the interests of Sun in a certain lease in said assignment.
[15] Applicant is filing under Gas Purchase Contract dated November 13, 1984.
Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 85-273 Filed 1-3-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP84-91-001]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 31, 1984.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on December 17, 1984 tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following sheet:

First Revised Sheet No. 344A

The sole purpose of this filing is to reflect the termination of the provisions of Exhibit B of Texas Eastern's Rate Schedule X-43. Exhibit B of Rate Schedule X-43 was authorized by the Commission in its order of July 18, 1984 in Docket No. RP84-91-000 for a term ending November 16, 1984, with pregranted termination authorization.

The proposed effective date of the above tariff sheet is November 16, 1984 the date authorized by the Commission in its order for termination of the provisions of Exhibit B.

A copy of this filing was served on Consolidated Gas Transmission Corporation.

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, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 8, 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. 85-303 Filed 1-3-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP84-99-002]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 31, 1984.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on December 17, 1984 tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following sheets:

Eighth Revised Sheet No. 74
Third Revised Sheet No. 120
Second Revised Sheet No. 122
Second Revised Sheet No. 123
Eighth Revised Sheet Nos. 164-171

These tariff sheets are being filed pursuant to Commission order issued November 21, 1984 in Docket No. RP84-99-001, which ordered Texas Eastern's revised tariff sheets filed in Docket No. RP84-99-000 be withdrawn. The tariff sheets being withdrawn reflect a new Rate Schedule AIC (Additional Incentive Charge), related Form of Service Agreement and conforming changes to the General Terms and Conditions.

Seventh Revised Sheet No. 172 was filed in Docket No. RP84-99-000 as a sheet reserved for future use, but was revised in Docket Nos. CP81-107-000 *et al.* and CP82-446-003 *et al.*, and made effective September 12, 1984, to reflect the Form of Service Agreement for the FTS Rate Schedule and therefore should not be withdrawn under this filing.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

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, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 8, 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. 85-304 Filed 1-3-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP84-129-001]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 31, 1984.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on December 17, 1984 tendered

for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, six copies of the following tariff sheet:

Revised Seventy-first Revised Sheet No. 14

On September 13, 1984 Texas Eastern filed a revised tariff sheet for purposes of complying with the Commission's Order No. 380 issued May 25, 1984, requiring that the purchased gas cost rate be reflected separate from other charges in the commodity rate. Such tariff sheet was approved by Commission order issued December 7, 1984, in Docket No. RP84-129-000.

Since the tariff sheet filed on September 13, 1984, does not reflect the rates under Rate Schedule FTS which were the subject of a previous filing on August 10, 1984 and Commission Order approving such rates issued September 7, 1984 and the page designation of "Revised Substitute Seventieth Revised Sheet No. 14", should be designated as "Revised Seventy-first Revised Sheet No. 14", Texas Eastern is submitting the above listed tariff sheet to replace the tariff sheet filed on September 13, 1984 solely to reflect the rates under Rate Schedule FTS and to reflect the appropriate page designation.

The proposed effective date of the above tariff sheet is September 13, 1984.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

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, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 8, 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. 85-305 Filed 1-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-52-000]

Trunkline Gas Co.; Notice of Change in Tariff

December 31, 1984.

Take notice that Trunkline Gas Company (Trunkline) on December 17, 1984, tendered for filing First Revised Sheet No. 21-L to its FERC Gas Tariff, Original Volume No. 1. According to Section 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until December 26, 1984.

Trunkline states that this tariff sheet is being filed pursuant to Commission Opinion No. 226 and Docket No. RP84-85-000 issued September 28, 1984, 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 reflects the change ordered in Opinion No. 226 that collection of the GRI funding unit be remitted to GRI within fifteen (15) days of receipt.

An effective date of January 1, 1985 is proposed for First Revised Sheet No. 21-L.

Copies of this filing were served on Trunkline's jurisdictional customers and respective state regulatory 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, 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 and 385.214). All such petitions or protests should be filed on or before January 8, 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. 85-306 Filed 1-3-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51552; TSH-FRI 2749-5]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of eighteen PMNs and provides a summary of each.

DATES: Close of Review Period:

PMN 85-314—March 17, 1985.

PMN 85-338—March 20, 1985.

PMN 85-339, 85-340, 85-343 and 85-344—March 23, 1985.

PMN 85-341, 85-342, 85-345, 85-346, 85-347, 85-348, 85-349 and 85-350—March 25, 1985.

PMN 85-351, 85-352, 85-353 and 85-354—March 26, 1985.

Written comments by:

PMN 85-314—February 15, 1985.

PMN 85-338—February 18, 1985.

PMN 85-339, 85-340, 85-343 and 85-344—February 21, 1985.

PMN 85-341, 85-342, 85-345, 85-346, 85-347, 85-348, 85-349 and 85-350—February 23, 1985.

PMN 85-351, 85-352, 85-353 and 85-354—February 24, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS-51552]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M St., SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTRACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Divison (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidental version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

PMN 85-317

Manufacturer. Confidential.
Chemical. (G) Fatty acid amide.
Use/Production. (G) Pigment dispersant. Prod. range: 10,000-20,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 2 workers, up to 2 hrs/da, up to 2 da/yr.
Environmental Release/Disposal. 0.1 to 174 kg/batch released to land. Disposal by approved landfill.

PMN 85-338

Manufacturer. Confidential.
Chemical. (G) Cyanoacrylate ester.
Use/Production. (S) Industrial cyanoacrylate adhesive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 85-339

Manufacturer. Confidential.
Chemical. (G) Coconut alkyd resin.
Use/Production. (G) Polymeric binder for baking clear and pigmented finishes. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 5 workers.
Environmental Release/Disposal. Confidential.

PMN 85-340

Manufacturer. Confidential.
Chemical. (G) Organofunctional polysiloxane.
Use/Production. (S) Site-limited paper release coating intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 20 workers, based on 3 shifts/operator and 2 workers, 1 shift/da.
Environmental Release/Disposal. No release to air.

PMN 85-341

Importer. Confidential.
Chemical. (G) Substituted xanthene.
Use/Import. (G) Dye for paper. Import range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Minimal, Eye—Minimal; Ames test: Negative; Yeast test: Negative; COD: 2,284 mg/g O_2 TL_o 48 hr (Zebra): >1,000 mg/l; TL_{50} 48 hr (Zebra): >1,000 mg/l; TL_{100} 48 hr (Zebra): >1,000 mg/l; TL_o 96 hr (Zebra): >1,000 mg/l; TL_{50} 96 hr (Zebra): >1,000 mg/l; TL_{100} 96 hr (Zebra): >1,000 mg/l.
Exposure. Processing: inhalation, a total of 2 workers, up to 0.5 hr/da.
Environmental Release/Disposal. 0.3 kg/batch released to water. Disposal by publicly owned treatment works (POTW) and navigable waterway.

PMN 85-342

Importer. Confidential.
Chemical. (G) Polyester resin.
Use/Import. (G) Resin. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: inhalation.
Environmental Release/Disposal. No data submitted.

PMN 85-343

Importer. Marubeni America Corporation.
Chemical. (S) Alpha, alpha, alpha tribromomethyl phenyl sulfone.
Use/Import. (S) Additive for photoresist. Import range: 5,000-10,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Processing: inhalation.
Environmental Release/Disposal. No release.

PMN 85-344

Manufacturer. Nickstadt-Moeller, Inc.
Chemical. (S) Benzoic acid, 2-(3-(1,3-benzodioxole-5-y1)-2 methyl propylidene)amino, methyl ester.
Use/Production. (S) Industrial aroma chemical for fragrance use in personal care and household cleaning products. Prod. range: 2,000-5,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 7 workers, up to 0.5 hr/da, up to 80 da/yr.
Environmental Release/Disposal. Release unknown.

PMN 85-345

Manufacturer. Confidential.
Chemical. (G) Phenolic resin.
Use/Production. (S) Resin used in making inks. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 85-346

Manufacturer. Confidential.
Chemical. (G) Alkyd resin.
Use/Production. (S) Converted to paint. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 85-347

Manufacturer. Confidential.
Chemical. (G) Modified phenolic resin.
Use/Production. (S) Resin converted into ink. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Releasae/Disposal. Confidential.

PMN 85-348

Manufacturer. Confidential.
Chemical. (G) Alkyd resin.
Use/Production. (S) Alkyd resin converted into paint. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 85-349

Manufacturer. Confidential.
Chemical. (G) Acrylated alkyd resin.
Use/Production. (S) Resin is converted into paint. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 85-350

Manufacturer. Confidential.
Chemical. (G) Modified phenolic resin.
Use/Production. (S) Resin is converted into ink. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 85-351

Manufacturer. Amoco Chemical Corporation.
Chemical. (S) 2,6-Naphthalene dicarboxylic acid.
Use/Production. (G) Monomer sold for captive industrial use.
Prod. range: Confidential.
Toxicity Data. Acute oral: >10,250 mg/kg; Acute dermal: >3,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Minimal.
Exposure. Confidential.
Environmental Release/Disposal. Release to water. Disposal by EPA approved waste treatment plant.

PMN 85-352

Manufacturer. Confidential.
Chemical. (G) MDI adduct with a polyether glycol and a hydroxy methacrylate.

Use/Production. (G) A component of formulations for open, nondispersive use. Prod. range: 3,000–6,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 13 workers.

Environmental Release/Disposal. 1.77 to less than 2.0 kg released to land. Disposal by landfill.

PMN 85–353

Importer. Confidential.

Chemical. (G) Polymer of aliphatic diisocyanate, aliphatic glycols, aliphatic diacid, aromatic anhydride and alkylene oxides.

Use/Import. (S) Industrial leather auxiliary. Import range: Confidential.

Toxicity Data. Acute oral: >5.0 ml/kg; Irritation: Skin—Non-irritant and not corrosive, Eye—Not a primary irritant and not corrosive; IC_{50} (Pseudo, fluorescence): >100 mg/l; LC_0 96 hrs (Barchydanio rerio): 80 mg/l; LC_{50} 96 hrs (Brachydania rerio): 119 mg/l; LC_{100} 96 hrs (Brachydanio rerio): 155 mg/l.

Exposure. Processing: dermal, inhalation and ocular, 1 to 5 min/weighing, 3 weighings/da.

Environmental Release/Disposal. No release to air, water and land. Disposal by POTW.

PMN 85–354

Importer. Confidential.

Chemical. (G) Polymer of aliphatic diisocyanate aliphatic diacids, aromatic diacid, aliphatic diol, aliphatic epoxides.

Use/Import. (S) Industrial auxiliary for leather. Import range: Confidential.

Toxicity Data. Acute oral: >5.0 ml/kg; Irritation: Skin—Not irritating, Eye—Not Irritating; 96 hr (Brachydanio rerio): 100 mg/l; LC_{50} (Pseudo, fluorescence): >100 mg/l.

Exposure. Processing: dermal, inhalation and ocular, 1 to 5 min/weighing, 3 weighings/da.

Environmental Release/Disposal. No release to air, water and land. Disposal by POTW.

Dated: December 28, 1984.

Linda K. Smith,

Acting Director, Information Management Discussion.

[FR Doc. 85–244 Filed 1–3–85; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59181; TSH–FRL 2749–6]

Certain Chemicals; Test Marketing Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h) (1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722. This notice, issued under section 5(h) (6) of TSCA, announces receipt of five applications for exemptions, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by: January 22, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS–59181]" and the specific TME number should be sent to: Document Control Officer (TS–793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E–201, 401 M Street, SW, Washington, DC 20460, (202–382–3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW, Washington, DC 20460, (202–382–3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TMEs received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address.

TME 85–14

Close of Review Period. February 3, 1985.

Manufacturer. Confidential.

Chemical. (G) Tri-substituted triazine.

Use/Production. (G) Polyolefin additive; open, non-dispersive. Prod. range: COnfidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Enviromental Release/Disposal. Release to land. Disposal by Publicly owned treatment works (POTW) and sanitary landfill.

TME 85–15

Close of Review Period. February 3, 1985.

Manufacturer. Confidential.

Chemical. Further clarification needed before information can be released to the public files.

Use/Production. Further clarification needed before information can be released to the public files. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Release to land. Disposal by POTW and sanitary landfill.

TME 85–16

Close of Review Period. February 3, 1985.

Manufacturer. Confidential.

Chemical. Further clarification needed before information can be released to the public files.

Use/Production. Further clarification needed before information can be released to the public files. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential

Environmental Release/Disposal. Release to land. Disposal by POTW and sanitary landfill.

TME 85–17

Close of Review Period. February 3, 1985.

Manufacturer. Confidential.

Chemical. Further clarification needed before information can be released to the public files.

Use/Production. Further clarification needed before information can be released to the public files. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release /Disposal. Release to land. Disposal by POTW and sanitiary landfill.

TME 85–18

Close of Review Period. February 3, 1985.

Manufacturer. Confidential.

Chemical. Further clarification needed before information can be released to the public files.

Use/Production. Further clarification needed before information can be released to the public files. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Release to land. Disposal by POTW and sanitary landfill.

Dated: December 28, 1984.

Linda K. Smith,

Acting Director, Information Management Division.

[FR Doc. 85-243 Filed 1-3-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2749-1]

Environmental Impact Statements; Notice of Availability

Responsible Agency

Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements filed December 24, 1984 through December 28, 1984 Pursuant to 40 CFR 1506.9.

EIS No. 840581, DSuppl, COE, OH, Geneva-on-the-Lake Small Boat Harbor, Construction, Ashtabula County, Due: March 1, 1985, Contact: David Heicher, (716) 876-5454.

EIS No. 840582, Final, FAA, CA, Palm Beach International Airport Fan Out Departure Procedure Elimination, Approval, Palm Beach County, Due: February 4, 1985, Contact: Jeffrey Griffith, (404) 763-7537.

EIS No. 840583, Draft, FHW, CA, CA-113 Construction, between County Road P27 and Interstate Route 5, Yolo County, Due: February 18, 1985, Contact: Michael Cook, (916) 440-2521.

EIS No. 840584, Final, BLM, ID, Monument Resource Management Plan, Blaine, Butte, Gooding, Jerome, Lincoln, Minidoka and Power Counties, Due: February 4, 1985, Contact: Ervin Cowley, (208) 886-2206.

EIS No. 840585, Final, SCS, PA, Jacobs Creek Watershed and Flood Protection Plan, Fayette and Westmoreland Counties, Due: February 4, 1985, Contact: James Olson, (717) 782-4453.

EIS No. 840586, Draft, AFS, MS, Mississippi National Forests Land and Resource Management Plan, Due: April 1, 1985, Contact: John Alcock, (404) 881-4177.

EIS No. 840587, Final, AFS, NB, SD, Nebraska National Forest Land and Resource Management Plan, Due: February 4, 1985, Contact: Robert Storch, (308) 432-3367.

EIS No. 840588, Final, IBR, NV, AZ, Hoover Dam Powerplant Modification, Construction, Clark County, Nevada and Mohave County, Arizona, Due: February 4, 1985, Contact: Gary Bryant, (702) 293-8522.

EIS No. 840589, Draft, FHW, WA, Pelix River Bridge Replacement, on US 101, Pacific County, Due: March 1, 1985, Contact: P. C. Gregson, (206) 753-2120.

EIS No. 840590, Final, MMS, MXG, 1985 Eastern, Central and Western Gulf of Mexico Outer Continental Shelf (OCS) Oil and Gas Sales 94, 98 and 102, Leasing, Due: February 4, 1985, Contact: Mark Rouse, (504) 837-4720.

Dated: December 31, 1984.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-255 Filed 1-3-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2749-3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 17, 1984 through December 21, 1984 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act, as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the rating assigned to draft environmental impact statements (EISs) was published in Federal Register dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D-AFS-L65091-00, Rating EC2, Caribou Nat'l Forest Land and Resource Mgmt. Plan, ID, UT, WY. Summary: EPA requested that the FEIS include the rationale used to determine compliance with water quality standards for sediment and culinary uses, and an explanation of how monitoring will be used to ensure compliance. EPA also requested that the air quality impacts resulting from satisfying fuelwood demands and herbicide application impacts be evaluated in the FEIS.

ERP No. DS-BLM-L65039-OR, Rating LO, Josephine and Jackson Klamath Sustained Yield Unit, Ten-Year Timber Management Plan, OR. SUMMARY: EPA's review concluded that the project would result in no significant environmental impacts.

ERP No. DR-COE-G36049-TX, Rating LO, Wright Patman Lake and Dam, Operation and Maintenance Program, Sulphur R., TX. Summary: EPA did not identify any potential environmental impacts requiring substantive changes to the proposal.

ERP No. D-USN-C11004-00, Rating EC2, Battleship Surface Action Group Homeport, Construction and Operation, NY, MA, RI. Summary: EPA stated the FEIS should address potential waste generation and disposal problems associated with homeporting operations. The FEIS should also provide more detailed information regarding mitigation measures proposed to lessen traffic and air quality impacts.

Final EISs

ERP No. F-AFH-E36151-NC, Moss Neck Watershed, Protection and Flood Prevention, NC. SUMMARY: EPA concludes that the comments offered on the DEIS were satisfactorily addressed and have no objections to the adoption of the FEIS.

ERP No. F-CDB-C89022-NY, Norstar Plaza Development, Grant, NY. SUMMARY: EPA's concerns were adequately addressed in the FEIS. EPA lacks objections to the overall project provided that air quality mitigation measures are employed.

ERP No. F-COE-E02006-00, Alabama and Mississippi Hydrocarbon Resources, Exploration and Production Permit, AL, MS. SUMMARY: EPA's environmental concerns that were expressed in comments on the DEIS were satisfactorily addressed.

ERP No. F-COE-E36111-MS, Sowashee Creek Watershed Protection and Flood Control Project, MS. SUMMARY: EPA finds our comments on the DEIS regarding the necessary mitigation measures for this facility have been implemented.

ERP No. F-FHW-F40191-IL, Staley Viaduct and IL-121, Improvements, IL. SUMMARY: EPA's review of the FEIS did not identify any significantly adverse environmental impacts associated with the project.

ERP No. F-FHW-F40210-MI, Edgewood Blvd. Improvement, Between Logan and Cedar Streets, MI. SUMMARY: EPA has objections to implementation of the selected alternative due to projected noise, neighborhood disruption, and pedestrian safety impacts. EPA strongly recommends that FHWA reconsider its decision, and review again the benefits of the rejected Alternative C.

ERP No. F-MMS-K03011-CA, Pt. Arguello Field OCS Oil and Gas Development, Gaviota Processing Facility, Development and Production Plan, Right-of-Way, Platform Verification and Drill Permit Approval, CA, Pacific Ocean. SUMMARY: The FEIS was responsive to issues EPA raised on the DEIS, with the exception of air quality issues. In particular, EPA noted that the FEIS minimized the project's potential air quality impacts, especially for PSD violations and cumulative air quality impacts in the Santa Barbara area.

ERP No. F-SCS-H36053-KS, South Fork Watershed Flood Control Plan, KS

SUMMARY: EPA's comments were adequately addressed in the FEIS.

Dated: December 31, 1984.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-256 Filed 1-3-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, 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.: 224-004004-001.

Title: Portland Terminal Agreement.

Parties:

The Port of Portland (Port)

The Six Japanese-Flag Line Carriers (Carriers)

Synopsis: Agreement No. 224-004004 provides that there will be an annual escalation of the minimum guarantee and discount plateaus equal in percentage to one-half of the increase taken by the Port in its Cargo NOS wharfage rates, as published in the Port's terminal tariff. The tariff now names per container wharfage rates on cargo in containers. To eliminate any confusion as to whether the per container rates or the Cargo, NOS rates should apply as provided by the agreement, Agreement No. 224-004004-001 clarifies the agreement's language and ensures that the per container wharfage rates would take precedence on cargo in containers.

Agreement No.: 212-010386-006.

Title: Argentina/U.S. Atlantic Coast Agreement.

Parties:

United States Lines (S.A.) Inc.

Empresa Lineas Maritimas Argentinas S.A.

A. Bottacchi S.A. de Navegacion C.F.I.I.

Companhia de Navegacao Lloyd Brasileiro

A/S Ivarans Rederi

Van Nievelt

Goudriaan & Co. BY (Holland Pan Am)

Cylanco, S.A.

Reefer Express Lines Pty., Ltd.

Synopsis: The proposed amendment would restate the agreement in accordance with the Commission's format, organization and content requirements and would delete the port of Key West, Florida from the scope of the agreement. It would also make clarifying changes to conform with the Commission's requirements concerning interstitial authority. The parties have requested a shortened review period.

Agreement No.: 212-010388-004.

Title: U.S. Atlantic Coast/Argentina Agreement.

Parties:

United States Lines (S.A.) Inc.

Empresa Lineas Maritimas Argentinas S.A.

A. Bottacchi, S.A. de Navegacion C.F.I.I.

Synopsis: The proposed amendment would restate the agreement in accordance with the Commission's format, organization and content requirements and would delete the port of Key West, Florida from the scope of the agreement. It would also make clarifying changes to conform with the Commission's requirements concerning interstitial authority. The parties have requested a shortened review period.

Agreement No.: 202-010637-004.

Title: North Europe-U.S. Atlantic Conference Agreement.

Parties:

Atlantic Container Line (G.I.E.)

Dart-ML Limited

Hapag-Lloyd AG

Compagnie Generale Maritime

Sea-Land Service, Inc.

Trans Freight Lines, Inc.

United States Lines, Inc.

Intercontinental Transport (ICT) BV

Synopsis: The proposed amendment would modify the agreement to more specifically delineate among shippers, shippers' associations, shipper councils and other shipper groups and refer to applicable statutory definitions under the Shipping Act of 1984.

Agreement No.: 217-010649-001.

Title: Johnson Scanstar/Hapag-Lloyd/Pacific Europe Express Space Cross Charter and Sailing Agreement.

Parties:

The East Asiatic Company, Ltd.

Blue Star Line, Ltd.

Hapag-Lloyd AG

Compagnie General Maritime

Intercontinental Transport (ICT) BV

Synopsis: The proposed amendment would provide that no party may directly or indirectly conduct or operate an ocean carrier container service in the trade other than under the provisions of the agreement.

Agreement No.: 202-010656-001.

Title: North Europe-U.S. Gulf Freight Association.

Parties:

Atlantic Cargo Services, AB

Compagnie Generale Maritime

Hapag-Lloyd AG

Intercontinental Transport (ICT) BV

Lykes Bros. Steamship Co., Inc.

Sea-Land Service, Inc.

Trans Freight Lines, Inc.

Synopsis: The proposed amendment would provide for space chartering among the parties and would expand the scope of the agreement to include all-water and through shipments to and via U.S. West coast ports from and via European ports and points presently within the scope of the agreement. It would also restate the authority of the parties with regard to transactions with shippers, shippers' associations, shipper councils and other shipper groups.

Agreement No.: 202-010676-001.

Title: Mediterranean/U.S.A. Freight Conference.

Parties:

Atlanttrafik Express Services, Ltd.

Achille Lauro

C.I.A. Venezolana de Navegacion

Compania Trasatlantica Espanola, S.A.

Constellation Lines, S.A.

Costa Line

d'Amico Societa di Navigazione per Azioni

Farrell Lines, Inc.

"Italia" Societá per Azioni de Navigazione

Jugolinija

Jugooceanija

Lykes Lines

Nedlloyd Lines

Nordana Line/Dannebrog Lines AS

Sea-Line Service, Inc.

Synopsis: The proposed amendment would admit Zim Israel Navigation Co., Ltd. as a party to the agreement. The parties have requested a shortened review period.

Agreement No.: 224-010711.

Title: Tampa Terminal Agreement.

Parties:

Tampa Port Authority (Authority)

Petroleum Packers, Inc. (PPI)

Synopsis: Agreement No. 224-010711 provides for the lease by the Authority to PPI of 6 acres of land at Hookers Point in the Tampa Terminal Area. PPI will perform marine terminal operations on the premises in connection with foreign commerce. The lease will become operative upon the determination of its effective date by the Commission.

By Order of the Federal Maritime Commission.

Dated: December 31, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 85-294 Filed 1-3-85; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Ove Christensen et al.; Applicants

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, DC 20573.

Ove Christensen, 7146 Mezzanine Way, Long Beach, CA 90808

Hiroyuki Wada dba Amex Trans-World Company, 16416 Northcase Drive, Suite 140, Houston, TX 77060

Great World Express Corp., 1305 Grandview Drive, South San Francisco, CA 94080, Judy Ting, President, Thereses Lu, Vice President

Solmar Logistics, Inc., 4544 Post Oak Place, Suite 148, Houston, TX 77027
Officers: Norman Robert Wittkamp, Jr., President/Director, Thomas Arnold Fullen

Sunrise Cargo Services, Inc., 6775 N.W. 25th Street, Miami, FL 33122-1801
Officers: Marcelle Cham, President, Francoise Cham, Secretary/Treasurer

By the Federal Maritime Commission.

Dated: December 31, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 85-295 Filed 1-3-85; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Kelly & Sisman Co., et al.; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: FMC-1524
Name: Kennelly & Sisman Co.
Address: 563 Lycastle, Detroit, MI 48214
Date Revoked: December 20, 1984
Reason: Failed to maintain a valid surety bond.

License Number: FMC-2311
Name: Kanical Aero Marine Services, Inc.
Address: P.O. Box 952, Fremont, CA 94537
Date Revoked: December 23, 1984
Reason: Failed to maintain a valid surety bond.

License Number: FMC-2347
Name: Selax Transport Corporation dba International Freight Forwarders & Co.
Address: 11 East 26th Street, 14th Floor, New York, NY 10010
Date Revoked: December 23, 1984
Reason: Failed to maintain a valid surety bond.

License Number: FMC-2738
Name: Edel Enterprises, Inc.
Address: 5419 N.W. 72nd Avenue, Miami, FL 33166
Date Revoked: December 23, 1984
Reason: Failed to maintain a valid surety bond.

License Number: FMC-664-R
Name: Imperial Van Lines International, Inc. & Imperial Van Lines International Inc., dba Imperial International Forwarding Company
Address: 23505 Crenshaw Blvd., Suite 100-A, Torrance, CA 90505
Date Revoked: December 24, 1984
Reason: Surrendered license voluntarily

License Number: FMC-76
Name: Rex & Reynolds Co., Inc.
Address: 27 Park Place, New York, NY 10007
Date Revoked: December 24, 1984
Reason: Requested revocation voluntarily

Eugene P. Stakem,

Deputy Director, Bureau of Tariffs.

[FR Doc. 85-296 Filed 1-3-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bankers Trust New York Corp.; Application To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)), to engage *de novo* through national bank subsidiaries in deposit-taking, including the taking of demand deposits, and other activities specified below. The proposed subsidiaries will not engage in commercial lending transactions as defined in Regulation Y. The Board has determined by order that such activities are closely related to banking. *U.S. Trust Company* (70 Federal Reserve Bulletin 371 (1984)). Although the Board is publishing notice of this application, under established Board policy the record of the application will not be regarded as complete and the Board will not act on the application unless and until preliminary charters for the proposed national bank subsidiaries have been submitted to the Board.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Federal Reserve Bank or the offices of the Board of Governors not later than January 23, 1985.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Bankers Trust New York Corporation*, New York, New York; to engage through the following national bank subsidiaries in consumer and mortgage lending, trust services and investment advisory services, and deposit-taking, including demand deposits: Bankers Trust Company of Houston, N.A., Houston, Texas; Bankers Trust Company of Dallas, Dallas, Texas; Bankers Trust Company of California, N.A., Los Angeles, California (with a branch in San Francisco); Bankers Trust Company of Georgia, N.A., Atlanta, Georgia; and Bankers Trust Company of Illinois, N.A., Chicago, Illinois. These activities would be conducted in the standard metropolitan statistical areas

of Chicago, Illinois; Houston, Texas; Dallas, Texas; Atlanta, Georgia; Los Angeles, California; and San Francisco, California.

Board of Governors of the Federal Reserve System, December 28, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-198 Filed 1-3-85; 8:45 am]

BILLING CODE 6210-01-M

First University Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. § 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 25, 1985.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

First University Bancorp, Inc., Newton, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of University Bank and Trust Company, Newton, Massachusetts.

B. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Toledo Trustcorp, Inc.*, Toldeo, Ohio; to acquire 100 percent of the voting shares of Trustcorp Inc., Columbus, Ohio.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Cowden Bancorp, Inc.*, Springfield, Illinois; to acquire 100 percent of the voting shares of Oakwood Bancorp, Inc., Springfield, Illinois, thereby indirectly acquiring State Bank of Oakwood, Oakwood, Illinois.

D. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Johnco, Inc.*, Whitehall, Wisconsin; to become a bank holding company by acquiring 80.7 percent of the voting shares of John O. Melby & Co. Bank, Whitehall, Wisconsin.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198.

1. *Flint Hills Financial Services Corporation*, Leawood, Kansas; to become a bank holding company by acquiring 80 percent of the voting shares of Americus State Bank, Americus, Kansas. In this regard, Colt Investments, Inc., Leawood, Kansas, has applied to acquire 24.9 percent of the voting shares of Flint Hills Financial Services Corporation, Leawood, Kansas, thereby indirectly acquiring Americus State Bank, Americus, Kansas.

2. *Nationwide Bankshares, Inc.*, West Point, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Charter West National Bank, West Point, Nebraska, a *de novo* bank.

3. *Superior Bancshares, Inc.*, Kansas City, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Superior National Bank, Kansas City, Missouri.

4. *Thatcher Banking Corporation*, Denver, Colorado; to acquire 95 percent of the voting shares of The First National Bank of Salida, Salida, Colorado, and at least 5 percent of the voting shares of Pitkin County Bank and Trust Co., Aspen, Colorado.

Board of Governors of the Federal Reserve System, December 28, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-199 Filed 1-3-85; 8:45 am]

BILLING CODE 6210-01-M

Horizon Bancorp; Application To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) for the Board's approval under 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) § 225.21(a) of Regulation Y (12 CFR 225.21(a)), to engage *de novo* through a state chartered bank subsidiary in deposit-taking, including the taking of demand deposits, and other activities specified below. The proposed subsidiary will not engage in commercial lending transactions as defined in Regulation Y. The Board has determined by order that such activities are closely related to banking. *U.S. Trust Company* (70 Federal Reserve Bulletin 371 (1984)). Although the Board is publishing notice of this application, under established Board policy the record of the application will not be regarded as complete and the Board will not act on the application unless and until a preliminary charter for the proposed bank subsidiary has been submitted to the Board.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Federal Reserve Bank or the offices of the Board of Governors not later than January 23, 1985.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Horizon Bancorp*, Morristown, New Jersey; to engage through a state chartered bank subsidiary, Horizon State Bank of New York, New York, New York, in consumer and mortgage lending and deposit-taking, including demand deposits.

Board of Governors of the Federal Reserve System, December 28, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-200 Filed 1-3-85; 8:45 am]

BILLING CODE 6210-01-M

NCNB Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwised noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 23, 1985.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President), 701 East Byrd Street, Richmond, Virginia 23261:

1. *NCNB Corporation*, Charlotte, North Carolina; to conduct data processing, transmission, and related activities as previously approved, throughout the United States and to offer and provide data processing, transmission, and related services to other EFT networks, through Florida Interchange Group, Inc., Orlando, Florida.

B. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President), 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *CoreStates Financial Corp.*, Philadelphia, Pennsylvania; to engage through its existing indirect subsidiary, Congress Financial Corporation, Philadelphia, Pennsylvania, in the previously approved activities of factoring, commercial finance and leasing of personal and real property. This application is for the expansion of the geographic scope of activities to include the entire United States.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. *Texas Valley Bancshares, Inc.*, Weslaco, Texas; to engage *de novo* through its subsidiary, Texas Valley Leasing Company, Inc., Weslaco, Texas, in leasing personal or real property or acting as agent, broker, or adviser in leasing such property.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. *Utah Bancorporation*, Salt Lake City, Utah; to engage *de novo* through its subsidiary, Valley Utah Insurance Company Inc., Salt Lake City, Utah, in acting as an insurance agent or broker at a bank-related office with respect to any insurance that is directly related to an extension of credit by a bank or bank-related firm of the kind described in Regulation Y, or indirectly related to a provision of other financial services by a bank or such a bank-related firms; and acting as underwriter through a wholly owned subsidiary, for credit life, accident and health insurance that is directly related to an extension of credit. These activities would be conducted in the State of Utah.

Board of Governors of the Federal Reserve System, December 28, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-201 Filed 1-3-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on December 28, 1984.

Social Security Administration

Subject: Workers Compensation/Public Disability Benefit Questionnaire-SSA 546 (0960-0247) Extension
Respondents: Individuals
Subject: Referral and Treatment Status of SSI Drug Addicts or Alcoholics-SSA 874 (0960-0331)-Extension
Respondents: State and local governments
Subject: Report on AFDC Assistance Units Receiving Excludable Support and Maintenance Assistance and Home Energy Assistance—New
Respondents: States
OMB Desk Officer: Robert J. Fishman

Public Health Service

Food and Drug Administration

Subject: Medicated Feed Application—0910-0011-Extension
Respondents: Medicated feed manufacturers
OMB Desk Officer: Bruce Artim

Alcohol Drug Abuse and Mental Health Administration

Subject: Drug Abuse Warning Network (DAWN) Extension—(0930-0078)
Respondents: Hospital emergency rooms and medical examiners/coroners
OMB Desk Officer: Fay S. Iudicello

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503. ATTN: (name of OMB Desk Officer).

Dated: December 28, 1984.

Joseph F. Costa,

Director, Office of Public and State Data Systems.

[FR Doc. 85-134 Filed 1-3-85; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84F-0408]

Mitsubishi Chemical Industries, Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Mitsubishi Chemical Industries, Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of sucrose fatty acid esters prepared with the solvents dimethyl sulfoxide and isobutyl alcohol.

FOR FURTHER INFORMATION CONTACT: Patricia J. McLaughlin, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 2024, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5A3839) has been filed by Mitsubishi Chemical Industries, Ltd., 5-2, Marunouchi 2-chome, Chiyoda-ku, Tokyo, Japan, proposing that § 172.859 *Sucrose fatty acid esters* (21 CFR 172.859) be amended to provide for the safe use of dimethyl sulfoxide and isobutyl alcohol as solvents in the preparation of sucrose fatty acid esters.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: December 20, 1984.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-187 Filed 1-3-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84F-0396]

Nalco Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Nalco Chemical Co., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of phosphoric acid, mono- and diisooctyl esters, compounds with t-alkyl(C_{12}-C_{14}) primary amines as a corrosion inhibitor or rust preventative in lubricants with incidental food contacts.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5B3837) has been filed by Nalco Chemical Co., 2901 Butterfield Rd., Oak Brook, IL 60521, proposing that § 172.3570 *Lubricants with incidental food contact* (21 CFR 172.3570) be amended to provide for the safe use of phosphoric acid, mono- and diisooctyl esters, compounds with t-alkyl(C_{12}-C_{14}) primary amines as a corrosion inhibitor or rust preventative in lubricants with incidental food contact.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: December 20, 1984.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-188 Filed 1-3-85; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

Arteriosclerosis, Hypertension and Lipid Metabolism Advisory Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Arteriosclerosis, Hypertension and Lipid Metabolism Advisory Committee, National Heart, Lung, and Blood Institute, February 21-22, 1985, Wilson Hall, Building 1, 3rd Floor, National Institutes of Health, Bethesda, Maryland 20205. The entire meeting will be open to the public from 8:30 a.m. to approximately 5:00 p.m. on Thursday, February 21, and from 8:30 a.m. to adjournment on Friday, February 22, to evaluate program support in Arteriosclerosis, Hypertension and Lipid Metabolism. Attendance by the public will be limited on a space available basis.

Ms. Terry Bellicha, Chief, Public Inquiry and Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20205, (301) 496-4236, will provide summaries of the meeting and rosters of the committee members.

Dr. G.C. McMillan, Associate Director, Arteriosclerosis, Hypertension and Lipid Metabolism Program, NHLBI, Room 4C-12, Federal Building, National Institutes of Health, Bethesda, Maryland 20205, (301) 496-1613, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: December 24, 1984.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85-191 Filed 1-3-85; 8:45 am]

BILLING CODE 4140-01-M

Research Centers in Minority Institiutions Award; Meeting

The purpose of this notice is to announce the Research Centers in Minority Institutions (RCMI) Award, a new type of grant, by the National Institutes of Health (HIH). The Conference Report on the Fiscal Year 1985 Appropriation for the Office of the Director, NIH, specifies that the purpose of the award is "to establish research centers in those predominantly minority institutions which offer doctoral degrees in the health professions or the sciences related to the health * * *"

The RCMI Program will be managed by the Office of the Director, Division of Research Resources. The program is designed to provide grants of up to $1,000,000 per year for five years, to help eligible institutions enrich their research environments via selected improvements in their human and physical resources. For example, the funds awarded could be used for the salaries of key research and research-

support personnel, instrumentation, and alterations and renovation of facilities. These expenditures are intended to complement ongoing and planned research activities, such as projects funded by Minority Biomedical Research Support grants, Minority Access to Research Career awards, traditional NIH and ADAMHA research project grants, and individual and institutional research fellowships.

To be eligible to compete for an RCMI Award, an institution must have 50 percent or more minority enrollment and offer doctoral degrees in the health professions or the sciences related to health. Officials of doctorate-granting schools who feel their institutions may be eligible for an RCMI Award should contact: Ms. Mary L. Miers, Institutional Liaison Officer, Office of Extramural Research and Training, Shannon Building—Room 115, National Institutes of Health, Bethesda, Maryland 20205, Telephone: (301) 496–5366.

On the basis of information currently available to the NIH, the following eligible institutions have been notified and have been furnished a copy of the draft guidelines for the RCMI Award:

Atlanta University Graduate School
City College of the City University of New York (CUNY)
Drew Postgraduate Medical School
Florida A&M School of Pharmacy
Howard University Graduate School
Howard University Medical School
Meharry Medical College
Morehouse Medical School
Ponce Medical School, Puerto Rico
Texas Southern University
Tuskegee Institute
University of Puerto Rico, Rio Piedras
University of Puerto Rico, San Jaun

A special meeting, attendance by the public limited to space available, will be held on January 30, 1985. Representatives of the eligible institutions and other interested individuals will have an opportunity to offer comments and recommendations about the draft guidelines. For a copy of the draft guidelines, information regarding this new program, and time and location of the meeting, please contact: Dr. James F. O'Donnell, Deputy Director, Division of Research Resources, Building 31—Room 5B03, National Institutes of Health, Bethesda, Maryland 20205, Telephone: (301) 496–6023.

Dated: December 27, 1984.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 85–192 Filed 1–3–85; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf North Atlantic Oil and Gas Lease Sale 82

Offshore oil and gas lease Sale 82, Part II, as proposed in 49 FR 20408–20425 (May 14, 1984) has been cancelled. Factors leading to this decision were: lack of industry interest at this time and loss, resulting from a recent ruling by the International Court of Justice, of much of the most geologically prospective acreage in the proposed sale area.

Dated: December 21, 1984.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 85–184 Filed 1–3–85; 8:45 am]

BILLING CODE 4310–MR–M

Request for Comments on Sale 98—Central Gulf of Mexico

AGENCY: Minerals Management Service, Interior.

ACTION: Request for comments.

SUMMARY: The purpose of this Notice is to request comments from all interested parties, including recommendations on alternative procedures, on a proposed stipulation the Minerals Management Service (MMS) is considering for use in Sale 98—Central Gulf of Mexico regarding the leasing of blocks in Warning Area 155. Comments are also being requested on a stipulation prohibiting discharges of any kind into the waters of the Mississippi Sound. The proposed stipulations appear in whole under paragraph 13, Stipulation No. 6—Military Impact Zone and paragraph 14, Information to Lessees clause (i) of the proposed Notice of Sale for Sale 98 published this date elsewhere in the **Federal Register.**

DATE: Written comments must be received on or before March 5, 1985.

ADDRESSES: Written comments should be submitted to the Chief, Offshore Leasing Management Division, Minerals Management Service, Mail Stop 645, 12203 Sunrise Valley Drive, Reston, Virginia 22091. Hand deliveries may be made to Room 2515, Department of the Interior Building, 18th and C Streets, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Chris Oynes, Chief, Offshore Leasing Management Division at (202) 343–6906.

Wm. D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 85–10 Filed 1–3–85; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Sleeping Bear Dunes National Lakeshore; Revised Boundary Map

The boundary of Sleeping Bear Dunes National Lakeshore, authorized October 21, 1970, 84 Stat. 1075, is revised to show approximately 115 acres acquired as uneconomical remnants. The new boundary deletes seven small parcels, generally less than 1 acre and totaling approximately 4.5 acres. These parcels are part of larger privately-owned tracts lying outside the boundary and are not needed for the purposes of the lakeshore.

This boundary change is made pursuant to the authority contained in the act of June 10, 1977, 91 Stat. 211, as amended, 16 U.S.C. 4601–9(c).

The tracts of land added and deleted are identified in the Sleeping Bear Dunes Land Status Maps, Series 634–35000. These maps are available to the public for inspection at the following addresses:

Director, National Park Service, Department of the Interior, Washington, D.C. 20240
Regional Director, Midwest Regional, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102
Superintendent, Sleeping Bear Dunes National Lakeshore, 400 Main Street, Frankfort, Michigan 49635.

Date: September 19, 1984.

Randall R. Pope,

Regional Director, Midwest Region.

[FR Doc. 85–193 Filed 1–3–84; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 347; Sub-1]

Coal Rate Guidelines—Nationwide; Environmental Impact Statement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of availability of final environmental impact statement.

SUMMARY: The Commission's Section of Energy and Environment has completed the final environmental impact

statement for the above-entitled proceeding, which contemplates establishment of maximum railroad coal rate guidelines. In an effort to avoid waste and to comport with budgetary objectives, copies of the final environmental document are being sent only to appropriate federal agencies and to organizations and individuals who submitted substantive comments on the draft environmental impact statement. Anyone else interested in obtaining a copy of the final environmental document may do so by contacting the person identified below.

FOR FURTHER INFORMATION CONTACT: Carl Bausch, Room 4143, Interstate Commerce Commission, 12th St. & Constitution Ave., NW, Washington, D.C. 20423, Telephone: (202) 275-0800.

Dated: January 4, 1985.

James H. Bayne,

Secretary.

[FR Doc. 85-205 Filed 1-3-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30567]

Railroad Carriers; Missouri, Kansas, Texas Railroad Co.; Exemption; Issuance of Note

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 11301 the issuance by the Missouri-Kansas-Texas Railroad Company of a note in the amount of $5.8 million in favor of the Federal Railroad Administration.

DATES: This exemption will be effective on January 4, 1985. Petitions to reopen must be filed by January 24, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30567 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Michael E. Roper, 701 Commerce Street, Dallas, TX 75202

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan Area) or toll-free (800) 424-5403.

Decided: December 21, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85-206 Filed 1-3-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55; Sub-142X]

Rail Carriers; Seaboard System Railroad, Inc.; Abandonment Exemption; Letcher County, KY

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commision exempts from the requirements of prior approval under 49 U.S.C. 10903 *et seq.*, the abandonment by the Seaboard System Railroad, Inc., of 2325 feet of track in Letcher County, KY, subject to standard labor protective conditions.

DATES: This exemption shall be effective on December 28, 1984. Petitions to reopen must be filed by January 24, 1985.

ADDRESSES: Send pleadings referring to Docket No. AB-55 (Sub-No. 142X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Fred R. Birkholz, 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: December 27, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley and Strenio. Commissioner Sterrett, joined by Commissioner Gradison, would not have required Seaboard to serve this decision on the shippers on the line, as the transaction will not affect them adversely. Commissioner Lamboley concurred with a separate expression. Vice Chairman Andre was absent and did not participate.

James H. Bayne,

Secretary.

[FR Doc. 85-209 Filed 1-3-85; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 458]

Railroad Cost of Capital—1984

AGENCY: Interstate Commerce Commission.

ACTION: Notice of institution of limited revenue adequacy proceeding.

SUMMARY: A proceeding will be conducted to make a determination of the railroads' cost of capital for 1984.

DATES: Notice of intent to participate due on January 14, 1985.

Statement of railroads due March 1, 1985. Statement of other interested parties due April 1, 1985. Rebuttal statements by railroads due April 22, 1985.

A commission decision will be issued as soon as possible after the record is closed.

ADDRESS: Send an original and 15 copies of comments and/or an original and one copy of the notice of intent to participate to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 275-7489.

SUPPLEMENTARY INFORMATION: By this notice, we are instituting a proceeding to determine the railroad industry's cost of capital rate for 1984. The most recent finding regarding the railroads' cost of capital was made in Ex Parte No. 452, *Railroad Cost of Capital—1983*, served October 31, 1984 (49 FR 44030, November 1, 1984), which determined the industry's 1983 cost of capital. The instant proceeding will be similar in scope to Ex Parte No. 452, *supra*.

Specifically, we are soliciting comments on: (1) The railroads' 1984 current cost of debt capital; (2) the railroads' 1984 cost of equity capital; and (3) the 1984 market value capital structure mix of the railroad industry. Our conclusions regarding these matters will be used in our computation of the industry's overall or composite cost of capital for 1984.

In the Commission's six previous cost of capital proceedings,[1] the railroads'

[1] These proceedings are: Ex Parte No. 452, *supra*; Ex Parte No. 436, *Railroad Cost of Capital—1982*, served August 4, 1983; Ex Parte No. 415, *Railroad Cost of Capital—1981*, served June 24, 1982; Ex Parte No. 381, *Adequacy of Railroad Revenue (1980 Determination)*, served November 12, 1980; Ex Parte No. 363, *Adequacy of Railroad Revenue (1979 Determination)*, served January 31, 1980; and Ex Parte No. 353, *Adequacy of Railroad Revenue (1978 Determination)* served December 5, 1978.

composite cost of capital was determined using only two of the three components in their capital structure: long-term debt and common stock equity. The third capital component, preferred stock equity, was not included in the determination. Our exclusion of preferred stock resulted largely from the finding, made by Dr. J.R. Foster in Ex Parte No. 353, *Adequacy of Railroad Revenue (1978 Determination)*, served December 5, 1978, that preferred stock represented only a small proportion of the railroads' capital structure. Dr. Foster found that, for a sample group of railroads, preferred stock accounted for only 1.2 percent of book value capitalization in 1977. Although none of the parties in recent cost of capital proceedings have argued for or against the exclusion of preferred stock, we, nevertheless, believe that the matter should be reconsidered, especially since we now determine the railroads' capital structure mix on the basis of market values and net book values. Accordingly, we seek comment in this proceeding as to whether or not the preferred stock component should be included in future (i.e., 1985 and beyond) Commission cost of capital determinations. Given the long lead time required by the parties to develop data in cost of capital proceedings, as well as our long history of excluding the preferred stock component, we do not believe it would be appropriate, in the instant proceeding, to alter our present method of determining the railroads' cost of capital. Our purpose here is to alert the parties that we are reconsidering the matter and that they may be required to submit preferred stock data in future cost of capital proceedings.

We have also, in past proceedings, determined the industry's cost of capital on the basis of data for a sample of railroads. Initially there were ten railroads in the sample but, because of mergers, only seven companies were used for the most recent (i.e., 1983) cost of capital determination.[2] Railroads were elected for the sample on the basis of having met six criteria.[3] (These criteria were developed by Dr. Foster in Ex Parte No. 353, *supra*.) We now find that several other railroads meet some or all of the criteria. Accordingly, we seek comment on the appropriateness of the criteria themselves and on the need, if any, to revise the existing sample base. For the same reasons stated above regarding the use of preferred stock, we will continue to use the existing sample base in the instant proceeding. Revisions to that base, if any, will be made in future (1985 and beyond) cost of capital proceedings.

We emphasize that, for purpose of determining the railroads' cost of capital for 1984, comments should focus on the various cost of capital components developed in Ex Parte No. 452 *supra*, and the underlying techniques and methodologies applied in their development. The primary purpose of this proceeding is to determine a specific cost of capital for 1984.

All Class I railroads shall be respondents in this proceeding. They shall, and other interested parties may, submit evidence that will enable the Commission to update the cost of capital finding of Ex Parte No. 452, *supra*, in light of conditions in the capital markets during 1984. With respect to such evidence, it is important that the parties provide the Commission with copies of all underlying workpapers and background materials used in the preparation of statements. In addition, each party should provide the other participants in this proceeding with access to these workpapers upon request.

Any party intending to participate in the proceeding shall file an original and one copy of a notice of intent to participate. To conserve time, avoid unnecessary expense, and limit the service of statements in this proceeding to parties who intend actively to participate, each notice of intent to participate shall include a detailed statement of: (1) Whether the party's interest extends merely to receiving Commission releases in this proceeding; (2) whether the party wishes to participate by filing and receiving statements; (3) whether, if the party wishes to file statements, its interests can be consolidated with those of other parties by the filing of joint statements; and (4) any other pertinent information to aid in limiting the service list to be issued in this proceeding. The Commission will prepare and make available to all parties submitting notices of intent to participate, a service list containings the names and addresses of all participants.

Evidentiary statements of the parties are due on or before the dates set forth in the preamble to this notice.

An original and 15 copies (if possible) of each statement shall be filed with the Commission, and one copy shall be served upon each party on the service list.

Copies of this notice shall be available to the public from the Office of the Secretary, and the notice shall be published in the **Federal Register**.

This action does not appear to affect significantly the quality of the human environment or conservation of energy resources. However, comments are invited.

Dated: December 26, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85-207 Filed 1-3-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-No. 231)]

Burlington Northern Railroad Co.; Abandonment in Merrick, Howard, Sherman, Valley, and Custer Counties, NE; Findings

The Commission has issued a certificate authorizing Burlington Northern Railroad Company to abandon its 73.27-mile rail line between Palmer (milepost 0.00) and Sargent (milepost 73.27) in Merrick, Howard, Sherman, Valley and Custer Counties, NE. 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.

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[2] The ten railroads were: the Atchison, Topeka and Santa Fe; Burlington Northern; Chesapeake & Ohio; Denver and Rio Grande Western; Missouri Pacific; Norfolk & Western; Seaboard Coast Line; Southern Pacific; Southern Railway; and Union Pacific. The seven surviving holding companies for the 1983 cost of capital determination were: Burlington Northern; CSX; Norfolk Southern; Rio Grande Industries; Santa Fe Industries; Southern Pacific; and Union Pacific.

[3] The criteria are:

(a) The company is listed as a Class I line-haul railroad in Moody's *Transportation Manual*.

(b) If the railroad is controlled by another company, the parent is primarily a railroad company and is not already included in the reference group.

(c) The railroad's equipment trust obligations are rated at least Aa by Moody's.

(d) The railroad's bonds are rated at least Baa by Moody's.

(e) The common stock is rated at least B by Standard & Poor's.

(f) The company's stock is listed on the New York or American Stock Exchange.

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. 85-434 Filed 1-3-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Modification of Final Judgment; National Finance Adjusters, Inc.

Notice is hereby given that the Department of Justice ("Department") and National Finance Adjusters, Inc. ("NFA"), have filed with the United States District Court for the Eastern District of Michigan a joint motion seeking to modify the final judgment in *United States* v. *National Finance Adjusters, Inc.*, 81-70005; and the Department, in a stipulation also filed with the court, has consented to modification of the judgment, but has reserved the right to withdraw its consent for at least seventy (70) days after the publication of this notice. The complaint in this case (filed in January 1981) alleged NFA had combined and conspired to agree on, prepare, publish in its directory, disseminate and encourage members to adhere to fee schedules for repossession services; to restrict membership to one or few members in certain geographic areas; to restrict the area in which each of defendant's members could advertise its repossession services; and to establish arbitrary and unreasonable membership restrictions. The final judgment mandates (1) elimination of the fee schedules; (2) prohibition of territorial exclusivity; and (3) admission to membership of any repossessor who meets certain minimum criteria.

The proposed modification has three major substantive changes. First, NFA would be allowed to grant exclusive territories to its members provided that its members do not have the same or overlapping exclusive territory in any other reposssession organization. Second, NFA would be allowed to require its members to guarantee customer satisfaction. Finally, the modified decree would remain in effect for seven as opposed to ten years after entry to take account of the three years the original decree had been in effect.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that the modification of the judgment would serve the public interest.

Interested persons may submit comments concerning this matter by setting them within sixty (60) days to John W. Poole, Jr., Chief, Special Litigation Section, Room 7216, Antitrust Division, United States Department of Justice, Washington, D.C. 20530 (Telephone: 202-633-2425).

Copies of the Complaint, Final Judgment (as modified), motion papers, all comments submitted and all further papers filed with the Court will be available for inspection at the Legal Procedure Unit of the Antitrust Division, Room 7416, United States Department of Justice, Tenth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530 (Telephone: 202-633-2481), and at the office of the Clerk of the United States District Court for the Eastern District of Michigan, U.S. Courthouse, 231 Lafayette, Detroit, Michigan 48226. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the copying fee set by Department of Justice regulations.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

U.S. District Court, Eastern District of Michigan

[Civil No. 81-70005]

Judge Ralph Freeman.

Filed: December 6, 1984.

United States of America, Plaintiff v. *National Finance Adjusters, Inc.*, Defendant.

Joint Motion

Now come the plaintiff, the United States of America, and the defendant National Finance Adjusters, Inc. ("NFA") by their respective attorneys, and move the Court as follows:

1. That the Court authorize the filing with the Clerk of this Court of the Stipulation with Exhibits A, B and C, the Memorandum of the United States, and the memorandum of NFA in support of this Joint Motion, all of which are attached hereto.

2. That the Court approve the procedure proposed by the parties as described in the Stipulation, and direct that a public notice in the form attached to the Stipulation be published as promptly as possible in the *ARA News and Views* and in the *ABA Banking Journal*.

As grounds for this Motion, the movants state that the proposed procedure, as described in the Stipulation, is in accordance with the current policy of the Department of Justice and fully adequate to protest the public interest; and that, for the reasons stated in the Memorandum of the United States and the Memorandum of NFA in support of this Joint Motion, modification of the Final Judgment entered herein on August 24, 1981, is appropriate and in the public interest.

Dated:

For the plaintiff: United States of America.

Respectfully submitted,

For the defendant: National Finance Adjusters, Inc.

U.S. District Court, Eastern District of Michigan

[Civil No. 81-70005]

Filed: December 6, 1984.

United States of America, Plaintiff v. *National Finance Adjusters, Inc.*, Defendant.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. Defendant, National Finance Adjusters, Inc., will publish at its expense notices, in the form attached hereto as Exhibit A, in two consecutive issues of the *ARA News and Views*, published by the American Recovery Association, Inc., and in two consecutive issues of the *ABA Banking Journal*, published by the American Bankers Association;

2. An order directing such publication, in the form attached hereto as Exhibit B, may be filed and entered by the Court forthwith, without further notice to any party and without any further proceedings;

3. An order in the form attached hereto as Exhibit C, modifying the Final Judgment entered in this action on August 24, 1981, may be filed and entered by the Court, upon the request of any party or by the Court *sua sponte*, at any time more than seventy (70) days after the last publication of the notices required by Paragraph one of this Stipulation. The order modifying the Final Judgment may be entered without further notice to any party and without other proceedings, provided that plaintiff has not withdrawn its consent, which it may do any time before the entry of the order by filing notice of the withdrawal of its consent with the Court and serving a copy of such notice upon the defendant.

4. In the event plaintiff withdraws its consent, or if the proposed order modifing the Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be without prejudice to

either party in this or any other proceeding, and this Stipulation shall not thereafter be used in this or any other action, or for any other purpose.

Dated:

For the plaintiff: United States of America: J. Paul McGrath, *Assistant Attorney General, Antitrust Division;* Mark Leddy, John W. Poole, Jr., Terrence F. McDonald, Steven B. Kramer, *Attorneys, Antitrust Division, Department of Justice, 10th & Pennsylvania Ave., N.W., Washington, D.C. 20530, Telephone: (202) 633-3082.*

For the defendant: National Finance Adjusters, Inc.: Richard E. Neuman, *Suite 1101, 351 California Street, San Francisco, California 94104, Telephone: (415) 956-4341.*

Exhibit A.—U.S. District Court, Eastern District of Michigan

[Civil No. 81-70005]

United States of America, Plaintiff v. *National Finance Adjusters, Inc.,* Defendant.

Take notice that National Finance Adjusters, Inc. ("NFA"), the defendant in this action, and the plaintiff, United States of America, have filed a joint motion for an order modifying the Final Judgment in this action which was entered on August 24, 1981. The plaintiff has reserved the right to withdraw its consent to the entry of the proposed modification for at least seventy (70) days after the publication of this notice.

The Complaint in this action, which was filed in January 1981, alleges that NFA had combined and conspired to agree on, prepare, publish in its directory, disseminate and encourage members to adhere to fee schedules for repossession services; to restrict membership to one or few members in certain geographic areas; to restrict the area in which each of defendant's members could advertise its repossession services; and to establish arbitrary and unreasonable membership restrictions. The Final Judgment mandates (1) elimination of the fee schedules; (2) prohibition of territorial exclusivity; and (3) admission to membership of any repossessor who meets certain minimum criteria.

The proposed modification has three major substantive changes. First, NFA would be allowed to grant exclusive territories to its members provided that its members do not have the same or overlapping exclusive territory in any other repossession organization. Second, NFA would be allowed to require its members to guarantee customer satisfaction. Finally, the modified decree would remain in effect for seven as opposed to ten years after entry to take account of the three-years the original decree had been in effect.

Interested persons may submit comments concerning this matter by sending them within sixty (60) days to John W. Poole, Jr., Chief, Special Litigation Section, Room 7216, Antitrust Division, United States Department of Justice, Washington, D.C. 20530 (Telephone: 202-633-2425).

Copies of the Complaint, Final Judgment (as modified), motion papers, all comments submitted and all further papers filed with the Court will be available for inspection at the Legal Procedure Unit of the Antitrust Division, Room 7416, United States Department of Justice, Tenth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20530 (Telephone: 202-633-2481), and at the office of the Clerk of the United States District Court for the Eastern District of Michigan, U.S. Courthouse, 231 Lafayette, Detroit, Michigan 48226. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the copying fee set by Department of Justice regulations.

Exhibit B.—U.S. District Court, Eastern District of Michigan

[Civil No. 81-70005]

United States of America, Plaintiff v. *National Finance Adjusters, Inc.,* Defendant.

Order Directing Publication of Notice of Motion to Modify Final Judgment

Defendant, National Finance Adjusters, Inc. ("NFA"), and plaintiff, United States of America, have moved jointly before this Court for a proposed order modifying the Final Judgment herein, and plaintiff has reserved the right to withdraw its consent for the entry of the proposed order. Plaintiff has proposed and defendant has agreed that notice of the motion and plaintiff's tenative consent be published at defendant's expense and that all interested persons be given an opportunity to submit comments concerning the proposed modification of the Final Judgment. It appearing to the Court desirable to invite such comments, and in consideration of the Stipulation of the parties dated ———— 1984, it is

Ordered that defendant NFA publish at its expense a notice, in the form attached hereto as Exhibit A, (1) in two consecutive issues of the *ARA News and Views,* published by the American Recovery Association, and (2) in two consecutive issues of the *ABA Banking Journal,* published by the American Bankers Association, and file proof of such publication with the Court; and it is

Futher ordered that copies of all comments received by the plantiff within sixty (60) days after the last publication of the notices required by this order shall be filed by plantiff promptly after it receives such comments; and it is

Further ordered that this Court will not rule upon the motion to modify until at least the seventy-first (71) day after the last publication of the notices required by this order.

Dated:

United States District Judge.

Exhibit C.—U.S. District Court, Eastern District of Michigan

[Civil No. 81-70005]

United States of America, Plaintiff v. *National Finance Adjusters, Inc.,* Defendant.

Order Modifying the Final Judgment

The parties have moved this Court for an order modifying the Final Judgment in this action. Notices of the motion have been published in the *ARA News and Views,* published by the American Recovery Association, and in the *ABA Banking Journal,* published by the American Bankers Association, and all interested persons have been afforded an opportunity to submit comments concerning the proposed modification.

The Court has considered all the papers that have been filed in connnection with the motion, and finds that it is in the public interest to modify the Final Judgment.

It is therefore ordered, that the Final Judgment entered herein on August 24, 1981, be modified to read as attached Exhibit D, and that the prior Final Judgment of August 24, 1981 be terminated, and of no further force or effect.

Dated:

United States District Judge.

U.S. District Court, Eastern District of Michigan

[Civil No. 81-70005]

Filed: December 6, 1984.

United States of America, Plaintiff v. *National Finance Adjusters, Inc.,* Defendant.

Memorandum of the United States in Support of the Parties' Joint Motion to Modify the Final Judgment

The parties have filed a motion to modify the Final Judgment of this action, which was entered on August 24, 1981. In a stipulation between defendant National Finance Adjusters, Inc. ("NFA") and the United States, defendant has agreed to publish notice of the motion, and an invitation for

comments thereon, in the *ARA News and Views*, published by the American Recovery Association, and in the *ABA Banking Journal*, published by the American Bankers Association; and the United States has consented to the entry of an order modifying the Final Judgment at any time more then seventy (70) days after the publication of such notice, but has reserved the right to withdraw its consent at any time before an order modifying the Final Judgment is entered.

The purpose of the proposed modification is to conform this Final Judgment in principle to two Final Judgments entered subsequently in related cases, *United States* v. *Business Investment and Development Corp.*, 1982-2 Trade Cas. ¶64,851 (W.D. Tex. 1982) and *United States* v. *Allied Finance Adjusters Conference, Inc.*, Trade Cas ¶65,407 (N.D. Ill. 1983).

In this memorandum, we summarize the NFA Complaint and the Final Judgment, explain the reasons why the United States has tentatively consented to the modification of the Judgment, and discuss the legal standards and precedents regarding judgment modification. We also discuss the procedures proposed by the United States, and agreed to by NFA, for giving public notice of the pending motion, obtaining public comment thereon, and assuring the right of the United States to withdraw its consent during and after the comment period.

I

The NFA Complaint and the Final Judgment

This action was commenced January 5, 1981, in the Eastern District of Michigan against NFA. The Complaint alleged that NFA and co-conspirators agreed to eliminate price and other forms of competition in the trade and commerce of providing repossession services, in violation of Section 1 of the Sherman Act. It was alleged that they: (a) agreed to, prepared, published in the NFA directory, disseminated and encouraged members to adhere to fee schedules for repossession services; (b) restricted membership in NFA to one or few members in certain geographic areas; (c) restricted the area for which each NFA member could advertise its services; and (d) established arbitrary and unreasonable membership restrictions.

The parties agreed to a settlement of the case and, after appropriate opportunity for the public to comment pursuant to the provisions of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)–(h) (1982), a Final Judgment was entered. Under this Final Judgment the defendant is restrained from fixing, advertising or publishing any price schedule or list for repossession services and from participating in any communications with representatives of other repossessor associations that relate to any price schedule or list for repossession services, or engaging in any conduct the effect of which is to influence the formulation of any price schedule or list for repossession services. The defendant is also prohibited, with two exceptions, from publishing any other reference to prices or fees for repossession services in its directory or other publications.[1] NFA is required to eliminate any restrictions on NFA members concerning the manner or extent of the advertising of their service area in any publication.

The defendant is also ordered to admit to membership any applicant who meets all of the following requirements: (1) the ability to obtain and retain, in the commercial market, reasonable fidelity bonds; (2) licensure under all applicable state and local licensing laws; (3) certification that he or she has not been convicted of a felony within a period of up to ten years prior to his or her application for membership; (4) one year of experience as an active repossessor; and (5) a principal office location specifically for his or her repossessor business during NFA membership.

The Final Judgment also orders the defendant to publish in the prefatory section of each NFA membership directory or other similar publication, certain information regarding the membership application process.

II

Related Cases

When this action was commenced in 1981, there were four major trade associations of repossessors or finance adjusters: (1) defendant NFA, (2) Allied Finance Adjusters Conference, Inc. ("Allied"); (3) Time Finance Adjusters ("TFA"); and (4) American Recovery Association ("ARA"). In addition to this case against NFA, the government filed simultaneously similar lawsuits against Allied and TFA. These two associations also formulated, published and disseminated price schedules for repossession services and restricted the number of members in each geographic area.

Allied, the oldest repossessor trade association, divided the country into territories and admitted only one member per territory. NFA and TFA were formed some years later; however, many Allied members were able to become members of NFA and TFA. NFA and TFA restricted the number of members in each territory on the basis of population. In some smaller metropolitan area NFA and TFA had single memberships; larger cities were restricted to two, three or four members.

The Allied consent decree, entered in Chicago District Court on April 25, 1983, allows a three-year period during which any member that already had overlapping exclusive territories[2] could elect either to waive its exclusive rights in the other organization or to require Allied to open that member's territory to service by all Allied members and all qualified applicants who wish to serve such territory. If Allied opens a territory it is required to publicize its action and entertain applications under specified procedures set out in the decree. All applicants fulfilling certain minimal requirements specified in the decree must be accepted.

The Allied decree also allows the organization to require its members to guarantee customer satisfaction regarding prices, terms or conditions of providing repossession services.

During the government's NFA, TFA and Allied investigations, Business Investment and Development Company ("BIDCO") was formed and through its subsidiary, American Lenders Service Co. ("ALSCO"), established a franchise repossession agency system. With few exceptions, the BIDCO stockholders and organizers were also Allied members. Most BIDCO stockholders became ALSCO franchisees for the areas in

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[1] One exception permits NFA to urge prospective purchasers of repossession services to negotiate fees in advance with members. The other provision allows NFA to permit its members to advertise in the directory their individual prices.

[2] "Exclusive territory" is defined in the proposed NFA decree as "a geographic area within which a repossessor organization either restricts the number of its members who may advertise under a geographic area's heading in its directory that they provide repossession service for that area or restricts the number of its members who maintain offices for repossession services."

The Allied and BIDCO decrees define "exclusive territory" as "an area within which a repossessor organization restricts the number of its members who maintain offices for repossession services." Allied and BIDCO require that its members maintain an office in the geographic area whereas NFA allows its members under certain circumstances to advertise in its directory under a post office address.

It is important to note that the term "exclusive territory", as defined in the Allied, BIDCO or proposed NFA decrees, does not allow restrictions on where any member may provide services. Thus, although the organization may prevent multiple offices in one geographic area it cannot prevent its members from competing intra-associationally for business in adjacent territories.

which they already had Allied territories, and many also had NFA and TFA memberships. On February 27, 1981, the Antitrust Division filed a fourth lawsuit alleging that BIDCO's fee schedule and territorial restrictions violated the Sherman Act.

The BIDCO consent decree which was entered by the U.S. District Court in Midland, Texas on July 10, 1982, is based on the same principles of eliminating agencies with overlapping exclusive territories granted by more than one reposessor organization. It similarly allows a customer satisfaction guarantee.

TFA had previously entered into a consent decree approved by the U.S. District Court in Orlando, Florida on November 16, 1981. This consent decree has provisions substantively identical to the original NFA decree. The government advised TFA that it would entertain a modification request; however, this association has determined that its operations are best served under the terms of the outstanding TFA Final Judgment.

III

Why the United States Has Tentatively Agreed to the Modification of This Final Judgment

A. *Proposed Modifications*

There are three major substantive differences in the proposed modified NFA decree and the original NFA decree. First, under the new decree NFA would be allowed to grant exclusive territories to its members provided that its members do not have an overlapping exclusive territory in another association. Second, NFA will be allowed to require that its members guarantee customer satisfaction regarding repossession fees charged. These changes will conform the NFA decree to the provisions of the BIDCO and Allied decrees. Finally, the time period of the decree would be reduced to reflect the three years that the old decree has been in effect so that the termination date will continue to be ten years from the original entry date.

Other changes reflect the language refinements and reorganization of the two companion decrees. Under Paragraph IX the Modified Final Judgment will be furnished to NFA current and future officers, directors and members. Attached to this memorandum as Appendix 1 is the proposed modified decree. Also attached as Appendix 2 is an annotated copy of the proposed decree with underscoring indicating additions to the original decree and brackets indicating deletions.

The Antitrust Division in this joint motion to modify the NFA decree seeks to conform the territorial provision and the customer guarantee provision contained in the NFA decree with those contained in the Allied and the BIDCO decrees. Paragraph VII of the proposed modification allows NFA to grant exclusive territories to its members providing that its members would not hold, in whole or in part, the same exclusive territory in any other repossessor organization. The decree directs NFA to terminate within sixty days the membership of anyone who would hold dual exclusive territories. If NFA does not specifically restrict membership in a territory—that is if it chooses to maintain its current open territory policy—procedures for new member acceptance are set forth. These new membership criteria, with two exceptions, are identical to those set out in the original decree.[3] NFA is permitted under Paragraph IV(C) to require its members to guarantee its customers' price satisfaction. In Paragraph XII the time period in which the decree remains in effect is reduced to seven years from entry date of the proposed modified decree.

B. *Discussion*

Modification of the NFA decree to permit exclusive territories while prohibiting overlapping exclusive territories should promote competition among repossessor organizations. Memberships granting exclusive territories can be used to encourage each NFA member to provide more or better services and to compete more effectively with members of other repossession associations. At the same time, the decree would continue to prevent anticompetitive effects associated with overlapping exclusive territories and price and advertising restraints. For this reason, the Department joins with NFA in urging that the Court enter the proposed modifications to the decree.

In the market as it now is structured, it does not appear that restrictions by any one association on the number of members it has in any area will adversely affect competition, provided it does not grant any member an exclusive territory that overlaps with an exclusive territory assigned to that member by any other organization. Indeed, the territorial restrictions provisions contained in the existing Final Judgment may unnecessarily inhibit defendant's ability to structure its organization in the most efficient and competitive manner and hence may lessen competition among repossessor organizations. It therefore appears to be in the public interest to modify the judgment accordingly.

Similarly, modifying the NFA decree to allow defendant to require that its members guarantee customer satisfaction regarding prices, terms of conditions should encourage inter-association competition. For example, if a consumer is dissatisfied with the repossession fee charged, the association can demand that its member refund the excess charge. NFA's competitors, including Allied and BIDCO, currently compete by including a customer satisfaction guarantee in their service packages. Thus, the guarantee, which may prevent excessive fees or charges for services not rendered, is a feature of the service offered by competing organizations and one which NFA should not be prohibited from offering. The modified decree retains however the absolute prohibition against any actions to set a minimum fee schedule for repossession services.

Accordingly, it appears that these modifications will enable NFA to compete on an equal footing with other organizations and is in the public interest.

As noted above, the remaining length of time the decree is in effect remains the same under the modified decree.

IV

The Legal Standards Applicable to the Modification of an Antitrust Decree With the Consent of the Government

This Court has jurisdiction to modify the Final Judgment pursuant to Section XVI of the Final Judgment, Rules 60(b)(5) and (6) of the Federal Rules of Civil Procedure, and "principles inherent in the jurisdiction of the chancery." *United States* v. *Swift & Co.*, 286 U.S. 106, 114 (1932).

Where, as here, the United States consents to the proposed modification of the final judgment in a government antitrust case, the issue before the Court is whether such modification is in the public interest. *United States* v. *Swift & Co.*, 1975-1 Trade Cas. ¶ 60,201, at 65,702 (N.D. Ill. 1975). *See also United States* v. *General Electric Co.*, 1977-2 Trade Cas. ¶ 61,659, at 72,717 (E.D. Pa. 1977). This is the same standard that a district court applies in deciding whether to enter an initial consent decree submitted by the Government in an antitrust proceeding. *See* 15 U.S.C. § 16(e) (1976); *United*

[3] The time-in-business requirement is extended by six months and the requirement that each member maintain a principal office location specifically for his or her repossession business is eliminated.

States v. *AT&T*, 552 F. Supp. 131, 147 n.67 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 103 S. Ct. 1240 (1983).

The Supreme Court has held that where the words "public interest" appear in federal statutes designed to regulate public sector behavior, they "take meaning from the purposes of the regulatory legislation." *NAACP* v. *FPC*, 425 U.S. 662, 669 (1976); *see also System Federation No. 91* v. *Wright*, 364 U.S. 642, 651 (1961); *United States* v. *American Cyanamid*, 719 F.2d 558 at 565, (2nd Cir. 1983). In this case, the Sherman Act is the underlying statute, and "the policy unequivocally laid down by [that] Act is competition." *Northern Pacific Railway Co.* v. *United States*, 356 U.S. 1, 4 (1958). *Accord, e.g., National Society of Professional Engineers* v. *United States*, 435 U.S. 679, 692, 695 (1978).

Thus, the ultimate question before the Court at this time is whether modification of the Final Judgment would serve the public interest in "free and unfettered competition as the rule of trade." *Northern Pacific Railway*, 356 U.S. at 4; *see also AT&T*, 552 F. Supp. at 149–51.

In answering this question, the Court should recognize that the Department of Justice has broad discretion in controlling government antitrust litigation. *See Sam Fox Publishing Co., Inc.* v. *United States*, 366 U.S. 683, 689 (1961); *cf. Control Data Corp.* v. *International Business Machines Corp.*, 306 F. Supp. 839, 845 (D. Minn. 1969), *aff'd sub nom. Data Processing Financial & General Corp.* v. *International Business Machines Corp.*, 430 F.2d 1277 (8th Cir. 1970) ("The Attorney General is the representative of the public interest in antitrust cases brought by the Government . . ."). In *United States* v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977), the court summarized the judiciary's role in determining whether the initial entry of a consent decree is "in the public interest":

> Absent a shoring of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government . . . and its responses to comments in order to determine whether those explanations are reasonable under the circumstances . . ..
>
> * * * * *
>
> This Court may not substitute its opinion or views concerning the prosecution of alleged violations of the antitrust laws of the determination of appropriate injunctive relief for the settlement of such cases absent proof of an abuse of discretion.

The same role is appropriate when the United States consents to the substantial modification of a final judgment. *Swift*, 1975–1 Trade Cas. at 65, 702–03. Where the Department of Justice has offered a reasoned and reasonable explanation of why the proposed modification of termination of a judgment vindicates the public interest in free and unfettered competition, and there is no "showing of corrupt failure of the government to discharge its duty," the Court should defer to the Department's conclusions concerning the appropriateness of the modification.[4]

V

The Proposed Procedures for Giving Public Notice of the Pending Motion and Inviting Committee Thereon

United States v. *Swift & Co.*, 1975–1 Trade Cas. at 65,703, discusses a court's responsibility to implement procedures that will give nonparties notice of, and an opportunity to comment upon antitrust judgment modifications proposed by consent of the parties:

> Congizant . . . of the public interest in competitive economic activity, established chancery powers and duties, and the occasional fallibility of the Government, the court is, at the very least, obligated to insure that the public, and all interested parties, have received adequate notice of the proposed modification . . . . (Footnote omitted.)

The Department of Justice believes that giving the public notice of the filing of a motion that will in a significant and substantial manner modify the final judgment previously entered in a government antitrust case, and an opportunity to comment upon that motion, are generally necessary to insure both the Department and the Court properly assess the public interest. Accordingly, over the years, the Department has adopted and refined a policy of consenting to motions to significantly modify, or to terminate judgments in antitrust actions only on condition that an appropriate effort be undertaken to notify potentially interested persons of the pending of the motion. In the case at bar, the Government has proposed, and NFA has agreed to, the following:

1. When the motion is filed, the Department will issue a press release (a) summarizing the Compliant, the Final Judgment and the reasons of the United States for consenting to the motion; (b) explaining that copies of the relevant papers can be inspected at the offices of the Antitrust Division and the Clerk of the Court; (c) stating that copies of the papers can be obtained from the Antitrust Division, upon request and payment of the copying fees prescribed by Justice Department regulations; and (d) inviting all interested persons to send comments concerning the proposed modification to the Antitrust Division during the following sixty days. The Department will also publish in the **Federal Register** a notice announcing the motion to modify and the Government's tentative consent to it, summarizing the Complaint and judgment, describing the procedures for inspecting and obtaining copies of relevant papers, and inviting the submission of comments.

2. The defendant will publish a notice of the motion in two consecutive issues of the *ARA News and Views*, published by the American Recovery Association ("ARA"). ARA is the largest repossession association and its newsletter is likely to be read by persons interested in the market affected by the Final Judgment. Defendant will also publish notice of the motion in two consecutive issues of the *ABA Banking Journal*, published by the American Bankers Association. This magazine has a nationwide circulation of over forty-two thousand financial institutions who are consumers of repossession services. The published notices will invite public comment and contain essentially the same information about the proceeding as appears in the Department's press release, omitting only the Department's reasons for consenting to the motion.

3. The Department will file with the Court copies of all comments that it receives.

4. The parties will stipulate that the Court will not rule upon the motion for at least seventy days after the last publication of the notices described above (and thus for at least ten days after the close of the period for public comments), and the United States will

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[4] Over the years, courts have approved many consent orders modifying government antitrust decrees. Recent instances include:

United States v. *Witco Chem. Corp.*, 1982–1 Trade Cas. ¶ 64,591 (W.D. Pa. 1981);

United States v. *Lee Shubert*, 1982–1 Trade Cas. ¶ 64,572 (S.D.N.Y. 1981);

United States v. *New York Coffee & Sugar Exch., Inc.*, 1982–1 Trade Cas. ¶ 64,540 (S.D.N.Y. 1981);

United States v. *Coca-Cola Bottling Co.*, 1980–81 Trade Cas. ¶ 63,664 (C.D. Cal. 1980);

United States v. *Leviton Mfg. Co.*, 1980–2 Trade Cas. ¶ 63,543 (D. Conn. 1980);

United States v. *Georgia Automatic Merchandising Council, Inc.*, 1980–2 Trade Cas. ¶ 63,448 (N.D. Ga. 1980);

United States v. *Mortgage Conference*, 1978–2 Trade Cas. ¶ 62,164 (S.D.N.Y. 1978);

United States v. *United Fruit Co.*, 1978–1 Trade Cas. ¶ 62,001 (E.D. La. 1978); and

United States v. *Providence Fruit & Produce Bldg., Inc.*, 1977–2 Trade Cas. ¶ 61,602 (D.R.I. 1977).

reserve the right to withdraw its consent to the motion at any time until an order modifying the Final Judgment is entered.[5]

We believe that this procedure is well designed to provide all potentially interested persons with notice that a motion to modify this judgment is pending, and with an adequate opportunity to comment thereon.[6] The parties are therefore submitting to the Court a separate proposed Order establishing this procedural approach, and we ask that it be entered forthwith.

VI

Conclusion

For the foregoing reasons, the United States (1) respectfully asks the Court to enter the Order submitted herewith directing publication of the notice of the motion to modify; and (2) tentatively consents to the modification of the Final Judgment proposed herein.

Dated:

Respectfully submitted,

Terrence F. McDonald, Steven B. Kramer, Attorneys, Antitrust Division, United States Department of Justice, 10th & Pennsylvania Ave., N.W., Washington, D.C. 20530, Telephone: (202) 633-3082, Attorneys for the Plaintiff, United States of America.

Appendix 1.—U.S. District Court, Eastern District of Michigan

[Civil No. 81-70005]

Judge Ralph Freeman.

United States of America, Plaintiff v. *National Finance Adjusters, Inc.*, Defendant.

Modified Final Judgment

The plaintiff, United States of America, having filed its complaint on January 5, 1981, and the plaintiff and the defendant, by their respective attorneys, having consented to the entry of a Final Judgment herein without trial or adjudication of any issue of fact or law, and without the Final Judgment constituting any evidence against or admission by either party with respect to any issue; and

The parties having consented to entry of this Modified Final Judgment which, upon entry, shall in all respects supercede the provisions of the Final Judgment previously entered herein;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law and upon consent of the parties, it is

Ordered, adjudged and decreed, as follows:

I

This Court has jurisdiction over the subject matter of this action and over both parties. The complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Sherman Act (15 U.S.C. § 1).

II

As used in this Modified Final Judgment:

(A) "Final Judgment" means the final Judgment as modified;

(B) "NFA" means National Finance Adjusters, Inc.

(C) "Person" means any individual, corporation, partnership, joint venture, firm, association, or any other business or legal entity;

(D) "Repossession services" includes, but is not limited to, tracing of property, collection and adjustment of loans, as well as repossession, sale or return of collateral;

(E) "Repossessor" means any person who owns, operates or manages an adjustment or repossession business which provides repossession services for banks, credit unions, or other lending institutions that seek to recover merchandise sold under security agreements where the debtor has forfeited possessory rights by defaulting on loan terms;

(F) "Repossessor organization" means any trade association for repossessors or any person which licenses other persons to provide repossession services under a trademarked name;

(G) "Directory" means any repossessor organization publication that lists members and is disseminated to current or prospective customers;

(H) "Exclusive territory" means a geographic area within which a repossessor organization either restricts the number of its members who may advertise under a geographic area's heading in its directory that they provide repossession services for that area, or restricts the number of its members who maintain offices for repossession services.

III

The provisions of this Final Judgment shall apply to the defendant NFA, its subsidiaries, its successors and assigns, to its officers, directors, agents and employees, and to all other persons in active concert or participation with the defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

(A) The defendant, whether acting unilaterally or in concert with any other person, is enjoined from, directly or indirectly,

(1) entering into, adhering to, or maintaining any contract, agreement, understanding, plan or program with any other repossessor organization to fix or maintain the prices of repossession services;

(2) formulating, establishing, publishing, maintaining, or distributing any price schedule or list of fees for repossession services;

(3) advocating, urging, recommending or suggesting any price schedule or list of fees for repossession services; or

(4) participating in any conversation, discussion or other communication with any other repossessor organization or repossessor, or representative thereof, that in any way relates to fees for repossession services.

(B) Nothing in this paragraph shall prohibit NFA from allowing individual members to advertise in any NFA directory independently determined prices or fees for repossession services.

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[5] Withdrawal by the Department of Justice of its consent would be significant because the legal standard applicable to a motion to modify or terminate an antitrust judgment over the government's objection is far stricter than the standard applying to a modification or termination with its consent. *American Cyanamid*, 556 F. Supp. 367, *rev'd on other grounds*, 719 F.2d 558 (2d Cir. 1983). *See also, AT&T*, 552 F. Supp. at 147 n.87. Where the United States opposes a motion to modify or terminate an antitrust decree, the moving party must demonstrate that changes since entry of the judgment "are so important that dangers, once substantial, have become attenuated to a shadow. . . . Nothing less than a clear showing of grievous wrong evoked by new and unforeseen conditions should lead [a court] to change what was decreed. . . ." *United States* v. *Swift & Co.*, 286 U.S. 106, 119 (1932).

[6] In a case involving a consent modification of an antitrust judgment, a district court directed the parties to follow the procedures set forth in the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)-(h). United States v. Motor Vehicle Mfrs. Ass'n, 1981-2 Trade Cas. ¶ 64,370 (C.D. Cal. 1981). The court's order did not, however, purport to hold that the APPA applies to all consent modifications as a matter of law and more recently both the Second Circuit and the Northern District of Illinois have held that the APPA does not apply to judgment termination proceedings. *American Cyanamid*, 719 F.2d at 565 n.7; *General Motors*, 1983-2 Trade Cas. ¶ 65,614.

We note, nonetheless, that the procedures we propose here generally follow those of the APPA, with certain differences that make the procedures we propose more likely to bring the motion to the attention of interested nonparties. For example, the APPA would require that notices be published in newspapers in the District of Columbia and in this district. The procedure we suggest, on the other hand, would require publication in specified periodicals where notices are more likely to be seen by the readers of the *ABA News and Views*, published by the American Recovery Association and circulated to its members, and in the *ABA Banking Journal*, circulated to consumers of repossession services. The proposed modification affects potential members and competitors of defendant NFA. Accordingly, we submit that not only is the APPA inapplicable here, but its procedures would provide decidedly inferior notice under the circumstances. *Cf. General Electric*, 1977-2 Trade Cas. at 72, 716 n.1.

(C) Nothing in this paragraph shall prohibit NFA from requiring its members to guarantee customer satisfaction regarding prices, terms or conditions of providing repossession services.

V

The defendant is ordered to include in a prominent manner in the prefactory section of each NFA directory the following statement:

In conformity with the consent decree entered into with the United States Department of Justice, National Finance Adjusters, Inc. has discontinued publishing and disseminating fee schedules. All prior schedules are, in their entirety, null and void. NFA makes no suggestion whatsoever concerning its members' specific fees or prices for repossession services and does not restrict or limit the right of any of its members to determine as in accordance with his or her individual business judgment, the fees to charge for repossession services.

VI

The defendant is enjoined from the following unless the plaintiff approves in writing such restriction as necessary or appropriate to promote competition in the repossession industry:

(A) restricting the area in which of the customers for which its members may provide repossession services; and

(B) restricting the geographic area for which its members may advertise their services, *provided, however,* that nothing in this Final Judgment shall prohibit the defendant from imposing a reasonable limit on the total number of cities and towns that each member may list in any NFA directory.

VII

(A) Nothing in this Final Judgment shall prohibit the defendant from granting any member an exclusive territory if such exclusive territory does not overlap in whole or in part an exclusive territory granted to such member by any other repossessor organization, *provided* that the defendant may allow any such overlapping exclusive territory to be held by any member for a period not to exceed sixty days. Prior to the end of any such sixty day period, the defendant shall terminate the membership of any member that holds any exclusive territory that overlaps in whole or in part an exclusive territory granted by any other repossessor organization.

(B)(1) If the defendant elects not to restrict the area in which its members may operate pursuant to VII(A) above, it shall promptly publish in the business opportunity classified advertisement sections of the newspaper with the largest circulation in the areas involved, a description of NFA and of the territory which is not so restricted, a statement to the effect that it is obligated to accept all qualified applicants for NFA membership for such territory, a summary of the requirements for such membership and the address to which application by nonmembers for NFA memberships covering such territory should be forwarded. Within fifteen (15) days of receiving any application for such membership, the defendant shall furnish to the applicant a written response stating when the application will be reviewed, whether the application is complete, and if the application is not complete, an itemization of any documents or information necessary to complete the application. Defendant shall convene at least two meetings per year at which any such membership applications shall be reviewed. All applications completed before any meeting shall be reviewed at that meeting. Within ten (10) days after reviewing any membership application, the defendant shall furnish a written notice to each applicant indicating whether the applicant was accepted for NFA membership, and, if the applicant was not accepted, a written statement of reasons why the applicant was not accepted for membership.

(2) The defendant shall accept any applicant for NFA membership covering a territory that is not restricted pursuant to Paragraph VII(A) who meets the following requirements:

(a) capability of obtaining and retaining, in the commercial market, a reasonable fidelity bond;

(b) capability of being licensed under all applicable state and local licensing laws;

(c) the absence of a felony conviction within a period of not more than ten (10) years prior to the application for membership; and

(d) possession of eighteen (18) months of experience as an active repossessor.

(3) The defendant is enjoined from establishing or maintaining unreasonable or discriminatory fees for NFA membership for a territory that has not been restricted pursuant to Paragraph VII(A).

(4) The defendant is enjoined from any action, the purpose or forseeable effect of which is to discourage service by NFA members or qualified applicants for NFA membership in areas not restricted pursuant to Paragraph VII(A).

VIII

The defendant is ordered to amend and eliminate from its bylaws, manuals, rules, regulations and any other governing documents, any provision inconsistent with this Final Judgment.

IX

The defendant is ordered and directed:

(A) to furnish within sixty (60) days after entry of this Final Judgment a copy of it to each of its officers, directors, employees and members;

(B) to furnish a copy of this Final Judgment to each person who in the seven (7) years after entry of this Final Judgment, becomes an officer, director, or member within thirty (3) days after such person becomes associated with the defendant;

(C) to direct each person to whom a copy of this Final Judgment is furnished pursuant to subparagraphs IX(A) and IX(B) to retain such copy for as long as he or she is associated with the defendant;

(D) to require each person to whom a copy of this Final Judgment is furnished pursuant to subparagraphs IX(A) and IX(B) to sign and submit to the defendant, within thirty (30) days of receipt of a copy of this Final Judgment, a certificate in substantially the following form; and the defendant shall retain such certificates for as long as this Final Judgment is in effect and for one year thereafter:

I (1) acknowledge receipt of a copy of the Final Judgment as modified in ——— 1984, (2) represent that I have read and understand the Final Judgment as modified, and (3) acknowledge that I have been advised and understand that non-compliance with the Final Judgment as modified may result in conviction for contempt of court and imprisonment and/or fines.

(E) at least once each year, during the seven (7) years after entry of this Final Judgment, to call to the attention of each of its officers, directors, employees and members the limitations imposed upon them by this Final Judgment, and of the sanctions that may be imposed for non-compliance;

(F) to file with the court and serve upon the plaintiff, within one hundred-twenty (120) days after entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with subparagraphs IX(A), IX(C), IX(D) and IX(E); and

(G) to furnish the plaintiff within thirty (30) days after each anniversary date of the entry of this Final Judgment, for a period of seven (7) years, an affidavit as to the fact of and manner of securing and ascertaining compliance with, the provisions of sections IV, V, VI, VII, VIII, and subparagraphs IX(B), IX(C), IX(D), and IX(E) of this Final Judgment.

X

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

(A) upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to the defendant made to its principal office, any duly authorized representative of the Department of Justice shall be permitted:

(1) access during the office hours of the defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, directors, members, employees, or agents of the defendant, who may have counsel present, regarding any such matters.

(B) Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to the defendant's principal office, the defendant shall submit such written reports, under oath, if required, with respect to any of the matters contained in this Final Judgment as may be requested. No information or documents obtained by the means provided in this Section X shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(C) If at the time information or documents are furnished by the defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, "Subject to Claim of Protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to the defendant prior to divulging such material in any legal proceeding (other than a grand dury proceeding) to which the defendant is not a party.

XI

Jurisdication is retained by the Court to enable only either of the named parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or implementation of this Final Judgment, for the modification of any of its provisions, for the enforcement or compliance and for the punishment of violations.

XII

This Final Judgment shall remain in effect until seven [7] years from date of entry hereof.

XIII

Entry of this Final Judgment is in the public interest.

Dated:

Ralph Freeman,
United States District Judge.

Annotated*

Appendix 2.—U.S. District Court, Eastern District of Michigan

[Civil No. 81-70005]

Judge Ralph Freeman.

United States of America, Plaintiff v. *National Finance Adjusters, Inc.*, Defendant.

Modified Final Judgment

The plaintiff, United States of America, having filed its complaint on January 5, 1981, and the plaintiff and the defendant, by their respective attorneys, having consented to the entry of *a* [this] Final Judgment *herein* without trial or adjudication of any issue of fact or law, and without *the* [this] Final Judgment constituting any evidence against or admission by either party with respect to any issue; *and*

The parties having consented to entry of this Modified Final Judgment which, upon entry, shall in all respects supercede the provisions of the Final Judgment previously entered herein;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law and upon consent of the parties, it is

Ordered, adjudged and decreed, as follows:

I

This Court has jurisdiction over the subject matter of this action and over *both* [each of the] parties. The complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Sherman Act (15 U.S.C. § 1).

II

As used in this *Modified* Final Judgment:

(A) "Final Judgment" means the Final Judgment as modified;

(B) "NFA" means National Finance Adjusters, Inc.;

(C) "Person" means any individual, corporation, partnership, joint venture, firm, association, or any other business or legal entity;

[B] *(D)* "Repossession services" includes, but is not limited to, tracing of property, collection and adjustment of loans, as well as repossession, sale or return of collateral;

[A] *(E)* "Repossessor" [or "adjuster"] means any *person who owns, operates or manages an adjustment or repossession business* [individual, partnership, corporation, association, firm or any other business or legal entity which provides] repossession services for banks, credit unions, or other lending institutions that seek to recover merchandise sold under security agreements where the debtor has forfeited possessory rights by defaulting on loan terms;

(F) "Repossessor organization" means any trade association for repossessors or any person which licenses other persons to provide repossession services under a trademarked name;

(G) "Directory" means any repossessor organization publication that lists members and is disseminated to current or prospective customers;

(H) "Exclusive territory" means a geographic area within which a repossessor organization either restricts the number of its members who may advertise under a geographic area's heading in its directory that they provide repossession services for that area or restricts the number of its members who maintain offices for repossession services.

III

The provisions of this Final Judgment *shall apply* [applies] to the defendant [National Finance Adjusters, Inc. ("NFA")] and to its officers, directors, members, agents, employees, subsidiaries, succesors and assigns] *NFA, its subsidiaries, its successors and assigns, to its officers, directors, agents and employees,* and to all other persons in active concert or participation with the defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

* All additions to the Final Judgment are italized; all deletions from the Final Judgment are bracketed.

IV

(A) The defendant, whether acting unilaterally or in concert with any other person, is enjoined from, directly or indirectly,

(1) entering into, adhering to, or maintaining any contract, agreement, understanding, plan or program with any other repossessor organization to fix or maintain the prices of repossession services;

(2) formulation, establishing, publishing, maintaining, or distributing any price schedule or list of fees for repossession services;

(3) advocating, urging, recommending or suggesting any price schedule or list of fees for repossession services; or

(4) participating in any conversation, discussion or other communication with any other repossessor organization or repossessor, or representative thereof, that in any way relates to fees for repossession services.

(B) Nothing in this paragraph shall prohibit NFA from allowing individual members to advertise in any directory independently determined prices or fees for repossession services.

(C) Nothing in this paragraph shall prohibit NFA from requiring its members to guarantee customer satisfaction regarding prices, terms or conditions of providing repossession services.

[IV]

[(1) fixing, establishing, or maintaining any price schedule or list for repossession services;

(2) advocating urging, recommending or suggesting any price schedule or list for repossession services;

(3) publishing or distributing any price schedule or list for repossession services;

(4) participating in any conversations, discussions or other communications with representatives of other repossessor associations that in any way relate to any price, price schedule or list for repossession services; or

(5) engaging in any other conduct the purpose or foreseeable effect of which is to influence the formulation of any price schedule or list for repossession services.]

V

The defendant is ordered to *include* [publish] in a prominent manner in the prefatory section of each NFA [membership] directory [or other similar publication] the following statement:

In conformity with a consent decree entered into with the United States Department of Justice, National Finance Adjusters, Inc. has discontinued publishing and disseminating fee schedules. All *prior* schedules [contained in prior editions] are, in their entirety, null and void. *NFA* [National Finance Adjusters] makes no suggestion whatsoever concerning *its members' specific* fees or prices for repossession services and does not restrict or limit the right of any of its members to determine, in accordance with his or her individual business judgment, the fees to charge for repossession services.

[VI]

[The defendant is prohibited from publishing any other reference to prices or fees for repossession services in its directory or other publications, provided however, that nothing in this judgment shall:

(1) limit the ability of NFA to urge prospective purchasers of repossession services to negotiate in advance with members as to prices or fees; or

(2) limit the ability of NFA to allow individual NFA members to advertise in the NFA directory, or other NFA listings, his or her individual prices or fees for repossession services.]

VI

The defendant is enjoined from the following unless the plaintiff approves in writing such restriction as necessary or appropriate to promote competition in the repossession industry:

(A) *restricting the area in which or the customers for which its members may provide repossession services; and*

(B) *restricting the geographic area for which its members may advertise their services, provided, however, that nothing in this Final Judgment shall prohibit the defendant from imposing a reasonable limit on the total number of cities and towns that each member may list in any NFA directory.*

VII

(A) *Nothing in this Final Judgment shall prohibit the defendant from granting any member an exclusive territory if such exclusive territory does not overlap in whole or in part an exclusive territory granted to such member by any other repossessor organization, provided that the defendant may allow any such overlapping exclusive territory to be held by any member for a period not to exceed sixty days. Prior to the end of any such sixty day period, the defendant shall terminate the membership of any member that holds any exclusive territory that overlaps in whole or in part an exclusive territory granted by any other repossessor organization.*

(B) (1) *If the defendant elects not to restrict the area in which it members may operate pursuant to VII(A) above, it shall promptly publish in the business opportunity classified advertisement sections of the newspapers with the largest circulation in the areas involved, a description of NFA and of the territory which is not so restricted, a statement to the effect that it is obligated to accept all qualified applicants for NFA membership for such territory, a summary of the requirements for such membership and the address to which application by nonmembers for NFA memberships covering such territory should be forwarded.*

[XIII]

[The defendant is ordered to publish in the prefatory section of each NFA membership directly, or other similar publication, the address to which applications for NFA memberships should be forwarded.]

[XIII] *VII(B)(1)*

Within fifteen [15] days of receiving any application for *such* membership, the defendant shall furnish to *the* [each] applicant a written response stating when the application will be reviewed, whether the application is complete, and if the application is not complete, *an* [a written] itemization of any documents or information necesary to complete the application. *Defendant* [NFA] shall convene at least two meetings per year at which *any such* membership applications shall be reviewed. All applications completed before any [NFA] meeting shall be reviewed at that meeting. Within ten (10) days after reviewing any membership application, the defendant shall furnish a written notice to each applicant indicating whether the applicant was accepted for NFA membership, and, if the applicant was not accepted, a written statement of reasons why the applicant was not accepted for membership.

(2) *The defendant shall accept any applicant for NFA membership covering a territory that is not restricted pursuant to Paragraph VII(A) who meets the following requirements:*

(a) capability of obtaining and retaining, in the commercial market, a reasonable market, a reasonable fidelity bond;

[XI(1)] [ability to obtain and retain, in the commercial market, reasonable fidelity bonds]

(b) capability of being licensed under all applicable state and local licensing laws;

[XI(2)] [applicant is licensed under all applicable state and local licensing laws;]

(c) *the absence of a felony conviction within a period of not more than ten (10) years prior to the application for membership; and*

[XI(3)] [certification that he or she has not been convicted of a felony within a period of up to 10 years prior to his or her application for membership;]

(*b*) *possession of eighteen (18) months of experience as an active repossessor.*

[XI(4)] [one year of experience as an active repossessor; and

[XI(5)] maintains a principal office location specifically for his other repossession business during NFA membership.]

[XII] (3) The defendant is enjoined from establishing or maintaining unreasonable *or discriminatory* fees for NFA membership *for a territory that has not been restricted pursuant to Paragraph VII(A).*

(4) *The defendant is enjoined from any action, the purpose or foreseeable effect of which is to discourage service by NFA members or qualified applicants for NFA membership in areas not restricted pursuant to Paragraph VII(A).*

[VII]

[The defendant is enjoined from expelling any member from NFA membership or from denying or delaying any application for NFA membership, in whole or in part, on the basis of:

(1) the population of other demographic information of a member's or an applicant's service area; or

(2) the number of other NFA members or applicants who operate or may operate in that service area.]

[VIII]

[The defendant is ordered and directed to eliminate any restrictions on NFA members concerning the manner or extent of advertising their service area in any advertisment, directory or other publication.]

[IX]

[The defendant, whether acting unilaterally or in concert with any other person, is enjoined from any activity the purpose or foreseeable effect of which is to allocate, protect, limit, or otherwise influence the service area or territory in which any of its members operate or advertise that they operate.]

[X]

[Defendant is ordered and directed to eliminate the following NFA membership requirements:

(a) any time period of experience in the repossession business that is greater than one year;

(b) full-time repossession business;

(c) United States citizenship; or

(d) any requirements based on any evaluation or determination of an applicant's financial condition, personal character or morals, or local referral business.]

[XI]

[Defendant is ordered and directed to admit any applicant for NFA membership who meets the following requirements:]

VIII

The defendant is ordered to amend and eliminate from its bylaws, manuals, rules, regulations and any other governing documents, any provision inconsistent with this Final Judgment.

[XIV] *IX*

The defendant is ordered and directed:

(A) to furnish within sixty (60) days after entry of this Final-Judgment a copy of it to each of its officers, directors, employees and members [engaged in the repossession business];

(B) to furnish a copy of this Final Judgment to each person who in the *seven (7)* [ten (10)] years after entry of this Final Judgment, becomes an officer, director, [employee] or member [engaged in the repossession business] within thirty (30) days after such person [is employed by or] becomes associated with the defendant;

(C) to direct each person to whom a copy of this Final Judgment is furnished pursuant to subparagraphs [XIV(A)] *IX(A)* and *IX(B)* [XIV(B) hereof] to retain such copy *for* as long as he or she is [is employed by or] associated with the defendant;

(D) to require each person to whom a copy of this Final Judgment is furnished pursuant to subparagraphs *IX(A)* [XIV(A)] and *IX(B)* [XIV (B) hereof] to sign and submit to the defendant, *within thirty (30) days of receipt of a copy of this Final Judgment,* a certificate in substantially the following form; and the defendant shall retain such certificates *for* as long as this Final Judgment is in effect and for one year thereafter:

I [The undersigned hereby] (1) acknowledge[s] receipt of a copy of the [1981 antitrust] Final Judgment *as modified in ——— 1984,* (2) represent[s] that *I have*] the undersigned has] read and understand[s] *the* [such] Final Judgment *as modified,* and (3) acknowledge[s] that *I have* [the undersigned has] been advised and understand[s] that non-compliance with the Final Judgment *as modified* may result in conviction for contempt of court and imprisonment and/or fines.

(E) at least once each year, during the *seven (7)* [ten (10)] years after entry of this *Final* Judgment, to call to the attention of each of its officers, directors, employees and members] engaged in the repossession of finance adjustment business] the limitations imposed upon them by this Final Judgment, and of the sanctions that may be imposed for non-compliance [therewith];

(F) to file with the court and serve upon the plaintiff, within *one hundred-twenty (120)* [ninety (90)] days *after* [from the date of] entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with *subparagraphs, IX(A), IX(C), IX(D) and IX(E)* [subsection XIV(A) hereof]; and

(G) to furnish the plaintiff within thirty (30) days after each anniversary date of the entry of the Final Judgment, for a period of *seven (7)* [ten (10)] years, an affidavait as to the fact of and manner of securing and ascertaining compliance with, the provisions of Sections IV, V, VI, VII, VIII, [IX, X, XI, XII, XIII] and *subparagraphs IX(B), IX(C), IX(D), and IX(E)* [subsections XIV(B), XIV(C), XIV(D) and XIV(E)] of this Final Judgment.

[XV]

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

[*A*) *upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to the defendant made to its principal office,* [a]ny duly authorized representative of the Department of Justice [upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office] shall be permitted:

(1) access during the office hours of the defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, directors, members, employees, or agents of the

defendant, who may have counsel present, regarding any such matters.

(B) upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to the defendant's principal office, the defendant shall submit such written reports, under oath, it required, with respect to any of the matters contained in this Final Judgment as may be requested. No information or documents obtained by the means provided in this Section *X* [XIV] shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(C) If at the time information or documents are furnished by the defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, "Subject to Claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to the defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendant is not a party.

[XVI] *XI*

Jurisdiction is retained by the Court to *enable only either* [for purposes of enabling any] of the *named* parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or implementa- tion of this Final Judgment, for the modification of any of *its* [the] provisions [thereof], for the enforcement or compliance [therewith] and for the punishment of violations [hereof].

[XVII] *XII*

This Final Judgment shall remain in effect until *seven (7)* [ten (10)] years from date of entry *hereof*.

[XVIII] *XIII*

Entry of this Final Judgment is in the public interest.

Dated:

Ralph Freeman,

United States District Judge.

[FR Doc. 85-186 Filed 1-3-85; 8:45 am]

BILLING CODE 4410-01-M

Immigration and Naturalization Service

Government of Guam Administration Policy for Temporary Alien Employment Certification

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of Temporary Labor Certification policies and procedures for The Territory of Guam.

SUMMARY: The Governor of Guam has developed temporary alien labor certification policies and procedures necessary for determining availability of U.S. workers and prevailing wage rates as required by 8 CFR 214.2(h)(3)(iii). The Commissioner of the Immigration and Naturalization Service has approved the Governor's systems and they are being published in the **Federal Register** for information of the general public.

FOR FURTHER INFORMATION CONTACT:

For General Information:

Loretta 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:

Flora Richardson, Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW, Washington, D.C. 20536, Telephone: (202) 633-3946

SUPPLEMENTARY INFORMATION: The Service's final rule (see 49 FR 15182) which transferred authority to issue temporary labor certifications for alien workers in the Territory of Guam from the Secretary of Labor to the Governor of Guam required the Governor to develop systems for determining availability of U.S. workers and prevailing wage rates, subject to approval by the Commissioner. If the Commissioner, in consultation with the Secretary of Labor, finds that the systems and any future modifications thereafter meet the requirements of 8 CFR 214.2(h)(3), he is required to publish them in the **Federal Register** and the Governor is required to publish them as a public record in Guam.

Pursuant to 8 CFR 214.2(h)(3)(ii), every petitioner must attach to a nonimmigrant visa petition to classify an alien under section 101(a)(15)(H)(ii) of the Act for employment on Guam either a certification from the Governor of Guam, or the Governor's designated representative within the Territorial Government, stating that qualified residents in the United States are not available to perform the required services and that the employment of a nonimmigrant alien will not adversely affect the wages and working conditions of United States resident workers who are similarly employed on Guam or a notice detailing the reasons why the required certification cannot be made.

The Governor of Guam's labor certification policies and procedures set forth the fact finding process necessary to develop information sufficient to support the granting or denial of a temporary labor certification. Employers are required to demonstrate that they have attempted to recruit U.S. workers through advertising and the employment service system and to offer wages and working conditions which will not adversely affect similarly employed workers on Guam.

To allow the Governor additional time to conduct prevailing wage surveys for construction occupations, the Governor is authorized until June 30, 1985 to use the Government of Guam rate paid for the fifth step of a grade employing similarly skilled construction workers or the 1960 Adverse Effect Wage Rate established by the Department of Labor, whichever is higher. The wage determination system described in Section VII of the Governor's Administrative Policy for Temporary Alien Employment Certification on Guam, set forth as follows, shall be used thereafter.

Administrative Policy for Temporary Alien Employment; Certification on Guam

Guam Department of Labor

I. *Purpose.* To establish operating policies and procedures for implementing the Governor of Guam's authority to make determinations on temporary labor certification applications for the Territory of Guam.

II. *Authority.* Immigration and Naturalization Service regulations at 8 CFR 214.2(h)(3)(ii) vest the Governor of Guam, or the Governor's designated representative within the Territorial Government, with authority to issue temporary labor certifications on Guam pursuant to section 101(a)(15)(H)(ii) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(ii).

Every petitioner must attach to every nonimmigrant visa petition to classify an alien under section 101(a)(15)(H)(ii) of the Act for employment on Guam

either a certification from the Governor of Guam, or the Governor's designated representative within the Territorial Government, stating that qualified residents in the United States are not available to perform the required services and that the employment of a nonimmigrant alien will not adversely affect the wages and working conditions of United States resident workers who are similarly employed on Guam, or a notice detailing the reasons why the required certification cannot be made.

III. *Definitions of Terms.*

A. "Application" means an *Application for Alien Employment Certification,* Form GDOL 750 and any other documents submitted by an employer (or his/her attorney or agent) in applying for a temporary labor certification under this Administrative Policy.

B. "Apprentice" means a United States citizen or a lawful resident alien who learns a craft through planned, supervised on-the-job training in conjunction with planned related technical instruction and is covered by a written agreement registered with the Guam Community College and United States Department of Labor, Bureau of Apprenticeship and Training.

C. "Contractor" means one who contracts on predetermined terms to provide labor and materials and to be responsible for construction jobs in accordance with plans and specifications.

D. "Department of Labor" refers to the Government of Guam, Department of Labor.

E. "Employer" means a person, firm, corporation or other organization which currently has a location within the Territory of Guam to which United States workers may be referred for employment, or the authorized representative of such a person, firm or corporation. Such entities must be duly licensed to conduct business on Guam.

F. "Guam Community College (GCC)" means an agency under Government of Guam responsible for the administration of the Apprenticeship Training Program (ATP) registered with the United States Department of Labor, Bureau of Apprenticeship and Training and other vocational training for the Territory of Guam.

G. "Guam Employment Service" means an agency of the Guam Department of Labor which serves the Territory of Guam by providing placement and other services of the job service system

H. "Job Order" describes Form GES 514 which is required to test the availability of United States workers through the employment service system.

I. "Job Opportunity" means a full-time opening for employment on Guam to which United States workers can be referred.

J. "Nonimmigrant Alien Temporary Worker" means an alien having a residence in a foreign country which he has no intention of abandoning, who is coming temporarily to the United States to perform temporary services or labor if an unemployed person capable of performing such services or labor cannot be found in this country.

K. "Part-time employment" means a job requiring hours or days of work less than those normal or prevailing for the occupation in the area of intended employment, e.g., less than seven hours a day or 35 hours a week.

L. "Similarly employed" means employed in an occupation which requires the same or similar level of education, training, and experience as the occupation for which certification is requested.

M. "Temporary employment" means a job which is limited to a definite period of time with an end relatively well fixed in time by some identified, definite event or change. It does not relate to the individual who will perform the duties or to a job that is permanent in nature.

N. "Temporary Labor Certification" means the determination by the Governor of Guam or the designated representative within the Territorial Government that (1) there are not sufficient United States workers who are qualified and available to perform the work and (2) the employment of the alien will not adversely affect the wages and working conditions of similarly employed United States workers on Guam.

O. "United States" means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands of the United States.

P. "United States worker" means any worker who, whether United States citizen, national, or alien, is legally permitted to work permanently within the United States.

IV. *Operating Guidelines.*

A. Requests for temporary labor certification may be filed for employment up to, but not exceeding 12 months. If the original intended duration of the temporary employment requires nonimmigrant aliens for a finite period not exceeding three years, or if unforeseen circumstances required an extension of an approved certification, a new application must be submitted for each period beyond one year. Requests for extensions will be processed in the same manner as new applications.

B. More than one alien may be requested on an application if they are to do the same type of services in the same occupation, in the same area of employment during the same period. However, the number requested may not exceed the actual number of job openings.

C. Part-time employment is inappropriate for temporary labor certification.

D. A temporary labor certification is valid only for the number of alien workers, the occupation, the area of employment, the specific activity, the period of time, and the employer specified in the certification.

E. A temporary labor certification is limited to one employer's specific job opportunity; it may not be transferred from one employer to another. A nonimmigrant alien may transfer to another employer only if the new employer obtains a labor certification and an approved petition from the Immigration and Naturalization Service.

V. *Employer Assurances.*

A. During the period for which the temporary labor certification is granted, the employer will comply with the Administrative Policy, applicable Federal and local laws and regulations.

B. The job opening(s) actually exist and that no qualified United States workers will be displaced as a result of the application for alien employment certification.

C. Reasonable efforts have been and will continue to be made by the employer to obtain United States workers at prevailing wages and working conditions no less favorable than those offered to aliens.

D. The job offer is open to all qualified United States workers without regard to race, color, creed, national origin, age, sex, citizenship, and to United States workers with handicaps who are qualified, willing, able, and available to perform the job and will not reject any qualified United States workers on the ground that the employer's supervisory personnel speak a language other than English.

E. The wages, which must be at least equal to the prevailing wage rate for that occupation, and working conditions which will be offered and afforded by the employer to any foreign worker will be identical to those offered and afforded to United States workers.

F. The job opportunity is not:

(1) Vacant because the former occupant is on strike or is being locked out in the course of a labor dispute, or

(2) At issue in a labor dispute.

G. If the employer provides housing for his employees, it shall be optional on the part of the worker and comply with all applicable Federal and local laws

and regulations including building permits, zoning, and other safety and health requirements.

H. The employer shall charge workers no more than actual costs for meals and lodging. This amount should not exceed $80.00 per week, and any excess cost thereof must be supported by proper documentation.

I. The employer will provide each worker with a copy of the worker's employment contract in English, the contract provided shall be in language which the worker is literate, and a copy shall be made available to the Guam Department of Labor.

J. Benefits, terms, and conditions of employment offered to alien workers, e.g., costs of transportation, bonuses, and insurance shall be offered to United States workers who apply for the job opportunity.

K. All other factors being equal, where there is a reduction in force, the employer agrees to terminate the alien nonimmigrant workers first in those job classifications in which there are United States workers.

L. It is contrary to the best interests of United States workers to have the alien, and/or agents or attorneys for the alien, participate in interviewing or considering United States workers for the job offered the alien. As the beneficiary of a labor certification application, the alien cannot represent the best interest of United States workers in the job opportunity. The alien's agent and/or attorney cannot represent the alien effectively and at the same time truly be seeking United States workers for the job opportunity. Therefore, the alien and/or the alien's agent and/or attorney may not interview or consider United States workers for the job offered to the alien.

M. The employer's representative who interviews or considers United States workers for the job offered to the alien shall be the person who normally interviews or considers, on behalf of the employer, applicants for job opportunities.

N. No person under suspension or disbarment from practice before the United States Department of Justice's Board of Immigration Appeals pursuant to 8 CFR 292.3 shall be permitted to act as an agent or attorney for an employer under the Part.

VI. *Processing Procedures.*

A. To apply for a temporary labor certification, the employer must file an Application for Alien Employment Certification with the Guam Department of Labor, Alien Labor Processing and Certification Division (GALPC) at least 40 days before the worker's services are needed. A separate application must be filed for each occupation.

B. The application shall include:

(1) An original and two copies of Form GDOL 750, Application for Alien Employment Certification, Offer of Employment, each bearing the original signature of the employer;

(2) A statement of employer assurances, contained in section V of this Administrative Policy, executed by the employer;

(3) A statement explaining the temporary nature of the job;

(4) A copy of the employment contract used to negotiate with and later signed by workers;

(5) A completed agent authorization on Form GDOL 750, if the employer is represented by an agent;

(6) A Notice of Appearance on INS Form G–28, if the employer is represented by an attorney;

(7) Results of any recruitment conducted prior to filing the application;

(8) All corrections or changes to documents submitted must by initialed be the employer or his authorized representatives (agent or attorney).

C. The GALPC shall review the application for completeness and adherence to Territorial and Federal requirements and shall also determine the prevailing wages for the occupation according to section VII of this Administrative Policy. A wage offer below the prevailing wage would adversely affect the wages of similarly employed United States workers on Guam.

D. The GALPC shall notify the employer in writing of any deficiencies in the application and return the application for changes or additional information. When a complete application is received, GALPC shall notify the employer to place a job order and advertisement.

E. The employer shall place a job order (GES 514) with the Guam Employment Service to recruit United States workers at least 30 days in advance of the need for services and provide a copy to the GALPC. The job order shall include the same information shown on GDOL 750 and shall remain active until a determination is made on the employer's application.

F. In conjunction with the job order, the employer shall advertise the job opportunity for three consecutive working days in the newspaper of largest circulation on Guam and provide a copy to GALPC. The advertisment shall contain the specifics of the job opportunity including the duties, requirements, wage offer, and fringe benefits. It shall direct interested applicants to apply at the Guam Employment Service for referral to the employer and shall not identify the employer's name, address, and telephone number.

G. The employer shall provide GALPC with written results of all recruitment to include the source of recruitment; names and addresses of United States workers who applied for the job; the job-related reasons why each worker was not hired for the job; and the names of United States workers who were hired.

H. After the application processing is completed, the Governor or the authorized representative shall grant or deny the labor certification.

VII. *Methodology for Determining Prevailing Wages.*

A. The prevailing wage shall be the average rate of wages paid to similarly employed workers on Guam.

B. Effective July 1, 1985, prevailing wage rates for all occupations will be based on survey data collected by the Guam government. Whenever necessary, the data will be supplemented with data from the Bureau of Labor Standards (BLS) if BLS covers occupations or industries not surveyed by the Guam government. The survey shall include a representative mixture of types and sizes of establishments found in private industry and the Federal and Guam governments. The prevailing rate shall be computed by totaling the wages paid to all similarly employed workers and dividing by the number of such workers. In the computation, the private, Government of Guam, and Federal sectors shall be weighted in the proportion that they exist in Guam's economy.

VIII. *Determinations.*

A. The Governor of Guam or the authorized representative shall determine whether to grant or to deny the temporary labor certification, or to issue a notice that the required certification cannot be made based on whether or not:

(1) United States workers are available for temporary employment opportunity.

(a) The Governor or authorized representative, in judging if a United States worker is available for the temporary employment opportunity, shall consider the documented results of the employer's recruitment efforts.

(b) To determine if a United States worker is available, the Governor or authorized representative shall consider United States workers on Guam, and may also consider United States workers who are willing to move from elsewhere to take the job at their own expense, or at the employer's expense, if the prevailing practice among employers

who employ workers in the occupation is to pay such relocation expenses, or if the employer will pay travel expenses for the alien(s).

(c) The Governor or authorized representative shall consider a United States worker able and qualified for the job opportunity if the worker, by education, training, experience, or a combination thereof, can perform the duties involved in the occupation as customarily performed by other United States workers similarly employed and is willing to accept the specific job opportunity.

(2) The employment of the alien will adversely affect wages and working conditions of United States workers similar employed. To determine this, the Governor or authorized representative shall consider such things as labor market information, special circumstances of the industry, organization, and/or occupation, the prevailing wage rate for the occupation in the area of intended employment, and prevailing working conditions, such as hours in the occupation.

(3) The job opportunity contains requirements or conditions which preclude consideration of United States workers or which otherwise prevent their effective recruitment.

B. A temporary labor certification may be issued for the duration of the temporary employment opportunity, not to exceed twelve (12) months. If the temporary job opportunity extends beyond 12 months, the employer must file a new application; however, temporary certifications may not be granted for the same job opportunity for a total period (including extensions) of more than three years.

C. Dates on the temporary labor certification shall be the beginning and ending dates of certified employment and the date certification was granted. The beginning date of certified employment may not be earlier than the date certification was granted.

IX. *Document Transmittal.*

A. Whenever, under this Administrative Policy, any notice or other document is required to be sent to an employer, the document shall be sent to the attorney who has filed a notice of appearance on INS Form G–28 or the employer's authorized agent, if the employer has an attorney or agent.

B. After making a temporary labor certification determination, the Governor or authorized representative shall notify the employer, in writing, of the determination.

C. If the labor certification is granted, the Governor or authorized representative, shall send the certified application containing the official temporary labor certification stamp, supporting documents, and completed Temporary Determination Form to the employer or, if appropriate, the employer's agent or attorney. The Temporary Determination Form shall indicate that the employer should submit all documents together with the employer's petition to the appropriate INS office.

D. If the labor certification is denied or a notice is issued that certification cannot be made, the Governor or authorized representative shall return a copy of the Application for Alien Employment Certification form, supporting documents, and completed Temporary Determination Form to the employer, or if appropriate, to the employer's agent or attorney. The Temporary Determination Form shall indicate specific bases on which the decision was made not to issue a temporary labor certification, and shall advise the employer of the right to appeal to the INS.

X. *Appeal of a Denial or Notice that a Certification Cannot be Made.*

A. The granting or denial of a temporary labor certification by the Governor or authorized representative, or a finding that a certification cannot be made, is final. Administrative appeal is made to INS, as set forth below.

B. Under the Act and regulations of the Immigration and Naturalization Service, the Governor's role is advisory. The Attorney General has the sole authority for the final approval or denial of a petition for temporary alien employment. The employer can submit countervailing evidence to the Immigration and Naturalization Service, according to 8 CFR 214.2(h)(3)(ii), that qualified persons in the United States are not available, that wages and working conditions of United States workers will not be adversely affected, and that the Governor of Guam's employment policies were observed.

XI. *Invalidation of Temporary Labor Certifications.*

A. A temporary labor certification issued by the Governor of Guam or authorized representative may be invalidated by an INS district director if it is determined by the district director or a court of law that the certification request involved fraud or wilful misrepresentation. A temporary labor certification can also be invalidated if the district director determines that the certification was improvidently issued.

B. If the district director intends to invalidate a temporary labor certification, a notice of intent shall be served upon the employer, detailing the reasons for the intended invalidation. The employer shall have ten days in which to file a written response in rebuttal of the notice of intent. The district director shall consider all evidence submitted upon rebuttal in reaching a decision.

C. An employer may appeal the invalidation of a temporary labor certification in accordance with 8 CFR Part 103.

(Secs. 103 and 214 of the Immigration & Nationality Act, as ameded; 8 U.S.C. 1103 & 1184)

Dated: December 31, 1984.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 85–210 Filed 1–3–85; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Bata Shoe Co., et al.

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Dirctor, Office of Trade Adjustment Assistance, at the address shown below, not later than January 14, 1985.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment

Assistance, at the address shown below, not later than January 14, 1985.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213.

Signed at Washington, DC this 24th day of December 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
A&T Fashion Sportswear, Inc. (ILGWU)	Woonsocket, RI	12/6/84	11/26/84	TA-W-15,646	Sportswear, ladies.
Bata Shoe Co., Inc. (wkrs)	Belcamp, MD	12/17/84	12/10/84	TA-W-15,647	Footwear, canvas, men & ladies.
Boot & Shoe Mfg Co. (wkrs)	Clarksville, TN	12/14/84	12/12/84	TA-W-15,648	Shoes, ladies & childrens.
Center for Nuclear Studies (wkrs)	Memphis, TN	12/4/84	11/30/84	TA-W-15,649	Consulting services to the energy industries.
Foster Forbes Glass Div. (GPPAW)	Millville, NJ	12/12/84	12/7/84	TA-W-15,650	Glass containers.
G.H. Bass & Company (workers)	Wilton, ME	12/12/84	11/13/84	TA-W-15,651	Shoes—sandles, ladies.
Juvenile Shoe Corp of America (ACTWU)	Aurora, MO	12/14/84	12/5/84	TA-W-15,652	Shoes, children and ladies.
Lloyd Davis Shoe Co., Inc. (Co.)	Somersworth, NH	12/14/84	12/11/84	TA-W-15,653	Shoes, & boots, ladies.
Pandora Industries, Pelham Fabrics Div. (workers)	Pelham, NH	12/12/84	12/6/84	TA-W-15,654	Sportwear, juniors, ladies.
Qume Corporation (workers)	San Jose, CA	12/14/84	12/7/84	TA-W-15,655	Printers, disk drives and terminals.
State of Florida—Dept. of Citrus (workers)	Lakeland, FL	12/6/84	11/29/84	TA-W-15,656	Field force workers—non-brand advertising.
Tensor Lamp Corp (workers)	Brooklyn, NY	12/17/84	12/13/84	TA-W-15,657	Lamps, desk, intensity, high lamps, incandescent.
Weyerhaeuser Co., White River Saw Mill (IWA)	Enumclaw, WA	12/17/84	12/10/84	TA-W-15,658	Dimension lumber 2 × 4—2 × 10.
Zenith Electronics Corp., Plant #40 (UEWA)	Franklin Park, Ill	11/30/84	11/27/84	TA-W-15,659	Repair work—t.v., video, etc.
Bonnie Lynn, Inc. (ILGWU)	North Bergen, NJ	11/14/84	11/9/84	TA-W-15,660	Dresses, ladies.

[FR Doc. 85-217 Filed 1-3-85; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Mary Lou Dress Co.; et al.

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period December 17, 1984—December 21, 1984.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-15, 510; Mary Lou Dress Co., Inc., Owego, NY

TA-W-15, 400; American Thread Co., Willimantic, CT

TA-W-15, 447; American Thread Co., Tallapoosa, GA

TA-W-15, 476; Fishing Vessel "Merluccius," Fort Bragg, CA

TA-W-15, 483; Stokes Molded Products, Div. of Exide Corp., Trenton, NJ

TA-W-15, 374; Peerless Tube Co., Freehold, NJ

TA-W-15, 425; Kings Point Knitting Mills, Inc., Spartanburg, SC

TA-W-15, 481; The Selmer Co., Elkhart, IN

TA-W-15, 454; Acme Boot Co., Inc., Cookeville, TN

In the following case the investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-15, 475; Eaton Corp., Shelbyville, TN

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-15, 496; Advanced Computer Management, Cumberland, IN

The investigation revealed that criterion (3) has not been met. The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-15, 539; Fenner America, Ltd., Middletown, CT

Separations from the subject firm resulted from a transfer of production to another domestic facility.

Affirmative Determinations

TA-W-15, 411; Capri Beachwear, Inc., Farmingdale, NY

A certification was issued covering all workers separated on or after March 1, 1984.

TA-W-15, 455; R.G. Barry Corp., Chattanooga, TN

A certification was issued covering all workers separated on or after November 1, 1983.

TA-W-15, 456; R.G. Barry Corp., Columbus, OH

A certification was issued covering all workers separated on or after October 1, 1983.

TA-W-15, 485; Berkshire Tanning Corp., North Adams, MA

A certification was issued covering all workers separated on or after January 1, 1984 and before December 1, 1984.

TA-W-15, 493; Purolator Products, Inc., Ringtown, PA

A certification was issued covering all workers separated on or after January 1, 1984 and before May 30, 1984.

TA-W-15, 495; The Scio Pottery Co., Inc., Scio, OH

A certification was issued covering all workers separated on or after October 4, 1983.

TA-W-15, 487; Draper Corp., Spartanburg, SC

A certification was issued covering all workers separated on or after October 1, 1983.

TA-W-15, 488; Draper Corp., Greensboro, NC

A certification was issued covering all workers separated on or after October 1, 1983.

TA–W–15, 486; Clinton Apparel Manufacturing Co., Clinton, NC

A certification was issued covering all workers separated on or after August 27, 1983 and before July 1, 1984.

TA–W–15, 451; Murray Ohio Manufacturing Co., Lawrenceburg, TN

A certification was issued covering all workers separated on or after February 1, 1984.

TA–W–15, 430; Quality Unlimited, Inc., East Newark, NJ

A certification was issued covering all workers separated on or after January 1, 1984 and before May 31, 1984.

TA–W–15, 442; The International Hat Co., Oran, MO

A certification was issued covering all workers separated on or after May 1, 1984 and before November 9, 1984.

I hereby certify that the aforementioned determinations were issued during the period December 17, 1984–December 21, 1984. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: December 27, 1984.

Glenn M. Zech,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 85–216 Filed 1–3–85; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

[Docket No. M–84–18–M]

American Gilsonite Co.; Petition for Modification of Application of Mandatory Safety Standard

American Gilsonite Company, Bonanza, Utah 84008 has filed a petition to modify the application of 30 CFR 57.19–3 (hoists) to its Bonanza Mine Site—I–16 Mine (I.D. No. 42–01785) located in Uintah County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that belt, rope, or chains not be used to connect driving mechanisms to man hoists.

2. As an alternate method, petitioner proposes to drive the hoist with six matched V-belts. Two brakes are installed on the hoist; because of the slow speed of the hoisting, the brakes are ample to stop the skip at all times. The hoist has overtravel switches for above ground and near the shaft bottom. An overspeed device automatically sets the brakes if the hoist speed gets too high.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 4, 1985. Copies of the petition are available for inspection at that address.

Dated: December 21, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85–232 Filed 1–3–85; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–84–249–C]

Black Panther Energy Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Black Panther Energy Resources, Inc., P.O. Box 404, Phelps, Kentucky 41553 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine (I.D. No. 15–13050) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mining height is 40 inches where pillars are being extracted.

3. Petitioner states that the canopies limit the equipment operator's seating position, increasing the chances of an accident. The canopies can also dislodge roof supports and damage suspended cables, increasing shock and fire hazards.

4. For the reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 4, 1985. Copies of the petition are available for inspection at that address.

Dated: December 21, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85–226 Filed 1–3–85; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–84–247–C]

Consolidation Coal Co; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.902 (low- and medium-voltage ground check monitor circuits) to its Buchanan No. 1 Mine (I.D. No. 44–04856) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that low- and medium-voltage resistance grounded systems include a failsafe ground check circuit to monitor continuously the grounding circuit.

2. As an alternate method, petitioner proposes to design and install low- and medium-voltage, 3-phase, alternating current, resistance grounded circuits underground without ground wire monitoring, as follows:

a. All circuits will be protected by circuit breakers to provide protection against undervoltage, grounded phase, short circuit and overcurrent as required by 30 CFR 75.900;

b. The source resistance grounded system will comply with all the requirements of 30 CFR 75.901 with the addition of a potential transformer and overvoltage timing relay connected across the grounding resistor;

c. The wiring and equipment-supplied power from the resistance grounded source will be installed and maintained in accordance with applicable requirements of the 1984 National Electrical Code;

d. The circuit conductors from the source to the equipment will be installed in grounded rigid metal conduits. If a short section of liquid tight flexible conduit is required, it will be bonded across to assure electrical continuity; and

e. In addition to the conduit, a separate grounding conductor will be installed within the conduit enclosing the associated power conductors. The grounding conductor will be used to ground the enclosures of each unit of equipment to the grounded side of the source grounding resistor. The size or capacity of the grounding conductor will be in accordance with the requirements of 30 CFR 75.701–4 (a)(b).

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 4, 1985. Copies of the petition are available for inspection at that address.

Dated: December 21, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85–221 Filed 1–3–85; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–84–259–C]

Eastern Associated Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Eastern Associated Coal Corporation, One PPG Place, Pittsburgh, Pennsylvania 15222 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Joanne Mine (I.D. No. 46–01430) located in Marion County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. A recitifier/transformer station is located in the 1-West haulageway. The return aircourses to the north and south of the station and the approaches are inaccessible for the installation of ventilation controls due to massive roof falls. These falls have rendered the area unsafe for travel and rehabilitation.

3. As an alternate method to coursing the air currents which ventilate the station directly into the return, petitioner proposes to install dry chemical fire suppression devices at the station.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 4, 1985. Copies of the petition are available for inspection at that address.

Dated: December 21, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85–230 Filed 1–3–85; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–84–8–M]

Frontier-Kemper Constructors, Inc., Petition for Modification of Application of Mandatory Safety Standard

Frontier-Kemper Constructors, Inc., P.O. Box 820, Vernal, Utah 84078 has filed a petition to modify the application of 30 CFR 57.21–97 (explosives) to its White River Shale Project (I.D. No. 42–01793) located in Uintah County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that blasts in gassy mines be initiated electrically, and that multiple-shot blasts be initiated only with millisecond-delay detonators.

2. Petitioner states that millisecond-delays result in greater concussion and more flying rock, which causes unnecessary damage to surrounding ground.

3. As an alternate method, petitioner proposes to use nonel blasting caps with standard delays, with the following conditions:

a. A test for flammable gas will be made in the shaft and at the blasting stations, shops, and permanent pumps be housed in fireproof structures or

b. All persons will be removed from the shaft before the blasting round is detonated;

c. All persons on the surface will be at least 125 feet from the shaft collar at the time the blasting round is detonated and will remain at least 125 feet from the shaft collar for at least 15 minutes after detonation;

d. During the 15 minutes following the blast, the upcast air emanating from the shaft will be monitored using remote monitoring devices; and

e. A test for flammable gas and other hazardous conditions will be made after 15 minutes from the blast detonation.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 4, 1985. Copies of the petition are available for inspection at that address.

Dated: December 21, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85–227 Filed 1–3–85; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–84–254–C]

Halfway, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Halfway, Inc., 41 Eagles Road, Beckley, West Virginia 25801 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Halfway No. 1 Mine (I.D. No. 46–06449) located in Raleigh County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that underground transformer stations, battery-charging stations, substations, compressor

face before any blasting round is detonated;
areas, and that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. Petitioner seeks a modification of the standard to permit small, less than three horsepower, portable water sump pumps to be operated without housing them in a fireproof structure or ventilating them directly into the return. In support of this request, petitioner states that:

a. The sump pumps are labeled portable electric submersibles;

b. The pumps are of the single and three phase variety and range from 1.2 to 3 horsepower;

c. The average pump has a diameter of 7.5 inches, a 26 inch length, and weighs approximately 25 pounds;

d. The electrical components of the pumps include a built-in thermal protection with all components submerged in flame resistant oil;

e. The pumps are designed to operate fully or partially submerged; and

f. The pumps are installed in compliance with all electrical requirements.

3. Petitioner states that it is safer and more practical to leave the pumps installed, though not in use, and/or let the pumps continually dewater a small stream than to move and reinstall the pumps in order to comply with the standard. Such movement could expose miners to the risks of electrical shock and muscle strain.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 4, 1985. Copies of the petition are available for inspection at that address.

Dated: December 21, 1984.

Patricia W; Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-228 Filed 1-3-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-25-M]

International Salt Co.; Petition for Modification of Application of Mandatory Safety Standard

International Salt Company, 3846 Retsof Road, Retsof, New York 14539 has filed a petition to modify the application of 30 CFR 57.21-20(f) (main fans; automatic signals) to its Sterling "B" Shaft (I.D. No. 30-02664) located in Livingston County, New York. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that main fans be provided with an automatic signal device to give warning or alarm should the fan system malfunction, and that the signal device be located so that it can be seen or heard by a responsible person at all times when persons are underground.

2. As an alternate method, petitioner proposes that a responsible person shall be in attendance in the immediate area of the main fan(s) while persons are underground. A "Deckman" is stationed at the collar when persons are underground. This person's duties are to operate the collar doors when persons/material are entering or leaving the shaft, signal the hoistman to raise or lower the conveyance at the collar level, prepare materials and supplies for lowering into the shaft, and perform maintenance on equipment when time permits. This person's movement is restricted to within 100 feet of the shaft collar while persons are underground. The person does not leave the work station unless relieved by another responsible person, is within audio and usually visual range of the ventilation fans, is the one to which an alarm would be directed, is always in the immediate area of the main fans while persons are underground, would be immediately aware of any fan failure and has direct communication with the fan. Persons underground are working in a shaft, adjacent to the vent tubing in fresh air. A fan failure would immediately be noted by these persons underground by the cessation of noise and airflow, and by the vent tubing going slack. Communication is provided from within the shaft to the hoistman, allowing evacuation or other appropriate action if a fan failure occurs.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 4, 1985. Copies of the petition are available for inspection at that address.

Dated: December 21, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-219 Filed 1-3-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-219-C]

Jim Walter Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Jim Walter Resources, Inc., P.O. Box C-79, Birmingham, Alabama 35283 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its No. 5 Mine (I.D. No. 01-01322) located in Tuscaloosa County, Alabama. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. On November 21, 1980, petitioner was granted a modification of 30 CFR 75.326 to use belt haulage entries as intake aircourses to ventilate active working places (docket number M-80-101-C).

2. This petition concerns that requirement of 30 CFR 75.326 that intake and return aircourses be separated from belt haulage entries.

3. Conditions in the mine require high volumes of intake air to dilute the large quantity of methane liberated from the coal at the working face, and to remove the methane from the return airways.

4. As an alternate method, petitioner proposes to install haulage tracks in the same entries with the belts. Petitioner will isolate the belt entries with continuous permanent-type stoppings. In heavy or caving areas, timbers laid longitudinally "skin to skin" may be used. Such permanent stoppings will be erected between the intake and return aircourses in entries and will be maintained to and including the third connecting crosscut outby the face of the entries, except that when the belt haulage entry and the track entry are in the same entry, the stopping

immediately outby the belt feeder separating the intake escapeway from the belt haulage/track entry will not be constructed. An early warning fire detector sensor will be installed to monitor the airstream in the belt/track immediately outby the stopping not constructed. The signal from the monitor sensor will be transmitted automatically to the working section and to a manned location on the surface where personnel on duty have two-way communications with all persons who may be endangered. Such signal will be activitated when the level of carbon monoxide exceeds 10 ppm above the ambient level for the mine.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 4, 1985. Copies of the petition are available for inspection at that address.

Dated: December 21, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-224 Filed 1-3-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-255-C]

Maben Energy Corp.; Petition for Modification of Application of Mandatory Safety Standard

Maben Energy Corporation, 41 Eagles Road, Beckley, West Virginia 25801 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Maben No. 6 Mine (I.D. No. 46-06376) located in Wyoming County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps be housed in fireproof structures or areas, and that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. Petitioner seeks a modification of the standard to permit sump pumps to be operated without housing them in a fireproof structure or ventilating them directly into the return. In support of this request, petitioner states that:

a. The pumps are of the single and three phase variety and range from 1.2 to 3 horsepower;

b. The average pump has a diameter of 7.5 inches, a 26 inch length, and weighs approximately 25 pounds;

c. The electrical components of the pumps include a builtin thermal protection with all components submerged in flame resistant oil;

d. The puumps are designed to operate fully or partially submerged; and

e. The pumps are installed in compliance with all electrical requirements.

3. Petitioner states that it is safer and more practical to leave the pumps installed, though not in use, and/or let the pumps continually dewater a small stream than to move and reinstall the pumps in order to comply with the standard. Such movement could expose miners to the risks of electrical shock and muscle strain.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 4, 1985. Copies of the petition are available for inspection at that address.

Dated: December 21, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-222 Filed 1-3-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-256-C]

Neumeister Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Neumeister Coal Company, RD #1, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescue devices) to its No. 2 Slope (I.D. No. 36-07166) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-contained self-rescue device or devices approved by the Secretary which is adequate to protect such person for one hour or longer.

2. The mine is always damp to wet. It is a heavily pitching anthracite mine with miner headings on 50-foot centers. The only electrical equipment is a small pump located at the foot of the slope.

3. The mine geology, undulation, thin coal and varying pitches make it hazardous to wear the device while working or in the narrow confines of the slope gun boat which services as a mantrip at the mine.

4. The mine is sometimes subjected to freezing temperatures and no warm storage place exists.

5. The mine can be evacuated in less than 15 minutes.

6. For these reasons, petitioner requests a modificaton of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 4, 1985. Copies of the petition are available for inspection at that address.

Dated: December 21, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-231 Filed 1-3-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-208-C]

Omega Mining Co., Inc., Petition for Modification of Application of Mandatory Safety Standard

Omega Mining Company, Inc., P.O. Box 3186, Morgantown, West Virginia 26503 has filed a petition to modify the application of 30 CFR 75.319 (ventilation of mechanized mining sections) to its Omega No. 100 Mine (I.D. No. 46-06470) located in Monongalia County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that each mechanized mining section be ventilated with a separate split of intake air directed by overcasts, undercasts, or the equivalent.

2. The mine has two sections, but is currently operating Section II only, on a double-shift basis, working on the day and afternoon shifts. Section I was intended to be developed and then pillared back out. The West Virginia Department of Natural Resources had issued a permit restricting coal reserve recovery on Section I to 50%. The two-shift production unit was then moved to develop Section II. After appeal, petitioner was granted permission to recover 80% of the coal reserve on Section I.

3. A nearby mine is nearing completion, and petitioner plans to transfer these employees and equipment to use them on the midnight shift on Section I. Petitioner states that the operation of only one production unit on each shift would prevent the employment of workers on return air.

4. Petitioner seeks a modification of the requirement that each mechanized mining section be ventilated with a separate split of air because:

a. The roof consists of massive sandstone, making overcast construction hazardous;

b. The pavement is fireclay and grades are common. Undercasts would be water-filled and hazardous for rubber-tired equipment to travel; and

c. Each producing section will be on a separate split of intake air.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 4, 1985. Copies of the petition are available for inspection at that address.

Dated: December 21, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-229 Filed 1-3-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-240-C]

Paramont Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Paramont Coal Company, P.O. Box 800, Wise, Virginia 24293 has filed a petition to modify the application of 30 CFR 77.214(a) (refuse piles; general) to its Deep Mine No. 10—Refuse Disposal Area (I.D. Nos. 44-05882; 1211-VA5-009604) located in Wise County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that refuse piles be located in areas which are a safe distance from all underground mine airshafts, preparation plants, tipples, or other surface installations, and that such piles not be located over abandoned openings or streamlines.

2. Petitioner is abandoning the mine. As an alternate method, petitioner proposes to seal the openings for the mine.

The construction of this mine seal will allow the placement of refuse over the mine portals and prevent the contact of refuse with any exposed coal seam. These portals serve as the only entrance to the mine; therefore, upon abandonment, all access will be eliminated. The seals will be designed to assure proper drainage from the mine workings.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 4, 1985. Copies of the petition are available for inspection at that address.

Dated: December 21, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-223 Filed 1-3-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-258-C]

Pyro Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Pyro Mining Company, P.O. Box 267, Sturgis, Kentucky 42459 has filed a petition to modify the application of 30 CFR 75.1404-1 (braking system) to its Wheatcroft Mine (I.D. No. 15-10815) and Pyro No. 9 Wheatcroft Mine (I.D. No. 15-13920), both located in Webster County, Kentucky, and its Palco Mine (I.D. No. 15-14492), its Pyro No. 9 Slope—William Station (I.D. No. 15-13881) and its Pride Mine (I.D. No. 15-11408), all located in Union County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a trailing locomotive or equivalent devices should be used on trains that are operated on ascending grades.

2. Petitioner uses rubber-rail supply trailers, which are designed to approach the end of the track, then convert to rubbertired vehicles. Normal operating procedure is to have trailing motors along main haulage routes. Trailing motors are not used when supplies are being sent from the main road to individual sections. Rubber-rail trailers are not fashioned to use such derails that would couple on to the rear car when ascending or descending grades.

3. Petitioner states that having a trailing motor or equivalent devices deemed as derailers on supply cars would result in a diminution of safety because:

a. Trailing locomotives ascending grades can override the pulling ability of the front motor; causing derail situations of supply cars between the two motors;

b. When trailing locomotives are used, this does not allow the supply person to remove loaded or empty trailers between the two motors safely. These supply persons would be required to uncouple several times and push the rubber-rail trailers into available crosscuts, placing such persons in unnecessary pinch points. The pushing action also damages the trailers.

presenting future derailment hazards. When it becomes necessary to remove empty trailers from the sections, it is nearly impossible to get a trailing motor behind them;

c. Derailers used on such cars installed after they are manufactured have malfunctioned. These derailers have caused accidents by dropping down and becoming caught on track rails or switches, causing wrecks or derailments. The derailers also prevent the locomotive train from backing up quickly if necessary.

4. As an alternate method, petitioner proposes that safety ropes or chains be used between all trailers and the nearest motor when ascending grades. Should any trailer become uncoupled, it would still be held by such a rope or chain and prevent a runaway from occurring. Lights will also be used at strategic locations along the track to warn persons that traffic is ascending steep grades.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 4, 1985. Copies of the petition are available for inspection at that address.

Dated: December 21, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-220 Filed 1-3-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-248-C]

Southern Ohio Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Southern Ohio Coal Company, P.O. Box 552, Fairmont, West Virginia 26554 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its Martinka Mine No. 1 (I.D. No. 46-03805) located in Marion County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that barriers be established and maintained around oil and gas wells penetrating coalbeds or any underground area of a coal mine.

2. As an alternate method, petitioner proposes to plug and mine through abandoned wells penetrating the coalbed using specific methods and safety precautions outlined in the petition.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 4, 1985. Copies of the petition are available for inspection at that address.

Dated: December 21, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-233 Filed 1-3-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-253-C]

Stanford Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Stanford Mining Company, Box 188, Dixonville, Pennsylvania 15734 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Penn Hill No. 2 Mine (I.D. No. 36-00921) and Chestnut Ridge Mine (I.D. No. 36-01329) both located in Indiana County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The coal seam varies in thickness from 35 to 45 inches, with undulating bottom and top.

3. Petitioner operates a roof bolting machine that has a canopy over the operator's position on the side of the machine; however, there is no cab or canopy over the rear alternate operator's position. Petitioner states that installing a canopy on the rear of the machine will result in a diminution of safety because the roof bolting machine is always operated from the side station and the canopy would obstruct the operator's vision. Also, at times the canopy could strike the roof supports, increasing the chances of an accident.

4. As an alternate method, petitioner proposes to eliminate the rear operating station by making the controls inoperative or removing them.

5. Petitioner also operates a Lee Norse miner with an on-board operator who remains under permanently supported roof at all times. The haulage system is a continuous-type and attached to the tail of the miner. The bridge carrier operator is always located outby the miner operator under permanently supported roof. Petitioner states that installing a canopy on the bridge carrier will result in a diminution of safety because the canopy will restrict the operator's visibility. The canopy could also strike and dislodge roof supports, increasing the chances of an accident.

6. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 4, 1985. Copies of the petition are available for inspection at that address.

Dated: December 21, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-225 Filed 1-3-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-10-M, etc.]

Union Carbide Corp,. et al; Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101(c) of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may modify the application of a mandatory safety

standard to a mine if the Secretary determines either or both of the following: that an alternate method exists at the petitioner's mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application or the standard to the petitioner's mine will result in a diminution of safety to the affected miners.

Summaries of petitions received by the Secretary appear periodically in the **Federal Register.** Final decisions on these petitions are based upon the petitioner's statement, comments and information submitted by interested persons and a field investigation of the conditions at the petitioner's mine. The Secretary has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances the decisions are conditioned upon the petitioner's compliance with stipulations stated in the decision.

FOR FURTHER INFORMATION CONTACT: The petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations and Variances, MSHA, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Dated: December 21, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

AFFIRMATIVE DECISIONS ON PETITIONS FOR MODIFICATION

Docket No.	FR Notice	Petitioner	Regulations affected	Summary findings
M-82-10-M	47 FR 21324	Union Carbide Corp.	30 CFR 3057.11-59	Providing each underground hoist operator with a 24-hour supply of respirable compressed air stored in containers near the hoist with specified conditions considered acceptable alternate method. Granted with conditions.
M-82-17-M	47 FR 24483	Morton Salt Division of Morton Thiokol, Inc.	30 CFR 51.21-75	Allowing persons to remain in affected active workings and power to remain energized for a period not to exceed 60 minutes in the event of a failure of ventilation other than a main fan stoppage considered acceptable alternate method. Granted with conditions.
M-83-5-M	48 FR 22825	Hecla Mining Co.	30 CFR 57.4-43	Moving the maintenance area from the portal end of the shop to the opposite end and installation of a noncombustible fire partition to separate the shop from the portal end considered acceptable alternate method. Granted with conditions.
M-83-13-M	48 FR 33553	Flatiron Sand & Gravel Co.	30 CFR 56.9-87	Use of a flashing light beam device to alert people behind equipment with specified conditions in lieu of using audible back-up alarms considered acceptable alternate method. Granted with conditions.
M-83-20-M	48 FR 45322	FMC Corp.	30 CFR 57.21-40	During longwall mining where a bleeder system of entries is being used and maintained for ventilation of gob areas, petitioner's proposal that the methane content of the air current in the bleeder split at the point where such split enters any other split shall not exceed 2.0 volume percent considered acceptable alternate method. Granted with conditions.
M-83-25-M	49 FR 673	American Gilsonite Co.	30 CFR 57.19-56	Petitioner's proposal to amplify the emergency signaling device so it can be heard over a large area in the event of a hoist failure considered acceptable alternate method. Granted with conditions.
M-83-27-M	48 FR 57639	Anderson Milling Co.	30 CFR 56.18-20	Petitioner's proposal to maintain radio contact with any employee working alone in the mill considered acceptable alternate method. Granted with conditions.
M-83-32-M	49 FR 4568	Granite Rock Co.	30 CFR 56.9-87	Use of an oscillating-type light as a visual warning device visible from the rear of the vehicle considered acceptable alternate method. Granted with conditions.
M-83-34-M	49 FR 4568	Long Star Industries, Inc.	30 CFR 56.9-87	Use of strobe lights installed on vehicles as warning devices when traveling in reverse considered acceptable alternate method. Granted with conditions.
M-83-35-M	49 FR 678	International Minerals and Chemical Corp.	30 CFR 57.4-61B	Installation of a reversible surface fan at the number 3 shaft with specified conditions considered acceptable alternate method to installing fire doors. Granted with conditions.
M-84-3-M	49 FR 13758	ASARCO, Inc.	30 CFR 57.11-37	Petitioner's proposal that the cross-sectional opening be 18 by 20 inches measured from the face of the ladder in lieu of 24 by 24 inches considered acceptable alternate method. Granted.
M-83-85-C	48 FR 45324	Peabody Coal Co.	30 CFR 75.1100-2(a)	Use of the high-pressure water hose to the continuous miners as fire protection devices at the working place considered acceptable alternate method. Granted in part with conditions.
M-83-93-C	48 FR 48879	Sewell Coal Co.	30 CFR 75.326	Petitioner's proposal to use belt and track air to ventilate active working places with specific safeguards considered acceptable alternate method. Granted with conditions.
M-83-119-C	48 FR 56869	Jewell Ridge Coal Corp.	30 CFR 75.326	use of belt and track air to ventile active working places and installation of an automatic fire detection system with sensors on the underground belt conveyors considered acceptable alternate method. Granted with conditions.
M-83-130-C	49 FR 674	Barnes & Tucker Co.	30 CFR 75.305	Due to numerous roof falls in specified return entries, petitioner's proposal to evaluate and control the air entering the affected area by regulators at the inlet monitoring stations considered acceptable alternate method. Granted with conditions.
M-83-138-C	49 FR 682	Westmoreland Coal Co.	30 CFR 75.326	Use of intake air which is coursed through the belt haulage and/or track entries to ventilate active working places with specified safeguards considered acceptable alternate method. Granted with conditions.
M-83-140-C	49 FR 681	Turris Coal Co.	30 CFR 77.216-3(a)	Insepction of the Slurry Pond and the Freshwater Pond on a monthly basis, and monitoring of instruments on a quarterly basis considered acceptable alternate method. Granted with conditions.
M-83-144-C	49 FR 673	Angus Mining Co., Inc.	30 CFR 75.1710	use of cabs or canopies in specified low mining heights would result in a diminution of safety. Granted with conditions.
M-83-149-C	49 FR 4284	Southern Ohio Coal Co.	30 CFR 75.1100-2(e)(2)	Proposal to provide two portable fire extinguishers or one extinguisher having at least twice the minimum capacity at each temporary electrical installation considered acceptable alternate method. Granted.
M-83-151-C	49 FR 4284	Southern Ohio Coal Co.	30 CFR 75.1700	Plugging and mining through abandoned oil and gas wells with specified procedures and precautions considered acceptable alternate method. Granted with conditions.
M-83-155-C	49 FR 5216	Kermit Coal Co.	30 CFR 75.305	Due to massive roof falls in several return aircourses, petitioner's proposal to establish and mtaintain air measuring stations at specified locations considered acceptable alternate method. Granted with conditions.
M-83-161-C	49 FR 4284	Tucker Hill Coal Co.	30 CFR 75-301	Proposed airflow reduction in petitioner's mine which would maintain a safe and healthful atmosphere considered acceptable alternate method. Granted with conditions.

AFFIRMATIVE DECISIONS ON PETITIONS FOR MODIFICATION—Continued

Docket No.	FR Notice	Petitioner	Regulations affected	Summary findings
M-83-169-C	49 FR 7307	Westmoreland Coal Co	30 CFR 75.1105	Installation of an MSHA-approved carbon monoxide/fire detection system with monitors in all belt haulage entries used as intake aircourses considered acceptable alternate method. Granted with conditions.
M-83-178-C	49 FR 7308	Westmoreland Coal Co	30 CFR 75.1103-4(a)	use of a fire sensor and warning system that will be capable of identification of fire by activated sensors considered acceptable alternate method. Granted with conditions.
M-83-179-C	49 FR 7308	Westmoreland Coal Co	30 CFR 75.1105	Installation of an MSHA-approved carbon monoxide/fire detection system with monitors in all belt haulage entries used as intake aircourses considered acceptable alternate method. Granted with conditions.
M-84-2-C	49 FR 3944	Jim Walter Resources, Inc	30 CFR 75.326	Petitioner's proposal to install haulage tracks in the same entries with belts with specified conditions considered acceptable alternate method. Granted.
M-84-3-C	49 FR 13762	D & F Deep Mine Buck Drift	30 CFR 75.301	Proposed airflow reduction in petitioner's mine which would maintain a safe and healthful atmosphere considered acceptable alternate method. Granted with conditions.
M-84-9-C	49 FR 11028	Maple Meadow Mining Co	30 CFR 75.506(d) and 75.1303	Use of the nonpermissible FEMCO Ten-Shot Blasting Unit with specific safeguards considered acceptable alternate method. Granted.
M-84-29-C	49 FR 11030	Partner Coal Co	30 CFR 75.506(d) and 75.1303	Use of the nonpermissible FEMCO Ten-Shot Blasting Unit with specific safeguards considered acceptable alternate method. Granted.
M-84-30-C	49 FR 11026	Kermit Coal Co	30 CFR 75.506(d) and 75.1303	use of the nonpermisaible FEMCO Ten-Shot Blasting Unit with specific safeguards considered acceptable alternate method. Granted.
M-84-34-C	49 FR 13763	Eastern Associated Coal Corp	30 CFR 75.305	Due to flooding and massive roof falls caused by deterioration of the draw slate top, petitioner's proposal to establish and maintain five special ventilation checkpoints at specified locations considered acceptable alternate method. Granted with conditions.
M-84-37-C	49 FR 14216	Washington Irrigation & Development Co.	30 CFR 77.1605(k)	The posting of unobstructed speed limit signs and the use of electric lights and/or flare pots to identify road edges considered acceptable alternate method. Granted with conditions.
M-84-50-C	49 FR 21133	Mettiki Coal Corp	30 CFR 75.1400	Allowing the fireboss and pumper to travel into and out of the fire on diesel powered, rubber tired mine tender vehicle son weekends and holidays without having a hoisting engineer on duty considered acceptable alternate method. Granted.
M-84-53-C	49 FR 13759	Barnes & Tuker Co	30 CFR 75.1100-3	Installation of a dry waterline along the slope belt with specified conditions considered acceptable alternate method. Granted with conditions.
M-84-63-C	49 FR 18196	K. W. Carbon, Inc	30 CFR 75.1710	Use of cabs or canopies in specified mining heights would result in a diminution of safety. Granted for specific equipment.
M-84-64-C	49 FR 13759	Barnes & Tucker Co	30 CFR 75.1100-3	Installation of a dry waterline along the slope belt with specified conditions considered acceptable alternate method. Granted with conditions.
M-84-70-C	48 FR 14216	Jewell Ridge Coal Corp	30 CFR 75.1103-4	Use of a carbon monoxide monitoring system in lieu of an automatic fire detection system considered acceptable alternate method. Granted with conditions.
M-84-74-C	49 FR 20079	Beckley Coal Mining Co	30 CFR 75.321	petitioner's proposal to continue normal operations when the auxiliary slope fan is shut down, with specified safeguards, considered acceptable alternate method. Granted.
M-84-96-C	49 FR 21131	H.A.T. Coal Co	30 CFR 75.1400	Proposed operation of mancage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method of compliance. Granted with conditions.
M-84-100-C	49 FR 23255	Beatrice Pocahontas Co	30 CFR 75.1700	Plugging and mining through abandoned oil and gas wells with specified procedures and precautions considered acceptable alternate method. Granted with conditions.

[FR Doc. 85-218 Filed 1-3-85; 8:45 am]
BILLING CODE 4510-43-M

NATIONAL TRANSPORTATION SAFETY BOARD

Availability of Reports, Recommendations, and Responses

Reports Issued

Aircraft Accident Report—Flying Tigers, Inc., Flight 2468, McDonnell Douglas DC8-63, N797FT, Chambers Field, Naval Air Station, Norfolk, Virginia, October 25, 1983 (Revised: September 1, 1984) (NTSB/AAR-84/08) (NTIS Order No. PB84-910408).

Aircraft Accident Report—Western Helicopters, Inc., Bell UH-1B, N87701, Valencia, California, July 23, 1982 (NTSB/AAR-84/14) (Supersedes NTSB/AAR-84/02) (NTIS Order No. PB84-910414).

Highway Accident Report—Collision of DeQueen, Arkansas, Police Department Patrol Car and Terrell Trucking, Inc. Tractor-Semitrailer, U.S. Route 71, Ashdown, Arkansas, July 5, 1984 (NTSB/HAR-84/07) (NTIS Order No. PB84-916207).

Safety Study—Deficiencies in Enforcement, Judicial, and Treatment Programs Related to Repeat Offender Drunk Drivers (NTSB/SS-84/04) (NTIS Order No. PB84-917007).

Marine Accident Report—Capsizing and Sinking of the United States Drillship Glomar Java Sea in the South China Sea, 65 Nautical Miles South-Southwest of Hainan Island, People's Republic of China, October 25, 1983 (NTSB/MAR-84/08) (NTIS Order No. PB84-916408).

Note.—Reports may be ordered from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, for a fee covering the cost of printing, mailing, handling, and maintenance. For information on reports call 703-487-4650 and to order subscriptions to reports call 703-487-4630.

Recommendations Issued

Aviation—*Federal Aviation Administration: May 25: A-84-53:* Issue a telegraphic Air Carrier Operations Bulletin to all DC-10 principal operations inspectors for immediate notification of DC-10 operators providing information that (1) the potential for a short circuit exists in electrical wiring beneath the glareshields above both pilot stations; (2) such a short circuit could be accompanied by sparks and smoke, and (3) circuits to the master caution light, master warning light, and engine failure warning light could be activated. *A-84-54:* Require an immediate visual inspection of wiring bundles beneath the DC-10 cockpit glareshields to determine that they are not chafed and are routed so that they are not sandwiched between the Isolume light, and the flight guidance control panel or the glareshield. *Aug. 13: A-84-82:* Prescribe standardized altitude symbology to be used in the profile view of approach

procedure charts. *A–84–83:* Redesign the low altitude/conflict alert at ARTS III/IIIA facilities so that the audio signal associated with a low altitude alert is readily distinguishable from that associated with a conflict alert and so that it is heard only by controllers immediately concerned with the involved aircraft. *A–84–84:* Amend the Air Traffic Control Handbook, 7110.65c, paragraph 33, to require a controller immediately a low altitude alert to any airplane under his control which has activated the Minimum Safe Altitude Warning system.

Note.—Single copies of these recommendations are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594. Please include recommendation number(s) in your request. Copies of recent recommendations are free of charge while supplies last. Recommendations that must be photocopied will be billed at a cost of 14 cents per page ($1 minimum charge).

Responses Received

Highway—*Federal Highway Administration: Dec. 20: H–84–28:* Issued an On Guard Bulletin regarding the failure of a motor carrier to equip its vehicle with parts that met the design specification of an original equipment manufacturer as well as failing to systematically inspect, repair, and maintain its equipment. *H–84–29:* Directed regional administrators to have inspectors place special emphasis on inspecting the suspension components of vehicles while conducting roadside inspections. *Dec. 21: H–78–52:* "Impact Attenuators for Heavy Vehicles—A Feasibility Study" concluded that it is infeasible to develop a roadside attenuator that can safely arrest all classes of vehicles. "Heavy Vehicle Escape Ramps—A Review of Current Knowledge" reviewed current truck escape ramp literature, documented all acceptable designs, determined shortcomings in the current method of arresting heavy vehicles, and developed a framework of information, criteria, and specifications concerning truck escape ramps. "Feasibility of a Grade Severity Rating System" determined the feasibility and format of a grade severity rating model so that existing countermeasures can be more rationally applied and the need for new countermeasures can be established. "Evaluation of Techniques to Counteract Truck Accidents on Steep Downgrades" refined and evaluated the grade severity rating model. *Dec. 21: H–78–40 and –41:* The number of new carriers identified through the safety inspection and weighing demonstration program are as follows: 1979—10,286; 1980—11,689; 1981—8,871; 1982—6,247. *Dec. 21: H–78–4:* Descriptive material concerning surveillance and control systems is now contained in the recently published Manual on Uniform Traffic Control Devices Handbook, Section 4I–6. *Dec. 26: H–80–9 through –11:* Additional information was provided on June 17, 1983, and the following reports of completed research were mentioned in our Octoberr 8, 1980, response: Design Considerations for Two-Lane Two-Way Work Zone Operations, FHWA/RD–83–112 and Performance Criteria for Channelizing Devices Used for Two-Lane Two-Way Operations, FHWA/RD–83–057.

Veterans Administration: Dec. 26: H–84–89: Present policy places heavy emphasis on voluntary participation in the VA alcohol dependence treatment program as the best way of motivating patients to deal constructively with their alcoholism so that they may reach realistic, measurable, and attainable goals. To the extent that local traffic court rehabilitation programs invoke coercive measures, they would appear to be at odds with this policy.

State of North Carolina: Dec. 13: H–84–77: The Governor's Task Force on Drunken Drivers recommended that law enforcement officers emphasize field sobriety test techniques as a way of building a compelling case of impairment and not rely solely on the breathalyzer reading for a conviction. The State Highway Patrol has adopted a three-part field sobriety test, including the horizontal gaze nystagmus test. *H–84–78:* The Safe Roads Act of 1983 made some changes in terminology regarding chemical analysis of breath and blood samples. The testing statute was rewritten so that a refusal to submit to a chemical test prohibits testing only under the implied-consent law. *H–84–79:* Under law, a driver who is impaired to the extent that it would be dangerous to release him and cannot find a responsible adult willing to be responsible for him, can be held in jail for up to 24 hours or until his blood alcohol concentration has dropped to 0.05 or less. *H–84–80:* The new driving while impaired law has eliminated all lesser included offenses than driving while under the influence of an impairing substance. If any district attorney reduces the charge to a non-alcohol related offense or drops charges, he must give his reasons for doing so in writing and file it in the court record. *H–84–81:* Has conducted training sessions for judges dealing with the trial and sentencing of DWI defendants. *H–84–82:* Whether an individual is a juvenile or not makes no difference on the maintenance, preservation, or accessibility of his or her driving record. *H–84–83:* The Rehabilitation, Alcohol Test, Evaluation and Retrieval System (RATERS) of the Division of Motor Vehicles provides complete and accurate law enforcement and judicial records of DWI defendants' previous alcohol-related traffic offenses, including those committed as a juvenile. These records are available to judges prior to sentencing through the Police Information Network. *H–84–84:* Safe Roads Act requires that any person convicted of a second DWI offense within five years or a first offense where they had a BAC level of 0.20 or greater receive a substance abuse assessment and, if recommended, undergo the appropriate treatment as a condition of special probation. *H–84–85:* The Alcohol, Drug Education Traffic Schools program deals primarily with young people aged 19 to 24 and provides basic information of the effects of alcohol and drugs on the body and on one's driving ability. Certain components of the ADETS curriculum have been incorporated in the Driver's Education classes taught in high schools across the State. *H–84–86:* The Safe Roads Act does not now provide for license suspension or revocation modifications for completing the ADETS program.

Marine—*Commonwealth of Massachusetts: Dec. 18: M–83–76 and –77:* Department of Fisheries, Wildlife and Recreational Vehicles has refiled legislation concerning the role of alcohol in recreational boating accidents.

American Bureau of Shipping: Dec. 18: M–84–74: Is currently reviewing the stability criteria for all mobile offshore drilling units and will include for discussion the capability of drillships to survive the flooding of any two adjacent compartments or tanks within 5 feet of the hull. *M–84–75:* Will meet with the U.S. Coast Guard to consider the recomendation to review the structural design of the five Global Marine drillships similar in design to the CLOMAR JAVA SEA. *M–84–76:* Is currently reissuing the rules for mobile offshore drilling units which have revised requirements of examinations of ballast spaces. The Circular of Instruction to field offices covering this matter will contain the instruction for increasing the number of ballast tanks to be examined with the age of the vessel.

Commonwealth of Kentucky: Nov. 27: M–83–77 and–78: Believes that the use of public intoxication statutes serve as an adequate deterrent to operating a boat under the influence of alcohol. The combination of our safety inspections and education programs are having a

positive effect on making the boat public aware of the dangers of mixing boating and alcohol. Does not feel that legislation is currently needed.

Railroad—*American Railway Engineering Association: Dec. 19: R–84–20:* Maintains a set of recommended practices based on proven field experience that can be used by railway engineers in the absence of their own detailed experience or investigations justifying other procedures. Because with the exception of rail in place on one railroad system, there are only about 15 miles of main-line tack with chrome-vanadium alloy steel rail installed in the entire country, there is no justification for revising existing recommended practices which only cover standard carbon rail or adopting new recommended practices addressed solely to chrome-vanadium alloy steel rail.

The Atchison, Topeka and Santa Fe Railway Company: Dec. 17: R–84–20: Believes that its internal controls and procedures are adequate for safe operation of trains over chrome-vanadium alloy rail. Feels that its internal defect testing programs accurately and safely assess the condition of rail so that effective maintenance can be planned and carried out where needed.

Burlington Northern Railroad: Dec. 13: R–84–20: Currently has less than one track mile of chrome-vanadium alloy rail in service in main line track. Concludes that its current maintenance rules, practices, and frequency of inspection for internal flaws meets or exceeds the recommended actions.

The Denver and Rio Grande Western Railroad Company: Dec. 20: R–84–20: Reissued and reviewed with all operating personnel in the maintenance of way its policy and procedure in the handling of all torch cut rails and emphasized the sensitivity of alloy rail.

Grand Trunk Western Railroad Co.: Dec. 13: R–84–20: Does not have any high-strength alloy rail. Torch-cutting of rail is not permitted except in an emergency.

Soo Line Railroad Company: Dec. 21: R–84–20: Has 2.04 miles of 1 percent chrome rail, which is tested for internal defects on at least a yearly basis.

Note.—Single copies of these response letters are available on written request to: Public Inquires 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).

Ray Smith,

Federal Register Liaison Officer.

December 31, 1984.

[FR Doc. 85–240 Filed 1–3–85; 8:45 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on January 10–12, 1985, in Room 1046, 1717 H Street, NW, Washington, DC. Notice of this meeting was published in the Federal Register on December 24, 1984.

The agenda for the subject meeting will be as follows:

Thursday, January 10, 1985

8:30 A.M.—9: A.M.: Report of ACRS Chairman (Open/Closed)—The ACRS Chairman will report briefly regarding items of current interest to the members, including consideration of ACRS members for recognition of their contributions to the nuclear power program.

Portions of this session will be closed as required to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy and information the premature release of which would be likely to significantly frustrate implementation of a proposed agency action.

9:00 A.M.—10:30 P.M.: Quality Assurance in Nuclear Facility Design and Construction (Open)—The ACRS members will hear and discuss reports of its subcommittee and representatives of the NRC regulatory staff regarding a proposed revision to Regulatory Guide 1.28 regarding quality assurance program requirements during design and construction of nuclear facilities.

10:30 A.M.—11:00 A.M.: Chilled Water Systems in Nuclear Power Plants (Open)—The members of the Committee will discuss proposed ACRS comments/recommendations regarding the requirements for chilled water systems in nuclear power plants.

11:00 P.M.—12:00 NOON: Recent Operating Events (Open)—The ACRS members will hear and discuss reports of it subcommittee and representatives of the NRC regulatory staff regarding recent operating events and incidents at nuclear power plants.

Portions of this session will be closed to discuss Proprietary Information applicable to the items being considered.

1:00 P.M.—5:00 P.M.: NRC Safety Research Program and Budget (Open/Closed)—The members of the Committee will discuss the proposed annual ACRS report to the U.S. Congress regarding the proposed NRC safety research program and budget for FY 1986–1987.

Portions of this session will be closed as required to discuss information the premature release of which would be likely to significantly frustrate the agency in the implementation of proposed agency action.

5:00 P.M.—5:30 P.M.: Future ACRS Activities (Open)—The ACRS members will discuss anticipated ACRS subcommittee activities and proposed items for consideration by the full committee.

Friday, January 11, 1985

8:30 A.M.—11:30 A.M.: Emergency Preparedness (Open)—The members of the Committee will hear and discuss the report of its subcommittee and representatives of the NRC Staff regarding proposed changes to 10 CFR 50.47, Emergency Plans, and Appendix E, Emergency Facilities and Equipment.

11:30 A.M.—12:30 P.M.: Activities of NRC Office of Nuclear Material Safety and Safeguards (Open)—The members of the Committee will hear a briefing on the activities of the NRC Office of Nuclear Material Safety and Safeguards.

1:30 P.M.—5:30 P.M. NRC Safety Research Program (Open/Closed)—The ACRS members will continue discussion of the proposed annual ACRS report to the U.S. Congress regarding the proposed NRC safety research program and budget for FY 1986–1987.

Portions of this session will be closed as required to discuss information the premature release of which would be likely to significantly frustrate the agency in the implementation of proposed agency action.

Saturday, January 12, 1985

8:30 A.M.—12:30 P.M. and 1:30 P.M.—4:00 P.M.: Preparation of ACRS Reports to NRC (Open/Closed)—The ACRS members will prepare reports to the Nuclear Regulatory Commission and to the U.S. Congress regarding matters considered during this meeting.

Portions of this session will be closed as required to discuss Proprietary Information applicable to the matters being discussed and information the premature release of which would be likely to significantly frustrate the

agency in the implementation of proposed agency action.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on October 3, 1984 (49 FR 193). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R. F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss Proprietary Information (5 U.S.C. 552b(c)(4), information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)6), and information the premature release of which would be likely to significantly frustrate proposed agency action (5 U.S.C. 552b(c)(9)(B)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 A.M. and 5:00 P.M. e.s.t.

Dated: December 31, 1984.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 85–307 Filed 1–3–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–289]

Metropolitan Edison Co. et al.; Notice of Issuance of Amendment To Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has, pursuant to the Initial Decision of the Atomic Safety and Licensing Board dated October 31, 1984, issued Amendment No. 103 to Facility Operating License No. DPR–50, issued to Metropolitan Edison Company, Jersey Central Power and Light Company, Pennsylvania Electric Company, GPU Nuclear Corporation (the licensees), which revised the license and the Technical Specifications (TSs) for operation of the Three Mile Island Nuclear Station, Unit No. 1, (the facility) located in Dauphin County, Pennsylvania. The amendment is effective as of the date of its issuance.

This amendment permits the return to operation of the repaired steam generators. On August 25, 1983, the Commission issued Amendment No. 86 (48 FR 39709) which addressed a portion of the licensees' application of May 9, 1983. That amendment revised the TSs to recognize and approve the steam generator tube kinetic expansion repair technique as an alternative to plugging of defective tubes, only for purposes of steam generator hot functional testing using pump heat (non-nuclear), and permitted such testing. Similarly, Amendment No. 91, issued on April 9, 1984, further modified TS 4.19 to cover the total period of pre-critical (non-nuclear) hot functional testing of the plant.

This amendment completes the Commission's action on the May 9 application by further modifying the TSs to remove restrictions as to the period of effectiveness of the acceptability of the kinetic expansion repair process as an alternative to plugging defective tubes in the steam generators, thus permitting them to return to operation. Pursuant to the Licensing Board's Initial Decision of October 31, 1984, the TSs are further modified to add requirements regarding the condenser offgas radiation monitor, and conditions have been added to the license to require primary-to-secondary leakage restrictions, power ascension test program results availability, extended inservice inspection, evaluation of operational leakage, and reporting corrosion lead tests.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 31, 1983 (48 FR 24231), and corrected June 14, 1983 (48 FR 27328). In response to this notice, requests for hearing were filed by TMIA on May 19, 1983, as amended on June 23, 1983, and by Lee, Molholt, and Aamodt on June 30, 1983, as amended on July 13, 1983. Comments were made by six other persons and the Commonwealth of Pennsylvania.

On August 25, 1983, the Commission issued a Safety Evaluation (NUREG-1019) related to this action and reopened the comment period to receive further public comments on the proposed no significant hazards consideration published on May 31. A "Notice of Additional Opportunity for Comment" was published in the **Federal Register** on August 31, 1983 (48 FR 39541). Additional comments were filed by the Commonwealth of Pennsylvania.

A hearing was held on July 16–18, 1984, and the Atomic Safety and Licensing Board issued its Initial Decision on October 31, 1984.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact which was published in the **Federal Register** on December 21, 1984, 49 FR 49740.

For further details with respect to the action see (1) the application for amendment dated May 9, 1983, (2) Amendment No. 103 to Facility Operating License No. DPR–50, (3) the aforementioned Initial Decision dated October 31, 1984, (4) the Licensing Board's Memorandum and Order (Rulings on Motions for Summary Disposition) dated June 1, 1984, and (5) the Commission's related Safety Evaluation (NUREG–1019), Supplement No. 1 to NUREG–1019, and the Commission's December 21, 1984 letter to GPU Nuclear Corporation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

A copy of items (2), (3), (4) and (5) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington,

D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 21st day of December 1984.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 85-308 Filed 1-3-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

Toledo Edison Co. and the Cleveland Electric Illuminating Co.; Notice of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-3, issued to the Toledo Edison Company and The Cleveland Electric Illumination Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit 1, located in Ottawa Country, Ohio.

Environmental Assessment

Identification of Proposed Action: The proposed amendment, submitted by application dated November 12, 1984, would add a new condition to the Facility Operating License. The incorporation of the proposed license condition into the operating license would allow for the operation of the Davis-Besse facility in Modes 1, 2, or 3 without the startup feedwater water pump (SUFP) and associated piping isolated from outside the auxiliary feedwater (AFW) pump rooms when the SUFP is operating. The condition would require Toledo Edison to observe three new operational restrictions relating to the use of and future modification to the SUFP. The license condition would require Toledo Edison to station an operator in the SUFP area when the SUFP is in operation to monitor the status of associated piping. This operator would be required to take certain actions in event of leakage or pipe failure. When the SUFP is not in operation, Toledo Edison would be required to isolate and maintain isolation of certain piping associated with the SUFP from outside the rooms containing the SUFP and the AFW pumps.

The license condition would require Toledo Edison to install a SUFP, associated piping, and valves such that the hazard to the AFW pumps from SUFP operation is removed. This installation is to be completed prior to commencing Cycle 6.

The Need for the Proposed Action: In a Licensee Event Report (LER) No. 84-009 dated June 18, 1984, the licensee identified one high and three moderate energy lines in the AFS pump rooms 237 and 238 whose failures have not been analyzed. These lines are the SUFP discharge (high) and suction lines and the turbine plant cooling water (TPCW) piping which cools the SUFP. The SUFP is located in AFW pump room 238 and can jeopardize AFW pump 1-2 due to a pipe leak of break which includes the effects of jet impingement, pipe whip, flooding and environmental conditions. The AFW pump 1-1, located in room 237, can be jeopardized by flooding and high ambient temperature. When operation of the SUFP Is not required, corrective action can be taken by isolating the SUFP and associated piping from the AFW rooms. However, when the plant is preparing for normal start up or a shutdown, operation of the SUFP is necessary.

Environmental Impacts of the Proposed Action: The Commission has evaluated the environmental impacts related to the proposed operation of Davis-Besse, Unit 1, in Modes 1, 2 and 3 without the SUFP and associated piping isolated from outside the AFW pump rooms when the SUFP Is operating. The Commission's evaluation of the proposed operation and the compensatory measures required by the proposed license amendment indicates that the operation will not reduce significantly the integrity or effectivess of the AFW system. Accordingly, post-accident radiological releases will not be greater than previously determined, nor does the proposed operation otherwise affect radiological plant effluents, and there is no significant increase in occupational exposures. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed license condition.

With regard to potential nonradiological impacts, the proposed operation under the proposed license condition involves systems located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed operation and compensatory measures under the proposed license amendment.

Alternatives to the Proposed Action: Since we have concluded that the environmental effects of the proposed action are negligible, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested license amendment. This would most likely increase the environmental impacts of the facility operation because it would result in the licensees having to use the main feedwater pumps for normal startup and shutdown. This would require the use of the fossil fueled auxiliary boiler to supply steam to drive the main feedwater pump turbine. Control of the main feedwater pumps under these conditions is difficult and auxiliary boiler operation is expected to be unreliable, resulting in unnecessary reactor trips and challenges to plant safety systems.

Alternative Use of Resources: This action does not involve the use of resources not previoulsy considered in connection with the Final Environmental Statements relating to this facility, *Environmental Statement on Davis-Besse Nuclear Power Station, Unit 1,* Docket 50-346 (March 1973), and *Final Environmental Statement Related to Operation of Davis-Besse Nuclear Power Station, Unit 1,* NUREG-75/097 (October 1979).

Agencies and Persons Consulted: The Commission's staff reviewed the licensees' request. The staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensees' application for amendment dated November 12, 1984, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and the the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Bethesda, Maryland, this 31st day of December 1984.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Assistant Director for Operating Reactors Division of Licensing.

[FR Doc. 84-309 Filed 1-3-84; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

White House Science Council (WHSC); Meeting

The White House Science Council, the purpose of which is to advise the Director, Office of Science and Technology Policy (OSTP), will meet on January 17 and 18, 1984, in Room 5104, New Executive Office Building, Washington, D.C. The meeting will begin at 6:00 p.m. on January 17, recess and reconvene at 8:00 a.m. on January 18. Following is the proposed agenda for the meeting:

(1) Briefing of the Council, by the Assistant Directors of OSTP, on the current activities of OSTP.

(2) Briefing of the Council by OSTP personnel and personnel of other agencies on proposed, ongoing, and completed panel studies.

(3) Discussion of composition of panels to conduct studies.

The January 17 session and a portion of the January 18 session will be closed to the public.

The briefing on some of the current activites of OSTP necessarily will involve discussion of material that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552(b)(c) (1), (2), and 9(B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552(b)(c)(6).

The portion of the meeting open to the public will begin approximately 10:00 a.m. Because of the security in the New Executive Office Building, persons wishing to attend the open portion of the meeting should contact Annie L. Boyd, Secretary, White House Science Council at (202) 456–7740, prior to 3:00 p.m. on January 16. Ms. Boyd is also available to provide further information regarding this meeting.

Dated: December 27, 1984.

Jerry D. Jennings,

Executive Director, Office of Science and Technology Policy.

[FR Doc. 85–499 Filed 1–3–85; 12:19 pm]

BILLING CODE 3170-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 14291; (812-5963)]

Caisse Nationale de Credit Agricole and Credit Agricole U.S.A. Inc.; Application for an Order Exempting Applicants

December 27, 1984.

Notice is hereby given that Caisse Nationale de Credit Agricole ("CNCA") and Credit Agricole U.S.A. Inc. ("Credit Agricole-USA") (collectively, "Applicants") (c/o James M. Reum, Esq., Hopkins & Sutter, Three First National Plaza, Chicago, IL 60602) filed an application on October 15, 1984, and an amendment thereto on December 14, 1984, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicants from all provisions of the Act in connection with the proposed issuance of commercial paper in the United States. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the applicable sections and rules.

Applicants state that CNCA was created in 1920 as a public institution wholly-owned by the French State, and that CNCA is under the joint supervision of the French Ministries of Economy, Finance and Budget and Agriculture. Applicants also state that CNCA acts as the central banking institution for *Credit Agricole Mutuel* or *Credit Agricole* ("Credit Agricole"), a mutual agricultural credit organization which offers a wide range of retail banking and financial services to the public and primarily services the financial needs of the French agricultural sector and rural areas. According to the application, Credit Agricole is the tenth largest banking institution in the world in terms of total assets and the thirteenth largest in terms of deposits.

Applicants state that because of the integrated and interdependent structure of the Credit Agricole system, CNCA's character as a commerical banking institution is best understood in the context of that system, which it manages and controls, rather than as an isolated entity. According to the application, Credit Agricole supports the French agricultural sector through long, medium and short-term loans and, since 1979, CNCA has also been authorized to make direct loans to companies in the agri-food industry. Credit Agricole also finances rural development, provides housing loans and is active in international banking within the framework defined by the applicable French ministries. Applicants represent that CNCA acts as an authorized foreign currency intermediary for itself and for regional mutual credit co-operatives within the Credit Agricole system enabling them to offer a complete range of international banking services. Additionally, Applicants represent that CNCA has offices worldwide including offices in Chicago and New York. Applicants state that all banking institutions in France (including CNCA) are subject to extensive governmental regulation. Applicants also state that CNCA is responsible to the Banque de France for the Maintenance of the required minimum reserves for Credit Agricole. Further, Applicants represent that because of its worldwide offices, CNCA is also subject to the International Banking Act of 1978.

Applicants state that Credit Agricole-USA, a Delaware corporation, will have an initial capitalization of $10,000 and that all of its outstanding capital stock will be held by CNCA. Further, Applicants represent that Credit Agricole-USA's sole business will be the provision of funds to CNCA, and that substantially all of Credit Agricole-USA's assets will consist of amounts receivable from CNCA.

According to the application, Credit Agricole-USA proposes to issue dollar-denominated commercial paper ("Notes") in the United States, with payment thereon unconditionally guaranteed by CNCA. Applicants represent that the Notes and guarantees thereof will rank *pari passu* among themselves; the Notes will rank prior to equity securities and equally with all other unsecured unsubordinated indebtedness of Credit Agricole-USA; and the guarantees will rank equally with all other unsecured unsubordinated indebtedness of CNCA (including deposit liabilities of CNCA).

Applicants maintain that the terms of the Notes, and the manner of their offering, will qualify them for exemption from registration under section 3(a)(3) of the Securities Act of 1933 ("1933 Act"). Applicants undertake not to authorize the issuance and sale of the Notes until they have received an opinion of their United States counsel that the Notes

would be entitled to a section 3(a)(3) exemption. Applicants represent that the proposed issue of the Notes and all future issues of debt securities (not including deposits) shall have received prior to issuance one of the three highest investment grades from at least one nationally recognized statistical rating organization and that their United States counsel shall have certified that such rating has been received; provided, however, that no such rating need be obtained if, in the opinion of United States counsel for Applicants, such counsel having taken into account for the purposes thereof the doctrine of "integration" referred to in Rule 502 of Regulation D under the 1933 Act and various releases and relevant no-action letters made public by the Commission, an exemption from registration is available with respect to such issue under section 4(2) of the 1933 Act or Regulation D thereunder.

Applicants undertake to insure that the Notes will not be advertised or offered for sale to the general public, but will only be sold by dealers to investors that ordinarily participate in the United States commercial paper market. Applicants also undertake to insure that the dealer will provide each offeree of the Notes prior to purchase a memorandum ("Memorandum") which describes the business of CNCA, including its most recent publicly available audited financial statements examined in accordance with generally accepted accounting principles applicable to French banks. Additionally, Applicants represent that the Memorandum will describe any material differences between French accounting standards applicable to CNCA and generally accepted accounting principles employed by United States banking institutions. Further, Applicants state that the Memorandum and financial statements will be at least as comprehensive as those customarily used in offering commercial paper in the United States and will be updated promptly to reflect material changes in CNCA's business or financial status.

Applicants or either of them may, from time to time in the future, offer other debt securities in the United States. Applicants represent that no such securities shall be offered or sold unless they are: (a) Registered under the 1933 Act or (b) in the opinion of United States counsel for Applicants an exemption from registration is available with respect to such offer and sale or (c) the Commission advises that it would not recommend any action be taken under the 1933 Act if such securities are not registered. Applicants undertake that any such future offering will be done on the basis of disclosure documents at least as comprehensive as those customarily used for offerings of similar securities in the United States. Applicants also undertake that, for any future offering of CNCA's or Credit Agricole-USA's securities made pursuant to a registration statement under the 1933 Act, Applicants will furnish a disclosure document to such persons and in such manner as may be required by the 1933 Act and the rules and regulations thereunder.

In connection with the issuance and sale of the Notes, or any future offering of debt securities, Applicants undertake to appoint (i) a bank or trust company having an office in New York City as authorized agent to issue the Notes from time to time on behalf of Applicants and (ii) such issuing agent or the manager of CNCA's New York branch or a corporation with an office in New York City engaged in providing corporate services for lawyers, as agent to accept service of process in any action commenced in any State or Federal court by the holder of any Note against Applicants based on the Notes or the guarantees relating thereto. Applicants further undertake to accept the jurisdiction of any State or Federal court in the City and State of New York in respect of any such action. Applicants represent that such appointment of an authorized agent to accept service of process and such consent to jurisdiction shall be irrevocable until all amounts due and to become due in respect of the Notes shall have been paid. Applicants also represent it will be subject to suit in any other court in the United States which shall have jurisdiction over Applicants by virtue of the manner of the offering of the Notes or otherwise. Neither the issuing agent nor the agent for service of process will be a trustee for the holders of the Notes nor will they have any responsibilities or duties to act for such holders as would a trustee. Applicants consent to any order granting this application being expressly conditioned on compliance with the representations and undertakings set forth above in the application.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than January 21, 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 specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the 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. 85-194 Filed 1-3-85 8:45 am]

BILLING CODE 8010-01-M

VETERANS ADMINISTRATION

Privacy Act of 1974; Amendment of Systems Notices *

Notice is hereby given that the Veterans Administration is updating three appendices to its notices of systems of records subject to the Privacy Act of 1974. The names of the appendices and dates of last publication are as follows: Appendix 1: Addresses of Veterans Administration Facilities last published at page 697 of the **Federal Register** publication, Privacy Act Issuance, 1980 Compilation, Volume V; Appendix 2: List of all Outreach Program Vet Centers last published at page 9844 of the **Federal Register** of January 29, 1981 (46 FR 9844); Appendix 3: Automated Medication Processing Facilities (Alphabetical by State and Facility With Outpatient Clinic Substations Listed Below Their Associated Medical Center) last published at 52269 of the **Federal Register** dated October 26, 1981 (46 FR 52269). These appendices are being updated to reflect the current names and mailing addresses of all VA facilities. Since these changes are administrative in nature, public comment is not required. These amendments are effective December 26, 1984.

Dated: December 26, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

Appendix 1, Addresses of Veterans Administration Facilities to VA systems of records as set forth on Page 697 of the **Federal Register** publication, Privacy Act Issuances, 1980 Compilation, Volume V, is changed as follows:

Appendix 1: Addresses of Veterans Administration Facilities

Alabama AL

VA Medical Center, 700 South 19th St., Birmingham, Alabama 35233
Mobile National Cemetery, 1202 Virginia St., Mobile, Alabama 36604
VA Outpatient Clinic Substation, 2451 Fillingim St., Mobile, Alabama 36617 (MAIL: VAMC, Biloxi, MS 39531)
VA Regional Office, 474 South Court St., Montgomery, Alabama 36104
VA Medical Center, 215 Perry Hill Rd., Montgomery, Alabama 36109
VA Medical Center, Tuscaloosa, Alabama 35404
VA Medical Center, Tuskegee, Alabama 36083
Fort Mitchell National Cemetery, Phenix City, Alabama (MAIL: NCAO, Atlanta, GA 30308)

Alaska AK

VA Regional Office and Outpatient Clinic, 235 East 8th Ave., Anchorage, Alaska 99501
Sitka National Cemetery, P.O. Box 1065, Sitka, Alaska 99835
Fort Richardson National Cemetery, HQ Infantry, 172D Brigade, AFCT–CM–M, Fort Richardson, Alaska 99505

Arizona AZ

VA Regional Office, 3225 North Central Ave., Phoenix, Arizona 85012
VA Medical Center, Seventh St. & Indian School Rd., Phoenix, Arizona 85012
VA Center Medical Center and Domiciliary, Prescott, Arizona 86301
Prescott National Cemetery, VAMC, Prescott, Arizona 86313
VA Medical Center, Tucson, Arizona 85723

Arkansas AR

VA Medical Center, Fayetteville, Arkansas 72701
Fayetteville National Cemetery, 700 Government Ave., Fayetteville, Arkansas 72701
Fort Smith National Cemetery, 522 Garland Ave. and South 6th St., Fort Smith, Arkansas 72901
VA Regional Office, 1200 West 3rd St., Little Rock, Arkansas 72201
VA Medical Center, 300 East Roosevelt Rd., Little Rock, Arkansas 72206
Little Rock National Cemetery, 2523 Confederate Blvd., Little Rock, Arkansas 72206

California CA

VA Supply Depot, Federal Service Center, Bldg. 701, 5600 Rickenbacker Rd., Bell, California 90201
VA Medical Center, 2615 East Clinton Ave., Fresno, California 93703
VA Medical Center, Livermore, California 94550
Jerry L. Pettis Memorial Veterans Medical Center, 11201 Benton St., Loma Linda, California 92357
VA Medical Center, 5901 East Seventh St., Long Beach, California 90822
VA Regional Office, Federal Bldg., 1100 Wilshire Blvd., Los Angeles, California 90024
VA Public and Consumer Affairs Regional Office, P.O. Box 84041, 11301 Wilshire Blvd., Los Angeles, California 90073
VA Data Processing Center, Federal Bldg., West Lost Angeles, 11000 Wilshire Blvd., Los Angeles, California 90024
VA Medical Center and Domiciliary, West Los Angeles, California 90073
VA Outpatient Clinic, 425 South Hill St., Los Angeles, California 90013
Los Angeles Regional Office of Audit, Wilshire and Sawtelle Blvd., Bldg. 258, Room 330. Los Angeles, California 90013
Los Angeles Regional Office of Investigations, P.O. Box 84102, Los Angeles, California 90073
Los Angeles National Cemetery, 950 S. Sepulveda Blvd., Los Angeles, California 90049
VA Medical Center, 150 Muir Road, Martinez, California 94553
VA Outpatient Clinic Substation, 1515 Clay St., Okland, California 94612
VA Medical Center, 3801 Miranda Ave., Palo Alto, California 94304
Golden Gate National Cemetery, 1300 Sneath Lane, San Bruno, California 94066
Fort Rosecrans National Cemetery, Point Loma, P.O. Box 6237, San Diego, California 92106
Riverside National Cemetery, 22495 Van Buren Blvd., Riverside, California 92508
VA Regional Office, 2022 Camino Del Rio North, San Diego, California 92108
VA Medical Center, 3350 La Jolla Village Drive, San Diego, California 92161
VA Outpatient Clinic, 2022 Camino Del Rio North, San Diego, California 92108
VA Regional Office, 211 Main St., San Francisco, California 94105
VA Medical Center, 4150 Clement st., San Francisco, California 94121
San Francisco National Cemetery, Presidio of San Francisco, P.O. Box 29012, San Francisco California 94129
VA Outpatient Clinic Substation, 315 Camiro Del Remedia, 691 A–OC, P.O. Box 6863, Santa Barbara, California 93105
VA Medical Center, Sepulveda, California 91343

Colordao CO

VA Regional Office, 44 Union Blvd., P.O. Box 25126, Denver, Colorado 80225
VA Medical Center, 1055 Clemont St., Denver, Colorado 80220
VA Prosthetics Distribution Center, Denver Federal Center, Denver, Colorado 80225
Veterans Canteen Service Field Office, Denver Federal Center, Box 25345, Denver, Colorado 80225
National Cemetery Area Office, 44 Union Blvd., Box 25126, Denver, Colorado 80225
Fort Logan National Cemetery, 3698 South Sheridan Blvd., Denver, Colorado 80235
VA Medical Center, Fort Lyon, Colorado 81038
Fort Lyon National Cemetery, VAMC, Fort Lyon, Colorado 81038
VA Medical Center, Grand Junction, Colorado 81501

Connecticut CT

VA Regional Office, 450 Main St., Hartford, Connecticut 06103
Hartford Regional Office of Audit, 450 Main St., Hartford, Connecticut 06103
Hartford Regional Office of Investigations, 450 Main St., Hartford, Connecticut 06103
VA Medical Center, 55 Willard Ave., Newington, Connecticut 06111
VA Medical Center, West Spring St., West Haven, Connecticut 06516

Delaware DE

VA Medical and Regional Office Center, 1601 Kirkwood Highway, Wilmington, Delaware 19805

District of Columbia DC

VA Central Office, 810 Vermont Ave., NW, Washington, D.C. 20420
VA Satellite Service Center, 811 Vermont Ave., Washington, D.C. 20420
VA Public and Consumer Affairs Regional Office, 810 Vermont Ave., NW, Washington, D.C. 20420
VA Congressional Liaison, Room B–328, Rayburn House Office Bldg., Washington, D.C. 20515
VA Regional Office, 941 N. Capitol St., NE, Washington, D.C. 20421
VA Medical Center, 50 Irving St., NW, Washington, D.C. 20422
VA Central Dental Laboratory, 50 Irving St., NW, Washington, D.C. 20422

Florida FL

VA Medical Center and Domiciliary, Bay Pines, Florida 33504
Bay Pines National Cemetery, VAMC, Bay Pines, Florida 33504
VA Outpatient Clinic, P.O. Box 13594, St. Petersburg, Florida 33733
VA Outpatient Clinic Substation, 2070 Carrell Rd., Fort Myers, Florida 33901

VA Medical Center, Archer Road, Gainesville, Florida 32602
VA Outpatient Clinic Substation, St. Luke's Professional Bldg., 1833 Blvd., Jacksonville, Florida 32206
VA Medical Center, Lake City, Florida 32055
VA Medical Center, 1201 Northwest 16th St., Miami, Florida 33125
VA Outpatient Clinic Substation, Port of Palm Beach, Executive Plaza, 301 Broadway, Rivera Beach, Florida 33404
VA Outpatient Clinic Substation, 5599 North Dixie Highway,, Oakland Park, Florida 33334
VA Outpatient Clinic Substation, 83 W. Columbia St., Orlando, Florida 32806
Barrancas National Cemetery, Naval Air Station, Pensacola, Florida 32508
St. Augustine National Cemetery, 104 Marine St., St. Augustine, Florida 32084
VA Regional Office, 144 First Ave. South, P.O. Box 1437, St. Petersburg, Florida 33731
VA Office, Post Office and Courthouse Bldg., 311 West Monroe St., Jacksonville, Florida 32201
VA Office, Room 100, 51 Southwest First Ave., Miami, Florida 33130
VA Medical Center, 13000 North 30th St., Tampa, Florida 33612

Georgia GA

VA Regional Office, 730 Peachtree St., NE, Atlanta, Georgia 30365
Veterans Canteen Service Field Office, 730 Peachtree St., NE, Atlanta, Georgia 30365
VA National Cemetery Area Office, 730 Peachtree St., NE, Atlanta, Georgia 30365
Atlanta Regional Office of Audit, 730 Peachtree St., NE, Suite 700, Atlanta, Georgia 30365
Atlanta Regional Office of Investigations, 730 Peachtree St., NE, Atlanta, Georgia 30365
VA Medical Center, 2460 Wrightsboro Rd. (10), Augusta, Georgia 30910
VA Medical Center, 1670 Clairmont Road, Decatur, Georgia 30033
VA Medical Center and Domiciliary, Dublin, Georgia 31021
Marietta National Cemetery, 500 Washington Ave., Marietta, Georgia 30060

Hawaii HI

VA Regional Office and Outpatient Clinic, 300 Ala Moana Blvd., Honolulu, Hawaii 96813
National Memorial Cemetery of the Pacific, 2177 Puowaina Drive, Honolulu, Hawaii 96813

Idaho ID

VA Medical Center, Fifth and Fort Sts., Boise, Idaho 83702
VA Regional Office, Federal Bldg. & U.S. Courthouse, 550 West Fort St., Box 044, Boise, Idaho 83724

Illinois IL

Chicago Regional Office of Audit, Lock Box 66302, AMF O'Hare, Hines, Illinois 60666
Chicago Regional Office of Investigations, Lock Box 66319, AMF O'Hare, Hines, Illinois, 60666
Alton National Cemetery, 600 Pearl St., Alton, Illinois 62003
VA Regional Office, 536 So. Clark St., Chicago, Illinois 60680
VA Public and Consumer Affairs Regional Office, 536 So. Clark St., Chicago, Illinois 60680
VA Medical Center (Lakeside), 333 East Huron St., Chicago, Illinois 60611
VA Medical Center (West Side), 820 South Damen Ave., Chicago, Illinois 60680
VA Medical Center, Danville, Illinois 61832
VA Outpatient Clinic Subsection, 411 West Seventh St., Peoria, Illinois 61605
VA Medical Center, North Chicago, Illinois 60064
VA Medical Center, Hines, Illinois 60141
VA Marketing Center, P.O. Box 76, Hines, Illinois 60141
VA Supply Depot, P.O. Box 27, Hines, Illinois 60141
VA Data Processing Center, Lock Box 66303, AMF O'Hare, Hines, Illinois 60666
VA Medical Center, Marion, Illinois 62959
Mound City National Cemetery, Junction Highway 37 and 51, Mound City, Illinois 62963
Quincy National Cemetery, 36th and Maine St., Quincy, Illinois 62301
Rock Island National Cemetery, Rock Island Arsenal, Rock Island, Illinois 61299
Camp Butler National Cemetery, R.R. #1, Springfield, Illinois 62707

Indiana IN

VA Medical Center, 1600 Randallia Drive, Fort Wayne, Indiana 46805
VA Regional Office, 575 North Pennsylvania St., Indianapolis, Indiana 46204
VA Medical Center, 1481 West 10th St., Indianapolis, Indiana 46202
Crown Hill National Cemetery, 3402 Boulevard Place, Indianapolis, Indiana 46208
VA Medical Center, Marion, Indiana 46952
Marion National Cemetery, VAMC, Marion, Indiana 46952
New Albany National Cemetery, 1943 Ekin Ave., New Albany, Indiana 47150
VA Outpatient Clinic Substation, 214 Southeast 6th St., Evansville, Indiana 47708

Iowa IA

VA Regional Office, 210 Walnut St., Des Moines, Iowa 50309
VA Medical Center, 30th & Euclid Ave., Des Moines, Iowa 50310
VA Medical Center, Iowa City, Iowa 52240
Keokuk National Cemetery, 18th and Ridge St., Keokuk, Iowa 52632
VA Medical Center, Knoxville, Iowa 50138

Kansas KS

Fort Leavenworth National Cemetery, Fort Leavenworth, Kansas 66048
Fort Scott National Cemetery, P.O. Box 917, Fort Scott, Kansas 66701
VA Medical Center and Domiciliary, Leavenworth, Kansas 66048
Leavenworth National Cemetery, Leavenworth, Kansas 66048
VA Medical Center, 2200 Gage Blvd., Topeka, Kansas 66622
VA Medical and Regional Office Center, 901 George Washington Blvd., Wichita, Kansas 67211

Kentucky KY

Danville National Cemetery, 377 North First St., Danville, Kentucky (MAIL: Camp Nelson National Cemetery, KY 40356)
Lebanon National Cemetery, Lebanon, Kentucky 40033
VA Medical Center, Lexington, Kentucky 40507
Lexington National Cemetery, 833 West Main St., Lexington, Kentucky (MAIL: Camp Nelson National Cemetery, KY 40356)
VA Regional Office, 600 Federal Place, Louisville, Kentucky 40202
VA Medical Center, 800 Zorn Avenue, Louisville, Kentucky 40202
Zachary Taylor National Cemetery, 4701 Brownsboro Road, Louisville, Kentucky 40207
Cave Hill National Cemetery, 701 Baxter Ave., Louisville, Kentucky (MAIL: Zachary Taylor National Cemetery, KY 40207)
Mill Springs National Cemetery, R.R. #1, Nancy, Kentucky 42544
Camp Nelson National Cemetery, R.R. #3, Nicholasville, Kentucky 40356

Louisiana LA

VA Medical Center, Alexandria, Louisiana 71301
Baton Rouge National Cemetery, 220 North 19th St., Baton Rouge, Louisiana 70806
VA Medical Center, 701 Loyola Ave., New Orleans, Louisiana 70113

VA Office, 510 East Stoner Ave., Shreveport, Louisiana 71130
VA Medical Center, 1601 Perdido St., New Orleans, Louisiana 70146
Alexandria National Cemetery, 209 Shamrock Ave., Pineville, Louisiana 71360
VA Medical Center, 510 East Stoner Ave., Shreveport, Louisiana 71130
Port Hudson National Cemetery, Route #1, Box 185, Zachary, Louisiana 70791

Maine ME

VA Medical and Regional Office Center, Togus, Maine 04330
Togus National Cemetery, VAMC and RO, Togus, Maine 04330
VA Office, 85 Preble St., Portland, Maine 04101

Maryland MD

Annapolis National Cemetery, 800 West St., Annapolis, Maryland 21401
VA Regional Office, Federal Bldg., 31 Hopkins Plaza, Baltimore, Maryland 21201
VA Medical Center, 3900 Loch Raven Blvd., Baltimore, Maryland 21218
VA Outpatient Clinic, Federal Bldg., 31 Hopkins Plaza, Baltimore, Maryland 21201
Baltimore National Cemetery, 5501 Frederick Ave., Baltimore, Maryland 21228
Loudon Park National Cemetery, 3445 Frederick Ave., Baltimore, Maryland (MAIL: Baltimore National Cemetery, MD 21228)
VA Medical Center, Fort Howard, Maryland 21052
Hyattsville Regional Office of Audit, Presidential Bldg., 6525 Belcrest Rd., Suite 412, Hyattsville, Maryland 20782
Hyattsville Regional Office of Investigations, Presidential Bldg., 6525 Belcrest Rd., Suite 412, Hyattsville, Maryland 20782
VA Medical Center, Perry Point, Maryland 21902

Massachusetts MA

VA Medical Center, 200 Springs Rd., Bedford, Massachusetts 01730
VA Regional Office, John Fitzgerald Kennedy Federal Bldg., Government Center, Boston, Massachusetts 02203
VA Office, 1200 Main St., Springfield, Massachusetts 01103
VA Medical Center, 150 South Huntington Ave., Boston, Massachusetts 02130
VA Outpatient Clinic Substation, 50 Kearney Square, Lowell, Massachusetts 01852
VA Outpatient Clinic, 17 Court St., Boston, Massachusetts 02108
VA Medical Center, Brockton, Massachusetts 02401
VA Outpatient Clinic Substation, 53 North Sixth St., New Bedford, Massachusetts 02740
VA Medical Center, Northampton, Massachusetts 01060
VA Outpatient Clinic Substation, 101 State St., Springfield, Massachusetts 01103
VA Medical Center, 1400 Veterans of Foreign Wars Parkway, West Roxbury, Massachusetts 02132
VA Outpatient Clinic Substation, Federal Bldg., 575 Main St., Worcester, Massachusetts 01608
Massachusetts National Cemetery, Bourne, Massachusetts 02532

Michigan MI

VA Medical Center, Allen Park, Michigan 48101
Fort Custer National Cemetery, 15501 W. Dickman Rd., Augusta, Michigan 49012
VA Medical Center, 2215 Fuller Rd., Ann Arbor, Michigan 48105
VA Medical Center, Battle Creek, Michigan 49016
VA Outpatient Clinic Substation, 260 Jefferson St., S.E., Grand Rapids, Michigan 49502
VA Regional Office, 477 Michigan Avenue, Detroit, Michigan 48226
VA Medical Center, Iron Mountain, Michigan 49801
VA Medical Center, 1500 Weiss St., Saginaw, Michigan 48602

Minnesota MN

VA Medical Center, 54th St. & 48th Ave. South, Minneapolis, Minnesota 55417
VA Outpatient Clinic, Fort Snelling, St. Paul, Minnesota 55111
VA Medical Center, St. Cloud, Minnesota 56301
VA Center, Federal Bldg., Fort Snelling, St. Paul, Minnesota 55111
VA Regional Office and Insurance Center, Federal Bldg., Fort Snelling, St. Paul, Minnesota 55111
VA Data Processing Center, Federal Bldg., Fort Snelling, St. Paul Minnesota 55111
Fort Snelling National Cemetery, 7601 34th Avenue South, Minneapolis, Minnesota 55450

Mississippi MS

VA Medical Center and Domiciliary, Biloxi, Mississippi 39531
Biloxi National Cemetery, VAMC, Biloxi, Mississippi 39531
Corinth National Cemetery, 1551 Horton St., Cornith, Mississippi 38834
VA Medical Center and Domiciliary, 1500 East Woodrow Wilson Ave., Jackson, Mississippi 39216
VA Regional Office, 100 West Capitol St., Jackson, Mississippi 39269
Natchez National Cemetery, 61 Cemetery Road, Natchez, Mississippi 39120

Missouri MO

Harry S. Truman Memorial Veterans Medical Center, 800 Stadium Road, Columbia, Missouri 65201
Jefferson City National Cemetery, 1024 East McCarty St., Jefferson City, Missouri (MAIL: NCAO, Atlanta, GA 30308)
VA Medical Center, 4801 Linwood Blvd., Kansas City, Missouri 64128
VA Medical Center, Poplar Bluff, Missouri 63901
Kansas City Regional Office of Audit, 1221 Baltimore St., Suite 1000, Kansas City, Missouri 64105
Kansas City Regional Office of Investigations, 1221 Baltimore St., Suite 1000, Kansas City, Missouri 64105
VA Records Depository, P.O. Box 141, Neosho, Missouri 64850
VA Regional Office, Federal Bldg., 1520 Market St., St. Louis, Missouri 63103
VA Office, Federal Office Bldg., 601 East 12th St., Kansas City, Missouri 64106
Veterans Canteen Service Finance Center, Federal Bldg., 405 Tucker Blvd., St. Louis, Missouri 63101
VA Medical Center, St. Louis, Missouri 63125
VA Records Processing Center, P.O. Box 5020, St. Louis, Missouri 63115
Jefferson Barracks National Cemetery, 101 Memorial Drive, St. Louis, Missouri 63125
Springfield National Cemetery, 1702 East Seminole St., Springfield, Missouri 65804

Montana MT

VA Medical and Regional Office Center, Fort Harrison, Montana 59636
VA Medical Center, Miles City, Montana 59301

Nebraska NE

VA Medical Center, Grand Island, Nebraska 68601
VA Regional Office, 100 Centennial Mall North, Lincoln, Nebraska 68508
VA Medical Center, 600 South 70th St., Lincoln, Nebraska 68510
VA Medical Center, 4101 Woolworth Avenue, Omaha, Nebraska 68105
Fort McPherson National Cemetery, Maxwell, Nebraska 69151

Nevada NV

VA Regional Office, 245 East Liberty St., Reno, Nevada 89520
VA Medical Center, 1000 Locust St., Reno, Nevada 89520
VA Outpatient Clinic, 1703 West Charleston Blvd., Las Vegas, Nevada 89102

New Hampshire NH

VA Regional Office, 275 Chestnut St., Manchester, New Hampshire 03101
VA Medical Center, 718 Smyth Rd., Manchester, New Hampshire 03104

New Jersey NJ

Beverly National Cemetery, Beverly, New Jersey 08010
VA Medical Center, East Orange, New Jersey 07019
VA Outpatient Clinic, 20 Washington Place, Newark, New Jersey 07120
VA Medical Center, Lyons, New Jersey 07939
VA Regional Office, 20 Washington Place, Newark, New Jersey 07120
Finn's Point National Cemetery, R.F.D. #3, Fort Mott Road, Salem, New Jersey 08079
VA Supply Depot, Somerville, New Jersey 08876
Veterans Canteen Service Field Office, Somerville, New Jersey 08876

New Mexico NM

VA Regional Office, 500 Gold Ave., SW, Albuquerque, New Mexico 87102
VA Medical Center, 2100 Ridgecrest Dr., SE, Albuquerque, New Mexico 87108
Fort Bayard National Cemetery, 403 South Bullard St., Silver City, New Mexico 88061
Santa Fe National Cemetery, Box 88, Santa Fe, New Mexico 87501

New York NY

VA Medical Center, Albany, New York 12208
VA Office, Leo W. O'Brien Federal Building, Clinton Ave. and N. Pearl Street, Albany, New York 12207
VA Medical Center, Batavia, New York 14020
VA Medical Center and Domiciliary, Bath, New York 14810
Bath National Cemetery, VAMC, Bath, New York 14810
VA Medical Center, 130 West Kingsbridge Rd., Bronx, New York 10468
VA Medical Center, 800 Poly Place, Brooklyn, New York 11209
VA Outpatient Clinic Substation, 100 State St., Rochester, New York 14614
Cypress Hills National Cemetery, 625 Jamacia Ave., Brooklyn, New York (MAIL: NCAO, Philadelphia, PA 19106)
VA Regional Office, Federal Bldg., 111 West Huron St., Buffalo, New York 14202
VA Medical Center, 3495 Bailey Ave., Buffalo, New York 14215
Calverton National Cemetery, Princeton Blvd., Calverton, New York 11933
VA Medical Center, Canandaigua, New York 14424
VA Medical Center, Castle Point, New York 12511
Woodlawn National Cemetery, 1825 Davis St., Elmira, New York (MAIL: Bath National Cemetery, NY 14810)
Long Island National Cemetery, Farmingdale, L.I., New York 11735
Franklin Delano Roosevelt Medical Center, Montrose, New York 10548
VA Regional Office, 252 Seventh Ave. at 24th St., New York, New York 10001
VA Prosthetics Evaluation Testing Center, 252 Seventh Ave., New York, New York 10001
VA Public and Consumer Affairs Regional Office, 252 Seventh Ave., New York, New York 10001
VA Medical Center, First Ave. at East 24th St., New York, New York 10001
VA Outpatient Clinic, 252 Seventh Ave., New York, New York 10001
VA Medical Center, Northport, New York 11768
VA Office, Federal Office Building and Courthouse, 100 State Street, Rochester, New York 14614
VA Office, U.S. Courthouse and Federal Bldg., 100 South Clinton St., New York 13260
VA Medical Center Irving Ave. & University Pl., Syracuse, New York 13210

North Carolina NC

VA Medical Center, 508 Fulton St., Durham, North Carolina 27705
VA Medical Center, 2300 Ramsey St., Fayetteville, North Carolina 28301
VA Medical Center, Asheville, North Carolina 28805
New Bern National Cemetery, 1711 National Ave., New Bern, North Carolina 28560
Raleigh National Cemetery, 501 Rock Quarry Road, Raleigh, North Carolina 27610
VA Medical Center, 1601 Brenner Ave., Salisbury, North Carolina 28144
Salisbury National Cemetery, 202 Government Road, Salisbury, North Carolina 28144
Wilmington National Cemetery, 2011 Market St., Wilmington, North Carolina 28403
VA Outpatient Clinic, 251 North Main St., Winston-Salem, North Carolina 27155
VA Regional Office, Federal Office Building, 251 North Main Street, Winston-Salem, North Carolina 27155

North Dakota ND

VA Regional Office, 655 First Ave. North, Fargo, North Dakota 58102
VA Medical Center, Elm and 21st Ave. North, Fargo, North Dakota 58102

Ohio OH

VA Medical Center, Chillicothe, Ohio 45601
VA Medical Center, 3200 Vine St., Cincinnati, Ohio 45220
VA Regional Office, Federal Office Bldg., 1240 East Ninth St., Cleveland, Ohio 44199
VA Office, Room 1024, Federal Office Bldg., 550 Main St., Cincinnati, Ohio 45202
VA Office, 200 North High St., Room 309, Columbus, Ohio 43215
VA Medical Center, 10701 East Boulevard, Cleveland, Ohio 44106
VA Outpatient Clinic, 2090 Kenny Rd., Columbus, Ohio 43221
VA Medical Center and Domiciliary, Dayton, Ohio 45428
Dayton National Cemetery, VAMC, 4100 West Third St., Dayton, Ohio 45428
VA Outpatient Clinic Substation, 3333 Glendale Ave., Toledo, Ohio 43614

Oklahoma OK

Fort Gibson National Cemetery, Fort Gibson, Oklahoma 74434
VA Regional Office, 125 South Main St., Muskogee, Oklahoma 74401
VA Office, Federal Bldg., 200 Northwest Fourth St., Oklahoma City, Oklahoma 73102
VA Outpatient Clinic Substation, 635 West 11th St., Tulsa, Oklahoma 74101
VA Medical Center, Oklahoma 74401
VA Medical Center, 921 Northeast 13th St., Oklahoma City, Oklahoma 73104

Oregon OR

VA Regional Office, 1220 SW Third Ave., Portland, Oregon 97204
VA Medical Center, 3710 SW U.S. Veterans Hospital Rd., Portland, Oregon 97207
Willamette National Cemetery, 11800 Southeast Mt. Scott Blvd., P.O. Box 66147, Portland, Oregon 97266
VA Outpatient Clinic, Portland, Oregon 97207
VA Medical Center, Roseburg, Oregon 97470
Roseburg National Cemetery, VAMC, Roseburg, Oregon 97470
VA Domiciliary, White City, Oregon 97501
White City National Cemetery, 2763 Riley Rd., Eagle Point, Oregon 97524

Pennsylvania PA

VA Medical Center, Altoona, Pennsylvania 16603
VA Medical Center, Butler, Pennsylvania 16001
VA Medical Center, Coatesville, Pennsylvania 19320
VA Medical Center, 135 East 38th St., Erie, Pennsylvania 16501
VA Medical Center, Lebanon, Pennsylvania 17042
VA Outpatient Clinic Substation, Federal Bldg., 228 Walnut St., Harrisburg, Pennsylvania 17108

Indiantown Gap National Cemetery, P.O. Box 187, Annville, Pennsylvania 17003
VA Regional Office and Insurance Center, 5000 Wissahickon Ave., (Mail P.O. Box 80709) Philadelphia, Pennsylvania 19101
VA Office, 19–27 North Main St., Wilkes-Barre, Pennsylvania 18701
VA Data Processing Center, P.O. Box 8079, Philadelphia, Pennsylvania 19101
VA Medical Center, University and Woodland Aves., Philadelphia, Pennsylvania 19104
VA Outpatient Clinic, 1421 Cherry St., Philadelphia, Pennsylvania 19102
Philadelphia National Cemetery, Haines St. and Limekiln Pike, Philadelphia, Pennsylvania 19138
VA Regional Office, 1000 Liberty Ave., Pittsburgh, Pennsylvania 15222
VA Medical Center, Highland Drive, Pittsburgh, Pennsylvania 15206
VA Medical Center, University Drive C, Pittsburgh, Pennsylvania 15240
VA Outpatient Clinic, 100 Liberty Ave., Pittsburgh, Pennsylvania 15222
VA Medical Center, 1111 East End Blvd., Wilkes-Barre, Pennsylvania 18711
VA National Cemetery Area Office, Independence Building South, 434 Walnut St., Rm. 1040, Philadelphia, Pennsylvania 19106
VA Outpatient Clinic, Substation, 2937 Hamilton Blvd., Allentown, Pennsylvania 18104

Philippines

VA Regional Office and Outpatient Clinic, 1131 Roxas Blvd., Manila, Philippines; MAILING ADDRESS from U.S.: VA Regional Office, APO San Francisco 96528

Puerto Rico, Commonwealth of (Including the Virgin Islands) PR

VA Medical and Regional Office Center, Barrio Monacillos, Rio Piedras, Puerto Rico 00921
VA Medical and Regional Office Center, U.S. Courthouse and Federal Bldg., Carlos E. Chardon Ave., Hato Rey, Puerto Rico 00918
Puerto Rico National Cemetery, Box 1298, Bayamon, Puerto Rico 00619
VA Outpatient Clinic, Substation Calle Isabel 60, Ponce, Puerto Rico 00731
VA Outpatient Clinic, Substation, Road Number 2, Mayaguez, Puerto Rico 00708

Rhode Island RI

VA Regional Office, 380 Westminster Mall, Providence, Rhode Island 02903
VA Medical Center, Davis Park, Providence, Rhode Island 02908

South Carolina SC

Beaufort National Cemetery, 1601 Boundary St., Beaufort, South Carolina 29902
VA Medical Center, 109 Bee St., Charleston, South Carolina 29403
VA Regional Office, 1801 Assembly St., Columbia, South Carolina 29201
VA Medical Center, Columbia, South Carolina 29201
Florence National Cemetery, 803 East National Cemetery Road, Florence, South Carolina 29501
VA Outpatient Clinic Substation, Piedmont East Bldg., 37 Villa Rd., Greenville, South Carolina 29607

South Dakota SD

VA Medical Center, Fort Meade, South Dakota 57741
Fort Meade National Cemetery, VAMC, Fort Meade, South Dakota 57741
VA Medical Center and Domiciliary, Hot Springs, South Dakota 57747
Hot Springs National Cemetery, VAMC, Hot Springs, South Dakota 57747
VA Medical and Regional Office Center, 2501 West 22nd St., Sioux Falls, South Dakota 57117
Black Hills National Cemetery, P.O. Box 640, Sturgis, South Dakota 57785

Tennessee TN

Chattanooga National Cemetery, 1200 Bailey Ave., Chattanooga, Tennessee 37404
Knoxville National Cemetery, 939 Tyson St., NW, Knoxville, Tennessee 37917
Nashville National Cemetery, 1420 Gallatin Road, South, Madison, Tennessee 37115
VA Medical Center, 1030 Jefferson Ave., Memphis, Tennessee 38104
Memphis National Cemetery, 3568 Townes Ave., Memphis, Tennessee 38122
VA Medical Center and Domiciliary, Mountain Home, Tennessee 37601
Mountain Home National Cemetery, P.O. Box 8, Mountain Home, Tennessee 37684
VA Medical Center, Murfreesboro, Tennessee 37130
VA Regional Office, 110 9th Ave. South, Nashville, Tennessee 37203
VA Medical Center, 1310 24th Ave. South, Nashville, Tennessee 37203
VA Outpatient Clinic Substation, Building 6200, Eastgate Center, Chattanooga, Tennessee 37411
VA Outpatient Clinic Substation, 9047 Executive Park Dr., Suite 100, Knoxville, Tennessee 37919

Texas TX

VA Medical Center, 6010 Amarillo Blvd. West, Amarillo, Texas 79106
VA Data Processing Center, 1615 East Woodward St., Austin, Texas 78772
VA Data Transmission Center, 1615 East Woodward St., Austin, Texas 78772
VA Medical Center, Big Spring, Texas 79720
VA Medical Center and Domiciliary, Bonham, Texas 75418
VA Outpatient Clinic Substation, 1502 South Brownlee Blvd., Corpus Christi, Texas 78404
VA Medical Center, 4500 South Lancaster Rd., Dallas, Texas 75216
VA Public and Consumer Affairs Regional Office, 4500 South Lancaster Rd., Dallas Texas 75216
VA Central Dental Lab, 4502 South Lancaster Rd., Dallas, Texas 75216
VA Office, U.S. Courthouse and Federal Office Building, 1100 Commerce Street, Dallas, Texas 75202
Dallas Regional Office of Audit, 2626 Mockingbird, Rm. 280, Dallas, Texas 75235
Dallas Regional Office of Investigations, 2626 Mockingbird, Rm. 280, Dallas, Texas 75235
VA Outpatient Clinic, 5919 Brook Hollow Drive, El Paso, Texas 79925
Fort Bliss National Cementery, P.O. Box 6342, Fort Bliss, Texas 79906
Houston National Cementery, 10410 Stuebner Air Line Road, Houston, Texas 77038
VA Regional Office, 2515 Murworth Dr., Houston, Texas 77054
VA Office, 307 Dwyer Ave., San Antonio, Texas 78285
VA Medical Center, 2002 Holcombe Blvd., Houston, Texas 77211
VA Outpatient Clinic Substation, 3385 Fannin St., Beaumont, Texas 77701
VA Medical Center, Kerrville, Texas 78028
VA Office, Federal Building, U.S. Courthouse, 1205 Texas Ave., Lubbock, Texas 79401
Kerrville National Cemetery, Veterans Administration Medical Center, Spur Rt. 100, Kerrville, Texas 78028
VA Outpatient Clinic, 1205 Texas Ave., Room 814, Lubbock, Texas 79401
VA Medical Center, Marlin, Texas 76661
VA Outpatient Clinic Substation, 1220 Jackson Ave., McAllen, Texas 78501
Audie L. Murphy Memorial Veterans Medical Center, 7400 Merton Minter Blvd., San Antonio, Texas 78284
San Antonio National Cemetery, 517 Paso Hondo St., San Antonio, Texas [MAIL: Sam Houston National Cemetery, TX 78209]
Fort Sam Houston National Cemetery, 1520 Harry Wurzbach Road, San Antonio, Texas 78209
VA Outpatient Clinic Substation, 307 Dwyer Ave., San Antonio, Texas 78285
VA Medical Center and Domiciliary, Temple, Texas 76501

VA Regional Office, 1400 North Valley Mills Drive, Waco, Texas 76799
VA Office, U.S. Courthouse and Federal Bldg., 1100 Commerce St., Dallas, Texas 75202
VA Medical Center, Memorial Drive, Waco, Texas 76703
VA Outpatient Clinic, 1400 North valley Mills Drive Waco, Texas 76799

Utah UT

VA Regional Office, 125 South State St., P.O. Box 11500, Salt Lake City, Utah 84147
VA Medical Center, 500 Foothill Blvd., Salt Lake City, Utah 84148

Vermont VT

VA Medical and Regional Office Center, White River Junction, Vermont 05001

Virginia VA

Forms and Publications Depot, 6307 Gravel Ave., Alexandria, Virginia 22310
Alexandria National Cemetery, 1450 Wilkes Street, Alexandria, Virginia 22314
Culpepper National Cemetery, 305 U.S. Ave., Culpepper, Virginia 22701
Danville National Cemetery, 721 Lee St., Danville, Virginia 24541
VA Medical Center and Domiciliary, Hampton, Virginia 23667
Hampton National Cemetery, Cemetery Road at Marshall Ave., Hampton, Virginia 23669
City Point National Cemetery, 10th Ave. and Davis St., Hopewell, Virginia (MAIL: Richmond National Cemetery, VA 23231)
Balls Bluff National Cemetery, Leesburg, Virginia (MAIL: Winchester National Cemetery, VA 22601)
Cold Harbor National Cemetery, R.F.D. #4, Box 155, Mechanicsville, Virginia (MAIL: Richmond National Cemetery, VA 23231)
VA Medical Center, 1201 Broad Rock Road, Richmond, Virginia 23249
Fort Harrison National Cemetery, R.F.D. #5, Box 174, Varina Road, Richmond, Virginia (MAIL: Richmond National Cemetery, VA 23231)
Richmond National Cemetery, 1701 Williamsburg Road, Richmond, Virginia 23231
Glendale National Cemetery, R.F.D. #5, Box 272, Richmond, Virginia (MAIL: Richmond National Cemetery, VA 23231)
VA Regional Office, 210 Franklin Rd., SW, Roanoke, Virginia 24011
VA Medical Center, Salem, Virginia 24153
Seven Pines National Cemetery, 400 East Williamsburg Road, Sandston, Virginia (MAIL: Richmond National Cemetery, VA 23231)
Staunton National Cemetery, 901 Richmond Ave., Staunton, Virginia 24401
Winchester National Cemetery, 401 National Ave., Winchester, Virginia 22601
Quantico National Cemetery, P.O. Box 10, Triangle, Virginia 22172

Washington WA

VA Medical Center, American Lake, Tacoma, Washington 98493
VA Regional Office, 915 Second Ave., Seattle, Washington 98174
VA Medical Center, 1660 South Columbian Way, Seattle, Washington 98108
Seattle Regional Office of Audit, P.O. Box 409, Seattle, Washington 98174
Seattle Regional Office of Investigations, P.O. Box 409, Seattle, Washington 98174
VA Medical Center, North 4815 Assembly St., Spokane, Washington 99208
VA Medical Center, Vancouver, Washington 98661
VA Medical Center, 77 Wainwright Drive, Walla Walla, Washington 99362

West Virginia WV

VA Medical Center, 200 Veterans ave., Beckley, West Virginia 25801
VA Medical Center, Clarksburg, West Virginia 26301
Grafton National Cemetery, 431 Walnut St., Grafton, West Virginia 26354
VA Regional Office, 640 4th Ave., Huntington, West Virginia 25704
VA Medical Center, 1540 Spring Valley Dr., Huntington, West Virginia 25701
VA Medical Center and Domiciliary, Martinsburg, West Virginia 25401
VA Data Transmission Center, Grassylick Rd., Romney, West Virginia 26725

Wisconsin WI

VA Medical Center, 2500 Overlook Terrace, Madison, Wisconsin 53705
VA Center (Milwaukee), P.O. Box 6, Wood, Wisconsin 53193
VA Medical Center, Tomah, Wisconsin 54660
VA Medical Center and Domiciliary, 5000 West National Ave., Wood, Wisconsin 53193
Wood National Cemetery, VAMC 5000 West National Ave., Wood, Wisconsin 53193

Wyoming WY

VA Medical and Regional Office Center, 2360 East Pershing Blvd., Cheyenne, Wyoming 82001
VA Medical Center, Sheridan, Wyoming 82801

Appendix 2, List of all Outreach Program Vet Centers to VA systems of records as set forth on page 9845 of the **Federal Register** dated January 29, 1981 is revised as follows:

Appendix 2: List of all Outreach Program Vet Centers

Vet Center, 4201 Tudor Centre Drive, Suite 115, Anchorage, AK 99508
Vet Center Satellite, 712 10th Ave., Fairbanks, AK 99701
Vet Center Satellite, P.O. Box 1883, Kenai, AK 99611
Vet Center Satellite, Box 957, Wasilla, AK 99687
Vet Center, 2145 Highland Ave., Suite 250, Birmingham, AL 35205
Vet Center, 110 Marine Street, Mobile AL 36604
Vet Center, 1311 West 2nd St., Little Rock, AR 72201
Vet Center, 807 North 3rd St., Phoenix, AZ 85004
Vet Center, 727 North Swan, Tucson, AZ 85711
Vet Center, 859 South Harbor Blvd., Anaheim, CA 92805
Vet Center, 1899 Clayton Road, Suite 140, Concord, CA 94520
Vet Center, 1340 Van Ness Ave., Fresno, CA 93721
Vet Center, 251 West 85th Place, Los Angeles, CA 90003
Vet Center, 2000 Westwood Blvd., Los Angeles, CA 90025
Vet Center, 2449 West Beverly Blvd., Montabello, CA 90640
Vet Center, 18924 Roscoe Blvd., Northridge, CA 91335
Vet Center, 616 16th St., Oakland, CA 94612
Vet Center, 4954 Arlington Ave., Riverside, CA 92504
Vet Center, 2900 6th Ave., San Diego, CA 92103
Vet Center, 1708 Waller Street, San Francisco, CA 94117
Vet Center, 2989 Mission Street, San Francisco, CA 94110
Vet Center, 1648 West Santa Clara Street, San Jose, CA 95116
Vet Center, 361 S. Monroe St., Suite 605, San Jose, CA 95128
Vet Center Satellite, 875 West Moreno Ave., Colorado Springs, CO 80905
Vet Center, 1820 Gilpin Street, Denver, CO 80218
Vet Center, 370 Market Street, Hartford, CT 06103
Vet Center, 562 Whalley Ave., New Haven, CT 06510
Vet Center, 709 8th St., SE, Washington DC 20003
Vet Center, Van Buren Medical Center, 1411 N. Van Buren St., Wilmington, DE 19806
Vet Center, 400 E. Prospect Rd., Ft. Lauderdale, FL 33334

Vet Center, 255 Liberty St., Jacksonville, FL 32202
Vet Center, 412 N.E. 39th St., Miami, FL 33137
Vet Center, 5001 South Orange, Orlando, FL 32809
Vet Center, 235 31st St. North, St. Petersburg, FL 33713
Vet Center, 1507 W. Sligh Ave., Tampa, FL 33604
Vet Center, 65 11th St., NE, Atlanta, GA 30309
Vet Center, 1370 Kapiolani Blvd., Suite 201, Honolulu, HI 96814
Vet Center, 3619 6th Avenue, Des Moines, IA 50313
Vet Center, 706 Jackson, Sioux City, IA 51101
Vet Center, 103 West State St., Boise, ID 83702
Vet Center, 547 West Roosevelt Rd., Chicago, IL 60607
Vet Center, 1600 Halsted St., Chicago Heights, IL 60411
Vet Center, 155 South Oak Park Ave., Oak Park, IL 60302
Vet Center, 605 N.E. Monroe, Peoria, IL 61603
Vet Center, 101 N. Kentucky Ave., Evansville, IN 47711
Vet Center, 528 West Berry St., Fort Wayne, IN 46802
Vet Center, 811 Massachusetts Ave., Indianapolis, IN 46204
Vet Center, 249 West Short St., Lexington, KY 40507
Vet Center, 736 South 1st St., Louisville, KY 40202
Vet Center, 310 South Laura, Wichita, KS 67211
Vet Center, 1529 N. Claibourne Ave., New Orleans, LA 70116
Vet Center, 480 Tremont Street, Boston, MA 02116
Vet Center, 71 Washington St., Brighton, MA 02135
Vet Center, 15 Bolton Place, Brockton, MA 02401
Vet Center, 1985 Main St., Northgate Plaza, Springfield, MA 01103
Vet Center, 1420 W. Patapsco Ave, Patapsco Plaza, Baltimore, MD 21230
Vet Center, Mondawmin Shopping Center, 1153 Mondawmin Concourse, Baltimore, MD 21215
Vet Center, 7 Elkton Commercial Plaza, Elkton, MD 21921
Vet Center, 8121 Georgia Ave., Suite 500, Silver Spring, MD 20910
Vet Center, 96 Harlow Street, Bangor, ME 04401
Vet Center, 175 Lancaster St., Room 213, Portland, ME 04101
Vet Center, 18411 West Seven Mile Rd., Detroit, MI 48219
Vet Center, 1940 Eastern Ave., SE, Grand Rapids, MI 49507
Vet Center, 14405 North Line, Southgate, MI 48195
Vet Center, 3600 Broadway, Suite 19, Kansas City, MO 64111
Vet Center, 2345 Pine Street, St. Louis, MO 63103
Vet Center, 405 E. Superior St., Duluth, MN 55802
Vet Center, 2480 University Ave., St. Paul, MN 55114
Vet Center, 158 E. Pascagoula St., Jackson, MS 39201
Vet Center, 2708 Montana Avenue, Billings, MT 59101
Vet Center, 910 North Alexander St., Suite 210, Charlotte, NC 28206
Vet Center, 4 Market Square, Fayetteville, NC 28301
Vet Center, 1322 Gateway Drive, Fargo, ND 58103
Vet Center, 108 Burdick Expressway, Minot, ND 58701
Vet Center, 920 L Street, Lincoln, NE 65808
Vet Center, 5123 Leavenworth St., Omaha, NE 68106
Vet Center, 14 Pearl Street, Manchester, NH 03104
Vet Center, 626 Newark Ave., Jersey City, NJ 07036
Vet Center, 1030 Broad Street, Newark, NJ 07102
Vet Center, 318 East State St., Trenton, NJ 08608
Vet Center, 4603 4th Street, NW, Albuquerque, NM 87107
Vet Center Satellite, 211 West Mesa, Gallup, NM 87301
Vet Center, 214 South 8th St., Las Vegas, NV 89101
Vet Center, 341 S. Arlington St., Reno, NV 89501
Vet Center, 875 Central Ave., West Mall Office Plaza, Albany, NY 12208
Vet Center, 116 West Main St., Babylon, NY 11702
Vet Center, 226 East Fordham Rd., Rooms 216/217, Bronx, NY 10458
Vet Center, 165 Cadman Plaza East, Brooklyn, NY 11201
Vet Center, 351 Linwood Avenue, Buffalo, NY 14209
Vet Center, 148–43 Hillside Ave., Jamaica Hills, NY 11435
Vet Center, 166 West 75th St., Manhattan, NY 10023
Vet Center Satellite, 200 Hamilton, Ave., White Plains Mall, White Plains, NY 10601
Vet Center, 31 East 12th St., 4th Floor, Cincinnati, OH 45202
Vet Center, 10605 Carnegie Ave., Cleveland, OH 44106
Vet Center, 11511 Lorain Ave., Cleveland, OH 44111
Vet Center, 1751 Cleveland Ave., Columbus, OH 43211
Vet Center, 438 Wayne Avenue, Dayton, OH 45410
Vet Center, 4111 North Lincoln, suite #10, Oklahoma City, OK 73105
Vet Center, 1605 South Boulder, Tulsa, OK 74119
Vet Center, 1966 Garden Avenue, Eugene, OR 97403
Vet Center, 2450 SE Belmont, Portland, OR 97214
Vet Center, 127 State Street, Harrisburg, PA 17101
Vet Center Satellite, 4328 Old William Penn Highway, Monroeville, PA 15146
Vet Center, 1107 Arch Street, Philadelphia, PA 19107
Vet Center, 5601 North Broad Street, Room 202, Philadelphia, PA 19141
Vet Center, 954 Penn Avenue, Pittsburgh, PA 15222
Vet Center, Suite LC–8A/9 Medical Center Plaza, La Riviera, Rio Piedras, PR 00921
Vet Center, 172 Pine Street, Pawtucket, RI 02860
Vet Center, 904 Pendelton St., Greenville, SC 29601
Vet Center, 3366 Rivers Avenue, No. Charleston, SC 29405
Vet Center, 610 Kansas City Street, Rapid City, SD 57701
Vet Center, 100 West 6th St., Suite 101, Sioux Falls, SD 57102
Vet Center, 1515 E. Magnolia Ave., Suite 201, Knoxville, TN 37917
Vet Center, 1 North 3rd Street, Memphis, TN 38103
Vet Center, 5415 Maple Plaza, Suite 114, Dallas, TX 75235
Vet Center, 2121 Wyoming St., El Paso, TX 79903
Vet Center, Seminary South Office Building, Suite 10, Forth Worth, TX 76115
Vet Center, 4905A San Jacinto, Houston, TX 77004
Vet Center, 717 Corpus Christi, Laredo, TX 78040
Vet Center, 107 Lexington Ave., San Antonio, TX 78205
Vet Center, 1916 Fredericksburg Road, San Antonio, TX 78201
Vet Center, 216 East 5th St. South, Salt Lake City, UT 84102
Vet Center, 7450 ½ Tidewater Drive, Norfolk, VA 23505
Vet Center, Gresham Court Box 83, 1030 West Franklin St., Richmond, VA 23220
Vet Center Satellite, St. Croix, VI 00802
Vet Center, Havensight Mall (116V), St. Thomas, VI 00802
Vet Center, Building #2, Gilman Office Complex, White River Junction, VT 05001
Vet Center Satellite, RFD #2, Tafts Corners, Williston, VT 05495
Vet Center, 1322 East Pike St., Seattle, WA 98122
Vet Center, North 1611 Division, Spokane, WA 99207

Vet Center, 4801 Pacific Avenue, Tacoma, WA 98408
Vet Center, 147 S. Butler St., Madison, WI 53703
Vet Center, 3400 Wisconsin, Milwaukee, WI 53208
Vet Center, 1014 6th Avenue, Huntington, WV 25701
Vet Center, 1191 Pineview Drive, Morgantown, WV 26505
Vet Center Satellite, 641 East Second St., Casper, WY 82601
Vet Center, 1810 Pioneer St., Cheyenne, WY 82001

Appendix 3, Automated Medication Processing Facilities to VA systems of records as set forth on page 52271 of the Federal Register dated October 26, 1981 is changed as follows:

Appendix 3: Automated Medication Processing Facilities

(Alphabetical by State and Facility With Outpatient Clinic Substations Listed Below Their Associated Medical Center)

VA Medical Center, 700 South 19th Street, Birmingham, Alabama 35233
VA Medical Center, 215 Perry Hill Road, Montgomery, Alabama 36109
VA Outpatient Clinic Substation, 2451 Fillingim Street, Mobile, Alabama 36617 (MAIL: VAMC Biloxi, MS 39531)
VA Medical Center, Tuscaloosa, Alabama 35404
VA Medical Center, Tuskegee, Alabama 36083
VA Medical Center, 2615 East Clinton Avenue, Fresno, California 93703
VA Medical Center, Livermore, California 94550
VA Medical Center, 11201 Benton Street, Jerry L. Pettis Mem. Vets. Hosp., Loma Linda, California 92357
VA Medical Center, 5901 East Seventh Street, Long Beach, California 90822
VA Medical Center, 11301 Wilshire Blvd., West Los Angeles (Brentwood), California 90073
VA Medical Center, West Los Angeles (Wadsworth), California 90073
Veterans Administration Outpatient Clinic, P.O. Box 6863, 315 Camiro Del Remedio, 691 A-OC, Santa Barbara, California 93105
VA Regional Pharmacy, Mail-Out Service Bldg. 222, W. Los Angeles, California 90073
VA Outpatient Clinic, 425 South Hill Street, Los Angeles, California 90013
VA Medical Center, 150 Muir Road, Martinez, California 94553
VA Outpatient Clinic Substation, 1515 Clay Street, Oakland, California 94612
VA Outpatient Clinic Substation, 4600 Broadway, Sacramento, California 95820
VA Medical Center, 3801 Miranda Avenue, Palo Alto, California 94304
VA Medical Center, 3350 La Jolla Village Drive, San Diego, California 92161
VA Outpatient Clinic Medical Center, 2022 Camino Del Rio North, San Diego, California 92108
VA Medical Center, 4150 Clement Street, San Francisco, California 94121
VA Medical Center, Sepulveda, California 91343
VA Medical Center, 1055 Clemont Street, Denver, Colorado 80220
VA Medical Center, Fort Lyon, Colorado 81038
VA Medical Center, Grand Junction, Colorado 81501
VA Medical Center, 55 Willard Avenue, Newington, Connecticut 06111
VA Medical Center, West Spring Street, West Haven, Connecticut 06516
VA Medical Center, 50 Irving Street, NW., Washington, D.C. 20422
VA Medical Center, Bay Pines, Florida 33504
VA Outpatient Clinic Medical Center, P.O. Box 13594, St. Petersburg, Florida 33733
VA Medical Center, Archer Road, Gainesville, Florida 32602
VA Outpatient Clinic Substation, 1833 Blvd., Jacksonville, Florida 32206
VA Medical Center, Lake City, Florida 32055
VA Medical Center, 1201 Northwest 16th Street, Miami, Florida 33125
VA Outpatient Clinic Substation, Port of Palm Beach, Executive Plaza, 301 Broadway, Riveria Beach, Florida 33404
VA Medical Center, 13000 North 30th Street, James A. Haley Veterans Medical Center, Tampa, Florida 33612
VA Outpatient Clinic Substation, 2070 Carrell Road, Fort Myers, Florida 33901
VA Outpatient Clinic Substation, 83 West Columbia Street, Orlando, Florida 32806
VA Medical Center, 2460 Wrightsboro Rd., Augusta, Georgia 30910
VA Medical Center, Atlanta, 1670 Clairmont Road, Decatur, Georgia 30033
VA Medical Center, Dublin, Georgia 31021
VA Medical Center, Fifth and Fort Streets, Boise, Idaho 83702
VA Medical Center, 333 East Huron Street, Chicago (Lakeside), Illinois 60611
VA Medical Center, 820 South Damen Avenue, Chicago (West Side), Illinois 60680
VA Medical Center, North Chicago Illinois 60064
VA Medical Center, Edward Hines Jr. Medical Center, Hines, Illinois, 60141
VA Medical Center, 30th & Euclid Avenue, Des Moines, Iowa 50310
VA Medical Center, Iowa City, Iowa 52240
VA Medical Center, Knoxville, Iowa 50138
VA Medical Center, Lexington, Kentucky 40507
VA Medical Center, 800 Zorn Avenue, Louisville, Kentucky 40202
VA Medical and Regional Office Center, Togus, Maine 04330
VA Medical Center, 3900 Loch Raven Blvd., Baltimore, Maryland 21218
VA Outpatient Clinic, Federal Bldg., 31 Hopkins Plaza, Baltimore, Maryland 21201
VA Medical Center, Fort Howard, Maryland 21052
VA Medical Center, Perry Point, Maryland 21902
VA Medical Center, 200 Springs Road, Edith Nourse Rogers Veterans Medical Center, Bedford, Massachusetts 01730
VA Medical Center, 150 South Huntington Avenue, Boston, Massachusetts 02130
VA Outpatient Clinic Substation, 50 Kearney Square, Lowell, Massachusetts 01852
VA Outpatient Clinic, 17 Court Street, Boston, Massachusetts 02108
VA Medical Center, Brockton, Massachusetts 02401
VA Medical Center, Northampton, Massachusetts 01060
VA Outpatient Clinic Substation, 101 State Street, Springfield, Massachusetts 01103
VA Medical Center, 1400 Veterans of Foreign Wars Parkway, West Roxbury, Massachusetts 02132
VA Outpatient Clinic Substation, Federal Building, 575 Main Street, Worcester, Massachusetts 01608
VA Medical Center, Allen Park, Michigan 48101
VA Medical Center, 2215 Fuller Road, Ann Arbor, Michigan 48105
VA Outpatient Clinic Substation, 3333 Glendale Avenue, Toledo, Ohio 43614
VA Medical Center, Battle Creek, Michigan 49016
VA Outpatient Clinic Substation, 260 Jefferson St. SE, Grand Rapids, Michigan 49502
VA Medical Center, Iron Mountain, Michigan 49801
VA Medical Center, 1500 Weiss Street, Saginaw, Michigan 38602
VA Medical Center, 54th Street & 48th Avenue South, Minneapolis, Minnesota 55417
VA Outpatient Clinic, Fort Snelling, St. Paul, Minnesota 55111
VA Medical Center, St. Cloud, Minnesota 56301
VA Medical Center, Biloxi Division, Biloxi, Mississippi 39531
VA Medical Center, Gulfport Division, Biloxi, Mississippi 39531

VA Medical Center and Domiciliary, 1500 East Woodrow Wilson Drive, Jackson, Mississippi 39216
VA Medical and Regional Office Center, Fort Harrison, Montana 59636
VA Medical Center, Miles City, Montana 59301
VA Medical Center, Grand Island, Nebraska 68801
VA Medical Center, 600 South 70th Street, Lincoln, Nebraska 68510
VA Medical Center, 4101 Woolworth Avenue, Omaha, Nebraska 68105
VA Medical Center, 1000 Locust Street, Reno, Nevada 89520
VA Outpatient Clinic, 1703 West Charleston Blvd., Las Vegas, Nevada 89102
VA Medical Center, 718 Symth Road, Manchester, New Hampshire 03104
VA Medical Center, 130 West Kingsbridge Road, Bronx, New York 10468
VA Medical Center, 800 Poly Place, Brooklyn, New York 11209
VA Medical Center, Castle Point, New York 12511
VA Medical Center, Franklin Delano Roosevelt Medical Center, Montrose, New York 10548
VA Medical Center, First Avenue At East 24th Street, New York, New York 10010
VA Outpatient Clinic, 252 Seventh Avenue, New York, New York 10001
VA Medical Center, Northport, New York 11768
VA Medical and Regional Office Center, 655 First Avenue, North Fargo, North Dakota 58102
VA Regional Office, Federal Bldg., 125 South Main Street, Muskogee, Oklahoma 74401
VA Outpatient Clinic Substation, 635 West 11th Street, Tulsa, Oklahoma 74101
VA Medical Center, 921 Northeast 13th Street, Oklahoma City, Oklahoma 73104
VA Medical Center, 3710 SW U.S. Veterans Medical Center Road, Portland, Oregon 97207
VA Outpatient Clinic, 426 SW Stark Street, Portland, Oregon 97204
VA Medical Center, Roseburg, Oregon 97470
VA Domiciliary, White City, Oregon 97501
VA Medical Center, Barrio Monacillos, Rio Piedras, Puerto Rico 00921
VA Center, U.S. Courthouse and Federal Bldg., Carlos E. Chardon Avenue, Hato Rey, Puerto Rico 00918
VA Outpatient Clinic, Substation, Calle Isable No. 60, Ponce, Puerto Rico 00731
VA Medical and Regional Office Center Box 4867, San Juan, Puerto Rico 00936
VA Outpatient Clinic Substation, Road Number 2, Mayaguez, Puerto Rico 00708
VA Medical Center, Davis Park, Providence, Rhode Island 02908
VA Outpatient Clinic Substation, 53 North Sixth Street, New Bedford, Massachusetts 02740
VA Medical Center, 109 Bee Street, Charleston, South Carolina 29403
VA Medical Center, 1801 Assembly St., Columbia, South Carolina 29201
VA Outpatient Clinic Substation, Piedmont East Bldg., 37 Villa Road, Greenville, South Carolina 29607
VA Medical Center, Fort Meade, South Dakota 57741
VA Medical Center, Hot Springs, South Dakota 57747
VA Medical Center, 2501 West 22nd Street, Sioux Falls, South Dakota 57101
VA Medical Center, 1030 Jefferson Avenue, Memphis, Tennessee 38104
VA Medical Center, Murfreesboro, Tennessee 37130
VA Medical Center, 1310 24th Avenue, South, Nashville, Tennessee 37203
VA Outpatient Clinic Substation, Bldg. 6200, Eastgate Center, Chattanooga, Tennessee 37411
VA Outpatient Clinic Substation, 9047 Executive Park Drive, Suite 100, Knoxville, Tennessee 37919
VA Medical Center, Sam Rayburn Memorial Veterans Center, Bonham, Texas 75418
VA Medical Center, 4500 South Lancaster Road, Dallas, Texas 75216
VA Medical Center, 2002 Holcombe Blvd., Houston, Texas 77211
VA Outpatient Clinic Substation, 3385 Fannin Street, Beaumont, Texas 77701
VA Medical Center, Kerrville, Texas 78028
VA Medical Center, Marlin, Texas 76661
VA Medical Center, 7400 Merton Minter Blvd., Audie L. Murphy Memorial Veterans Medical Center, San Antonio, Texas 78284
VA Outpatient Clinic Substation, 307 Dwyer Avenue, San Antonio, Texas 78285
VA Outpatient Clinic Substation, 1502 South Brownlee Blvd., Corpus Christi, Texas 78404
VA Outpatient Clinic Substation, 1220 Jackson Avenue, McAllen, Texas 78501
VA Medical Center, Olin E. Teague Veterans' Center, Temple, Texas 76501
VA Medical Center, Memorial Drive, Waco, Texas 76703
VA Outpatient Clinic, 1400 North Valley Mills Drive, Waco, Texas 76799
VA Medical Center, 500 Foothill Boulevard, Salt Lake City, Utah 84148
VA Medical and Regional Office Center, White River Junction, Vermont 05001
VA Medical Center, Hampton, Virginia 23667
VA Medical Center, 1201 Broad Rock Road, Richmond, Virginia 23249
VA Medical Center, Salem, Virginia 24153
VA Medical Center, American Lake, Tacoma, Washington 98493
VA Medical Center, 4435 Beacon Avenue, South, Seattle, Washington 98108
VA Medical Center, North 4815 Assembly Street, Spokane, Washington, 99208
VA Medical Center, Vancouver, Washington 98661
VA Medical Center, 77 Wainwright Drive, Walla Walla, Washington 99362
VA Medical Center, 200 Veterans Avenue, Beckley, West Virginia 25801
VA Medical Center, 1540 Spring Valley Drive, Huntington, West Virginia 25704
VA Medical Center, Martinsburg, West Virginia 25401
VA Medical Center, 2500 Overlook Terrace, William S. Middleton Memorial Veterans Medical Center, Madison, Wisconsin 53705
VA Medical Center, 5000 West National Avenue, Wood, Wisconsin 53193
VA Medical Center, Tomah, Wisconsin 54660
VA Medical and Regional Office Center, 2360 East Pershing Blvd., Cheyenne, Wyoming 82001

[FR Doc. 85-97 Filed 1-3-85; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 3
Friday, January 4, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, January 7, 1985, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United State Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cases-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or othe persons participating in the conduct of the affairs thereof:

Name of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and)c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum and Resolution re: The Des Plaines Bank, Des Plaines, Illinois.

Application for capital assistance under section 13(i) of the Federal Deposit Insurance Act:

Name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Name of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor the the FDIC Building located at 550–17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: December 31, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–392 Filed 1–2–85; 2:14 pm]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, January 7, 1985, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D. C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: December 31, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc 85–393 Filed 1–2–85; 2:14 pm]

BILLING CODE 6714-01-M

3

FEDERAL ENERGY REGULATORY COMMISSION

January 2, 1985.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.SC. 552b:

AGENCY HOLDING MEETING: Energy Regulatory Commission.

TIME AND DATE: 10:00 a.m., January 9, 1985.

PLACE: 825 North Capital Street, NE., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda:

* Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357–8400.

This is a list of matters to be considered by the Commission. It does

not include a listing of all papers relevant to the items of the agenda; however, all public documents may be examined in the Division of Public Information.

Consent Power Agenda, 805th meeting—January 9, 1985, Regular Meeting (10:00 a.m.)

CAP–1.
Project No. 8256–000, Electro Technologies, LTd.
CAP–2.
Project No. 8429–003, Aliceville Hydro Associates
CAP–3.
Project No. 7809–002, Emerson Falls Hydro Associates
CAP–4.
Project No. 8117–001, City of Yakima, Washington
CAP–5.
Project No. 8154–002, City of Yakima, Washington
CAP–6.
Project Nos. 7377–004 and 005, Renewable Resources Development and Hat Creek Corporation
Project Nos. 7379–004 and 005, Renewable Resources Development and Slate Creek Resources, Inc.
Project Nos. 7378–003, 004, 7380–004, 005, 7383–004 and 005, Renewable Resources Development and Carlson Hydroelectric Corporation
Project Nos. 7381–004 and 005, Magnum Ranch, Inc.
Project Nos. 7382–004 and 005, Renewable Resources Development, Upper Lake Creek Corporation, Middle Lake Creek Corporation and Lower Lake Creek Corporation
Project Nos. 7384–004 and 005, Renewable Resources Development and David E. Cereghino
Project Nos. 7385–004 and 005, Renewable Resources Development, et al.
Project Nos. 7386–004 and 005, Renewable Resources Development and Magnum Ranch, Inc.
Project Nos. 7429–005 and 006, China Cow Hydro Company, Close Quarters, Inc., Double O. Hydro Company and Diamond T. Hydro Company
Project Nos. 7495–003 and 004, Cook Electric, Inc.
Project Nos. 7589–005 and 006 Paul S. Boyer
CAP–7.
Project No. 7737–002, WP, Inc.
CAP–8.
Project No. 8410–001, Ashuelot Hydro Partner, Ltd.
CAP–9.
Project Nos. 7899–001 and 002, Renewable Resources Development and the Jungert Corporation
CAP–10.
Project No. 8156–001, James W. Caples
Project Nos. 8157–001 and 002, Warren Osborne
CAP–11.
Omitted
CAP–12.
Project Nos. 8229–001 and 002, Cook Electric Incorporated
CAP–13.
Project Nos. 8194–001 and 002, James W. Caples
CAP–14.
Project Nos. 3503–000 and 001, James B. Howell
Project No. 4025–000, Willis D. Deveny
Project No. 5865–000, David Cereghino
Project No. 5965–000, Firmin O. Gotzinger of Pollock, Idaho
Project Nos. 6175–000, 002, 6208–000, 002, 6230–000, 001, 6231–000, 001, 6245–000, 001, 002, 6246–000, 001, 002, 6265–000, 001, 6267–000, 001 and 6442–000, Lester Kelley, Vernon Ravenscroft and Helen Chenoweth
Project Nos. 6433–000, 001 and 003, Warren B. Nelson
Project Nos. 6434–000 and 001, Thomas B. Nelson,
Project Nos. 6435–000 and 001, Joseph B. Nelson
Project Nos. 6589–000, 001, 6590–000, 001, 6591–000 and 001, Hy-Tech Company
Project No. 6702–000, the Superior Oil Company
Project Nos. 6755–000 and 001, Brown's Industries, Inc.
Project Nos. 6809–000, 6810–000 and 6811–000, Douglas Mendenhall
Project No. 7184–000, Richard A. and Carole K. Sorensen
Project Nos. 7225–000 and 003, Little Salmon River Estates
Project No. 7246–000, Richard L. Pullen and/or Bobbie Pullen
Project No. 7377–000, Renewable Resources Development and Hat Creek Corporation
Project Nos. 7378–000, 7380–000 and 7383–000, Renewable Resources Development and Carlson Hydroelectric Corporation
Project No. 7379–000, Renewable Resources Development and Slate Creek Resources, Inc.
Project No. 7381–000, Magnum Ranch, Inc.
Project No. 7382–000, Renewable Resources Development and Upper Lake Creek Corporation, Middle Lake Creek Corporation and Lower Lake Creek Corporation
Project No. 7384–000, Renewable Resources Development and David E. Cereghino
Project No. 7385–000, Renewable Resources and Cross Ranch Hydro, Inc., JJAK Hydro Company, Hat Creek Corporation and Wicks Family Corporation
Project No. 7386–000, Renewable Resources and Magnum Ranch, Inc.
Project No. 7429–000, China-Cow Hydro Company, Close Quarters, Inc., Double-O Hydro Company and Diamond T Hydro Company
Project Nos. 7495–000 and 7859–000, Cook Electric, Inc.
Project No. 7589–000, Paul S. Boyer
Project No. 7300–000, China-Cow Hydro Company
Project No. 7298–000, Squaw Creek Hydro Corporation of McCall, Idaho
Project No. 7301–000, Double-O Hydro Company
Project No. 7334–000, Double-O Hydro Company and Double-T Hydro Company
Project No. 7339–000, Cross-O Ranch, Inc. and Hat Creek Corporation
Project No. 7340–000, JJAK Hydro Company
Project No. 7899–000, Renewable Resources Development and the Jungert Corporation
CAP–15.
Project No. 1984–009, Wisconsin River Power Company
CAP–18.
Project No. 2821–005, City of Portland, Oregon
CAP–17.
Docket No. QF84–434–00, Luz Solar Partners Ltd., et al.
CAP–18.
Docket No. ER85–130–000, Illinois Power Company
CAP–19.
Docket Nos. ER84–571–001 and ER84–572–001, Utah Power & Light Company
CAP–20.
Docket No. ER84–705–001, Boston Edison Company
CAP–21.
Docket No. ER84–504–002, Allegheny Generating Company
CAP–22.
Docket No. ER78–417–006, Kentucky Utilities Company
CAP–23.
Docket No. ER84–574–002, Holyoke Water Power Company and Holyoke Power and Electric Company
CAP–24.
Docket Nos. ER84–576–004 and 005, Wisconsin Power & Light Company
CAP–25.
Omitted
CAP–26.
Docket No. ER83–694–000, West Texas Utilities Company
CAP–27.
Docket No. EL84–30–001, Gulf States Utilities Company

Consent Miscellaneous Agenda

CAM–1.
Docket No. RM79–76–231 (Texas–14 addition), high-cost gas produced from tight formations
CAM–2.
Docket No. RM79–76–235 (Colorado–39), high-cost gas produced from tight formations

Consent Gas Agenda

CAG–1.
Docket No. RP85–47–000, East Tennessee Natural Gas Company
CAG–2.
Docket No. RP85–43–000, Columbia Gas Transmission Corporation
CAG–3.
Docket Nos. TA85–1–53–000, 002, TA84–1–53–000, et al., and TA83–1–53–000, et al., KN Energy, Inc.
CAG–4.
Docket Nos. RP84–67–001 and 002, Mississippi River Transmission Corporation v. United Gas Pipe Line Company
CAG–5.
Docket Nos. RP84–120–001, TA85–1–35–000 and 002, West Texas Gas, Inc.
CAG–6.
Docket No. TA85–1–33–003, El Paso Natural Gas Company
CAG–7.

Docket Nos. RP82-125-012 and 013, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
CAG-8.
Docket Nos. TA85-1-23-000 and 001, Eastern Shore Natural Gas Company
CAG-9.
Docket Nos. TA85-1-43-000, 001 and TA84-2-43-001, Northwest Central Pipeline Corporation
CAG-10.
Docket No. TA83-2-18-000, National Fuel Gas Supply Corporation
CAG-11.
Omitted
CAG-12.
Docket No. TA84-1-15-000, Mid-Louisiana Gas Company
CAG-13.
Docket No. RP84-13-000, Michigan Consolidated Gas Company-Interstate Storage Division
CAG-14.
Docket No. RP83-138-000, Distrigas of Massachusetts Corporation
CAG-15.
Docket No. RP84-63-000, Mississippi River Transmission Corporation
CAG-16.
Docket No. ST84-1137-000, Cranberry Pipeline Corporation
CAG-17.
Docket Nos. RI84-10-000 through RI84-17-000, Phillips Petroleum Company, FERC Gas Rate Schedule Nos. 9, 483, 497, 498, 499, 500, 502 and 507
CAG-18.
Docket No. CI78-93-003, Pennzoil Oil & Gas Inc.
CAG-19.
Docket No. CI82-247-000, Ashland Exploration, Inc.
CAG-20.
Docket No. CI67-248-000, Beacon Gasoline Company
CAG-21.
Docket No. CP83-203-003, et al., Transcontinental Gas Pipe Line Corporation
CAG-22.
Docket No. CP84-700-001, Colorado Interstate Gas Company
CAG-23.
Docket No. CP82-487-003, Williston Basin Interstate Pipeline Company
Docket Nos. CP84-504-000, RP84-62-000, SA84-19-000, TA84-2-49-000, TA85-1-49-000, 001 and RP84-93-000, Montana-Dakota Utilities Company
CAG-24.
Docket Nos. RP83-14-002, et al., RP83-81-015, et al., CP83-254-000, 029, et al., CP83-335-000 and 032, et al., Montana-Dakota Utilities Company
CAG-25.
Docket Nos. CP75-23-023 and CP75-120-016, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
CAG-26.
Docket No. CP84-258-001, Panhandle Eastern Pipe Line Company
CAG-27.
Docket No. CP84-577-001, Trunkline Gas Company
CAG-28.
Docket No. CP84-366-000, Valero Transmission Company and Valero Industrial Gas Company
CAG-29.
Docket No. CP83-411-000 (Phase II), Equitable Gas Company
CAG-30.
Docket No. CP84-701-000, Cranberry Pipeline Corporation
Docket No. G-5236-005, Cabot Corporation
CAG-31.
Docket No. CP85-12-000, Texas Gas Transmission Corporation
CAG-32.
Docket No. CP85-22-000, the Inland Gas Company, Inc.
CAG-33.
Docket Nos. CP85-13-000 and TC85-4-000, Montana-Dakota Utilities Company
CAG-34.
Docket No. CP83-439-002, Southern Natural Gas Company
CAG-35.
Docket No. CP84-257-000, Northern Natural Gas Company, Division of Internorth, Inc.
Docket No. G-2621-000, Phillips Petroleum Company

I. Licensed Project Matters

P-1.
Reserved

II. Electric Rate Matters

ER-1.
Docket No. ID-2067-000, John F. White

Miscellaneous Agenda

M-1.
Reserved
M-2.
Reserved
M-3.
Docket Nos. RM84-6-015 Through 026, Refunds Resulting From Btu Measurement Adjustment

I. Pipeline Rate Matters

RP-1.
Docket Nos. TA84-2-37-006 and 007, Northwest Pipeline Corporation
RP-2.
Docket Nos. RP80-136-000 and 004, Southern Natural gas Company and Southern Energy Company

II. Producer Matters

CI-1.
Docket No. CI85-27-000, Mesa Petroleum Company
CI-2.
Docket No. CI85-51-000, Exxon Corporation

III. Pipeline Certificate Matters

CP-1.
Docket No. CP82-355-000, Natural Gas Pipeline Company of America
CP-2.
Docket No. CP85-105-000, United Gas Pipe Line Company
CP-3.
Docket No. CP85-67-000, United Gas Pipe Line Company

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-415 Filed 1-2-85; 3:37 pm]

BILLING CODE 6717-01-M

4

FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:00 a.m., Wednesday, January 9, 1985, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed changes to the Plans administered under the Federal Reserve System's employee benefits program.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 31, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-34030 Filed 12-31-84; 4:23 pm]

BILLING CODE 6210-01-M

5

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

SUNSHINE ACT MEETING

AGENCY HOLDING THE MEETING: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Government in the Sunshine Act (5 U.S.C. 552b).

STATUS: Open.

TIME AND DATE: January 9-10, 1985, 9:00 a.m.

PLACE: Council Office Meeting Room, 850 SW., Broadway, Suite 1100, Portland, Oregon.

MATTERS TO BE CONSIDERED:

January 9

1. Council Decision on a Policy for Reducing the Load Uncertainty of the Direct Service Industries
2. Revised Cost of Delaying the Model Conservation Standards Issue Paper
3. Staff Presentation on Resource Financial and Economic Assumptions
4. Staff Presentation and Council Decision on Technical Corrections to the Model Conservation Standards
5. Public Comment on Economic/Demographic Assumptions Issue Paper
6. Public Comment on Environmental Criteria for Resource Acquisition Issue Paper
7. Council Business

January 10

8. Public Hearing on Proposed Fish and Wildlife Goals Amendment
9. Continuation of any agenda items that were not completed on January 9

Public comment will follow each item.

FOR FURTHER INFORMATION CONTACT:

Ms. Bess Wong (503) 222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 85-416 Filed 1-2-85; 3:51 pm]

BILLING CODE 0000-00-M

federal register

Friday
January 4, 1985

Part II

Federal Trade Commission

16 CFR Part 456

Ophthalmic Practice Rules; Proposed Trade Regulation Rule; Notice of Proposed Rulemaking,

FEDERAL TRADE COMMISSION

16 CFR Part 456

Ophthalmic Practice Rules; Proposed Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would remove total bans imposed by state law and certain forms of commercial ophthalmic practice. The proposed rule is intended to prevent consumer injury arising from public restraints on the permissible forms of ophthalmic practice that appear to increase consumer prices for ophthalmic goods and services, but which do not appear to protect the public health or safety. The proposed rule also contains minor modifications intended to clarify the prescription release requirement of 16 CFR Part 456 (the Advertising of Ophthalmic Goods and Services Trade Regulation Rule, referred to in this notice as the "Eyeglasses Rule").

This notice sets out the rulemaking procedures to be followed, the text of the proposed rule (set forth as a modification of the Eyeglasses Rule), reference to the legal authority under which the rule is proposed, a statement of the Commission's reasons for proposing this rule, a list of specific questions and issues upon which the Commission Particularly desires written and oral comment, an invitation for written comments, and instructions for prospective witnesses and other interested persons who desire to present oral statements or otherwise participate in this proceeding.

DATES: Written comments must be submitted on or before April 5, 1985.

Notification of interest in questioning witnesses must be submitted on or before March 8, 1985.

Prepared statements of witnesses and exhibits, if any, must be sumitted on or before April 26, 1985 for witnesses at the Washington, D.C., hearings and May 31, 1985 for witnesses at the San Francisco, California, hearings.

Public hearings commence at 9:30 a.m. on May 20, 1985 in Washington, D.C., and at 9:30 a.m. on June 17, 1985 in San Francisco, California.

ADDRESSES: Written comments notifications of interest, prepared statements of witnesses and exhibits should be submitted in five copies to James P. Greenan, Presiding Officer, Federal Trade Commision, Washington, D.C., 20580, 202–523–3564. The Public hearings will be held in Room 332 Federal Trade Commision Building, 6th Street and Pennsylvania Avenue NW., Washington D.C., and in Room 12470, San Francisco Regional Office of the Federal Trade Commission, 450 Golden Gate Avenue, San Francisco, California.

FOR FURTHER INFORMATION CONTACT: Gary Hailey, Matthew Daynard, or Renee Kinscheck Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, 202–523–3452, 202–523–3427, or 202–523–3377.

SUPPLEMENTARY INFORMATION: The proposed rule would remove four major restraints imposed by state law on premissible forms of commercial practice: (1) Restrictions on employer-employee or other business relationships between optometrists or opticians and non-professional corporations or unlicensed persons; (2) limitations on the number of branch offices an optometrist or optician may operate: (3) restictions on the practice of optometry on the premises of merchantile establishments (such as department stores); and (4) bans on the practice of optometry under a trade name.

The proposed rule would only prevent state or local governments from enforcing total bans on these forms of commercial ophthalmic practice; it would not interfere with the states' ability to regulate specific harmful practices as long as commercial practice itself is not directly or indirectly prohibited.

"Commercial practice" in the retail optical market is generally understood to refer to large-scale, high-volume providers. "Non-commercial practice," on the other hand, describes small firms or independent "solo" practitioners.

Legal impediments to the practice of optometry and opticianry in commercial settings restrain the growth and development of retail optical firms that offer optometric services and also restrain other high-volume, "commercial" businesses, which, through managerial efficiencies and economies of scale, are often able to charge lower prices for ophthalmic goods and services than small "noncommercial" practitioners. These restrictions also prevent commercial firms, as well as opticians and non-dispensing optometrists, from competing effectively with dispensing optometrists and ophthalmologists who offer both examination and dispensing services. Individual practitioners are also precluded from establishing practices in mercantle locations such as shopping centers or department stores, where the potential for high-volume business exists.

Proponents of commercial practice restraints justify them as necessary to protect the public health, safety and welfare. The Commission has reason to believe, however, that these practice restrictions unnecessarily increase the price and reduce the accessibility of vision care without having any significant positive impact on the quality of vision care. This tentative belief is based primarily on empirical research conducted by the Commission's Bureaus of Economics and Consumer Protection and othe published studies. Comment on the methodology and validity of those studies is specifically requested.

The proposed rule would also modify slightly the prescription release requirement of the Eyeglasses Rule, 16 CFR Part 456. The proposed changes are intended to eliminate areas of confusion which existed concerning the scope of the Eyeglasses Rule. The proposed rule modifications would involve no preemption of state law.

Copies of the staff report (entitled "State Restrictions on Vision Care Providers: The Effects on Consumers," July 1980), the Bureau of Economics report (entitled "Effects of Restrictions on Advertising and Commercial Practice in the Professions: The Case of Optometry," September 1980), the contact lens report (entitled "A Comparative Analysis of Comsetic Contact Lens Fitting by Ophthalmologists, Optometrists and Opticians," December 1983), the Bureau of Consumer Protection's study of the duplication of eyeglass lenses without a prescription (entitled "A Comparison of a Random Sample of Eyeglasses," July 1979), and the study of the impact of the prescription release requirement (entitled "FTC Eyeglasses Study: An Evaluation of the Precription Release Requirement," 1981) may be obtained in person or by mail from: Public Reference Room (Room 130), Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

Section A. Statement of the Commission's Reasons for the Proposed Rule

On January 20, 1976, the Commission directed the staff on the Bureau of Consumer Protection to initiate an investigation to determine whether restrictions on forms of commercial ophthalmic practice and limitations on the scope of practice of opticianry were unfair acts or practices within the meaning of section 5(a)(1) of the Federal Trade Commission Act. The decision to commence this investigation was based on consideration of evidence received

during the Commission's earlier ophthalmic advertising rulemaking proceeding. That investigation examined the adequacy of information available to consumers of vision care. It focused on how state and private advertising restrictions affect the cost, availability, and quality of vision care.[1] Evidence presented in that proceeding indicated that advertising restictions were but one part of a larger system of public and private restraints on ophthalmic practice which may limit competition, increase prices, and limit the availability of vision care.

The Commission staff addressed various types of public and private restraints in the course of this second investigation. With repect to restrictions on forms of commercial practice by ophthalmic providers, the staff examined four restraints imposed by state law: (1) Restrictions on employer-employee or other business relationships between optometrists or opticians and lay individuals and non-professional corporations; (2) limitations on the number of branch offices an optometrist or optician may operate; (3) restrictions on the practice of optometry and opticianry in commercial locations or on the premises of mercantile establishments; and (4) bans on the use of trade names by optometrists. Two categories of limitations on the scope of practice of opticianry were also studied by the staff: (1) Restrictions preventing opticians from fitting contact lenses; and (2) restrictions prohibiting opticians from duplicating existing eyeglasses lenses in order to produce new pairs of eyeglasses.

Staff assessed the impact on the price, quality, and availability of vision care of these restrictions. The ultimate issue addressed was whether higher prices and diminished access to vision care result from these restrictions and, if so, whether such consumer injury is counterbalanced by positive effects on quality of care. Staff received comments from private citizens, members of the professions involved and their professional associations, and government officials during the investigation. Staff also researched current state laws, private associations' regulations, and industry practices. To obtain data on the impact of these restrictions on the price, availability and quality of vision care, staff performed several research studies: (1) A study by the FTC's Bureau of Economics measured the price and quality effects of commercial practice restrictions; (2) a shopper survey of optical establishments measured the accuracy of the duplication process; and (3) a study administered by Bureau of Consumer Protection staff measured the comparative ability of ophthalmologists, optometrists, and opticians to fit contact lenses. Professional groups including the American Academy of Ophthalmology, the Contact Lens Associaton of Ophthalmologists, the American Optometric Association, the Contact Lens Society of America, the Opticians Association of America, and the National Association of Optometrists and Opticians assisted in the design and administration of the contact lens fitting study and the American Optometric Association reviewed and analyzed the BE commercial practices study data. Studies performed by others were also reviewed.

The staff has set forth the results of its initial investigation in a publicly available report entitled "State Restrictions on Vision Care Providers: The Effect on Consumers" (July 1980). The Commission's decision to commence this rulemaking proceeding is based on consideration of the staff report and the public comments received in response to the Advance Notice of Proposed Rulemaking ("ANPR").[2] The ANPR, which was published in the **Federal Register** on December 2, 1980, requested comment on the issues presented by this investigation and on what action, if any, the Commission should take. Specifically, the public was invited to comment on the evidence and findings contained in the staff report, and on various alternatives to rulemaking. During the 60-day comment period, 247 comments were received from consumers, industry members and government officials. After consideration of the evidence contained in the staff report, the ANPR comments, and the recommendations of the staff, the Commission has determined that rulemaking is the most appropriate way to explore further the issues raised by this investigation.

With respect to the proposed rule provisions concerning commercial practice restrictions, the staff report presents evidence that state laws which restrict the ability of optometrists to practice in commecial settings raise consumer prices but do not maintain or enhance the quality of vision care. Results obtained from the 1980 Bureau of Economics study ("BE Study") indicate that: (1) Prices of eyeglasses and eye examinations are significantly lower in cities where commercial practice is not restricted and in cities where advertising is not restricted; (2) commercial optometrists charge lower prices than non-commercial optometrists; (3) non-commercial providers who operate in markets where commercial practice is permitted charge less than their counterparts in cities where commercial practice is proscribed; and (4) there is no difference in overall quality of care between cities where commercial practice is permitted and cities where commercial practice is restricted. To assess quality, the study evaluated the accuracy of the prescriptions written by the sampled optometrists, the accuracy and workmanship of the eyeglasses dispensed by the examining optometrist, the thoroughness of the eye examination, and the extent of unnecessary prescribing of eyeglasses. Comment regarding the methodology and analysis of the BE study is requested below.

The 1983 Bureau of Consumer Protection and Bureau of Economics study of contact lens wearers concluded that: (1) The quality of cosmetic contact lens fitting provided by opticians and commercial optometrists was not lower than that provided by ophthalmologists and non-commercial optometrists, and (2) commercial optometrists charged significantly less for contact lenses than did any other group. To assess the quality of contact lens fitting, the study evaluated the relative presence or absence of several potentially pathological corneal conditions related to contact lens wear. Comment regarding the methodology and analysis of the contact lens study is requested below.

The staff recommendation that the Commission engage in rulemaking proceedings regarding commercial practice restrictions is based primarily on the results of these studies, which contradict the claim that the entry of commercial firms into the market lowers the overall level of quality of vision care. At the same time, the results show

[1] The Commission found public and private bans on nondeceptive advertising by vision care providers and those providers' failure to release spectacle prescriptions to be unfair acts or practices in violation of section 5 of the FTC Act. The resulting Eyeglasses Rule (16 CFR Part 456) eliminated those bans on nondeceptive advertising and required vision care providers to furnish copies of prescriptions to consumers after eye examinations. Subsequently, the U.S. Court of Appeals for the District of Columbia in American Optometric Association v. FTC, 626 F.2d 896 (D.C. Cir. 1980), upheld the prescription release requirement but remanded the advertising portions of the Eyeglasses Rule for further consideration in light of the Supreme Court decision in Bates v. State Bar of Arizona, 433 U.S. 350 (1977), which found the right of lawyers to advertise to be protected free speech under the First Amendment to the Constitution.

[2] 45 FR 79,823 (1980).

that average prices are significantly higher where commercial practice is restricted. Therefore, the Commission has reason to believe that these restrictions may be unfair acts or practices within the meaning of Section 5 of the FTC Act.

The proposed trade regulation rule would also modify the definition of the term "prescription" in the current Eyeglasses Rule to eliminate all references to contact lenses. Confusion has arisen as to whether eye doctors are required by the rule to state that patients whom they had examined were suitable candidates for contact lenses by writing "OK for contacts" or similar language on the prescription. This modification is consistent with staff's recommendation that the Commission not employ rulemaking to address the question of who should be permitted to fit contact lenses. Finally, the Commission has proposed several nonsubstantive changes to clarify the rule.

The staff report presented evidence that consumers are not always given eyeglasses prescriptions or contact lens specifications following the purchase of eyeglasses or contact lenses. If this were true, the report concluded, consumers' ability to obtain duplicate or replacement spectacle or contact lenses from the dispensers or fitters of their choice would be limited. This would be particularly true in states that prohibit duplication of spectacle lenses or contact lens fitting by opticians.

However, the staff report did not recommend rulemaking to eliminate those state restraints on duplication of lenses or contact lens fitting by opticians. The Commission concurs with this recommendation and, therefore, has not proposed rulemaking in this area. The staff report recommended that, instead of proposing to remove these state restraints, the Commission extend the prescription release requirement of the Eyeglasses Rule to require a consumer's eyeglasses dispenser or contact lens fitter to provide upon request a copy of that consumer's current eyeglasses prescription after the dispensing process is complete, or a copy of the complete contact lens specifications after the initial fitting process is complete. However, the proposed trade regulation rule does not contain provisions extending the prescription release requirement of the Eyeglasses Rule. The recommendations in the staff report regarding extension were based on complaints that consumers were sometimes denied access to their eyeglasses prescriptions and contact lens specifications. However, those complaints were few in number, and the Commission has no reason to believe that a significant number of dispensers and fitters are currently refusing to provide consumers with their prescriptions or specifications. Nevertheless, comment is requested on these issues.

The Commission has carefully and deliberately considered the staff report and recommended trade regulation rule and the comments received in response to the Advance Notice of Proposed Rulemaking. Based on the evidence presented to date, the Commission believes that the initiation of a rulemaking proceeding would be in the public interest.

The public is advised that the Commission has not adopted any findings or conclusions of the staff. All findings in this proceeding shall be based solely on the rulemaking record. Accordingly, the Commission invites comment on the advisability and manner of implementation of the proposed rule.

The Commission's Rules of Practice shall govern the conduct of the rulemaking proceeding, except that, to the extent that this notice differs from the Rules of Practice, the provisions of this notice shall govern. This alternative form of proceeding is adopted in accordance with § 1.20 of those rules (16 CFR 1.20).

Section B. Section-by-Section Analysis

The following discussion is intended to highlight the major provisions of the proposed rule, and to explain briefly their anticipated effect. Sections of the Eyeglasses Rule that would remain unchanged and which were explained in the Statement of Basis of Purpose of the Eyeglasses Rule[3] will not be described here.

Section 456.1 defines relevant terms and contains new definitions as well as technical modifications to terms in the Eyeglasses Rule.

The term "patient" has been substituted for the term "buyer" in paragraph (a) to conform more closely to industry usage.

The specific terms "ophthalmologist" and "optometrist" in paragraphs (e) and (f) have been substituted for the general word "refractionist" in § 456.1(h) of the original rule to define those categories of providers—Doctors of Medicine, Ostepathy and Optometry—who are qualified under state law to perform eye examinations. This change was made for two reasons. First, the use of the term "refractionist" in the original rule has caused confusion because it is not generally used by consumers or the industry. Second, certain provisions of the proposed rule permitting commercial practice do not apply to ophthalmologists. The term "refractionist" has been deleted so that this distinction is clear.

The term "prescription" is defined in paragraph (h) as those specifications necessary to obtain spectacle lenses. Thus, the prescription that is released to the patient need only contain the data on the refractive status of the patient's eyes, and any information, such as the date or signature of the examining optometrist or ophthalmologist, that state law requires in a legally fillable eyeglass prescription. In addition, all references to contact lenses have been deleted from the definition in order to end the confusion generated by the original definition concerning the obligation of optometrists and ophthalmologists to place the phrase "OK for contact lenses" (or similar words) on prescriptions. No such obligation would exist under the proposed definition. Another purpose of this change is to clarify the fact that the prescription release requirement (§ 456.2) does not affect state laws regulating who is legally permitted to fit contact lenses. This proposed change would not affect the current requirement that optometrists and ophthalmologists give spectacle prescriptions to all patients whose eyes they examine, including those patients who wear or intend to purchase contact lenses.

A "trade name ban" is defined in paragraph (j) to cover any state law or regulation that prohibits optometrists from practicing or holding themselves out to the public under trade or corporate names. The discussion of § 456.4(a)(4) below explains the scope of the proposed rule with respect to eliminating trade name bans on how the states may regulate the use of trade names.

Sections 456.2 through 455.6 of the Eyeglasses Rule have been deleted in accordance with the court's decision in *American Optometric Association* v. *FTC*, 626 F.2d 897 (D.C. Cir. 1980), which remanded those portions of the rule to the Commission for further consideration.

New § 456.2 contains minor modifications to the release of prescription requirement of the Eyeglasses Rule (originally § 456.7) which was upheld by the court in *American Optometric Association* v. *FTC*, and which remains in effect. The rule requires that eye doctors give spectacle prescriptions to consumers

[3] 43 FR 23,992 (1978).

immediately after performing eye examinations. Comment is requested below as to whether the prescription release requirement should be modified in a variety of ways.[4]

Section 456.4(a) would prohibit state or local governments from enforcing certain existing bans on commercial ophthalmic practice. By removing prohibitions on these forms of practice, the rule would permit optometrists and opticians to engage in commercial ophthalmic practice if they desire to do so; it would not mandate that any practitioner engage in any specific mode of practice. At the same time, the rule would not interfere with a state's ability to control specific harmful practices as long as the commercial practices allowed by this section are not directly or indirectly prohibited. Section 456.5, paragraphs (b) through (e), serve primarily to explain the limited scope of § 456.4(a) by providing examples of how the states might regulate commercial practice, if necessary, short of prohibiting it altogether. For this reason, the provisions of § 456.5(b)–(e) are discussed here with the corresponding operative provisions of § 456.4(a).[5]

Paragraph (a)(1) would prevent state and local governments from prohibiting employer-employee or other business relationships between optometrists or opticians and persons other than ophthalmologists or optometrists. Specifically, this section would remove a variety of state-imposed restrictions that prevent optometrists and opticians from working for or associating with non-professional corporations or lay individuals.

The rule would allow the states to take action, however, to protect the health and safety of their citizens to the extent it may be threatened by specific practices. As indicated in § 456.5(b), for example, a state may decide to prevent unlicensed persons from improperly interfering in the professional judgments of optometrists and opticians. Or a state could choose to prohibit commission payments as a form of compensation for optometrists or opticians. The proposed rule would only prohibit regulations or restrictions that effectively ban employer-employee or other business relationships between optometrists or opticians and others.

Paragraph (a)(2) would prohibit state or local restrictions on the number of offices that an optometrist, optician or any other person may operate. This provision would permit any person, including any corporation, who provides eye examinations or ophthalmic goods and services to own or operate any number of offices. Thus, a state under this section could not require that an office be open only when the optometrist who owns it is in personal attendance.

The proposed rule would not, however, prevent states from regulating how services are provided at each office. For example, as explained in § 456.5(c), states could require that ophthalmic goods or eye examinations provided at each office be supplied by a person qualified under state law to do so. The proposed rule would only prohibit regulations that restrict the ownership of any particular number of offices by optometrists, opticians, or other persons.

Paragraph (a)(3) would remove state and local restrictions that prohibit optometrists from locating an office in a pharmacy, department store, shopping center, retail optical dispensary, or other mercantile location. This provision would permit optometrists to establish offices in high-traffic areas, such as drug stores and shopping centers, or near retail opticians. Optometrists would also be able to lease office space from non-professional corporations or lay individuals.

As explained in § 456.5(d), however, the proposed rule would not interfere with a state's ability to enforce general zoning laws. In addition, states would retain the discretion to regulate leasing arrangements between optometrists and corporations or lay persons in order to prevent specific harmful practices. The proposed rule would remove only those regulations that prohibit optometrists from practicing in mercantile locations.

Paragraph (a)(4) woulds prohibit all state or local bans that prevent optomerists from practicing or holding themselves out to the public under a trade name. This provision would permit an optometrist to adopt an assumed or corporate name, or any name other than the one appearing on the petitioner's license, subject of course to the laws and regulations governing deception or infringement that apply to trade name practice by all persons.

Section 456.5(e) explains that the proposed rule would not, however, prevent states from enforcing laws that are reasonably necessary to prevent the deceptove use of trade names. If states desire to ensure full professional identification, for example, they could require that the identity of the optometrist be disclosed to the patient at the time the eye exmination is performed or opthalmic goods and services are dispensed. The proposed rule only would prevent a state from enforcing restrictions that prohibit the practice of optometry under a trade name.

Section 456.4(b) restates the last paragraph of § 456.3 of the original Eyeglasses Rule. It simply exempts every state or local governmental entity or officer from financial liability for violations of the proposed rule.

Section 456.5(f) would make it clear that the Commission intends that the proposed rule could be used as a defense in legal or administrative proceedings, or affirmatively for declarative, injunctive, or other relief.

Section C. Invitation To Comment

All interested persons are hereby notified that they may submit data, views, or arguments on any issue of fact, law or policy which may have bearing upon the proposed rule. Such comments may be either in writing or orally. Written comments will be accepted until April 5, 1985 and should be addressed to James P. Green, Presiding Officer, Federal Trade Commission, Washington, D.C. 20580, 202–523–3564. To assure prompt consideration, comments should be identified as "Ophthalmic Practice Rulemaking Comment." Please furnish five copies of all comments. (Instructions for persons wishing to present their views orally are found in Sections E and F of this notice).

While the Commission welcomes comments on any issues which you feel may have bearing upon the proposed rule, questions on which the Commission particularly desire comments are listed in Section E below. All comments and testimony should be referenced specifically to either the Commission's questions or the section of the proposed rule being discussed. Comments should include reasons and data for the position. Comments opposing the proposed rule or specific provisions should, if possible, suggest a specific alternative. Proposals for alternative regulations should include reasons and data that indicate why the alternatives would better serve the purposes of the proposed rule. Comments should include a full discussion of all the relevant facts and be based directly or firsthand knowledge, personal experience or

[4] The staff had recommended that the rule be modified to require the release of a prescription only when a patient requests one. The Commission has decided to propose no change in this rule provision at this time, but rather to request comment on the issue.

[5] The Commission does not intend to imply that the types of regulation cited in § 456.5(b)–(e) are desirable, but cites them merely as examples of state regulation that would not be eliminated if the proposed rule were adopted.

general understanding of the particular issues addressed by the proposed rule.

Section D. Questions and Issues

In the Advance Notice of Proposed Rulemaking, the Commission invited public comment regarding which hearing format should be used if the Commission decided to intitiate a rulemaking proceeding; however, none of the comments we received dealt with this issue. The Commission has decided to employ a modified version of the rulemaking procedures specified in §1.13 of the Commission's Rules of Practice, proceeding with a single Notice of Proposed Rulemaking and the "no designated issues" format. Set forth below is a list of sepcific questions and issues upon which the Commission particularly desires comment and testimony. The list of questions is not intended to be a list of "disputed issues of material fact that are necessary to resolve," and any right to cross-examine will be determined with reference to the criteria set forth in the Commission's Rules of Practice.

Interested persons are urged to consider carefully the following questions. The Commission retains its authority to promulgate a final rule which differs from the proposed rule in ways suggested by these questions and based upon the rulemaking record.

1. The 1980 BE study selected survey subjects who had myopia, which is a relatively routine visual problem. Is there any evidence to indicate that the quality results would have differed if the study had included patients with less common vision problems?

2. Persons with eye pathology were excluded from the sample in the BE study. The study did, however, attempt to measure whether the tests necessary to detect pathology and assess vision problems were performed. Is the use of "process" tests, rather than outcome tests, inappropriate méthodology? Are there reasons to believe that the procedures and tests performed to detect eye disease were not performed adequately by those optometrists surveyed?

3. The BE study was designed to measure the effects of commercial practice independent of advertising and, in fact, found that commercial practice had an independent downward impact on price even where advertising was permitted. The BE study data, however, were collected before the advent of advertising in some states. Some people have asserted that the study's price findings concerning the impact of advertising restrictions are unreliable because the data were collected before the full impact of the *Bates* case was felt. Are there reasons why the study's findings that commercial practice has an indepndent effect on price should not be relied on?

4. In its study of commercial practice, the FTC's Bureau of Economics used a multivariate statistical technique to make certain adjustments to the raw price data to account for cost of living differences between cities, differences among survey subjects in prescriptive needs, differences among cities in the supply of optometrists, and differences among cities in the demand for optometric services. The Bureau of Economics states that failure to account for the effects of these variables could lead to inappropriate conclusions about the impact of commercial practice restrictions on price. In a study of this nature, is it appropriate to analyze differences between average adjusted prices rather than average unadjusted prices? Would any other adjustment technique have been more appropriate thant he technique used by the Bureau of Economics?

5. The 1983 contact lens wearer study analyzed only cosmetic contact lens wearers. Is there any evidence to indicate that the quality results would have differed if the study's subjects had included wearers who were aphakic or who suffered from unusual medical or visual problems?

6. The contact lens wearer study analyzed current contact lens wearers rather than former wearers. Is there any reason to believe that the distribution of former contact lens wearers (or, "unsuccessful wearers") among the different fitter groups is significantly different than that of current wearers (or "successful wearers")?

7. What are the costs and benefits of trade name bans? How do trade name bans affect the ability of optometrists to engage in commercial practice? Are these bans necessary to prevent deception? Would it be possible for commercial ophthalmic practice to develop if employment, branching and location restrictions were eliminated, but not trade name bans?

8. What is the effect of laws that require that trade name advertising disclose the names of all optometrists practicing under the trade name? Are such disclosure requirements necessary to prevent deception or other harm to consumers?

9. The proposed rule would remove restrictions on commercial optometric practice imposed by state law or regulation. Do private associations also restrain commercial practice through restrictive membership requirements or other means? If state-imposed restrictions were removed, would association-imposed restrictions have a significant impact on the nature and extent of commercial practice? If so, should the proposed rule be amended to remove association-imposed restrictions?

10. Should the prescription release requirement contained in the Eyeglasses Rule be modified to require that spectacle lens prescriptions be given to patients only in those instances where patients requested them? If so, for how long a period of time should ophthalmologists and optometrists be required to respond to that request? Does the current requirement that a prescription be tendered in evey instance result in confusion in some consumers' minds as to whether they should in every instance fill that prescription? What costs does the current requirement impose on ophthalmologists and optometrists who are required to tender a prescription that every patient may not want? Are consumers generally aware of their right to seek and obtain their prescriptions? If so, are consumers generally aware of how they may use their prescriptions?

11. Should the prescription release requirement be modified to require ophthalmologists and optometrists to offer to provide spectacle lens prescriptions to patients? If so, what are the relative merits of requiring that the examiner make that offer (a) orally, (b) by posting a written notice in his or her office, or (c) in some other manner? Should the offer be required to include some explanation of why the offer is being made, or how the offered prescription can be used by the consumer? To what extent, if any, would a requirement to offer to provide prescription reduce the costs of the current requirement?

2. Should the prescription release requirement be repealed altogether? Is this requirement, even when modified to require release only upon request, unnecessary? What are the costs and benefits of the prescription release requirement?

13. Should optometrists and ophthalmologists be required to release duplicate copies of prescriptions to consumers who lose or misplace their original prescriptions? If so, should they be allowed to charge for the duplicate copies?

14. The staff had received few complaints from consumers who wished to obtain replacement or duplicate pairs of eyeglasses from someone other than their original dispenser but were refused access to their current spectacle lens prescriptions. Do a significant number of eyeglass dispensers refuse to return

fillable prescriptions to consumers? Can consumers reasonably avoid such problems? What are the costs and benefits of (a) a rule provision requiring that eyeglass dispensers return fillable prescriptions to consumers, (b) efforts to increase consumer awareness of the need to determine whether a particular dispenser will provide a copy of the prescription before deciding where to purchase eyeglasses, or (c) other actions?

15. The staff has received few complaints from consumers who wanted to buy replacement contact lenses from someone other than their original fitter but were refused access to their lens specifications. Are a significant number of contact lens wearers refused access to their lens specifications? Can consumers reasonably avoid such problems? What are the costs and benefits of (a) a rule provision requiring release of specifications, (b) efforts to increase consumer awareness of the need to determine whether a particular examiner will provide specifications before deciding where to purchase lenses, or (c) other actions?

16. The contact lens study found that the prices charged for replacement contact lenses vary widely. Is that price dispersion explained by differences in lens or service quality, or is it evidence of a lack of competition? If the latter, what is the cause of this lack of competition?

Section E. Public Hearings

Two sets of public hearings will be held on this proposed trade regulation rule. The first will commence on May 20, 1985 at 9:30 a.m. in Room 332, 6th Street and Pennsylvania Avenue, NW, Washington, DC. The second will commence on June 17, 1985, at 9:30 a.m. in Room 12470, 450 Golden Gate Avenue, San Francisco, CA. Tentatively scheduled are 10 days of public hearings at each site.

Persons desiring to present their views orally at the hearings should advise James P. Greenan, Presiding Officer, Federal Trade Commission, Washington, D.C. 20580, 202–523–3564, as soon as possible.

The Presiding Officer appointed for this proceeding shall have all powers prescribed in 16 CFR 1.13(c), subject to any limitations described in this notice.

Section F. Instruction to Witnesses

1. *Advance notice.* If you wish to testify at the hearings, please notify the Presiding Officer immediately by letter or telephone of your desire to appear and file with him or her your complete, word-for-word statement no later than April 26, 1985 for witnesses at the Washington, D.C. hearings and May 31, 1985 for witnesses at the San Francisco, California hearings. (You may testify at only one of the hearings.) This advanced notice is required so that other interested persons can determine the need to ask you questions and have an opportunity to prepare. Any cross-examination that is permitted may cover any of your written testimony, which will be entered into the record exactly as submitted. Consequently, it will not be necessary for you to repeat this statement at the hearing. You may simply appear to answer questions with regard to your written statement or you may deliver a short summary of the most important aspects of the statement within time limits to be set by the Presiding Officer. As a general rule, your oral summary should not exceed twenty minutes.

Prospective witnesses are advised that they may be subject to questioning by designated representatives of interested parties and by members of the Commission's staff. Prospective witnesses are also advised that they may be questioned about any data they have that supports or was used as a basis for general statements made in their testimony. Such questioning will be conducted subject to the descretion and control of the Presiding Officer and within such time limitations as he may impose. In the alternative, the Presiding Officer may conduct such examination himself or he may determine that full and true disclosure as to any issue or question may be achieved through rebuttal submissions or the presentation of additional oral or written statements. In all such instances, the Presiding Officer shall be governed by the need for a full and true disclosure of the facts and shall permit or conduct such examination with due regard for relevance to the factual issues raised by the proposed rule and the testimony delivered by each witness.

2. *Use of Exhibits.* Use of exhibits during oral testimony is encouraged, especially when they are to be used to help clarify technical or complex matters. If you plan to offer documents as exhibits, file them as soon as possible during the period for submission of written comments so they can be studied by other interested persons. If those documents are unavailable to you during this period you must file them as soon as possible thereafter and not later than the deadline for filing your prepared statement. Mark each of the documents with your name, and number them in sequence, (*e.g.*, Jones Exhibit 1). Please also number all pages of each exhibit. The Presiding Officer has the power to refuse to accept for the rulemaking record any hearing exhibits that you have not furnished by the deadline.

3. *Expert Witnesses.* If you are going to testify as an expert witness, you must attach to your statement a *curriculum vitae*, biographical sketch, resume or summary of your professional background and a bibliography of your publications. It would be helpful if you would also include documentation for the opinions and conclusions you express by footnotes to your statements or in separate exhibits. If your testimony is based upon or chiefly concerned with one or two major research studies, copies should be furnished. The remaining citations to other works can be accomplished by using footnotes in your statement referring to those works.

4. *Results of surveys and other research studies.* If in your testimony you will present the results of a survey or other research study, as distinguished from simple references to previously published studies conducted by others, you must also present as an exhibit or exhibits all of the following information that is available to you:

(a) A complete report of the survey or other research study and the information and documents listed in (b) through (e) below if they are not included in that report.

(b) A description of the sampling procedures and selection process, including the number of persons contacted, the number of interviews completed, and the number of persons who refused to participate in the survey.

(c) Copies of all completed questionnaires or interview reports used in conducting the survey or study if respondents were permitted to answer questions in their own words rather than required to select an answer from one or more answers printed on the questionnaire or suggested by the interviewer.

(d) A description of the methodology used in conducting the survey or other research study including the selection of and instructions to interviewers, introductory remarks by interviewers to respondents, and a sample questionnaire or other data collection instrument.

(e) A description of the statistical procedures used to analyze the data and all data tables which underlie the results reported.

Other interested persons may wish to examine the questionnaires, data collection forms and any other underlying data not offered as exhibits and which serve as a basis for your testimony. This information, along with computer tapes that were used to

conduct analyses, should be made available (with appropriate explanatory data) upon request of the Presiding Officer. The Presiding Officer will then be in a position to permit their use by other interested persons or their counsel.

5. *Identification, number of copies, and inspection.* To assure prompt consideration, all materials filed by prospective witnesses pursuant to the instructions contained in paragraphs 1–4 above should be identified as "Ophthalmic Practice Rulemaking Statement" ("and Exhibits," if appropriate), submitted in five copies when feasible and not burdensome, and should include the name, title, address, and telephone number of the prospective witness.

6. *Reasons for requirement.* The foregoing requirements are necessary to permit us to schedule the time for your appearances and that of other witnesses in an orderly manner. Other interested parties must have your expected testimony and supporting documents available for study before the hearing so they can decide whether to question you or file rebuttals. If you do not comply with all of the requirements, the Presiding Officer has the power to refuse to let you testify.

7. *General procedures.* These hearings will be informal and courtroom rules of evidence will not apply. You will not be placed under oath unless the Presiding Officer so requires. You also are not required to respond to any question outside the area of your written statement. However, if such questions are permitted, you may respond if you feel you are prepared and have something to contribute. The Presiding Officer will assure that all questioning is conducted in a fair and reasonable manner and will allocate time according to the number of parties participating, the legitimate needs of each group for full and true disclosure, and the number and nature of the factual issues discussed. The Presiding Officer further has the right to limit the number of witnesses to by heard if the orderly conduct of the hearing so requires.

The deadlines established by this notice will not be extended and hearing dates will not be postponed unless hardship can be demonstrated.

Section G. Notification of Interest

If you wish to avail yourself of the opportunity to question witnesses you must notify the Presiding Officer by March 8, 1985 of your position with respect to the proposed rulemaking proceeding. Your notification must be in sufficent detail to enable the Presiding Officer to identify groups with the same or similar interests respecting the general questions and issues provided in Section E of this notice. The Presiding Officer may require the submission of additional information if your notification is inadequate. If you fail to file an adequate notification in sufficient detail, you may be denied the opportunity to cross-examine witnesses.

Before the hearings commence, the Presiding Officer will identify groups with the same or similar interests in the proceeding. These groups will be required to select a single representative for the purpose of conducting direct or cross-examination. If they are unable to agree, the Presiding Officer may select a representative for each group. The Presiding Officer will notify all interested persons of the identity of the group representatives at the earliest practicable time.

Group representatives will be given an opportunity to question each witness on any issue relevant to the proceeding and within the scope of the testimony. The Presiding Officer may disallow any questioning that is not appropriate for full and true disclosure as to relevant issues. The Presiding Officer may impose fair and reasonable time limitations on the questioning. Given that questioning by group representatives and the staff will satisfy the statutory requirements with respect to disputed issues, no such issues will be designated by the Presiding Officer.

Section H. Post-Hearing Procedures

The Presiding Officer will establish the time that you will be afforded after the close of the hearings to file rebuttal submissions, which must be based only upon identified, properly cited matters already in the record. The Presiding Officer will reject all submissions which are essentially additional written comments rather than rebuttal. The rebuttal period will include the time consumed in securing a complete transcript.

Within a reasonable time after the close of the rebuttal period, the staff shall release its recommendations to the Commission as required by the Commission's Rules of Practice. The Presiding Officer's report shall be released not later than 30 days thereafter and shall include a recommended decision based upon his or her findings and conclusions as to all relevant and material evidence. Post-record comments, as described in § 1.13(h) of the Rules of Practice, shall be submitted not later than 60 days after the publication of the Presiding Officer's report.

Section I. Rulemaking Record

In view of the substantial rulemaking records that have been established in prior trade regulation rulemaking proceedings (and the consequent difficulty in reviewing such records), the Commission urges all interested persons to consider the relevance of any material before submitting it for the rulemaking record. While the Commission encourages comments on its proposed rule, the submission of material that is not generally probative of the issues posed by the proposed rule merely overburdens the rulemaking record and decreases its usefulness, both to those reviewing the record and to interested persons using it during the course of the proceeding. The Commission's rulemaking staff has received similar instruction.

Material that the staff has obtained during the course of its investigation prior to the initiation of the rulemaking proceeding but that is not placed in the rulemaking record will be made available to the public to the extent that it is considered to be nonexempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552.

The rulemaking record, as defined in 16 CFR 1.18(a), will be made available for examination in Room 130, Public Reference Room, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW, Washington, D.C.

Section J. Preliminary Regulatory Analysis

I. Need for, and Objectives of, the Proposed Rule

The Federal Trade Commission (FTC) is examining restrictions on the delivery of eye care services and products in an effort to ensure maximum consumer access to these goods and services at the lowest possible price, without any compromise in the quality of vision care. This preliminary regulatory analysis is included in the Notice of Proposed Rulemaking in order to facilitate its availability to the public.

The proposed rule would remove state-imposed restrictions that bar certain forms of commercial ophthalmic practice and would clarify the current prescription release provisions of 16 CFR Part 456, the Advertising of Ophthalmic Goods and Services Trade Regulation Rule, which is referred to in this analysis as the "Eyeglasses Rule." Detailed information regarding the investigation, findings, and reasoning that support the proposed rule is contained in preceding sections of this Notice and is incorporated by reference

into this analysis, and in the FTC Staff Report entitled "State Restrictions on Vision Care Providers: The Effects on Consumers" (July 1980).

The Federal Trade Commission has identified several such restrictions that it has reason to believe limit competition in the delivery of eye care goods and services and cause substantial consumer injury. These restrictions appear to decrease consumer access to vision care services, increase the cost of these services, and impede the growth of "non-traditional" eye care practices, but fail to provide offsetting improvements in quality of care. The restrictions in question prohibit: (1) Business relationships between optometrists or opticians and lay individuals or firms; (2) the operation or ownership of branch offices by vision care providers; (3) the location of optometrists' offices in pharmacies, department stores, shopping centers, retail optical dispensaries, or other mercantile settings; and (4) the use of trade names by optometrists. The proposed rule would prohibit enforcement of the restrictions enumerated above but would not interfere with a state's ability to enforce specific restrictions aimed at control of harmful practices.

The proposed rule would also clarify the Eyeglasses Rule's current prescription release requirement by modifying the definition of prescription.

II. Legal Authority

The Commission has reason to believe that the public restrictions discussed above may be unfair acts or practices within the meaning of sections 5 and 18 of the Federal Trade Commission Act, 15 U.S.C. 45 and 57(a) because such restrictions may cause substantial injury to consumers that is not outweighed by any countervailing benefits and that consumers cannot reasonably avoid.

III. Alternatives Considered by the Commission

The Commission notes that alternatives under consideration are procedural, not substantive. Unlike some regulatory initiatives where alternative substantive approaches to attain the same ends may exist, in this instance the Commission's intent is to permit certain forms of ophthalmic practice to exist in the marketplace, in the face of state laws explicitly banning them. Thus, the alternatives to the promulgation of a rule focus solely on other approaches for attaining the relaxation of those state restrictions. In the discussion that follows we detail the costs and benefits associated with the attainment of the goal of permitting commercial ophthalmic practice. Assuming the broadest application of successful outcomes, the same costs and benefits would result irrespective of the process used to achieve those ends. We discuss all costs and benefits for the rulemaking option only. To the extent that the use of alternative procedural options may impose different costs and benefits in pursuing the substantive goals, we discuss those in each section.

1. Model State Law

Rather than promulgating a trade regulation rule,the Commission could issue a public report with a model state law or guidelines for voluntary change which embody the Commission's findings and objectives. Adoption of these guidelines in whole or in part would be at the discretion of each state. (See Advance Notice of Proposed Rulemaking, 45 FR 79828–79829 (1980), for a detailed discussion of possible subjects to include in such a model state law.)

2. Cases

One alternative to rulemaking is for the Commission to issue formal complaints on a case-by-case basis against a particular state, private association or ophthalmic practitioner alleged to have engaged in unfair acts or practices.

3. No Further Action by the FTC

The Commission could take no further action and close the investigation. The staff report and economic studies which serve as the primary evidentiary bases for the Commission's decision to proceed with rulemaking could instead be made available to state regulatory bodies in the hope that they would take corrective action in this area.

IV. Cost-Benefit Analysis

The entitles that will be affected by the proposed rule are state and local agencies involved in regulation of vision care providers; optometrists, ophthalmologists, opticians, and other persons engaged in the provision of eye care; and consumers of vision care goods and services. The following cost-benefits analyses of the proposed rule and each alternative refer to particular affected entities whenever possible.

In 1982, approximately 22,000 optometrists, 12,000 ophthalmologists, and 26,000 opticians were engaged in active practice. The majority of optometrists are self-employed or practice with the other optometrists as members of a professional corporation. Approximately 10% of optometrists are employed by large optical chains, department stores, or opticians. Consumers annually spend approximately $6 billion on ophthalmic goods and services. Chain optical stores currently hold 15% of the retail eyeware market.

1. Proposed Rule

Costs, Adverse Effects: No direct compliance costs would be imposed on any affected sector by the proposed rule's removal of state restrictions on commercial forms of practice.

a. *Costs to Affected Government Entities*: The proposed rule would remove state statutes and state board regulations which ban commerical forms of practice. Indirect costs might arise should state or local regulatory agencies decide to enact new regulations to control potentially harmful practices. In addition to the cost involved in enacting such regulations, the regulatory agencies might incur some additional enforcement costs.

B. *Costs to Industry Members:* No direct costs would be imposed on optometrists, ophthalmologists, or opticians by the removal of state bans on commercial forms of practice. The rule would only permit, not require, providers to operate branch offices, maintain offices in mercantile locations, use trade names and be employed by lay corporations and individuals.

The only "costs" borne by industry members would be the indirect effects of doing business in a market where greater consumer choice creates more competition. The indirect effect of the rule on various industry members cannot be determined with any degree of precision. A range of consequences can be expected to flow from this restructuring of the market, depending at least in part of how individual providers respond to the changing market conditions.

In markets where commercial practice is now prohibited, it can be anticipated that commercial firms will enter. The market share that firms will capture in those states cannot be predicted. However, in states that currently permit commercial practice, it appeas to co-exist with traditional solo practice.

Data from studies of the ophthalmic market indicate that this market is price elastic: that is, as prices of eye examinations and eyeglasses decline, there is a proportionately greater increase in consumption. Thus, the staff anticipate an incrase in total expenditures for vision care products and services. However, the market will be a more competitive one. Some less efficient providers will undoubtely lose business.

c. *Costs to Vision Care Consumers:* No direct economic cost would be

imposed on consumers of vision care by the removal of bans on commercial forms of practice. To the contrary, two FTC studies indicate that average prices for eye examinations, eyeglasses, and contact lenses are lower in markets where commercial practice is permitted, and that no adverse impact on the quality of vision care services should result from the removal of restrictions on forms of practice.

Benefits: a. *Benefits to Affected Government Entities:* State and local regulatory agencies would incur lower compliance and enforcement costs if bans on commercial forms of practice were removed. However, these lower costs might be offset to some extent if states or agencies enact new regulations to control potentially harmful practices.

b. *Benefits to Industry Members:* Present vision care practitioners would be able to own and operate more than a limited number of offices, locate in mercantile settings, use a trade name for their practice, and enter into employment, leasing, or other business arrangements with lay individuals and firms, notwithstanding current state law to the contrary. Corporations or other business entities presently selling ophthalmic goods would be able to hire, lease space to, or associate with optometrists in order to offer one-stop shopping to consumers.

c. *Benefits to Vision Care Consumers:* By removing state restrictions on commercial practice, consumers of vision care should be able to purchase vision care goods and services at lower prices without any compromise in quality of care. FTC studies indicate that: (1) Prices are significantly lower in cities where commercial practice and advertising are not restricted; (2) commercial optometrists charge lower prices than non-commercial optometrists; (3) non-commercial providers who operate in markets where commercial practice is permitted charge less than their counterparts in cities where commercial practice is prohibited; and (4) overall quality of care is no lower in commercial than in non-commercial markets. Consumers may be able to obtain these lower prices that result from increased competition from two groups: non-commercial practitioners who lower their prices in response to increased competition and commercial practitioners who offer vision care at low prices by taking advantage of economies of scale. Due to the lifting of restrictions on commercial forms of practice, it can be anticipated that some consumers will purchase vision care on a more frequent basis.

In addition, consumers would be able to obtain one-stop service (eye examination plus eyeglasses or contact lenses) from optometrists who are located near or lease space from a retail optical dispensary in response to the lifting of location restrictions, or from retail optical firms which offer the services of an optometrist to perform eye examinations.

2. No Rule—Model State Law

Costs, Adverse Effects: a. *Costs to Affected Government Entities:* A model state law would impose no costs directly because it is an option to be adopted by state government entities at their discretion.

b. *Costs to Industry Members:* Assuming that all states adopted a model law, costs to industry members should be the same as if a rule were adopted. However, if some states do not enact the model state law while others enact only certain provisions or different versions altogether, the end result would be a lack of uniformity in the state laws concerning commercial practices. This might burden practitioners or firms who wish to maintain interstate operations.

c. *Costs to Vision Care Consumers:* As stated above, no direct economic costs would be imposed on consumers by removal of bans on commercial forms of practice. In addition, on the basis of the results of the FTC studies, no adverse impact on the quality of vision care is expected to result if a state adopts a model state law permitting commercial forms of practice.

Benefits: a. *Benefits to Affected Government Entities:* A model state law would provide states with valuable information, but would not remove state laws. Individuals states or state boards could modify the model law to meet particular circumstances.

b. *Benefits to Industry Members:* If a state adopts a model state law which permits the commercial forms of practice contained in the proposed rule, benefits to industry members in that state would be similar to those resulting from promulgation of a trade regulation rule. This result assumes that commercial practice would not be burdened indirectly by restrictive state enforcement policies or regulations.

c. *Benefits to Vision Care Consumers:* If a state adopts a model state law permitting commercial forms of ophthalmic practice, benefits to consumers in that state would be the same as those resulting from promulgation of the trade regulation rule.

3. Cases Against Private Associations and/or State Government Entities

Costs, Adverse Effects: a. *Costs to Affected Parties:* The issuance of a complaint by the Commission against a private association or against a state regulatory body alleging Section 5 unfairness concerning commercial practice restrictions would result in adjudication costs for that entity. If the Commission issued a final order, a party against whom the complaints were issued would have a comply with the terms of that order. Compliance costs would parallel those of a trade regulation rule.

b. *Costs to Industry Members:* If the Commission pursued the option of a case-by-case adjudication, those cases would necessarily be against states and private associations that have imposed commercial practice bans. Costs to industry members in the event of successful litigation by the Commission would be the same as if a rule were adopted. The only significant difference in procedural costs would be that rulemaking entitles affected industry groups to participate. In adjudication against a specific state governmental entity, affected industry members would have to seek intervenor or *amicus curiae* status.

c. *Costs to Vision Care Consumers:* Assuming the broadest application of a final order, successful litigation would result in the same substantive costs and benefits as rulemaking. However, consumers would not have a right to participate in litigation as they would in rulemaking proceedings.

Benefits: a. *Benefits to Affected Parties:* Private associations or state and local regulatory agencies would incur lower compliance and enforcement costs if bans on commercial forms of practice were removed. However, these lower costs might be offset to some extent if such entities enact new ethical codes or regulations to control potentially harmful practices.

b. *Benefits to Industry Members:* A case against a particular state would produce benefits to industry members in that state similar to those that would result from promulgation of a trade regulation rule.

A case against an association in a state that prohibited commercial practice would result in little if any benefit to industry members. A case against an association in a state that permits commercial practice would enable industry members who wished to engage in commercial practice to enjoy the benefits of association membership.

c. *Benefits to Vision Care Consumers:* Any case that resulted in the removal of barriers to commercial practice in a particular state would produce benefits to consumers in that state similar to those that would result from promulgation of a trade regulation rule.

4. No Further Action by the FTC

Costs, Adverse Effects: a. *Costs to Affected Government Entities:* None. Should the FTC take no further action regarding state-imposed commercial restrictions, these state restrictions will remain operative. FTC materials could be provided to state and local regulatory entities should they wish to consider modification of existing state laws or regulations.

b. *Costs to Industry Members:* Present conditions of practice will probably continue to exist if the FTC terminates its activity regarding commercial restraints. Ophthalmic practitioners who would adopt forms of commercial practice if permitted to do so by state law would be adversely affected by FTC inactivity.

c. *Costs to Vision Care Consumers:* Consumer injury, which the Commission has reason to believe results from restraints on commercial forms of practice, will continue it the Commission terminates its activity in this area. Consumers residing in markets where restrictions exist will be adversely affected since the *status quo* of these markets presently limits competition. As a result, consumers in markets where restrictions exist may continue to face artifically high costs due to limited competition in the eye care goods and services markets.

Benefits: a. *Benefits to Affected Government Entities:* State law and regulation will not be preempted by federal regulation if the FTC takes no further action. State and local governments will not be obliged to reevaluate existing laws or enact any new laws.

b. *Benefits to Industry Members:* Non-commercial practitioners may continue to operate without encountering increased competion.

c. *Benefits to Vision Care Consumers:* None. Consumers would not benefit by termination of Commission activity in this area. The potential benefits associated with commercial practice would be foreclosed if the Commission took no further action and no action at the state level were forthcoming

V. Explanation of why the Commission has Initiated a Rulemaking Proceeding

The Commission has considered all remedial options discussed in Part 1 of this Regulatory Analysis. Of all the alternatives considered, the Commission believes that rulemaking is the most efficient and orderly way to explore further the complex issues involved in this investigation. Although the Commission has decided to initiate a rulemaking proceeding, it should be noted that the commercial practice portion of the proposed rule is essentially deregulatory in nature. By barring enforcement of state restrictions on commercial forms of practice, the proposed rule would reduce barriers to competition and remove direct government interference with practitioners' decisionmaking. The evidence to date indicates that these restrictions result in substantial consumer injury by causing prices to be unnecessarily high and by limiting access to care. At the same time, these restraints do not offer any countervailing benefit in terms of higher quality vision care. In addition, this injury is not one consumers can reasonably avoid because it results from government-imposed restrictions. Therefore, the Commission has reason to believe that such restrictions may be unfair to consumers. The proposed modification of the prescription release requirement would simply clarify the nature and extent of that requirement.

The Commission has carefully considered the option of preparing a model state law. The model state statute could include provisions permitting the forms of practice contained in the proposed rule. The preparation of such a statute, however, would be only a recommendation by the Commission and would depend on voluntary action by the states themselves to accomplish the desired changes. While the preparation of a model state law might provide an impetus for state action, it is unlikely that most or all 50 states would enact the model state law. Despite the 1980 publication of the Bureau of Economics study, which found that commercial practice restrictions cause higher prices but do not maintain or enhance quality of care, there has been little movement at the state level to change the applicable laws. Moreover, a significant change in the current state regulatory scheme is not likely to occur in the time that it could be accomplished by the Commission through promulgation of a trade regulation rule. Finally, some states might only enact certain portions of the model statute or might enact different versions altogether.

Another remedial option is for the Commission to issue complaints against individual states or private associations concerning commercial practice restrictions. The Commission has considered this alternative and has determined that this is not the most appropriate way to proceed for several reasons. First, an action against a private association would still leave state laws intact. Second, a final order against a state or private association might not have application to others; hence, much of the consumer injury believed to exist might not be alleviated. Given the number of states which restrict commercial practice, the Commission has determined that the issuance of individual complaints would not be an efficient use of Commission resources. Only a remedy with nationwide application will eliminate the widespread consumer injury.

For these reasons, the Commission has determined that initiation of a rulemaking proceeding is the most appropriate way to proceed and is the most efficient use of Commission resources. Through rulemaking, the Commission can present a thorough analysis of the issues raised by this investigation. Rulemaking also permits direct participation by all interested parties. If the Commission ultimately determines that state commercial practice restraints are unfair under Section 5, a trade regulation rule is the only remedy that would alleviate the consumer injury nationwide.

Section K. Initial Regulatory Flexibility Analysis

The following discussion is included with the Commission's Preliminary Regulatory Analysis for the proposed rule pursuant to the requirements of the Regulatory Flexilibilty Act, Pub. L. 96–354. The Act requires an analysis of the anticipated impact of the proposed rule on small business.[6] The analysis must contain a description of: (1) The reasons why action is being considered; (2) the objectives of and legal basis for the proposed rule; (3) the class and number of small entities affected; (4) the projected reporting, recordkeeping and other compliance requirements of the proposed rule; (5) any existing relevant federal rules which may duplicate, overlap or conflict with the proposed rule; [7] and (6) any significant alternatives to the proposed rule which accomplish its objectives and, at the same time, minimize its impact on small entities.[8] The preliminary regulatory analysis preceding this section discussed items, 1, 2 and 6 above in detail and therefore will not be repeated

[6] 5 U.S.C. 603(a) (1983).
[7] 5 U.S.C. 603(b) (1)–(5) (1983).
[8] 5 U.S.C. 603(c) (1983).

here.[9] Thus, this analysis will discuss items 3–5 above.

I. Entities to Which the Rule Applies

The proposed rule will directly affect all ophthalmologists and optometrists who perform eye examinations and all optometrists, opticians and others who desire to engage in commerical ophthalmic practice. In 1982, there were approximately 12,000 ophthalmologists, 22,000 optometrists, and 26,000 opticians in active practice in the United States. Most ophthalmologists and optometrists are self-employed. The majority of opticians are self-employed or employed in "independent" retail optical establishments. An increasing number of vision care providers, however, appear to be adopting alternate modes of practice, including partnerships, group practice, and, in the case of optometrists and opticians, employment by or leasing arrangements with commercial optical establishments (such as department stores or large retail optical chains).

Ophthalmologists, optometrists and opticians all provide eye care service to consumers. Ophthalmologists and optometrists examine the eyes and prescribe and dispense eyeglasses and contact lenses. Opticians dispense eyeglasses, and, in some states, they fit and dispense contact lenses.

Most ophthalmologists are doctors of medicine, but some are doctors of osteopathy. They specialize in the diagnosis and treatment of eye diseases and abnormal conditions, including refractive errors. As physicians, they are authorized to perform surgery or to prescribe drugs, lenses or other treatment to remedy these conditions.

Doctors of optometry examine the eye and related structures to determine the presence of vision problems, eye diseases or other abnormalities. They prescribe and adapt corrective lenses or other optical aids and may use visual training aids when indicated to preserve or restore maximum visual acuity. Generally, optometrists do not prescribe drugs, definitively diagnose or treat eye diseases, or perform surgery. In a few states, however, they may be able to treat eye diseases in certain circumstances.

Dispensing opticians (or ophthalmic dispensers) make, fit, supply and adjust eyeglasses according to prescriptions written by ophthalmologists or optometrists. In many states they are also authorized to duplicate spectacle lenses without a prescription, and, in some states, they may fit contact lenses on their own authority or under the direction or supervision of an ophthalmologists or optometrist. By custom, practice and tradition, opticians in many states also dispense contact lenses pursuant to an eye doctor's written specifications or under certain other conditions.

II. Compliance Requirements

The Commission believes that reporting, recordkeeping or other compliance requirements of the proposed rule should not have a disproportionate impact on small entities as compared to large firms. The proposed rule, in fact, would impose no such mandatory requirements on any entities for compliance purposes. Rather, the primary impact of the proposed rule on small entities would stem from the increased competition in the vision care industry which can be anticipated as a result of the rule's deregulatory effects.

The economic impact on individual small entities from increased competition in the vision care industry, although difficult to determine, could be substantial. However, the proposed rule provisions removing certain public restraints on commercial ophthalmic practice would permit small entities (*i.e.*, optometrists and opticians) to engage in alternate modes of practice, including commercial practice, or to expand, should they desire to do so.

The proposed rule provisions removing certain commercial practice restraints could adversely affect some small entities while benefitting others. This result would stem from the increased competition anticipated as a result of removing bans on commercial ophthalmic practice. In states that currently restrict commercial practice, for example, the market share of small entities providing vision care might tend to decline as large commercial practices enter the market. However, other small entities that wish to engage in commercial practice are not permitted to do so under current state laws.

We are aware of no existing federal rules that duplicate, overlap or conflict with the proposed rule.

Section L. Proposed Trade Regulation Rule

Notice is hereby given that the Federal Trade Commission, pursuant to the Federal Trade Commission Act, as amended, 15 U.S.C. 41 *et seq.*, the provisions of part 1, subpart B of the Commission's Procedures and Rules of Practice, 16 CFR 1.7 *et seq.*, and the Administrative Procedure Act, 5 U.S.C. 553 *et seq.*, has initiated a proceeding for the promulgation of a trade regulation rule concerning ophthalmic practice.

Accordingly, the Commission proposes the following Trade Regulation Rule in the form of a revision of 16 CFR Part 456. Set forth below is the full text of the proposed rule, which has been integrated into the existing Eyeglasses Rule. In the text which immediately follows, new rule provisions are highlighted by arrows and deleted provisions are bracketed.[10] The text of the proposed rule then appears without the deleted portions for easier reading.

PART 456—[ADVERTISING OF OPHTHALMIC GOODS AND SERVICES] ►OPHTHALMIC PRACTICE RULES◄

§ 456.1 Definitions.

(a) A [*"buyer"*] ►"patient"◄ is any person who has had an eye examination.

[(b) The "dissemination of information" is the use of newspapers, telephone directories, window displays, signs, television, radio, or any other medium to communicate to the public any information, including information concerning the cost and availablity of a product or service.]

[(c)] ►(b)◄ An *"eye examination"* is the process of determining the refractive condition of a person's eyes or the presence of any visual anomaly by the use of objective or subjective tests.

[(d)] ►(c)◄ *"Ophthalmic goods"* consist of eyeglasses, or any component of eyeglasses, and contact lenses.

[(e)] ►(d)◄ *"Ophthalmic services"* are the measuring, fitting, and adjusting of ophthalmic goods to the face subsequent to an eye examination.

►(e) An *"ophthalmologist"* is any Doctor of Medicine or Osteopathy who perfoms eye examinations.◄

►(f) An *"optometrist"* is any Doctor of Optometry.◄

[(f)] ►(g)◄ A *"person"* means any party over which the Federal Trade Commission has jurisdiction. This includes individuals, partnerships, corporations, [and] professional associations►, and other entities.◄

[(g)] ►(h)◄ A *"prescription"* is the written specifications for [ophthalmic] ►spectacle◄ lenses which are derived from an eye examination►, including◄ [The prescription shall contain all of the information necessary to permit the buyer to obtain the necessary ophthalmic goods from the seller of his choice. In the case of a prescription for contact lenses, the refractionist must

[9] 5 U.S.C. 605(a) explicitly permits such incorporation.

[10] Some of the deleted portions correspond to those provisions of the original Rule which were remanded by virtue of the decision in American Optometric Association v. Federal Trade Commission, 626 F.2d 897 (D.C. Cir. 1980).

include in the prescription only those measurements and directions which would be included in a prescription for spectacle lenses.]

[All prescriptions shall include] all of the information specified by state law, if any, ►necessary to obtain spectacle lenses.◄

[(h) A "*refractionist*" is any Doctor of Medicine Osteopathy, or Optometry or any other person authorized by state law to perform eye examinations.]

(i) A "*seller*" is any person, or his ►or her◄ employee or agent, who sells or provides ophthalmic goods and services directly to the public.

►(j) A "*trade name ban*" is any state law, rule or regulation which prohibits optometrists from practicing or holding themselves out to the public under the name of the person by whom they are employed or a name other than the name shown on their license or certificate of registration.◄

[§ 456.2 Private Conduct].

[(a) It is an unfair act or practice for sellers to fail to disseminate information concerning ophthalmic goods and services notwithstanding state or local law to the contrary. *Provided,* Violation of this subpart by any seller acting alone shall not be deemed to be a violation of section 5(a)(1) of the Federal Trade Commission Act.]

[To prevent this unfair act or practice, any seller may engage in the dissemination of information concerning ophthalmic goods and services subject to the limitations expressed in § 456.5 below.]

[(b) It is an unfair act or practice for refractionists to fail to disseminate information concerning eye examinations notwithstanding state or local law to the contrary. *Provided,* Violation of this subpart by any refractionist acting alone shall not be deemed to be a violation of section 5(a)(1) of the Federal Trade Commission Act.]

[To prevent this unfair act or practice, any refractionist may engage in the dissemination of information concerning eye examinations. Nothing in this subpart shall excuse a refractionist from compliance with any state or local law which permits the dissemination of information concerning eye examinations, including information on the cost and availability of those examinations but require that specified affirmative disclosures also be included.]

[§ 456.3 Public Restraints].

[It is an unfair act or practice under Section 5 of the Federal Trade Commission Act for any state or local government entity or any subdivision thereof, state instrumentality, or state or local governmental official to enforce any:]

[(a) prohibition, limitation or burden on the dissemination of information concerning ophthalmic goods and services by any seller or group of sellers, or]

[(b) prohibition, limitation or burden on the dissemination of information concerning eye examinations by any refractionist. *Provided:* Nothing in subpart (b) shall be construed to prohibit the enforcement of a state or local law which permits the dissemination of information concerning eye examinations, including information on the cost and availability of those examinations, but requires that specified affirmative disclosures also be included.]

[Violation of subparts (a) and (b) shall not be deemed for purposes of section 5(m)(1)(A) or section 19 of the Federal Trade Commission Act to be a violation of section 5(a)(1) of the Act.]

[§ 456.4 Conformance to State Law].

[It is an unfair act or practice under section 5 of the Federal Trade Commission Act:]

[(a) for any seller to reduce, limit or burden the dissemination of information concerning ophthalmic goods and services in order to comply with any law, rule, regulation or code of conduct of any nonfederal legislative, executive, regulatory or licensing entity or any other entity or person, which would have the effect of prohibiting, limiting, or burdening the dissemination of this information, or]

[(b) for any refractionist to reduce, limit, or burden the dissemination of information concerning eye examinations in order to comply with any law, rule, regulation or code of conduct of any nonfederal legislative, executive, regulatory or licensing entity or any other entity or person, which would have the effect of prohibiting, limiting, or burdening the dissemination of this information. *Provided:* To the extent that a state or local law, rule, or regulation permits the dissemination of information concerning eye examinations, including information on the cost and availability of those examinations, compliance with that law or regulation shall not be construed to reduce, limit or burden the dissemination of information concerning eye examinations.]

[§ 456.5 Permissible State Limitations].

[(a) To the extent that a state or local law, rule, or regulation requires that any or all of the following items be included within any dissemination of information concerning opthalmic goods and services, such a law, rule, or regulation shall not be considered to prohibit, limit, or burden the dissemination of information.]

[(1) whether an advertised price includes single vision and/or multifocal lenses;]

[(2) whether an advertised price for contact lenses refers to soft and/or hard contact lenses;]

[(3) whether an advertised price for ophthalmic goods includes an eye examination;]

[(4) whether an advertised price for ophthalmic goods includes all dispensing fees, and]

[(5) whether an advertised price for eyeglasses includes both frames and lenses.]

[(b) Where a state or local law, rule, or regulation applies to all retail advertisements of consumer goods and services (including a law, rule, or regulation which requires the affirmative disclosure of information or imposes reasonable time, place and manner restrictions), such a law or regulation shall not be considered to prohibit, limit, or burden the dissemination of information.]

[(c) if, upon application of an appropriate state or local governmental agency, the Commission determines that any additional requirement of any such state or local govermental agency deemed by that agency to be necessary to prevent deception or unfairness is reasonable and does not unduly burden the dissemination of information, then that requirement shall be permitted to the extent specified by the Commission.]

[§ 456.6 Private Restraints.]

[(a) It is an unfair act or practice for any person, other than a state or a political subdivision or agency thereof, to prohibit, limit or burden:]

[(1) the dissemination of information concerning opthalmic goods and services by any seller;]

[(2) the dissemination of information concerning eye examinations by any refractionist. *Provided:* Nothing in this subpart shall be construed to prohibit any person from imposing reasonable affirmative disclosure requirements on the dissemination of information concerning eye examinations.]

[(b) Any organization or association which is not composed primarily of sellers and/or refractionists, which adopts or enforces self-regulatory guidelines for the dissemination of information which apply to all retail advertisements of consumer goods and

services, shall not be deemed to be in violation of this subpart.]

[(c) The conditioning of membership in a professional or trade association of sellers or refractionists on a requirement that members or prospective members of that association not engage in the dissemination of information concerning opthalmic goods and services and eye examinations or a requirement that opthalmic goods and services be advertised only in a prescribed manner shall be deemed to prohibit, limit or burden the dissemination of that information.]

§ 456.[7] ►2◄ Separation of Examination and Dispensing.

[In connection with the performance of eye examinations] ►I◄t is an unfair act or practice for [a refractionists] ►an opthalmologist or optometrist◄ to:

(a) Fail to give to the [buyer] ►patient◄ [a] ►one◄ copy of the [buyer's] ►patient's spectacle lens◄ precription immediately after the eye examination is completed. *Provided*: [A refractionist] ►An ophthalmologist or optometrist◄ may refuse to give the [buyer] ►patient◄ a copy of the [buyer's] ►patient's◄ prescription until the [buyer] ►patient◄ has paid for the eye examination, but only if that [refractionist] ►ophthalmologist or optometrists◄ would have required immediate payment from that [buyer] ►patient◄ had the examination revealed that no ophthalmic goods were required;

(b) Condition the availability of an eye examination to any person on a requirement that [that person] ►the patient◄ agree to purchase any opthalmic goods from the [refractionist] ►opthalmologist or optometrist◄;

(c) Charge the [buyer] ►patent◄ any fee in addition to the [refractionist's] ►ophthalmologist's or optometrist's◄ examination fee as a condition to releasing the prescription to the [buyer] ►patient◄. *Provided*: [A refractionist] ►An opthalmologist or optometrist◄ may charge an additional fee for verifying ophthalmic goods dispensed by another seller when the additional fee is imposed at the time the verification is performed; or

(d) Place on the prescription, or require the [buyer] ►patient◄ to sign, or deliver to the [buyer] ►patient◄ a form or notice waiving or disclaiming the liability or responsibility of the [refractionist] ►ophthalmologist or optomertrist◄ for the accuracy of the eye examination or the accuracy of the ophthalmic goods and services dispensed by another seller.

§ 456.[8] ►3◄ Federal or State Employees.

[Nothing in this part shall be construed to prohibit any federal, state or local government entity from adopting and enforcing standards or requirements concerning the dissemination of information and release of prescriptions by sellers or refractionists employed by those governmental entities.]

►The requirements of § 456.2 of this rule do not apply to ophthalmologists, optometrists or sellers in the employ of any federal, state or local governmental entity.◄

►§ 456.4 State Bans on Commercial Practice.

(a) It is an unfair act or practice for any state or local governmental entity to enforce any law, rule or regulation which directly or indirectly:

(1) Prohibits employer-employee or other business relationships between optometrists or sellers and persons other than ophthalmologists or optometrists;

(2) Limits the number of offices which an optometrist or seller may own or operate;

(3) Prohibits an optometrist from practicing in a pharmacy, department store, shopping center, retail optical dispensary or other mercantile location;

(4) Imposes a trade name ban.

(b) If any state or local governmental entity or officer violates any of the provisions of § 456.4(a) (1)–(4), that person will not be subject to any liability under Sections 5(m)(1)(A) or 19 of the Federal Trade Commission Act.

§ 456.[9] ►5◄ Declaration of Commission Intent.

[(a) It is the purpose of this part to allow retail sellers of ophthalmic goods and services to disseminate information concerning those goods and services in a fair and nondeceptive manner to prospective purchasers. This part is intended to eliminate certain restraints, burdens, and controls imposed by state and local governmental action as well as by private action on the dissemination of information, including advertising, concerning ophthalmic goods and services.]

[It is the intent of the Commission that this part shall preempt all state and local laws, rules, or regulations that are repugnant to this part, and that would in any way prevent or burden the dissemination of information by retail sellers of ophthalmic goods and services to prospective purchasers, except to the extent specifically permitted by this part. All state or local laws, rules, or regulations which burden the dissemination of information by requiring affirmative disclosure specifically addressed to ophthalmic goods and services are preempted, except for those specifically permitted by this part. State and local laws, rules, or regulations which apply to advertising of all consumer goods and services, including those that require affirmative disclosure of information, are not preempted.]

[(b) It is the Commission's intent that state laws which do not permit refractionists to disseminate information concerning eye examinations, including information concerning the cost and availability of those examinations, be preempted. State and local laws, rules or regulations which require affirmative disclosure of information in all disseminations of information concerning eye examinations are not preempted.]

[(c) The Commission intends this part to be as self-enforcing as possible. To that end, it is the Commission's intent that this part may be used, among other ways, as a defense to any proceeding of any kind which may be brought against any retail seller of ophthalmic goods and services or refractionist who advertises in a nondeceptive and fair manner.]

[(d) It is not the Commission's intent to compel any seller or refractionist to disseminate information by virtue of this part. On the contrary, the provisions of this part are intended solely for the protection of those sellers and refractionists who want to disseminate information but have been restrained or prevented from advertising due to the prohibitions and restrictions of state and local laws and regulations, or by private action.]

[(e)] (a) In prohibiting the use of waivers and disclaimers of liability in § [456.7(d)] 456.2(d), it is not the Commission's intent to impose liability on [a refractionist] an ophthalmologist or optometrist for the ophthalmic goods and services dispensed by another seller pursuant to that [refractionists's] ophthalmologist's or optometrist's prescription.

►(b) It is the purpose of this rule to allow optometrists or sellers of ophthalmic goods and services to work for or enter into other business relationships (such as partnerships or franchise agreements) with non-professional corporations or unlicensed persons. The rule is not intended to interfere with a state's ability to enforce any law, rule, or regulation designed to control specific harmful practices, such as improper interference in the professional judgment of optometrists or sellers or compensation schemes used to pay employed optometrists or sellers

which encourage over-prescription so long as the law, rule, or regulation does not directly or indirectly prohibit optometrists or sellers from working for or entering into other business relationships with nonprofessional corporations or unlicensed persons.◄

►(c) It is the purpose of this rule to allow optometrists, sellers, or any other person to own or operate any number of offices. The rule is not intended to interfere with a state's ability to enforce any law, rule, or regulation requiring that opthalmic goods, services or eye examinations provided at each office be supplied by a person qualified under state law to do so or regulating the services provided at each office, as long as states do not directly or indirectly limit the number of offices which an optometrist or seller can own or operate.◄

►(d) It is the purpose of this rule to allow optometrists to practice in a pharmacy, department store, shopping center, retail optical dispensary or other mercantile location. The rule is not intended to interfere with the state's ability to enforce general zoning laws or any law, rule, or regulation which prohibits the location of optometric or optical practice in areas which would create a public health or safety hazard.◄

►(e) It is the purpose of this rule to allow optometrists to practice or hold themselves out to the public under trade names. The rule is not intended to prevent states from enforcing any law, rule, or regulation which requires that the identity of an optometrist be disclosed to a patient at the time an eye examination is performed or ophthalmic goods or services are dispensed. This rule also is not intended to prohibit states from enforcing any state law, rule, or regulation that is reasonably necessary to prevent the deceptive use of trade names in advertising.◄

►(f) The Commission intends the rule to be as self-enforcing as possible. To that end, it is the Commission's intent that this rule may be used, among other ways, as a defense to any proceeding of any kind which may be brought against any seller or optometrist for practicing under a trade name, working for or associating with a non-professional corporation or unlicensed person, operating branch offices or practicing in a mercantile location.◄

[(f)] ►(g)◄ The rule, each subpart, and the Declaration of Commission Intent and their application are separate and severable.

* * * * *

Part 456—Ophthalmic Practice Rules

§ 456.1 Definitions

(a) A "*patient*" is any person who has had an eye examination.

(b) An "*eye examination*" is the process of determining the refractive condition of a person's eyes or the presence of any visual anomaly by the use of objective or subjective tests.

(c) "*Ophthalmic goods*" consist of eyeglasses, or any component of eyeglasses, and contact lenses.

(d) "*Ophthalmic services*" are the measuring, fitting, and adjusting of ophthalmic goods to the face subsequent to an eye examination.

(e) An "*ophthalmologist*" is any Doctor of Medicine or Osteopathy who performs eye examinations.

(f) An "*optometrist*" is any Doctor of Optometry.

(g) A "*person*" means any party over which the Federal Trade Commission has jurisdiction. This includes individuals, partnerships, corporations, professional associations, or other entities.

(h) A "*prescription*" is the written specifications for spectacle lenses which are derived from an eye examination, including all of the information specified by state law, if any, necessary to obtain spectacle lenses.

(i) A "*seller*" is a person, or his employee or agent, who sells or provides ophthalmic goods and services directly to the public.

(j) A "*trade name ban*" is any state law, rule or regulation which prohibits optometrists from practicing or holding themselves out to the public under the name of the person by whom they are employed or a name other than the name shown on their license or certificate of registration.

§ 456.2 Separation of Examination and Dispensing

It is an unfair act or practice for an ophthalmologist or optometrist to:

(a) Fail to give to the patient one copy of the patient's spectacle lens prescription immediately after the eye examination is completed. Provided: An ophthalmologist or optometrist may refuse to give the patient a copy of the patient's prescription until the patient has paid for the eye examination, but only if that ophthalmologist or optometrist would have required immediate payment from that patient had the examination revealed that no ophthalmic goods were required;

(b) Condition the availability of an eye examination to any person on a requirement that the patient agree to purchase any ophthalmic goods from the ophthalmologist or optometrist;

(c) Charge the patient any fee in addition to the ophthalmologist's or optometrist's examination fee as a condition to releasing the prescription to the patient. *Provided*: An ophthalmologist or optometrist may charge an additional fee for verifying ophthalmic goods dispensed by another seller when the additional fee is imposed at the time the verification is performed; or

(d) Place on the prescription, or require the patient to sign, or deliver to the patient a form or notice waiving or disclaiming the liability or responsibility of the opthalmologist or optometrist for the accuracy of the eye examination or the accuracy of the ophthalmic goods and services dispensed by another seller.

§ 456.3 Federal or State Employees

The requirements of Section 456.2 of this rule do not apply to ophthalmologists, optometrists or sellers in the employ of any federal, state or local governmental entity.

§ 456.4 State Bans on Commercial Practice.

(a) It is an unfair act or practice for any state or local governmental entity to enforce any law, rule or regulation which

(1) Prohibits employer-employee or other business relationships between optometrists or sellers and persons other than ophthalmologists or optometrists;

(2) Limits the number of offices which an optometrist or seller may own or operate;

(3) Prohibits optometrist from practicing in a pharmacy, department store, shipping center, retail optical dispensary or other mercantile location.

(4) Imposes a trade name ban.

(b) If any state or local governmental entity or officer violates any of the provisions of § 456.4(a) (1)–(4), that person will not be subject to civil penalty, redress, or any other monetary liability under sections 5(m)(1)(A) or 19 of the Federal Trade Commission Act.

§ 456.5 Declaration of Commission Intent

(a) In prohibiting the use of waivers and disclaimers of liability in § 456.2(d), it is not the Commission's intent to impose liability on an ophthalmologist or optometrist for the ophthalmic goods and services dispensed by another seller pursuant to the ophthalmologist's or optometrist's prescription.

(b) It is the purpose of the rule to allow optometrists or sellers of ophthalmic goods and services to work for or enter into other business relationships (such as partnerships or

franchise agreements) with non-professional corporations or unlicensed persons. The rule is not intended to interfere with a state's ability to enforce any law, rule, or regulation designed to control specific harmful practices, such as improper interference in the professional judgment of optometrists or sellers or compensation schemes used to pay employed optometrists or sellers which encourage over-prescription, so long as the law, rule, or regulation does not directly or indirectly prohibit optometrists or sellers from working for or entering into other business relationships with non-professional corporations or unlicensed persons.

(c) It is the purpose of this rule to allow optometrists, sellers, or any other person to own or operate any number of offices. The rule is not intended to interefere with a state's ability to enforce any law, rule, or regulation requiring that ophthalmic goods, services or eye examinations provided at each office be supplied by a person qualified to do so or regulating the services provided at each office, as long as states do not directly or indirectly limit the number of offices which an optometrist, seller or any other person may own or operate.

(d) It is the purpose of this rule to allow optometrists to practice in a pharmacy, department store, shopping center, retail optical dispensary or other mercantile location. The rule is not intended to interfere with the state's ability to enforce general zoning laws or any law, rule, or regulation which prohibits the location of optometric or optical practice in areas which would create a public health or safety hazard.

(e) It is the purpose of this rule to allow optometrists to practice or hold themselves out to the public under trade names. The rule is not intended to prevent states from enforcing any law, rule, or regulation which requires that the identity of an optometrist or seller be disclosed to a patient at the time an eye examination is performed or ophthalmic goods or services are dispensed. This rule also is not intended to prohibit states from enforcing any state law, rule, or regulation that is reasonably necessary to prevent the deceptive use of trade names in advertising.

(f) The Commission intends the rule to be as self-enforcing as possible. To that end, it is the Commission's intent that this rule may be used, among other ways, as a defense to any proceeding of any kind which may be brought against any seller or optometrist for practicing under a trade name, working for or associating with a non-professional corporation or unlicensed person, operating branch offices or practicing in a mercantile location.

(g) The rule, each subpart, and the Declaration of Commission Intent and their application are separate and severable.

By direction of the Commission, Commissioner Azcuenaga abstaining.

Emily H. Rock,

Secretary.

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Part III

Environmental Protection Agency

40 CFR Parts 260, 261, 264, 265, and 266
Hazardous Waste Management System; Definition of Solid Waste; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 264, 265, and 266

[SWH-FRL 2703-7]

Hazardous Waste Management System; Definition of Solid Waste

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On April 4, 1983, EPA proposed to amend its existing definition of solid waste used in regulations implementing Subtitle C of the Resource Conservation and Recovery Act (RCRA). Most of the proposal dealt with the question of which materials are solid and hazardous wastes when they are recycled. The Agency also proposed general and specific standards for various types of hazardous waste recycling activities.

We are finalizing much of the rule as proposed, but have made a number of changes and clarifications. The effect of the rule is to clarify the extent of EPA's jurisdiction over hazardous waste recycling activities and to set forth the regulatory regime for recycling activities subject to the Agency's jurisdiction.

DATES: *Effective Dates:* These rules with exceptions noted below, become effective on July 5, 1985. Sections 261.1(b), 261.2(e), and Part 266 Subpart F (rules for which the regulated community does not need time to come into compliance) are effective December 20, 1984.

Compliance Dates: All persons who generate, transport, treat, store, or dispose of wastes which are covered by today's regulation must notify EPA or a State authorized by EPA to operate the hazardous waste program of their activities under Section 3010 of RCRA no later than April 4, 1985 unless these persons previously have notified EPA or an authorized State that they generate, transport, treat, store, or dispose of hazardous wastes and have received an identification number. Notification instructions are set forth in 45 FR 12746, February 26, 1980.[1]

All existing hazardous waste management facilities which treat, store, or dispose of hazardous waste covered by today's rule and which qualify to manage these wastes under interim status under section 3005(e) of RCRA must file with EPA or a State authorized by EPA to operate the hazardous waste program to notification by April 4, 1985, and a Part A permit application by July 5, 1985. Under the Solid and Hazardous Waste Act Amendments of 1984, a facility is eligible for interim status if they were either in existence on November 19, 1980 or were in existence on the effective date of any statutory or regulatory change under RCRA that requires them to obtain a section 3005 permit. See RCRA amended section 3005(e). Facilities which have qualified for interim status will not be allowed to manage the wastes covered by today's rule after July 5, 1985, unless: (1) They file a notification with EPA or an authorized State by April 4, 1985, and (2) they submit an amended Part A permit application with EPA or an authorized State by July 5, 1985 (see 40 CFR 270.10(g)).

ADDRESSES: The official record for this rulemaking 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: RCRA Hotline, toll free, at (800) 424-9346 or at (202) 382-3000. For technical information, contact Matthew A. Straus, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460 (202) 475-8551.

[1] Under the Solid Waste Disposal Amendments of 1980 (Pub. L. 96-452 (October 21, 1980)), EPA was given the option of waiving the notification requirement under section 3010 of RCRA, following revision of the section 3001 regulations, at the discretion of the Administrator.

SUPPLEMENTARY INFORMATION: Under Subtitle C of RCRA, EPA is granted the authority to regulate hazardous wastes. Hazardous wastes, however, are defined in the statute as a subset of "solid waste." (See Sections 1004(5) and 1004(27).) It thus is necessary to define what a solid waste is in order to determine the extent of EPA's jurisdiction under Subtitle C.

On April 4, 1983, EPA proposed to amend the existing regulatory definition of solid waste. See 48 FR 14472. The proposal defined which materials were solid wastes when disposed of, burned, incinerated, or recycled. The greater part of the proposal dealt with the question of which materials are solid wastes when recycled—the area where the extent of the Agency's authority is not explicit on the face of the statute. EPA also proposed regulatory standards for various types of hazardous waste recycling activities, with the standards varying according to the type of activity.

EPA received well over one hundred comments on the proposed rule, including comments from states, waste generators, waste recyclers, environmental groups, and members of the public. The Agency also held three public hearings on the proposal, at which we received additional comments. Virtually all commenters agreed that the proposed rule was a substantial improvement over the existing regulations because it replaced the "sometimes discarded" feature of the existing definition.[2] The majority of the commenters also supported the proposal (or at least key parts of it). Many commenters, however, expressed concern that the proposed rules were very complicated. Other criticisms were substantive. Some waste generators challenged the Agency's classification of certain recycling activities as waste management, or even reiterated a challenge to EPA's authority under Subtitle C of RCRA to regulate recycled materials as solid wastes. Commercial recyclers were divided in their reaction, with commercial chemical waste recyclers (who would generally be regulated more comprehensively under the proposal than under the existing rules) being generally favorable, while recyclers of metal-containing waste were generally opposed.

Reaction from states also was divided. (There were fourteen comments from state or government agencies. The State of Nebraska also conducted an informal survey of 25 states for their reactions to the proposed rules. Some of the survey respondents were among the direct commenters to the Agency.) Although there were favorable comments, some state officials expressed concern with some of the

[2] 40 CFR 261.2(b) (2) and (3) indicate that spent materials and by-products that sometimes are discarded are solid wastes. This standard applies to all materials of a given type and so charges generators with knowledge of what other generators do with the same material.

proposed conditional exemptions from regulation. They argued that the exemptions were too broad, particularly with respect to lack of notification, recordkeeping, and waste tracking provisions. Some states also criticized the absence of storage controls on certain recycling operations. States and administrative agencies were virtually unanimous in urging the Agency to take more and immediate action against burning hazardous waste-derived fuels and contaminated used oil.

The major environmental group to comment on the proposal was critical of many of the provisions, particularly the conditional exemptions for certain hazardous waste recycling activities. The Congressional Office of Technology Assessment voiced similar criticisms. Certain (but not all) segments of the non-recycling commercial hazardous waste management community also criticized the conditional exemptions.

After reviewing the comments, EPA has decided to adopt the proposal as a final rule, but with a number of modifications and clarifications. In defining s solid waste, the key concept of the proposal was that ordinarily one must know both what a material is and how it is being recycled before knowing whether it is a solid waste. We are retaining this concept, which had substantial support from commenters, in the final rule. Although we are adhering to this conceptual approach, we are making substantive changes regarding which secondary materials are wastes when burned as fuels and when placed on the land, and also regarding certain of the proposed exclusions, which we now think were ambiguous or overbroad. In addition, we are clarifying how the regulations apply to the recycling of hazardous scrap metal; we are also indicating explicitly that certain types of materials being recycled are not solid wastes.

We are also altering the proposed regulatory regime. The most significant change is to eliminate most of the proposed conditional exemptions. These exemptions, we now believe, would not have adequately protected human health and the environment from the risks of leaks and spills.

We also have made a number of drafting changes to clarify the definition of solid waste and its accompanying regulatory provisions. We have revised the definition to state more clearly the types of recycling activities that do or do not constitute waste management, and have included a chart of materials and recycling activities (Figure 1 to the proposed rule) as part of the final rule. Accompanying definitions have been transferred to a new applicability provision in § 261.1. We also are expressing certain exceptions to general principles as variances, contained in Part 260.

Today's preamble is organized into four large sections. Part I contains a background discussion and a summary description of the final regulation. Part II deals with the question of which materials are solid wastes, and especially the question of which materials are solid (and hazardous)[3] wastes when recycled. Part III discusses the management standards for hazardous waste recycling activities, and Part IV addresses the regulatory impacts of the final rule.

Described in more detail, Part I of the preamble describes briefly the Agency's legal authority, and alternative approaches the Agency considered instead of the one actually adopted. The final section of this part of the preamble summarizes the portions of the final rule stating which hazardous secondary materials are and are not RCRA Subtitle C wastes when recycled.

Part II of the preamble discusses the Agency's jurisdiction (under Subtitle C) over secondary materials that are to be recycled. We explain each provision in the rule that states which hazardous secondary materials are and are not RCRA Subtitle C wastes when recycled. We first explain the new definitions involved in the rule—principally regarding types of secondary materials and types of thermal combustion units. We next discuss each provision of the rule stating when hazardous secondary materials that are to be recycled are wastes. For each provision, we discuss the proposed rule, the final rule, how and why it differs from the proposed rule, and respond to major comments. (A separate background document responding to each comment is part of the record for this rulemaking.)

In Part III, we describe the regulatory standards for hazardous wastes that are to be recycled. We also discuss in this section the variance provisions that are part of the final rule.

Part IV summarizes the economic and regulatory impacts expected to result from this regulation. A separate report on the economic impacts is part of the record for this rulemaking.

[3] Although hazardous wastes are a subset of solid wastes under RCRA, EPA's regulatory authority under Subtitle C applies only to hazardous wastes. Since the present regulations apply only to Subtitle C, we have chosen to make the definition of solid waste applicable to those materials that also are hazardous wastes. See Section II.A. of Part 2 below. The terms thus are synonymous for purposes of the Subtitle C regulations. In addition, we are using the terms (as well as the term "waste" or "Subtitle C waste") synonymously in this preamble.

Part I: Introduction and Background

I. Legal Authority

The Agency in the April 4 preamble described fully its position that Congress gave EPA authority to regulate recycled secondary materials as solid and hazardous wastes under the Subtitle C regulations. See 48 FR 14473, 14502-505. Subsequent legislative pronouncements again confirm our interpretation. See H.R. Rep. No. 98-198, 98th Cong. 1st Sess. at 48. Some commenters repeated old arguments challenging the Agency's authority, but raised no points not already answered. We consequently see no need to discuss these points again. In any case, the recent Hazardous and Solid Waste Act Amendments of 1984 (HSWA) appear to have settled this question by explicitly requiring EPA to adopt "standards applicable to the legitimate use, reuse, recycling, and reclamation of (hazardous) wastes" (RCRA amended section 3001(d)(2)). We add that the Agency's construction is made in the context of a "legislative directive . . . (that) is implicit rather than explicit", and that the construction is a "reasonable interpretation" of the ambiguous statutory term "solid waste". *Chevron U.S.A.* v. *NRDC*, —— U.S. ——, —— (1984). The Agency's construction thus is surely a "permissible" one. *Id.* at ——.

Certain other commenters indicated that RCRA provides EPA with unrestricted authority to regulate all recycling as waste management. The Agency does not fully accept this argument. We agree that RCRA embodies a general principle that most hazardous secondary materials [4] are considered to be hazardous wastes when recycled. Congress enacted a regulatory approach to deal with the problem of ensuring safe hazardous waste management. (H.R. Rep. No. 94-1491, 98th Cong. 2d Sess. at 4.) We indeed believe that the statute expresses a presumption that accumulated hazardous secondary materials are solid and hazardous wastes in order that this regulatory approach be applied to "the last remaining loophole in environmental law" (*id.*). We believe, however, that the grant of authority in RCRA over recycling activities is not

[4] Throughout this preamble, EPA refers for convenience to "secondary materials." We mean a material that potentially can be a solid and hazardous waste when recycled. The rule itself refers to the following types of secondary materials: Spent materials, sludges, by-products, scrap metal, and commercial chemical products recycled in ways that differ from their normal use. The rule does not use the term secondary materials.

unlimited. Specifically, we do not believe our authority extends to certain types of recycling activities that are shown to be very similar to normal production operations or to normal uses of commercial products. We also do not accept the argument that a potentially harmful recycling practice is invariably subject to regulation under Subtitle C, since potential environmental harm is not always a determinative indicator of how closely a recycling activity resembles waste management. We again believe that this construction is a permissible one. *Chevron supra*, —— U.S. at ——. (This discussion is developed further in Section H. of Part II. of the preamble.)

II. Alternatives

A. Alternative Approaches for Determining When Secondary Materials Which Are To Be Recycled Are RCRA Solid Wastes

As stated in the preamble to the proposed rule, determining which secondary materials are wastes when recycled presents conceptual and practical difficulties. The Agency considered several approaches other than the one ultimately adopted, but ended by retaining the overall approach proposed initially.

It is evident that the Agency is adopting a complicated regulatory scheme. There are two simpler alternatives: to say that all secondary materials being recycled are wastes, or that all are not wastes. Neither of these alternatives is satisfactory. The Agency's May 19, 1980 definition took essentially the former approach and it proved unacceptable to both the Agency and the regulated community (see 48 FR 14475). Comments were virtually unanimous in urging the Agency to reject this approach.

Not classifying recycled materials as wastes is equally unacceptable. We read the statute to state that hazardous secondary materials being recycled are wastes and that we ordinarily have jurisdiction to regulate most recycling activities involving these materials. We also believe that regulation of most of these activities is necessary to protect human health and the environment. Furthermore, we doubt whether completely avoiding regulation would necessarily promote recycling, as some commenters maintain. The Agency is impressed by comments of both generators, states and members of the recycling community who state that some regulation is needed to assure both the public and generators that their wastes will not be mishandled when sent to recyclers. See comments of National Association of Solvent Reclaimers, Washington, D.C. Public Hearing, June 16, 1983; Comments of American Electronics Association, San Francisco Public Hearing, June 23, 1983, Comments of States of Iowa and Michigan (August, 1983). These persons maintain that regulation of these activities will encourage wastes both to be recycled, and recycled in a responsible manner.

Another approach, discussed in the April 4 preamble, would be to use a standard based on value, whereby a recycled material would count as a solid waste when a person other than the generator is paid to recycle it. Although this factor is relevant for enforcement purposes in determining whether a recycling activity is a sham, the Agency continues to believe that it is not a successful regulatory approach for the reasons given in the April 4 preamble. See 48 FR 14478–481. Most commenters agreed with the Agency that this approach should not be adopted.

The Agency also attempted to fashion a narrative definition stating categorically whether secondary materials are or are not wastes. The narrative standard would be based on whether materials are typically dealt with as commodities, and whether they contain significant concentrations of non-recyclable toxic constituents not customarily found in analogous raw materials. (See 48 FR 14476 at n.7.)

The Agency continues to believe that this type of definition is too subjective to serve as a self-implementing standard. Commenters agreed. The Agency also continues to think, and commenters generally agreed, that in most cases one must know both what the material is and how it is being recycled before determining whether it is a waste. A narrative definition based on the nature of the material itself thus cannot serve successfully as a regulatory standard.[5]

B. Alternatives for Regulating Hazardous Wastes That Are To Be Recycled

In considering how to regulate hazardous wastes that are to be recycled, the Agency differentiated at proposal between facilities presenting a significant risk of waste overaccumulation before recycling and those that did not. We viewed overaccumulation as the chief danger to guard against, and so proposed to conditionally exempt from regulation those types of recycling operations that do not present a significant risk of overaccumulation before recycling. See 48 FR 14477, 14486. The chief types of recycling operations that would have been conditionally exempt were those in which a generator reclaimed its own wastes, those in which a reclaimer reclaimed for its own subsequent use, or when wastes were reclaimed pursuant to batch tolling agreements. *Id.* At the same time, we indicated that we were continuing to evaluate whether hazardous waste leaks and spills could occur at these operations (before prolonged accumulation) and whether regulation was necessary to protect human health and the environment. *Id.* at 14477. In essence, we investigated further the hypothesis that if these wastes were handled as if they were products, and were not overaccumulated, they would be managed safely without RCRA controls.

We have come to the conclusion that most of the conditional exemptions that we proposed were unjustified, because the risk of damage from spills and leaks at these facilities indicates that regulation is necessary to protect human health and the environment. Simply because a waste is likely to be recycled will not ensure that it will not be spilled or leaked before recycling occurs. In the first place, the analogy we drew at proposal—between wastes stored before certain types of recycling and products stored before use—is frequently incorrect. Wastes in many cases have little independent economic value, but are recycled to avoid disposal costs. Persons storing this type of hazardous waste before recycling are very much like persons storing hazardous waste before disposal: there is nothing about the waste that makes it so valuable that safe handling is assured absent regulation.

Furthermore, safe handling is not always assured even for hazardous wastes that are more like commodities in terms of value. A company's decision on how carefully wastes are handled before recycling turns chiefly on a range of factors—principally the value of the wastes being recycled and the value of the end products of recycling versus the cost of purchasing additional raw materials, the profit margin of the facility, and the cost of improving the integrity of the facility. Unless the wastes are extremely valuable (as in legitimate precious metal reclamation) there is no imperative incentive to avoid leaks and spills. In confirmation, there have been massive leaks of high purity

[5] The Agency does believe that some secondary materials are inherently waste-like, and will specify in the rule that these materials are solid wastes. See § 261.2(d). For the most part, however, we think that a secondary material's identity as a waste turns both on what it is, and how it is recycled.

solvents and gasoline (to name only some of the more valuable commodities) from product storage tanks, showing the risk of spillage of stored commodities. The recent addition of Subtitle I to RCRA to control leaks from underground product storage tanks confirms that the risk of harm from spillage is significant. Indeed, there have been a number of instances of groundwater contamination caused by improper storage of hazardous wastes awaiting reclamation by their generator, hazardous wastes being reclaimed pursuant to batch tolling agreements, and hazardous wastes being reclaimed before use by the reclaimer—the situations that would have been conditionally exempt under the proposal. (See Appendix A.)

Equally important, the Agency already has determined that it is necessary to regulate hazardous waste storage in order to protect human health and the environment, and has also determined that regulations are needed to prevent the "uncontrolled release of hazardous waste constituents into the environment." See 46 FR 2802, 2807 (January 12, 1981). These prior findings are relevant to the question of regulating hazardous waste storage before recycling. There is a risk, as stated above, that spills and leaks of hazardous waste will occur, even if the wastes eventually will be recycled. Spills and leaks are the principal example of uncontrolled hazardous waste releases from storage and thus ordinarily require regulatory control. The Agency is persuaded that its existing findings are valid for hazardous wastes stored before recycling except in those situations in which wastes are so economically valuable that there is an economic imperative to avoid release.

The Agency thus finds that the factual basis for most of the conditional exemptions in the proposal was not justified, and that the Agency's general findings as to the need to control hazardous waste storage are valid for these recycling situations. Hazardous wastes stored before reclamation—even where there is minimal risk of overaccumulation—still can present significant potential for harm to human health and the environment if mismanaged, and market mechanisms are insufficient to prevent mismanagement from occurring. Regulation thus is called for.

In determining the level of regulation to adopt for those facilities which would have been conditionally exempt, the Agency is guided by the principle that the paramount and overriding statutory objective of RCRA is protection of human health and the environment. The statutory policy of encouraging recycling is secondary and must give way if it is in conflict with the principal objective. See 48 FR 14474/1, 14482/2; see also H.R. Rep. No. 98-198, *supra*, at 46.[6] We accordingly have determined that, for the most part, the conditional exemptions we proposed were unwarranted and facilities recycling in these ways should be subject to regulation under the Subtitle C rules.

III. An Overview of the Final Definition of Solid Waste

A. Materials That Are Solid Wastes

The revised definition of solid waste states that any material that is abandoned by being disposed of, burned, or incinerated—or stored, treated, or accumulated before or in lieu of these activities—is a solid waste. The remainder of the definition states which materials are wastes when recycled.

The amended definition adopts the approach that for secondary materials being recycled, one must know both what the material is and how it is being recycled before determining whether or not it is a Subtitle C waste. This approach differs sharply from the existing definition (40 CFR 261.2), which states that all sludges, and virtually all other secondary materials (*i.e.* all those that are sometimes discarded by anyone managing them (see fn. 2 above)), are wastes no matter how they are recycled. In understanding the revised definition, therefore, one must consider the types of secondary materials in conjunction with types of recycling practices.

1. *Types of Recycling Activities That Are Within The Agency's Subtitle C Jurisdiction.* The definition states that four types of recycling activities are within EPA's jurisdiction:

- *Use constituting disposal.* This activity involves directly placing wastes or waste-derived products (a product that contains a hazardous waste as an ingredient) onto the land. Extending jurisdiction to waste-derived products placed on the land represents a change from the proposal;
- *Burning waste or waste fuels for energy recovery, or using wastes to produce a fuel;*
- *Reclamation.* This activity involves the regeneration of wastes or the recovery of material from wastes;
- *Speculative accumulation.* This activity involves either accumulating wastes that are potentially recyclable, but for which no recycling market (or no feasible recycling market) exists, or accumulating wastes before recycling unless 75% of the accumulated material is recycled during a one-year period. (This provision now includes the activity referred to in the proposal as overaccumulation.)

2. *Types of Secondary Materials That Are Within The Agency's Subtitle C Jurisdiction.* These categories of recycling activities then are divided further according to the type of secondary material involved—spent materials, sludges, by-products, or commercial chemical products (a division present in the existing regulations—see 40 CFR 261.2(b)(1)(3)). We also have clarified the proposal by adding a new category of secondary material—scrap metal.

"*Spent materials*" are materials that have been used and are no longer fit for use without being regenerated, reclaimed, or otherwise re-processed. Examples are spent solvents, spent activated carbon, spent catalysts, and spent acids.

"*Sludges*" are defined in RCRA and the implementing regulations as residues from treating air or wastewater, or other residues from pollution control operations. (See RCRA section 1004(26)(A) and 40 CFR 260.10.)

"*By-products*" are defined essentially the same way as in the existing definition to encompass those residual materials resulting from industrial, commercial, mining, and agricultural operations that are not primary products, are not produced separately, and are not fit for a desired end use without substantial further processing. The term includes most secondary materials that are not spent materials or sludges. Examples are process residues from manufacturing or mining processes, such as distillation column residues or mining slags.

"*Commercial chemical products*" are the commercial chemical products and intermediates, off-specification variants, spill residues, and container residues listed in 40 CFR 261.33. Although these materials ordinarily are not wastes when recycled (see 45 *FR* 78540-541, November 25, 1980), we are including them as wastes when they are recycled in ways that differ from their normal use, namely, when they are used in a manner constituting disposal, or when they are burned for energy recovery, (assuming these materials are neither a pesticide nor a commercial fuel).

[6] The Agency also does not believe that hazardous waste recycling will be discouraged in those situations that we now intend to regulate. Not only do the incremental costs of regulation appear to be minimal (see Part IV of this preamble), but regulation can actually encourage recycling. See 45 FR 33092 (May 19, 1980) and Section II.A. above.

"*Scrap metal*" is defined as bits or pieces of metal that are discarded after consumer use or that result from metal processing operations. Examples are scrap automobiles and scrap radiators (commonly referred to as post-consumer scrap) and scrap turnings and scrap fines (commonly referred to as obsolete scrap).

3. *Secondary Materials That Are Subtitle C Wastes When Recycled in Particular Ways.* As we indicated in the proposal, sludges and by-products sometimes are difficult to characterize as wastes or non-wastes when they are reclaimed. 48 *FR* 14476. Many by-products and sludges in the mining industry, for example, are routinely processed further to recover usable metals in a manner much like continued processing of the virgin ore. As stated above, neither the Agency nor any commenter could devise a self-implementing narrative standard that convincingly distinguishes between product-like and waste-like sludges and by-products being reclaimed.

The Agency thus has structured the final regulation so that the Agency must evaluate these materials individually before determining whether they are subject to RCRA jurisdiction when they are to be reclaimed. Thus, in the final regulation, only sludges and by-products listed in 40 CFR 261.31 and 261.32 are solid wastes when reclaimed.[7]

The Agency does not perceive this difficulty for the remaining types of recycling over which we have jurisdiction. Thus, all secondary materials (*i.e.* all spent materials, sludges, by-products, and scrap metal) are considered to be wastes when they are used in a manner constituting disposal, are burned for energy recovery or used to produce a fuel, or are accumulated speculatively. The Agency proposed that only listed by-products would be wastes when burned for energy recovery or used to produce a fuel, but is changing the proposal for the reasons stated in Section II.V.D. of Part 2 of the preamble.

[7] The Agency intends that residues derived from reclaiming listed by-products and sludges also be considered to be listed for purposes of this regulation. This is in accord with 40 CFR 261.3(c)(2) and (d)(2) and 40 CFR 260.22(b). These provisions state that residues derived from treating, storing, or disposing of listed hazardous wastes are also considered to be listed hazardous wastes, and, for delisting purposes, to have the same constituents of concern as the hazardous wastes from which they are derived. Under the amended definition of solid waste, therefore, if a reclaimer distills a listed by-product, and then reclaims the resulting distillation bottom, the distillation bottom also is considered to be a listed by-product and therefore a waste when reclaimed.

The following table, which appears in the regulation itself, summarizes when secondary materials are solid wastes when recycled:

TABLE 1. Matrix of Which Types of Secondary Materials Will be Defined as Solid and Hazardous Wastes When Recycled and Which Types of Recycling Activities Constitute Waste Management

	Use constituting disposal	Burning for energy recovery, or use to produce a fuel	Reclamation	Speculative accumulation
Spent materials (both listed and nonlisted/characteristic).	Yes	Yes	Yes	Yes.
Sludges (listed)	Yes	Yes	Yes	Yes.
Sludges (nonlisted/characteristic)	Yes	Yes	No	Yes.
By-products (listed)	Yes	Yes	Yes	Yes.
By-products (nonlisted/characteristic)	Yes	Yes	No	Yes.
Commercial chemical products listed in 40 CFR § 261.33 that are not ordinarily applied to the land or burned as fuels.	Yes	Yes	No	No.
Scrap metal	Yes	Yes	Yes	Yes.

Yes—Defined as a solid waste
No—Not defined as a solid waste

In addition, there are certain materials that are inherently waste-like, regardless of how they are recycled. The Agency has reserved the right to designate these materials as solid wastes, and has designated the chlorinated and dioxin dibenzofuran containing F020, F022–F023, F026, and F028 wastes as solid wastes no matter how they are recycled.

The Agency again emphasizes that to determine if a secondary material is a RCRA solid waste when recycled, one must examine both the material and the recycling activity involved. A consequence is that the same material can be a waste if it is recycled in certain ways, but would not be a waste if it is recycled in other ways. For example, an unlisted by-product that is reclaimed is not defined as a solid waste. However, the same by-product is defined as a waste if it is recycled by being (a) placed on the land for beneficial use, (b) incorporated into a product that is placed on the land for beneficial use, (c) burned as a fuel, (d) incorporated into a fuel, or (e) accumulated speculatively. Obviously, the by-product also is a waste whenever it is disposed of or incinerated rather than recycled.

B. Secondary Materials That Are Not Solid Wastes

Not all recycling activities involve waste management. Based on our reading of the statute and legislative history, the definition excludes two activities involving direct use or reuse of secondary materials, and one activity where these materials are recycled without first being reclaimed by being returned as a raw material substitute to the original primary production process. These activities ordinarily will not be considered to involve waste management because they are like ordinary production operations or ordinary usage of commercial products.

(1) *Using or reusing secondary materials as ingredients or feedstocks in production processes.* When secondary materials are *directly* used as an ingredient or a feedstock, we are convinced that the recycled materials are usually functioning as raw materials and therefore should not ordinarily be regulated under Subtitle C. Examples are using fly ash as a constitutent in cement, or using distillation bottoms from the manufacture of carbon tetrachloride as feedstock in producing tetrachloroethylene. However, when distinct components of the material are recovered as separate end products (i.e., recovering lead from scrap metal in smelting operations), the secondary material is not being used, but rather reclaimed and thus, would not be excluded under this provision. The other major exception to this provision is when spent materials, by-products, sludges or scrap metal are used as ingredients in waste-derived fuels or in waste-derived products that will be placed on the land. In these situations, not only is the spent material, sludge, scrap metal, or by-product a solid waste but the waste-derived product remains subject to RCRA jurisdiction as well.

(2) *Using or reusing secondary materials as effective substitutes for commercial products.* When secondary materials are *directly* used as substitutes for commercial products, we also believe these materials are functioning as raw materials and therefore are outside of RCRA's jurisdiction and, thus, are not wastes. Examples are certain sludges that are used as water conditioners and by-products hydrochloric acid from chemical manufacture used in steel

pickling. In these examples, the recycled materials are substituting for other commercial products, and material values are not being recovered from them.

(3) *Return of secondary materials to the original primary production process in which they are generated without first reclaiming them.* When secondary materials are returned to the original primary production process (from which they are generated) without first being reclaimed, we likewise believe this recycling activity does not constitute waste management. This provision has been modified from the proposal to cover more precisely those closed-loop production processes that use secondary materials as return feed to the original primary process.

C. Variances From Classification as Solid Wastes

We also have promulgated variance provisions allowing the Regional Administrator or authorized States to determine that certain materials that are to be recycled are not solid wastes. There are three such variances:

- *Materials accumulated without sufficient amounts being recycled.* The Agency proposed that persons failing to recycle 75% of their accumulated waste material could petition the Regional Administrator to declare that the material is not a waste. We are retaining this provision and are formally terming it a variance;
- *Materials that are reclaimed and then reused within the original primary production process in which they were generated.* The Agency proposed a complete exclusion for this type of situation, referred to in the proposal as closed-loop recycling. We are now convinced that the proposal was too broad but that individual exclusions may be warranted; and
- *Materials that are reclaimed but must be reclaimed further before material recovery is completed.* This variance would allow individual consideration of whether an initial reclamation process is only minimal processing or whether it substantially completes the recycling process.

The following tables summarize the differences between the final and proposed rules with respect to the secondary materials that are and are not solid and hazardous wastes when recycled:

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Table 2: Secondary Materials That Are Solid and Hazardous Wastes When Recycled: Proposal v. Final Rule

	Use Constituting Disposal		Burning for Energy Recovery, Use to Produce a Fuel, or Fuels Containing These Materials		Reclamation		Speculative Accumulation	
	Final */	Proposal	Final	Proposal	Final	Proposal	Final	Proposal
Spent Materials (both listed and non-listed exhibitting a characteristic)	Yes...	Yes...	Yes...	Yes...	Yes...	Yes...	Yes...	Yes...
Sludges (listed)	Yes...	Yes...	Yes...	Yes...	Yes..	Yes...	Yes...	Yes...
Sludges (non-listed exhibiting a characteristic)	Yes...	Yes...	Yes...	Yes...	No...	No...	Yes...	Yes...
By-products (listed)	Yes...	Yes...	Yes...	Yes...	Yes..	Yes...	Yes...	Yes...
By-Products (non-listed exhibiting a characteristic)	Yes...	Yes...	Yes...	No...	No...	No...	Yes...	Yes...
Commercial chemical products listed in 40 CFR §261.33 that are not ordinarily applied to the land or burned as fuels	Yes...	Yes...	Yes...	Yes...	No...	No...	No...	No...
Scrap Metal	Yes...	Yes...	Yes...	**/	Yes...	**/	Yes...	Yes...

Yes = Defined as a solid waste
No = Not defined as a solid waste

*/ Final rule includes hazardous waste-derived products (products containing a hazardous waste) that are placed on the land. The proposal did not cover these waste-derived products.

**/ Some scrap metal was classified as a by-product under the proposed rule, and this type of scrap metal would not have been a waste when reclaimed or burned for energy recovery.

TABLE 3. MATERIALS THAT ARE NOT SOLID AND HAZARDOUS WASTES WHEN RECYCLED: PROPOSAL V. FINAL RULE

Proposal	Final rule
(a) Secondary materials used or reused as ingredients.	Same, except materials used in a product that is applied to land for beneficial use are defined as wastes.
(b) Secondary materials used or reused as substitutes for raw materials in primary processes.	Modified and subsumed in d) below.
(c) Secondary materials used or reused in a particular function as a substitute for a commercial product.	Same.
(d) Secondary materials reclaimed at the plant site and returned to the original production process ("closed-loop recycling").	Modified to apply to secondary materials returned as raw materials to the original primary production process *without* first being reclaimed; in addition, secondary materials that are first reclaimed and then returned to the original process are eligible for a variance from being a solid waste.
(e) Unlisted sludges and by-products that are reclaimed.	Same.
(f) Unlisted by-products burned as fuels or incorporated into fuels.	Changed; these by-products are defined as wastes in the final rule.
(g) (Not specifically proposed).	Black liquor recycled as part of the Kraft paper process.
(h) (Not specifically proposed).	Spent sulfuric acid used in making virgin sulfuric acid.

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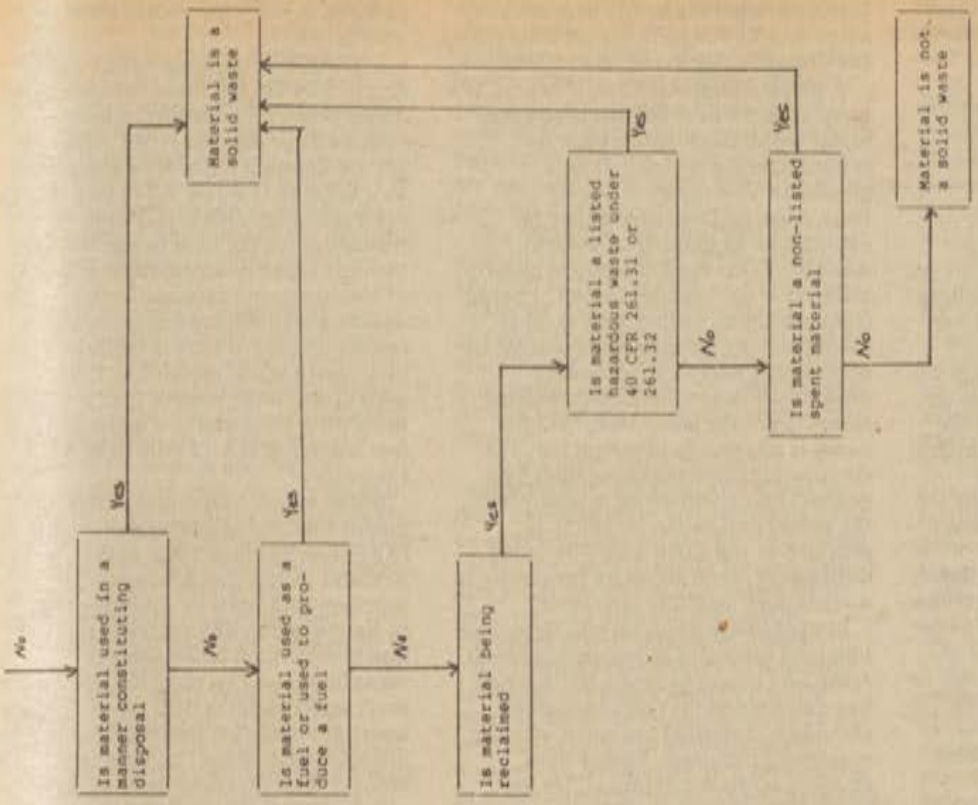
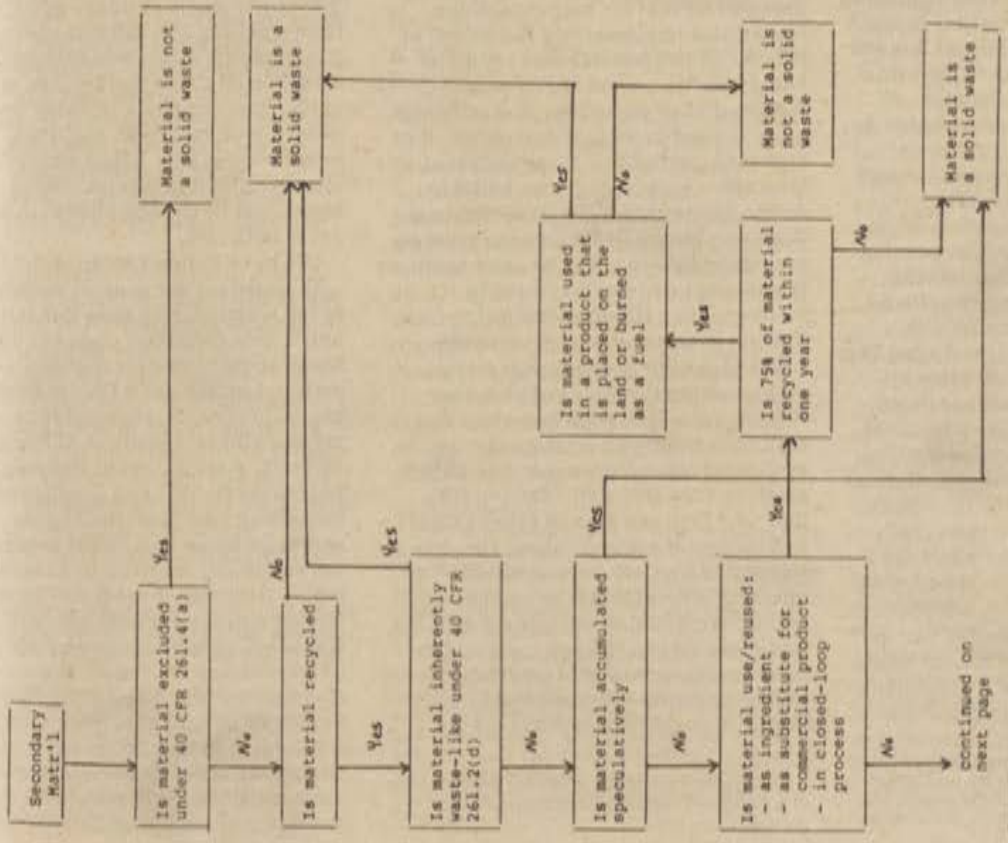
Table 4: Decision Tree for Deciding Which Secondary Materials Are Solid Wastes When Recycled





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Part II: Secondary Materials That Are Subtitle C Solid and Hazardous Wastes When Recycled

I. Definitions of Particular Terms Used in the Amended Definition of Solid Waste

A. Spent Materials/Sludges/By-Products/Scrap Metal

The final definition classifies the universe of secondary materials that are wastes when recycled as either sludges, spent materials, by-products, or scrap metal.[8] With the exception of scrap metal, this is the same classification scheme as in the proposed rule. See 48 FR 14476/2. We have not changed the proposed definition of "sludge," but are clarifying what we mean by spent materials and by-products. We also are explaining the new definition of scrap metal.

1. *Spent Materials.* We are continuing to define spent materials as those which have been used and are no longer fit for use without being regenerated, reclaimed, or otherwise re-processed. In response to comments, however, we have altered the wording of the definition of spent material to express this concept more clearly. As the proposal was worded, a spent material was one that had been used and no longer could serve its original purpose. The Agency's reference to original purpose was ambiguous when applied to situations where a material can be used further without being reclaimed, but the further use is not identical to the initial use. An example of this is where solvents used to clean circuit boards are not longer pure enough for that continued use, but are still pure enough for use as metal degreasers. These solvents are not spent materials when used for metal degreasing. The practice is simply continued use of a solvent. (This is analogous to using/reusing a secondary material as an effective substitute for commercial products.) The reworded regulation clarifies this by stating that spent materials are those that have been used, and as a result of that use become contaminated by physical or chemcial impurities, and can no longer serve the *purpose* for which they were produced. (This reworded definition appropriately parallels the definition of "used oil"—a type of spent material—in RCRA section 1004(36).)

In response to comment, we also note that leftover, unreacted raw materials from a process are not spent materials, since they never have been used. Unreacted raw materials thus are not subject to RCRA jurisdiction unless they are discarded by being abandoned.

2. *Scrap Metal*—a. *Classification.* We have added a new definition of scrap metal to the final regulations. At proposal, scrap metal that was generated as a result of use by consumers (copper wire scrap, for example) was defined as a spent material. (This type of scrap is usually referred to as "obsolete scrap".) Scrap from metal processing, on the other hand (such as turnings from machining operations) was defined as a by-product. (It is usually called "prompt scrap".) Yet the scrap metal in both cases is physically identical (*i.e.*, the composition and hazard of both by-product and spent scrap is essentially the same) and, when recycled, is recycled in the same way—by being utilized for metal recovery (generally in a secondary smelting operation).

In light of the physical similarity and identical means of recycling of prompt scrap and obsolete scrap, the Agency has determined that all scrap metal should be classified the same way for regulatory purposes. Rather than squeeze scrap metal into either the spent material or by-product category, we have placed it in its own category.

b. *Recycled Hazardous Scrap Metal is a Solid Waste.* We have further determined that for purposes of the regulations implementing Subtitle C of RCRA, all scrap metal that would be hazardous[9] is a solid waste when disposed of or when recycled (although, as explained in more detail below, it is exempt from Subtitle C regulation at this time when recycled). Scrap metal is waste-like in that it is a used material that is no longer fit for use and must be reclaimed before it can be used again, or is a process residue that must be recovered in a different operation from the one in which it was generated.

We also believe that scrap metal comes within the series of statutory definitions which state generally that materials from which resources are recovered are solid wastes. See RCRA sections 1004 (19), (30), (22), (7), (18), (23), and (24); see also 48 FR at 14502/1-2. Based on these provisions, the Agency has stated that most reclamation operations involve waste management, and *all* reclamation operations utilizing materials that have been used and that must be re-processed before they can be reused constitute waste management. We believe that scrap metal that is being reclaimed fits within these provisions.

c. *Definition of Scrap Metal and Regulatory Distinctions Between Scrap Metal and Other Metal-Containing Wastes That Are Recycled.* Although we are defining hazardous scrap metal as a Subtitle C waste when recycled, we are exempting such metal from regulation for the time being. We need to study types of scrap metal and types of management practices further before deciding on an appropriate regulatory regime (if any). It thus is important to distinguish scrap metal from other metal-containing wastes that are subject to Subtitle C regulations when recycled. See Section II.H.4. of Part III of the Preamble.

Scrap metal, as defined in this rule, means bits and pieces of metal parts (*e.g.*, bars, turnings, rods, sheets, wire), or metal pieces that are combined together with bolts or soldering (*e.g.*, radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled. Put another way, scrap metal is defined as products made of metal that become worn out (or are off-specification) and are recycled to recover their metal content, or metal pieces that are generated from machining operations (*i.e.*, turnings, stampings, etc.) which are recycled to recover metal. Materials not covered by this term include residues generated from smelting and refining operations (*i.e.*, drosses, slags, and sludges), liquid wastes containing metals (*i.e.*, spent acids, spent caustics, or other liquid wastes with metals in solution), liquid metal wastes (*i.e.*, liquid mercury), or metal-containing wastes with a significant liquid component, such as spent batteries.

We have defined scrap metal in this way based on our general understanding of the way industry uses this term. As noted, this definition does not include liquid spent materials that contain metals. Liquids are different from metal pieces in content, physical form, and manageability. Members of both the National Association of Recycling Industries (NARI) and the Institute for Scrap Iron and Steel (ISIS) also generally agree that liquid wastes are not commonly referred to as scrap metal. Although these metal-bearing liquids and scrap metal are both classified as solid wastes under this rule (if hazardous), the regulatory significance of not including these liquids as scrap metal is that the liquids are subject to immediate regulation when they are reclaimed (assuming they are hazardous spent materials, listed sludges, or listed by-products) whereas

[8] Commercial chemical products listed in § 261.33 also are wastes when recycled to the land or burned as fuels, when this is not their normal manner of use.

[9] For clarification of this point, see the discussion of § 261.1(b), Section II.A. of this part of the preamble.

scrap metal is not.[10] It is the Agency's judgment that immediate regulation of metal-bearing liquids is appropriate because: (1) (As liquids) They need special precautions when managed, (2) the current regulatory regime in Parts 264–265 is appropriate, and (3) wastes of this type have been linked to a series of damage incidents when stored before reclamation.[11] The reasons for deferring regulation of scrap metal thus do not apply here.

Similar reasoning underlies the Agency's classification of spent lead-acid batteries as a spent material, subject to immediate regulation when reclaimed. Spent batteries are different in physical form from scrap metal because they contain substantial amounts of liquid acid. As discussed in Section II.G. of Part III of this premable, it is appropriate to immediately regulate the storage of spent lead-acid batteries at reclamation facilities. We consequently are classifying and regulating spent batteries differently from scrap metal.

Scrap metal is also classified differently from metal-containing process residues such as slags, drosses, and sludges partly because it is different in physical form and content. More importantly, these residues can be involved in recovery operations that amount to on-going processing of the virgin material and so are not invariably wastes when utilized for metal recovery. As noted above, this is not the case when scrap metal is recovered. For this reason, all hazardous scrap metal is classified as a waste (although exempt from regulation at this time), while sludges and by-products being reclaimed must be identified more particularly by listing before they are wastes.

3. *By-products Versus Co-products.* We are also modifying the definition of by-product. In the proposed rule, we said by-products were not primary products and were not solely or separately produced. This language did not directly address situations where there are a number of co-products being produced. By "co-product" we mean a material produced for use by the general public and suitable for end use essentially as-is. Examples are sulfuric acid from smelters' metallurgical acid plants, various metals produced in tandem by smelting operations (such as lead recovered from primary copper smelting operations), or co-products such as kerosene, asphalt, or pitch from petroleum refining. These co-products are not (and were never intended to be) covered by the regulations.

We therefore are clarifying the definition to indicate that by-products are materials, generally of a residual character, that are not produced intentionally or separately, and that are unfit for end use without substantial processing. Examples are still bottoms, reactor cleanout materials, slags, and drosses.

On the other hand, materials produced intentionally, and which in their exisiting state are ordinarily used as commodities in trade by the general public, are considered to be co-products and not by-products.[12] In response to comment, we also note that these materials can be produced from a combination of processes at a facility, and need not result from one single process. (It is also possible to put a by-product to use—for example a still bottom can be used as an intermediate to make a new product. The still bottom would not be considered a waste under the amended definition due to its manner of recycling—use as an ingredient. It would, however, still be a by-product).

B. Definitions of Incinerator, Boiler, and Industrial Furnace

1. *General Classes of Combustion Units.* Many enclosed devices are used to treat hazardous waste through controlled flame combustion.[13] The proposed regulations divided that universe into three groups: incinerators, boilers, and industrial furnaces. We are adopting this same tripartite division in the final rule. The Agency already regulates the emissions from hazardous waste incinerators and intends to regulate the emissions from combustion units that burn hazardous wastes for energy recovery. Regulation will be established at a level that is necessary to protect human health and the environment. It is necessary to distinguish among the types of combustion units, however, because incinerators are being regulated sooner than boilers and industrial furnaces, and because the ultimate standards for boilers and industrial furnaces may vary from each other, as well as from the standards for incinerators.

2. *Definition of Incinerator. Incinerators* burning hazardous waste are subject to the permitting standards of 40 CFR Part 264, Subpart O. An incinerator is defined as any enclosed device that is neither a boiler nor an industrial furnace that uses controlled flame combustion to treat waste. This definition differs from the text of the proposal in order to make it clear that the three defined units—incinerators, boilers, and industrial furnaces—cover the entire universe of enclosed devices using controlled flame combustion to treat hazardous waste. The regulation also amends the former definition of incinerator, promulgated on May 19, 1980, which defines the device in terms of the primary purpose for which wastes are burned. However, this change is essentially a clarification of the existing rules which should have little effect on the number or identity of units already subject to Subpart O. As we stated at proposal, incinerators are built to destroy hazardous waste, so wastes burned in them are obviously being burned for the primary purpose of destruction. 48 FR 14484/2.

The May 19, 1980 definition focused on whether each waste fuel was burned for the primary purpose of destruction. Today's regulatory scheme more appropriately describes how one can examine the nature of the combustion unit to recognize combustion for purposes other than destruction. It then classifies units used for those activities as either boilers or industrial furnaces. If combustion of a waste does not meet the criteria for those classes, then the primary purpose of its combustion is necessarily destruction. Thus, it should properly remain subject to the permitting standards of Part 264, Subpart O.

Comforming changes are being made in §§ 264.340 and 265.340 defining the applicability of Subpart O's standards for incinerators. Similarly, § 265.370, defining the applicability of the interim status standards for other thermal treatment, is being amended. These changes clarify the coverage of flame combustion devices, but do not alter existing obligations.

3. *Definition of Boiler. Boilers* burning hazardous waste for energy recovery

[10] In particular, in reviewing a booklet published by the National Association of Recycling Industries (NARI) which classifies non-ferrous scrap into 133 different categories, most of the categories described—approximately 95 percent—refers to metal pieces (*i.e.*, wire, castings, clippings, sheet metal, slabs, etc.). See NARI Circular NF–82, Standard Classification for Non-Ferrous Scrap Metal. The Institute of Scrap Iron and Steel (ISIS) likewise classifies scrap metal as metal pieces.

[11] See Appendix A.

[12] We note, however, that products or co-products that include hazardous wastes as ingredients are classified as wastes when they are to be burned for energy recovery or placed directly on the land for beneficial use. See Sections V.C. and V.D. of this part of the preamble.

[13] There are also a few hazardous waste management devices which rely on thermal treatment, but do not directly combust the treated waste. EPA will allow permitting of those devices under the criteria of 40 CFR Part 264, Subpart P: Other Thermal Treatment, or under the criteria of 40 CFR Part 264, Subpart X: Miscellaneous Waste Management, following promulgation of those Subparts.

now fall within the exemption from regulation of actual recycling processes found in 40 CFR 261.6, pending promulgation of substantive regulations controlling emissions from burning hazardous wastes in them as may be necessary to protect human health and the environment. Thus, boilers do not now require RCRA permits to continue their combustion activities. (Storage of certain hazardous wastes before burning requires a storage permit and the transport of these wastes is regulated, however. See 40 CFR 261.6(b).)

a. *Adoption of a Standard Based on Integral Design of the Device.* The definition of boilers focuses on physical indicia of their legitimate use for energy recovery. The final definition, like the proposal, relies upon the concepts of integral design, combustion efficiency, and energy recovery. This reflects the fact that boilers, unlike incinerators, are designed and operated to convert fuel into more usuable energy (generally steam). This is most efficiently done when energy recovery devices, such as water vessels, are physically in contact with (integrally connected to) the combustion chamber in which the fuel is burned.[14] EPA consequently proposed that the combustion chamber and heat recovery sections of a boiler must be of integral design—physically formed into a single unit—and that significant heat recovery must take place in the combustion chamber by means of radiant heat transfer.

Many parties commented on the proposed definition. Some had generalized objections to the basic concept of a test based on physical criteria, arguing that it would stifle innovation and that it was unrelated to environmental protection. Others had specific criticisms related to the proposal's exclusive reliance on *radiant* heat transfer as the measure of "significant heat recovery." Commenters also described a few specific types of legitimate boilers which might not meet the proposed "integral design" test.

EPA has considered, but is unpersuaded by, the general criticism of the rule's reliance on physical criteria to differentiate between these units. Significant regulatory consequences spring from the distinctions between classes of combustion devices. Thus, it is important that the tests for those distinctions be unambiguous and easy to apply. The physical test of integral design meets those needs. The test also has environmental significance since it will pinpoint those cases in which the unit is not designed to achieve efficient energy recovery and, thus, cannot be relied upon to attain complete combustion.

Adverse impacts on innovation are unlikely to occur since the test focuses on efficient transfer of energy from fuel to fluids—the most common and widespread element of boiler technology. Furthermore, extensive comments actually identified only two limited classes of boilers for which the test could be inappropriate; the final regulation specifically deals with those classes, as discussed below. Finally, EPA has provided for a case-by-case determination that a unit is a legitimate boiler, based on an assessment of specified relevant factors.

Under the final rule, therefore, the great majority of boilers can be unambiguously identified by a simple examination of physical design while a case-by-case assessment can be made of the few units for which it is possible that the physical test is inappropriate.

b. *Supplementation of Integral Design Standard With Additional Physical Standards.* The integral design test is supplemented by quantified criteria for continuous and long-term energy recovery. These supplementary tests are designed to ensure that units that are *physically* designed as boilers are not *actually* being used to destroy hazardous waste. In the final regulation these criteria are quantified and placed in the regulation to avoid the ambiguity about regulatory coverage which might have arisen if they had been left in the preamble, as at proposal. (A specific background document explains these criteria in detail.)

The final definition does include several changes based on specific technical comments. These are discussed in the background document; however, the major points are mentioned here.

First, the definition of boiler now identifies specific units—process heaters and fluidized bed combustion units—which are generally recognized as boilers but for which the integral design test is not determinative of whether the unit is a boiler. Historically, these units have generally been regarded as legitimate boilers despite the fact that they might not meet a strict integral design test. As such, they would often qualify for the case-by-case classification procedure, assuming they meet the energy recovery criteria. The explicit reference to them in the definition avoids the need for case-by-case assessments.

Second, the definition now gives credit for *all* forms of heat recovery which are exported from the unit and actually are utilized. This significant technical change is in response to criticisms of the proposal's reliance on *radiant* heat transfer alone. As such, it avoids many problems of measurement and classification. In fact, measurement can now often be based on a simple comparison of annual feed to the unit, and annual pounds of steam recovered from the unit, with both measured in British Thermal Units (BTU).

Finally, the specific required energy recovery ratios have been revised since proposal. The changes reflect the shift from reliance on radiant heat recovery alone to reliance on the total heat recovery. We are indicating that boilers must maintain a thermal energy recovery efficiency of 60 percent when in operation. (This is to be based on the higher heating value of the fuel, the common means of evaluating boilers efficiency in this country.) This value is within the range recommended by commenters, and also is within the range of recoveries reported in relevant technical literature. We also are indicating that boilers must export and utilize 75 percent of the recovered energy on an annual basis. This value allows for unit downtime but guards against situations where heat recovery elements have been added as incidental parts of a combustion unit, or have been added in an attempt to avoid classification as an incinerator. The vast majority of legitimate, well-maintained and well-operated boilers (and all those of which EPA is now aware) should meet the criteria now in the regulation. Specific outlying units may be eligible for a case-by-case assessment.

4. *Definition of Industrial Furnace.* *Industrial furnaces* burning hazardous waste for energy recovery are currently exempt from regulation by the provisions of 40 CFR 261.6. Thus, they do not now require permits to continue their combustion activities. (As with boilers, storage of certain hazardous wastes before burning in industrial frunaces requires a storage permit, and the transportation of these wastes is regulated. See § 261.6(b).)

We indicated at proposal that industrial furnaces were those combustion devices designed as incinerators or as boilers that are used as integral components of manufacturing processes to recover materials or energy, not to destroy wastes. 48 FR 14483. To be an "industrial furnace", a unit had to fall within the classes that

[14] van Nostrand's *Scientific Encyclopedia* (5th Ed.) at 324-331 defines "boiler surface" as those parts "which are in contact with the hot gases on one side and water or a mixture of water and steam on the other side." *See also*, McGraw Hill *Encyclopedia of Science and Technology* (1982) at 362-365.

EPA had specifically designated in the rule, based on a series of criteria relating to how the device was an integral component of a manufacturing process.

We have adopted this same scheme in the final rule. Thus, only those devices specifically named in the regulation (*i.e.*, in the definition of industrial furnace contained in § 260.10) are considered to be industrial furnaces for purposes of the regulation. The criteria for adding new industrial furnaces are the same as at proposal. We have added certain new devices to the list of industrial furnaces. Our reasons are provided in the background document supporting this portion of the regulations.

II. Discussion of Specific Provisions of the Revised Definition of Solid Waste

A. Section 261.1(b): Purpose and Scope

1. *Use of The Regulatory Definition of Solid Waste Only For Purposes of The Subtitle C Regulations.* The applicability provision in the final rule is virtually identical to the one proposed. Section 261.1(b)(1) reiterates that the regulatory definition of solid waste applies only to materials that also are Subtitle C hazardous wastes. This point is implicit since the regulatory definition of solid waste appears in regulations implementing Subtitle C of RCRA, which subtitle only applies to hazardous wastes. In response to comment, we are adopting a clarifying provision in § 261.1(b) to ensure that the regulatory definition is not used in unintended contexts, for example to justify regulation of non-hazardous wastes. The language of the final rule is modelled on Section 8 of H.R. 2867 and is consistent with the Committee's intent. See H.R. Rep. 98–198 at 47.

This provision also makes clear that waste-derived products placed on the land for beneficial use or burned as fuels must themselves be hazardous (by exhibiting a characteristic or containing a listed hazardous waste) to be covered by the rule.

2. *Use of The Statutory Definition for Purposes of Sections 3007, 3013, and 7003.* EPA also is promulgating § 261.1(b)(2), which provision states that the regulatory definition does not limit the Agency's jurisdiction under Sections 3007, 3013, and 7003 of RCRA. Rather, the statutory definitions of solid and hazardous waste will apply when these provisions are involved. A substantially identical provision has been in the regulations since May of 1980. (Those provisions recopied from the May 19, 1980 rules are not being repromulgated and are not subject to judicial review.) Several commenters objected to its continued inclusion, arguing that the statutory definitions of solid and hazardous waste do not provide adequate notice to the regulated community. These comments are unfounded. Congress clearly intended a broader definition of waste to apply when these three provisions are involved. See 48 FR at 14484 (April 4, 1983) and 45 FR 33090 (May 19, 1980); see also H.R. Rep. 98–198 at 47 (EPA's authority under Sections 3007 and 7003 includes all wastes that meet the *statutory* definition of hazardous waste). Courts also have repeatedly applied the statutory definition in Section 7003 actions. See 48 FR 4502 n.67 (Section 7003 actions against recycling facilities). Therefore, the statutory definitions of solid waste and hazardous waste will apply in all actions involving Sections 3007, 3013, and 7003 of RCRA. This means that the Agency's authority under these provisions extends to all materials that *could* be solid wastes under RCRA, not just to those defined as solid wastes in the regulations. Thus, EPA has authority to sample a potentially hazardous unlisted by-product being reclaimed even though this material would not be defined as a solid waste in § 261.2. It could be a solid waste, however; the regulatory definition states that this is a question requiring material-by-material consideration by EPA. EPA thus retains the statutory authority to obtain the information necessary to determine whether the materials are solid wastes (or, in the case of Sections 3013 and 7003, to take appropriate action under those provisions). The same reasoning applies to materials potentially designable as solid wastes under § 261.2(d).

This portion of the rule is effective immediately. The HSWA amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, since amended § 261.1(b) restates currently applicable law, as discussed above. See also H.R. Rep. 98–198 at 47, confirming this view. In addition, the government's interest in exercising its authorities under these provisions is high, and intrusion into business operations may be minimal, particularly in the case of exercise of Section 3007 authority. See, *e.g.*, *Mobil Oil* v. *EPA*, 716 F.2d 1187 (7th Cir. 1983). In these circumstances, the Agency believes there is "good cause" within the meaning of amended Section 3010 to make this portion of the rule effective immediately.

B. Section 261.2(b): Materials That Are Solid Wastes Because They Are Abandoned

This provision is identical to that proposed. It states that materials abandoned by being disposed of, burned, or incinerated are solid wastes. (By saying "abandoned," we do not intend any complicated concept, but simply mean thrown away.) Materials that are accumulated, stored or treated in lieu of or before such activities also are solid wastes. (We indicate in the final rule that materials that are recycled in lieu of disposal are not covered by this provision—even though recycling constitutes treatment. Rather, they are covered by the provisions in the definition saying when recycled materials are wastes.) We again emphasize, as we did in the proposal, that materials being burned in incinerators or other thermal treatment devices, other than boilers and industrial furnaces, are considered to be "abandoned by being burned or incinerated" for purposes of this provision, whether or not energy or material is also recovered. See 48 FR 14484/2. Materials burned for destruction in boilers and industrial furnaces are likewise considered to be "abandoned by being burned or incinerated." *Id.*, and n.15. We are making a conforming amendment to the Part 264 and 265 Subpart O applicability provision to express these thoughts. (We discuss in section D. below the concept of burning for destruction in boilers and industrial furnaces.)

C. Section 261.2(c)(1): Wastes and Waste-Derived Products That Are Used in a Manner Constituting Disposal

1. *The Proposed Provision.* EPA proposed that all secondary materials—*i.e.*, all spent materials, sludges, by-products and discarded § 261.33 commercial chemical products—that are recycled by being placed on the land, were solid wastes. In addition, all of these materials would be wastes if they were recycled to the land after simple mixing with other materials, when the mixing did not result in significant chemical or biological change to the original waste. See 48 FR at 14484–85.

2. *Extension of Jurisdiction To Hazardous Waste-Derived Products That Are Applied To The Land.* Virtually all commenters conceded that the Agency has authority to regulate secondary materials applied to the land in an as-is condition or after most simple mixing. Many comments, however, criticized the Agency for not also including within the scope of the rule waste-derived products that are

applied to the land. They argued that the simple mixing standard in the proposal was imprecise, had no relation to environmental consequences, and deviated from Congressional intent to control placing hazardous wastes on the land. The House Committee on Energy and Commerce also indicated that it expects EPA to control "hazardous wastes-derived products used or reused by being applied directly to the land." H.R. Rep. 98–198 at 46. Indeed, the Agency itself noted in the preamble to the proposal that we might reconsider the question of asserting authority over hazardous waste-derived products that are used on the land. (See 48 FR 14485/1.)

After reconsideration, we are revising the final rule to apply not only to hazardous secondary materials used on the land without significant change but also to *all* products containing these wastes that are applied to the land and that are themselves hazardous. We read our jurisdiction as applying to waste-derived products whose recycling is similar to a normal form of waste management—in this case, land disposal. (The jurisdictional basis for the following provision on hazardous waste-derived fuels is similar, except that incineration is the waste management practice corresponding to recycling by burning.) We thus agree with those commenters who maintained that the Agency's jurisdiction extends to all hazardous wastes placed on the land, whether or not the waste was mixed with other materials or chemically altered before being placed on the land. The type of processing involved is relevant in determining what regulatory scheme to adopt or in deciding if the waste-derived product is still hazardous. We have determined, however, that processing does not deprive the Agency of RCRA Subtitle C jurisdiction when the waste-containing product is still placed on the land.

The Agency is thus asserting jurisdiction over all hazardous secondary materials, and over products that contain these wastes, when they are applied to the land. Thus, fertilizers, asphalt, and building foundation materials that use hazardous wastes as ingredients and are then applied to the land are subject to RCRA jurisdiction. Secondary materials applied directly to the land likewise are within the Agency's Subtitle C regulations, as are secondary materials dumped into water to serve as fill or structural support.[15]

We note that we are *not* asserting RCRA jurisdiction over pesticides or pesticide applications. Use of a pesticide involves use of a product, not recycling of a waste. Thus, if a pesticide (including off-specification pesticide, pesticide rinse waters or unused dip solution applied in accord with label instructions) is applied to the land for beneficial use, the practice is not viewed as use constituting disposal.

At the present time, the principles of § 261.3 (c) and (d) continue to apply in determining whether a hazardous waste-derived product remains a hazardous waste. Thus, if a waste that exhibits a characteristic of hazardous waste is incorporated into a product to be placed on the land, the waste-derived product is a hazardous waste only if the product itself exhibits one or more of the characteristics of hazardous waste. For example, if a product contains an EP toxic sludge, but the product itself does not exhibit EP toxicity or any other characteristic of hazardous waste, it would not be subject to regulation under Subtitle C. If the waste-derived product contains a listed waste, it is subject to regulation under Subtitle C unless and until it is delisted under the standards and procedures contained in §§ 260.20 and 260.22. See § 261.3 (c)(2) and (d)(2). (We may eventually revisit this part of the rule because there are no hazardous waste characteristics that measure exposure pathways posed by certain waste-derived products, such as crop up-take for waste-derived fertilizers.)

By asserting jurisdiction over hazardous waste-derived products placed on the land, EPA necessarily is asserting authority over the hazardous wastes—the hazardous spent materials, sludges, by-products and § 261.33 commercial chemical products—that go into these products. Thus, if a generator sends a hazardous sludge to a fertilizer producer, for example, the sludge is a hazardous waste in the generator's hands. This result represents a change from the proposal, where these materials would not have been wastes because they were to be used as ingredients (proposed § 261.2(c)(1)(i)). (All of these secondary materials are wastes under the existing (May 19, 1980) definition of solid waste, however, and are presently subject to regulation if they are listed wastes or sludges. See § 261.6.) Thus, there is not a significant change in overall regulatory coverage between the existing and final rules for wastes to be incorporated into waste-derived products that are used on the land. (See also Section III.C. of Part III of the preamble on this point.)

3. *Regulatory Strategy for Commercial Products Containing Hazardous Wastes that are Placed on the Land.* Although EPA is asserting authority over waste-derived products that are placed on the land for beneficial use, we are not yet ready to undertake regulation of these waste-derived commercial products, and therefore are temporarily exempting them from regulation. Ultimate users of these materials—farmers and highway construction crews, for example—are in many cases individuals not ordinarily within the ambit of the Subtitle C regulatory system. EPA needs more time to determine whether it is possible to develop a more sophisticated means of including these types of users within a regulatory framework. The Agency also needs more time to develop a regulatory system for determining when end uses of these products could present a substantial hazard to human health and the environment, and when such practices as waste-product application rate protect against potential harm.

In developing a short and long-term scheme for controlling hazardous waste-derived products placed on the land for beneficial use, the Agency hopes eventually to develop specification levels for toxic constitutents or other specific standards—for those waste-derived products whose use on the land may cause substantial harm. We are not sure if it is technically feasible to develop such specifications, however, and it would take years to work out this type of approach. EPA therefore believes that short-term controls of these practices are needed since uncontrolled land placement of meterials containing hazardous wastes is potentially very dangerous. We also believe that persons generating or using hazardous waste-derived products on the land should demonstrate that the product is safe to use for land placement, or else comply with regulations that apply to hazardous wastes placed on the land.

The Agency intends, therefore, to develop regulations whereby generators or users of hazardous waste-derived products could demonstrate that these products can be placed safely on the land. To this end, EPA expects to conduct studies of these waste-derived products to determine: (1) the types of hazardous wastes contained in waste-derived products that are applied to the land, and (2) the potential hazards presented by these waste-derived products. Once these studies are completed, the Agency will take

[15] We note, however, that we do not consider secondary materials that are used as wastewater conditioners to be within the scope of this provision. The activity is not similar to land disposal because the secondary material is chemically combined as part of a conditioning process and is subsumed as an ingredient in the conditioned water. See 48 FR 14485 n.18.

appropriate regulatory action. One alternative the Agency is examining is for the user or producer of the waste-derived product to demonstrate via a risk assessment assuming possible exposures via groundwater, crop uptake, runoff to surface water, wind dispersion, or direct human contact that such waste-derived products do not present a substantial hazard to human health or the environment when the waste-derived products are applied to the land. In some cases, users or producers could also evaluate toxicant mobility by existing methods, as in delistings. This system would remain in place until the Agency developed different regulations.

The Agency therefore is limiting its regulatory coverage at this time to hazardous wastes placed directly on the land, or placed on the land after processing, unless the waste a) undergoes a chemical reaction so as to become inseparable by physical means, and b) the resulting combined material is marketed as a commercial product. (See Section II.C. of Part 3 of the preamble for an explanation of these terms.) The practices we are regulating, as we stated at proposal, are tantamount to land disposal and should be regulated as such. We also are regulating hazardous wastes that are transported and stored before being incorporated into hazardous waste-derived products. These wastes stand on the same conceptual and regulatory footing as other hazardous wastes transported and stored before being recycled.

D. Section 261.2(c)(2): Wastes That Are Burned to Recover Energy, Are Used to Produce Fuels, or Are Contained in Fuels

These provisions are among the most important in the regulation, and are integrally related to other regulations proposed or being developed by the Agency. We noted in Section II.B. above that much of the Agency's on-going activity addresses burning of hazardous wastes for energy recovery in boilers or industrial furnaces, and explained our definitions of these terms, as well as our definition of incinerator. We discuss here which secondary materials are wastes when burned as fuels, and how to distinguish among burning for energy recovery, burning for material recovery, and burning for destruction, as well as the regulatory implications of falling into each of these three categories. We also discuss our future regulatory plans, and finally address how we are regulating storage that occurs before burning hazardous waste for energy recovery.

1. *Materials That Are Wastes When Burned As Fuels.* The Agency proposed that all spent materials, all sludges, and listed (but not unlisted) by-products be considered solid wastes when they are burned as fuels, as well as (of course) when they are burned for destruction.[16] Fuels derived from these wastes likewise were defined as solid wastes. As a point of clarification, if a waste exhibiting a characteristic of hazardous waste is used as an ingredient in a fuel, and the waste-derived fuel does not exhibit a characteristic, the waste-derived fuel would not be considered to be a hazardous waste. See § 261.3(d)(1).

Our reason for limiting our jurisdiction in the proposed rule to listed by-products was that we were unsure whether certain commercial fuels might technically be by-products (as defined). See 48 FR 14485. We have reconsidered the issue and have determined that *all* by-products (again as defined) are solid wastes when burned as fuels or used to produce a fuel. We have three principal reasons for this change in approach:

(1) Both the comments and our own investigations failed to disclose instances where by-products were normal commercial fuels;

(2) Data indicates that many process residues, which are by-products, containing high concentrations of Appendix VIII constituents are burned as fuels in industrial boilers; and

(3) Congressional intent is for the Agency to read its jurisdiction over waste-fuels expansively.

States, environmental groups, and waste treatment industry members urged the Agency to expand its claim of jurisdiction. The Agency likewise believes that its authority over recycling is broadest when the recycling practice is like a classic waste management activity, in this case, incineration.

Those commenters who supported the proposal did not maintain that the Agency would regulate normal commercial fuels if all by-products were wastes when burned as fuels. Rather, they argued that many residual materials have high Btu values, and emissions from burning these materials are not substantially different from burning fossil fuels. Others argued that if these by-products were ignitable and did not contain Appendix VIII hazardous constituents, they should not be considered to be wastes when burned.

These comments, in the Agency's view, go to the issue of whether burning and storage of these materials needs to be regulated. The Agency will address these questions in a different rulemaking. These comments do not, however, address the conceptual question of whether the materials are wastes. It is our opinion that by-products that are unlike commercial fuels—because they are residual materials not intentionally produced, and are significantly different in composition from fossil fuels—are wastes when burned as fuels.

Our opinion is reinforced by data submitted to the Agency regarding by-product waste streams presently being burned in boilers and industrial furnaces. Data from the Agency's Industry Studies program of the organic chemical and pesticides industry indicate that boilers and industrial furnaces within these industries burn residual by-products containing high concentrations of such Appendix VIII hazardous constituents as aniline, cyanides, dimethyl phthalates, isobutyl alcohol, and tetrachloroethene. By-products identified in comments to this rulemaking as being burned in boilers or industrial furnaces include chlorinated solvents, chlorinated aliphatic hydrocarbon production wastes, nitrochlorobenzene production wastes, and solvent recovery still bottoms. By-products identified in responses to the Agency's survey on waste and used oil fuels (Questionnaire: *Used Oil and Hazardous Waste as Fuel*, OMB No. 20500019) include distillation bottoms from production of carbon tetrachloride, distillation bottoms from production of phenol/acetone from cumene, distillation bottoms from production of aniline and excess cyanide from acrylonitrile production.

These by-products are physically and conceptually very different from fossil fuels. They are waste-like because they are residual materials containing toxic constituents not ordinarily found in fossil fuels. Many are typically discarded. We therefore believe that we

[16] The Agency also proposed that commercial chemical products listed in § 261.33 that are not themselves fuels, are solid wastes when they are burned as fuels, or used to produce fuels, and that fuels containing these materials (i.e. the commercial chemicals themselves, incorporated into the fuel in lieu of normal use) are solid wastes. We are finalizing this provision today. One commenter, however, misread this language to state that if a fuel contains a chemical that also is on the § 261.33 list—for example, acetaldehyde—fuels containing acetaldehyde were solid wastes regardless of the source of the acetaldehyde. This is incorrect. These materials must first be commercial chemical products (or related materials such as off-specification variants or spill residues) listed pursuant to § 261.33, and must be burned or processed as fuel in lieu of their original intended purpose. We also note that the RCRA Reauthorization legislation takes precisely this position. See H.R. Rep. No. 98-198 at 40; S. Rep. No. 98-284 at 37.

have jurisdiction over the burning of these materials.[17]

Furthermore, recent statements of Congressional intent strongly support and expansive reading of authority over waste-fuels. The HSWA commands the Agency to regulate burning hazardous wastes for energy recovery, and voice special concern over recycling practices involving "direct introduction of hazardous wastes to the air. . . ." H.R. Rep. No. 98–198, 98th Cong., 1st Sess. 46. Our action today is in full accord with these declarations.

As a point of clarification, the Agency reemphasizes that it has modified the difinition of by-product to indicate more clearly that co-products—materials intentionally produced for a commercial market and suitable for use as-is—are not considered to be by-products. Thus, co-products from petroleum refining such as kerosene, pitch, or various grades of fuel oil, are not by-products for purposes of this regulation.[18] On the other hand, residual materials such as tank bottoms (EPA Hazardous Waste No. KO52) are by-products and are considered to be wastes when used as fuels or when incorporated into fuels. We note that the HSWA takes precisely this position. See RCRA amended Section 3004(g)(2)(A) and 3005(r)(2). Fuels containing these wastes likewise remain solid wastes. *Id.* Again, it may turn out that regulation of these materials is unnecessary to protect human health and the environment. EPA also may be able to establish specifications that distinguish waste-derived fuels from products. Today's rule makes clear that the Agency has jurisdiction to make these determinations.

As a result of this change, all spent materials, sludges, by-products, and § 261.33 commercial chemical products and all fuels to which these materials are added,[19] are potentially subject to regulation when transported, stored, and burned for energy recovery. We discuss below in sections 3 and 4, the Agency's on-going efforts to control burning and storage of these materials.

2. *Determining When a Waste is Burned for Energy Recovery and Applicability of the Rules to Burning for Materials Recovery.* Today's regulations apply to hazardous wastes burned for "energy recovery." This limitation raises two issues: Distinguishing burning for energy recovery from burning for destruction, and determining how to regulate wastes if they are burned to recover materials.

(a) *Burning for Energy Recovery.* The Agency has already addressed in part what it means to burn wastes for legitimate energy recovery. In a Statement of Enforcement Policy issued on January 18, 1983 (printed at 48 FR 11157 (March 16, 1983)), EPA stated that as a general matter—subject to individualized consideration of particular circumstances—burning of low energy hazardous wastes as alleged fuels is not considered to be burning for legitimate energy recovery. This is the case even if the low energy hazardous waste is blended with high energy materials and then burned. Thus, under these principles, boilers and industrial furnaces burning low energy wastes could be considered to be incinerating them, and so be subject to regulation as hazardous waste incinerators. (See 48 FR 11158, 11159, and fn.3.)

Today's regulation leaves the principles of the Statement in force. However, EPA, in the Statement, indicated that sham burning was easiest to determine when burning occurs in non-industrial boilers. We also said that larger industrial boilers are more efficient at recovering energy and so could be deemed, more often, to be burning lower energy wastes legitimately. (*Id.* at 11159.) In applying the Enforcement Policy Statement to industrial boilers and industrial furnaces, we would seek to enforce only in situations where large amounts of low energy wastes with high concentrations of toxicants are burned. These are clearly situations where low energy hazardous waste adulteration was deliberate and massive. We also note that the Policy Statement does not address burning for material recovery, or situations where a single waste is burned for material and energy recovery. In this situation, the fact that low energy wastes are involved would not necessarily indicate that there is no recycling, because material recovery also is involved.

(b) *Burning for Material Recovery.* A second question is the scope of these regulations when burning involves material recovery. The Agency views these regulations as applying whenever hazardous wastes are burned in boilers. Boilers, by definition, recover energy. If materials are also recovered, this recovery is ancillary to the purpose of the boiler, and so does not alter the regulatory status of the activity.

Burning for material recovery in industrial furnaces, however, raises different kinds of issues. As discussed above, industrial furnaces are used as integral components of manufacturing processes to recover materials. Thus, regulation under RCRA of actual burning in industrial furnaces could, in some circumstances, represent an intrusion into a normal production process, particularly if the material being recovered is the same material the furnace ordinarily produces. On the other hand, when an industrial furnace is used for material recovery and the secondary material being burned is: (a) Not ordinarily associated with the furnace (for example, organic still bottoms), (b) different in composition from materials ordinarily burned in the unit (as when the secondary material contains Appendix VIII hazardous constituents different from, or in concentrations in excess of those in materials ordinarily burned in the furnace), or (c) burned for a purpose ancillary to the chief function of the furnace, we think that RCRA jurisdiction over the burning exists. (Jurisdiction obviously exists, for example, if that purpose is destruction.)

When industrial furnaces burn for energy recovery, regulation of the burning would not constitute an impermissible intrusion into the production process because burning for energy recovery is an activity that is not central to the usual function of an industrial furnace. See H.R. Rep. 98–198 at 40 (industrial furnaces burning for energy recovery are to be regulated under the waste-as-fuel provisions of H.R. 2867). We therefore are asserting RCRA jurisdiction when an industrial furnace burns hazardous secondary materials—*i.e.*, hazardous wastes—for energy recovery.

The regulations would also apply when an industrial furnace burns the same secondary material for both energy and material recovery. Examples are blast furnaces that burn organic wastes to recover both energy and carbon values, or cement kilns that burn chlorinated wastes as a source of energy

[17] We note as well that Congress already has required the Agency to develop performance standards for used oil burned as a fuel. See RCRA Sections 3014 and 1004(37). The Agency believes that if we have authority to regulate burning of used oil, which is composed primarily of petroleum fractions and therefore is physically similar to fossil fuel or fuel oil, *a fortiori*, we also have authority to regulate burning of secondary materials that are physically quite distinct from fossil fuels.

[18] Off-specification fuels burned for energy recovery also are not by-products, and so would not be considered to be wastes under this provision. An example provided in the comments was of natural gas pipeline condensate. The condensate contains many of the same hydorcarbons found in liquefied natural gas, and certain higher hydrocarbons that also have energy value. It is generated in the pipeline transmission of natural gas. This condensate is not considered to be a waste when burned for energy recovery.

[19] As noted above, for a waste-derived fuel to be hazardous waste, it would have to contain a listed waste or exhibit a hazardous waste characteristic. See § 261.3 (c) and (d).

and chlorine. (Indeed, energy recovery from burning in kilns is automatic, so that all burning of hazardous wastes in kilns is within the Agency's RCRA jurisdiction.) These activities are not so integrally tied to the production nature of the furnace as to raise questions about the Agency's jurisdiction. In addition, EPA believes that both the existing statute and the new legislation express a strong mandate to take a broad view of what constitutes hazardous waste when hazardous secondary materials are burned for energy recovery, and to regulate as necessary to protect human health and the environment. See e.g., 48 FR 14502 (statutory definitions stating that secondary materials burned for energy recovery are solid wastes); H.R. Rep. 94–1491, *supra* at 4 (Congress' concern in promulgating Subtitle C was to "eliminat(e) the last remaining loophole in environmental law", not to create new loopholes); H.R. Rep. 98–198, *supra* at 41–42; S. Rep. No. 98–284 at 36. In taking this view, we thus reconsider and withdraw footnote 19 of the preamble to the proposed rule where we said we would count materials burned in industrial furnaces for both energy and material recovery as being burned for material recovery. For the reasons given above, we think that was a mistaken idea.

We note as well that if an industrial furnace burning secondary materials for ostensible material recovery is used to destroy the materials, it is not recycling but rather is incinerating them. Examples of such sham recovery are when there is no material recovery, or where material recovery is economically insignificant. Another example is when wastes are burned in excess of what can feasibly be recovered and used. (The following subsection discusses a regulatory change clarifying this principle.)

(c) *Amendment to Applicability Section of Subpart O of Parts 264 and 265.* In the final rule, we are codifying the general principle that boilers and industrial furnaces used to destroy wastes rather than to recover energy and material from them are considered to be incinerating the wastes, and thus are subject to the permit requirements of Subpart O of Part 264 or the interim status requirements of Part 265. (This amendment is found in the applicability sections of Subpart O of Parts 264 and 265.) We intend for this amendment to remain in effect until we develop permit standards for burning in boilers and industrial furnaces. Not only is an interim control on those practices needed, but without this provision boilers and industrial furnaces burning for destruction would have no means of receiving a permit.

It also should be noted that with the exception of certain conditions in the definition of "boiler," we are not defining objectively what constitutes burning for destruction, such as specifying precise Btu limits for waste fuels or volume limits on waste feed. We have decided that there are too many exceptional circumstances where unvarying rules of this type would yield unintended results. It is better policy, we think, to apply the concepts explained here and in the Statement of Enforcement Policy, and so enforce this provision in a more individualized manner.

(d) *Examples of How These Provisions Operate.*

The following examples indicate which secondary materials are wastes when burned for energy recovery.

• Facility A burns an unlisted ignitable by-product in its boilers.

A is considered to be burning a hazardous waste since all secondary materials burned for energy recovery are defined as solid wastes. (Ignitable wastes will have high Btu value, and so the waste will be burned for legitimate energy recovery.)

• Facility B burns the same by-product in an industrial furnace to recover energy.

B is considered to be burning a hazardous waste for the same reason as A was in the first example.

• Facility C burns an unlisted EP toxic by-product in its boiler to recover both materials and energy.

C is considered to be burning a hazardous waste for energy recovery, since secondary materials burned for a dual recycling purpose in boilers are considered for jurisdictional purposes to be burning for energy recovery. This answer assumes that sufficient energy and material values are recovered so that the waste is not being burned for destruction.

• Facility D burns the same by-product in an industrial furnace to recover both energy and materials.

D is considered to be burning a hazardous waste, even though the waste is an unlisted by-product, and even though there is some material recovery. Unlisted by-products burned for energy recovery in any type of combustion unit are defined as solid wastes. If D were burning exclusively for material recovery—for example if D operated a smelting furnace burning to recover metal—the material would not be a solid waste since it would be an unlisted by-product being reclaimed.

• Facility E burns an unlisted EP toxic sludge in its industrial furnace but recovers no energy and minimal material values. The material recovered is also unrelated to the material the furnace normally produces.

E would be considered to be burning a hazardous waste for destruction, and so would have to comply with the standards for incineration in Subpart O of Parts 264 and 265.

3. *The Agency's Future Plans for Regulating Burning of Hazardous Waste for Energy Recovery.* As noted above, the actual burning of hazardous waste for energy recovery in boilers and industrial furnaces is exempt from regulation. There was strong consensus in the public comments—confirmed by recent legislative action—that there is a need for regulatory action to control this type of burning. The Agency agrees, and is adopting a phased approach to address the problem. We will soon be proposing the first set of regulations which would ban burning of hazardous wastes and contaminated used oil in non-industrial boilers, and would impose administrative controls on these materials whenever burned in industrial boilers or industrial furnaces.

The next phase of regulations will develop permit standards for burning in industrial boilers and in some industrial furnaces. In developing these standards, we will use many of the factors recommended by commenters in this proceeding. Thus, we intend that these units achieve the same ultimate level of protection as incinerators, and (in some cases) will specify design and operating conditions based on the type of waste and the operating efficiency of the combustion unit to ensure that this level of performance is achieved.

We also are considering adopting general narrative standards, roughly analogous to those contained in the Part 267 regulations (see 46 FR 12429, February 13, 1981), for remaining industrial furnaces burning hazardous wastes for energy recovery. This will allow these units to be permitted immediately until such time as the Agency is able to develop unit specific permit standards for them.

At the time these standards are in place, the Agency intends to withdraw the Statement of Enforcement Policy and the rules stating that the Subpart O regulatory standards for incinerators apply to boilers and industrial furnaces burning hazardous wastes for destruction. This is because we will then have promulgated the permit standards necessary to protect human health and the environment for boilers and industrial furnaces burning hazardous

waste, and so the purpose for which a material is burned will no longer be relevant in determining what the regulatory regime for the burning device should be.

4. *Regulation of Generators, Transporters and Storers of Hazardous Wastes Before the Wastes are Burned for Energy Recovery.* Up to this point, we have been discussing the Agency's jurisdiction over wastes burned as fuels and over fuels containing these wastes, and our planned regulatory regimes for the actual burning of these wastes and waste fuels. We now discuss regulation of these materials *before* they are burned.

EPA proposed the following regulatory scheme for generators, transporters, waste fuel processors, and ultimate burners:

TABLE 5. APRIL 4 PROPOSED RULES FOR GENERATORS, TRANSPORTERS, FUEL PROCESSORS AND BURNERS

	Hazardous wastes that are subject to regulation
Generator sending waste to fuel processor.	All spent materials, all sludges, listed by-products, and § 261.33 materials that are not fuels.
Generator sending waste directly to burner.	All sludges, and spent materials and by-products listed in §§ 261.31 and 261.32 (spent materials and by-products exhibiting a characteristic of hazardous waste were exempt from regulation, as were § 261.33 materials).
Transporters taking waste to fuel processor.	All spent materials, all sludges, listed by-products, and § 261.33 materials that are not fuels.
Transporters taking waste to burners.	All sludges, and spent materials and by-products listed in §§ 261.31 and 261.32.
Fuel processor	All spent materials, all sludges, listed by-products, and § 261.33 materials (*i.e.* all secondary materials defined as wastes when burned for energy recovery); waste-derived fuels produced by the processor were exempt from regulation.
Burners	All sludges, and spent materials and by-products listed in §§ 261.31 and 261.32.

In essence, the Agency proposed to perpetuate the current distinctions in 40 CFR 261.6(b) between listed wastes and sludges on the one hand, and non-listed, non-sludge hazardous wastes on the other for generators and transporters sending wastes directly to burners, and for burners themselves. See 48 FR 14482, 14495 and proposed § 261.6(b)(5). We also proposed that all hazardous wastes sent to fuel processors be subject to regulation, so that fuel processors storing spent materials that exhibit a characteristic of hazardous waste (as well as wastes already covered by § 261.6(b), namely listed wastes and hazardous sludges) were subject to regulation as storage facilities. Generators and transporters sending any type of hazardous waste to a fuel processor were subject to Part 262 and 263 standards. Hazardous waste fuels produced by these fuel processors were not subject to regulation, and so could be transported, stored, and burned without being subject to regulation. *Id.* at 14485.

Comments on this part of the proposal were mixed. Some commenters supported the Agency, but others urged the Agency to regulate transport and storage of all hazardous wastes used as fuels, including non-sludge hazardous wastes exhibiting a hazardous waste characteristic and hazardous waste-derived fuels. They argued that these controls were needed to ensure safe handling of these wastes, to provide a record to the public and to regulatory agencies of which wastes are burned for energy recovery, and of where they are being burned. Some commenters also argued that extending regulatory control over these additional hazardous wastes would effectuate the policy of the then-pending, now-enacted RCRA Reauthorization legislation.

EPA agrees that regulation of transport and storage of all hazardous wastes and all hazardous waste fuels is necessary to protect human health and the environment. The question for the Agency is how best to implement these controls while avoiding the undue confusion or disruption that would result from extensive, piecemeal changes of the current rules. EPA thus has decided to make most of the regulatory changes respecting transport and storage in the context of the soon-to-be proposed rules on hazardous waste and used oil fuels cited above. Thus, in the present package, we are exempting from regulation all hazardous waste fuels produced by a person other than the waste's generator or burner. Hazardous waste fuels leaving intermediate waste fuel blenders and processors consequently would remain exempt from regulation at this time. We also have decided, as an interim measure, to retain the distinction between listed wastes and sludges and unlisted characteristic hazardous waste fuels, so that only the former are regulated.

Finally, we are clarifying that transport and storage requirements apply to all hazardous waste fuels (*i.e.*, hazardous wastes to be burned for energy recovery) containing listed wastes and sludges, except for those produced by a person other than the generator of the hazardous waste. Consequently, if a generator of listed hazardous wastes and sludges blends or processes these wastes and sends them to a burner, the blended waste fuels are subject to regulation (until burned). If the generator blends the same wastes and sends this blend to a hazardous waste fuel processor, the blended wastes remain subject to regulation until reprocessed by the fuel processor.

The clarification of the rules to apply to certain blended hazardous waste fuels (*i.e.*, those going from a generator to a burner, or from a generator to a fuel processor) removes an ambiguity in the present rules, and responds to comments urging immediate regulation of all hazardous waste fuels, blended or unblended. The final rule also assures that wastes are not removed from the regulatory system due to minimal processing by a generator intended merely to evade regulatory requirements.

EPA is not regulating immediately hazardous waste fuels produced by a person other than the generator because the Agency feels this type of regulation would be too disruptive at the present time. Regulation could extend, for example, to unknowing users such as non-industrial boiler operators. In addition, although it is true that the HSWA mandates regulation of these wastes as necessary to protect human health and the environment, the Agency is given two years from enactment to develop these standards. The Agency thus believes that its forthcoming proposal on hazardous waste fuels is the better forum to address these issues.

We are limiting regulation to listed wastes and sludges because these wastes are controlled under present regulations, and the Agency believes the forthcoming hazardous waste fuel rules are the better vehicle for extending regulation to different types of wastes. We thus are not adopting the portion of the proposal which would have regulated all hazardous wastes going to a fuel processor. We do not think it makes sense to have one set of rules for unlisted spent materials and by-products sent to a processor, and a different set of rules when these materials are sent to a burner.

The following examples illustrate the final rules dealing with transport and storage of hazardous waste fuels:

• Generator A generates a hazardous spent solvent listed under § 261.31. He sends the spend solvent to burner B who burns it in his boiler.

Generator A must comply with Part 262 (see § 266.32(a) and § 266.34(c) of the final rule) because a listed waste is involved. Burner B must obtain a storage permit (see § 266.35(c)). The burning is

exempt from regulation at the present time (see § 266.30(a)).

• Generator C generates a hazardous spent solvent listed under § 261.31, blends it with virgin fuel oil, and sends the blend to Burner D who burns it in a boiler.

The answer is the same as for the last example, for the same reasons.

• Generator E generates a hazardous spent solvent listed under § 261.31, blends it with virgin fuel oil, and sends the blend to processor F who processes the blend and does further blending. F then markets the hazardous waste fuel to Burner G who burns it in his boiler.

Generator E is subject to Part 262, as in the previous examples. Processor F is a storage facility (see § 266.34(c)(2)). However, the hazardous waste fuels that F markets are exempt from regulation, so Burner G may store and burn them without regulation (at the present time).

• Generator H generates an unlisted ignitable by-product that he sends to Burner I to be burned in a boiler.

The hazardous waste is exempt from regulation because it is neither a listed waste nor a sludge (see § 266.36). This result would be the same if the ignitable by-product were blended at any point, or sent to an intermediate processor instead of the ultimate burner.

The following chart summarizes the generation, transportation, and storage standards in the final rule for hazardous wastes to be burned as fuels.

TABLE 6: FINAL RULES REGARDING TRANSPORT AND STORAGE BEFORE BURNING FOR GENERATORS, TRANSPORTERS, FUEL BLENDERS, AND BURNERS

	Hazardous wastes that are subject to regulation
Generator sending waste to fuel processor.	Spent materials and by-products listed in §§ 261.31 and .32, all sludges, and any blend containing one of these wastes.
Generator sending waste directly to burner.	Spent materials and by-products listed in §§ 261.31 and .32, all sludges, and any blend containing one of these wastes.
Transporters taking waste from generators to fuel processor.	Spent materials and by-products listed in §§ 261.31 and .32, all sludges, and any blend containing one of these wastes.
Transporters taking waste from generators to burners.	Spent materials and by-products listed in §§ 261.31 and .32, all sludges, and any blend containing one of these wastes.
Fuel processors who do not generate the waste or burn the waste-derived fuel.	Spent materials and by-products listed in §§ 261.31 and .32, all sludges, and any blend containing one of these wastes; waste-derived fuels produced by the processor are exempt from regulation.
Transporters taking intermediate waste-derived fuels from fuel processors to burners.	Exempt from regulation.
Burners.	Spent materials and by-products listed in §§ 261.31 and .32, all sludges, and any blend containing one of these wastes; waste-derived fuels from fuel processors who did not generate the waste are exempt from regulation.

E. Section 261.2(c)(3): Reclamation

1. *Definition of Reclamation.* EPA proposed that all spent materials, listed sludges, and listed by-products that are reclaimed are solid wastes.[20] See 48 FR at 14486. We limited the definition to listed sludges and listed by-products to avoid including sludges and by-products that are routinely processed to recover usable products as part of on-going production operations. We defined "reclamation" to constitute either regenerating waste materials or processing waste materials to recover usable products. In essence, reclamation involves regeneration or material recovery. Wastes are regenerated when they are processed to remove contaminants in a way that restores them to their usable original condition. Examples are reclamation of spent solvents or reclamation of other spent organic chemicals. Secondary metal reclamation processes, such as secondary smelting, are examples of material recovery. Our regulatory definition of reclamation relies heavily on a number of statutory definitions, including those of "resource recovery" (RCRA Section 1004(31)) and "recovered material" (RCRA Section 1004(19)). *Id.* at 14487/2.

We also drew a distinction in the proposal between situations where material values in a spent material, by-product, or sludge are recovered as an end-product of a process (as in metal recovery from secondary materials) as opposed to situations where these secondary materials are used as ingredients to make new products without distinct components of the materials being recovered as end-products. The former situation is reclamation; the latter is a type of direct use that usually is not considered to constitute waste management. 48 FR 14487. In addition, we proposed that secondary materials put to direct use as substitutes for commercial products were not considered to be reclaimed, so that this type of use also is usually not considered to be waste management. Our reason for this distinction is that secondary materials put to direct use in this way are being used essentially as products.

We are adopting these provisions as proposed. (Additional discussion of recycling involving direct use of secondary materials is found in Section H. below.) Also, as discussed in Section I.A.2. of this part of the preamble, we have added provisions to the final definition indicating explicitly that scrap metal that is hazardous is considered to be a waste for the regulatory purposes of RCRA Subtitle C when it is reclaimed. As we noted, recovery from scrap metal is not normally analogous to on-going processing of virgin materials, and much of the scrap metal that is reclaimed is waste-like because it is no longer fit for use and must be reclaimed before it can be used again. (As discussed in Part III of the preamble, however, the Agency is at this time exempting from Subtitle C regulation hazardous scrap metal that is to be reclaimed.)

As a matter of drafting, we have reorganized this provision so that the definition of reclamation is found in § 261.1. The exceptions for direct use recycling are contained in a separate provision (§ 261.2(e)) indicating when secondary materials that are to be recycled are not solid wastes.

Most of the comments agreed with the proposed definition of reclamation (although many questions were raised about how to regulate reclamation activities and about exclusions for direct use recycling). One commenter requested clarification as to the intended result when a secondary material is first reclaimed and then put to direct use. Under the final rule, spent materials, listed sludges, and listed by-products that are processed to recover usable products, or that are regenerated—*i.e.*, that are reclaimed—are solid wastes. If the material is to be put to use after it has been reclaimed, it still is a solid waste until reclamation has been completed. Thus, the fact that wastes may be used after being reclaimed does not affect their status as wastes before and while being reclaimed.

Other commenters raised a related question about the status of spent materials, listed sludges, and listed by-products that are reclaimed and

[20] The proposal contained an exception for materials that were reclaimed at the plant site and returned to the original process in which they were generated. We are not promulgating this exception in the final rule, for the reasons explained in section H of this part of the preamble.

subsequently used as feedstock. This situation is a subset of the one just described, so that these materials are wastes until reclaimed. Their later use as feedstock does not alter this result. The Agency acknowledges, however, that its discussion of the recycling of spent sulfuric acid in the proposal preamble (footnote 30) created some confusion. The Agency still does not think this process involves reclamation. To eliminate any uncertainty, however, we are amending § 261.4(a) of the regulations to state that spent sulfuric acid that is recycled to produce virgin sulfuric acid is not considered to be a solid waste. (See Section I. below.)

2. *The Status of Reclaimed Products.* The Agency proposed a clarifying amendment to § 261.3(c)(2) (the "derived from" rule) to indicate that commercial products reclaimed from hazardous wastes are products, not wastes, and so are not subject to the RCRA Subtitle C regulations. See 48 FR 11489. Thus, regenerated solvents are not wastes. Similarly, reclaimed metals that are suitable for direct use, or that only have to be refined to be usable are products, not wastes. This amendment states a fairly evident principle, and was not challenged by any commenter.

We caution, though, as we did in the proposal, that this principle does not apply to reclaimed materials that are not ordinarily considered to be commercial products, such as waste-waters or stabilized wastes. The provision also does not apply when the output of the reclamation process is burned for energy recovery or placed on the land. These activities are controlled by the provisions of the definition dealing with using hazardous wastes as ingredients in fuels or land-applied products. For instance, if a spent solvent is treated and blended with oil to sell as a fuel, that waste-derived fuel is still subject to RCRA jurisdiction.

The principle also does not apply to wastes that have been processed minimally, or to materials that have been partially reclaimed but must be reclaimed further before recovery is completed. (See 48 FR at 14499 n. 57.) For this last situation—where materials are partially reclaimed but must be reclaimed further until recovery is completed—we are providing a variance procedure for situations in which the initially reclaimed material is commodity-like in spite of the need for additional processing before it is finally reclaimed. This variance is explained fully in Section J.2. of Part 3 of the preamble below.[21]

F. Section 261.2(c)(4): Wastes That Are Accumulated Speculatively

1. *Grouping of Speculative Accumulation and Overaccumulation Provisions.* EPA proposed that any secondary material (*i.e.*, spent materials, sludges, or by-products) being accumulated speculatively were solid wastes. We said these materials are "accumulated speculatively" when they are being stored with a legitimate expectation of eventual recycling but have never been recycled, or cannot feasibly be recycled. See 48 FR 14489.

The Agency further proposed that secondary materials that accumulate at a site for over a year without 75 percent being recycled are solid wastes. 48 FR 14490. The sense of this provision was that all secondary materials that overaccumulate before being recycled are solid wastes, even if they are going to be recycled in ways that ordinarily do not constitute waste management.

We have combined these concepts in a single provision in the final definition. We have drafted the provision so that secondary materials are considered to be solid wastes if they are accumulating before being recycled. However, the materials will not be considered solid wastes (under this provision of the definition) if the person accumulating can show, on request, that: a) the materials have known recycling potential and can feasibly be recycled, and b) during a one-year calendar period that the amount of material recycled, or transferred to a different site for recycling, is at least 75 percent of the amount accumulated at the beginning of the year.[22]

We think that drafting the provision in this way most accurately reflects Congressional intent that accumulated hazardous secondary materials are ordinarily to be regarded as solid and hazardous wastes. Congress believed that hazardous wastes are rarely, if ever, recycled or amenable for recycling. H.R. Rep. No. 94–1491, at 4. It mandated a "regulatory framework" to ensure that "hazardous wastes (are not) disposed of in ponds or lagoons or on the ground in a manner that results in substantial and sometimes irreversible pollution of the environment." (*Id.*) This mandated "regulatory approach" would "eliminat(e) the last remaining loophole in environmental law . . ." (*Id.*)

Although accumulating hazardous secondary materials are ordinarily regarded as solid and hazardous wastes, this is not invariably the case. As noted earlier in the preamble (see Section II.B. of Part 1 and Section H of Part 2), these materials would not be wastes if they can be recycled in certain designated ways, and if they are not accumulated speculatively before being recycled. These situations represent exceptions to the general statutory prohibition against unregulated waste management.

The final rule thus states the general principle that hazardous secondary materials accumulating before recycling are wastes unless the person accumulating is able to show on request that he is indeed recycling sufficient volumes of the materials on an annual basis. The provision is not substantively different from the proposed rule on overaccumulation; the drafting indicates explicitly, however, that this is an exception to the general statutory principle. Thus, the burden of showing that sufficient amounts are being recycled is on the person accumulating the material. (See Section J. of this part of the preamble.)

2. *§ 261.2(c)(4)(A): Wastes That Are Accumulating With Expectation of Recycling But Which Have Not Been Recycled.* We are adopting in the final rule the proposed provision that all materials stored with a legitimate expectation of eventually being recycled but for which there is no known recycling market or disposition, or no feasible means of recycling, are wastes. These wastes are subject immediately to all applicable RCRA Subtitle C standards. Ordinarily, these are storage standards for the applicable type of storage facility. (See 48 FR 14499/2.) Materials that are known to be recyclable, such as solvents, scrap metal, used oil, or most smelting drosses, slags, and sludges ordinarily would not be subject to this provision.

A person accumulating hazardous secondary materials would have the burden of proving that there is a feasible means of recycling the material. (See Section J. below.) This ordinarily will require identification of actual recyclers and recycling technology, location of the recycler, and relative costs associated with recycling. For example, if the

[21] One commenter questioned whether recirculated industrial cooling water was considered to be reclaimed. Ordinarily, we consider cooling water (contact or non-contact) to be reused directly when it is recirculated. Cooling water is not ordinarily processed or treated to remove impurities before recirculation, but is routed away from the process (often through a cooling tower) to lose enough heat to be reusable. The Agency does not consider cooling water routed in this way to be reclaimed.

[22] Of course, the materials could still be solid and hazardous wastes depending on how they are recycled. For example, they would be wastes if they are to be recycled by being burned to recover energy.

nearest recycler is 800 miles away, the person accumulating the hazardous secondary material would have to show that it is economically reasonable to send his material that far to be recycled. The most convincing demonstration clearly would be that the hazardous secondary material actually has been recycled.

Most comments supported the proposal. Two commenters, however, suggested that material for which generators could demonstrate that on-going developmental work will lead to recycling at a future date should not be considered to be accumulated speculatively. We disagree. We think that materials that are not known to be recyclable (or not feasibly recyclable in the hands of a particular generator) are wastes immediately. The example in the preamble to the proposed rule of a waste accumulating over eight years while the generator endeavored to find a means to recycle it indicates that conducting research into recycling possibilities is much different than being able to recycle a waste. In addition, the Agency is not equipped to evaluate whether an unproven developmental plan will ultimately prove feasible.

3. *Section 261.2(c)(4)(B): Wastes Accumulating Before Recycling That Are Not Recycled In Sufficient Amounts. a. The Proposed Provision.* EPA proposed that secondary materials not already defined as wastes that accumulated at a site for over a year without 75 percent being recycled, or transferred to a different site for recycling, are solid wastes. (The materials must, of course, have a know potential for recycling, or they will be considered to be wastes immediately.) EPA also proposed that certain wastes which were exempt when recycled would no longer be exempt if insufficient amounts were recycled in a year.

We coupled this provision with an exception allowing persons who failed to recycle 75 percent in a given year to petition the Regional Administrator (or authorized state having this provision) to demonstrate that they could recycle sufficient amounts in the subsequent year. If the petition was granted the accumulated material was not a waste, or remained exempt from regulation. Once the material accumulated for over a year without sufficient turnover, however, it became a waste or lost its exemption from regulation unless the Regional Administrator (or authorized State) were to decide otherwise.

b. The Final Regulation. We are promulgating this provision essentially as proposed. We continue to believe that the length of time secondary materials are accumulated before being recycled is an important indicator of whether or not they are wastes (or, in the case of precious metal wastes, whether they should be subject to regulation). This is borne out by the large number of recycling damage cases where secondary materials that were overaccumulated over time caused extensive harm. Commenters likewise stated that raw materials usually are processed through production processes in a continual manner and therefore that the length of time a secondary material accumulates before recycling is relevant in determining whether the material is a waste. The Agency also believes, and many commenters agreed, that the one-year period and 75 percent turnover figure were within the reasonable range of values the Agency could select. We are promulgating this provision essentially as proposed.

As just discussed, the major change in the provision involves the structuring of the regulation to indicate that secondary materials stored before recycling are wastes unless the person accumulating the waste is able to show that they are being recycled at an annual rate of 75 percent or more. By requiring persons accumulating the materials to be able to show that they are recycling sufficient amounts, we mean that they have the burden of proof on this issue. We are not requiring specific reports to be submitted to the Agency, nor that particular records be maintained. (See Section d. below discussing the type of records that would satisfy the burden of proof.)

As at proposal, this provision applies to all spent materials, sludges, and by-products not already defined as solid and hazardous wastes and that are accumulated before any type of recycling. The provision thus applies to secondary materials not otherwise considered to be wastes when recycled—namely, to materials that are to be used as ingredients or as commerical product substitutes, to materials that are recycled in a closed-loop production process, to unlisted sludges and by-products that are to be reclaimed, and to black liquor and spent sulfuric acid being reclaimed. Thus, if one of these materials are overaccumulated, they would be considered to be hazardous wastes and would become subject to regulation under applicable provisions of § 261.6, normally § 261.6 (b) and (c) (see Section II.I. of Part 3 of the preamble).

The provision also continues to apply to one set of wastes which are ordinarily exempt from most regulation when recycled, precious metal wastes being reclaimed. Thus, if these wastes are overaccumulated, they no longer are conditionally exempt from regulation (see § 266.70(d)).

The provision does *not* apply to secondary materials that already are wastes when they are recycled, for example scrap metal, secondary materials burned as fuels, or spent lead-acid batteries being reclaimed. The regulations in § 261.6 and Part 266 must be consulted to determine if these wastes are regulated. Rate of turnover thus is not a factor in determining the extent of regulation for these wastes.

In response to comment, we are adding that the provision also does not apply to materials generated in a manufacturing process unit or associated non-waste-treatment manufacturing unit covered by § 261.4(c). Including materials that are generated in these units in the calculation would be inconsistent with the reasons EPA initially exempted wastes accumulated in these types of units. See 45 FR 72025 (October 30, 1980).[23]

EPA proposed that the 75% turnover rate be calculated based on volume. In response to comment, we are writing the final rule so that rate of turnover can be calculated based on either weight or volume. Either measure appears to be a reasonble way to calculate turnover.

We are making one other change to the proposed rule by requiring that 75% of the accumulated materials be recycled during the *calendar* year, starting on January 1, 1985. The proposal would have allowed the person accumulating to choose among the calendar, fiscal, and inventory years as the period during which 75% turnover must be achieved. On reflection, we think that a single time period is needed to facilitate enforcement and to achieve uniformity. EPA believes that if enforcement officials are confronted with a differing starting date at each facility, this provision would become too difficult to implement.

c. *The Requirement That Materials of The Same Class Being Recycled The Same Way Be Counted Together.* In the proposal, we left open the question of whether the overaccumulation provision applies on a material-by-material basis or on a basis that takes into account both the material being recycled and the

[23] Although the final rule refers to § 261.4(c)—a provision that exempts wastes from regulation—EPA is *not* stating that the materials in these units are wastes. EPA is stating that the secondary materials not otherwise defined as solid wastes that are accumulating in the product storage tanks or other vessels described in § 261.4(c) are not subject to the turnover provision contained in the speculative accumulation rule.

manner of recycling. We indicated that our preference was for the 75 percent recycling requirement to be applied to all materials of the same class which were to be recycled in the same way. Most commenters agreed, as this kind of accounting best assures that similarly situated materials will be grouped in the same way.

We are adopting this standard in the final rule. We wish to clarify precisely what this standard means, however. By "materials of the same class" we mean materials of the same type generated from the same process. Examples of materials that would be grouped are distillation bottoms from integrated production of chlorinated aliphatic hydrocarbons, slags from a smelting process, drosses from a smelting process, dry sludges from the same process, or wastewater treatment sludges from the same process.

The requirement that the materials be "recycled in the same way" means that materials are either to be used to make the same thing (for materials to be used as ingredients), used in the same way (for materials used as effective substitutes for commercial products), or, for unlisted by-products and sludges, that the same material be recovered from them. Thus, still bottoms used as intermediates to make the same products would be counted together—for example, all still bottoms from chlorinated aliphatic hydrocarbon production that are used to make carbon tetrachloride. On the other hand, still bottoms used as intermediates in the production of ethylene dichloride would be counted separately. All of a generator's spent pickle liquor used as a wastewater sludge conditioner would be aggregated; the same generator's pickle liquor used to produce iron oxide would be counted separately. Smelting drosses from which lead is recovered would be counted separately from smelting drosses from which zinc is recovered.

The Agency is adopting this approach to ensure that materials most alike in terms of physical characteristics and mode of recycling are counted together. EPA also believes this approach safeguards against situations where recyclable materials are counted along with unrecyclable ones, shielding the unrecyclable materials from being wastes. For instance, if a generator has 100 units of a secondary material all of which are recycled as ingredients in a process, and 20 units of the same material only one unit of which is recycled in a different process, the remaining 19 units should be classified as wastes because they aren't being recycled.

d. *Means of Satisfying the Burden of Proof.* As noted, persons accumulating secondary materials not otherwise defined as wastes have the burden of proving that they are recycling sufficient amounts of the secondary materials. At a minimum, we would expect that accumulators have on hand (1) the amount of secondary material of each class recycled in the same way on-hand at the beginning of the one-year period, (2) the amount of such material added during the one-year period, and (3) the amount remaining at the end of the one-year period. Records customarily maintained, such as records of throughput through an industrial process, should be satisfactory. For materials used as intermediates in closed-loop processes, records of consistent historical use should be sufficient. In addition, names and addresses of recyclers receiving the secondary materials should be maintained, as well as any other information that substantiates the minimum turnover rate (*e.g.* contracts or correspondence with a recycler).

e. *Response to Comments.* Although commenters expressed concern about the provision's complexity, most supported it in principle. One commenter, while supporting most of the overaccumulation provision, urged that it not apply to unlisted by-products accumulated in tanks and containers for a generator's own use or reuse. We have considered this comment but are rejecting it for the reasons given in the proposal (48 FR 14491/1). As a general matter, we believe the key measure of whether a material is overaccumulated is the length of time before use occurs, not how the material is stored or who will recycle it. In addition, the commenter was most concerned about accounting for unlisted by-products burned as fuels; since these materials are defined as wastes in the final rule (although they are not at this time subject to storage requirements), this question is of less importance.

There were a series of comments regarding the status of commercial chemical products that accumulate over time without being used. EPA indicated in the proposed rule that commercial chemical products that are hazardous wastes when discarded (*i.e.*, those listed in § 261.33 of the regulations) were not subject to either the speculative accumulation or overaccumulation provisions of the proposed rule. 48 FR 14489. We also asked for comments as to whether some type of maximum accumulation period should be imposed by rule. Virtually all commenters opposed this idea, due to the large recordkeeping requirements involved, and the difficult practical problems involved in observing and enforcing such a standard. The Agency shares these concerns. *Id.* at 14490. We therefore are not adopting any time limit on when a commercial chemical product held for recycling becomes a waste. The May 19, 1980 standard remains in place; these materials are wastes when discarded or intended for discard (by means of abandonment), and are not wastes when stored for recycling.

f. *Variances for Secondary Materials Not Recycled in Sufficient Volumes.* We also believe that there may be valid reasons that persons are unable to recycle sufficient amounts of non-waste secondary materials in one year (or the precious metal wastes that are conditionally exempt form regulation) and have retained the petition process to accommodate these situations. The petition is now termed a variance from being a solid waste, and is found in § 260.30 Substantive standards for the Regional Administrator's (or authorized state official's) decision are in § 260.31 (a) and procedures for applying for and processing variances are in § 260.33.

The standards for granting a variance are basically those we proposed. The Regional Administrator must decide if sufficient amounts of material are likely to be recycled or transferred for recycling in the following year. Factors to be considered are: (a) The kind of material being accumulated and its expected manner of recycling, (b) how much is being stored, (c) how it is being stored, (d) whether it is being stored in a way that minimizes loss, (e) how and when it is expected to be recycled, and (f) why this is a reasonable expectation. The Regional Administrator should consider the applicant's past history of recycling the material, whether there are contractual arrangements or market conditions bearing on the likelihood of future recycling, the reason that the material was accumulated without 75 percent being recycled in the past year, and other relevant factors. If, for example, a company has a multi-year history of selling a secondary material as a commercial product substitute, but was unable to sell 75 percent during a given year due to a temporary downturn in market conditions, and is handling the secondary material in a manner commensurate with its value as a substitute commercial product, the company may be eligible for a variance. On the other hand, a company that overaccumulates a secondary material not ordinarily reused, but that has been able to pay other companies to use the material in the past, and now has tons of

material on hand in open piles, is much less likely to be eligible for a variance.

A variance, if granted, would be valid for only one year. If the accumulator failed to recycle 75 percent of the material on hand in the following year, it would have to petition for a new variance. Under the proposal, the company would have had to recycle 50 percent of the total accumulated materials to be eligible to apply for a second variance. In addition, a variance could only be renewed two times. In response to comments, we are not adopting either of these requirements in the final rule. There do appear to be situations, although infrequent, where secondary materials can accumulate for over two years without being recycled and still not necessarily be deemed a waste. Possible examples are certain traditionally reclaimed mining by-products that are being accumulated because of cyclically depressed metal prices. However, in determining whether to grant a variance, the longer a material has accumulated without recycling, the more likely it is that the variance application will be denied.

G. Section 261.2(d): Secondary Materials That are Designated as Solid Wastes

1. *The General Standard.* EPA proposed that particular inherently waste-like materials could be designated as solid wastes without regard for the mode of recycling. Some comments criticized this provision as being a vague catch-all, while others supported it or (in the case of certain industry commenters) conceded the need for this type of provision.

EPA is retaining this listing authority in the final regulation. A provision of this type is needed because it is impossible in practice to devise a single definition which completely distinguishes wastes from non-wastes. We continue to think that certain residual materials are inherently waste-like, either because: (a) They are typically disposed of or incinerated on an industry-wide basis, or (b) they contain toxic constituents [24] in concentrations not ordinarily found in the raw materials or products for which they substitute, which toxic constituents are not used, reused, or reclaimed during the recycling process. In addition, recycling of the materials must have the potential to pose a substantial hazard to human health and the environment. The Agency believes these criteria are relatively straightforward and understandable. Certainly they are not "vague" in any legal sense. The Agency will be required to designate in the rule that particular materials are wastes so that there is no risk that those subject to regulation are uncertain or their obligations.

The criticism that this provision is a "catch-all" also does not appear to have merit. We believe the criteria limits those materials the Agency could designate. The Agency must determine that the materials ordinarily are not recycled on a nation-wide basis, and that the material contains Appendix VIII constituents at levels not found in analogous raw materials or products. The criteria that the recycling activity potentially pose a substantial hazard also limits the Agency, by suggesting that a purpose of the activity is to dispose of the non-recycled toxic constituents, and by suggesting that the secondary materials have so little value that they are stored insecurely, and are thus waste-like.[25]

One commenter suggested that the Agency designate secondary materials as solid wastes if management of the materials presents an "unreasonable risk of injury to health or the environment." This determination would be based on an assessment taking into account such factors as effects of the material on human health and the environment, benefits of using the material, and economic consequences of listing.

This standard, as the commenter admits, is drawn essentially from the Toxic Substances Control Act. This is not the standard Congress enacted for RCRA decisionmaking. RCRA determinations are to be based on health and environmental based factors. (See 45 FR 33069 (May 19, 1980).)

The consequences of being designated as a solid waste is that the material will be within the Agency's jurisdiction no matter how it is being recycled. Thus, the particular dioxin-containing wastes designated in today's regulation (see the following subsection) are considered to be wastes (for example) even if used directly as substitutes for commercial products or as ingredients in producing a product. On the other hand, § 261.6 must be consulted to determine the type of regulation that applies to the waste.

2. *Application of the Standard to Specific Wastes.* EPA proposed to designate a group of dioxin-containing materials as solid wastes. See 48 FR 14491–492. We are modifying the proposal, in response to comments, to exclude the listed commercial chemical formulations (Hazardous Waste FO27). These formulations do not meet the designation criteria because they are not chemically dissimilar from analogous commercial products (*i.e.* they are virtually the same as pesticides that are used), and they are not typically discarded. In determining if these formulations are wastes when disposed or recycled, the regulated community should refer to the rules applicable to commercial chemical products. The formulations thus would be wastes when they are discarded by being abandoned, or when they are burned for energy recovery (the manner of recycling not analogous to normal use). See § 261.33 as amended by today's rule.

We also are indicating that Hazardous Waste F021 is not designated as a solid waste if it is used as an ingredient to make a product at the site of generation. It is a solid waste if recycled in any other way (or if disposed.) The Agency is taking this step in response to comments indicating that pentachlorophenol production plants typically reuse these materials in their own production process.

H. Section 261.2(e): Secondary Materials That Are Not Solid Wastes When Recycled

1. *Secondary Materials Used as Ingredients to Make New Products, or Used as Substitutes for Commercial Products.* a. *The Agency's Subtitle C Jurisdiction.* EPA proposed that secondary materials that are used as ingredients to make new products were not solid wastes provided that distinct components were not recovered (*i.e.* reclaimed) as end products. We also proposed that secondary materials used as substitutes for commercial products in particular functions or applications are not solid wastes. See 48 FR 14477, 14487–88. An example of the former practice—*i.e.*, use as an ingredient—is the use of chemical industry still bottoms as feedstock. Use of hydrofluorosilicic acid (an air emission control dust) as a drinking water fluoridating agent, or use of spent pickle liquor as a wastewater conditioner, are examples of use of a secondary material as a commercial product substitute.

When secondary materials are directly used (or, in the case of previously used materials, reused) in these ways, we stated, they function as raw materials in normal manufacturing operations or as products in normal commercial applications. We reiterate these positions in the final regulation. These direct use recycling situations

[24] These are toxic constituents listed in Appendix VIII of Part 261. The proposal erroneously referred to "Appendix VII" (48 FR at 14491), due to a misprint by the Federal Register.

[25] We thus disagree with the commenter who argued that a hazard posed by recycling a material is not relevant in determining whether the material is a waste.

represent exceptions to the general principle that accumulated hazardous secondary materials are hazardous wastes.

The final rule consequently states that secondary materials used as ingredients or used directly as commercial products are not wastes and so are outside the Agency's RCRA jurisdiction. They thus are not subject to RCRA Subtitle C regulations when generated, transported, or used (unless they are accumulated speculatively, as described earlier).

Most commenters agreed with the Agency on this point. Those who didn't felt that the Agency's jurisidiction over recycled secondary materials is unlimited. The Agency disagrees. Our RCRA authority over recycling of hazardous secondary materials is broad, but has some limits. The legislative history indicates that Congress rejected an approach that would have required modifying production processes in order to reduce the volume of hazardous waste generated. This is because such restrictions "i(n) many instances would amount to interference with the productive (sic) process itself. . . ." H.R. Rep. No. 94–1491, 94th Cong. 2d Sess. at 26. The Agency accordingly has interpreted its jurisdiction so as to avoid regulating secondary materials recycled in ways that most closely resemble normal production processes. These types of recycling are use of secondary materials as ingredients or as direct commercial product substitutes, or (as explained below) use in a closed-loop type of production process.[26]

b. Redrafting of the Exclusion in the Final Rule. In the proposal, exclusions for using and reusing materials directly took the form of exceptions to the definition of reclamation (proposed § 261.2(c)(1)(i)–(iii)). We have redrafted the final regulation so that § 261.2(e)(1) indicates explicitly which secondary materials used/reused in particular ways are not solid wastes. A definition of "use"/"reuse" appears in § 261.1(c). Exceptions to this principal are found in § 261.2(e)(2), and restate the situations where recycling might be considered to involve a use (or a closed-loop recycling situation, explained in the next section), but nevertheless constitutes waste management.

As noted above, there are several such use/reuse circumstances where the nature of the material or the nature of the recycling activity indicates that RCRA jurisdiction exists:

- where the material being used is inherently waste-like;
- where insufficient amounts of the material are recycled;
- where the material is incorporated into a product that is used in a manner constituting disposal or where the material is used directly in a manner constituting disposal; and
- where the material is used by being incorporated into a fuel, or being burned directly as a fuel.

In addition, when a component of the material is recovered as an end product, the material is being reclaimed, not used.

c. *Distinguishing Sham Situations.* Other commenters voiced concern that these exclusions open opportunities for sham recyclers to claim that they are using secondary materials, and so not engaging in waste management. The Agency shares these concerns, and wishes to take this opportunity to indicate some of those situations (which also were pointed out in comments) we regard as shams.

First, where a secondary material is ineffective or only marginally effective for the claimed use, the activity is not recycling but surrogate disposal. An example (provided in comments) is use of certain heavy metal sludges in concrete. The sludges did not contribute any significant element to the concrete's properties, and so we would not regard this activity as legitimate recycling.

A second example of sham use occurs when secondary materials are used in excess of the amount necessary for operating a process. Examples are when secondary materials which contain chlorine are used as ingredients in a process requiring chlorine but are used in excess of the chlorine levels required. An indication that secondary materials are *not* being used in excess is if the recycler requires product specifications on incoming secondary materials, and these specifications are in accord with those generally in use in the industry.

Another indication that a claimed recycling use is a sham is if the secondary material is not as effective as what it is replacing. Conversely, where the secondary material is as effective as the alternative virgin material, the activity is much more likely to be considered legitimate recycling. Spent pickle liquor, for example, is known to be as effective as virgin materials when used as a phosphorous precipitant in wastewater treatment. See 46 FR 44970 (September 8, 1981). This reuse is legitimate. A secondary material considerably less effective, however, could well be viewed as not being used legitimately.

Absence of records regarding the recycling transaction is another indication of a sham situation. Records ordinarily are kept documenting use of raw materials and products. Records likewise are usually retained to document secondary material use and reuse. The Agency consequently views with skepticism situations where secondary materials are ostensibly used and reused but the generator or recycler is unable to document how, where, and in what volumes the materials are being used and reused. The absence of such records in these situations consequently is evidence of sham recycling.

A final indication of sham use is if the secondary materials are not handled in a manner consistent with their use as raw materials or commercial product substitutes. Thus, if secondary materials are stored or handled in a manner that does not guard against significant economic loss (*i.e.*, the secondary materials are stored in leaking surface impoundments, or are lost through fires or explosions), there is a strong suggestion that the activity is not legitimate recycling.

A recurring type of situation posing the potential for sham use involves using corrosive wastes as neutralizing agents. The potential for disposal in these situations is high since a waste acid can be dumped into (or onto) other materials, and any resulting change in pH would be incidental to the disposal purpose of the transaction. Accordingly, EPA will not accept a claim that a corrosive secondary material is being used as a substitute for virgin acid or caustic unless indicia of legitimate recycling are present. These include that the secondary acid or caustic meet relevant commercial specifications, that they be as effective as the virgin material for which they substitute, that they be used under controlled conditions, and that in a two-party transaction there be consideration (usually monetary) for use of the material. In addition, the more contaminated the acid or caustic is in relation to virgin material, the less likely the Agency is to view its application as legitimate recycling.

We note also that persons claiming that they are recycling hazardous wastes in a manner excluded by the regulation have the burden of proof that are within the terms of the exclusion. See Section J. below.

Finally, persons intending to use secondary materials that are not listed in the Chemical Substance Inventory compiled by EPA pursuant to Section

[26] We note, in response to comments, that the materials excluded from the RCRA definition still can be hazardous materials for purposes of Department of Transportation regulations governing the transportation of hazardous materials.

8(b) of the Toxic Substances Control Act (TSCA) must notify the Agency of the intended use at least 90 days before the use begins. See TSCA Section 5(a) and 48 FR 21722 (May 13, 1983). EPA can regulate these substances under TSCA if it determines that the manufacture, processing, distribution in commerce, use, or disposal of the substance will present an unreasonable risk or injury to human health or the environment. (TSCA, Section 5(f).) EPA can also extend the review period an additional 90 days for good cause. (TSCA, Section 5(c).)

2. *Closed-Loop Recycling.* a. *The Agency's Proposal.* The Agency also proposed to exclude from the defintion of solid waste materials that are reclaimed at the plant site where generated and that are then returned to the original production process in which the material was generated.[27] See 48 FR 14488/89. We referred to this type of operation as "closed-loop recycling," and stated that this type of operation could be viewed as an on-going production process and therefore outside the Agency's Subtitle C jurisdiction.

There were many comments on this provision. Virtually all commenters agreed that some type of closed-loop provision was justified, but disagreed about its scope. Some commenters felt that the proposal was too broad, while others stated that it should be extended to any situation where a generator reclaimed its wastes and reused the reclaimed material in a process under its control. In addition, many commenters criticized elements of the proposal as unclear, particularly what the Agency meant by "original process from which generated".

b. *Modification of the Proposal.* We have determined that the proposal was both inexact and overbroad (see below). However, we believe that there are certain "closed-loop" situtations that are so closely tied to on-going production that they should be considered not to involve solid wastes. In our opinion, there are three key requirements to a closed-loop process—that is, a production process that at some point utilizes secondary materials but nevertheless is both essentially on-going and closely interrelated throughout all steps. The first requirement is the return of secondary materials to the original process without undergoing significant alteration or reprocessing, namely *without first being reclaimed.* Second, the production process to which these unreclaimed materials are returned itself must be *primary* material based—*i.e.*, the materials must be returned to a primary production process.[28] This is because if the material originally introduced to a process already is a waste, the process residue returned to the process should not be any less of a waste than the material originally introduced. For example, a still bottom from reclamation of hazardous spent solvents would never be considered to be involved in a closed-loop operation if it were redistilled because solvent reclamation is a secondary process and spent solvents introduced to it are wastes.[29]

Third, the secondary material must be returned as *feedstock* to the original *production* process and must be recycled as part of that process. Thus, a spent degreasing solvent returned to degreasing operation would not be covered by this provision because it is not involved in actual production. It merely cleans equipment.

We consequently are stating in the final rule that secondary materials are not solid wastes when they are returned for recycling as *feedstock* to the original *primary* production process in which they are generated, and they are *not reclaimed* before they are returned to that process. The broader provision we proposed, which allowed reclamation before return to the original process, would exclude from the solid waste definition too many operations where the reclamation step is less and less directly related to the principal production process. Examples are situations where hydrochloric acid is recovered from chemical industry still bottoms, and the acid is returned to the chemical reactor. Another potential situation is when fluoride is recovered (as cryolite) from primary aluminum spent potliners and the fluoride is reused. In these examples, neither the still bottoms nor the spent potliners should be considered to be involved in a closed-loop operation because the reclamation step is ancillary to normal production activities. The proposed approach might also have excluded operations where the secondary material itself is substantially unrecoverable and contains comparatively small percentages of utilizable material. The proposal thus might have invited abuse, as companies might seek to avoid regulation by reclaiming some small increment, and returning that increment to the original production process.

We consequently are not adopting the proposed approach in the final rule. The final rule makes clear that the situations discussed in the paragraph above are *not* closed-loop recycling and so are not excluded from the definition.

c. *Explanation of the Requirements That Secondary Materials Not Be Reclaimed, and That They Be Returned To The Original Process.* The final rule raises two principal issues of interpretation: distinguishing between reclamation and incidental processing, and clarifying what the Agency means by return to the original production process. The Agency has defined "reclamation" in these regulations to mean recovery or regeneration. We further clarified, in the April 4 preamble, that processing steps that do not themselves regenerate or recover material values and are not necessary to material recovery are not reclamation. See 48 FR 14489/1. Examples are the wetting of dry wastes to avoid wind dispersal (*id.*) or the briquetting of dry wastes to facilitate resmelting. Another example, provided in comments, is sintering operations at iron and steel plants where taconite ores, flue dusts, and other iron-bearing materials are agglomerated thermally before charging to a blast furnace. Conversely, processing operations that do recover or regenerate materials so as to make them available for further use are considered to involve reclamation. Examples are dewatering of wastewater treatment sludges before the dewatered sludges are recycled, and the treatment of wastewater before recycling. (See 48 FR 14487/1, explaining that both of these operations involve reclamation.)[30]

[27] The proposal actually excluded these materials from the defintion of reclamation, but the effect of the provision was to exclude these materials from the definition of solid waste.

[28] For purposes of this provision, a "primary process" is one that uses raw materials as the majority of its feedstock. Secondary processes, conversely, use spent materials or scrap metal as the majority of their feedstock. The Agency notes that the Office of Management and Budget Standard Industrial Classification Manual uses very similar definitions in establishing primary and secondary process classifications.

[29] The requirement in the final rule that materials be returned to the original *primary* process to be eligible for the closed-loop exclusion thus subsumes part of another exclusion that the Agency proposed for secondary materials returned to primary processes. (See proposed § 261.2(c)(1)(ii) and 48 FR 14488.) As explained in the following section, we are limiting the scope of that proposed exclusion to situations where secondary materials are returned without first being reclaimed to the primary process in which they were generated. The language of the final rule (§ 261.2(e)(1)(iii)) thus indicates that secondary materials must be generated by, and returned as feedstock to processes using raw materials as their principal feedstocks in order to be considered eligible for this provision.

[30] We are aware that under this reading there are probably no secondary materials generated or stored in impoundments that would be eligible for the closed-loop exclusion. The Agency intends this result. Secondary materials stored in impoundments

Continued

By "return to the original process", the Agency means that the (unreclaimed) secondary material must be returned to the same *part* of the process from which it was generated. The material need not be returned to the same unit operation from which it was generated. It is sufficient if it is returned to any of the unit operations associated with production of a particular product, if it originally was generated from one of those unit operations. For example, an emission control dust from a primary zinc smelting furnace could be returned to any part of the process associated with zinc production, such as the smelting furnace in the pyrolytic plant, or the dross furnace. A spent electrolyte from the primary copper production process could be returned to any part of the process involved in copper production—including the roaster, converter, or tank house. An emission control dust from steel production could be returned to the sintering plant for processing before charging to the blast furnace.

However, in the first example, if the emission control dust from the zinc smelting furnace was sent to by-product cadmium recovery operations, it would not be considered to be returned to the same of the process from which it was generated. This is because the cadmium production processes produce a different product from zinc production operations. For the same reason, if the spent electrolytes in the second example were sent to by-product recovery operations for recovery of nickel sulfate, they would not be considered to be returned to the original process. Note that this principle holds even if the by-product recovery operation is located at the same plant site.

d. *Variance For Hazardous Wastes That Are Reclaimed and Then Returned To The Original Process.* We do believe, however, that EPA's proposal—that materials reclaimed before being reused in the original primary production process are not wastes—can have some applicability. We are allowing for these situations by means of a variance. The standards and procedures for granting or denying a variance for this type of recycling are described in Section II.J.2.(b) of Part III of this preamble.

e. *Examples.* The following examples illustrate the operation of this provision:

• Primary smelting facility A generates a dry emission control dust that it collects, stores, and resmelts in the original smelting furnace.

The emission control dust is not a solid waste because it is returned to the original primary process without first being reclaimed. (This answer assumes that the dust is not overaccumulated before it is resmelted.)

• Primary smelting facility B generates a listed wastewater treatment sludge that it dewaters and returns to the original process.

The wastewater treatment sludge is a solid waste because it is listed and must be reclaimed (in this case, recovered by dewatering) before it is resmelted.

• Generator C generates a spent solvent which it distills and returns to the same degreasing operation in which it was generated.

The spent solvent is a solid waste. Not only is it reclaimed before reuse, but it is not reused as a feedstock in a production process. (After the solvent is reclaimed, of course, it is a product and no longer a waste.)

• Generator D generates a still bottom that it burns without reprocessing for energy recovery in a boiler in the same unit operation.

The still bottom is a solid waste because it is burned for energy recovery. The closed-loop exclusion thus does not apply. Nor would it apply if recycling the still bottom constitutes disposal or if the still bottoms were overaccumulated before return to the original process.

• Generator E, a petroleum refinery, generates a hazardous by-product from refining operations that is returned to the refining process and incorporated into fuels, asphalt, and other products.

This process involves return of unreclaimed material to a primary production process but the by-product remains a waste because it is used as an ingredient in fuels and in products that are placed directly on the land. See § 261.2(e)(2) (i) and (ii).

3. *Recycling of Secondary Materials by Primary Facilities.* a. *The Agency's Proposal.* The remaining exclusion that EPA proposed was for secondary materials that are reclaimed in primary production processes. These were not considered to be solid wastes. Proposed § 261.2(c)(1)(ii); 48 FR at 14477, 14488. The usual example is secondary materials sent to a primary smelter for material recovery. The reason for the proposal was that these materials were substituting for the normal raw material feedstock. One result of this proposed exclusion would be differential regulation of secondary and primary facilities reclaiming the same materials, since the material could be a solid waste when reclaimed by a secondary smelter, but would not be when reclaimed by a primary smelter.

The proposal was imprecise regarding the scope of the exclusion. For example, we did not discuss whether it made any difference if the primary reclaimer recovered the same materials (or even the same *type* of material) originally produced, whether recovery occurred at the same or a different site, or whether the primary reclaimer recovered its own or another person's secondary materials.

There were many comments on this part of the proposal. Operators of primary processes supported it, while operators of secondary processes objected. Some states and environmental groups also objected.

b. *Modification of the Proposal.* We have decided not to promulgate this exclusion as proposed, but rather to limit its scope to the closed-loop production situations discussed in the previous section. We think the proposal was in error in failing to differentiate among the different types of fact situations where a primary process would be used for reclamation—such as the part of the process involved, location of the recovery operation, and type of material recovered. The proposal, for example, could have applied to situations where: (a) Residues are sent off-site to be recovered, (b) residues go to a by-product recovery operation, or (c) where residues are recovered in ancillary operations and the material recovered is not marketable but can be used in a primary process.[31] The Agency does not believe that an unvarying rule like the one we proposed can properly cover all these situations. Rather, when a secondary material is to be recovered in an operation different from the one in which it was generated, we believe there is a continuum with secondary materials becoming more waste-like the more the recovery operation differs from the original process, and the more physically removed the recovery operation is from the original process. The nature of the secondary material—whether it is a sludge, by-product, or a spent material, or scrap metal, how frequently it is recovered, and how it is handled before recovery—also is highly relevant. The proposed rule was deficient in failing to account for all of these factors.

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are ordinarily waste-like. They usually are not stored in a manner that minimizes loss (see, *e.g.*, 48 FR 14486, as well as substantial portions of legislative history of the RCRA Reauthorization legislation), and virgin materials are rarely if ever stored in this way. We thus see this result—that wastewater treatment sludges and other wet sludges are not eligible for the closed-loop recycling exclusion—as justified both conceptually and environmentally.

[31] Cryolite recovery from spent primary aluminum potliners is a possible example of this last situation.

We believe that the exclusion should apply only when residues from primary processes are returned in unreclaimed form to the original process where they are then reclaimed. This is the only situation where the Agency can say *a priori* that secondary materials reclaimed in primary processes are not wastes.

The by-products and sludges that are the residue from primary production processes thus can potentially be solid wastes when they are reclaimed in other primary (or secondary) processes. They are wastes if they overaccumulate before being reclaimed, and they are wastes if they are listed in §§ 261.31 and 261.32. In determining whether to list certain sludges and by-products as hazardous wastes, we intend to take into account whether they should be considered to be wastes when reclaimed. If materials are reclaimed in primary processes (such as primary smelting operations), we will evaluate how frequently the material is recycled on an industry-wide basis, whether the material is replacing a raw material and the degree to which it is similar in composition to the raw material, the relation of the recovery practice to the principal activity of the facility, and whether the secondary material is managed in a way designed to minimize loss—all of which show that the material is handled as a commodity.

As stated in the previous section, hazardous secondary materials returned for reclamation to the secondary process in which they were generated are not excluded from being wastes. The materials are not substituting for raw materials normally used, and the operations themselves—using as they often do spent materials as a principal feed—are reclamation processes, not ordinary production operations. Thus, return of a residue to this type of process is not the same as a continuous production operation.

The final regulations thus provide that the following secondary materials are wastes when reclaimed by either primary or secondary reclamation operations, unless the materials are returned to the primary smelting process from which they were generated without first being reclaimed:

(1) Sludges and by-products that are listed in §§ 261.31 and 261.32

(2) All hazardous spent materials;

(3) All hazardous scrap metal.

In addition,

(4) Any secondary material is a waste if overaccumulated.

c. *Examples.* The following examples illustrate these principles:

• Primary smelter A generates a listed emission control dust that it sends to primary smelter B for metals recovery.

The dust is a solid and hazardous waste because it is a listed sludge being reclaimed.

• Primary smelter B generates a listed emission control dust that it reclaims itself in an as-is condition in its own smelting furnace.

The dust is not a solid waste because it is being reclaimed as part of a closed-loop recycling process, and has not been reclaimed before reintroduction to that process.

• Primary aluminum smelter A generates spent potliners from which it recovers fluoride for use in its own process.

The potliners, a spent material, are a solid waste.[32] They are not returned to the smelting process for recovery, but to a different unit operation. In addition, fluoride recovery is an ancillary activity, far removed from the production of aluminum, the principal activity of the primary aluminum facility. (In fact, this operation is probably best viewed as hazardous waste treatment because the main purpose of the operation is to treat the cyanide in the potliners, not to recover fluoride. See 49 FR 8746 (March 8, 1984).)

• Solvent reclaimer S generates hazardous still bottoms from its distillation operation and mixes these still bottoms on-site with virgin oil. S then sends the mixture to a fuel processor.

The still bottoms are solid wastes because they are used to produce a fuel. The fact that this operation occurs at a single site is irrelevant. The mixture of still bottoms and oil remains subject to regulation as a hazardous waste as well.

I. Secondary Materials Specifically Excluded From the Definition of Solid Waste

1. § *261.4(a)(6): Black Liquor Reclaimed and Reused in The Kraft Paper Process.* Pulpmaking processes in the paper industry use chemicals to digest wood chips, and the spent chemicals are recovered from the digester, reclaimed by burning in a recovery furnace, and then reused in the digester in approximately their original form. "Black liquor" is the name given to the spent chemicals, which are caustic and sometime corrosive. Recovery and reuse of black liquor can occur at a single paper mill, and also can involve a second paper mill which reclaims black liquor for its own use or for reuse by the generating mill. All Kraft paper mills reclaim their black liquor (or have the black liquor reclaimed), and little is ever discarded. The Kraft process itself is not economically viable without recovering the black liquor. Black liquor is customarily stored in tanks before being reclaimed, but also is stored in surface impoundments. (The paper industry estimates that one-third of the approximately 125 domestic Kraft mills have black liquor impoundments.)

The Agency has tentatively determined that black liquor, on a generic basis, meets the standards for a closed-loop variance (see section II.J.2. b. of Part 3 of the preamble below) and so is not a solid waste when recycled in this way. (We also indicated in the proposed regulation that black liquor recovery was a closed-loop type of operation. 48 FR 14489.) At least where black liquor is stored in tanks rather than in surface impoundments, black liquor reclamation is integrally tied to the Kraft paper production process, whether it occurs at a single or different plant. All Kraft mills practice black liquor recovery, and the recovery is economically essential to the process. An end use for black liquor is readily available. The whole operation is essentially an on-going process, with chemicals being used, recovered, and returned in their original form to the same process in which they were generated, or to an analogous process at a different facility. Because this operation appears to occur for all black liquor generated, we have determined that black liquor is not a solid waste when recycled in this way.

The Agency, however, is continuing to investigate the degree of recycling that occurs when black liquor is stored in surface impoundments. Although some (and perhaps most) of the black liquor stored in impoundments is recycled in a closed-loop manner, there are some reasons to question whether this is invariably the case. These reasons are:

• Black liquor may remain in impoundments without being recycled for long periods of time because of: (a) Inadequate capacity of the black liquor recovery furnace; (b) the lack of a nearby facility to sell or trade the black liquor; and (c) difficulties in pumping the black liquor from an impoundment due to contamination, dilution, or coagulation of the black liquor with impoundment bottom solids, wood chips, or rain.

• Many black liquor impoundments are unlined, and so may leak.

• Black liquor impoundments are often built to accommodate excess black liquor caused by process upset

[32] This waste is currently exempt from regulation as a result of EPA's interpretation of Section 3001(b)(3) of RCRA.

conditions such as loss of a set of black liquor evaporators or loss of a recovery furnace. When this occurs, the black liquor in the impoundment is accumulated in excess of what can be accommodated at the facility and so may not be recycled, or not be recycled for a long time.

In light of these uncertainties, the Agency is investigating further whether black liquor stored in an impoundment before recycling in the Kraft process is a waste. In addition, we note that black liquor that is disposed of and not recycled is a waste, and if hazardous, a hazardous waste. This includes black liquor that leaks, leaches, or overflows from an impoundment and is not recycled. Furthermore, the final rule states that black liquor stored before recycling remains subject to the rules on speculative accumulation. Thus, paper mills accumulating black liquor must show that they are recycling 75% of the amount on hand at the beginning of a one-year period.

In summary, today's final rule states that:

• Black liquor accumulating before recycle to the Kraft paper process is not a Subtitle C solid waste. At least for the present time, this exclusion includes black liquor that is stored in a surface impoundment before recycling. The person accumulating must show that the black liquor is not being accumulated speculatively, or the black liquor will be considered to be a waste;

Black liquor that is recycled in some other manner could be a waste and black liquor that is disposed of is a waste.

2. *§ 261.4(a)(7): Spent Sulfuric Acid Used to Produce Virgin Sulfuric Acid.* Spent sulfuric acid is frequently used as a feedstock in the production of virgin sulfuric acid. It is normally reintroduced into the original sulfuric acid production process where sulfur values are recovered and absorbed into existing sulfuric acid. 45 FR 14487 n.30. Under the proposal, spent sulfuric acid recycled in this way was not considered to be a solid waste because it was used as an ingredient, used in a primary process, and was burned in an industrial furnace. See 48 FR 14483, 14487 n.30, 14488 n.31.

As discussed earlier (see Section E. above), some commenters questioned the regulatory status of spent materials that are reclaimed and then used as feedstocks. We indicated that normally the spent material would be considered to be a solid waste until it was reclaimed. However, we agree that our discussion of spent sulfuric acid at proposal (in footnote 30) created some confusion.

To eliminate any confusion, we are promulgating a specific exclusion stating that spent sulfuric acid recycled in this way is not a solid waste. As we explained at proposal, the spent sulfuric acid recycling process more closely resembles a manufacturing operation than a reclamation process. In addition, the operation is well established, and accounts for approximately 9% (in 1982) of the roughly 33 million tons of sulfuric acid produced annually. At least one state (California) has indicated by statute that spent sulfuric acid returned to the sulfuric acid production process is not a solid waste. EPA is therefore declaring explicitly that spent sulfuric acid returned to a sulfuric acid production process is not a solid waste. The acid is a hazardous waste if disposed (assuming it is corrosive or exhibits other hazardous waste characteristics), and could be a hazardous waste if recycled in some other manner (such as burning for energy recovery).

J. § 261.2(f): Burden of Proof in Enforcement Actions

EPA proposed that if respondents in enforcement actions raised a claim that a particular secondary material was not a solid waste (or was conditionally exempt from regulation) because it was recycled in a particular manner then they had the burden of proof to show that they were indeed recycling in that way. (Proposed § 261.2(d) and 48 FR 14492.) We are adopting this provision in the final regulation.

As discussed earlier in Section F, RCRA creates a broad remedial scheme to ensure that hazardous wastes are managed safely from cradle-to-grave. The regulatory framework envisaged for this problem extends to hazardous wastes being recycled, and normally includes any hazardous secondary material that is being recycled or that is accumulated with expectation of recycling.

Certain exceptions to this remedial scheme to exist. We think it appropriate, and the rule states explicitly, that the burden of proof (in the sense of both the burden of producing evidence and the burden of persuasion) is on the persons claiming that their hazardous secondary material is not a waste because it is within the terms of any of these exceptions. This provision, thus, restates the legal principle that parties claiming the benefits of an exception to a broad remedial statutory or regulatory scheme have the burden of proof to show that they fit the terms of the exception. *See, e.g. SEC* v. *Ralston Purina Co.*, 346 U.S. 119, 126 (1953) (exception to Securities Act registration requirements); *U.S.* v. *First City National Bank of Houston*, 386 U.S. 361, 366 (1967) (exception to merger provisions of Clayton Act); *Arnold* v. *Ben Knowsky, Inc.*, 361 U.S. 388, 393 (1960) (exception to Fair Labor Standards Act for retail sales); *Weyerhauser, Inc.* v. *Costle*, 590 F.2d 1011, 1040 (D.C. Cir. 1978) (burden of proof is on applicant for Agency-created fundamentally different factors variance).

Viewed another way, the regulations presume that hazardous secondary materials stored before recycling are hazardous wastes. The person accumulating can prove, however, that the materials are not wastes due to the manner of recycling (including the amount of material being recycled). These facts are within the special knowledge of the person accumulating the material. Presumptions of this type have been upheld consistently when they further interpret a remedial statutory purpose, guard against harm to public health and safety, and where the facts to rebut the inference are particularly within the knowledge of the other party. *See Beth Israel Hospital* v. *NLRB*, 437 U.S. 482, 493, 502 (1978); *U.S.* v. *General Motors Corp.*, 561 F.2d 923, 924 (D.C. Cir. 1977) (Leventhal J. dissenting in part).

Furthermore, this type of claim is an affirmative defense, for which it is appropriate that the person asserting the defense have the burden of proof. In addition, the facts underlying the recycling defense would be peculiarly within the knowledge of the party asserting the defense, a situation as noted above where it is appropriate for that party to have the burden of proving the issue. We thus disagree with those commenters claiming that the Agency lacked authority, or was ill-advised, to allocate a burden of proof in this regulation. Indeed, the Agency has allocated burdens of proof to respondents in other regulations that create an affirmative defense or an exception to a generally applicable principle. See § 122.42(n)(4) (permittee has burden of proof to establish the affirmative defense of upset); § 124.5 (National Pollutant Discharge Elimination System permit applicant has burden of persuasion that a permit authorizing a discharge of pollutants should be issued). This allocation of the burden of proof was affirmed in *American Petroleum Institute* v. *EPA*, 661 F.2d 340, 352, 354 (5th Cir. 1981).

There is no formal recordkeeping requirement in the regulation. However, persons must keep whatever records or other means of substantiating their claims that they are not managing a

solid waste because of the way the material is to be recycled.[33] They also must show that they are not overaccumulating their secondary materials. See Section F.3. above. In addition, owners or operators of facilities claiming that they are engaged in recycling must show that they have the necessary equipment to do so.

Part III: Standards for Managing Hazardous Wastes That are Recycled

I. An Overview of the Final Regulations

Section 261.6 of the final regulation contains the regulatory requirements for hazardous wastes that are recycled. The final rule contains many of the provisions that were proposed, but also eliminates all but one of the proposed conditional exemptions. The other major change from the proposal is that we are adopting standards and procedures for certain variances.

A. Outline of the Final Regulations

As in the proposal (and as under current regulations), hazardous wastes to be recycled—called "recyclable materials" in the regulation—are ordinarily subject to regulation under Parts 262 and 263 of the regulations (when generated and transported) and to the storage facility requirements in Parts 264 and 265 (when stored before recycling). We usually do not regulate the recycling process itself, except when the recycling is analogous to land disposal or incineration. (See 45 FR 33092–093 (May 19, 1980); see also H.R. Rep. 98–198, *supra*, at 46 indicating that uses constituting disposal and burning for energy recovery are to be regulated.) In addition, certain recyclable materials and certain types of recycling are subject to regulatory standards that are not completely identical to those contained in Parts 262 through 265 and Parts 270 and 124. The regulatory standards for these types of recycling activities are contained in various subparts of Part 266. Section 261.6(a)(2) serves as a cross reference, listing those recyclable materials and recycling activities subject to special standards. We are adopting Part 266 standards for the following recycling activities or recyclable materials:

- uses constituting disposal;
- burning for energy recovery in boilers and industrial furnaces and using recyclable materials to produce a fuel;
- recyclable material from which precious metal are to be recovered;
- spent lead-acid batteries being reclaimed.

Used oil that is to be recycled will eventually be regulated under Part 266 but presently is exempt from regulation during the time it takes to develop standards consistent with the requirements of the Used Oil Recycling Act and the HSWA (see 48 FR 14496).

We also are exempting permanently two types of recyclable materials—industrial ethyl alcohol to be reclaimed, and used batteries or cells returned to a battery manufacturer for regeneration—from all Subtitle C regulation. These exemptions are found in § 261.6(a)(3).

Scrap metal (that is hazardous) and that is to be recycled is also exempt for the present time while the Agency investigates further whether there is a need for regulation and what an appropriate regulatory regime might be if regulation is necessary.

Finally, we have added variances from § 261.6 or Part 266 (as well as § 261.2) for certain types of recyclable materials and recycling activities. These variances—to be implemented at the Regional or State level—can result in increased regulation, or (for materials determined not to be solid wastes) no regulation. Standards for granting or denying variances are found in §§260.31 and 260.32 (variance from being a solid waste), and 260.40 (additional regulation of generators or storage facilities). Procedures for implementing these variances are found in new §§ 260.33 and 260.41.

B. Elimination of Conditional Exemptions

EPA proposed that four types of reclamation activities be conditionally exempt from regulation: (1) A single person reclaiming his own hazardous wastes; (2) a single person reclaming another's hazardous wastes for his own use; (3) batch tolling reclamation arrangements; and (4) precious metal reclamation. With the exception of precious metal reclamation, we are not adopting these exemptions in the final rule. (We are also soliciting comment as to whether batch tolling reclamation procedures should be eligible for a variance.) As stated in Part I of the preamble, we have concluded that there is danger of substantial harm from leaks and spills if these activities are not regulated. We are supported in this conclusion by comments of states, hazardous waste management organizations, environmental groups, and the Congressional Office of Technology Assessment.

We have also concluded that all of the Part 264/265 standards should apply to those recycling situations that are not conditionally exempt. We considered whether it was possible to develop tailored standards for these facilities, leaving out those regulatory standards which guard solely against the risk of overaccumulation (a risk unlikely to be present; see 48 FR 14477) and retaining those standards which guard against risk of spills or leaks.

This type of tailoring proved impossible. Design and containment standards for containers, tanks, and piles are necessary to protect against leaks and spills, and were indeed devised largely to prevent these risks. Closure and financial responsibility requirements, which do guard against overaccumulation, also provide protection should leaks or spills occur. Thus, facility owners and operators must ensure that contamination that has occurred during operation of the facility, such as by spills or leaks, will be controlled, minimized, or elinimated so that post-closure escape of contaminants will not occur. See § 264.111, 264.112(a)(3), and 264.114. The financial responsibility provisions ensure that funds will be available to carry out closure responsibilities, including those just mentioned. Contingency and emergency procedures are also needed to respond to short-term spills or fires, as are requirements for preparedness and prevention. The tracking requirements of the manifest system are needed if the whole regulatory system is to be enforceable and implementable (most state commenters were emphatic on this point; many industry commenters likewise favored use of a manifest). Transportation standards are chiefly designed to protect against risks from spills, and to ensure proper tracking, as are the Part 262 generator standards. We consequently cannot justify tailored regulations for these types of operations.

C. Summary

Tables 9 and 10 compare the various provisions of the current, proposed, and final regulations. Table 11 provides a flow chart which identifies the various requirements for the different recycling activities and materials.

[33] Absence of documentation not only would make it difficult or impossible for a respondent to carry its burden of proof, but also would itself be evidence that the claimed recycling is a sham. See Section II.H.1.c. above

TABLE 9. COMPARISON OF THE VARIOUS PROVISIONS BETWEEN THE EXISTING, PROPOSED, AND FINAL RULES

Subject	Existing provision	Proposal	Final rule
Exemption for recycled hazardous wastes exhibiting a characteristic.	§ 261.6 (a)	Eliminated	Eliminated.
General regulatory standards for recycled hazardous wastes.	§ 261.6 (b)	§ 261.6 (c), (d) and (e).	§ 261.6 (b) and (c).
Redesignation of recycled hazardous wastes.	.....	§ 261.6 (a)	§ 261.6 (a).
Complete exemption for certain recyclable materials.	.....	§ 261.6 (b) (vii).	§ 261.6 (a) (3).
Conditional exemptions for certain recyclable materials.	.....	§ 261.6 (b) (i)–(iv).	Eliminated except for precious metal recycling (Part 266 Subpart F).
Reference to tailored management standards for recyclable materials.	.....	§ 261.6 (f)	§ 261.6 (a) (2).
Standards for uses constituting disposal.	.....	§ 261.6 (e)	Part 266 Subpart C.

TABLE 9. COMPARISON OF THE VARIOUS PROVISIONS BETWEEN THE EXISTING, PROPOSED, AND FINAL RULES—Continued

Subject	Existing provision	Proposal	Final rule
Standards for recyclable materials to be burned for energy recovery.	.....	§ 261.6 (b) (v).	Part 266 Subpart D.
Standards for spent lead-acid batteries being reclaimed.	.....	Part 266 Subpart D.	Part 266 Subpart G.
Variances	.....	.....	Part 260 (standards and procedures).

TABLE 10. COMPARISON OF THE REGULATORY REQUIREMENTS BETWEEN THE PROPOSED AND THE FINAL RULE FOR THE VARIOUS RECYCLING ACTIVITIES

Activity	Proposal	Final
Use constituting disposal.	Regulate as land disposal (waste-derived products placed on the land were not defined as solid wastes).	Regulate as land disposal; exempt waste-derived products for the time being.

TABLE 10. COMPARISON OF THE REGULATORY REQUIREMENTS BETWEEN THE PROPOSED AND THE FINAL RULE FOR THE VARIOUS RECYCLING ACTIVITIES—Continued

Activity	Proposal	Final
Burning in boilers or industrial furnace for energy recovery.	Regulate transportation and storage of listed wastes and hazardous sludges before burning; burning is exempt; blenders would also be regulated when they store spent materials exhibiting a hazardous waste characteristic.	Regulate transportation and storage of listed wastes and sludges before burning; burning is exempt.
Generator reclaiming own wastes.	Conditionally exempt.	Regulate under Parts 262–265.
Person reclaiming someone else's wastes for own use.	....do.....	Regulate under Parts 262–265.
Wastes reclaimed pursuant to batch tolling agreements.	....do.....	Regulate under Parts 262–265.
Wastes reclaimed to recover precious metals.	....do.....	Conditionally exempt (Part 266, Subpart F).
Spent lead-acid batteries being reclaimed.	Regulate when battery reaches the reclaimers' site.	Regulate when battery reaches the reclaimers' site (Part 266, Subpart G).

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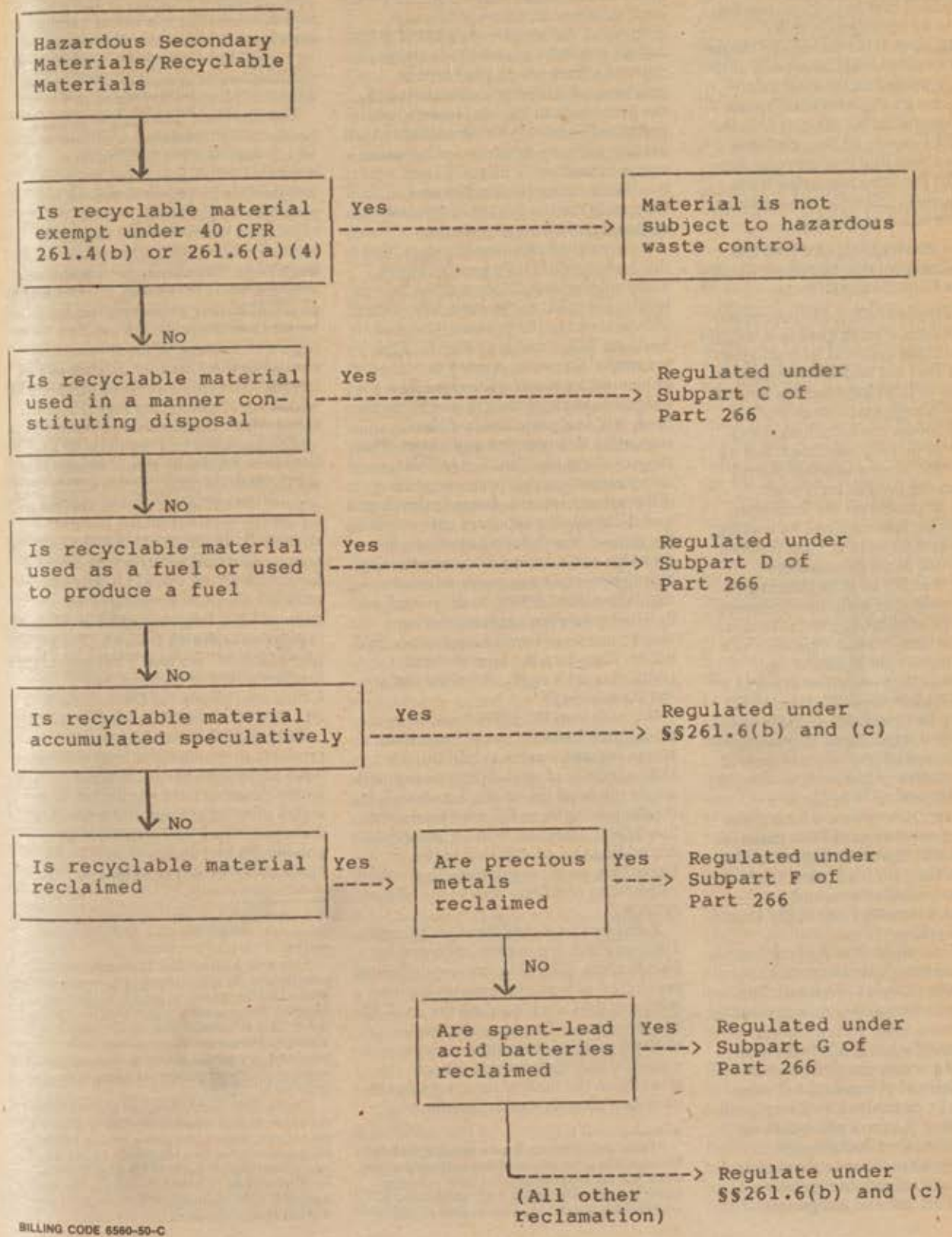
Table 11: Decision Tree Which Identifies the Various Regulatory Requirements for the Different Recycling Activities and Materials



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II. Discussion of Specific Provisions of the Regulation

A. Section 261.6(a)(1): Recyclable Materials

To avoid conceivable stigmatization, EPA proposed that hazardous wastes that are to be recycled be called "regulated recyclable materials." Most comments favored this approach, and we are adopting it in the final rule, choosing the less cumbersome name "recyclable material." As stated in the proposal, however, all Section 7004(b) announcements and notices regarding permits for facilities managing these materials must still refer to hazardous waste. See 48 FR at 14493/3.

B. Section 261.6(a)(2)(i) and Part 266 Subpart C: Recyclable Materials Used in a Manner Constituting Disposal

1. *The Proposal Rule.* EPA proposed that hazardous wastes used in a manner that constitutes disposal be regulated under the Part 264 and 265 regulations applicable to land treatment or landfill disposal. Storage and transportation occurring before the actual recycling also were to be fully regulated. See 48 FR 14496–497. Only materials placed directly on the land in an "as-is" condition or placed on the land after simple mixing were defined as wastes, however, and so were subject to these requirements. Most commenters indicated that the land treatment and landfill regulations were inappropriate for this type of recycling because those regulations contemplate existence of a facility whereas use constituting disposal recycling activities occur in a variety of situation-specific contexts which may be dissimilar. Certain of the land disposal regulations, they argued—such as closure or post-closure care or liner installation requirements—would be very impractical to apply to a recycling situation where a hazardous sludge was used as road-base material on a stretch of highway. Other facility standards, they claimed, such as plant security, or preparedness and prevention, normally don't apply to this kind of recycling.

2. *The Final Rule.* The Agency has decided to promulgate the regulatory scheme essentially as proposed. The changes from the proposal, explained in 3. below, have to do with a clearer explanation of what type of chemical changes to a waste-derived product result in deferral of regulation. Under the final rule, hazardous wastes placed on the land in the form generated, or after simple mixing that doesn't significantly alter the waste's chemical character, are subject to regulation under the Part 264 and 265 permit requirements for landfill or land treatment facilities. The Agency indeed has indicated as long ago as the preamble to the May, 1980 interim status standards that these regulations would apply to hazardous wastes placed on the land, whether or not recycling is a purpose of the activity. See 45 FR 33205–206 (any benefit, such as providing crop nutrients, from placing hazardous wastes on the land is incidential, and the practice is to be regulated as land treatment); see also 48 FR 14484/3 (April 4, 1984) (direct application of hazardous waste to land as fertilizer is land treatment, citing the Background Document for the July 26, 1982 land disposal permitting standards).

It may be, as commenters state, that the Agency ultimately can develop a more tailored regulatory system for wastes recycled to the land. We are not able to do so at the present time. See Sections II.C.1. and 2. of Part II of the preamble. Since the Agency is implementing a statute designed to control hazardous wastes placed on the land, it is inappropriate to defer regulating this practice any longer. The Agency therefore does not intend to delay regulating this practice while a different regulatory scheme is developed and debated. If wastes are safe to put on the ground, the delisting mechanism provides some means of demonstrating that the practice can occur without regulation. (See § 260.22 which applies to listed wastes; wastes exhibiting a characteristic of hazardous waste could not be placed on the land without complying with applicable Part 264 or 265 standards.)[34]

We note that the HSWA includes a prohibition banning use of hazardous waste (except wastes exhibiting the characteristic of ignitability) mixed with waste oil, used oil, or other materials for dust suppression or for road treatment. See RCRA amended Section 3004(1). We are adding this prohibition to the hazardous waste regulations in another rulemaking codifying provisions of the HSWA.

3. *Exemption For Hazardous Waste-Derived Products.* As we indicated in Part II of the preamble, we are deferring regulation of hazardous waste-derived products that are placed on the land. We are deferring action because waste-derived products may present less potential risk than wastes placed directly on the land without significant chemical change, due to the chemical alteration and dilution of toxic constituents that can occur in the course of the process. Use of hazardous waste-derived commercial products on the land also is more clearly a recycling activity than direct waste application[35], and this use thus is a better candidate for separate regulatory standards. In any case, the Agency wishes to obtain public comments on this issue in the context of a specific proposal.[36]

The final rule thus states that products that contain hazardous wastes which wastes have undergone a chemical reaction so as to become inseparable by physical means, are not presently subject to RCRA Subtitle C regulation when they are used in a manner constituting disposal. We think the phrase 'have undergone a chemical reaction so as to become inseparable by physical means' expresses our intention better than the language used at proposal, namely 'without essential change to their identity or after simple mixing'. The waste-derived products for which we are deferring regulation are those where the hazardous wastes have undergone chemical bonding, so that they are chemically transformed. The waste-derived products for which we are *not* deferring regulation are those where the waste is mixed but not chemically reacted. (An exception is for commercial hazardous waste-derived fertilizers which would not have to undergo chemical bonding to be exempt.) The language used in the final regulation is drawn from 40 CFR § 116.3 (definition of "mixture") but expresses a familiar physical concept. See *Condensed Chemical Dictionary*, 10th ed., Van Nostrand Reinhold Co. (1981).

Examples of hazardous waste-derived products in which contained wastes have undergone chemical bonding, and so are deferred from regulation, are waste-derived cement and asphalt. In these processes, the constituents polymerize and so are essentially inseparable by physical means.[37] They

[34] Delistings do not apply on a site-specific basis, however. The petitioner must demonstrate that the waste will not cause substantial harm to human health and the environment if left unregulated in any reasonably-occurring management setting.

[35] The Agency was not considering waste-derived products in its 1980 preamble statement quoted earlier.

[36] We note, however, that the wastes must contribute to the effectiveness of the waste-derived product for the Agency to regard the waste as being recycled. For example, a waste used in a fertilizer would have to contain nutrients or micronutrients; a waste used in cement would have to have pozzolanic properties. If a waste does not contribute to the product, we consider the waste to be disposed of.

[37] Technically, not every constituent introduced to cement or asphalt becomes chemically bonded to the polymer. Some constituents become trapped in the polymer rather than chemically bound. Because cement and asphalt are not viewed as chemical mixtures and are commercial products, the Agency intends to defer regulation of hazardous wastes-derived cement and asphalt at this time.

are not in solution or otherwise mixed. On the other hand, wastes applied to the land after drying or dewatering remain subject to regulation. Hazardous wastes that are mixed with used oil are another example of wastes that are mixed, not chemically reacted. See 48 FR 14496/1. They therefore are subject to regulation under the landfill or land treatment facility standards if applied to the land.

The final rule also states that a waste-derived material must be a commercial product before it is exempt from regulation under this provision. A commercial product is one marketed for general use, not just the use of the waste generator or user. If a generator were to add a waste to other material so that the waste is chemically reacted and then were to apply the waste-derived product to its own land without also selling the product, the land application would remain regulated under today's rule because it does not involve a commercial product. (This answer assumes the waste remains hazardous after the chemical change.)[39]

The Agency recognizes that the distinctions between wastes subject to regulation when placed on the land and hazardous waste-derived products for which regulation is deferred are not ideal. A better scheme is the one we ultimately envision, where all of these wastes are potentially subject to regulation and (at least for waste-derived products) a mean exists for the producer or user of the product to demonstrate that the product is safe to use in a situation-specific context. This scheme requires further development and proposal before it can be implemented. In the interim, we are regulating those practices most closely resembling land disposal.

4. *Exemption for Commercial Hazardous Waste-Derived Fertilizers.* The Agency indicated at proposal that many waste-derived fertilizers were not covered by the proposed rule. 48 FR 14485/1. Commenters pointed out that the mixing involved in producing mixed waste-derived fertilizers does not ordinarily change the chemical character of the wastes contained in the product, and asked for further clarification of the rule as it applies to waste-derived fertilizers.

We do not intend to regulate commercial waste-derived fertilizers at this time because we need to study further the possible hazards associated with their use. We are therefore indicating in the final rule that commercial waste-derived fertilizers are not subject to regulation at this time. (We also note that the normal application of such fertilizer does not appear to constitute a release under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). See CERCLA Section 101(22)(D) and S.Rep. No. 96–848, 96th Cong. 2d Sess. 46.) By 'commercial fertilizers', we mean fertilizers produced for the general public's use and not for the exclusive use of the generator. When a hazardous waste generator applies its waste, mixed or not, solely to its own land as a fertilizer, we believe that disposal is a major purpose of the practice, and that the land disposal rules should apply. See 45 FR 33205–206.

5. *Regulation of The Transport and Storage of Hazardous Waste Before Processing of Waste-Derived Products To Be Placed On The Land.* The final rule also regulates immediately all transport and storage of these wastes before the time they are actually processed into waste-derived products to be placed on the land. Likewise, if wastes are placed on the land in the form generated or after simple mixing, they are subject to regulation when stored or transported before being placed on the land. For purposes of transportation and storage, therefore, these wastes are regulated like all other hazardous wastes prior to land disposal. The Agency believes that these wastes can pose the same hazards when stored and transported as other wastes awaiting land disposal, and consequently that comparable regulation is called for. There have indeed been a number of damage incidents associated with both transport and storage of hazardous wastes prior to processing to produce waste-derived products to be placed on the land, confirming that regulation is necessary. (See Appendix A, Damage Incidents.)

6. *Example.* The following example illustrates how these provisions will operate:

- Generator G generates a hazardous sludge that can be used as an ingredient in fertilizer. G stores the waste in a pile for 30 days and then ships it by truck to a fertilizer-producting plant (F), who stores it in a pile and later blends it with other materials and sells the resulting product as a commercial fertilizer. The fertilizer eventually is sold and applied to the land.

G is a generator subject to Part 262 standards, and its storage pile requires a Part 264 permit or must meet interim status standards (waste piles are not covered by the 90-day accumulation exception in § 262.34). The transporter must comply with Part 263. F, the fertilizer producer, must obtain a storage permit for its waste pile or comply with interim status requirements. The waste-derived fertilizer is not presently subject to regulation because it is sold as a commercial product.

C. Section 261.6(a)(2)(ii) and Part 266 Subpart D: Recyclable Materials Burned for Energy Recovery in Boilers and Industrial Furnaces

We already described (in Section II. D. of Part II of this preamble) that for the time being, the Agency is leaving in place the regulatory system contained in existing § 261.6. We summarize these existing requirements here:

- Generators sending listed hazardous wastes (*i.e.* wastes listed in §§ 262.31 or 261.32 or blended mixtures containing these wastes), or hazardous sludges to fuel processors or burners are subject to Part 262. Generators who store these same wastes before burning for energy recovery must comply with the Part 264 or Part 265 storage standards or with § 262.34. Generators storing non-sludge characteristic wastes before burning them for energy recovery are exempt from regulation.
- Transporters taking listed hazardous wastes and hazardous sludges, or blended mixtures containing these wastes, to fuel processors or burners are subject to Part 263. Transporters taking unlisted, non-sludge hazardous wastes directly from generators to fuel processors or to burners, or taking hazardous waste-derived fuels (*i.e.* fuels which contain hazardous waste) from fuel processors to burners, are not subject to regulation (when they transport such wastes).
- Hazardous waste fuel processors are subject to full regulation under Part 264/Part 265 when they store listed wastes and hazardous sludges (including mixtures containing these wastes before processing. The fuel they produce is not subject to regulation.
- Hazardous waste fuel burners are subject to storage requirements when they store listed wastes and hazardous sludges, but not when they store non-sludge unlisted wastes or hazardous waste-derived fuels received from fuel processors who didn't generate the waste.
- Burning of hazardous wastes for legitimate energy recovery in boilers or in industrial furnaces is not presently subject to regulation.

These rules are temporary only. Our forthcoming proposed rule on burning hazardous waste and contaminated used oil sets forth our contemplated regulatory regime.

[39] For this reason, stabilized waste that are applied to the land are not covered by this provision because stabilized wastes are not commercial products. To the same effect, see 48 FR at 14485/1.

We also note that the HSWA contains two provisions relevant to this discussion. The first prohibits cement kilns located in cities with populations greater than 500,000 from burning hazardous waste fuel unless the kiln complies with requirements applicable to hazardous waste incinerators. See RCRA amended Section 3004(q)(C)(2)(I). Since the prohibition is imposed by statute, it applies to *all* hazardous waste fuels, not just hazardous waste fuels containing listed wastes and sludges.

The second statutory requirement involves labelling of hazardous waste fuels. The new amendments provide that any person who produces, distributes, or markets a hazardous waste fuel must include a warning label in the invoice or bill of sale stating that the fuel contains a hazardous waste and listing all hazardous wastes contained therein. See RCRA amended Section 3004(r)(1). This requirement again applies to *all* hazardous waste fuels, and so applies to fuels containing characteristic spent materials and by-products, as well as listed wastes and sludges. Certain hazardous waste fuels are exempt from this warning label requirement, however. These are petroleum coke containing hazardous waste ingredients (unless the coke exhibits a hazardous waste characteristic), and fuels from petroleum refining containing oil-bearing hazardous wastes indigenous to refining (amended Sections 3004(q)(2)(A) and 3004(r) (2) and (3)), respectively.

These requirements are being added to the hazardous waste regulations by another rulemaking proceeding which codifies portions of the HSWA.

D. Section 261.6(a)(2)(iii) and Part 266 Subpart E: Recycled Used Oil

This provision is reserved for the regulations implementing the Used Oil Recycling Act (UORA) (Section 3014 of RCRA). This provision requires EPA to conduct an analysis and evaluate the effect of regulation on used oil recycling. EPA presently is conducting studies and developing regulations that satisfy the requirements of the UORA. We will soon propose the first of these regulations dealing with contaminated used oil burned for energy recovery, and will be proposing additional regulations in the future.

E. Section 261.6(a)(2)(iv) and Part 266 Subpart F: Precious Metal Reclamation

1. *Retention of The Partial Exemption.* Although EPA has concluded that most of the proposed conditional exemptions are unwarranted, we continue to believe that the exemption for precious metal-containing wastes being reclaimed for their precious metal content remains justified because of the high value of the metals being reclaimed. We noted in the first part of this preamble that a decision on how carefully wastes are stored before reclamation turns largely on a weighing of how valuable the wastes are and the cost of buying virgin products to replace reclaimed materials. The precious metals being reclaimed from these wastes are at the high end of the value continuum, ranging from values of approximately $9.00 per troy ounce (silver) to $600.00 per troy ounce (iridium and rhodium).

An examination of how these wastes are managed confirms that they are accorded special care due to their value. Management of these materials ordinarily is characterized by very careful handling from point of generation to point of recovery. Wastes containing these metals are at least placed in containers, and are sometimes neutralized, dried and shipped—with armed guards—in pouches to the reclaimer. Reclaimers and generators often enter into batch tolling agreements, requiring reclaimers to return the theoretically reclaimable amount of metal to the generator. For this purpose, wastes are typically assayed by both the generator and the reclaimer for precious metal content, and precautions are taken by the reclaimer to avoid loss. Wastes are containerized before reclamation; the Agency is not aware that open piles or impoundments are used for storage. Accumulation time by reclaimers also tends to be short (less than one month), because reclaimers often are required to return the reclaimed metal (or cash) to the generator within that time.[39]

The Agency thus believes that the value of the contained metals, corroborated by the usual management practices for these wastes, supports the partial exemption. At the same time, the Agency does not believe a complete exemption is warranted. As pointed out in the proposal, individual precious metal operations have caused environmental harm, and some of the wastes being reclaimed—such as spent cyanide solutions—are very hazardous. In this regard, we note that some precious metal reclaimers themselves supported a partial, rather than total exemption. (See, *e.g.*, Comments of Englehard Industries Division, July 30, 1983.)

The rule consequently states that wastes to be recycled are exempt from all but the following requirements:

(a) Notification requirements under Section 3010

(b) Manifest requirements

(c) Requirements precluding overaccumulation; and

(d) Recordkeeping requirements to document that wastes are not being overaccumulated.

Manifest requirements are necessary to create a paper trail to track wastes from the generator to the reclaimer. To enforce the requirement against overaccumulation, we are requiring generators, reclaimers, and intermediary facilities accumulating the wastes to keep records showing the volume of wastes on-hand at the beginning of the calendar year, the amount of waste generated or received during the one-year period, and the amount of waste remaining at the end of the period.

We are making this portion of the rule effective immediately because the regulated community does not need time to come into compliance. RCRA amended Section 3010.

2. *Definition of Precious Metal.* As used in the final regulation, precious metal reclamation includes reclamation operations recovering gold, silver, platinum, palladium, the platinum group metals (iridium, osmium, rhodium, ruthenium) or any combination of these. This is essentially the definition used in the proposal (the proposal omitted the metal osmium), and is the same definition used by the Agency in developing effluent limitation guidelines for the precious metal reclamation subcategory (40 CFR Part 421). The only comments disagreeing with this definition suggested (without explanation) that beryllium, germanium, gallium, and indium also be included. These metals are not ordinarily classified as precious, and commodity prices for these metals ordinarily are much lower than for the precious metals (in some cases, several hundred times less). The Agency also has little information on the handling practices for wastes containing these materials or whether these wastes would be hazardous. We therefore are not expanding the list of precious metals at this time.

3. *Distinguishing Sham Operations.* We also note that sham recovery operations merely claiming to be engaged in precious metal reclamation are *not* exempt under this provision. Sham operations not only include those where no precious metals are present, but those where precious metals are present only in trace amounts, or in amounts too low to be economically recoverable. The regulations consequently state that the reclamation

[39] A memorandum to the record from the Agency's Effluent Guidelines Division documents these statements.

facility must be recovering economically significant amounts of precious metals from each waste for the waste to be conditionally exempt. For example, wastes from which small amounts of silver are recovered by a facility not ordinarily engaged in precious metal reclamation would not be exempt from regulation. Other factors indicating sham precious metal recycling are lack of strict accounting by either the generator or reclaimer of wastes to be reclaimed, storage (such as in open piles or impoundments) by either the generator or reclaimer not designed to protect wastes from release, payment to a reclaimer to accept wastes, or absence of efficient recovery equipment at the reclaimer's site. Generators or reclaimers engaged in this type of sham recycling without complying with RCRA regulations are of course managing hazardous wastes without complying with applicable regulatory standards.

4. *Status of Wastes From Precious Metal Reclamation When Hazardous Wastes Are Reclaimed.* Several commenters questioned the statement in the preamble that wastes from precious metal reclamation are presumptively hazardous if the material being reclaimed is a hazardous waste. This statement does no more than recite existing regulations (see § 261.3(c)(2)), and is justified factually here because the hazardous portions of the wastes are not recovered but remain in the process residue. (Effluent sampling data shows high toxic metal and cyanide concentrations in wastewater from precious metal reclamation operations reclaiming electroplating sludges and related wastes.) Commenters presented no data disputing these conclusions. In addition, individual precious metal waste generators and reclaimers have the option of delisting the wastes from the reclamation process if they believe they are not hazardous.

F. Section 261.6(a)(2)(v) and Part 266 Subpart G: Spent Lead-Acid Batteries Being Reclaimed

EPA proposed that spent lead-acid batteries be regulated when stored by the persons reclaiming them, either a battery cracker or a secondary lead smelter. These spent batteries would not be regulated, however, when handled by persons other than reclaimers, such as retailers, wholesalers or local service stations, or during transportation. Spent batteries stored at intermediate collection centers also would not be regulated. See 48 FR 14498–499.

Many commenters supported these regulations, including significant segments of the lead recycling industry. Other commenters disagreed that the risks presented by storage of spent lead-acid batteries warrant regulation. Still other commenters, including most of the commenters from the lead recycling industry, stated that battery storage by independent collection centers presented greater risks than storage by reclaimers. They stated that collection centers tended to store batteries for a longer time than reclaimers, and sometimes in larger amounts, and provided examples of improper handling by collection centers. There was consensus, however, that initial collectors and transporters did not require regulation.

We have decided to adopt the proposed regulation without significant change. Acid spillage from uncracked batteries can cause significant harm, and storers have no (or minimal) incentive to store spent batteries without acid spillage. We are impressed that even some lead recycling industry members accept the need for regulation of spent battery storage. We also note that many states regulate various aspects of spent battery recycling (including, in many cases, storage by battery reclaimers),[40] confirming a need for regulation. Damage cases cited in the April 4 preamble provide further corroboration.

The Agency is continuing to investigate whether regulation of intermediate collection sites is appropriate. These battery collection sites are managed, for the most part, by the same persons who operate scrap metal collection sites, and scrap metal and spent batteries are usually accumulated by these persons at the same sites. We therefore will address this issue as part of our study of hazardous scrap metal storage.

G. Recyclable Materials Exempt from Regulation

1. *Section 261.6(a)(3)(i): Reclaimed Industrial Ethyl Alcohol.* Industrial ethyl alcohol can become contaminated during use, and may then be returned to a distillery for redistillation. Spent industrial alchol exhibits the characteristic of ignitability.

EPA has decided to exempt industrial ethyl alchol that is reclaimed from any RCRA regulation because the entire reclamation operation already is regulated by the Bureau of Alcohol, Tobacco and Firearms from point of spent ethyl alcohol generation to point of redistillation. These regulations require operating permits for individual industrial ethyl alcohol distilleries and users. These permits must address (among other things) ethyl alcohol storage (including storage of spent ethyl alcohol), plant security, and recordkeeping. See 27 CFR 19.156, 19.159, 19.166, and 19.271–19.281 (requirements for distillers) and §§ 211.41–211.50, and 211.91–211.96 (requirements for users). Tracking from the generator to the distiller likewise is controlled. *Id.* §§ 211.217.–211.219. There is also incentive to avoid loss of alcohol because there is tax liability of $10.50 per gallon of spent ethyl alcohol, and this tax is imposed, and ordinarily not remitted, in the event of loss. *Id.*, §§ 19.561–19.563. In light of this comprehensive cradle-to-grave existing regulatory system, further RCRA regulation would be redundant.

2. *Section 261.6(a)(3)(ii): Used Batteries Returned to a Battery Manufacturer for Regeneration.* This exemption is identical to the one proposed. See 48 FR 14496/2. (In response to comment, we also note that returning an unused battery for regeneration would not involve waste management, because the battery would be a commercial product being recycled. See § 261.33.) In essence, the practice involves returning a commercial product for regeneration, an activity not ordinarily regulated. All comments on this issue supported the proposal. (We note, in response to a comment, that used battery cells returned to a manufacturer for regeneration also are covered by this exemption.)

3. *§ 261.6(a)(3)(iii): Used Oil Exhibiting a Characteristic of Hazardous Waste.* This temporary exemption was discussed in Section II.E. above.

4. *§ 2616.(a)(3)(iv): Scrap Metal.* The Agency has determined not to regulate (for the time being) hazardous scrap metal that is being reclaimed. This is an interim measure. We are continuing to study which types of scrap metal may be hazardous.[41] We also are continuing to study the modes of scrap management by collection centers and by end reclaimers, and are also studying marketing arrangements in the industry. Other on-going work deals with the impacts (both environmental and economic) of possible regulation, the feasibility of enforcement if regulation should be necessary, and whether

[40] The States of Pennsylvania, South Carolina, Texas, Missouri, New York, California, Oklahoma, Oregon and Indiana regulate various aspects of spent battery recycling. See Comments of General Battery Corporation to Proposed Effluent Limitations and Standards for Nonferrous Metals Manufacturing, August 15, 1983.

[41] Preliminary results of Agency studies indicate that most scrap metal is not hazardous, although some types exhibit EP toxicity.

tailored regulations can or should be developed for hazardous scrap metal.

The Agency expects to determine from this investigation which types of scrap metal are hazardous, whether the regulation of transportation and storage is necessary, and what an appropriate regulatory regime might be for those types of scrap metal that are hazardous. Since we do not yet have answers to these questions, we are deferring regulation.

We are not deferring regulation of non-scrap metal-bearing hazardous wastes that are reclaimed. The Agency already has made a determination that these wastes are hazardous, that regulation is necessary to protect human health and the environment, and what appropriate regulatory standards should be. Thus, such metal-bearing wastes as spent batteries, spent mercury, and spent acids and caustics are subject to § 261.6 (or Part 266) regulatory standards under today's rule.

H. Section 261.6(b) and (c): Requirements for Generators, Transporters, and Storage Facilities

1. *The Generally Applicable Standards.* These provisions state that persons generating, transporting, or storing recyclable materials, who are not explicitly addressed in § 261.6(a), are subject to all of the applicable requirements of Parts 262, 263, 264 and 265 of the regulations, as well as to applicable permit requirements. Thus, hazardous wastes that are to be reclaimed are covered by these provisions. Hazardous wastes that are accumulated speculatively also are covered.[42] As noted, these provisions will apply to most of the activities that would have been conditionally exempt under the proposal, as well as to situations (such as reclamation by an independent reclaimer selling reclaimed products to the general public) that we already proposed to regulate fully.

The following chart compares the extent of coverage under the May 19, 1980 regulations (40 CFR 261.6(b)) with today's final regulation for those recyclable materials not regulated under the special standards in Part 266—namely recyclable materials being reclaimed or accumulated speculatively. For wastes being reclaimed, the principal extension of regulation is to spent materials exhibiting a characteristic of hazardous waste. Sludges that are not listed as hazardous wastes, however, are no longer regulated when reclaimed. In addition, unlisted by-products and spent materials are now subject to regulation when accumulated speculatively (*i.e.* without sufficient amounts being shown to be recycled). Commercial chemical products listed in 40 CFR § 261.33 are not subject to regulation when recycled in any of these ways.

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[42] As we noted in the April 4 preamble, persons who overaccumulate wastes are subject to regulation as storage facilities when a year elapses without sufficient turnover of material. (However, as noted in the rule, and in Section II.F.3.b. of Part 2 of the preamble, materials that are stored in a unit covered by § 261.4(c) are not covered by the overaccumulation provisions.) These persons have a six-month period to come into compliance with applicable storage requirements or to ship all accumulated hazardous wastes to a Subtitle C facility. 48 FR 14499/2–3. Persons accumulating hazardous wastes speculatively are subject to immediate regulation as generators (if they generate the wastes) or as storage facilities (if they store anoter person's wastes, if they store their own wastes in piles or in impoundments, or if they store their own wastes in tanks and containers for longer than 90 days or for less than 90 days without complying with the provisions of § 262.34).

TABLE 12: Comparison of Regulation Under May 19, 1980 Regulations and Under Amended §261.6 for Recyclable Materials Not Subject to Regulation Under Part 266 Standards

	Reclamation		Acumulation Without Sufficicent Amounts Being Recycled		Accumulation Without A Known Recycling Market	
	May 19	Final Rule	May 19	Final Rule	May 19	Final Rule
Spent Materials Listed in §§261.31 or 261.32	yes	yes	yes	yes	yes	yes
Spent Materials Exhibiting a Characteristic of Hazardous Waste	no	yes	no	yes	yes	yes
Sludges Listed in §§261.31 or 261.32	yes	yes	yes	yes	yes	yes
Sludges Exhibiting a Characteristic of Hazardous Waste	yes	no	yes	yes	yes	yes
By-products Listed in §§261.31 or 261.32	yes	yes	yes	yes	yes	yes
By-products Exhibiting a Characteristic of Hazardous Waste	no	no	no	yes	yes	yes
Scrap metal	no	no	no	no	yes	yes
Commercial Chemical Products Listed in §261.33	no	no	no	no	no	no

Yes - Subject to regulation under Parts 262-265

No - Not subject to regulation

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2. *Conforming Amendments to §§ 261.5, 264.1, and 265.1.* EPA proposed that hazardous wastes that are exempt from regulation when they are to be recycled are not included in the small quantity generator calculation. 48 FR at 14493 n. 38. This proposal was a conforming amendment to existing § 265.1(c), which already embodies this principle. We are promulgating this amendment in final form today. Since there are fewer conditional exemptions than at proposal, however, fewer recycled hazardous wastes will be excluded from the small quantity generator calculation. As at proposal, spent lead-acid batteries that are to be reclaimed are excluded from the small quantity generator calculation because they are not subject to regulation in the hands of the generator.[45]

The amendments to §§ 264.1 and 265.1 also are conforming. They indicate that these sections do not apply to activities that are conditionally exempt or excluded from regulation, or that are regulated under a Part 266 standard. (The Part 266 standard may, of course, make reference to a Part 264 or 265 standard.)

3. *Revision of § 260.10: Definition of "Designated Facility".* In response to comment, the Agency also is adopting a rule relating to manifesting of hazardous wastes to recycling facilities that introduce the wastes directly into the recycling process without prior storage. These recycling facilities are not required to obtain storage permits under the May 19, 1980 rules (§ 261.6(b); see also 48 FR at 14498/2 to the same effect), nor under the rules adopted today. This is because the Agency does not regulate the actual process of recycling, but only generation, transportation, and storage occurring before actual recycling. 45 FR 33093/1 (May 19, 1980). However, generators sending hazardous wastes to these facilities, and transporters carrying these wastes, are required to deliver the wastes to "designated facilities" and to include the name, address, and EPA identification number of these facilities on the accompanying manifest. A "designated facility" is defined as a facility with a Part 264 permit or operating pursuant to interim status (§ 260.10).

These rules consequently are in conflict because recycling facilities that do not store are not "designated facilities" (they do not have permits or interim status), and, under a literal reading of the present rules, are unable to receive wastes for recycling. This obviously was not the Agency's intention. Accordingly, the Agency is amending the definition of designated facility so that recycling facilities that do not store before recycling can receive hazardous wastes.

The amendment states that facilities regulated under § 261.6(c)(2) of the regulations are also to be considered designated facilities. Section 261.6(c)(2), in turn, states that recycling facilities that do not store are required to notify the Agency under Section 3010 (obtaining an identification number in the process), and to comply with manifest requirements under §§ 265.71, 265.72, and 265.76.

The Agency stresses that this amendment is an interim one and is designed to solve the immediate conflict between different regulations. We are not making a final decision that these facilities require only minimal regulation. In fact, we are considering whether these facilities should be subject to additional requirements to be implemented through individual permits.

We also stress that very few facilities recycle wastes without first storing them. In this regard, we note that tanks or containers in which some incidental settling occurs but which are used primarily for storage are subject to regulation under the storage facility permit standards.[46] This is in keeping with the policy of the current regulation that only the actual process of recycling is to be left unregulated. Examples of recycling processes that occur without prior storage are where spent batteries are introduced directly to a battery shredding machine without prior storage, or when spent solvents are placed in a distillation unit without prior storage.

I. Variances

EPA is adopting several variance provisions in the final rule. One of these provisions results in increased regulation (and so is a variance from otherwise applicable standards or exemptions), while the others result in a determination that materials recycled in certain ways are not solid wastes. These provisions are described below.

1. *Case-by-Case Regulation.* a. *The Substantive Standard.* EPA proposed that various recycling activities conditionally exempt from regulation be subject to case-by-case regulation if they accumulated, stored, or burned hazardous wastes in a manner insufficient to protect human health and the environment, to be determined based on criteria enumerated in the rule. Proposed § 261.6(g), 48 FR 14510. We believed this provision necessary in order to regulate individual unsafe operations, while maintaining an otherwise appropriate exemption.

Many comments supported this provision, but other commenters objected. They complained that the Agency was giving with one hand but taking back with the other, that the provision vested too much discretion in the Regional (or authorized State) Administrator because decision-making standards were too broad, and that this type of provision deprived facilities of needed certainty. (Many of these same commenters argued that the Agency should vest Regional Administrators with authority to grant individual variances, based upon standards far broader than in the case-by-case regulatory provision.)

The Agency has determined to adopt most of the provision as proposed, except that we are not promulgating a case-by-case provision for boilers and industrial furnaces burning hazardous waste for energy recovery. We note that the provision has less significance than at proposal, because it applies only to wastes utilized for precious metal reclamation. Applicability at proposal was to other types of conditionally exempt operations, which now will be fully regulated. We believe this type of provision remains needed in spite of its reduced applicability, to guard against mishandling of precious metal-containing waste. Indeed, we know that damage incidents have occurred at these facilities. The case-by-case regulatory provision also allows the Agency to control individual facilities without fully regulating the entire class.

The Agency also does not accept the argument that the regulatory standard is too broad. Regional officials must find that the wastes are not being contained, or that incompatible wastes are being stored together. Relevant factors are the type and quantity of waste accumulated, the mode and length of accumulation, and the type of hazard posed by the site. The Agency not only believes that these standards are sufficiently clear, but notes they are modelled on long-standing provisions in the Agency's National Pollutant Discharge Elimination System permit regulations providing authority for regional officials to require case-by-case regulation of

[45] Precious metal wastes are to be included when making the small quantity generator calculation because these wastes are subject to regulation in the hands of the generator.

[46] For purposes of this point, piles and impoundments are rarely considered to be an integral part of the hazardous waste recycling process because wastes are not secure from loss, and because recovery from them (if any) is inefficient. Piles and impoundments at non-exempt hazardous waste recycling facilities consequently are subject to regulation.

facilities holding general permits. (See 48 FR 14494 n.40.)

We have a number of reasons for not promulgating the case-by-case provision for boilers and industrial furnaces. Most important, the Agency already is well on the way to establishing standards for these facilities. We will propose to ban burning of hazardous wastes in non-industrial boilers, and shortly will propose permitting standards for remaining boilers and industrial furnaces. These standards should either be effective, or be close to being effective, by the time an enforcement action could be brought, decided, and a permit issued under the case-by-case provision. Furthermore, the Statement of Enforcement Policy (see Section II.D.2.a. of Part 2 of the preamble) remains in force and serves as a partial safeguard against abusive situations until the permit standards become effective. In light of these considerations, it does not seem worth the resources necessary to implement the case-by-case provision for boilers and industrial furnaces.

One commenter argued that the Regional Administrator must show an "imminent threat to human health and the environment" before case-by-case regulation could be invoked. We disagree. This standard, similar to that in Section 7003 of RCRA, may be more stringent than required for issuing a RCRA permit (see Section 3004). Since the case-by-case provision amounts to a determination that an individual facility requires a RCRA permit (or must comply with Part 262 accumulation standards), the suggested standard is inappropriate.

As a matter of organization, we are codifying the substantive standards for case-by-case regulation in § 260.40. These standards are thus grouped with other provisions that are individual in application and effect, such as delistings and variances. Procedures for case-by-case proceedings are found in new § 260.41.

b. *Procedures for Case-by-Case Determinations.* We are adopting the procedures that we proposed. Upon deciding that precious metal-containing waste at a particular location should be regulated, the Regional Admininstrator (or authorized state) will issue a notice to the person storing the waste stating why the waste is considered to be improperly contained (for instance, because contaminated runoff from a pile of the waste is seeping into soil, surface water or ground water). If the person is accumulating the material on-site for less than 90 days and the material is being held in tanks or containers, the notice will require compliance with the provisions of Subparts A, C, D, and E of Part 262. (These generators already are required to comply with subpart B (the manifest requirements) of Part 262. See § 266.70(b)(2).) The notice becomes final within 30 days, unless the person accumulating requests a hearing, in which case a public (non-evidentiary legislative) hearing will be held. EPA will provide notice of the hearing to the public, and allow public participation at the hearing. The Regional Administrator will issue a final order after the hearing stating whether or not compliance with Part 262, Subpart A, C, D, and E is required. The order becomes effective 30 days after service of notice of the decision unless a later date is specified or unless review the Administrator is requested. The order may be appealed to the Administrator by any person who participated in the public hearing. The Administrator may then choose to grant or deny the appeal. Final Agency action occurs when a final order is issued and Agency review procedures are exhausted. (Cf. § 124.19 where analogous procedures are used for appeals from RCRA permits.) Judicial review, in our view, should be in a Court of Appeals since the Agency's decision and implementing procedures are analogous to those used in issuing a permit. (See RCRA Section 7006(b), indicating that review of RCRA permit issuance decisions are in a Court of Appeals.)

If the person is storing the material for longer than 90 days, storing in a pile or impoundment, or storing off-site, the notice will require him to apply for a storage permit within 60 days to six months of being notified, the precise date for applying to be specified by the Region or authorized state.[45] Permit applicants normally have six months to submit a Part B permit application. (See 40 CFR 270.10(e)(4).) We are providing the authority to request a shorter time period because facilities subject to this provision ordinarily will be causing actual harm or have the potential to cause immediate harm. The person can challenge the determination that he is storing a hazardous waste through the permitting process, either in the public hearing, or in comments filed on the draft permit, or on the notice of intent to deny the permit. The fact sheet accompanying the permit would specify the reasons for the Agency's determination. (As noted in the proposal, these procedures are identical to those in 40 CFR 124.52 (case-by-case permitting of facilities otherwise subject to general permit standards under the Clean Water Act).)

Several commenters urged that a separate hearing be afforded before requiring the facility to submit a storage permit application. We think the procedures we have chosen strike a proper balance between public and private interests. The Agency's interest in having a single proceeding is strong. EPA will invoke this provision when a facility is storing wastes in a manner that is insufficient to protect human health and the environment. There may be actual (and certainly threatened) release of hazardous wastes. It will be important, in such situations, that the facility manage the wastes in compliance with Part 264 standards as soon as possible. Substantial delay could result in increased harm or increased risk of harm. A separate initial proceeding (potentially followed by judicial review) to determine whether the facility should be required to obtain a permit could well result in lengthy delay, substantially prejudicing the public interest.

Furthermore, the facility will be engaging in conduct—storage of hazardous waste—that by statute normally requires a permit. They probably will be engaging in conduct which is an abuse of the regulatory exemption for precious metal-containing wastes. The government's interest again is strong that the abuse cease, and that the normally-mandated statutory scheme—issuance of a permit—be implemented without delay.

Finally, the government has an administrative interest in avoiding successive proceedings. As we noted in adopting § 124.52, "(t)o allow (a separate hearing before requiring a permit application) would produce long delays and a potential for two consecutive hearings on closely related issues." 48 FR 32879 (June 7, 1979).

A facility's interest in having a separate hearing is its ability to challenge the determination that a storage permit is required before being required to submit a permit application. We think the facility's interest in avoiding this cost[46] is outweighed by the public interests outlined above. Moreover, EPA would allow the applicant to comment on the determination throughout the permitting process. We note also that EPA's procedures allow the facility to remain

[45] EPA proposed that persons submit permit applications within 60 days of being notified. We are giving the Region or state the option of specifying up to six months to submit applications to allow room for procedural flexibility.

[46] The estimated cost of completing a tank and container permit application is approximately $10,000 (assuming 75 drum capacity or 5,000 gallon capacity). Pope-Reid Associates Inc., *Unit Cost Analysis of Part 264 and Part B Tank and Containers Storage Analysis* (April, 1983).

operating while it applies for a permit. If the procedure in the rule were unavailable, the Agency might seek more draconian relief against a facility under Section 7003 of RCRA, which could entail cessation of facility waste handling operations.

2. *Variances from Classification of a Solid Waste.* EPA did not propose any variance provisions, but did solicit comments as to whether general or specific types of variances were justified. See 48 FR 14499–500. Industry commenters generally supported the idea of variances, but were not specific about substantive standards for granting or denying them.

EPA continues to think that variances for broad classes of recycled wastes are unwarranted, because the variances would too easily become surrogate permits. Thus, we reject the notion of granting variances because recycled wastes are being stored safely.

We do believe, however, that certain discrete variances are warranted, and we are adopting these in the rules promulgated today. There are three such provisions covering situations where there can be a question of whether the material is a waste. A variance, if granted, would state that the material is not a waste. We describe below what these activities are, and the substantive and procedural standards for granting or denying a variance.

a. *Materials Accumulated Without Sufficient Amounts of Materials Being Recycled.* As explained earlier (see Section II.F.3.f of Part II of the preamble), this provision was proposed on April 4, although it was not formally called a 'variance'. It states that persons who fail to turn over 75 percent of their accumulated wastes in a year can petition the Regional Administrator (or the state in an authorized state) to declare that the material is not a waste, in spite of the failure to recycle 75 percent. The provision now appears in § 260.30 (instead of § 261.2 as proposed. Standards for granting a variance are contained in § 260.31. They are virtually the same as those we proposed, except that variances could continue to be granted beyond a two-year accumulation period, and there are no conditions precedent on the amount to be recycled before applying for a variance.

Procedures for granting or denying this variance are contained in § 260.33. These procedures (identical to those for the other variances) are discussed in Section 3 below.

b. *Materials That Are Reclaimed And Then Reused Within The Original Primary Process in Which They Were Generated.* EPA proposed that materials that are reclaimed and then reused within the original production process in which they were generated are not solid wastes. As explained in Section II.H.2. of Part II of the preamble, we have decided that the proposal was too broad and we have narrowed the provision to apply only to materials returned to the original primary production process without first being reclaimed.

We nevertheless believe that there may be some situations where a material can be reclaimd before being reused within the original primary production process and not be a solid waste. Although the principle is not invariably true, there can be occasions when this type of recycling is an adjunct to the original primary process, constituting a closed loop. See 48 FR 14488. We thus are allowing for these situations by means of a variance.

The standards for granting a variance are contained in § 260.31(b). The Regional Administrator (or authorized state) is to decide whether the reclamation operation is an essential part of the primary production process. The following criteria bear on that decision:

- *How economically viable the production process would be if it were to use virgin materials alone.* The more significant the cost saving, the more the situation is like one single production process. For example, the Kraft paper process cannot be operated economically without some recovery and recycling of black liquor. (See section I. in Part 2 above.)
- *The prevalence of the recycling practice on an industry-wide basis.* The more wide-spread the practice, the more likely it is to be a production process.
- *The extent to which handling of the material before it is reclaimed is designed to minimize loss of material.* Materials utilized in production processes should be stored in a way that minimizes loss.[47] Thus, the more precautions that are taken to store a material before reclaiming it, the more the situation is like a production process. Situations where materials are stored before reclamation in open unlined piles, unlined impoundments, or leaking tanks and drums, consequently are less likely to be granted this variance.
- *The time periods between generation of the material and its reclamation, and between reclamation and reuse in the original process.* The longer the elapsed time between each of these steps, the less likely the operation is to be viewed as a single process. (Operations that are cyclical, or require long accumulation time to be viable, could still be eligible, however.)
- *The location of the reclamation operation in relation to the production process.* We are expanding this criterion beyond the proposal, where we limited the provision to reclamation operations conducted at the same plant site. We are not including this as a condition precedent to granting of this variance, in response to comments that closed-loop recycling situations can extend beyond a plant boundary. However, the more physically close the reclamation operation is to the production process, the more likely the situation is to be viewed as closed-loop recycling.
- *Whether the reclaimed material is used for its original purpose when it is returned to the original primary production process, and whether it is returned in substantially its original form.* Operations are most like a closed-loop operation when the reclaimed material is returned to the original production process in substantially its original form for its original purpose.
- *Other factors, as relevent.*

The Regional Administrator can rely on any or all of these criteria, and can weigh them as he deems appropriate. We also note that there are a number of conditions an applicant must meet before he is eligible for this variance. First, the material must be returned as feedstock to the "original primary production process". "Original primary production process" has the same meaning as in § 261.2(e)(iii), and is discussed in Section II.H.2. of Part II of the preamble. (In response to comment, we note that if a plant were to generate the same secondary material from different processes, commingle the secondary material and reclaim it, and return the reclaimed materials for reuse in the original processes, the operation could be eligible for this variance even though the reclaimed materials have become commingled. The commingling does not so alter the nature of the transaction as to vitiate the underlying policy of this closed-loop variance.) The material that is returned also must be "reused" when returned to the original process. We mean by this that the material must contribute directly to the production process as an ingredient, reactant, or an alternative feedstock. Secondary materials returned to a smelting furnace are an example. Solvents reclaimed and utilized for degreasing are not, because the

[47] See, for example, the many comments to this effect from industry commenters in the record to this rulemaking. See also comments from various industry commenters supporting the Agency's rule—found in § 261.3(a)(2)(iv)(D)—to exempt *de minimis* losses of § 261.33 commercial chemicals to process wastewater from the mixture rule presumption.

reclaimed solvents are not contributing to the production process.[48] Finally, the reclamation and reuse must both be conducted by the same "person", although not necessarily at a single plant site. ("Person" is defined in § 260.10 and in RCRA as including among others, single corporations and other legal entities.)

c. *Materials That Have Been Reclaimed But Must Be Reclaimed Further Before Recovery Is Completed.* The final variance from being a solid waste is for materials that have been reclaimed but must be reclaimed further before recovery is completed. We indicated in the proposal that reclamation processes are not completed until the end-product of the process is recovered, giving as an example, recovery of lead from spent batteries, which can require two operations—cracking and smelting—to be complete. 48 FR 14499 n.57. The material being reclaimed thus remains a waste until reclamation is finished.

We think this principle is generally sound, but that there may be some exceptions where the initial reclamation step is so substantial that the resulting material is more commodity-like than waste-like even though no end-product has been recovered. Possible examples are processes producing fluxes similar in composition to virgin ore concentrates. We consequently are allowing the Regional Administrator to grant a variance for materials that have been reclaimed, not completely recovered, but after initial reclamation are commodity-like in spite of having to be reclaimed further.

The criteria for making this decision are:

• *The degree of processing that the material has undergone and the degree of further processing required.* The more substantial the initial processing, the more likely the resulting material is to be commodity-like. Conversely, the more substantial the processing that is yet to occur, the less likely the initially-reclaimed material is to be commodity-like. For example, a spent solvent sent to an initial reclaimer who settles out debris and then sends the solvent to be distilled would not be eligible for this variance.

• *The value of the material after it has been reclaimed.* Obviously, the more valuable a material is after initial processing, the more likely it is to be commodity-like.

• *The degree to which the initially-reclaimed material is like an analogous raw material.* If the initially-reclaimed material can substitute for a virgin material, for instance as feedstock to a primary process, it is more likely to be commodity-like.

• *The extent to which an end market for the reclaimed material is guaranteed.* If the applicant can show that there is an existing and guaranteed end market for the initially-reclaimed material (for instance, value, traditional usage or contractual arrangements), the material is more likely to be commodity-like.

• *The extent to which the reclaimed material is handled to minimize loss.* The more carefully a material is handled, the more it is commodity-like.

• *Other relevant factors.*

The Regional Administrator (or an authorized state) may weigh these factors as she sees fit, and may rely on any or all of them to reach a decision. In addition, the variance applies *only* to wastes after they have been initially reclaimed. Applicable regulatory requirements for the waste before initial reclamation are unaffected. The initial reclaimer will thus be a RCRA storage facility, and have to obtain a permit to store the wastes before reclaiming them. If a variance should be granted, however, the recovered material is not a waste and the subsequent reclaimer is not a RCRA facility.

3. *Variance to be Classified as a Boiler.* As discussed in I.B. of Part 2 of the preamble above, EPA also is adopting a variance provision to allow the Regional Administrator to classify certain enclosed flame combustion devices as boilers even though they do not otherwise meet the definition of boiler contained in § 260.10. See § 266.32. The Regional Administrator is to consider how nearly the unit meets the definition of boiler, considering:

• The extent to which the unit has provisions for recovering and exporting energy in the form of steam, heated fluids, or heated gases;

• The extent to which the combustion chamber and energy recovery equipment are of integral design;

• The efficiency of energy recovery, calculated in terms of the recovered energy compared with the thermal value of the fuel;

• The extent to which exported energy is utilized;

• The extent to which the device is in common and customary use as a "boiler" functioning primarily to produce steam, heated fluids, or heated gases; and

• Other factors, as appropriate.

4. *Procedures for Variances.* We are promulgating a new § 260.33 which contains procedures for granting or denying the four types of variances just described. In essence, an applicant must submit a written application to the appropriate EPA Regional Office (or authorized state). If a recycling transaction is conducted in more than one Region or state (i.e. the generator is in one region and the recycler is in another), the application should be submitted to the region or state in which the recycling activity occurs. The application should address the standard and criteria applicable to the particular variance, and state generally why grant of a variance is justified. The Regional Administrator will consider the application and will issue a written draft notice tentatively granting or denying the variance, and giving reasons for this action. (In many cases, an inspection probably is necessary to rule on an application.) Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the area where the recycling facility is located. The Regional Administrator will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. Any hearings will be nonadjudicatory. The Regional Administrator will issue a final decision after receipt of comments and after the hearing (if any), and this decision may not be appealed to the Administrator.

5. *Should EPA Adopt a Variance for Batch Tolling Agreements.* EPA proposed that hazardous wastes reclaimed pursuant to batch tolling agreements would be conditionally exempt from regulation. A batch tolling agreement is a contract between generator and reclaimer whereby a generator retains ownership of the waste, sends the waste to a reclaimer, and receives back the reclaimed portion. The proposal further specified that: (1) The generator had to send the wastes to a reclaimer within 180-days of generation, (2) the wastes had to be reclaimed and returned within 90 days of receipt by the reclaimer, and (3) the reclaimer could not commingle wastes being reclaimed under a batch tolling agreement with wastes of another generator. In addition, the reclaimer had to be paid according to the amount of reclaimed material returned to the generator, and paid more as the amount of material returned increased (*i.e.* the reclaimer would not be paid a flat fee regardless of the amount of reclaimed material returned).

As discussed above, EPA is not finalizing most of the proposed conditional exemptions because the risk of damage from spills and leaks

[48] The second example on p. 14488/2 of the proposal contained an erroneous implication in this regard.

indicates that regulation is necessary to protect human health and the environment. We are soliciting further comment, however, as to whether reclaimers who reclaim pursuant to batch tolling agreements should be eligible for a conditional variance. [The conditions would be that records be kept to document existence of the type of batch tolling contracts described above.)

The aspect of the batch tolling contract that might create sufficient incentive to avoid loss is that the reclaimer be paid more as the amount of material returned to the generator increases. EPA can see that under certain circumstances a reclaimer would no longer be able to make a profit (or even recover fully allocated costs) if too much waste is lost before reclamation. However, the point at which this occurs will vary for each reclaimer, and potentially for each transaction. EPA is seeking comment as to the type of showing necessary to demonstrate that the batch tolling contract would become unprofitable unless spills and leaks are avoided. Commenters should address the type of economic data that would be presented, and also should address how this information could be presented in a form amenable to administrative resolution. The administrative proceeding the Agency has in mind is an individual variance proceeding where the reclaimer has the burden of showing that the contract creates sufficient incentives against loss to obviate the need for a storage permit.

The Agency also would like commenters to address whether any reclaimers would apply for this type of variance. The Agency's information is that few reclaimers operate exclusively in the batch tolling mode (see 48 FR 14495, and n.47), so these reclaimers are likely to require a permit in any event. It is not worth the resources to create an elaborate administrative mechanism if it lacks practical significance.

We note finally that any variance for batch tolling would apply only to the reclaimer, not to the waste generator. The tolling contract's provision that payment increase as the amount of material returned increases does not create any additional incentives against loss for the generator. Commenters therefore should also address whether a variance mechanism applying only to reclaimers would have practical significance.

Part IV: Economic, Environmental, and Regulatory Impacts

I. State Authority

A. Applicability in Authorized States

Under Section 3006 of RCRA, EPA may authorize qualified States to administer and enforce their State hazardous waste management programs in lieu of EPA operating the Federal program in those States. (See 40 CFR Part 271 for the standards and requirements for authorization.) Authorization, either interim or final, may be granted to State programs that regulate the identification, generation, and transportation of hazardous wastes and the operation of facilities that manage hazardous waste.

Today's announcement promulgates standards for certain hazardous wastes under the Federal hazardous waste management program. With some exceptions not relevant here, upon authorization of the State program, EPA suspends operation within the State of those parts of the Federal program for which the State is authorized. Therefore, today's promulgation would be applicable only in those States which have not been granted authorization.

It should be noted that 40 CFR 271.9 requires States to control all hazardous wastes controlled under 40 CFR Part 261 in order for their program to be considered equivalent to the Federal program for purposes of Section 3006. EPA is indicating in this regulation that certain types of recycled hazardous secondary materials are not RCRA solid or hazardous wastes (or, in the case of materials subject to variance provisions, need not be wastes). States may choose to regulate these materials as wastes pursuant to State law; Section 3009 of RCRA allows states to impose stricter requirements than those in the Federal program. Such states are considered equivalent for purposes of State authorization. See § 271.1(i).

B. Effect on State Authorization

The rules promulgated under this rulemaking will not apply in authorized states until the state either (1) receives final authorization on the basis of providing controls for hazardous wastes that are equivalent to or more stringent than EPA's or (2) after final authorization, revises its program to include controls for hazardous wastes that are equivalent to, or more stringent than EPA's. The procedures and schedule for state adoption of these regulations is described in 40 CFR 271.21. See 49 FR 21678 (May 22, 1984).

Applying § 271.21(e)(2), states that have final authorization must revise their programs within a year of promulgation of EPA's regulations if only regulatory changes are necessary, and within two years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases. See 40 CFR 271.21(e)(3).

States that submit official applications for final authorization less than 12 months after promulgation of these regulations may be approved without including standards equivalent to those promulgated. However, once authorized, a state must revise its program to include standards equivalent to or more stringent than EPA's within the time period discussed above.

Interim authorization for these requirements under the Hazardous and Solid Waste amendments of 1984 is not allowed. Today's rule is not a requirement deriving from the 1984 amendments; thus, under section 3006(g), interim authorization is not available as a substitute for adopting equivalent regulations.

II. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and thus requires a Regulatory Impact Analysis. Based on our analysis, we have determined that this rule is not a major rule because it will not: (1) Have an affect on the economy of $100 million or more, (2) significantly increase costs or prices to industry, or (3) diminish the ability of U.S.-based enterprises to compete in domestic or export markets.

This assessment is based on a study prepared for EPA which evaluated the cost impact on the regulated community for the change to the definition of solid waste and accompanying management standards. This study [49] describes the changes in regulatory requirements, the populations affected by the change, and then summarizes the resulting changes in costs.

The report first identifies those secondary materials and recycling activities which would be subject to different regulatory requirements, comparing the existing regulations with those promulgated today. This analysis indicated the following:

- *Use constituting disposal.*—Non-listed spent materials and non-listed by-products would be subject to increased requirements for generators, transporters, and storers; all secondary

[49] See report entitled, "Cost and Impact Analysis for Final Rule: Change in the Definition of Solid Waste and Accompanying Management Standards for Wastes Which Are Recycled," Industrial Economics, Inc., December, 1984.

materials (including § 261.33 commercial chemical products) would also be subject to increased requirements for the actual recycling activity.[50]

• *Use/reuse*[51].—All listed wastes and non-listed sludges would be subject to decreased requirements for generators, transporters, and storers.

• *Reclamation.*—Non-listed spent materials would be subject to increased requirements for generators, transporters, and storers; non-listed sludges would be subject to decreased requirements for generators, transporters, and storers; all listed wastes and non-listed sludges that are sent for precious metal reclamation would also be subject to decreased requirements for generators, transporters, and storers.

The report then identified those industrial categories which are involved in recycling that will be affected by this rulemaking. The primary source for this information was the National Survey of Hazardous Waste Generators and Treatment, Storage, and Disposal Facilities. This survey included questions on the various recycling activities. Results were reviewed to determine where affected activities were occuring. In some cases, the actual survey responses were reviewed to determine the accuracy of these results. Two other sources were also used to collect this information. One was the JRB report on affected populations that accompanied the proposal to the definition of solid waste [52] while the other source was provided by an industry trade group who reported on the recycling activities of their members.

Based on this information, we determined that:

• Approximately 128 establishments would have their requirements under the hazardous waste management regulations reduced;

• Approximately 87 establishments that use or reuse secondary materials or reclaim certain secondary materials otherwise considered hazardous wastes would be completely excluded from regulation;

• Approximately 2,171 establishments would have their requirements under the hazardous waste management regulations increased;

• Approximately 380 establishments that recycle hazardous wastes would be newly subject to regulation.

These findings show that a significant number of persons will have increased regulatory requirements under the final rule. However, most of these persons already are subject to regulation under the hazardous waste management regulations; in addition, most of these persons will be regulated as generators rather than as storers of hazardous waste. Therefore, the increased impact is relatively modest. The regulatory impact on persons using or reusing listed hazardous wastes and sludges or who reclaim certain secondary materials—namely, non-listed sludges and listed hazardous wastes and hazardous sludges that are sent for precious metal reclamation—would be reduced. These presently regulated activities would not be regulated at all or regulated minimally under the final rule.

The report then analyzes what these changes will actually cost the regulated community. The study applies the appropriate unit cost populations to arrive at a net cost. (These costs were adjusted to reflect only the volume-dependent variable costs and not the incremental fixed costs already incurred by the affected establishments.)

The results of the study demonstrate that the final rule will decrease compliance costs by an estimated $1.8 million (costs shown are annualized after-tax costs).[53] This figure represents the sum of increases and decreases in annualized costs for all affected establishments, including:

• An estimated decrease in costs of $8.5 million for establishments with reduced regulatory requirements or for establishments that are released from the hazardous waste management regulations entirely; and

• An estimated increase in costs of $6.7 million for newly regulated establishments or for those facing increased regulatory requirements.

Our analysis further suggests that for industries facing increased regulatory requirements under the final rule, there would be no significant cost increases or other adverse affects on competition, employment, or investment.

Finally, it should be noted that many of the assumptions made in the report were conservative. Thus, we believe that our estimates understate the decreased regulatory impact for the final rule. Moreover, a number of provisions that would have reduced requirements could not be completely quanitified (*i.e.*, reclamation of non-listed sludges), even though we know the costs will be reduced. Therefore, because this final rule is not a major regulation, no Regulatory Impact Analysis is being conducted.

This final rule was submitted to the Office of Management and Budget (OMB) for review, as required by Executive Order 12291.

III. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., 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 that describes the rules impact on small (i.e., small businesses, small organizations, and small governmental jurisdications). This analysis is unnecessary, however, if the Agency's Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

EPA and its contractor performed an analysis to determine whether the final rule to the definition of solid waste and the accompanying management standards will impose significant costs on small entities. The resulting report (see footnote 50) indicates that in none of the industry categories would this rule have a significant economic impact on small entities (as this is defined under the criteria that this final rule will not have a significant economic impact on a substantial number of small entities and therefore, does not require a regulatory flexibility analysis.

IV. Paperwork Reduction Act

There are no information collection requirements directly associated with this rule. However, this rule indirectly affects other information collection requirements that have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* These affected requirements have been assigned the following OMB control numbers 2050-0028, 2000-0061, 2000-0404, 2050-0012, 2050-0008, 2050-0011, 2050-0013, 2050-0009, 2000-0445, and 2050-0024. The appropriate changes to these

[50] The Agency is deffering regulation on use constituting disposal activities for commercial products that contain hazardous wastes. Therefore, requirements for the use constituting disposal activity applies only for wastes applied directly to the land (*i.e.*,use "as-is") or applied after mixing that allows its components to be separated by physical means.

[51] Secondary materials that are used to produce waste-derived products that are applied to the land or that are used to produce a fuel are not included under this provision.

[52] See report entitled "Impact on the Regulated Community of Possible Changes in the Definition of Solid Waste: Use, Reuse, Recycling, Reclamation," JRB Associates, February, 1983.

[53] The proposal to the definition of solid waste reported a reduced compliance cost of approximately $24 million. This estimate, however, was based on different population estimates as well as different unit cost estimates. Therefore, this cost is not directly comparable with the compliance cost derived for the rule promulgated today.

requirements are now being submitted to OMB for approval.

Lists of Subjects

40 CFR Part 260

Administrative practice and procedure, Hazardous materials, Waste treatment and disposal.

40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

40 CFR Part 264

Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal.

40 CFR Part 265

Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal, Water supply.

40 CFR Part 266

Hazardous materials.

Dated: December 20, 1984.

Alvin L. Alm,

Acting Administrator.

APPENDIX A.—SUMMARY OF DAMAGE INCIDENTS RESULTING FROM RECYCLING OF HAZARDOUS WASTES

Types of recycling operation, wastes present, damages caused, or hazards posed	Source of information
1. Resolve, Inc. (located in N. Dartmouth, Mass) stored spent solvent distillation bottoms in unlined lagoons prior to reclamation. Substantial groundwater contamination has resulted.	Superfund Interim Priority Site.
2. The Gold Coast Oil Facility (located in Miami) is a solvent and paint thinner reclamation operation. It also obtained drums of other miscellaneous wastes containing phenols, metals and other organic compounds. Nearly 3,000 of these drums have accumulated without their contents being recycled. In addition, still bottoms from the solvent reclamation operation were disposed of improperly. Substantial contamination of a drinking water aquifer has resulted.	Superfund Interim Priority Site.
3. Sapp Battery Salvage (in Jackson County, Florida) recovered lead from spent batteries. Damage to surface and ground water was caused by spillage of acid from the spent batteries, leaching from severed battery casings, and (to a lesser degree) from runoff from batteries stored prior to being recovered.	Superfund Interim Priority Site.
4. Seymour Recycling Corp. (located in Indiana) is an inactive waste recycling and incineration facility which overaccumulated inventory and eventually ceased operation, leaving over 60,000 drums of one-half million gallons of bulk waste. Wastes are toxic ignitable, and corrosive. Ground and surface water contamination resulted, and there also is danger of fire or explosion.	Seymour Recycling Corp. (N.D. Ind.) (RCRA § 7003 action); Superfund Interim Priority Site.
5. A waste processing company (located in New Jersey) operated an oil recycling plant which purchased waste oil for reclamation. Waste oil, some of it PCB contaminated, was stored in unlined settling lagoons. Filter clay from the settling operation was also used to build a road to the site. The site was abandoned, leaving all waste material in place in the unlined lagoons. Contamination of an aquifer used as a public water supply is suspected. (Some damage at the site also resulted from disposal of waste from the reclamation process.)	Superfund Interim Priority Site (known as Burnt Fly Bog).
6. The Chem-Dyne facility (located in Ohio) engaged in reclamation of spent solvents and other organic chemicals. It also blended these wastes and sold the mixture as a fuel. The facility overaccumulated huge amounts of these materials, and also mishandled materials that were processed. Materials present include phenol, naphthalene, polyvinyl chloride distillation waste, paint sludges, ink sludges, vanadium pentoxide, cyanide, methylmercaptan, silicate resins, freon, acetaldehyde, benzyl chloride, cumenes, asbestos, epichlorohydrin, arsenic, toluene dioscyanate, pentachloronitrobenzene, phthalate esters, and plastic and rubber industry resins. Clean-up costs are estimated at $3.5 million. The company presently is in receivership. Hazards posed by this site include human health, contamination of air and surface water, fish kills, noticeable odors, actual fire, explosions, spills and runoff, storm sewer problems, erosion problems, inadequate security, and presence of incompatible wastes.	*U.S. v. Chem-Dyne, Inc.* (§ 7003 and Superfund action); Superfund Interim Priority Site; Hazardous Waste Report, December 14, 1981, p. 15.
7. The Bridgeport Rental and Oil Services site (located in Bridgeport, New Jersey) stored waste oil in an unlined lagoon prior to recycling it. The waste oil is known to be contaminated with benzene, vinyl chloride, methylene chloride, trichloroethylene and toluene. Overflow and leaching from the lagoon has been documented; groundwater used as a human drinking water source from nearby wells is contaminated.	Superfund Interim Priority Site; *U.S. v. Bridgeport Rental and Oil Services* (§ 7003 actions).
8. Chemical Metals Industries (located in Maryland) engaged in the reclamation of precious metals primarily from various electroplating wastes, as well as other spent chemical reprocessing. Most materials were taken pursuant to tolling agreements. Waste materials were accumulated sloppily, resulting in spills of acid and metal-bearing wastes. The facility later was abandoned, leaving over 1,500 drums of unreclaimed wastes, many corroded or leaking. Over $350,000 in federal, state and municipal funds has been expended to date on clean-up.	Superfund Interior Priority Site; Hazardous Waste Report, January 25, 1982, p. 4.
9. The Chemicals and Minerals Reclamation Company (located in Cleveland) acted as a waste broker, receiving flammable organics, solvents, and resins prior to recycling or disposal. A massive fire resulted from unsafe accumulation of these materials. The facility closed after the fire, leaving waste inventory (over 1,500 drums) for clean-up.	*U.S. v. Chemicals and Minerals Reclamation* (§ 7003 action); Superfund Interim Priority Site.
10. The Midwest Solvent Recovery Company, a solvent reclaimer located in Gary, Indiana, stored spent solvents improperly in drums, tanks, and open pits. These materials were often flammable, in many cases incompatible (acids and cyanides, for example), and were badly overaccumulated. A fire of "tremendous size" (484 F. Supp. at 140) broke out at the reclamation site, and burned for a week before it could be extinguished. The company continued to operate for a number of years after the fire without any change in practice. Soil and groundwater contamination have occurred. A preliminary injunction ordering clean-up was eventually entered in the government's imminent hazard action.	*U.S. Midwest Solvent Recovery Inc.* (§ 7003 action).
11. Solvent Recovery Service (located in Connecticut) obtained a variety of chlorinated solvents for reclamation. These solvents were stored improperly in leaking drums. Wastes were also disposed in a lagoon on the site. Aquifer contamination has resulted and the local drinking water supply has been affected.	*U.S. v. Solvent Recovery Service of New England* (§ 7003 action).
12. Andover Sites (located in Andover, Minn.) are a group of five sites which operated as waste brokers. They accepted metal-bearing wastes, solvents, waste oils, paints, inks, and glues. A recycling market was found for some of this material but a great deal overaccumulated. Some of this material was ultimately dumped or burned improperly. Many drums still remain. Ground and surface water have been contaminated by metals and organic contaminants.	Superfund Interior Priority Site.
13. Fitt Industries (in Walnut Ridge, Arkansas) obtained sulfate and other wastes from generators and used them as an ingredient in fertilizer production. These materials, along with other process ingredients, are stored in large, exposed piles. An enormous fire occurred when the piles of wastes ignited; runoff from water used to fight the fire contaminated soil and surface waters.	Superfund Interim Priority Site.
14. The South Carolina Recycling and Disposal Company was a waste broker accepting volatile organic wastes and waste oils. These materials were accumulated improperly prior to reclamation or disposal. Among the compounds present are solvents, waste oils, acetaldehyde, methyl acetate, cyanuric acid, ethylene chlorohydrin, acetone cyanohydrin, trichloroethylene, mixed acids, sulfuric acid, mercuric oxide yellow, and other caustics and acids. Massive overaccumulation, fire hazard and actual fires, and groundwater contamination near drinking water wells resulted.	*U.S. v. South Carolina Recycling and Disposal Company* (Bluff Roads); (§ 7003 action); Superfund Interim Priority Site.
15. [* * *] accepts steel mill flue dust, pickle liquors, solvents, and acids for regeneration and material recovery. Some of these materials also are used as ingredients in fertilizers. The facility used surface impoundments and piles for storage. These storage facilities were unsecure and leaked heavy metals and chlorinated solvents. The facility also burns waste oil, spent solvents, and solvent distillation bottoms as fuels, creating air pollution problems. A local Air Pollution Control Agency has initiated action against the company to require monitoring of incoming wastes and of boiler flue gas emissions.	*Damages and Threats From Hazardous Material Sites*, EPA/430/9-80/004, p. 251; followup phone conversations with representatives of Ecology and Environment (EPA Superfund contractors); Superfund Interim Priority Site.
16. PCB contaminated waste oil was stored prior to recycling or road application. No market developed and the facility operator was unable to dispose of the contaminated oil. Over 24,000 gallons are accumulated, and the State probably will have to pay disposal costs.	*Damages and Threats From Hazardous Material Sites*, p.103.
17. The Laskin Greenhouse and Waste Oil Co. (located in Jefferson, Ohio) accepted waste oil and spent solvents for storage prior to use as fuels or for road oiling. Millions of gallons accumulated without being recycled, resulting in a substantial hazard. The boilers in which the waste oil was burnt were incapable of destroying the contained contaminants (including PCB's) resulting in air pollution. Approximately $1.7 million has already been expended; additional funds are to be allocated.	*U.S. Laskin Greenhouse and Waste Oil Co.* (§ 7003 action); Hazardous Waste Report, January 25, 1982, pp. 5–6, Superfund Interim Priority Site.
18. This facility (located in Illinois) engaged in petroleum reclamation from waste oil, and also reclaimed metal hydroxide sludges, spent acids and caustics, and miscellaneous sludges. These materials overaccumulated in pits, lagoons, and tanks. PCB's, phenol, and PAH's are found in the waste oil. Chromium, cadmium, and lead are also present, as are benzene, toluene, and trichloroethylene. Leaching and drainage to surface waters has caused extensive damage. Over $300,000 has been spent on clean-up to date.	*U.S. v. A&F Materials Co.* (§ 7003 action) Superfund Interim Priority Site.

APPENDIX A.—SUMMARY OF DAMAGE INCIDENTS RESULTING FROM RECYCLING OF HAZARDOUS WASTES—Continued

Types of recycling operation, wastes present, damages caused, or hazards posed	Source of information
19. This scrap metal reclaimer stored materials destined for reclamation in leaking drums. Some ongoing disposal occurred as well. Paint sludge, 465 resin flux, and miscellaneous oily materials were on hand, contaminating soil and possibly ground and surface water.	*U.S. v. Acme Refining Co.* (§ 7003 action).
20. The site (located in Tennessee) engaged in waste salvage and disposal operations involving improperly drummed and buried materials; most constituents that leaked or spilled appear to be chlorinated solvents; 1,2-Dichloropropane has also been found.	*U.S. v. Automated Industrial Disposal and Salvage Co.* (§ 7003 action).
21. The Dewey-Loeffel, landfill (located in Nassau County, New York) was used in an oil reclamation and storage operation. PCB contaminated oil was stored at the site. Ground and surface water in the vicinity have been found to be contaminated with PCB.	*Damages and Threats from Hazardous Material Sites*, p. 193.
22. (* * *) is a solvent and chemical recovery and waste recycling operation. It also separates out and resells acids, caustics, and poisons. Some on-going disposal occurs as well. Chemicals which have been present at the site include acetone, ether, benzene, ketones, acetaldehyde, aniline, methanol, chlorinated solvents, cyanides, HCl, H_2SO, formic acid, PCBs, beryllium, penthachlorophenol and caustics. The government's complaint alleges that damages and hazards include overaccumulation, improper storage (including unsafe storage in underground bulk storage tanks), mislabelling, fire hazard, soil contamination and possible water contamination. A preliminary injunction has been entered ordering the facility to comply with certain of the interim status standards for storage.	*U.S. v. West* (§ 7003 action).
23. Improper storage of spent solvents by this Ohio solvent recovery operation led to contamination of ground and surface water and air. PCBs, tetrachloroethene, toluene, MEK, and xylene are among the toxicants involved.	*U.S. v. Chemical Recovery Systems* (§ 7003 action).
24. This Indiana scrap metal recovery operation accepted steel drums containing flammable toxic materials. These drums were stored and handled improperly. Substances present include cyanide, asbestos, and paint residues.	*U.S. v. Ken Industries* (§ 7003 action).
25. This Indiana facility engages in solvent reclamation. Disposal of incoming materials and still bottoms also occurred. A large fire was caused by overaccumulation and storage. Compounds present include arsenic, chromium, cadmium, lead, mercury, nickel, selenium, antimony, cyanides, dimethylphenols, phthalate esters, naphthalene, and solvents.	*U.S. v. Fisher-Calo Chemicals and Solvent Corp.* (§ 7003 action).
26. Dioxin-contaminated waste oil was sprayed in horse show arenas, in Missouri, leading to poisoning of exposed individuals and livestock.	EPA Damage Incident Files.
27. Radioactive mining wastes are used as foundation fill for residential dwellings throughout Denver	Superfund Interim Priority Site (known as Denver radium site); also cited in Eckhardt Report).
28. Radioactive mining wastes are used as foundation fill for residential dwellings in Montana	Eckhardt Report.
29. Radioactive phosphate mining wastes are used as foundation fill for residential dwellings in Florida	Background Document 6 to EPA's 1978 proposed regulations.
30. Air pollution from solvent reclamation operations	Subtitle C Environmental Impact Statement, Vol. 11, p. J–1.
31. The American Ecological Recycle Research Corporation (located in Jefferson, Colorado) stores and reclaims solvents, waste oil, and other chemical wastes. Many of these materials are incompatible, including oxidizers and solvents, and cyanides and acids. These materials were stored together haphazardly, often in leaking drums. A large fire gutted portions of the facility, releasing toxic fumes and causing cyanide poisoning of firefighters. A continuing fire hazard and soil and water contamination threat remains.	*U.S. v. American Ecological Recycle Research Corp.* (§ 7003 action).
32. Air, ground water, and surface water contamination resulted from solvent recovery operations in Maryland (including volatilization of solvents from distillation units).	*U.S. v. Spectron, Inc.* (§ 7003 action).
33. Drinking water was contaminated because of improper storage of organic solvents at a reclamation facility	Minnesota State Damage File D2306.
34. The Schuylkill Metals Company (located in Hillsboro County, Florida) reclaims lead from spent batteries. Acid spillage from the battery cracking operations, acid and metal leaching from stored casings, and runoff from piled spent batteries have contaminated ground water in the area.	Interviews with officials of Hillsboro County Environmental Protection Commission.
35. The Chloride Metals Company (located in Tampa) is a secondary lead smelter reclaiming lead from spent batteries. Ground water is contaminated with acid and metals from the battery cracking operation (which recovers lead from smelting), and from runoff from piled casings and spent batteries.	Interviews with officials of Hillsboro County Environmental Protection Commission.
36. Reclamation of tetraethyl lead sludges stored in ponds prior to reclamation. Damage is from air pollution and from fumes in transit	§ 3004 damage incidents, also cited in H.R. Rep. 94–1491, pp. 20–21.
37. Metal reclamation of "waste stockpiled raw materials." Leachate from these piles contaminated public drinking water supplies with metals, closing a number of wells.	H.R. Rep. 94–1491, p. 16.
38. A company reclaims copper from "industrial wastes"; these materials are stored in cement-lined lagoons. The lagoons cracked contaminating the ground and surface waters.	H.R. Rep. 94–1491, p. 17.
39. The McKin Company (located in Gray, Maine) was used as a transfer station and processing point for contaminated waste oils prior to final shipment to re-refiners. Both waste oil from oil spills and fuel still bottoms are reprocessed. Evidence exists that wastes were spilled at the processing facility and leached into the underlying aquifer. Organic toxicants were eventually identified in ground water, residential drinking wells, and the public water system. The damage appears to be attributable to waste disposal as well as waste oil processing. Specific contaminants found include trichlorethane, trichlorethylene, acetone, xylene, dimethyl sulfide, trimethylsilanol, and alcohols. The state eventually ordered the facility closed.	*Damage and Threats From Hazardous Material Sites*, p. 14.
40. Mercury-containing sludges generated by a number of different companies were sent to a Mexican reclaimer for metal recovery. The wastes were abandoned before they reached Mexico. In most cases, the drummed wastes were unlabelled and unmanifested, so that it is difficult to pinpoint responsibility or determine the precise nature of the drummed materials.	*U.S. v. Monochem, Inc.* (enforcement action).
41. Damage resulted from burning waste oil and solvents as fuel in boilers and landspreading of PCB-contaminated waste oil, coupled with improper tank and pond storage.	Tel. comm. with state site insp. on May 4, 1981; Task Force Source Data Report.
42. The Southern Metal Processing Company (located in Alabama) a reclamation facility for acid and metal-containing wastes, allowed over 10,000 drums to accumulate; leakage from these drummed wastes polluted surface waters. A fire at the site injured two firemen.	*Damages and Threats Caused by Hazardous Material Sites*, p. 43.
43. Waste oil contaminated with organics (including carbon tetrachloride) was used as a dust suppressant. Well contamination resulted	EPA, New Hampshire State Damage File, Code D2315.
44. Use of cadmium-contaminated POTW sludge as a fertilizer for farm land	EPA, New York State Damage File, Code D2317.
45. Waste oil storage results in ground water contamination from organics. Site also was used for disposal	EPA, New York State Damage File, Code D2317.
46. (* * *) engages in solvent reclamation and waste brokerage operations. Paint residues (to a lesser degree) are also redistilled at this plant. Hazards posed by the site include contamination of ground water and soil, noticeable odors, risk of fire/explosion, spills/runoff, sewer/storm problems, and presence of incompatible wastes.	Telephone conversation with state site inspector on May 5, 1981; Task Force Source Data Report.
47. (* * *) was paid by waste generators to store waste oil on-site. Prior to reclamation operations, waste oils were carelessly stored in surface impoundments or bulk tanks resulting in waste oil leakage.	Telephone conversation with state inspector on May 4, 1981; Task Force Source Data Report.
48. (* * *) reclaims both solvent and waste oil. Huge drum inventory resulted with some drums being stacked up as long as two years. Surface water was contaminated when hazardous waste leached from containers with unbroken seals. Paint solids were stored so long that reclamation became virtually impossible (due to thinner evaporation and rain dilution). Hazards posed by the site include contamination of water supply, contamination of surface water, and soil contamination from spills and runoff.	Telephone conversation with state inspector on May 4, 1981; Task Force Source Data Report.
49. (* * *) is a reclaimed solvent distributing plant that packages solvents in drums and sells them. If a company switches from one solvent to another, a pipeline must be washed out with the new product. The solvent mixture wash would be drummed, sold to (* * *) where the solvents would be separated and redistributed. Hazards posed by the site include worker injury contamination of soil, and spills/runoff.	Task Force Source Data Report.
50. (* * *) is predominantly a solvent reclamation operation. Solvents are stored in drums and tanks prior to reclamation. (* * *) paid to return refined materials to the manufacturer. The site was investigated primarily because of a spillage problem from loading and unloading drums outside. Potential hazards on the site include contamination of air, water supply, and ground water, risk of fire and explosion, spills, leaks, runoff and inadequate security.	Task Force Source Data Report.
51. (* * *) is a solvent reclamation operation. The waste generator buys back the reclaimed waste. Pre-RCRA (* * *) piled wastes for long periods of time in the open on permeable soil. No labels were on the drums and toxic chemicals leached.	Telephone conversation with state site inspector on May 5, 1981.
52. An oil reclamation firm in Region V recycles oil for large manufacturing plants. The firm takes used oil, restores it to desired levels of purity, blends it with virgin oil, and finally sells it back to the dealer to be sold. Hazard description/incident includes human health hazard, contamination of surface water, soil, and air, noticeable odors, fire/explosion, spills, runoff, and erosion problems.	Telephone conversation with state site inspector on May 5, 1981; Task Force Source Data Report.
53. The Sitresim Chemical Corp. (located in Massachusetts) engaged primarily in solvent reclamation, but also accumulated many other types of wastes. These materials overaccumulated and incompatible wastes were stored indiscriminately. An office fire triggered an explosion and a spectacular fire. The site is now bankrupt and over 30,000 drums, most containing unknown toxicants, remain $2.9 million has been spent on cleanup to date.	EPA Damage Incident Files, Superfund Interim Priority Site.

Appendix A.—Summary of Damage Incidents Resulting From Recycling of Hazardous Wastes—Continued

Types of recycling operation, wastes present, damages caused, or hazards posed	Source of information
54. (* * *) a New Jersey facility recycling organo-tin compounds, presently stores approximately 500 drums in poor condition. A potential fire hazard also exists and site security is inadequate.	EPA, Region II officials.
55. (* * *) a New Jersey facility, operated an oil/solvent reclamation facility. The site was abandoned, leaving hazardous wastes for cleanup.	EPA, Region II officials.
56. (* * *) a New Jersey drum reconditioner, went out of business leaving approximately 3000 drums on the site. There is extensive soil contamination and runoff into an adjacent drainage ditch.	EPA, Region II officials.
57. Quanta, Inc. (located in New Jersey) received tainted waste oils and spent solvents which it blended into fuels. The fuel was sold to apartment buildings for burning. PCBs, metals, bromoform, and halogenated solvents are present at the site and in the fuels. The site now has been abandoned.	EPA, Region II officials. (This site was also the subject of ABC's "20/20" broadcast on waste oil).
58. The Ferguson site (located in Rock Hill, South Carolina) stored spent solvents prior to reclamation. The solvents were stored in corroded and leaking drums, and leakage from the drums contaminated soil and seeped into surface water. Toxic chemicals in the waste and surrounding soil including toluene, bis(2-ethylhexyl) phthalate, xylene, ethyl chloride, diethyl carbometoxy phosphate, alcohols, and toxic metals. The site eventually was abandoned leaving about 2,500–5,000 drums. $143,000 was spent so far for site cleanup, and cleanup is not yet complete.	U.S. EPA, *Remedial Actions at Hazardous Waste Sites, Survey and Cost Studies*, EPA 430/9–81–05.
59. Chromium-bearing wastes were used as a landfill cap at the Monument St. Landfill in Baltimore, Md. The wastes began to leach toxic metals, and the runoff contaminated soil and surface water.	Report of the House Committee on Energy and Commerce (May 1982).
60. Commercial-grade pentachlorophenol is burnt as a fuel in diesel trucks. Chlorinated phenols, burnt at low temperatures and short residence times, are likely to form chlorinated dioxins and dibenzofurans.	EPA, Region VII officials.
61. B + L Oil (located in Newark, New Jersey) sold contaminated waste oil as fuel. The blended fuel contained phenolic compounds, volatile chlorinated hydrocarbons, and aromatic hydrocarbons. The company and its president both have been convicted criminally in the New Jersey state courts.	New Jersey Hazardous Waste News, April 1982. Conversations with New Jersey state officials.
62. Madison Industries (located in Old Bridge, New Jersey) manufactures zinc chloride and zinc sulfate from waste zinc and spent acids, which it obtains from other sources. These materials were accumulated improperly in large quantities, causing damage.	Transcript of state enforcement proceedings.
63. Air pollution resulted from solvent and waste oil recovery operations conducted by Frinck's Industrial Waste facility (located in Pecatonica County, Ill).	Documents from Illinois Environmental Protection Agency.
64. The Old Inger Oil Refinery (located in Darrow, La.) operated an oil reclamation plant. Storage tanks overflowed into holding ponds which were later abandoned without cleanup.	Superfund Interim Priority Site.
65. York Oil Co. (located in Moira, New York) is an abandoned waste oil recycling facility. Lagoons used in the recovery of waste oil discharged into adjacent wetlands. The lagoons and wetlands remain contaminated with PCB-containing oil.	Superfund Interim Priority Site.
66. Enviro-Chem, a hazardous waste recycling facility in Indiana, was investigated by State officials after an employee died in a tank of hazardous waste. The officials found 21,000 barrels of hazardous waste at the site. The facility has been ordered to close down due to failure to remove sludge and contaminated soil from a pit, failure to provide adequate concrete pads for 14,000 barrels of hazardous waste being stored on the ground at the site, and failure to store hazardous materials in compliance with State fire marshal rules and regulations.	EPA, Region V officials.
67. American Recovery, a chemical waste reprocessing facility (located in the Baltimore area) has suffered a number of fires caused by explosions of accumulated wastes. The facility also was fined for violation of various state regulatory requirements.	EPA, Region III officials.

Note.—Summaries of § 7003 actions are based on allegations in the Government's verified complaints. The courts hearing these must decide ultimately whether these allegations have been proven. In citing these allegations, we are not seeking to prejudice the outcome of these actions. At the same time, these statements reflect the results of the Government's investigation of these sites, and the Agency believes the statements to be accurate. In many cases, we are citing these allegations to demonstrate that there is a need for regulation in this area, not to ascertain the potential liability of particular facilities.

In addition, certain sites are not named specifically in this Appendix, because the companies involved are the subject of ongoing enforcement investigation. These companies are indicated by (* * *) in the summary.

The Agency's task force source data report is a confidential compilation of inspections of damage sites by Federal and State Officials. It also contains reports of some § 3007 inspections whether or not the sites were causing damage.

Appendix B.—Definition of a Solid Waste Damage Incidents—Additions List

Damage incident	Source
1. New Castle Steel (New Castle County, Delaware) recycles electric furnace dust. Run-off from the site is contaminated and there is potential for contamination of ground water.	National Priorities List. Aug 1983.
2. The Arroom Corp. (Rathdrum, Idaho) recycled waste oils containing solvents, prior to abandoning the site in January 1982. Remaining on-site are 17 partially filled storage tanks, the contents of which remain largely undetermined. Chloroform has been found in a soil sample. Wastes processed at the site may have included PCBs. EPA has collected soil samples to document leakage on site.	Do.
3. The Cross Brothers Pail Recycling (Pembroke Township, Illinois) recycled pails and drums at the site between 1961 and 1980. The operation involved burning out pail and drum residue using hazardous waste solvents as fuel, and then sand-blasting and painting. During these operations, soil and ground water became contaminated. Investigations by the State discovered over 10,000 5-gallon pails (mostly empty), 10 acres of contaminated soil, at least 10 covered trenches of unknown wastes, and a plume of contaminated ground water leaving the site.	Do.
4. The LaSalle Electrical Utilities Site (LaSalle, Illinois) manufactured capacitors using PCBs from the late 1940s to late 1978. The company reportedly used waste oils from this process to control dust in the parking lot until 1969. More than 1,000 parts per million PCBs remain in the soil throughout the site.	Do.
5. The Old Inger Oil Refinery Site (Darrow, Louisiana) reclaimed oil from refinery wastes in 1976. A spill in 1978 contaminated a large surface area. In 1981, Louisiana officially declared the site "abandoned." It has nine oil storage tanks, which have overflowed into nearby holding ponds and a swamp. Ground water and soil are contaminated by organic chemicals. This is the top priority site in Louisiana.	Do.
6. The PSC Resources Site (Palmer, Massachusetts) formerly owned by Phillips Resources, Inc., holds 34,000 gallons of waste. The inactive facility reclaimed waste oil from Massachusetts collection points. These products were then heat treated and sold as a base for lubricating oil, road spray oil, and fuel. After a spill in June 1982, EPA discovered several leaking tanks and containment dikes, as well as saturated soils. Surface waters, wetlands, and ground water are directly threatened by the waste. Trichlorethane and PCBs have been identified in an adjacent swamp.	Do.
7. York Oil Co. (Moira, New York) formerly recycled waste oils. Before the site was abandoned, it consisted of eight steel storage tanks, two buildings, and three lagoons. The berms of the lagoons have failed in the past, discharging PCB-contaminated oil into the adjacent wetlands that drain into Lawrence Brook. Analyses indicate 50 parts per million (ppm) of PCB in lagoon waters, over 500 ppm in lagoon sludge, up to 26 parts per billion (ppb) in ground water; and up to 350 ppm in solids.	Do.
8. The Arcanum Iron & Metal Site (Darke County, Ohio) has been in the scrap metal/recycling business since the early 1960s. It now recycles lead batteries. Large piles of battery casings, lead, and lead oxides are on the property, as well as standing pools of acid wastes. Acid overflow from this operation has killed both fish and vegetation in Painter Creek, downstream of the site.	Do.
9. The Metal Banks Site (Philadelphia, Pennsylvania) processed transformers and oil contaminated with PCBs there for a number of years until closing the operation in 1972. In 1977, EPA determined that periodic oil slicks found in the Delaware River adjacent to the site were contaminated with PCBs. The site was subsequently identified as the source of the slicks. A U.S. Coast Guard study revealed that up to 20,000 gallons of PCB-contaminated oil were in the ground water under the site and were leaking into the Delaware River.	Do.
10. In 1970, the road through Quail Run Mobile Manor (2 miles east of Gray Summit, Missouri) was sprayed with 25 barrels of dioxin contaminated waste oil. In 1974, soil was excavated to a depth of 2 feet from one road in the park. This was deposited in the area between the road and a lagoon. On February 2, 1983, EPA identified dioxin at the site. Analysis of soil samples detected 1.4 parts per billion (ppb), 14 ppb, and 23 ppb of dioxin. Additional sampling on March 9, 1983, revealed a range of levels from 6 ppb to 1,100 ppb.	National Priorities List Update, July 1984.
11. The Sand Springs Petrochemical Complex (near Sand Springs, Oklahoma) consists of three adjacent areas on the abandoned Old Sinclair Refinery, including a waste oil recycling facility, a solvents recycling facility, and the Sinclair Refinery acid pits—an original part of the Old Sinclair Refiner. The two recycling companies have been in business since the mid-1970s. Over the years, hazardous substances were stored or disposed of in drums, tanks, and unlined pits, or were simply buried on-site. These substances include volatile and nonvolatile organics, acids, caustics, chlorinated solvents, and sludges containing heavy metals. Poor operations have contaminated local ground-water, and there is the potential for contaminants to leave the site in run-off.	Do.
12. Waste Research & Reclamation Co. (Eau Claire, Wisconsin) has recycled oil and solvents from industrial sources since 1975. The techniques used to handle and store drums allowed wastes to spill on the site. Run-off from waste processing has been collected in unlined impoundments. Organic solvents from the site contaminate ground water.	Do.

APPENDIX B.—DEFINITION OF A SOLID WASTE DAMAGE INCIDENTS—ADDITIONS LIST—Continued

Damage Incident	Source
13. The NL Industries site (Salem County, New Jersey) recovers lead from spent automotive batteries and separates the plastic from the rubber casings. As a result of improper storage of batteries on the site and other factors relating to their processing, ground water, surface water, and soils are extensively contaminated with various heavy metals.	National Priorities List Aug. 1983.
14. Scientific Chemical Processing, Inc. (Carlstadt, New Jersey) recovered and recycled various chemical wastes. As a result of a State Order, the company ceased operations in 1980. About 375,000 gallons of hazardous substances are stored on the site in tanks, drums, and tank trailers. Soils are extensively contaminated, run-off from the site is contaminated, and ground water contamination is likely.	Do.
15. In 1983, the State of Indiana filed suit against Norman Poer, an individual who contracted with Inmont Corporation to purchase what he was told was paint and solvent, in an attempt to recycle them to produce low grade paint. When Mr. Poer was unable to sell or give away the paint, he abandoned it on a 5-acre field he owned in Jackson Township, Indiana. Ground water samples indicate that the well on site contains hazardous levels of arsenic and lead. In addition, further tests have indicated that the paint waste has elevated levels of lead and chromium and that the ignitability of the waste classifies it as hazardous. The barrels remain on site, leaking contents onto the ground.	National Priorities List Update, July 1984.

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for Part 260 reads as follows:

Authority: Secs. 1006, 2002(a), 3001 through 3007, and 3010 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 through 6927, and 6930].

2. Section 261.10 is amended by adding new definitions for "Boiler" and "Industrial Furnace" to appear alphabetically and by revising the definitions of "Designated facility" and "Incinerator."

§ 260.10 Definitions

* * * * *

"Boiler" means an enclosed device using controlled flame combustion and having the following characteristics:

(1) (i) The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

(ii) The unit's combustion chamber and primary energy recovery sections(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream), and fluidized bed combustion units; and

(iii) While in operation, the unit must maintain a thermal energy recovery efficiency of at least 60 percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(iv) The unit must export and utilize at least 75 percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(2) The unit is one which the Regional Administrator has determined, on a case-by-case basis, to be a boiler, after considering the standards in § 260.32.

"Designated facility" means a hazardous waste treatment, storage, or disposal facility which has received an EPA permit (or a facility with interim status) in accordance with the requirements of Parts 270 and 124 of this Chapter, a permit from a State authorized in accordance with Part 271 of this Chapter, or that is regulated under § 261.6(c)(2) or Subpart F of Part 266 of this Chapter, and that has been designated on the manifest by the generator pursuant to § 262.20.

* * * * *

"Incinerator" means any enclosed device using controlled flame combustion that neither meets the criteria for classification as a boiler nor is listed as an industrial furnace.

"Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use controlled flame devices to accomplish recovery of materials or energy:

(1) Cement kilns
(2) Lime kilns
(3) Aggregate kilns
(4) Phosphate kilns
(5) Coke ovens
(6) Blast furnaces
(7) Smelting, melting and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machine, roasters, and foundry furnaces)
(8) Titanium dioxide chloride process oxidation reactors
(9) Methane reforming furnaces
(10) Pulping liquor recovery furnaces
(11) Combustion devices used in the recovery of sulfur values from spent sulfuric acid
(12) Such other devices as the Administrator may, after notice and comment, add to this list on the basis of one or more of the following factors:

(i) The design and use of the device primarily to accomplish recovery of material products;

(ii) The use of the device to burn or reduce raw materials to make a material product;

(iii) The use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;

(iv) The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;

(v) The use of the device in common industrial practice to produce a material product; and

(vi) Other factors, as appropriate.

* * * * *

3. In Subpart C of Part 260, add the following § 260.30:

§ 260.30 Variances from classification as a solid waste.

In accordance with the standards and criteria in § 260.31 and the procedures in § 260.33, the Regional Administrator may determine on a case-by-case basis that the following recycled materials are not solid wastes:

(a) Materials that are accumulated speculatively without sufficient amounts being recycled (as defined in § 261.1(c)(8)(B) of this Chapter);

(b) Materials that are reclaimed and then reused within the original primary production process in which they were generated;

(c) Materials that have been reclaimed but must be reclaimed further before the materials are completely recovered.

4. In Subpart C of Part 260, add the following § 260.31:

§ 260.31 Standards and criteria for variances from classification as a solid waste.

(a) The Regional Administrator may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The Regional Administrator's decision will be based on the following standards and criteria:

(1) The manner in which the material is expected to be recycled, when the material is expected to be recycled, and whether this expected disposition is likely to occur (for example, because of past practice, market factors, the nature of the material, or contractual arrangements for recycling);

(2) The reason that the applicant has accumulated the material for one or more years without recycling 75 percent of the volume accumulated at the beginning of the year;

(3) The quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;

(4) The extent to which the material is handled to minimize loss;

(5) Other relevant factors.

(b) The Regional Administrator may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original primary production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

(1) How economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;

(2) The prevalence of the practice on an industry-wide basis;

(3) The extent to which the material is handled before reclamation to minimize loss;

(4) The time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;

(5) The location of the reclamation operation in relation to the production process;

(6) Whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;

(7) Whether the person who generates the material also reclaims it;

(8) Other relevant factors.

(c) The Regional Administrator may grant requests for a variance from classifying as a solid waste those materials that have been reclaimed but must be reclaimed further before recovery is completed if, after initial reclamation, the resulting material is commodity-like (even though it is not yet a commercial product, and has to be reclaimed further). This determination will be based on the following factors:

(1) The degree of processing the material has undergone and the degree of further processing that is required;

(2) The value of the material after it has been reclaimed;

(3) The degree to which the reclaimed material is like an analogous raw material;

(4) The extent to which an end market for the reclaimed material is guaranteed;

(5) The extent to which the reclaimed material is handled to minimize loss;

(6) Other relevant factors.

5. In Subpart C of Part 260, add the following § 260.32:

§ 260.32 Variance to be classified as a boiler.

In accordance with the standards and criteria in § 260.10 (definition of "boiler"), and the procedures in § 260.33, the Regional Administrator may determine on a case-by-case basis that certain enclosed devices using controlled flame combustion are boilers, even though they do not otherwise meet the definition of boiler contained in § 260.10, after considering the following criteria:

(a) The extent to which the unit has provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

(b) The extent to which the combustion chamber and energy recovery equipment are of integral design; and

(c) The efficiency of energy recovery, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(d) The extent to which exported energy is utilized; and

(e) The extent to which the device is in common and customary use as a "boiler" functioning primarily to produce steam, heated fluids, or heated gases; and

(f) Other factors, as appropriate.

6. In Subpart C of Part 260, add the following § 260.33:

§ 260.33 Procedures for variances from classification as a solid waste or to be classified as a boiler.

The Regional Administrator will use the following procedures in evaluating applications for variances from classification as a solid waste or applications to classify particular enclosed flame combustion devices as boilers:

(a) The applicant must apply to the Regional Administrator in the region where the recycler is located. The application must address the relevant criteria contained in § 260.31 or § 260.32 of this Part.

(b) The Regional Administrator will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the locality where the recycler is located. The Regional Administrator will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. The Regional Administrator will issue a final decision after receipt of comments and after the hearing (if any), and this decision may not be appealed to the Administrator.

7. In Subpart C of Part 260, add the following § 260.40:

§ 260.40 Additional regulation of certain hazardous waste recycling activities on a case-by-case basis.

(a) The Regional Administrator may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in § 261.6(a)(2)(iv) of this Chapter should be regulated under § 261.6 (b) and (c) of this Chapter. The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. In making this decision, the Regional Administrator will consider the following factors:

(1) The types of materials accumulated or stored and the amounts accumulated or stored;

(2) The method of accumulation or storage;

(3) The length of time the materials have been accumulated or stored before being reclaimed;

(4) Whether any contaminants are being released into the environment, or are likely to be so released; and

(5) Other relevant factors.

The procedures for this decision are set forth in §260.41 of this Chapter.

8. In Subpart C of Part 260, add the following § 260.41:

§260.41 Procedures for case-by-case regulation of hazardous waste recycling activities.

The Regional Administrator will use the following procedures when determining whether to regulate hazardous waste recycling activities described in § 261.6(a)(2)(iv) under the provisions of § 261.6 (b) and (c), rather than under the provisions of Subpart F of Part 266 of this Chapter.

(a) If a generator is accumulating the waste, the Regional Administrator will issue a notice setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of Subparts A, C, D, and E of Part 262 of this Chapter. The notice will become final within 30 days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the Regional Administrator will hold a public hearing. The Regional Administrator will provide notice of the hearing to the public and allow public participation at the hearing. The Regional Administrator will issue a final order after the hearing stating whether or not compliance with Part 262 is required. The order becomes effective 30 days after service of the decision unless the Regional Administrator specifies a later date or unless review by the Administrator is requested. The order may be appealed to the Administrator by any person who participated in the public hearing. The Administrator may choose to grant or to deny the appeal. Final Agency action occurs when a final order is issued and Agency review procedures are exhausted.

(b) If the person is accumulating the recyclable material as a storage facility, the notice will state that the person must obtain a permit in accordance with all applicable provisions of Parts 270 and 124 of this Chapter. The owner or operator of the facility must apply for a permit within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the Regional Administrator's decision, he may do so in his permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit or on the notice of intent to deny the permit. The fact sheet accompanying the permit will specify the reasons for the Agency's determination. The question of whether the Regional Administrator's decision was proper will remain open for consideration during the public comment period discussed under § 124.11 of this Chapter and in any subsequent hearing.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

9. 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].

10. In § 261.1, paragraph (c) is added and paragraph (b) is revised to read as follows:

§ 261.1 Purpose and scope.

* * * * *

(b)(1) The definition of solid waste contained in this Part applies only to wastes that also are hazardous for purposes of the regulations implementing Subtitle C of RCRA. For example, it does not apply to materials (such as non-hazardous scrap, paper, textiles, or rubber) that are not otherwise hazardous wastes and that are recycled.

(2) This Part identifies only some of the materials which are solid wastes and hazardous wastes under Sections 3007, 3013, and 7003 of RCRA. A material which is not defined as a solid waste in this Part, or is not a hazardous waste identified or listed in this Part, is still a solid waste and a hazardous waste for purposes of these sections if:

(i) In the case of Sections 3007 and 3013, EPA has reason to believe that the material may be a solid waste within the meaning of Section 1004(27) of RCRA and a hazardous waste within the meaning of Section 1004(5) of RCRA; or

(ii) In the case of Section 7003, the statutory elements are established.

(c) For the purposes of Sections 261.2 and 261.6:

(1) A "spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing;

(2) "Sludge" has the same meaning used in § 260.10 of this Chapter;

(3) A "by-product" is a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a co-product that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

(4) A material is "reclaimed" if it is processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents.

(5) A material is "used or reused" if it is either:

(i) Employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one process used as feedstock in another process). However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

(ii) Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

(6) "Scrap metal" is bits and pieces of metal parts (*e.g.*, bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (*e.g.*, radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled.

(7) A material is "recycled" if it is used, reused, or reclaimed.

(8) A material is "accumulated speculatively" if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that—during the calendar year (commencing on January 1)—the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period. In calculating the percentage of turnover, the 75 percent requirement is to be applied to each material of the same type (*e.g.*, slags from a single smelting process) that is recycled in the same way (*i.e.*, from which the same material is recovered or that is used in the same way). Materials accumulating in units that would be exempt from regulation under § 261.4(c) are not be included in making the calculation. (Materials that are already defined as solid wastes also are not to be included in making the

calculation.) Materials are no longer in this category once they are removed from accumulation for recycling, however.

11. Section 261.2 is revised to read as follows:

§ 261.2 Definition of solid waste.

(a)(1) A *solid waste* is any discarded material that is not excluded by § 261.4(a) or that is not excluded by variance granted under §§ 260.30 and 260.31.

(2) A *discarded material* is any material which is:

(i) *Abandoned*, as explained in paragraph (b) of this section; or

(ii) *Recycled*, as explained in paragraph (c) of this section; or

(iii) Considered *inherently waste-like*, as explained in paragraph (d) of this section.

(b) Materials are solid waste if they are *abandoned* by being:

(1) Disposed of; or

(2) Burned or incinerated; or

(3) Accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.

(c) Materials are solid wastes if they are *recycled*—or accumulated, stored, or treated before recycling—as specified in paragraphs (c)(1) through (c)(4) of this section.

(1) *Used in a manner constituting disposal.* (i) Materials noted with a "*" in Column 1 of Table 1 are solid wastes when they are:

(A) Applied to or placed on the land in a manner that constitutes disposal; or

(B) Contained in products that are applied to the land (in which case the product itself remains a solid waste).

(ii) However, commercial chemical products listed in § 261.33 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(2) *Burning for energy recovery.* (i) Materials noted with a "*" in column 2 of Table 1 are solid wastes when they are:

(A) Burned to recover energy;

(B) Used to produce a fuel;

(C) Contained in fuels (in which case the fuel itself remains a solid waste).

(ii) However, commercial chemical products listed in § 261.33 are not solid wastes if they are themselves fuels.

(3) *Reclaimed.* Materials noted with a "*" in column 3 of Table 1 are solid wastes when reclaimed.

(4) *Accumulated speculatively.* Materials noted with a "*" in column 4 of Table 1 are solid wastes when accumulated speculatively.

TABLE 1

	Use constituting disposal (261.2(c)(1))	Energy recovery/ fuel (261.2(c)(2))	Reclamation (261.2(c)(3))	Speculative accumulation (261.2(c)(4))
	(1)	(2)	(3)	(4)
Spent Materials	(*)	(*)	(*)	(*)
Sludges (listed in 40 CFR Part 261.31 or .32)	(*)	(*)	(*)	(*)
Sludges exhibiting a characteristic of hazardous waste	(*)	(*)		(*)
By-products (listed in 40 CFR Part 261.31 or 261.32)	(*)	(*)	(*)	(*)
By-products exhibiting a characteristic of hazardous waste	(*)	(*)		(*)
Commercial chemical products listed in 40 CFR § 261.33	(*)	(*)		
Scrap metal	(*)	(*)	(*)	(*)

Note.—The terms "spent materials", "sludges", "by-products," and "scrap metal" are defined in § 261.1.

(d) *Inherently waste-like materials.* The following materials are solid wastes when they are recycled in any manner:

(1) Hazardous Waste Nos. F020, F021 (unless used as an ingredient to make a product at the site of generation), F022, F023, F026, and F028.

(2) The Administrator will use the following criteria to add wastes to that list:

(i)(A) The materials are ordinarily disposed of, burned, or incinerated; or

(B) The materials contain toxic constituents listed in Appendix VIII of Part 261 and these constituents are not ordinarily found in raw materials or products for which the materials substitute (or are found in raw materials or products in smaller concentrations) and are not used or reused during the recycling process; and

(ii) The material may pose a substantial hazard to human health and the environment when recycled.

(e) *Materials that are not solid waste when recycled.* (1) Materials are not solid wastes when they can be shown to be recycled by being:

(i) Used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed; or

(ii) Used or reused as effective substitutes for commercial products; or

(iii) Returned to the original process from which they are generated, without first being reclaimed. The material must be returned as a substitute for raw material feedstock, and the process must use raw materials as principal feedstocks.

(2) The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process (described in paragraphs (e)(1)(i)–(iii) of this section:

(i) Materials used in a manner constituting disposal, or used to produce products that are applied to the land; or

(ii) Materials burned for energy recovery, used to produce a fuel, or contained in fuels; or

(iii) Materials accumulated speculatively; or

(iv) Materials listed in paragraph (d)(1) of this section.

(f) *Documentation of claims that materials are not solid wastes or are conditionally exempt from regulation.* Respondents in actions to enforce regulations implementing Subtitle C of RCRA who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so.

12. Section 261.3 is amended by revising paragraph (c)(2) to read as follows:

§ 261.3 Definition of Hazardous Waste.

* * * * *

(c) * * *

(2) Any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate (but not including precipitation run-off), is a hazardous waste. (However, materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.)

* * * * *

13. Section 261.4 is revised by adding paragraphs (a)(6) and (a)(7) to read as follows:

§ 261.4 Exclusions.

(a) * * *

* * * * *

(6) Black liquor that is reclaimed in a Kraft pulping liquor recovery furnace and then reused in the Kraft paper process, unless it is accumulated speculatively as defined in § 261.1(c) of this Chapter;

(7) Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in § 261.1(c) of this Chapter.

* * * * *

14. Section 261.5 is amended by revising paragraph (c) to read as follows:

§ 261.5 Special requirements for hazardous waste generated by small quantity generators.

* * * * *

(c) Hazardous waste that is recycled and that is excluded from regulation under §§ 261.6 (a)(2)(iii) and (v), (a)(3), or 266.36 is not included in the quantity determinations of this section and is not subject to any requirements of this section. Hazardous waste that is subject to the requirements of §§ 261.6 (b) and (c) and Subparts C and D of Part 266 is included in the quantity determination of this section and is subject to the requirements of this section.

* * * * *

15. Section 261.6 is revised to read as follows

§ 261.6 Requirements for recyclable materials.

(a)(1) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of paragraphs (b) and (c) of this section, except for the materials listed in paragraphs (a)(2) and (a)(3) of this section. Hazardous wastes that are recycled will be known as "recyclable materials."

(2) The following recyclable materials are not subject to the requirements of this section but are regulated under Subparts C through G of Part 266 of this Chapter and all applicable provisions in Parts 270 and 124 of this Chapter:

(i) Recyclable materials used in a manner constituting disposal (Subpart C);

(ii) Hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under Subpart O of Part 264 or 265 of this Chapter (Subpart D);

(iii) [Reserved for used oil];

(iv) Recyclable materials from which precious metals are reclaimed (Subpart F);

(v) Spent lead-acid batteries that are being reclaimed (Subpart G).

(3) The following recyclable materials are not subject to regulation under Parts 262 through 266 or Parts 270 or 124 of this Chapter, and are not subject to the notification requirements of Section 3010 of RCRA:

(i) Industrial ethyl alcohol that is reclaimed;

(ii) Used batteries (or used battery cells) returned to a battery manufacturer for regeneration;

(iii) Used oil that exhibits one or more of the characteristics of hazardous waste; or

(iv) Scrap metal.

(b) Generators and transporters of recyclable materials are subject to the applicable requirements of Parts 262 and 263 of this Chapter and the notification requirements under Section 3010 of RCRA, except as provided in paragraph (a) of this section.

(c)(1) Owners or operators of facilities that store recyclable materials are regulated under all applicable provisions of Subparts A through L of Parts 264 and 265 and Parts 270 and 124 of this Chapter and the notification requirement under Section 3010 of RCRA, except as provided in paragraph (a) of this section.

(2) Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in paragraph (a) of this section:

(i) Notification requirements under section 3010 of RCRA;

(ii) Sections 265.71 and 265.72 (dealing with the use of the manifest and manifest discrepancies) of this Chapter.

16. Section 261.31 is amended by revising the hazardous waste listings F007, F008, F009, F010, F011, and F012 to read as follows:

§ 261.31 Hazardous waste from non-specific sources.

* * * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
Generic:		
F007	Spent cyanide plating bath solutions from electroplating operations.	(R, T)
F008	Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.	(R, T)
F009	Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.	(R, T)
F010	Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process.	(R, T)
F011	Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations.	(R, T)
F012	Quenching waste water treatment sludges from metal heat treating operations where cyanides are used in the process.	(T)

* * * * *

17. Section 261.33 is amended by revising the introductory text to read as follows:

§ 261.33 Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof.

The following materials or items are hazardous wastes when they are discarded or intended to be discarded as described in § 261.2(a)(2)(i), when they are burned for purposes of energy recovery in lieu of their original intended use, when they are used to produce fuels in lieu of their original intended use, when they are applied to the land in lieu of their original intended use, or when they are contained in products that are applied to the land in lieu of their original intended use.

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

18. The authority citation for Part 264 reads as follows:

Authority. Secs. 1006, 2002(a), 3004, and 3005 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), 6924, and 6925).

19. In § 264.1, paragraph (g)(2) is revised to read as follows:

§ 264.1 Purpose, scope, and applicability.

* * * * *

(g) * * *

(2) The owner or operator of a facility managing recyclable materials described in § 261.6(a) (2) and (3) of this Chapter (except to the extent that requirements of this Part are referred to in Subparts C, D, F, or G of Part 266 of this Chapter).

* * * * *

20. Section 264.340(a) is revised to read as follows:

§ 264.340 Applicability.

(a) The regulations in this Subpart apply to owners or operators of facilities that incinerate hazardous waste, except

as § 264.1 provides otherwise. The following facility owners or operators are considered to incinerate hazardous waste:

(1) Owners or operators of hazardous waste incinerators (as defined in § 260.10 of this Chapter); and

(2) Owners or operators who burn hazardous waste in boilers or in industrial furnaces in order to destroy the wastes.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

21. The authority citation for Part 265 reads as follows:

Authority: Secs. 1006, 2002(a), 3004, and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6921(a), 6924, and 6925].

22. In § 265.1, paragraph (c)(6) is revised to read as follows:

§ 265.1 Purpose, Scope, and Applicability.

* * * * *

(c) * * *

(6) The owner and operator of a facility managing recyclable materials described in § 261.6 (a) (2) and (3) of this Chapter (except to the extent that requirements of this Part are referred to in Subparts C, D, F, or G of Part 266 of this Chapter).

* * * * *

23. Section 265.340(a) is revised to read as follows:

§ 265.340 Applicability.

(a) The regulations in this Subpart apply to owners or operators of facilities that incinerate hazardous waste, except as § 264.1 provides otherwise. The following facility owners or operators are considered to incinerate hazardous waste:

(1) Owners or operators of hazardous waste incinerators (as defined in § 260.10 of this Chapter); and

(2) Owners or operators who burn hazardous wastes in boilers or in industrial furnaces in order to destroy the wastes.

* * * * *

24. Section 265.370 is revised to read as follows:

§ 265.370 Other thermal treatment.

The regulations in this Subpart apply to owners or operators of facilities that thermally treat hazardous waste in devices other than enclosed devices using controlled flame combustion, except as § 265.1 provides otherwise. Thermal treatment in enclosed devices using controlled flame combustion is subject to the requirements of Subpart O if the unit is an incinerator.

25. Part 266 is added to read as follows:

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

Subparts A-B—[Reserved]

Subpart C—Recyclable Materials Used in a Manner Constituting Disposal

Sec.

266.20 Applicability.

266.21 Standards applicable to generators and transporters of materials used in a manner that constitute disposal.

266.22 Standards applicable to storers of materials that are to be used in a manner that constitutes disposal who are not the ultimate users.

266.23 Standards applicable to users of materials that are used in a manner that constitutes disposal.

Subpart D—Hazardous Waste Burned for Energy Recovery

266.30 Applicability.

266.31 Prohibitions. [Reserved]

266.32 Standards applicable to generators of hazardous waste fuel.

266.33 Standards applicable to transporters of hazardous waste fuel.

266.34 Standards applicable to marketers of hazardous waste fuel.

266.35 Standards applicable to burners of hazardous waste fuel.

266.36 Conditional exemption for spent materials and byproducts exhibiting a characteristic of hazardous waste.

Subpart E—[Reserved]

Subpart F—Recyclable Materials Utilized for Precious Metal Recovery

266.70 Applicability and requirements.

Subpart G—Spent Lead-acid Batteries Being Reclaimed

266.80 Applicability and requirements.

Authority: Sec. 1006, 2002(a), and 3004 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), and 6924].

Subparts A-B—[Reserved]

Subpart C—Recyclable Materials Used in a Manner Constituting Disposal

§ 266.20 Applicability.

(a) The regulations of this Subpart apply to recyclable materials that are applied to or placed on the land:

(1) without mixing with any other substance(s); or

(2) after mixing with any other substance(s), unless the recyclable material undergoes a chemical reaction so as to become inseparable from the other substance(s) by physical means; or

(3) after combination with any other substance(s) if the resulting combined material is not produced for the general public's use. These materials will be referred to throughout this Subpart as "materials used in a manner that constitutes disposal."

(b) Products produced for the general public's use that are used in a manner that constitutes disposal and that contain recyclable materials are not presently subject to regulation if the recyclable materials have undergone a chemical reaction in the course of producing the product so as to become inseparable by physical means. Commercial fertilizers that are produced for the general public's use that contain recyclable materials also are not presently subject to regulation.

§ 266.21 Standards applicable to generators and transporters of materials used in a manner that constitute disposal.

Generators and transporters of materials that are used in a manner that constitutes disposal are subject to the applicable requirements of Parts 262 and 263 of this chapter, and the notification requirement under Section 3010 of RCRA.

§ 266.22 Standards applicable to storers of materials that are to be used in a manner that constitutes disposal who are not the ultimate users.

Owners or operators of facilities that store recyclable materials that are to be used in a manner that constitutes disposal, but who are not the ultimate users of the materials, are regulated under all applicable provisions of Subparts A through L of Parts 264 and 265 and Parts 270 and 124 of this chapter and the notification requirement under Section 3010 of RCRA.

§ 266.23 Standards applicable to users of materials that are used in a manner that constitutes disposal.

Owners or operators of facilities that use recyclable materials in a manner that constitutes disposal are regulated under all applicable provisions of Subparts A through N of Parts 264 and 265 and Parts 270 and 124 of this chapter and the notification requirement under Section 3010 of RCRA. [These requirements do not apply to products which contain these recyclable materials under the provisions of § 266.20(b) of this chapter.]

Subpart D—Hazardous Waste Burned for Energy Recovery

§ 266.30 Applicability.

(a) The regulations of this Subpart apply to hazardous wastes that are burned for energy recovery in any boiler or industrial furnace that is not regulated under Subpart O of Part 264 or 265 of this chapter, except as provided by paragraph (b) of this section. Such hazardous wastes burned for energy recovery are termed "hazardous waste fuel". However, hazardous waste fuels produced from hazardous waste by blending or other treatment by a person who neither generated the waste nor burns the fuel are not subject to regulation at the present time.

(b) The following hazardous wastes are not regulated under this subpart:

(1) Used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in Subpart C of Part 261 of this chapter. Such used oil is subject to regulation under Subpart E of Part 266 rather than this subpart; and

(2) Hazardous wastes that are exempt from regulation under the provisions of § 261.4 of this Chapter and hazardous wastes that are subject to the special requirements for small quantity generators under the provisions of § 261.5 of this Chapter.

§ 266.31 Prohibitions. [Reserved]

§ 266.32 Standards applicable to generators of hazardous waste fuel.

(a) Generators of hazardous waste fuel are subject to the requirements of Part 262 of this chapter except that § 266.36 exempts certain spent materials and by-products from these provisions;

(b) Generators who are marketers also must comply with § 266.34;

(c) Generators who are burners also must comply with § 266.35.

§ 266.33 Standards applicable to transporters of hazardous waste fuel.

(a) Transporters of hazardous waste fuel from generator to marketer, or from a generator to a burner are subject to the requirements of Part 263 of this Chapter, except that § 266.36 exempts certain spent materials and by-products from these provisions.

(b) Transporters of hazardous waste fuel from marketers to burners are not presently subject to regulation.

§ 266.34 Standards applicable to marketers of hazardous waste fuel.

Persons who market hazardous waste fuel are called "marketers". Marketers include generators who market hazardous waste fuel directly to a burner, and persons who receive hazardous waste from generators and produce, process, or blend hazardous waste fuel from these hazardous wastes. Persons who distribute but do not process or blend hazardous waste fuel are also marketers, but are not presently subject to regulation. Marketers (other than distributors) are subject to the following requirements: *Prohibitions:*

(a)–(b) [Reserved]

(c) *Storage.* (1) Marketers who are generators are subject to the requirements of § 262.34 of this chapter, or to Subparts A through L of Parts 264 and 265 and Parts 270 and 124 of this chapter, except as provided by § 266.36 of this Subpart for certain spent materials and by-products;

(2) Marketers who receive hazardous wastes from generators, and produce, process, or blend hazardous waste fuel from these hazardous wastes, are subject to regulation under all applicable provisions of Subparts A through L of Parts 264 and 265 and Parts 270 and 124 of this chapter, except as provided by § 266.36 of this subpart for certain spent materials and by-products.

§ 266.35 Standards applicable to burners of hazardous waste fuel.

(a) [Reserved]

(b) *Notification.* [Reserved]

(c) Burners that store hazardous waste fuel prior to burning are subject to the requirements of § 262.34 of this chapter, or to all applicable requirements in Subparts A through L of Part 264 or Part 265 of this chapter with respect to such storage, except as provided by § 266.36 of this subpart for certain spent materials and by-products.

§ 266.36 Conditional exemption for spent materials and by-products exhibiting a characteristic of hazardous waste.

(a) Except as provided in paragraph (b), hazardous waste fuels that are spent materials and by-products and that are hazardous only because they exhibit a characteristic of hazardous waste are not subject to the notification requirements of Section 3010 of RCRA, the generator, transporter, or storage requirements of Parts 262 through 265, 270 and 124 of this chapter.

(b) This exemption does not apply when the spent material or by-product is stored in a surface impoundment prior to burning.

Subpart E—[Reserved]

Subpart F—Recyclable Materials Utilized for Precious Metal Recovery

§ 266.70 Applicability and requirements.

(a) The regulations of this subpart apply to recyclable materials that are reclaimed to recover economically significant amounts of gold, silver, platinum, paladium, irridium, osmium, rhodium, ruthenium, or any combination of these.

(b) Persons who generate, transport, or store recyclable materials that are regulated under this Subpart are subject to the following requirements:

(1) Notification requirements under Section 3010 of RCRA;

(2) Subpart B of Part 262 (for generators), §§ 263.20 and 263.21 (for transporters), and §§ 265.71 and 265.72 (for persons who store) of this chapter;

(c) Persons who store recycled materials that are regulated under this Subpart must keep the following records to document that they are not accumulating these materials speculatively (as defined in § 261.1(c) of this chapter);

(i) Records showing the volume of these materials stored at the beginning of the calendar year;

(ii) The amount of these materials generated or received during the calendar year; and

(iii) the amount of materials remaining at the end of the calendar year.

(d) Recyclable materials that are regulated under this Subpart that are accumulated speculatively (as defined in § 261.1(c) of this chapter) are subject to all applicable provisions of Parts 262 through 265, 270 and 124 of this chapter.

Subpart G—Spent Lead-Acid Batteries Being Reclaimed

§ 266.80 Applicability and requirements.

(a) The regulations of this Subpart apply to persons who reclaim spent lead-acid batteries that are recyclable materials ("spent batteries"). Persons who generate, transport, or collect spent batteries, or who store spent batteries but do not reclaim them are not subject to regulation under Parts 262 through 266 or Parts 270 or 124 of this Chapter, and also are not subject to the requirements of Section 3010 of RCRA.

(b) Owners or operators of facilities that store spent batteries before reclaiming them are subject to the following requirements.

(1) Notification requirements under Section 3010 of RCRA;

(2) All applicable provisions in Subparts A, B (but not § 264.13 (waste analysis)), C, D, E (but not § 264.71 or § 264.72 (dealing with the use of the manifest and manifest discrepancies)), and F through L of Part 264 of this chapter;

(3) All applicable provisions in Subparts A, B (but not § 265.13 (waste analysis)), C, D, E (but not §265.71 and

§ 265.72 (dealing with use of the manifest and manifest discrepancies)), and F through L of Part 265 of this chapter;

(4) All applicable provisions in Parts 270 and 124 of this chapter.

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federal register

Friday
January 4, 1985

Part IV

Department of the Interior

Minerals Management Service

Outer Continental Shelf, Central Gulf of Mexico; Proposed Oil and Gas Lease Sale 98; Notice

Billing Code: 4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf
Central Gulf of Mexico
Proposed Oil and Gas Lease Sale 98

With regard to oil and gas leasing on the Outer Continental Shelf (OCS), the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, as amended, provides the affected States the opportunity to review the proposed Notice of Sale. The following is a proposed Notice of Sale for Sale 98 in the offshore waters of the Central Gulf of Mexico. This Notice is hereby published as a matter of information to the public.

The reader's attention is directed to paragraph 13, Stipulation No. 6--Military Impact Zone and paragraph 14, Information to Lessees Clause (i) of this Notice. Both contain requests for public comments regarding proposed stipulations for Sale 98.

Wm D Bettenberg

Director, Minerals Management Service
William D. Bettenberg

Approved:

Robt J Burford

Acting Assistant Secretary - Land and Minerals Management
Robert F. Burford

DEC 27 1984
Date

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf
Central Gulf of Mexico
Proposed Oil and Gas Lease Sale 98

1. Authority. This Notice is published pursuant to the Outer Continental Shelf (OCS) Lands Act of 1953 (43 U.S.C. 1331-1343), as amended (92 Stat. 629), and the regulations issued thereunder (30 CFR Part 256).

2. Filing of Bids. Sealed bids will be received by the Regional Director (RD), Gulf of Mexico Region, Minerals Management Service (MMS), 3301 North Causeway Boulevard, Metairie, Louisiana 70002. Bids may be delivered in person to the above address during normal business hours (8:00 a.m. to 4:00 p.m., c.s.t.) until the Bid Submission Deadline at _____. Hereinafter, all times cited in this Notice refer to Central Standard Time (c.s.t.) unless otherwise stated. Bids will not be accepted on the day of Bid Opening, _____. Delivery by mail should be addressed to P.O. Box 7944, Metairie, Louisiana 70010, and must be received by the Bid Submission Deadline. Bids received by the RD later than the time and date specified above will be returned unopened to the bidders. Bids may not be modified unless written modification is received by the RD prior to _____. Bids may not be withdrawn unless written withdrawal is received by the RD prior to 8:30 a.m., c.s.t., _____. Bid Opening Time will be 9:00 a.m., c.s.t., _____ at the _____. All bids must be submitted and will be considered in accordance with applicable regulations, including 30 CFR Part 256. The list of restricted joint bidders which applies to this sale appeared in the Federal Register at _____ on _____.

3. Method of Bidding. Tract numbers will not be used. A separate bid in a sealed envelope labeled "Sealed Bid for Oil and Gas Lease Sale 98, (map number(s), map name(s), and block number(s)), not to be opened until 9:00 a.m., c.s.t., _____," must be submitted for each block or prescribed bidding unit bid upon. For example, a label would read as follows: "Sealed Bid for Oil and Gas Lease Sale 98, NG 16-1, Atwater Valley, Block 701, not to be opened until 9:00 a.m., c.s.t., _____." For those blocks which must be bid upon together as a bidding unit (see paragraph 12), it is required that all numbers of blocks comprising the bidding unit appear in the label on the sealed envelope. A suggested bid form appears in 30 CFR Part 256, Appendix A. In addition, the total amount bid must be in whole dollar amounts (no cents). Bidders must submit with each bid one-fifth of the cash bonus, in cash or by cashier's check, bank draft, or certified check, payable to the order of the U.S. Department of the Interior--Minerals Management Service. No bid for less than all of the unleased portion of a block or bidding unit as described in paragraph 12 will be considered. Bidders are advised to use the description "All the Unleased Federal Portion" for those blocks having only aliquot portions currently available for leasing.

All documents must be executed in conformance with signatory authorizations on file. Partnerships also need to submit or have on file in the Gulf of Mexico Regional Office a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder in percent to a maximum of five decimal places, e.g., 50.12345 percent. Other documents may be required of bidders under 30 CFR 256.46. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. Bidding Systems. All bids submitted at this sale must provide for a cash bonus of $150 or more per acre, or fractions thereof. All leases resulting from this sale will provide for a yearly rental payment of $3 per acre, or fractions thereof. All leases awarded will provide for a minimum royalty of $3 per acre, or fractions thereof. The bidding systems to be utilized for this sale apply to blocks or bidding units as shown on map 2 (see paragraph 12). The following bidding systems will be used:

(a) Bonus Bidding with a 12-1/2 Percent Royalty. Bids on the blocks and bidding units offered under this system must be submitted on a cash bonus basis with a fixed royalty of 12-1/2 percent.

(b) Bonus Bidding with a 16-2/3 Percent Royalty. Bids on the blocks and bidding units offered under this system must be submitted on a cash bonus basis with a fixed royalty of 16-2/3 percent.

5. Equal Opportunity. Each bidder must have submitted by the Bid Submission Deadline, stated in paragraph 2, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form 1140-8 (June 1982), and the Affirmative Action Representation Form, Form 1140-7 (June 1982). See paragraph 14, "Information to Lessees."

6. Bid Opening. Bid opening will begin at the Bid Opening Time stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight on the day of Bid Opening, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. Deposit of Payment. Any cash, cashier's checks, certified checks, or bank drafts submitted with a bid will be deposited by the Government in an interest bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. Withdrawal of Blocks. The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

9. Acceptance, Rejection, or Return of Bids. The United States reserves the right to reject any and all bids. In any case, no bid will be accepted and no lease for any block or bidding unit will be awarded to any bidder, unless:

(a) the bidder has complied with all requirements of this Notice and applicable regulations;

(b) the bid is the highest valid bid; and

(c) the amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus in the amount of $150 or more per acre, or fractions thereof. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, or other applicable regulations, may be returned to the person submitting that bid by the RD and not considered for acceptance.

10. Successful Bidders. Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease, pay the balance of the cash bonus bid together with the first year's annual rental as specified below, and satisfy the bonding requirements of 30 CFR 256, Subpart I.

For this lease sale, MMS will utilize procedures for the electronic funds transfer (EFT) payment of four-fifths of the cash bonus bid and the first year's annual rental for each lease issued. Successful bidders are required to submit the balance of the bonus and the first year's annual rental payment by EFT utilizing the Federal Reserve Communications System and the Treasury Financial Communications System, payable to the Department of the Interior--MMS.

The RD will provide more detailed instructions on making the EFT payments when bidders are qualified to submit bids for the sale. Bidders are referred to 30 CFR 218.155 (49 FR 8602, March 8, 1984).

11. Leasing Maps/Official Protraction Diagrams. Blocks or bidding units offered for lease may be located on the following Leasing Maps/Official Protraction Diagrams which may be purchased from the Gulf of Mexico Regional Office (see paragraph 14):

(a) Outer Continental Shelf Leasing Maps--Louisiana Nos. 1 through 12. This is a set of 27 maps which sells for $17.

(b) Outer Continental Shelf Official Protraction Diagrams:

NH 16-4	Mobile	(revised April 19, 1983)
NH 16-7	Viosca Knoll	(revised December 2, 1976)
NH 15-12	Ewing Bank	(revised December 2, 1976)
NH 16-10	Mississippi Canyon	(revised December 2, 1976)
NG 15-3	Green Canyon	(revised December 2, 1976)
NG 15-6	Walker Ridge	(revised December 2, 1976)
NG 16-1	Atwater Valley	(revised November 10, 1983)
NG 16-4	(No Name)	(approved December 2, 1976).

These sell for $2 each.

12. Description of the Areas Offered for Bids.

(a) Acreages of full and partial blocks occurring at the meeting of map borders appear on Leasing Maps and Official Protraction Diagrams. Acreages of split blocks on the State-Federal boundary appear on the set of drawings entitled "Split Blocks--Central Gulf of Mexico," available from the Gulf of Mexico Regional Office (see paragraph 14(a)). Where part of any of the above full, partial, or split blocks is under lease (as indicated below), the acreage available for leasing at this sale is listed in the document entitled "Central Gulf of Mexico Lease Sale 98, Open Acreages for Blocks with Aliquots Under Lease," also available from the Gulf of Mexico Regional Office. A list entitled "8(g) Boundary Blocks" is also available from the Regional Office.

(b) References to maps 1, 2, and 3 in this Notice refer to the following maps which are available on request from the Gulf of Mexico Regional Office:

Map 1 entitled "Central Gulf of Mexico Lease Sale 98, Stipulations, Lease Terms, and Warning Areas, Proposed."

Map 2 entitled "Central Gulf of Mexico Lease Sale 98, Bidding Systems and Bidding Units, Proposed," refers largely to Royalty Rates and Bidding Units.

Map 3 entitled "Central Gulf of Mexico Lease Sale 98, Detailed Maps of Biologically Sensitive Areas, Proposed," pertains to areas referenced in Stipulation No. 2.

(c) In several instances two or more blocks have been joined together into bidding units totaling less than 5,760 acres. Any bid submitted for a bidding unit having two or more blocks must be for all of the unleased Federal acreage within all of the blocks in that bidding unit. The list of those bidding units with their acreages appears on map 2.

(d) The areas offered for leasing include all those blocks shown on the OCS Leasing Maps and Official Protraction Diagrams listed in paragraph 11 (a) and (b), except for those blocks or partial blocks described as follows:

DESCRIPTIONS OF BLOCKS LISTED REPRESENT ALL FEDERAL ACREAGE LEASED UNLESS OTHERWISE NOTED

Sabine Pass	West Cameron (continued)	West Cameron (continued)	West Cameron (continued)	West Cameron, West Addition (continued)	West Cameron, West Addition (continued)
3					
5	63	153	230		
6	64	165	231	315	426
7	65	166	232	317	427
9	66	167	233	318	431
10	67	168	236	320	432
11	68	169	237	322	433
12	69 (W½)	170	238	323	436
13	71	171	239	328	437
14	72	172	240	329	440
15	73	173	247	331	442
16	75	175	248	332	
	77	176	249	333	West Cameron, South Addition
West Cameron	78	177	250	335	
	79	178	252	336	
17	81	180	253	341	445
18-	90	181	255	343	446
(S½)	91	182 (W½)	261	344	448
20	93	184	264	352	449
21-	95	185	265	353	450
(SW¼SW¼)	96	186	266	363	451
22	97	187	277	364	457
28-	100	188	278	365	458
(W½; W½W½S½	101	192	279	366	459
Zone 2)	102	193	280	367	463
33	108	195	281	368	464
34	110	196	283	369	470
35	111	197	284	370	476
36	112	198		379	478
40	113	199	West Cameron,	380	479
41 (E½)	115	201	West Addition	381	480
42	116	202		383	483
44-	118	203	157	384	485
(W½SW¼;	129	204	163	389	487
Portion seaward	131	205	287	391	488
of 8g line)	132	206	289	392	489
45	134	211	290	393	490
47 (W½)	135	212	291	405	491
48	136	214	292	406	492
49	143	215	293	409	493
53	144	216	294	413	494
54	145	217	296	414	498
56	146	220	299	416	499
57	148	222	300	417	500
58	149	225	305	420	501
59	150	226	306	421	502
61	151	228	311	424	504
62	152	229	313	425	505

West Cameron, South Addition (cont'd)

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West Cameron, South Addition (continued)

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West Cameron, South Addition (continued)

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661
663

East Cameron

2
9-
(E½SW¼; SE¼ Zone 2)
14-
(E½NW¼; NE¼)
16
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91
94

East Cameron (continued)

66
67
71
72
76
81
82 (W½)
83 (NW¼)
88
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90
96
97
99
100
102
104
105
106
113
114
116
117
118
119 (N½)
122
123
125
128
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134
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137
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142
143
148
151
157
158
160 (E½)
161
178
185
187
194-
(E½E½SE¼)

East Cameron (continued)

195 (S½)
196
198
202
203
204-
(W½W½)
208
209
213
215
217
220
221
222
226
229
231
232
235

East Cameron, South Addition

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East Cameron South Addition (continued)

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Vermilion

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Vermilion (continued)

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46 (N½)
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89
91
94

Vermilion (continued)

95
96
97
101 (S½)
102
103
104
107
108
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124
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128
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178
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182
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187
190

Vermilion (continued)

191
197
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201
202
203
204
214
215
216
217-
(SW¼;
W½W½SE¼)
218-
(E½SE¼;
E½W½SE¼;
NE¼SW¼SE¼)
219
220
221
222
223
224
225-
(E½NE¼;
NE¼SE¼)
226
227
228
231
232
236
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Vermilion, South Addition (continued)

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Vermilion, South Addition (continued)

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S. Marsh Island, North Addition

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210
211
212
213
214
215
216
217
218
219
220
221-
(Landward of lease 0310 stip. line)
222
223
224
225
226

S. Marsh Island, North Addition (continued)

227
228
229
230-
(Landward of lease 0310 stip. line)
231
232
233
234
235
236
237
238
239
240
241-
(Landward of lease 0310 stip. line)
242-
(Landward of lease 0310 stip. line)
243
244
245
246
249
250
252
253-
(Landward of lease 0310 stip. line)
254
255
256
257
260
261
265
267
268
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270
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275
280

S. Marsh Island, North Addition (continued)

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S. Marsh Island

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S. Marsh Island, South Addition

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S. Marsh Island, South Addition (continued)

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S. Marsh Island, South Addition (continued)

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Eugene Island

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Eugene Island (continued)

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83
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93 (E½)
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102
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107
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111
112
113a
116
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120
125
126
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128A
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129A
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Eugene Island (continued)

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198
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202
204
205
206
208
210
211
213
214-
(W½W½E½, W½)
215
217
218
219
224
227
229
230
231
237
238
240
243
246
247
249
251

Eugene Island (continued)

252
253
254 (S½)
255 (S½)
256
257
258
259
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261
264
265
266

Eugene Island, South Addtion

267
269
270
272
273
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301 (S½)
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Eugene Island, South Addtion (continued)

312
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314
315
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319
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Eugene Island, South Addtion (continued)

387
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Ship Shoal

11
13
14
15
16
25-
(Seaward of Zone 2)
26
27
28
29
30
31
32
33
34
35
37
38
49
50
52
55
59
63
64 (W½)
65
66
68
69
70
71 (W½)
72
78
79
80

Ship Shoal (continued)

81
82
84
85
86
87 (W½)
90
91
92
93
94-
(S½NE¼; W½SE¼; S½NE¼ in Zone 3)
97
98
99
102
104
107
108
111
112
113
114
115
117 (W½)
118 (W½)
119
120
123
128
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133
134
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Ship Shoal (continued)

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211
214
215
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217
218
219
222
223
224
225 (S½)
229
230
232
233
235

Ship Shoal, South Addition

237
238

Ship Shoal, South Addition (continued)

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262
263
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271
274
275
276
278
280
281
282
283
285
288
290
291-
(S½; SE¼)
2nd
293
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296
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302
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307
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316
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319
320

Ship Shoal, South Addition (continued)

321
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361
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368

South Timbalier

16
21
22
23
24
26
27-
(W½; W½SW¼)
28 (NE¼)
29
31
33-
(Portion seaward of fg line)

South Timbalier (continued)	South Timbalier (continued)	South Timbalier, South Addition (continued)	South Timbalier, South Addition (continued)	Grand Isle (continued)	West Delta
					17
34	150			32	18
35	151	229	314	33	21-
36	152	230	316	34	(S½S½S½;
37	156	231	317	37	S½S½)
38	159	236	319	38	22 (S½)
44	160	238		39	23
47	161	239	South Pelto	40	24
48	162	240		41	26
50	163	242	1	42	27
51	164	243	2	43	28
52	165	244	8	44 (N½)	29
53	166	245	9	45	30
54	169	246	10	46	31
55	170	247	11	47	32
59	171	248	12	48	33
63	172	251	13	49	34
64	173	252	14	51	35-
66	175	258	17	52	(Seaward of
67	176	259	18	53	Zone 3)
68	177	260	19 (S½)	63	36-
69	182	261	20	75	(S½; N½)
70	183	263	23	76	38
71	184	264	24	77	39
72	185	265	25	78	40
76	186	267		79	41
77	188 (N½)	268	Bay Marchand	81	42
85	189	269		82	43
86	190	270	2	83	44
87	192	277	3	85	45
90	193	280			48
97	194	282	Grand Isle	Grand Isle,	49
98	195	283		South Addition	50
100	196	284	15		57
106	197	285	16	86	58
107	200	287	17	90	59
111	203	289	18	91	60
128	205	290	19	93	61
129	206	295	20	94	62
130	208	297	21	95	63
131	209	293	22	96	67
132		295	23	101	68
133	South Timbalier,	297	24	102	69
134	South Addition	298	25	103	70
135		299	26	105	71
143	212	300	27	106	72
144	217	301	29 (S½)	109	73
145	220	302	30-	112	74
146	221	309	(Portion in	113	75
147	225	311	Zone 2)	118	76
148	226	312	31	119	79
149	228				

West Delta (continued)	South Pass (continued)	South Pass, South & East Addition (continued)	Main Pass (continued)	Main Pass (continued)	Main Pass, South & East Addition (continued)
80 (S½;	18		63	129	
S½S½;	19	74	64	131	215
S½N½S½)	27	75	65	132	216
85	28	76-	68	133	222
86	33	(Portion landward	69	138	226
87 (S½)	34	of 8g line)	72	140	227
89	36	77	73	141	229
90	37	78	74-	142	230
91	38	82	(Portion	143	231
92	42-	83	landward of	144	232
93	(Portion lying	84	3rd Supp. Decree)	145	233
94	between Zone 1	86	77	148	235
95	and Zone 2 lines)	88	78	149	236
96	43	89	86	150	237
99	44	93	87	151	242
100	45	94	89	152-	243
102	46		91	(Seaward of	244
103	48	Main Pass	92	1965	245
104	49		93	Decree Line)	253
105	50	6	95	153	254
107	51	7-	96		263
108	52-	(N½; N½S½;	98	Main Pass, South	265
109	(Portion landward	Seaward of	99	& East Addition	266
	of 8(g) line)	1975	100		269
West Delta,	53	Decree Line)	101	154	270
South Addition	54	18 (S½)	102	155	271
	55	19	103	159	273
117	56	27	106	160	274
118	57	28	107-	161	277
129	58	29	(N½N½E½E½;	164	278
132	59	30	S½S½W½E½;	165	280
133	60	37	W½W½S½; W½)	169	281
134	61	38	108	170	286
137		39	110	172	287
138	South Pass, South	40	111	173	288
140	& East Addition	41	112	174	289
143		42	113	176	290
144	62	43-	114	180	293
147	63	(N½; W½E½S½;	115	183	296
148	64	W½S½)	116	184	297
149	65	44-	117	197	298
152	66-	(SE¼SE¼;	118	199	299
	(Seaward of	SE¼SW¼)	120	202	300
South Pass	1965	55	121	203	301
	Decree Line)	56	122	208	303
4	67	57	123	209	304
17-	69	58	124	210	305
(Portion lying	70	59-	125	211	306
1 ft. seaward	71	(Portion landward	126	212	308
of 3rd Supp.	72	of Zone 3 line)	127 (N½)	213	310
Decree)	73	62	128	214	311

Main Pass, South & East Addition (continued)

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Breton Sound

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Chandeleur

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Chandeleur, East Addition

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Mobile

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Mobile (continued)

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Vioska Knoll

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Vioska Knoll (continued)

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Vioska Knoll (continued)

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Ewing Bank

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Ewing Bank (continued)

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Ewing Bank (continued)

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Mississippi Canyon

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Mississippi Canyon (continued)

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Mississippi Canyon (continued)

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Green Canyon

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Green Canyon (continued)

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Green Canyon (continued)

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Green Canyon (continued)

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Atwater Valley

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13. Lease Terms and Stipulations.

(a) Leases resulting from this sale will have initial terms as shown on map 1 and will be on Form MMS-2005 (August 1982). Copies of the lease form are available from the Gulf of Mexico Regional Office.

(b) The applicability of Stipulations Nos. 1 through 6 that will be included in leases resulting from this sale is as shown on map 1 and supplemented by references in this Notice.

Stipulation No. 1--Protection of Cultural Resources.

(This stipulation will apply to all blocks offered for lease in this sale.)

(a) "Cultural resource" means any site, structure, or object of historic or prehistoric archaeological significance. "Operations" means any drilling, mining, or construction or placement of any structure for exploration, development, or production of the lease.

(b) If the Regional Director (RD) believes a cultural resource may exist in the lease area, the RD will notify the lessee in writing. The lessee shall then comply with subparagraphs (1) through (3).

(1) Prior to commencing any operations, the lessee shall prepare a report, as specified by the RD, to determine the potential existence of any cultural resource that may be affected by operations. The report, prepared by an archaeologist and geophysicist, shall be based on an assessment of data from remote-sensing surveys and of other pertinent cultural and environmental information. The lessee shall submit this report to the RD for review.

(2) If the evidence suggests that a cultural resource may be present, the lessee shall either:

(i) Locate the site of any operations so as not to adversely affect the area where the cultural resource may be; or

(ii) Establish to the satisfaction of the RD that a cultural resource does not exist or will not be adversely affected by operations. This shall be done by further archaeological investigation, conducted by an archaeologist and a geophysicist, using survey equipment and techniques deemed necessary by the RD. A report on the investigation shall be submitted to the RD for review.

(3) If the RD determines that a cultural resource is likely to be present on the lease and may be adversely affected by operations, the RD will notify the lessee immediately. The lessee shall take no action that may adversely affect the cultural resource until the RD has told the lessee how to protect it.

(c) If the lessee discovers any cultural resource while conducting operations on the lease area, the lessee shall report the discovery immediately to the RD. The lessee shall make every reasonable effort to preserve the cultural resource until the RD has told the lessee how to protect it.

Stipulation No. 2--Protection of High Relief Banks.

(This stipulation will be included in leases located in the areas so indicated on maps 1 and 3 described in paragraph 12. The high relief banks with their appropriate "no activity" isobaths are listed below.)

Bank Name	Isobath (meters)
18 Fathom Lump	85
Bouma Bank	85
Rezak Bank	85
Sidner Bank	85
Sonnier Bank	85
Sackett Bank	85
Ewing Bank	85
Diaphus Bank	85
Alderdice Bank	80
Parker Bank	85
Fishnet Bank	76
Jakkula Bank	85
Sweet Bank[1]	85
28 Fathom Bank	85
29 Fathom Bank	64
Bright Bank	85
Geyer Bank[2]	85
MacNeil Bank[2]	82

[1] The Sweet Bank Stipulation will contain only this sentence: "No structures, drilling rigs, or pipelines will be allowed within the 85-meter isobath."

[2] Western Gulf of Mexico bank with portion of 3-Mile Zone in Central Gulf of Mexico.

(a) No structures, drilling rigs, or pipelines will be allowed within the isobaths of the banks listed above.

(b) Operations within the area shown as "1-Mile Zone" on map 3 shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a down-pipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

(c) Operations within the area shown as "3-Mile Zone" on map 3 shall be restricted as specified in either (1) or (2) below at the option of the lessee.

(1) All drill cuttings and drilling fluids must be disposed of by shunting the material to the bottom through a down-pipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

(2) The operator (lessee) shall submit a monitoring plan. The monitoring plan will be designed to assess the effects of oil and gas exploration and development operations on the biotic communities of the nearby banks.

The monitoring program shall indicate that the monitoring investigations will be conducted by qualified, independent scientific personnel, and that these personnel and all required equipment will be available at the time of operations. The monitoring team will submit its findings to the Regional Director (RD) on a schedule established by the RD, or immediately in case of imminent danger to the biota of the bank resulting directly from drilling or other operations. If it is decided that surface disposal of drilling fluids or cuttings presents no danger to the bank, no further monitoring of that particular well or platform will be required. If, however, the monitoring program indicates that the biota of the bank are being harmed, or if there is a great likelihood that operation of that particular well or platform may cause harm to the biota of the bank, the RD shall require shunting as specified in subparagraph (1) above or other appropriate operational restrictions.

Stipulation No. 3--Live Bottom Areas.

(This stipulation will be included in leases located in the areas indicated on map 1 described in paragraph 12.)

Prior to any drilling activity or the construction or placement of any structure for exploration or development on this lease, including but not limited to well drilling and pipeline and platform placement, the lessee will submit to the Regional Director (RD) a bathymetry map, prepared utilizing remote sensing and/or other survey techniques. This map will include interpretations for the presence of live bottom areas within a minimum of 1,820 meters radius of a proposed exploration or production activity site.

For the purpose of this stipulation, "live bottom areas" are defined as those areas which contain biological assemblages consisting of such sessile invertebrates as sea fans, sea whips, hydroids, anemones, ascidians, sponges, bryozoans, seagrasses, or corals living upon and attached to naturally occurring hard or rocky formations with rough, broken, or smooth topography; or whose lithotope favors the accumulation of turtles, fishes, and other fauna. If it is determined that the remote sensing data indicate the presence of hard or live bottom areas, the lessee will also submit to the RD photodocumentation of the sea bottom near proposed exploratory drilling sites or proposed platform locations.

If it is determined that live bottom areas might be adversely impacted by the proposed activities, then the RD will require the lessee to undertake any measure deemed economically, environmentally, and technically feasible to protect live bottom areas. These measures may include, but are not limited to, the following:

(a) the relocation of operations to avoid live bottom areas;

(b) the shunting of all drilling fluids and cuttings in such a manner as to avoid live bottom areas;

(c) the transportation of drilling fluids and cuttings to approved disposal sites; and

(d) the monitoring of live bottom areas to assess the adequacy of any mitigation measures taken and the impact of lessee initiated activities.

Stipulation No. 4--Military Warning Areas.

(This stipulation will be included in leases located within each warning area, as shown on map 1 described in paragraph 12.)

Warning Areas Command Headquarters
Central Planning Area

Warning Areas	Warning Areas Command Headquarters
W-155	Naval Air Training Command Training Wing Six Naval Air Station Pensacola, Florida 32508
W-453	159th Tactical Fighter Group Air National Guard U.S.N.A.S. NOLA New Orleans, Louisiana 70143-0200
W-92	Naval Air Station New Orleans, Louisiana 70143
Eglin Water Test Area 1 and 3	Commander Armament Division Eglin Air Force Base, Florida 32542

(a) Hold Harmless

Whether or not compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property which occurs in, on, or above the Outer Continental Shelf, to any person or persons or to any property of any person or persons who are agents, employees, or invitees of the lessee, its agents, independent contractors or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the Outer Continental Shelf, if such injury or damage to such person or property occurs by reason of the activities of any agency of the U.S. Government, its contractors or subcontractors, or any of their officers, agents, or employees, being conducted as a part of, or in connection with, the programs and activities of the command headquarters listed in the table above.

Notwithstanding any limitations of the lessee's liability in section 14 of the lease, the lessee assumes the risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of their officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the lessee, and to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by agents, employees, or invitees of the lessee, its agents, or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the aforementioned military installations and agencies, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors or subcontractors, or any of their officers, agents, or employees and whether such claims might be sustained under theories of strict or absolute liability or otherwise.

(b) Electromagnetic Emissions

The lessee agrees to control its own electromagnetic emissions and those of its agents, employees, invitees, independent contractors or subcontractors emanating from individual, designated warning areas in accordance with requirements specified by the commander of the command headquarters listed in the table above to the degree necessary to prevent damage to or unacceptable interference with Department of Defense flight, testing, or operations activities conducted within individual, designated warning areas. Necessary monitoring, control, and coordination with the lessee, its agents, employees, invitees, independent contractors or subcontractors, will be affected by the commander of the appropriate onshore military installation conducting operations in the particular warning area; provided, however, that control of such electromagnetic emissions shall permit at least one continuous channel of communication between a lessee, its agents, employees, invitees, independent contractors or subcontractors, and onshore facilities.

(c) Operational Controls

The lessee agrees that, prior to operating or causing to be operated on its behalf boat or aircraft traffic into individual, designated warning areas, the lessee shall coordinate and comply with instructions from the commander of the individual command headquarters listed in the table above. Such coordination and instruction will provide for positive control of boats and aircraft operating in the warning areas at all times.

Stipulation No. 5--Suspension of Operations.

(This stipulation will be included in leases on blocks in water depths of 400-900 meters as shown on map 1 described in paragraph 12.)

The Director shall suspend or temporarily prohibit production or any other operation or activity pursuant to this lease if such suspension or cessation of operations or activities is necessary to complete operations or activities described in a development and production plan approved by the Regional Director pursuant to 30 CFR 250.34-2 and 250.12(b)(4)(c).

Stipulation No. 6--Military Impact Zone.

Two options for joint usage of Warning Area W-155 are under discussion. Either of these options would only apply to leases issued as a result of Sale 98 and future leases as appropriate. Comments on the stipulation, the alternative approach, and timing of the offering presented are requested from all interested parties, including recommendations on the initial location of the area to be reserved for naval operations.

(a) The first option is the stipulation as presented below.

The Departments of Defense and Interior are discussing a proposal to lease blocks listed in Stipulation No. 6.' This stipulation would control timing and placement of drilling structures in W-155. Surface structures would be consolidated into one or more contiguous areas of fixed size at any one time during the exploratory stage. This consolidation will provide sufficient area to remain for the use of the Navy so that a 40- by 40-mile aircraft carrier operating area remains in W-155. The lease which first receives approval of a Plan of Exploration will establish a "drilling window" area and, until this area is vacated, no other leases outside this area that would conflict with the minimum Navy area may be drilled. Depending on the locations of wells, more than one window may exist. Meanwhile, in the remaining part of W-155, a restricted area (40 by 40 miles) will exist for exclusive use of the Navy for carrier operations, and no drill rigs will be allowed in this area unless the Navy mission can be accommodated. Further, leases on which drilling is allowed will be alternated to maximize exploration of the leased area; i.e., carrier operations would shift to the area first drilled, and new drilling would occur in the area vacated by the carrier. Offering these blocks with this stipulation in Sale 98 constitutes one option for joint usage in this area.

Stipulation No. 6

(This stipulation will be included in leases for the following blocks located in military operating area W-155.)

NH 16-7 Vfosca Knoll

34	124	214	343
35	125	254	344
36	126	255	345
37	166	256	386
38	167	257	387
78	168	258	388
79	169	298	389
80	170	299	431
81	210	300	432
82	211	301	433
122	212	302	434
123	213	342	

The placement, location, and planned periods of operation of surface structures on this lease during the exploration stage are subject to approval by the Regional Director (RD) after the review of an operator's Plan of Exploration (POE). Prior to approval of the POE, the RD shall consult with the Commander, Naval Air Training Command, Naval Air Station, Corpus Christi, Texas, 78419, in order to determine the POE's compatibility with scheduled military operations. The POE will serve as the instrument for promoting a predictable and orderly distribution of surface structures, determining the location and density of such structures, and maximizing exploration while minimizing conflicts with Department of Defense activities. A POE will be disapproved in accordance with 250.34.1(e)(2)(iii) if it is determined that the proposed operations will result in interference with scheduled military missions in such a manner as to possibly jeopardize the national defense or to pose unacceptable risks to life and property. Moreover, if there is a serious threat of harm or damage to life or property or if it is in the interest of national security or defense, approved operations may be suspended in accordance with 30 CFR 250.12(a)(1)(ii) and (iii). If operations are suspended or otherwise temporarily prohibited, the term of the lease shall automatically be extended for a period of time equivalent to the period that the suspension or prohibition is in effect.

(b) The second option is to defer now a fixed 40- by 40-mile aircraft carrier operating area within W-155. No leasing would be permitted in that deferred area for a period of 4 years after the Sale 98 sale date. Remaining blocks in W-155 would be leased with no restrictions. After the 4-year period, drilling results in adjacent areas would be evaluated to determine if relocation of the carrier operating area could be advantageous and feasible.

The following blocks proposed for deferral are located in the Eastern Gulf Planning Area and hence do not constitute deferrals from Sale 98: NH 16-8, Destin Dome, Blocks 47 through 54, 58 through 60, 91 through 98, 101 through 104, 135 through 148, 179 through 192, 223 through 234, 267 through 279, 311 through 324, 355 through 368, 399 through 412, 443 through 456, 492 through 500, and 542 through 544.

The Department is also considering holding Sale 98 in two parts. Part 1 would not include the above listed blocks. They would constitute Sale 98--Part 2, to be held at the same time as Sale 94--Eastern Gulf of Mexico (tentatively scheduled for November 1985). This would allow W-155 to be offered in its entirety at one time. The same lease options ((a) and (b)) would be considered.

Comments on the stipulation, deferral option, and the possibility of holding this sale in two parts are solicited. Respondents are invited to indicate a preferred combination of these approaches or alternatives, if appropriate. Comments should be directed to the address stated in paragraph 14 (h) and are due within 60 days following publication of this Notice.

14. Information to Lessees.

(a) Information on Leasing Maps. There is available from the Gulf of Mexico Regional Office a set of drawings entitled "Split Blocks--Central Gulf of Mexico," depicting the State-Federal boundary, including the acreage on the Federal side of the line. For complete information on any of the subjects mentioned in this Notice, including copies of the various documents identified as available from the Gulf of Mexico Regional Office, prospective bidders should contact the Public Information Unit at the address stated in paragraph 2, either in writing or by telephone (504) 838-0519 or 838-0527.

(b) Information on Navigation Safety. Operations on some of the blocks offered for lease may be restricted by designation of fairways, precautionary zones, anchorages, safety zones, or traffic separation schemes established by the U.S. Coast Guard pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et. seq.) as amended; or in connection with the Louisiana Offshore Oil Port (LOOP) for blocks 57 and 59, Grand Isle area. U.S. Corps of Engineers permits are required for construction of any artificial islands, installations, and other devices permanently or temporarily attached to the seabed located on the OCS in accordance with section 4(e) of the OCS Lands Act, as amended.

Prospective bidders should be aware of a Coast Guard study of port access routes in the Gulf of Mexico. Notice of this study was published in the Federal Register on March 19, 1984, at 49 FR 10127, with an additional reference on April 12, 1984, at 49 FR 14538. The study will evaluate alternative routing measures for the Galveston and LOOP approaches. The results of this study could cause restrictions on the manner in which specific offshore areas leased after March 19, 1984, may be explored and developed. In the Central Gulf of Mexico, the following map areas and blocks are affected (reference Outer Continental Shelf Leasing Maps--Louisiana):

(1) West Cameron Area, South Addition - Map 1B
Blocks 468, 469, 471, 472, 473, 474, 475, 495, and 496

(2) Grand Isle Area - Map 7
Blocks 67, 68, 69, and 80

(3) West Delta Area South Addition - Map 8A
Blocks 119, 120, 135, 136, 139, 150, 151, and 153

For additional information, prospective bidders should contact Lt. Commander M. W. Brown, Assistant Marine Port Safety Officer, 8th Coast Guard District, Hale Boggs Federal Building, New Orleans, Louisiana (Phone: (504) 589-6901).

(c) Information on MOU with DOT on Pipelines. Bidders are advised that the Departments of the Interior and Transportation have entered into a Memorandum of Understanding dated May 6, 1976, concerning the design, installation, operation, and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

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BILLING CODE 4310-MR-C

(d) Information on Unitization. Bidders are advised that, in accordance with section 16 of each lease offered, the lessor may require a lessee to operate under a unit, pooling, or drilling agreement, and that the lessor will give particular consideration to requiring unitization in instances where one or more reservoirs underlie two or more leases with a different royalty rate or a net profit share payment.

(e) Information on 10-Year Leases. For those blocks identified as having lease terms with an initial period of 10 years, bidders are advised that pursuant to 30 CFR 250.34-1(a)(3), the lessee shall submit to the MMS either an exploration plan or a general statement of exploration intention prior to the end of the ninth lease year.

(f) Information on Affirmative Action. Revision of Department of Labor regulations on Affirmative Action requirements for Government contractors (including lessees) have been deferred, pending review of those regulations (see Federal Register of August 25, 1981, at 46 FR 42865 and 42968). Should changes become effective at any time before the issuance of leases resulting from this sale, section 18 of the lease form (Form MMS-2005, August 1982), would be deleted from leases resulting from this sale. In addition, existing stocks of the Affirmative Action forms described in paragraph 5 of this Notice contain language that would be superseded by the revised regulations at 41 CFR 60-1.5(a)(1) and 60-1.7(a)(1). Pending the issuance of revised versions of Forms 1140-7 and 1140-8, submission of Form 1140-7 (June 1982) and Form 1140-8 (June 1982) will not invalidate an otherwise acceptable bid, and the revised regulations' requirements will be deemed to be part of the existing Affirmative Action forms.

(g) Information on Ordnance Disposal Areas. Bidders are cautioned as to the existence of two inactive ordnance disposal areas in the Mississippi Canyon area, as shown on map 1 described in paragraph 12. These areas were used to dispose of ordnance of unknown composition and quantity. The westernmost area has not been used for over 15 years. Water depths in this area range from 750 to 1,525 meters. Bottom sediments in both areas are generally soft, consisting of silty clays. Exploration and development activities in these areas require precautions commensurate with the potential hazards.

The U.S. Air Force has released an indeterminable amount of unexploded ordnance throughout Eglin Water Test Areas 1 and 3. The exact location of the unexploded ordnance is unknown, and lessees are advised that all lease blocks included in this sale within these water test areas should be considered potentially hazardous to drilling and platform and pipeline placement.

(h) Information on Shallow Hazards. Federal regulation (30 CFR 250.34) requires a lessee to conduct shallow hazards and other geological and geophysical surveys that are necessary for the evaluation of activities to be carried out under a proposed exploration or development/production plan or activities being carried out under an approved plan.

Data collection by the lessee on a lease, and when necessary, off a lease, will be analyzed and submitted by the lessee and then reviewed and, when necessary, reanalyzed by the RD to ensure that drilling, development, and production activities can be conducted in an acceptable manner with minimum risk or damage to human, marine, and coastal environments. Based on the review and analysis of the data received and other available data and information, the RD either approves or requires modification to an exploration or development/production plan or application for permit to drill, or recommends that the Director, MMS, temporarily prohibit or suspend the conduct of exploration or development/production activities, according to provisions of the OCS Lands Act, as amended, and appropriate regulations. Existing regulations authorize the RD to take whatever steps are necessary to assure safe operations offshore, whether shallow hazards are delineated before or after the lease sale.

(i) Information on Disputed Blocks. Bidders are advised that the blocks below are involved in boundary dispute litigation between the United States and the States of Mississippi and Alabama. A United States Supreme Court decision in the matter is possible before the final Notice of Sale. The blocks will be offered only if the Supreme Court rules that they are within Federal jurisdiction or if agreements for their offering are reached with affected States pursuant to section 7 of the OCS Lands Act, as amended. The affected blocks are on the OCS Official Protraction Diagram NH 16-4, Mobile: Blocks 629 through 633, 671 through 679, 681, 686 through 688, 718 through 720, 722, 729 through 732, 765 through 768, 809 through 816, and 818 through 820.

Bidders are advised that the States of Alabama and Mississippi prohibit any discharge from oil and gas activities on State leases in Mississippi Sound. Should agreements be reached with these States for Federal offering of these blocks, the following stipulation might be applied on the following blocks: Official Protraction Diagram NH 16-4, Mobile: 629 through 633, 671 through 679, 681, 686 through 688, 718 through 720, 722, and 729 through 732.

> No discharges of any kind (including drilling fluids, drill cuttings, food and sanitary wastes, trash and garbage, machinery cooling water, distilling unit brines, produced waters, etc.) shall be made into the waters of Mississippi Sound from any activity conducted under the terms of this lease.

Comments on this proposed stipulation are requested from all interested parties, including recommendations of alternative procedures for disposal outside this area. Comments are due, within 60 days following publication of this Notice, to the Chief, Offshore Leasing Management Division, Minerals Management Service, Mail Stop 645, 12203 Sunrise Valley Drive, Reston, Virginia 22091. Hand deliveries may be made to Room 2515, Department of the Interior Building, 18th and C Streets, N.W., Washington, D.C. 20240.

15. OCS Orders. Operations on all leases resulting from this sale will be conducted in accordance with the provisions of all Gulf of Mexico OCS Orders, as of their effective dates, and any other applicable OCS Order as it becomes effective.

Federal Register

Friday
January 4, 1985

Part V

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions; Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Order, 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Connecticut: CT84-3016	June 8, 1984.
New York:	
NY83-3032	July 29, 1983.
NY83-3027	July 22, 1983.
NY81-3062	Sept. 11, 1981.
Pennsylvania: PA84-3000	Jan. 13, 1984.
Washington: WA84-5040	Nov. 16, 1984.

Signed at Washington, D.C., this 28th day of December 1984.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

MODIFICATION P. 1

DECISION NO. CT84-3016 - MOD. #9
(49 FR 23980 - June 8, 1984)
STATEWIDE, CONNECTICUT

OMIT:

Modification #4, published July 27, 1984.

ADD:

To Classification Descriptions for LABORERS (BUILDING CONSTRUCTION):
Group 6: Asbestos removal laborer

To FOOTNOTES:
t. B, C & D, provided the employee works three days during the week of the holiday and the working day after the holiday.

CHANGE:

	Basic Hourly Rates	Fringe Benefits
IRONWORKERS: Ornamental; Reinforcing; Structural and Precast Concrete Erection	18.50	5.93+j
LABORERS (BUILDING):		
Group 1	12.65	2.80+t
Group 2	12.90	2.80+t
Group 3	13.40	2.80+t
Group 4	13.15	2.80+t
Group 5	12.65	2.80+t
Group 6	13.15	2.80+t
PLUMBERS & STEAMFITTERS AREA 9 (for all construction work)	21.81	3.40+g

DECISION NO. NY83-3032 - MOD. #4
(48 FR 34629 - July 29, 1983)
BRONX, KINGS, NEW YORK, QUEENS & RICHMOND COUNTIES, NEW YORK

CHANGE:

	Basic Hourly Rates	Fringe Benefits
METALLIC LATHERS & REINFORCING IRON WORKERS	20.99	5.05+g

DECISION NO. NY83-3027 - MOD. #5
(48 FR 33622 - July 22, 1983)
NASSAU & SUFFOLK COUNTIES, NEW YORK

CHANGE:

	Basic Hourly Rates	Fringe Benefits
METALLIC LATHERS & REINFORCING IRON WORKERS	20.99	5.05+g

DECISION NO. NY81-3062 - MOD. #12
(46 FR 45530 - Sept. 11, 1981)
WESTCHESTER COUNTY, NEW YORK

CHANGE:

	Basic Hourly Rates	Fringe Benefits
METALLIC LATHERS & REINFORCING IRON WORKERS	20.99	5.05+g

MODIFICATION P. 2

DECISION NO. PA84-3000 - MOD. #7
(49 FR 1851 - January 13, 1984)
Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Cameron, Centre, Clarion, Clearfield, Clinton, Crawford, Elk, Erie, Fayette, Forest, Franklin, Fulton Greene, Huntingdon, Indiana, Jefferson, Mercer, Lawrence, McKean, Mifflin, Potter, Somerset, Venango, Warren, Washington & Westmoreland Counties, Pennsylvania

CHANGE:

	Basic Hourly Rates	Fringe Benefits
CARPENTERS		
Zone I	14.58	31%
Zone II	14.39	31%
CARPENTER - WELDER		
Zone I	14.96	31%
Zone II	14.77	31%
CARPENTER - BURNER		
Zone I	14.77	31%
Zone II	14.58	31%
CEMENT MASONS	14.86	4.24
PILEDRIVERMEN	15.53	30%
PILEDRIVERMEN WELDER	15.76	30%
LABORERS		
Class I		
Zone I	12.44	24%
Zone II	12.32	24%
Class II		
Zone I	12.59	24%
Zone II	12.49	24%
Class III		
Zone I	13.00	24%
Zone II	13.00	24%
Class IV		
Zone I	13.92	24%
Zone II	13.92	24%
LINE CONSTRUCTION		
Zone 3		
Line, Dynamite Man Heavy Equipment Op.	16.29	1.00+ 3 3/8%
Winch truck Op.	11.59	1.00+ 3 3/8%
Truck Driver	11.37	1.00+ 3 3/8%
Groundman	10.30	1.00+ 3 3/8%

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS: HEAVY & HIGHWAY CONSTRUCTION		
Class I		
Zone I	16.42	23.17%
Zone II	16.18	23.17%
Class II		
Zone I	16.20	23.17%
Zone II	15.95	23.17%
Class III		
Zone I	13.23	23.17%
Zone II	13.00	23.17%
Class IV		
Zone I	12.87	23.17%
Zone II	12.60	23.17%
Class V		
Zone I	12.66	23.17%
Zone II	12.43	23.17%
TRUCK DRIVERS: HEAVY & HIGHWAY CONSTRUCTION		
Class 1		
Zone 1	13.61	19%
Zone 2	13.38	19%
Class 2		
Zone 1	13.74	19%
Zone 2	13.56	19%
Class 3		
Zone 1	13.82	19%
Zone 2	13.66	19%
Class 4		
Zone 1	13.82	19%
Zone 2	13.66	19%
Class 5		
Zone 1	13.92	19%
Zone 2	13.74	19%
Class 6		
Zone 1	13.92	19%
Zone 2	13.74	19%
Class 7		
Zone 1	13.90	19%
Zone 2	13.72	19%
Class 8		
Zone 1	13.65	19%
Zone 2	13.41	19%
Class 9		
Zone 1	13.74	19%
Zone 2	13.52	19%
Class 10		
Zone 1	13.82	19%
Zone 2	13.66	19%
Class 11		
Zone 1	13.74	19%
Zone 2	13.56	19%

Over

MODIFICATION P. 3

	Basic Hourly Rates	Fringe Benefits
DECISION NO. PA84-3000		
TRUCK DRIVERS: HEAVY & HIGHWAY CONSTRUCTION CONTINUED		
Class 12		
Zone 1	13.71	19%
Zone 2	13.52	19%

	Basic Hourly Rates	Fringe Benefits
DECISION NO. WA84-5040 - MOD #4 (49 FR 45532 - Nov. 16, 1984) Statewide Washington		
OMIT: Truck Drivers (Area 1): Group 2: Omit pickup hauling material from group description (page 29)		
OMIT: Truck Drivers Area 2: Group 3: Flatbed, Single Rear Axle From description (page 31)		

[FR Doc. 85-183 Filed 1-3-85; 8:45 am]
BILLING CODE 4510-27-C

federal register

Friday
January 4, 1985

Part VI

Environmental Protection Agency

40 CFR Part 136

Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act; Final Rule and Interim Final Rule and Proposed Rule; Corrections

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL-2737-4]

Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act; Correction and Extension of Comment Period on Interim Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final and final rule; corrections and extension of the comment period on the Interim Final portion of the rule.

SUMMARY: EPA is correcting the Preamble, Final and Interim Final Regulations and Appendices to regulations establishing Guidelines for Test Procedures for the Analysis of Pollutants Under the Clean Water Act which was published in the **Federal Register** of October 26, 1984, 49 FR 43234. In response to requests to allow for a longer time period to review the supporting record, EPA is extending the comment period by sixty days.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Medz, Environmental Monitoring Systems Division, Office of Research and Development (RD-680), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, Telephone Number: (202) 382-5792.

DATE: Comments on the Interim Final Rule must be submitted on or before February 25, 1985.

SUPPLEMENTARY INFORMATION: In FR Doc. 84-26189 appearing at page 43234 in the **Federal Register** of Friday, October 26, 1984, EPA published a preamble, a Final and Interim Final Regulation and Appendices establishing guidelines for Test Procedures for the Analysis of Pollutants Under the Clean Water Act. The Preamble and Appendices contained typographical and other errors which EPA is today correcting. In addition, EPA is correcting the citations of several supporting documents to indicate that they are available through the National Technical Information Service (NTIS).

In response to several requests for an extension of the comment period, the EPA is extending the end of the comment period by sixty days from December 26, 1984 to February 25, 1985.

EPA has discovered that several approved test procedures were inadvertently omitted. The following tables and paragraphs indicate the omitted test procedures, and the references from which they are incorporated. Incorporation by reference of these references has been approved as of the effective dates published in 49 FR 43234 by the Director of the Federal Register.

Table/parameter method	Reference from which incorporated
1A. Coliform (fecal) in presence of chlorine	
MF:—909C	Standard Methods for the Examination of Water and Wastewater, 15th Edition, 1981.
—page 124	Microbiological Methods for Monitoring the Environment, Water, and Wastes, EPA-600/8-78-017, 1978.
—8-0050-77	Methods for Collection and Analysis of Aquatic, Biological, and Microbiological Samples, USGS, TWRI, Book 5, Chapter A4, 1977.
1B. Hardness, EDTA Titration—page 556.	Official Methods of Analysis of the Association of Official Analytical Chemists, 13th Edition, 1980.
Hydrogen ion, pH, Electrometric—page 547.	Ibid.
Manganese, periodate—page 227.	Standard Methods for the Examination of Water and Wastewater, 14th Edition, 1976.
Nitrate (as N), brucine sulfate:	
—page 427	Ibid.
—I-1540-78	Methods for Determination of Inorganic Substances in Water and Fluvial Sediments, USGS, TWRI, Book 5, Chapter 1A, 1979.
Potassium, cobaltinitrite—page 235.	Standard Methods for the Examination of Water and Wastewater, 14th Edition, 1976.
Silver, Dithizone—324B.	Standard Methods for the Examination of Water and Wastewater, 15th Edition, 1981.
Sodium, flame photometric—325.B.	Ibid.
Sulfate (Barium chloroanilate)—375.1.	Methods for Chemical Analysis of Water and Wastes, EPA-600/4-79-020.
Vanadium (gallic acid)—327B.	Standard Methods for the Examination of Water and Wastewater, 15th Edition, 1981.
Zinc (Dithizone)—328C.	Ibid.

These test procedures were all approved in 1976 and have appeared unchanged in subsequent editions of the Code of Federal Regulations (CFRs). Today's correction reprints the test procedures in the list of approved methods.

In Table IA, parameter 2, Coliform (fecal) in the presence of Chlorine, number per 100 mL, EPA inadvertently omitted the membrane filter (MF) test procedure from the list of Approved Biological Test Procedures. In the October 26, 1984 regulation, EPA did not promulgate any substantive changes in the methods for fecal coliform in the presence of chlorine. Today's correction simply reprints the first two parameters and the accompanying footnotes of Table IA as they should have appeared in the October 26, 1984 printing. The remainder of Table IA and Table IA Notes are free of errors and are therefore not reprinted here.

In Table IB, the "automated barium chloroanilate" test procedure for Sulfate (parameter 65) was inadvertently changed to the "automated methylthymol blue" test procedure. The "methylthymol blue" test procedure was not proposed, and this change was not intended. This correction will reprint the "barium chloroanilate" test procedure which was approved in 1976 and has appeared in subsequent editions of the CFRs.

In Table IB several changes were made to improve the descriptors which identify the approved test procedures. However, the approved atomic absorption test procedure for Arsenic and Selenium (parameters 6 and 60, respectively) was incompletely designated "Hydride" in the October 26, 1984 printing. With this notice, the descriptor is corrected to read "Atomic absorption (gaseous hydride)".

The test procedures approved in 1976 for measurements of Nitrate and Nitrite (Parameters 38 and 40 of Table IB) have not been changed, though the titles have been altered. Although it appears that a new parameter, Nitrate-nitrite (as N) (parameter 39) has been added, this new parameter listing is merely a clearer way to identify the test procedure for a previously approved method. For the test procedures (other than Brucine sulfate) which were approved in 1976 for the measurement of "Nitrate", it was necessary to first determine "Nitrate plus Nitrite" and "Nitrite" as separate determinations. "Nitrate" was then determined by subtracting the "Nitrite" determinations from the "Nitrate plus Nitrite". In the October 26, 1984 printing, in order to clarify these relationships, EPA retained the "Brucine sulfate" test procedure descriptor unchanged, but modified the remaining descriptors which appeared in the 1976 approved test procedures list to a single descriptor "Nitrate-nitrite N minus Nitrite N". To further emphasize these relationships, Nitrate-nitrite N was added as a "new" parameter.

In Tables IC and ID two approved test procedures which were approved in the final rule were inadvertently omitted. EPA omitted EPA Method 610 (High Pressure Liquid Chromatography) from the list of approved test procedures for Napthalene in Table IC (Test Procedures for Organic Compounds), and EPA Method 625 (Gas Chromatography/Mass Spectrometry) from the list of approved test procedures for Heptachlor epoxide in Table ID (Test Procedures for Pesticides). This notice corrects these errors of omission.

In Table II the holding time for "Filterable residues" was incorrectly given as "48 hours". This notice corrects

the October 26, 1984 printing to the correct value of "7 days".

EPA is correcting these errors and other typographical errors in the final regulation.

Dated: December 11, 1984.

Bernard D. Goldstein,

Assistant Administrator, Office of Research and Development.

Authority: Sections 301, 304(h), 307 and 501(a), Pub. L. 95-217, 91 Stat. 1566, et seq. (33 U.S.C. 1251, et seq.) (the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977).

The following corrections are made in FR Doc. 84-26189 appearing on 43234 in the issue of October 26, 1984:

1. On page 43234, **SUMMARY**, column 1, line 25, change "preservations" to "preservation".

2. On page 43234, column 2, lines 44-46, change "Water and Waste Management Monitoring Research Division" to "Environmental Monitoring Systems Division".

3. On page 43234, column 2, line 50, change "5788" to "5792".

4. On page 43234, column 3, line 3, change "5788" to "5792".

5. On page 43236, column 2, lines 19 and 42, change "(CBOD)" to "($CBOD_5$)".

6. On page 43237, column 1, line 1, change "pressure" to "performance".

7. On page 43240, column 3, line 62, change "basis quality control criteria" to read "basis of the quality control criteria".

8. On page 43244, EXHIBIT 3, footnote 1, change "asterisked" to "indicated".

9. On page 43244, EXHIBIT 4, footnote 1, change "asterisked" to "indicated".

10. On page 43245, column 3, line 51, change "occuring" to "occurring".

11. On page 43248, column 1, lines 16 and 22, change "BOD" to "5-day BOD".

12. On page 43248, column 3, line 7, change "4(e)" to "IV(E)".

§ 136.3 [Corrected]

13. On page 43251, in § 136.3, Table IA, the first and second entries and footnotes 1 through 4 are corrected, and footnote 4A is added to read as follows:

TABLE IA.—LIST OF APPROVED BIOLOGICAL TEST PROCEDURES

Parameters and units	Method [1]	EPA [2]	Standard methods 15th ed.	ASTM	USGS [3]
Bacteria:					
1. Coliform (fecal) number per 100 ml	MPN, 5 tube, 3 dilution; or, membrane filter (MF) [4], single step.	Page 132	908C		
2. Coliform (fecal) in presence of chlorine number per 100 ml.	MPN, 5 tube, 3 dilution; or, MF [4], single step. [4A]	Page 124	909		B-0050-77.
3. * * *		Page 132	908C		
4. * * *		Page 124	909C		B-0050-77.
5. * * *					

[1] The method used must be specified when results are reported.
[2] "Microbiological Methods for Monitoring the Environment, Water and Waste, 1978", EPA-600/8-78-017, U.S. Environmental Protection Agency.
[3] Greeson, P.E., *et al.*, "Methods for Collection and Analysis of Aquatic Biological and Microbiological Samples," U.S. Geological Survey, Techniques of Water-Resources Investigations, Book 5, Chapter A4, Laboratory Analysis, 1977.
[4] 0.45 μm membrane filter or other pore size certified by the manufacturer to fully retain organisms to be cultivated, and free of extractables which could interfere with their growth and development.
[4A] Since the membrane filter technique usually yields low and variable recovery from chlorinated wastewaters, the MPN method will be required to resolve any controversies.

* * * * * * *

14. On page 43251, Table IB, parameter 6, Arsenic, change the method descriptor "Hydride" to "AA (gaseous hydride)".

15. On page 43252, Table IB, parameter 17, Chlorine, delete the first three methods and the respective references and replace with the following methods and references to read:

Iodometric titrimetric [13], amperometric direct, or,	330.1	408C	D1253-76(A)	———
starch-iodine end point.	330.3	408A	D1253-76(B)	———

16. On page 43252, Table IB, parameter 27, Hardness, opposite the method descriptor, "EDTA titration" under the reference column heading "Other", incorporate the reference citation "P. 556 [8]".

17. On page 43253, Table IB, parameter 28, Hydrogen ion (pH) under the reference column heading "Other", incorporate the reference citation "P. 547 [8]".

18. On page 43253, Table IB, parameter 31, Kjeldahl nitrogen, under the reference column heading "USGS" move references down one space so that reference "I-4551-78" is opposite the "Automated phenate" method descriptor and reference "I-4552-78" is opposite the "Semi-automated block digestor" method descriptor.

19. On page 43253, Table IB, parameter 34, opposite the method descriptor "Periodate" under the reference column heading "Other" incorporate the reference citation "P. 227 [28]".

20. On page 43253, Table IB, parameter 38, Nitrate, opposite the method descriptor "Brucine sulfate" under the reference column heading "Other", incorporate the reference citation "P. 427 [28]"; and under the reference column heading "USGS" incorporate the reference citation "I-1540-78".

21. On page 43253, Table IB, parameter 44, Orthophosphate under the reference column heading "Other" move the reference citation "P. 561 [2]" down two lines so that it is opposite the method descriptor "manual single reagent".

22. On page 43254, Table IB, parameter 52, Potassium, under the parameter and method column, change the method descriptor "Or flame photmetric" to "Flame photometric, or", and add the method descriptor "Colorimetric (Cobaltinitrite)" immediately below the descriptor "Flame photometric, or"; opposite the method descriptor "Colorimetric (Cobaltinitrite)" under the reference column heading "Other", incorporate the reference citation "P. 235 [28]".

23. On page 43254, Table IB, parameter 60, Selenium, change the method descriptor "Hydride" to "AA (gaseous hydride)".

24. On page 43254, Table IB, parameter 62, Silver, after "AA furnace" delete the word "or" and insert the method descriptor "Colorimetric (Dithizone), or" in the line between "AA furnace" and "Inductively coupled plasma"; opposite the method descriptor "Colorimetric (Dithizone), or" under the reference column heading "Standard Methods, 15th edition" incorporate the reference citation "324B".

25. On page 43254, Table IB, parameter 63, Sodium, opposite the method descriptor "Flame photometric" under the column heading "Standard

Methods, 15th edition", incorporate the reference citation "325B".

26. On page 43254, Table IB, parameter 65, Sulfate, change the method descriptor "Automated methylthymol blue" to "Automated colorimetric (barium chloroanilate)" and change the incorporated reference under EPA from "375.2" to "375.1"; delete the reference "I–2822–78" under the USGS column.

27. On page 43254, Table IB, parameter 74, Vanadium, opposite the method descriptor "Colorimetric (Gallic acid)" under the reference column heading "Standard Methods, 15th edition", incorporate the reference citation "327B".

28. On page 43254, Table IB, parameter 75, Zinc, insert a line between the method descriptor "Inductively coupled plasma" and "Colorimetric (Zincon)", and insert the method descriptor "Colorimetric (Dithizone)"; opposite the method descriptor "Colorimetric (Dithizone)" under the reference column heading "Standard Methods, 15th edition" incorporate the reference citation "328C".

29. On page 43255, Table IB, footnote 7, line 2, change "traditional $CBOD_5$" to read "traditional BOD_5".

30. On page 43255, Table IB Notes, add a new footnote to read: [28] The approved method is that cited in the "Standard Methods for the Examination of Water and Wastewater", 14th edition, 1976.

31. On page 43255, Table IC, parameter 11, change "(ghi)" to read "(g,h,i)".

32. On page 43255, Table IC, parameter 13, change "Chloride" to "chloride".

33. On page 43255, Table IC, parameter 14, change "Butyl Phthalate" to "butyl phthalate".

34. On page 43256, Table IC, parameter 66, change "Chloride" to "chloride".

35. On page 43256, Table IC, parameter 67, change "2-Methyl-4,6-Dinitrophenol" to "2-Methyl-4,6-dinitrophenol".

36. On page 43256, Table IC, parameter 68 under the column labeled HPLC, delete the "....." and add "610".

37. On page 43256, Table IC, parameter 75, change "2,2-oxybis(1-chloropropane)" to "2,2'-Oxybis(1-chloropropane)".

38. On page 43256, Table IC, parameter 97, change "Chloride" to "chloride".

39. On page 43257, Table ID, the method descriptor following parameter 42 "GC/MS 625" should be moved up one line to accompany parameter 41 and read as follows:

41. Heptachlor epoxide	GC	608	509A	D3086	Note 3, p. 7; Note 4, p. 30; Note 6, p. S73.
	GC/MS	625			

40. On page 43257, Table ID, parameter 42, should read:

42. Isodrin	GC				Note 4, p. 30; Note 6, p. S73.

41. On page 43257, Table ID, parameter 56, change "Prometon" to "Prometron".

42. On page 43258, in column 2 of the Table of References, Sources and Costs, add parameters 34, 38 immediately before and 52 immediately after parameter 48 to the list of parameters on line 7 which are found in Table IB and which are incorporated by reference from the 14th edition of "Standard Methods for the Examination of Water and Wastewater."

43. On page 43258, in column 2 of the Table of References, Sources, and Costs, add parameter 2 between parameters 1 and 3 on line 12, which are found in Table IA and which are incorporated by reference from the USGS Methods for Collection and Analysis of Aquatic, Biological, and Microbiological Samples.

44. On page 43258, Table of References, Sources, and Costs, move line 11 "IB–EPA" in column 1, and line 13 "1–13, 15–48, 50–75" in column 2 down so they are opposite the EPA reference on line 24 of column 3, entitled "Methods for Chemical Analysis of Water and Wastes".

45. On page 43259, in column 2 of the Table of References, Sources, and Costs, add parameters 27 and 28 between parameters 22 and 30 to the list of parameters on line 3 which are found in Table IB and which are incorporated by reference from "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Edition, 1980.

46. On page 43260, Table II, under the column heading "Maximum holding time" for parameter 54, Residue, Filterable, change "48 hours" to "7 days".

47. On page 43262, column 2, section 6.3.1, change "Barnebey" to "Barnabey".

48. On page 43265, column 3, change reference 9 to read:

9. "EPA Method Study 24, Method 601—Purgeable Halocarbons by the Purge and Trap Method," EPA 600/4–84–064, National Technical Information Service, PB84–212448, Springfield, Virginia 22161, July 1984.

49. On page 43268, delete the handwritten number "–170–" from the bottom of the page.

50. On page 43275, column 1, section 8.7, line 7, change "recommended to encompass" to "that encompass".

51. On page 43276, column 1, change reference 2 to read:

2. Lichtenberg, J.J. "Determining Volatile Organics at Microgram-per-Litre-Levels by Gas Chromatography," Journal American Water Works Association, *66*, 739 (1974).

52. On page 43276, column 3, change reference 9 to read:

9. "EPA Method Study 25, Method 602, Purgeable Aromatics," EPA 600/4–84–042, National Technical Information Service, PB84–196662, Springfield, Virginia 22161, May 1984.

53. On page 43283, column 2, section 8.2.5, line 2, delete "either".

54. On page 43284, column 3, change reference 3 to read:

3. "Evaluate Test Procedures for Acrolein and Acrylonitrile," Special letter report for EPA Project 4719–A, U.S. Environmental

Protection Agency, Environmental Monitoring and Support Laboratory, Cincinnati, Ohio 45268, 27 June 1979.

55. On page 43284, column 3, change reference 9 to read:

9. "Evaluation of Method 603 (Modified)," EPA-600/4-84-ABC, National Technical Information Service, PB84-, Springfield, Virginia 22161, Nov. 1984.

56. On page 43293, column 2, section 10.2.2, line 3, change "vapor" to "excess".

57. On page 43294, column 3, change reference 2 to read:

2. "Determination of Phenols in Industrial and Municipal Wastewaters," EPA 600/4-84-ABC, National Technical Information Service, PBXYZ, Springfield, Virginia 22161, Nov. 1984.

58. On page 43295, column 3, change reference 13 to read:

13. "EPA Method Study 14 Method 604-Phenols," EPA 600/4-84-044, National Technical Information Service, PB84-196211, Springfield, Virginia 22161, May 1984.

59. On page 43303, column 1, change reference 2 to read:

2. "Determination of Benzidines in Industrial and Muncipal Wastewaters," EPA 600/4-82-022, National Technical Information Service, PB82-196320, Springfield, Virginia 22161, Apr. 1982.

60. On page 43303, column 3, change reference 10 to read:

10. "EPA Method Study 15, Method 605 (Benzidines)," EPA 600/4-84-062, National Technical Information Service, PB84-211176, Springfield, Virginia 22161, June 1984.

61. On page 43309, columns 2 and 3, change reference 2 to read:

2. "Determination of Phthalates in Industrial and Muncipal Wastewaters," EPA 600/4-81-063, National Technical Information Service, PB81-232167, Springfield, Virginia 22161, July 1981.

62. On page 43309, column 3, at the end of reference 12, replace the period with a comma and add the date "June 1980.".

63. On page 43309, column 3, change reference 13 to read:

13. "EPA Method Study 16 Method 606 (Phthalate Esters)," EPA 600/4-84-056, National Technical Information Service, PB84-211275, Springfield, Virginia 22161, June 1984.

64. On page 43317, column 3, change reference 4 to read:

4. "Determination of Nitrosamines in Industrial and Municipal Wastewaters," EPA 600/4-82-016, National Technical Information Service, PB82-199621, Springfield, Virginia 22161, Apr. 1982.

65. On page 43318, column 3, at the end of reference 22, replace the period with a comma and add the date "June 1980.".

66. On page 43318, column 3, change reference 23 to read:

23. "EPA Method Study 17 Method 607—Nitrosamines," EPA 600/4-84-051, National Technical Information Service, PB84-207646, Springfield, Virginia 22161, June 1984.

67. On page 43325, column 3, change reference 2 to read:

2. "Determination of Pesticides and PCBs in Industrial and Municipal Wastewaters," EPA 600/4-82-023, National Technical Information Service, PB82-214222, Springfield, Virginia 22161, April 1982.

68. On page 43326, column 1, replace the period at the end of Reference 17 with a comma and add the date "June 1980.".

69. On page 43326, column 1, change Reference 18 to read:

18. "EPA Method Study 18 Method 608—Organochlorine Pesticides and PCBs," EPA 600/4-84-061, National Technical Information Service, PB84-211358, Springfield, Virginia 22161, June 1984.

70. On page 43326, Table 1, in the column under the heading "Method detection limit", change line 2 from "0.00" to "0.004"; change line 3 from "0.00" to "0.006".

71. On page 43326, Table 3, in the column under the heading "Range for X" change ".98–2.44" to "0.98–2.44".

72. On page 43326, column 3, Table 4, under the column heading "Overall precision" change line 3 from "0.33$\bar{X}$–0.95" to "0.33X–0.05".

73. On page 43341, column 1, change Reference 2 to read:

2. "Determination of Nitroaromatic Compounds and Isophorone in Industrial and Municipal Wastewaters," EPA 600/ 4-82-024, National Technical Information Service, PB82-208398, Springfield, Virginia 22161, May 1982.

74. On page 43341, column 2, at the end of Reference 10 replace the period with a comma and add the date "June 1980.".

75. On page 43341, column 2, change Reference 11 to read:

11. "EPA Method Study 19, Method 609 (Nitroaromatics and Isophorone)," EPA 600/ 4-84-018, National Technical Information Service, PB84-176906, Springfield, Virginia 22161, Mar. 1984.

76. On page 43349, column 1, Reference 2, replace the citation after the end of the title "Wastewaters," with the following text:

EPA 600/4-82-025, National Technical Information Service, PB82-258799, Springfield, Virginia 22161, June 1982.

77. On page 43349, column 2, change reference 12 to read:

12. "EPA Method Study 20, Method 610 (PNA's)," EPA 600/4-84-063, National Technical Information Service, PB84-211614, Springfield, Virginia 22161, June 1984.

78. On page 43357, column 1, Reference 2, replace lines 3–6 with the following lines:

EPA 600/4-81-062, National Technical Information Service, PB81-232290, Springfield, Virginia 22161, July 1981.

79. On page 43357, column 2, change reference 12 to read:

12. "EPA Method Study 21, Method 611, Haloethers," EPA 600/4-84-052, National Technical Information Service, PB84-205939, Springfield, Virginia 22161, June 1984.

80. On page 43364, column 2, in Reference 2 change the text of lines 3 and 4 to read:

Wastewaters, "EPA 6090/4-84-ABC, National Technical Information Service, PBXYZ, Springfield, Virginia, 22161 November 1984.

81. On page 43364, column 3, change Reference 11 to read:

11. "EPA Method Study Method 612—Chlorinated Hydrocarbons," EPA 600/4-84-039, National Technical Information Service, PB84-187772, Springfield, Virginia 22161, May 1984.

82. On page 43373, column 1, change Reference 2 to read:

2. "Determination of TCDD in Industrial and Municipal Wastewaters," EPA 600/4-82-028, National Technical Information Service, PB82-196882, Springfield, Virginia 22161, Apr. 1982.

83. On page 43373, column 3, change Reference 15 to read:

15. "EPA Method Study 26, Method 613: 2,3,7,8-Tetrachlorodibenzo-p-dioxin," EPA 600/4-84-037, National Technical Information Service, PB84-188879, Springfield, Virginia 22161, May 1984.

84. On page 43373, column 3, Table 1, delete comma after 8 to read: 2,3, 7,8-TCDD.

85. On page 43378, column 2, Reference 11, replace line 4 by: "May 14, 1980.".

86. On page 43378, column 2, change Reference 12 to read:

12. "EPA Method Study 29 EPA Method 624—Purgeables," EPA 600/4-84-054, National Technical Information Service, PB84-209915, Springfield, Virginia 22161, June 1984.

87. On page 43385, column 1, section 1.3, line 2, after the word "method" add two references to read as follows: "method [2, 14]".

88. On page 43385, column 1, section 2.1, line 13, delete the words "either external or".

89. On page 43386, column 3, section 7.2, line 13, change "masses" to "m/z quantities".

90. On page 43389, column 2, section 13.3, lines 1 and 2, delete the phrase, "If the internal standard calibration procedure is being used", and use the remainder of the sentence as the first sentence of section 13.3 to read as follows: "The internal standard must be added to the sample extract and mixed thoroughly immediately before it is injected into the instrument."

91. On pay 43390, column 2, change date at the end of Reference 13 to "May 14, 1980.".

92. On page 43390, column 2, change Reference 14 to read:

14. "EPA Method Study 30, Method 625, Base/Neutrals, Acids, and Pesticides," EPA 600/4–84–053, National Technical Information Service, PB84–206572, Springfield, Virginia 22161, June 1984.

93. On page 43390, column 2, Table 1, change "Bis(2-chloroethyl)-ether" to "Bis(2-chloroethyl) ether".

94. On page 43390, column 2, Table 1, change "Bis(2-chloroisopropyl) ether" to "Bis(2-chloroisopropyl) ether [a]" and add a footnote to Table 1 to read: "[a] The proper chemical name is 2,2'-oxybis(1-chloropropane)".

95. On page 43390, Table 4, add a new footnote "a" after the parameter "Bis(2-chloroisopropyl) ether" to read: "Bis(2-chloroisopropyl) ether [a]".

96. On page 43391, Table 4, change "Diethylphthalate" to "Diethyl phthalate".

97. On page 43391, Table 4, line 21, under column heading "Secondary" change the number "338" to "339".

98. On page 43391, Table 4, line 42, change "Indeno (1, 2, 3-c, d) pyrene" to "Indeno(1, 2, 3-cd) pyrene".

99. On page 43391, Table 4, change footnote designations "a" after parameters on lines 8, 10, 12, 21, 26, 27, 29, and 45 to footnote "b".

100. On page 43391, Table 4, change footnote designations "b" after parameters of lines 46–54 to footnote "c".

101. On page 43391, Table 4, add a new footnote "α" to read: "a The proper chemical name is 2,2'-bisoxy(1-chloropropane)".

102. On page 43391, Table 4, change footnote designation "a" to "b".

103. On page 43391, Table 4, change footnote designation "b" to "c" and merge the three lines of footnote text to read:

"[c] These compounds are mixtures of various isomers (See figures 2 through 12). Column conditions: Supelcoport (100/120 mesh) coated with 3% SP–2250 packed in a 1.8 m long x 2 mm ID glass column with helium carrier gas at 30 mL/min flow rate. Column temperature held isothermal at 50 °C for 4 min. then programmed at 8 °C/min to 270 °C and held for 30 min."

104. On page 43392, Table 6, line 13, change "Bis(2-chloroethyl)ether" to "Bis(2-chloroethyl) ether".

105. On page 43392, Table 6, line 15, change "Bis(2-chloroisopropyl)ether" to "Bis(2-chloroisopropyl) ether [a]".

106. On page 43392, Table 6, line 16, change "Bis(2-ethylhexyl)-phthalate" to "Bis(2-ethylhexyl) phthalate".

107. On page 43392, Table 6, line 35, change "Di-n-octylphthalate" to "Di-n-octyl phthalate".

108. On page 43392, Table 6, at the bottom of the table after the NOTE, add a new footnote "a" to read:

"[a] The proper chemical name is 2,2'oxybis(1-chloropropane)".

109. On page 43392, Table 7, line 13, change "Bis(2-chloroethyl)-ether" to "Bis(2-chloroethyl) ether".

110. On page 43393, Table 7, line 2, change "Bis(2-chloroisopropyl)-ether" to "Bis(2-chloroisopropyl) ether [a]."

111. On page 43393, Table 7, line 3, change "Bis(2-ethylhexyl)-phthalate" to "Bis(2-ethylhexyl) phthalate".

112. On page 43393, Table 7, line 22, change "Di-n-octylphthalate" to "Di-n-octyl phthalate".

113. On page 43393, Table 7, add a new footnote "a" to read:

"[a] the proper chemical name is 2,2'oxybis(1-chloropropane)".

114. On page 43393, Table 8, lines 10 and 11, change the parameters "1-Fluoronaphthylene" and "2-Fluoronaphthylene" to "1-Fluoronaphthalene" and "2-Fluoronaphthalene".

115. On page 43407, column 1, section 2.3, line 5, delete the words "or external".

116. On page 43408, column 1, section 6.5.1.2, line 5, change "approx" to "approximately".

117. On page 43408, column 3, section 6.7.4, line 1, change "Othe" to "Other".

118. On page 43409, column 1, section 7.4, line 8, delete the words "or external".

119. On page 43409, column 1, section 7.4.3, line 3, change "figure 5" to "figure 6".

120. On page 43410, column 3, section 10.6, delete the sentence on lines 15–17 which reads: An example of the . . . shown in figure 5.

121. On page 43412, column 1, change Reference 9 to read:

9. "EPA Method Study 29 EPA Method 624—Purgeables," EPA 600/4–84–054, National Technical Information Service, PB84–209915, Springfield, Virginia 22161, June 1984.

122. On page 43412, column 1, Table 1, line 16, for 1,2-dichloroethane, change the Storet number from "32103" to "34536".

123. On page 43412, column 3, Table 3, insert a new mass 175 and intensity required and change limits for mass 176 to read:

174	.....
175	5 to 9 percent of mass 174
176	95 to 101 percent of mass 174

124. On page 43416, column 1, section 2.3, line 5, delete the words "or external".

125. On page 43416, column 2, section 4.2, line 4, insert "benzidine" between the colon and "benzo(a)anthracene".

126. On page 43416, column 2, section 4.2, line 7, change "B-naphthylamine" to "β-naphtylamine".

127. On page 43416, column 3, section 5.5, line 2, change "(q" to "±".

128. On page 43417, column 1, section 6.7, line 15, change "ug/mL" to "μg/mL".

129. On page 43417, column 2, section 6.13, line 9, change "10uL" to "10 μL".

130. On page 43417, column 3, section 7.3.1, lines 4 and 5, change "ug/mL" to "μg/mL".

131. On page 43417, column 3, section 7.4, line 8, delete the words "or external".

132. On page 43422, Table 1, line 20, change "a-picoline (Synfuel)" to "α-Picoline (Synfuel)".

133. On page 43422, Table 3, line 30 (EGD 234), change "2,4-dimethyl phenol" to "2,4-dimethyl phenol-d3".

134. On page 43424, Table 4, after the Temperature program footnote, change "; 30–250 °C" to "; 8 °C/min to 250 °C".

135. On page 43424, Table 5, line 1 (m/z 51), change "30–80" to "30–60"; and at line 4 (m/z 127), change "30–80" to "40–60".

136. On page 43424, Table 5, add a new specification for m/z 365 and change the intensity required for mass 441 to read:

275	.....
365	greater than 1 percent of mass 198
441	present and less than mass 443

Appendix B to Part 136—[Corrected]

137. On page 43430, section 5, column 3, first line under "where:"

delete the second "=" to read:
where:
X_c; i=1 to n, are the analytical results in

138. On page 43430, section 7.(a), line 4 change the phrase "spike in the matrix at the" to "spike the matrix at this".

139. On page 43430, section 7.(b), line 6, reverse the subscript and superscript of "S" from "S^A_2" to "S^2_A", and change "others" to "other".

140. On page 43431, column 1, Tables of Student's t Values, under column heading "Degrees of freedom", line 6, change "10" to "15".

Appendix C to Part 136—[Corrected]

141. On page 43433, column 3, section 7.6.2, lines 16 to 19, delete the last sentence.

. . . report, May 14, 1980.

[FR Doc. 85-234 Filed 1-3-85; 8:45 am]

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40 CFR Part 136

[FRL-2636-6]

Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act

Correction

In FR Doc. 84-26189 beginning on page 43234 in the issue of Friday, October 26, 1984, make the following corrections:

1. On page 43237, column 1, line 33, change "as" to "a".

2. On page 43239, column 1, last line, change "Table" to "Tables".

3. On page 43242, column 2, EXHIBIT 1, the heading over the last and the next to last columns should be changed to read:

Number of Test Criteria Failures

Start-up [1] *On-going* [2]

4. On page 43243, EXHIBIT 2, last column, line 7, change "HC1" to "HCl".

7. On page 43250, column 2, first paragraph line 2, change "January 22" to "January 24".

§ 136.3 [Corrected]

8. On page 43251, Table IB heading, change "1B" to "IB".

9. On page 43252, Table IB heading, change "1B" to "IB".

10. On page 43253, Table IB heading, change "1B" to "IB".

11. On page 43253, Table IB, parameter 34, change "Maganese" to "Manganese".

12. On page 43254, Table IB heading, change "1B" to "IB".

13. On page 43255, Table IC, parameter 10, change "Benzo(b)fluroanthene" to "Benzo(b)fluoranthene".

14. On page 43257, Table ID, parameter 16, change "Chloropratham" to "Chloropropham".

APPENDIX A TO PART 136—[Corrected]

15. On page 43261, column 1, table in section 1.1, change the CAS No. after trans-1,3-Dichloropropene to "10061-02-6".

16. On page 43261, column 1, table in section 1.1, change "1,1,1-Tetrachloroethane" and "1,1,2-Tetrachloroethane" to "1,1,1-Trichloroethane" and "1,1,2-Trichloroethane".

17. On page 43275, column 3, section 12.2, line 3, change "1000 X MDL" to "100 x MDL."

18. On pages 43278, 43279, and 43280, delete handwritten page numbers "-208-", "-209-" and "-210-" from the bottom of each page, respectively.

19. On page 43282, column 1, section 5.9, line 2, change "weighint" to "weighing".

20. On page 43283, column 1, section 8.1.1, line 1, change "inital" to "initial".

21. On page 43283, column 1, section 8.2.5, line 4, change "prameters" to "parameters".

22. On page 43283, column 2, section 8.4, line 8, remove "of the".

23. On page 43283, column 3, section 8.4.3, line 7, change "outsied" to "outside".

24. On page 43283, column 3, section 8.5, line 8, change "(S_p)" to "(s_p)".

25. On page 43284, column 1, section 10.1 line 7, change "Columnm" to "Column".

26. On pages 43286, 43287, 43288, and 43289 delete the handwritten numbers "-243-", "-244-", "-245-", and "-246-" at the bottom of each page, respectively.

27. On page 43291, column 1, section 5.6.3, line 2, change "issued" to "is used".

28. On page 43294, column 1, section 12.7, line 14, change "volume:Volume" to "volume:volume".

29. On page 43294, column 3, section 14.2, line 10, delete "xc".

30. On pages 43297 and 43298 delete the handwritten numbers "-288-" and "-289-" from the bottom of each of the pages, respectively.

31. On page 43304 delete the handwritten number "325" from the bottom of the page.

32. On pages 43311 and 43312, delete the handwritten numbers "-363-" and "-364-" from the bottom of each page, respectively.

33. On page 43314, column 1, section 5.6.2, line 2, change "Supel" to "Supel-".

34. On pages 43319 and 43320, delete typed numbers "407-" and "408-" from the bottoms of the pages, respectively.

35. On page 43321, column 2, section 2.1, line 5, change "exchagned" to "exchanged".

36. On page 43326, column 3, Table 3, in the first footnote, change the subscript "$_s$=" to lower case "s=".

37. On page 43326, column 3, Table 4, under the column heading "Single analyst precision", line 12, change "0.41$\bar{X}$ + 0.65" to "0.41 $\bar{X}$ − 0.65".

38. On page 43326, column 3, Table 4, in the first footnote, change "$\bar{X}$'" to "X' ".

39. On pages 43327 through 43336, delete the typed numbers "-451-" through "-460-" from the bottom of each page, respectively.

40. On page 43339, column 3, section 8.5, change "PO=90%" to "P=90%".

41. On pages 43342 and 43343, delete the typed numbers "-496-" and "-497-" from the bottom of each page, respectively.

42. On page 43344, column 3, section 3.2, line 7, change "table 1" to "Table 1".

43. On page 43344, column 3, section 4.1, line 17, change superscript from "identified[4-9]" to "identified[4-9]".

44. On page 43349, column 3, Table 3, line 6 under the heading "Parameter" change syllabification from "Benzo(b)fluo-ranthene" to "Benzo(b)fluor-anthene".

45. On page 43349, column 3, Table 4, under column heading "Overall precision", line 14 (Naphthalene), change "0.41$\bar{X}$−0.74" to "0.41$\bar{X}$ + 0.74".

46. On pages 43350 through 43352, delete the typed numbers "-539-" through "-541-" from the bottom of each of the pages, respectively.

47. On page 43357, column 2, Table 1, first three parameters, delete the space between the prefix "Bis" and the following parenthesis.

48. On pages 43358 and 43359, delete the typed numbers "-578-" and "-579-" from the bottoms of each of the pages, respectively.

49. On page 43361, column 1, section 6.5, line 1, change "(1.00 μg/μL)" to "(1.00 μg/μL)".

50. On page 43362, column 1, section 8.2.1, line 5, change "109" to "10".

51. On page 43362, column 1, section 8.2.4, lines 2 and 3, delete space between the "μ" and the "g" to read "μg/L".

52. On page 43364, Table 2, third symbol explanation at the bottom of the table, change "$P_i P_s$" to "P_i, P_s"

53. On pages 43366 and 43367, delete the typed numbers "-614-" and "-615-" from the bottoms of each page, respectively.

54. On page 43368, column 2, section 3.1.1, line 2, change "cleand" to "cleaned".

55. On page 43370, column 1, section 6.10, line 5, change "ML" to "mL".

56. On page 43370, column 1, section 7.1.1, line 9, change "n/z" to "m/z".

57. On page 43373, column 3, Table under section 1.1, change "Trichloroethane" to "Trichloroethene".

58. On page 43378, column 1, section 13.1, line 4, change "m/z quantitate" to "m/z to quantitate."

59. On page 43378, column 3, Table 4, eighth parameter, change "1,1-Dichloroethene" to "1,1-Dichloroethane".

60. On page 43379, Table 5, for Toluene under the column heading Range for P, change the range from "47–162" to "47–150".

61. On page 43379, Table 5, 29th parameter change "Trichloroethane" to "Trichloroethene".

62. On page 43379, Table 5, change "Trichlorofluoromethene" to "Trichlorofluoromethane".

63. On page 43380, Table 6, change "1,1,2=Trichloroethane" to "1,1,2-Trichloroethane".

64. On page 43380, Table 6, for the 1,1,2-Trichloroethane, under the column heading, Accuracy, change "0.95+1.71" to "0.95C+1.71".

65. On page 43381 through 43384, delete the handwritten numbers "–704–", "–705–", –706–", and "–707–", from the bottom of each of the pages, respectively.

66. On page 43386, column 2, section 6.4 line 2, change "H^2SO^4" to "H_2SO_4".

67. On page 43386, column 3, section 7.2.2, Equation 1, put a line between the numerator and denominator to read:

$$RF = \frac{(A_s)(C_{is})}{(A_{is})(C_s)}$$

68. On page 43389, column 3, section 17, title, line 2, change "(2,3,7,8,TCDD)" to "(2,3,7,8-TCDD)".

69. On page 43390, column 2, Table 1, change "Bis(2-ethylhexl) phthalate" to "Bis(2-ethylhexyl) phthalate".

70. On page 43392, Table 7, under the column heading "Single analyst precision" change "S_r'" to "s_r'".

71. On page 43392, Table 7, under the column heading "Overall precision" on line 11, change "0.3.0x" to "0.30x".

72. On page 43393, Table 7, under column heading "Single analyst precision" change "S_r'" to "s_r'".

73. On pages 43394 through 43406 delete the handwritten numbers "–764–", "–765–", "–766–", "–767–", "–768–", "–769–", "–770–", "–771–", "–772–", "–773–", "–774–", "–775–", and "–776–" from the bottoms of each of the pages, respectively.

74. On page 43409, column 1, section 7.4.2, line 5, insert a division sign "/" between the two parenthesized expressions for area to read: R=(area at m_1/z)/(area at m_2/z).

75. On page 43412, column 1, Table 1, 17th entry, change "1,1-dichloroethane" to "1,1-dichloroethene".

76. On page 43412, column 2, Table 2, line 8, change "Chloroethene-d5" to "Chloroethane-d5".

77. On page 43417, column 2, section 6.13, line 4, change "1.00 µL" to "1.00 mL".

78. On page 43418, column 1, section 7.4.2, line 10, change "$R_x=R_y$" to "$R_x > R_y$".

79. On page 43418, column 1, section 7.4.4, line 20, change "/(R_m-R_y+1)" to "/$(R_m-R_x)(R_y+1)$".

80. On page 43418, column 1, section 7.4.4, line 21, change "$_y$" to read: "R_y".

81. On page 43418, column 2, section 7.5.1, line 1, add a parenthesis after C_s to read: RF=$(A_s \times C_{is})/(A_{is} \times C_s)$, where

82. On page 43420, column 3, section 13.4, line 1, change "Massesd" to "Masses".

83. On page 43421, column 2, section 16.2, line 1, change "/Ml" to "/mL".

84. On page 43423, Table 3, 21 lines from the bottom (EGD 372), change detection limit from "50" to "10".

85. On page 43424, Table 3, footnote 2, change "accepted" to "acceptable".

86. On page 43424, Table 4, line 1 (EGD 164), change "ins" to "int".

87. On page 43424, Table 4, after the footnote beginning with the word "Column:" change "id.d." to "i.d.".

Appendix B to Part 136—[Corrected]

88. On page 43430, column 3, section 7.(b), second line after the equation, start the line at the left hand margin and merge the following line to read as follows: "calculated MDL and process the samples through the . . ."

Appendix C to Part 136—[Corrected]

89. On page 43434, column 3, section 10.4, line 6, change "+5" to "±5".

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL-2737-3]

Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; correction.

SUMMARY: This document corrects proposed Guidelines Establishing Test Procedures for the Analysis of Pollutants that appeared at page 43437 in the **Federal Register** of October 26, 1984 (49 FR 43437), FR Doc. 84–26349. This action is necessary to correct typographical errors.

DATES: Comments on the proposed rule must be submitted on or before January 10, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Medz, Environmental Monitoring Systems Division, Office of Research and Development (RD–680), 401 M Street, SW., Washington, D.C. 20460. Telephone Number: (202) 382–5792.

Dated: December 11, 1984.

Bernard D. Goldstein,

Assistant Administrator, Office of Research and Development.

The following corrections are made in FR Doc. 84–26349 appearing on 43437 in the issue of October 26, 1984.

1. On page 43437, column 1, under **ADDRESS:**, lines 3 and 4, change "Water and Waste Management Monitoring Research Division" to "Environmental Monitoring Systems Division".

2. On page 43437, column 1, under **FOR FURTHER INFORMATION CONTACT:** line 3, change "5788" to "5792".

3. On page 43437, column 2, line 1, insert after "(GS) methods," the phrase, "2 high pressure liquid chromotography (HPLC) methods,".

4. On page 43437, column 2, line 25, change "matricies" to "matrices".

5. On page 43437, column 3, last paragraph, line 9, change "Tetrachloride" to "tetrachloride".

6. On page 43439, Table IC,, parameter 10, change "Acid" to "acid"; parameter 16, change "Butyl Phthalate" to "butyl phthalate"; parameter 42, change "Dibromochlorobenzene" to Dibromochloromethane".

7. On page 43440, Table IC, parameter 85, change "Chloride" to "chloride"; parameter 86, change "Dinitrophenol" to "dinitrophenol".

8. On page 43440, Table IC, parameter 88, Naphthalene, under the column heading HPLC, add "610".

9. On page 43440, Table IC, parameter 113, delete the hyphen between "Tetrachloro" and "dibenzo" to read: "2,3,7,8-Tetrachlorodibenzo-p-dioxin".

10. On page 43440, Table IC, footnote 6, insert "Agency" after the words "United States Environmental Protection".

11. On page 43441, Table ID, parameter 4, change "Atratpm" to "Atraton" and in parameter 22, change "Dementon-S" to "Demeton-S".

[FR Doc. 85–235 Filed 1–3–85; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 136

[FRL–2636–6]

Guidelines Establishing Test Procedures for the Analysis of Pollutants

Correction

In FR Doc. 84–26349 beginning on page 43437 in the issue of Friday, October 26, 1984, make the following correction:

§ 136.3 [Corrected]

In § 136.3, Table ID, page 43441, parameter 17, correct "2,4'-D" to read "2, 4-D".

BILLING CODE 1505–01–M

federal register

Friday
January 4, 1985

Part VII

Department of Education

Innovative Programs for Severely Handicapped Children; Auxiliary Activities; Proposed Annual Funding Priorities and Application Closing Date for Transmittal of New Applications for Fiscal Year 1985 Awards; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Auxiliary Activities; Innovative Programs for Severely Handicapped Children

AGENCY: Department of Education.

ACTION: Notice of Proposed Annual Funding Priorities.

SUMMARY: The Secretary proposes annual funding priorities for the Auxiliary Activities—Innovative Programs for Severely Handicapped Children program. To ensure wide and effective use of program funds, the Secretary proposes seven priorities to direct funds to the areas of greatest need for fiscal year 1985. A separate competition will be established for each priority.

DATE: Comments must be received on or before February 4, 1985.

ADDRESS: Comments should be addressed to: R. Paul Thompson, Special Needs Section, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3511—M/S 2313), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: R. Paul Thompson. Telephone: (202) 732-1161.

SUPPLEMENTARY INFORMATION: The Auxiliary Activities program, authorized by Section 624 of the Education of the Handicapped Act, supports research, development or demonstration, training, and dissemination activities which meet the unique educational needs of handicapped children and youth, and are consistent with the purposes of Part C of the Act (20 U.S.C. 1424). The Education of the Handicapped Act Amendments of 1983, Pub. L. 98-199, included amendments to the provisions of Section 624. In accordance with this authority, the Secretary proposes to fund projects under the following priorities for fiscal year 1985. Projects will be funded for up to 36 months, except where otherwise indicated, subject to an annual review of progress, the availability of Federal funds, and other factors (*see* 34 CFR 75.251-75.253).

Priorities

(1) *Non-directed Demonstration Projects for Severely Handicapped Children and Youth.* This priority supports projects designed to demonstrate specific, viable procedures for meeting significant educational needs, including vocational needs, of severely handicapped (other than deaf-blind) children and youth. The content of the demonstration projects is limited only by the overall mission of the program—to demonstrate innovative and effective approaches to the education of severely handicapped children. Applicants proposing to conduct the projects must fully describe and justify the selection of the focus and particular approach to be demonstrated. Approximately $700,000 is expected to be available for issuing up to six awards under this competition.

(2) *Approaches to Total Life Planning for Deaf-blind Children and Youth.* This priority supports projects which implement innovative procedures for the development of total life planning for deaf-blind children and youth. The planning must include: (1) Assessment of a broad range of skills and capabilities including, but not limited to, cognitive, linguistic, affective, and psychomotor functioning of the project participants; (2) identification of services which are essential to meet the needs of the participants and which will maximize their potential as they approach adulthood; (3) development of strategies for individualized life planning for each project participant, with provision for modifying the planning on at least an annual basis; and (4) development of strategies for applying individualized planning to deaf-blind children and youth not served by the project. These projects may: (1) Begin activities from the time children are identified as handicapped and include planning for preschool education through vocational education and rehabilitation services as appropriate, emphasizing the transition of such children from educational to home and community environments; and (2) encourage the active involvement of parents in promoting the implementation of total life planning for these children. Approximately $600,000 is expected to be available for issuing up to five awards under this competition.

(3) *Skills Training, Placement, and Supported Employment for Deaf-Blind Youth.* This priority supports projects which design, implement, and disseminate information about innovative practices in the prevocational and vocational skills training, work site placement, and supported employment of deaf-blind youth. The practices must extend beyond, expand upon, complement, or supplement existing successful practices. These projects may also include feasible applications of techniques still in the development stage in research and other experimental programs. Four characteristics distinguish these programs from traditional vocational education programming for deaf-blind children and youth. These programs are designed to—(1) Provide employment opportunities for youth lacking the potential for unassisted competitive employment or those not eligible for vocational rehabilitation benefits; (2) provide, in combination with other federal, State and local funding services, ongoing training supervision and support services without the expectation of unassisted competitive work; (3) provide an employment focus directed toward the achievement by deaf-blind youth of the same goals (security, mobility, quality of life, and income level) sought by nonhandicapped workers; and (4) incorporate a variety of support strategies and techniques to assist a service agency in providing training to deaf-blind individuals at work sites. Approximately $600,000 is expected to be available for issuing up to five awards under this competition.

(4) *Non-directed Demonstration Projects for Deaf-Blind Children and Youth.* This priority supports projects designed to demonstrate specific, viable procedures for meeting significant educational needs of deaf-blind children and youth. The content of the demonstration projects is to focus upon the overall mission of the program—to demonstrate innovative and effective approaches to the education of deaf-blind children and youth in the least restrictive environment with the goal of providing educational programs for these children and youth in regular school settings. Projects, in particular, must be designed to demonstrate functional and viable procedures in such areas as the design, implementation, and evaluation of age appropriate curricula and the provision of related services for the education of deaf-blind children and youth.

For the purposes of this priority, the term "related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training. *See* 34 CFR 300.13.

Each applicant proposing to conduct a project must fully describe and justify the selection of the focus and particular approach to be demonstrated.

Approximately $600,000 is expected to be available for issuing up to five awards under this competition.

(5) *State-wide Systems Change.* This priority supports which design, implement, evaluate, and disseminate information about a model for the State-wide delivery of comprehensive special education and related services to severely handicapped children and youth (including deaf-blind children and youth), ages birth through 21, within a particular State. Such a design must utilize and enhance existing service delivery systems for these children. Particular attention should be placed on ensuring that deaf-blind children are properly integrated into these systems since services to this group are often provided through a combination of regional, Federal, State and local service providers. Federal programs with which the projects should be coordinated include Early Childhood State Plan projects (34 CFR Part 309), the Services for Deaf-Blind Children program (34 CFR Part 307), and vocational education activities. Each project must develop a system which will—(1) develop a comprehensive description of services for severely handicapped children within a State; (2) complete an extensive analysis of the current service delivery system; (3) design an improved comprehensive State-wide model for the delivery of educational services to maximize the potential of severely handicapped children and youth; (4) implement the model of State-wide services on a pilot basis under systematic and carefully documented conditions; (5) design and implement an evaluation plan for each of the project components; (6) disseminate information about the model's findings and recommendations; (7) establish and utilize an advisory committee; and (8) maintain a performance measurement system to monitor all project activities. In the past few years, contracts have been awarded to establish similar State-wide service delivery systems. States receiving these contracts are not eligible for funding under this priority. These States are Georgia, Hawaii, Illinois, Kansas, Minnesota, Montana, New York, Oregon, Washington, Utah, and Wyoming.

Projects under this priority will be funded through cooperative agreements with the Secretary. Approximately $1,672,500 is expected to be available for issuing up to 13 grants or cooperative agreements under this competition.

(6) *Communication Skills Development for School-age Deaf-Blind Children and Youth.* This priority supports projects which identify critical educational problems in developing communication skills in school-age deaf-blind children, ages 6 through 21, design and demonstrate innovative programs to effectively resolve such problems, and disseminate information about project findings and recommendations. Projects should address one of the following issues—(1) appropriate communication modes; (2) standardized procedures of communication (language) sampling within a range of social contexts; (3) the sequence of communicative behaviors that follow the presymbolic stage and are predictive of later linguistic or communicative functioning; (4) procedures for assessment of communicative exchanges between deaf-blind persons and others (parents, siblings, peers, teachers, etc.); (5) effective intervention strategies that facilitate effective communicative exchanges between deaf-blind persons and others; or (6) procedures for selecting and evaluating technological aids with attention to the vocabulary and linguistic features appropriate to each device and its individual user. Approximately $1,050,000 is expected to be available for issuing up to 14 grants with each grant averaging $75,000 annually. These grants will be awarded for 24 months or less.

(7) *Social and Community Skills Development for Severely Handicapped Children and Youth.* This priority supports projects which design, implement, and evaluate innovative procedures which increase the skills and opportunities of severely handicapped (including deaf-blind) children and youth to socially interact with peers and others in neighborhood and other community situations. These projects should seek to promote the development of new social skills, and improve the existing interactive skills, and additionally seek to ensure that the right of such children and youth to participate in community activities outside of structured educational or intervention settings is not dependent upon a particular level of performance. Projects should focus on one or more of the following issues—(1) enhancing social skills; (2) reducing or eliminating social barriers; and (3) increasing opportunities for social participation. Projects which emphasize skill enhancement should provide opportunities for generalization to other settings. Activities preparing the community and/or neighborhood to support and adjust to the inclusion of severely handicapped children and youth should include parents, professionals, and non-handicapped peers as well as the general public. Projects which focus on increasing environmental opportunities should emphasize integrated settings and provide opportunities for expanding available effective experiences. Project activities should focus on two or more small groups of two or more severely handicapped children and be co-directed by a parent and local educational agency professional. Approximately $1,340,000 is available for issuing up to 16 grants with each grant averaging $83,750 annually. These grants will be for 24 months or less.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed priorities.

All comments submitted in response to these proposed priorities will be available for public inspection, during and after the comment period, in Room 4615, Switzer Building, 330 C Street, SW., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(20 U.S.C. 1424)

(Catalog of Federal Domestic Assistance No. 84.086; Innovative Programs for Severely Handicapped Children)

Dated: December 31, 1984.

Gary L. Jones,

Acting Secretary of Education.

[FR Doc. 85-202 Filed 1-3-85; 8:45 am]

BILLING CODE 4000-01-M

Auxiliary Activities; Innovative Programs for Severely Handicapped Children

AGENCY: Department of Education.

ACTION: Application notice establishing closing date for transmittal of new applications for fiscal year 1985 awards.

SUMMARY: Applications are invited for new projects under the Auxiliary Activities—Innovative Programs for Severely Handicapped Children program.

Authority for this program is contained in Section 624 of Part C of the Education of the Handicapped Act. (20 U.S.C. 1424)

Applications may be submitted by public or private, profit or non-profit organizations and institutions.

The Auxiliary Activities program supports research, development or demonstration, training, and dissemination activities consistent with Part C of the Act that meet the unique educational needs of handicapped children and youth, including those who are severely handicapped. This application notice, however, addresses

only those priorities under Section 624 of the Act proposed by the Secretary for fiscal year 1985 awards under the Auxiliary Activities—Innovative Programs for Severely Handicapped Children and Youth program.

Closing date for transmittal of applications: An application for a new project must be mailed or hand delivered on or before April 8, 1985.

Applications delivered by mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.086, 400 Maryland Avenue, SW., 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 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 and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application for a new project that is hand delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

Available funds: It is estimated that approximately $6,562,500 will be available for support of 64 new projects under this program in fiscal year 1985. This estimate does not bind the Department of Education to a specific number of grants or cooperative agreements or to the amount of any grant or cooperative agreement unless that amount is otherwise specified by statute or regulations. Grant or cooperative agreement approval is for the time period indicated in each priority. Funding beyond the first year period is subject to an annual review of progress, availability of funds, and other factors (see 34 CFR 75.251–75.253).

Priorities for funding: The selection of priorities was based upon: (1) A comprehensive review of the program's history, including the number of responses to various requests for proposals and responses to the 1982, 1983, and 1984 grant competitions; and (2) an analysis of comments from professionals serving severely handicapped and deaf-blind children as to perceived needs in the field. The priority areas are listed in the table following. For further information on each selected area, applicants may consult the regulations and proposed annual funding priorities.

PRIORITY AREAS—INNOVATIVE PROGRAMS FOR SEVERELY HANDICAPPED CHILDREN, FISCAL YEAR 1985

Priority No.	Priority area	Anticipated	
		Funding levels	Number of awards
84.086C	Non-directed Demonstration Projects for Severely Handicapped (other than Deaf-Blind) Children and Youth.	$700,000	6
84.086D	Approaches to Total Life Planning for Deaf-Blind Children and Youth.	600,000	5
84.086E	Skills Training, Placement, and Supported Employment for Deaf-Blind Youth.	600,000	5
84.086H	Non-directed Demonstration Projects for Deaf-Blind Children and Youth.	600,000	5
84.086J	State-wide Systems Change.	1,672,500	13
84.086K	Communication Skills Development for School-age Deaf-Blind Children and Youth.	1,050,000	14
84.086L	Social and Community Skills Development for Severely Handicapped Children and Youth.	1,340,000	16

Application forms: Application forms and program information packages are expected to be available on February 4, 1985. These materials may be obtained by writing to the Special Needs Section, Special Educational Programs, Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3511, M/S 2313), Washington, D.C. 20202. Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 20 pages in length. The Secretary further urges that applicants submit only the information that is requested.

(Approved by the Office of Management and Budget under control number 1820–0028)

Applicable regulations: Regulations applicable to this program include the following:

(a) Regulations governing the Auxiliary Activities program (34 CFR Part 315). Final regulations for this program were published on July 9, 1984 (49 FR 28020). A notice of proposed annual funding priorities for this program is published in this issue of the **Federal Register.** Prospective applicants are advised that the proposal annual funding priorities are subject to modification in response to public comments submitted within 30 days of publication. In the event any substantive changes are made in any of the priorities or other requirements for new projects, applicants will be given the opportunity to amend or resubmit their applications.

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

FOR FURTHER INFORMATION CONTACT: R. Paul Thompson, Special Needs Section, Special Education Programs, Department of Education, 330 C Street, SW. (Switzer Building, Room 4615), Washington, D.C. 20202. Telephone (202) 732–1161.

(20 U.S.C. 1424)

(Catalog of Federal Domestic Assistance No. 84.086; Auxiliary Activities—Innovative Programs for Severely Handicapped Children)

Dated: December 31, 1984.

Gary L. Jones,

Acting Secretary of Education.

[FR Doc. 85–263 Filed 1–3–85; 8:45 am]

BILLING CODE 4000-01-M

federal register

Friday
January 4, 1985

Part VIII

Small Business Administration

13 CFR Part 123

Disaster Program for West Coast Fisheries; Interim Final Rule

SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

[Revision 11; Amdt. 3]

Disaster Program for West Coast Fisheries

AGENCY: Small Business Administration.

ACTION: Interim final rule.

SUMMARY: This regulations implements new section 23 of the Small Business Act which was added by Pub. L. 98–473 and which authorizes the Small Business Administration (SBA) to make economic injury disaster loans to small concerns suffering as a result of West Coast ocean conditions between June 1982 and December 1983 commonly known as El Nino. Because of the emergency nature of this subject, SBA is publishing this rule in interim final form, but solicits public comments on the matter.

EFFECTIVE DATE: January 4, 1985.

ADDRESS: Comments should be sent to the Deputy Associate Administrator for Disaster Assistance, Room 820, 1441 L Street, NW. Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Bernard Kulik, Deputy Associate Administrator for Disaster Assistance, Telephone (202) 653–6879.

SUPPLEMENTARY INFORMATION: On October 12, 1984, the President signed Pub. L. 98–473, which, among other things, added a new section 23 to the Small Business Act authorizing SBA to make economic injury disaster loans to small concerns suffering as a result of West Coast ocean conditions commonly known as El Nino occurring between June 1982 and December 1983. The statute here implemented is, in the words of its Senate sponsor, (Senator Gorton):

> * * *carefully designed to ensure that it does not become an entitlement for industry. The fisherman must demonstrate * * * that their injury is directly attributable to El Nino. Business with only a peripheral relationship to fishing will not be eligible for the loans "[130 Cong. Rec. S 8617 (daily ed.); June 28, 1984]

A similar statement was made by the sponsor in the House of Representatives, Congressman Bosco [130 Cong. Rec. H 1631 (daily ed.) March 15, 1984]. Accordingly, the regulation is limited to events and the time periods stated in the statute, and to small business concerns directly injured by El Nino during those periods.

The incident date of mid October 1982 is based on information received from the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce (NOAA) as the approximate time when the effects of El Nino were first experienced by the West Coast fishing industry.

Since these loans will be made pursuant to section 7(b)(2) of the Small Business Act, (15 U.S.C. 636) they will be made at interest rates not to exceed 4 percent and will only be available to applicants unable to obtain credit from non-Federal sources on reasonable terms and conditions, taking into consideration prevailing rates and terms in the community in or near where the concern transacts business, for similar purposes and periods of time (section 3(h) of the Small Business Act.)

This regulation substantially tracks the statute and is of an emergency nature, requiring prompt implementation. Therefore, SBA is adopting this interim regulation in final form without prior public participation. SBA nevertheless invites public comments, and reserves the right to modify this regulation in light of comments received through future rulemaking procedures.

Regulatory Impact

This regulation is not a major rule for purposes of E.O. 12291 since it is not likely to result in an annual economic effect of $100 million or more, or to result in a cost increase for anyone anywhere, nor to have an adverse effect on competition or employment. For purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it will have a significant economic impact on a substantial number of small entities. For purposes of Section 603 of the Act the following information is offered:

1. The reason why this rule is being adopted, its objectives and legal basis have been indicated above.

2. The regulation will apply to all small business concerns applying for economic injury assistance pursuant to section 7(b)(2) of the Small Business Act, 15 U.S.C. 636, as a direct result of El Nino related ocean conditions off the West Coast of the United States during 1982/1983. Since SBA has no experience with El Nino related economic injuries, it is not possible to estimate the number of small concerns affected by this regulations.

3. There are no reporting or record-keeping requirements specifically inherent in this regulation. However, applicants will be required to substantiate their requests for assistance.

4. There are no Federal rules which duplicate, conflict with, or overlap this regulation.

5. There are no significant alternatives to this regulation, which closely tracks the underlying statute. The commencement date of mid October 1982 has been selected on the advice of NOAA, as set forth above.

This regulation is intended to implement section 111 A of Pub. L. 98–473, adding a new section 23(1) to the Small Business Act. It will permit the dispensing of disaster assistance to small concerns adversely affected by the oceanic conditions described above. There are no monetary costs or adverse effects inherent on this rule.

Since this regulation carries no reporting or record-keeping requirement, it is not subject to the Paperwork Reduction Act of 1980, Pub. L. 98–511.

List of Subjects in 13 CFR Part 123

Disaster assistance, loan programs/business, Small businesses.

PART 123—[AMENDED]

Accordingly, pursuant to secs. 7(b)(2) and 23(1) of the Act, 15 U.S.C. 636 and 650, a new § 123.42 is added to Subpart C (Economic Injury Disaster Loans) of Part 123 of title 13 of the Code of Federal Regulations, and the Table of Contents revised to add the new § 123.42 to Subpart C in the appropriate place:

§ 123.42 El Nino-Related Economic Injury.

(a) SBA is authorized by Pub. L. 98–473 to provide financial assistance, pursuant to section 7(b)(2) of the Small Business Act (15 U.S.C. 636), to small business concerns involved in the fishing industry, which suffered substantial economic injury as a direct result of recent El Nino-related ocean conditions which occurred during the period beginning with June 1982 and ending with December 1983.

(b) The term "recent El Nino-related ocean conditions" means those conditions (including high water temperatures, scarcity of prey and absence of normal upwellings) which occurred in the eastern Pacific Ocean off the west coast of the North American Continent beginning on or about mid October 1982 and which resulted from the climatic conditions occurring in the Equatorial Pacific during 1982 and 1983.

(c) The term "fishing industry" means any trade or business involved in (1) the catching, taking, or harvesting of fish (whether or not sold on a commercial basis), (2) any operation at sea or on land, in preparation for, or substantially dependent upon, the catching, taking or harvesting of fish, and (3) the processing or canning of fish (including storage, refrigeration and transportation of fish before processing or canning).

(d) The term "fish" means finfish, mollusks, crustaceans, and all other

forms of marine and plant life other than marine mammals and birds.

(e) Loans to small business concerns made as a result of this section shall bear interest at a rate not to exceed 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59.002, Economic Injury Disaster Loans)

Dated: November 19, 1984.

James C. Sanders,

Administrator.

[FR Doc. 85-266 Filed 1-3-85; 8:45 am]

BILLING CODE 8025-01-M

federal register

Friday
January 4, 1985

Part IX

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Part 440

Weatherization Assistance for Low-Income Persons; Interim Final Rule

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 440

[Docket No. CAS-RM-80-508]

Weatherization Assistance for Low-Income Persons

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

ACTION: Interim final rule.

SUMMARY: The Department of Energy is issuing an interim final rule for the program for Weatherization Assistance for Low-Income Persons to implement changes made to the program by the Human Services Reauthorization Act of 1984. The principal amendments to the program: allow States the option of using the eligibility requirements of the Department of Health and Human Services' Low-Income Home Energy Assistance Program (LIHEAP); add replacement furnaces and boilers to the weatherization materials list; allow the Secretary of Energy to add weatherization materials to the program without a rulemaking procedure; require States to spend an average of at least 40 percent of their program costs (materials, program support and labor) for weatherization materials; allow States to average their weatherization expenditures, not to exceed $1,600 per dwelling unit in the State, for materials, labor and program support; remove the $150 limit on the cost of making incidental repairs; and allow reweatherization of dwelling units partially weatherized during the period September 30, 1975, through September 30, 1979.

DOE will issue a separate rulemaking on an additional amendment to establish a performance fund of not less than 5 percent and not more than 15 percent of the annual program appropriation, beginning in fiscal year 1986.

The amendments in this interim final rule give the States additional flexibility to develop and implement weatherization programs which are responsive to their needs and which increase their ability to conserve energy and assist low-income persons. Further, the amendments in this interim final rule will lessen the paperwork requirements on the States by eliminating certain requirements in the State Plan.

DATES: Effective date: February 4, 1985. Written comments must be received on or before February 4, 1985. A public hearing will be held in Washington, D.C., on January 29, 1985, from 9:30 a.m. to 5:00 p.m. (See Section III, Opportunity for Public Comment, for further information).

ADDRESSES: Public hearing location: U.S. Department of Energy, Forrestal Building, Room 1E-245, 1000 Independence Avenue, SW., Washington, D.C. 20585.

All written comments (three copies) and requests to speak at the hearing should be addressed to Conservation and Renewable Energy, Department of Energy, Office of Hearings and Dockets, Forrestal Building, Room 6B-025, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9319.

FOR FURTHER INFORMATION CONTACT:

Greg Reamy, Office of Weatherization Assistance Programs, Conservation and Renewable Energy, Department of Energy, Mail Stop 5G-023, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-2207

Pamela M. Pelcovits, Office of General Counsel, Department of Energy, Mail Stop 6B-144, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-9517.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background of the Program

Introduction

The Department of Energy (DOE) is amending the regulations for the Weatherization Assistance for Low-Income Persons Program, (Program, or WAP), 10 CFR Part 440, issued under Title IV of the Energy Conservation and Production Act, as amended, Pub. L. 94-385, 90 Stat. 1150 (42 U.S.C. 6861 *et seq.*) (Act or program statute). The purpose of today's action is to implement changes required by the recent passage of the Human Services Reauthorization Act of 1984, Pub. L. 98-558, Stat. (Amending Act). These changes will increase State and local flexibility in operating the Weatherization Assistance Program.

Background of the Program

The Act authorized DOE to establish a program to weatherize the homes of low-income persons, particularly those who are elderly or handicapped. The program is intended to reduce national energy consumption, particularly of imported oil, and to reduce the impact of higher fuel costs on low-income families. Funds are provided to install insulation, storm windows, caulking and weatherstripping, and to make furnace efficiency modifications and other improvements to conserve energy.

DOE currently makes grants to States, the District of Columbia, and under certain circumstances, Indian tribal organizations. The Governor of each State, or his designee, applies for, receives and administers the grant funds. The funds are distributed by the States and the District of Columbia to local governments and non-profit organizations to weatherize homes. Certain Indian tribal organizations also administer Federal funds and perform weatherization activities under this program.

Funds are allocated by DOE through a formula which reflects the relative need for weatherization assistance among the States. The formula takes into account the number of low-income households, the percentage of total residential energy used for space heating and cooling, and the number of heating and cooling degree days in each State.

Administrative Requirements

DOE has determined that the proposed rulemaking requirements of the Department of Energy Organization Act (42 U.S.C. 7191) (DOE Act) and the Administrative Procedure Act (5 U.S.C. 553) (APA) should not be followed with respect to the changes to the WAP rules made by this action. Section 501(c)(1) of the DOE Act provides that when a showing has been made that "no substantial issue of fact or law exists" and that such rulemaking is "unlikely to have substantial impact on the Nation's economy or large numbers of individuals or businesses," such rulemaking can be issued in accordance with the minimal APA requirements. Further, section 553(b) of the APA provides that except where notice and hearing are required by statute, the requirement for a notice of proposed rulemaking does not apply when the agency "for good cause finds (and incorporates the finding and a brief statement of the reasons therefore in the rule issued) that notice and public procedure there upon are impracticable, unnecessary or contrary to the public interest."

Since the changes made by this interim final rule are mandated by the Amending Act and, in large part, track the statute, DOE believes that they can raise no "substantial issue of law or fact" and have no "substantial impact on the Nation's economy or large

numbers of individuals or businesses," as required by section 501(c)(1) of the DOE Act. Further, the notice and comment procedures of the APA are waived in accordance with section 553(b). DOE finds it is in the public interest to have these very recent statutory changes implemented in the program without delay and within this grant cycle, which commences in the next few weeks. This would be impracticable if DOE proceeded with a notice of proposed rulemaking at this time.

DOE has made some changes to the requirements for State Plans only in order to monitor conformance with the new substantive changes to the regulations, and DOE has kept these administrative changes to the minimum. However, DOE is providing an opportunity for public comment on these changes and may consider additional changes to the regulations as a result of the comments at a later date.

II. Amendments to the Weatherization Program

In this interim final rule, DOE is incorporating the amendments to the program required by the Human Services Reauthorization Act of 1984 which will give the States more flexibility in operating their programs. These amendments will expand both the approach to weatherizing a home and the universe of low-income households eligible for assistance. The principal amendments: allow States the option of using the eligibility requirements of the Department of Health and Human Services' Low-Income Home Energy Assistance Program (LIHEAP); add replacement furnances and boilers to the weatherization materials list; allow the Secretary of Energy to add weatherization materials to the program without a rulemaking procedure; require States to spend an average of at least 40 percent of their program costs (materials, program support and labor) for weatherization materials; allow States to average their weatherization expenditures, not to exceed $1,600 per dwelling unit in that State, for materials, labor and program support; remove the $150 limit on the cost of incidental repairs; and allow reweatherization of dwelling units partially weatherized during the period September 30, 1975, through September 30, 1979.

The Weatherization Assistance Program is a State grant program. The amendments underscore both the State's increasing role in fashioning a weatherization program tailored to its specific needs and the State's increasing responsibility to ensure that the spirit and intent of the program statute—to maximize the benefits to low-income persons per weatherization dollar spent—are carried out. These responsibilities pose a formidable challenge to the program grantees.

To date just 1.3 million of the program's 12.6 million potentially eligible households have been weatherized. If all States were to elect to use the LIHEAP eligibility criterion which is up to 150 percent of the OMB poverty level, the universe may be closer to 22 million households. At the same time, it is now possible, as a result of the amendments to the program statute, to spend more on each home assisted—through additional weatherization measures and the averaging of per home expenditures. The pressures to do more operate against a background of finite resources. This setting will require States to employ all means at their disposal to increase the efficiency and effectiveness of the program in order to maximize the weatherization dollars they spend.

1. Eligibility

DOE amends § 440.3 as required by the Amending Act to expand the definition of "low-income" to include that, if a State elects, it may use the eligibility criterion under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621) in determining WAP eligibility throughout the State. Allowing States the option of using the LIHEAP eligibility criterion may increase the present 12.6 million households[1] now eligible under the DOE Weatherization Program to approximately 22 million currently eligible under the LIHEAP Program.

The Amending Act provides that the LIHEAP criterion must be at least 125 percent of the poverty level established by OMB. (The OMB poverty levels are also used in one of the two current eligibility tests under the WAP.) DOE believes the Congress intended that a person who would be eligible under either of the first two WAP criteria would remain eligible should a State elect to use the LIHEAP criterion. Accordingly, DOE believes that when a State elects the LIHEAP criterion, it should be added to one of the original criteria, for purposes of retaining program eligibility for those who are under 125 percent of the OMB definition.

A State must apply its chosen eligibility definition uniformly throughout the State. For example, States may not use the LIHEAP criterion in urban areas, but not use it in rural areas.

[1] Approximately 1.3 million homes have already been weatherized under WAP.

In addition DOE amends § 440.14 to require States to explain in their State Plans the eligibility criteria that will be followed. No changes have been made in the priority for providing weatherization services under the program.

2. Weatherization Materials

DOE is also amending § 440.3 by adding "replacement furnaces and boilers" to the definiton of weatherization materials as required by section 402(1) of the Amending Act. Allowing replacement furnaces and boilers will require the States to justify, through prioritization procedures contained in the energy audit performed on a dwelling unit or class of units under § 440.21(b), the necessity of replacing a furnace or boiler rather than employing less expensive furnace/boiler efficiency modifications. The regulation continues to permit heating and cooling system repairs and tuneups/efficiency improvements and boiler repair and modifications/efficiency improvements. Because the DOE developed energy audit, Project Retro-Tech, does not address replacement furnaces and boilers, a State which considers employing these measures must submit to DOE for approval a new or modified energy audit. At a minimum, this new or modified energy audit must consider the cost of replacement versus the cost of making modification improvements to a heating unit. When considering the replacement of a boiler in a rental building or rental dwelling units, the State must also consider § 440.22(b)(3)(ii) which prohibits undue or excessive enhancement to rental dwelling units.

3. Additional Weatherization Materials

Section 402(2) of the Amending Act deletes the requirement that any additions to the list of weatherization materials be made "by rule". This change will give DOE greater flexibility to respond to state-of-the-art technology. Without having to go through the lengthy process of a rulemaking, DOE can in a timely fashion incorporate into the program new energy saving products, ideas and technology. If a State wishes to request the use of a new weatherization material, then the State should submit the request in writing, together with documentation demonstrating the material's cost-effectiveness, its position on the State's list of prioritized measures, and any material related to applicable standards. A State may submit a request to add new materials at any time as an amendment to the current year's State

Plan, or as a part of the annual application procedure. In either case, DOE will notify the State of its determination in writing. DOE is also amending § 440.21(a) to clarify that Appendix A applies only to weatherization materials listed in the regulations and not to any additional materials added as discussed above.

4. Allowable Expenditures

DOE amends § 440.18 to require that States spend an average of at least 40 percent of their program costs (materials, program support and labor) for weatherization materials as required by § 403 of the Amending Act. Incidental repairs are part of the 40 percent average. In addition, DOE is amending § 440.14(b)(9)(ix) to require that States furnish DOE, in their Annual Plans, the average amount of DOE funds to be applied to any dwelling unit for weatherization materials. This change will help to maximize the program dollars expended for weatherization materials which is a goal of the program statute.

As provided in section 402(c)(2)(D) of the Amending Act, DOE amends § 440.18(iii) by eliminating the $150 per dwelling unit limit for making incidental repairs. However, the repairs that can be made are still only those that are "incidental", that is, those repairs necessary for the effective performance or preservation of weatherization materials installed on a dwelling unit, as defined in § 440.3. The goal of this program remains energy conservation, not housing rehabilitation.

5. Averaging Expenditures

DOE is amending § 440.18 as required by section 403(2) of the Amending Act by eliminating the $1,000 maximum expenditure limit per dwelling unit and allowing the States to average, not to exceed $1,600, their expenditures per dwelling unit. Additionally, DOE is amending § 440.14 to require States to furnish only the average amount, not the maximum amount, of DOE funds to be applied to any dwelling unit. This average includes the cost of materials, program support and labor. DOE wishes to avoid the expenditure of widely divergent amounts on individual homes, "goldplating" some and skimping on others. States may find it necessary to set maximum expenditure limits for their subgrantee agencies. Other existing requirements of § 440.14 remain, including providing the type of weatherization work to be done, the estimated number of dwelling units to be completed, and an estimate of the amount of energy to be conserved. The State average may be required of each subgrantee or varied among them, so long as the State's $1,600 average is maintained. This amendment eliminates the need for those waivers previously employed when additional funds were needed to pay for labor or special categories of materials. Therefore, DOE amends § 440.18(d), § 440.19(b) and § 440.21(e) by eliminating the references to waivers. However, a State is not precluded from adopting its own waiver process in conjunction with subgrantee maximum expenditure limits, so long as the State's $1,600 average is maintained.

The provisions implementing the statewide $1,600 average per dwelling unit, of which 40 percent must be expended for materials, can best be illustrated by the following example: State X receives an allocation of $2 million. After deducting monies for administration and training and technical assistance $1.6 million remains for direct program costs. To comply with the above provision, the State must weatherize at least one thousand homes and spend at least $640,000 for weatherization materials.

As discussed earlier in this preamble, it is the responsibility of the States to demonstrate wise and prudent use of DOE funds to provide the most cost-effective approach to weatherizing as many homes with DOE funds as possible. The amendments contained in this interim final rule may appear to be taking the program in the opposite direction—spending more on fewer homes. The reality is that the States have never had more flexibility to create weatherization programs which are cost-effective, efficient and suitable to their own unique needs and special situations. There are options available to deal with the dwelling unit that needs a "little bit extra", or the family "a few dollars over" the former eligibility criteria. There is also a larger universe of households eligible for assistance.

The management decisions and choices made by each State will be critical to the level of success its program achieves and will affect the achievement of national program goals.

6. Reweatherizing

DOE amends § 440.18 to allow States to reweatherize dwelling units which were partially weatherized during the period September 30, 1975, through September 30, 1979 in accordance with section 403(2) of the Amending Act. When considering these dwelling units for reweatherization, the occupant must reapply for assistance under the program and be certified as eligible. A new energy audit will be needed to determine which materials should be installed, using present standards, taking into account the current condition of the dwelling unit. Dwelling units weatherized since September 30, 1979, are not eligible for reweatherization except under current provisions, one of which allows the low-cost/no-cost activities of § 440.20 for these dwellings. Homes reweatherized under this provision may not be reported to DOE as new completions, but will be accounted for separately.

7. Revisions to Appendix A

DOE has updated Appendix A, Standards for Weatherization Materials, to include standards for replacement furnaces and boilers which are being added to the list of weatherization materials. Additionally, DOE has added standards for heat-reflective materials which were inadvertently omitted from the January 27, 1984, final rule. Such materials include shade screens, rigid awnings, louver systems and industrial-grade white paint used as a heat-reflective measure. These heat-reflective measures should be considered only in areas of the country which experience extremely hot temperatures. The standards which appear in Appendix A for all mateials are current as of the publication of this notice.

8. Performance Fund

Section 404 of the Amending Act requires DOE to establish a performance fund beginning in fiscal year 1986 of not less than 5 and not more than 15 percent of the amount appropriate for each fiscal year. This amendment directly affects the amount of funding all States will receive both initially and as a result of determining factors that will be established by rulemaking later. DOE has decided to issue the performance fund amendment as a separate notice of proposed rulemaking. This proposal is expected to be issued in about 60 days.

III. Opportunity for Public Comment

Interested persons are invited to participate in this rulemaking by submitting data, views or arguments with respect to the matters set forth in this notice to: Conservation and Renewable Energy, Department of Energy, Office of Hearings and Dockets, Forrestal Building, Room 6B-025, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Comments should be identified on the outside of the envelope, and on the document themselves, with the designation: "Weatherization Assistance for Low-Income Persons, Interim Final Rule, Docket Number CAS-RM-80-508". Three copies should be submitted.

All comments received will be available for public inspection in the DOE Reading Room, Room 1E-090, Forrestal Building, 1000 Indepdendence Avenue, SW., Washington, D.C. 20585, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Any person submitting information which that person believes to be confidential, and which may be exempt by law from public disclosure, should submit one complete copy, as well as two copies from which the information claimed to be confidential has been deleted. DOE shall make a determination of any such claim. This procedure is set forth in 10 CFR 1004.11 (44 FR 1980, January 8, 1979).

DOE will hold one public hearing on this interim final rule. The hearing will be held in Washington, D.C., on the date and at the address stated in the **DATE** and **ADDRESS** section of the preamble.

Any person who has an interest in the proposed regulation or who is a representative of a group or class of persons which has an interest in it may make a written request for an opportunity to make an oral presentation. Such a request to speak at a hearing should be addressed to Hearings and Dockets, Conservation and Renewable Energy, Mail Stop 6B-025, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9319, and must be received by 4:30 p.m., local time, January 25, 1985, (for Washington, D.C.). A request may also be hand delivered between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Requests should be marked the same as for written comments, with the additional notation, "With Request to Speak".

The person making the request should describe briefly his or her interest in the proceeding and, if appropriate, state why that person is a proper representative of a group. The person should also give a concise summary of the proposed oral presentation, and should provide a phone number where the person may be reached. Each person selected to be heard at a public hearing will be notified. Those persons selected to be heard should bring three copies of their statement to the hearing. If a person cannot provide three copies, alternative arrangements can be made in advance of the hearing. This should be done in the letter requesting to speak.

DOE reserves the right to select persons to speak at the hearings, to schedule their presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation will be limited to twenty minutes, based on the number of persons requesting to speak.

A DOE official will preside at the hearing. This will not be a judicial or evidentiary-type hearing. Questions may be asked of speakers only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. Any decision made by DOE with respect to the subject matter of the hearings will be based on all of the information available to DOE.

Any participant who wishes to ask a question at the hearing may submit the question in writing to the presiding officer. The presiding officer will determine whether the question is relevant and material, and whether the time limitations permit it to be presented for an answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made, and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Office, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcript from the reporter.

If DOE must cancel the hearing, DOE will make every effort to publish an advance notice of such cancellation in the **Federal Register**. Notice of cancellation will also be given to all persons scheduled to speak at the hearing. Hearing dates may be cancelled in the event no public testimony has been scheduled in advance.

IV. Environmental, Regulatory Impact, Regulatory Flexibility, Paperwork Reduction Act, and Coordinating Agency Reviews

A. Environmental Review

Pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA), Pub. L. 91-190, 83 Stat. 852, 42 U.S.C. 4321 *et seq.*, DOE published a Notice of Availability of an Environmental Assessment (EA) (DOE/EA-0085) of the Grants Program for Weatherization Assistance for Low-Income Persons in the **Federal Register** on April 10, 1979 (44 FR 21323). At the same time, DOE published notice of its determination, based on the EA, that the proposed action would not constitute a major Federal action significantly affecting the quality of the human environment, and that therefore no Environmental Impact Statement (EIS) was required.

DOE has reviewed the environmental impacts of the program amendments issued today. It is DOE's judgment that the program amendment will result in no environmental impacts not previously analyzed in the EA on the program. Accordingly, DOE has determined that the environmental impacts of the program as modified by today's amendment have been adequately analyzed in the April 1979 EA, and that these impacts are not significant. Hence, no additional EA or EIS is required.

B. Review Under Executive Order 12291

Today's issuance was reviewed under Executive Order 12291, 46 FR 13193, February 27, 1981. DOE has concluded that the rule is not a "major rule" under the Executive Order, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, State, Federal or local government agencies, or geographic regions; or (3) 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. Pursuant to Section 3(c)(3) of Executive Order 12291, this rule was submitted to the Director of OMB for a ten-day review. The Director has concluded his review under the Executive Order.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164 (5 U.S.C. 601 *et seq.*), requires, in part, that an agency prepare a final regulatory flexibility analysis for any final rule, unless it determines that the rule will not have a "significant economic impact on a substantial number of small entities." In the event that such an analysis is not required for a particular rule, the agency must publish a certification and an explanation of that determination in the **Federal Register**. The changes proposed in this action primarily add flexibility to the existing program. The only additional regulatory requirements placed on small entities are placed on those nonprofit organizations which are subgrantees. Thus, these changes have only a minimal effect on only a few small entities. Accordingly, pursuant to section 605(b) of the Regulatory Flexibility Act, DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

Recently, the information collection requirements contained in this interim final rule were released by the Department as a part of the Program Management package of information collections, and were approved by the Office of Management and Budget (OMB) under Control Number 1910-1400.

E. Catalogue of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance number for the Weatherization Assistance Program is 81.042.

F. Consultation

In developing these final regulations, DOE has consulted with the Departments of Housing and Urban Development, Health and Human Services, and Agriculture, pursuant to section 413(b) of the Act.

List of Subjects in 10 CFR Part 440

Administrative practice and procedures, Aged, Energy conservation, Grant Programs—Energy, Grant Programs—Housing and Community Development, Handicapped, Housing standards, Indians, Reporting and recordkeeping requirements.

In consideration of the foregoing, DOE hereby amends Chapter II of Title 10, Code of Federal Regulations, as set forth below.

Issued in Washington, D.C., December 28, 1984.

Pat Collins,

Under Secretary.

PART 440—[AMENDED]

10 CFR Part 440 is proposed to be amended as shown.

1. The authority citation for Part 440 is revised to read as follows:

Authority: Title IV, Energy Conservation and Production Act, Pub. L. 94-385, 90 Stat. 1150, 42 U.S.C. 6861 *et. seq.*, as amended by Title IV of the Human Services Reauthorization Act, Pub. L. 98-558, —— Stat. ——, Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565, 42 U.S.C. 7101 *et seq.*

2. In § 440.3 the definition of "Low Income" is amended by adding paragraph (3) and the definition of "Weatherization Materials" is amended by revising paragraph (2), as follows:

§ 440.3 Definitions.

* * * * *

"Low Income" means that income in relation to family size which:

(1) Is at or below 125 percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget, except that the Secretary may establish a higher level if the Secretary, after consulting with the Secretary of Agriculture and the Secretary of Health and Human Services, determines that such a higher level is necessary to carry out the purposes of this part and is consistent with the eligibility criteria established for the weatherization program under section 222(a)(12) of the Economic Opportunity Act of 1964;

(2) Is the basis on which cash assistance payments have been paid during the preceding twelve month-period under Titles IV and XVI of the Social Security Act or applicable State or local law; or

(3) If a State elects, is the basis for eligibility for assistance under the Low Income Home Energy Assistance Act of 1981, provided that such basis is at least 125 percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget.

* * * * *

"Weatherization Materials" mean:

(1) * * *

(2) Furnace efficiency modifications, including, but not limited to—

(i) Replacement burners, furnaces, or boilers or any combination thereof;

(ii) Devices for minimizing energy loss through heating system, chimney, or venting devices; and

(iii) Electrical or mechanical furnace ignition systems which replace standing gas pilot lights.

* * * * *

§ 440.12 [Amended]

3. In § 440.12(b)(3), replace the reference to § 440.18(b) with § 440.18(d).

4. In § 440.14 paragraphs (b)(9) (viii), (ix) and (x) are revised and a new paragraph (xi) is added to read as follows:

§ 440.14 State Plans.

* * * * *

(b) * * *

(9) * * *

(viii) The average amount of the DOE funds specified in § 440.18(c)(1)–(11) to be applied to any dwelling unit;

(ix) The average amount of DOE funds to be applied to any dwelling unit for weatherization materials as specified in § 440.18(c)(1);

(x) Procedures for determining the most cost-effective measures in a dwelling unit or a statement that Project Retro-Tech will be used; and

(xi) The definition of "low income" in accordance with § 440.3 which the State has chosen for determining eligibility.

5. Section 440.18 is revised to read as follows:

§ 440.18 Allowable expenditures.

(a) An average of at least forty percent of the funds provided in a State under this part for weatherization materials, labor and related matters included in paragraphs (c)(1)–(9) of this section shall be spent for weatherization materials.

(b) The expenditure of financial assistance provided under this part for labor, weatherization materials and related matters included in paragraphs (c)(1)—(9) of this section shall not exceed an average of $1,600 per dwelling unit weatherized in the State.

(c) Allowable expenditures under this part include only:

(1) The cost of purchase and delivery of weatherization materials;

(2) Labor costs, in accordance with § 440.19;

(3) Transportation of weatherization materials, tools, equipment, and work crews to a storage site and to the site of weatherization work;

(4) Maintenance, operation, and insurance of vehicles used to transport weatherization materials;

(5) Maintenance of tools and equipment;

(6) Purchase or annual lease of tools, equipment, and vehicles, except that any purchase of vehicles shall be referred to DOE for prior approval in every instance;

(7) Employment of on-site supervisory personnel;

(8) Storage of weatherization materials, tools and equipment;

(9) The cost of incidental repairs if such repairs are necessary to make the installation of weatherization materials effective;

(10) The cost of liability insurance for weatherization projects for personal injury and for property damage;

(11) The cost of carrying out low-cost/no-cost weatherization activities in accordance with § 440.20; and

(12) Allowable administrative expenses under paragraph (d) of this section.

(d) Not more than 10 percent of any grant made to a State may be used by the grantee and subgrantees for administrative purposes in carrying out duties under this part, except that not more than 5 percent may be used by the State for such purposes.

(e) No grant funds awarded under this part shall be used for any of the following purposes:

(1) To weatherize a dwelling unit which is designated for acquisition or clearance by a Federal, State, or local program within twelve months from the date weatherization of the dwelling unit would be scheduled to be completed; or

(2) To install or otherwise provide weatherization materials for a dwelling unit weatherized previously with grant funds under paragraph (a)(1) of this section, except:

(i) As provided under § 440.20;

(ii) Unless such dwelling unit has been damaged by fire, flood or act of God and repair of the damage to weatherization materials is not paid for by insurance; or

(iii) That dwelling units partially weatherized under this part or under other Federal programs during the period September 30, 1975, through September 30, 1979, may receive further financial assistance for weatherization under this part.

§ 440.19 [Amended]

6. In § 440.19, replace the reference to § 440.18(a) (1)(ii)(F) with § 440.18(c)(2) in paragraph (a); and remove paragraph (b).

7. In § 440.20, paragraph (a) is revised to read as follows:

§ 440.20 Low-cost/no-cost weatherization activities.

(a) An eligible dwelling unit may be weatherized without regard to the limitations contained in § 440.18 (e)(2) or § 440.21(b) from funds designated by the grantee for carrying out low-cost/no-cost weatherization activities provided:

* * * * *

8. In § 440.21 paragraph (a) and (e) are revised to read as follows:

§ 440.21 Standards and techniques for weatherization.

(a) For those weatherization materials listed in § 440.3, only weatherization materials which meet or exceed standards prescribed in Appendix A to this part shall be purchased with funds provided under this part.

* * * * *

(e) The weatherization materials which shall be installed first are those which are determined to be the most cost effective using the formula in paragraph (b) of this section.

9. In § 440.22, paragraph (a) is revised to read as follows:

§ 440.22 Eligible dwelling units.

(a) A dwelling unit shall be eligible for weatherization assistance under this part if it is occupied by a family unit:

(1) Whose income is at or below 125 percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget;

(2) Which contains a member who has received cash assistance payments under Title IV or XVI of the Social Security Act or applicable State or local law during the twelve-month period preceding the determination of eligibility for weatherization assistance; or

(3) If the State elects, is eligible for assistance under the Low-Income Home Energy Assistance Act of 1981, provided that such basis is at least 125 percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget.

10. Appendix A to Part 440 is revised to read as follows:

Appendix A—Standards for Weatherization Materials

The following Government standards are produced by the Consumer Products Safety Commission and are published in Title 16, Code of Federal Regulations.

Thermal Insulating Materials for Building Elements Including Walls, Floors, Ceilings, Attics and Roofs Insulation—organic fiber—conformance to Interim Safety Standard 16 CFR Part 1209

Fire Safety Requirements for Thermal Insulating Materials According to Insulation Use—Attic Floor—insulation materials intended for exposed use in attic floors shall be capable of meeting the same flammability requirements given for cellulose insulation in 16 CFR Part 1209

Enclosed spaces—insulation materials intended for use within enclosed stud or joist spaces shall be capable of meeting the smoldering combustion requirements in 16 CFR Part 1209

The following standards which are not otherwise set forth in Part 440 are incorporated by reference and made a part of Part 440. The following standards have been approved for incorporation by reference by the Director of the Federal Register. These materials are incorporated as they exist on February 27 and a notice of any change in these materials will be published in the **Federal Register.** The standards incorporated by reference are available for inspection at the Office of the Federal Register Information Center, Room 8301, 1100 L Street, NW., Washington, D.C. 20408.

Materials incorporated by reference are also available from the following sources:

American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pa. 19103

FS-Federal Specifications, General Services Administration, Specifications Section, Room 6039, 7th and D Streets, SW., Washington, D.C. 20407

American National Standards Institute, Inc., 1430 Broadway, New York, N.Y. 10018

Architectural Aluminum Manufacturers Association, 35 East Wacker Drive, Chicago, Ill. 60601

National Woodwork Manufacturers Association, 205 West Touhy Ave., Park Ridge, Ill. 60068

Fir and Hemlock Door Association, Yeon Building, Portland, Oregon 97204

Steel Door Institute, 712 Lakewood Center North, 14600 Detroit Ave., Cleveland, Ohio 44107

Steel Window Institute, 1230 Keith Building, Cleveland, Ohio 44115

National Electrical Manufacturers Association, 2101 L St., NW., Washington, D.C. 20037

American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, N.Y. 10017

American Gas Association, 1515 Wilson Boulevard, Arlington, Va. 22209

National Fire Protection Association, Batterymarch Park, Quincy, Mass. 02269

Air-Conditioning and Refrigeration Institute, 1501 Wilson Blvd., Arlington, Va. 22209

Sheet Metal and Air Conditioning Contractor's Association, 8224 Old Courthouse Road, Vienna, Va. 22180

Environmental Protection Agency, 401 M Street, NW., Washington, D.C. 20460

American Society of Heating, Refrigeration and Air-Conditioning Engineers, Inc., 2029 K Street, NW., Washington, D.C. 20006

Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, Ill. 60062

Office of Weatherization Assistance Program, Conservation and Renewable Energy, Mail Stop 5G-023, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585

THERMAL INSULATING MATERIALS FOR BUILDING ELEMENTS INCLUDING WALLS, FLOORS, CEILINGS, ATTICS, AND ROOFS

	Standards
Insulation—mineral fiber:	
Blanket	Conformance to ASTM[1] C665-78.
Roof insulation	Conformance to ASTM C726-81.
Loose-fill	Conformance to ASTM C764-73 (1979).
Insulation—mineral cellular:	
Vermiculite loose-fill	Conformance to ASTM C516-80.
Perlite loose-fill	Conformance to ASTM C549-81.
Cellular glass block	Conformance to ASTM C552-79.
Perlite board	Conformance to ASTM C728-82.
Insulation—organic fiber:	
Cellulosic fiber board	Conformance to ASTM C208-82.
Cellulose loose-fill	Conformance to Interim Safety Standard 16 CFR[2] Part 1209.
Insulation—organic cellular:	
Performed block-type polystyrene.	Conformance to ASTM C578-83.
Rigid performance urethane board.	Conformance to ASTM C591-69.
Polyurethane or polyisocyanurate board faced with aluminum foil.	Conformance to F.S.[3] HH-I-1972/1.
Polyurethane or polyisocyanurate board faced with felts.	Conformance to F.S. HH-I-1972/2.
Insulation—composite boards:	
Mineral fiber and rigid cellular polyurethane composite board.	Conformance to ASTM C726-81.
Perlite and rigid cellular polyurethane composite board.	Conformance to ASTM C984-83.
Gypsum board and polyurethane or polyisocyanurate composite board.	Conformance to F.S. HH-I-1972/4.
Materials used as a patch to reduce infiltration through the building envelope.	Commercial availability.

[1] ASTM indicates American Society for Testing and Materials.
[2] CFR indicates Code of Federal Regulations.
[3] F.S. indicates Federal Specification.

Thermal Insulating Materials for Pipes, Ducts, and Equipment Such as Boilers and Furnaces

	Standards
Insulation—mineral fiber:	
Performed pipe	Conformance to ASTM[1] C547-77.
Blanket and felt (industrial type).	Conformance to ASTM C553-70 (1977).
Blanket insulation and blanket type pipe insulation (metal-mesh covered) (industrial type).	Conformance to ASTM C592-80.
Block and board	Conformance to ASTM C612-83.
Spray-applied fibrous for elevated temperature.	Conformance to ASTM C720-72 (1979).
High temperature fiber blanket.	Conformance to ASTM C892-78.
Duct work	Conformance to ASTM C971-82.
Insulation—mineral cellular:	
Diatomaceous earth block and pipe.	Conformance to ASTM C517-71 (1979).
Calcium silicate block and pipe.	Conformance to ASTM C533-80.
Cellular glass block and pipe.	Conformance to ASTM C552-79.
Expanded perlite block and pipe.	Conformance to ASTM C610-67 (1974).
Insulation—organic cellular:	
Performed flexible elastomeric cellular in sheet and tubular form.	Conformance to ASTM C534-82.
Rigid preformed cellular urethane.	Conformance to ASTM C591-69.
Insulation—skirting	Commercially available.

[1] ASTM indicates American Society for Testing and Materials.

Fire Safety Requirements for Thermal Insulating Materials According to Insulation Use

	Standards
Attic floor	Insulation materials intended for exposed use in attic floors shall be capable of meeting the same flammability requirements given for cellulose insulation in 16 CFR[1] Part 1209.
Enclosed spaces	Insulation materials intended for use within enclosed stud or joist spaces shall be capable of meeting the smoldering combustion requirements in 16 CFR Part 1209.
Exposed interior walls and ceilings.	Insulation materials, including those with combustible facings, which remain exposed and serve as wall or ceiling interior finish shall have a flame spread classification not to exceed 150 (per ASTM[2] E84.
Exterior envelope walls and roofs.	Exterior envelop walls and roofs containing thermal insulations shall meet applicable building code requirements for the complete wall or roof assembly.
Pipes, ducts, and equipment.	Insulation materials intended for use on pipes, ducts, and equipment shall be capable of meeting a flame spread classification not to exceed 150 (per ASTM E84).

[1] CFR indicates Code of Federal Regulations.
[2] ASTM indicates American Society for Testing and Materials.

Storm Windows

	Standards
Storm Windows:	
Aluminum Combination Unit.	Conformance to ANSI/AAMA[1] 1002.10-83.
Aluminum Frame	Conformance to Sections 1.2, 1.3, 1.4, and 1.6 of ANSI/AAMA 1002.10-83.
Wood Frame	Conformance to Section 3 of ANSI/NWMA[2] I.S. 2-80.
Rigid Vinyl Frame	Conformance to Sections 6.1 through 6.7; 6.12, and 6.13 of ASTM[3] D 4099-82.
Frameless Plastic Glazing	Required minimum thickness, 6 mil (0.006 inches).
Movable Insulation Systems for windows.	Commercial Availability.
Shade Screens:	
—Fiberglass	Commercially available.
—Polyester	Commercially available.
Rigid Awnings:	
—Wood	Commercially available.
—Metal	Commercially available.
Louver Systems:	
—Wood	Commercially available.
—Metal	Commercially available.

[1] ANSI/AAMA indicates American National Standards Institute/Architectural Aluminum Manufacturers Association.
[2] ANSI/NWMA indicates American National Standards Institute/National Woodwork Manufacturers Association.
[3] ASTM indicates American Society for Testing and Materials.

Storm Doors

	Standards
Storm Doors:	
Aluminum:	
—Frame	Conformance to ANSI/AAMA[1] 1102.7-1977.
—Sliding	Conformance to ANSI/AAMA 1002.10-83.
Wood:	
—Pine	Conformance to Section 3 of ANSI/NWMA[2] I.S. 5-83.
—Fir, Hemlock, Spruce	Conformance to Section 3 of FHDA[3] 7-79.
—Rigid Vinyl	Conformance to ASTM[4] D 3678-81.
Vestibule:	
Materials to construct vestibules.	Commercially available.

[1] ANSI/AAMA indicates American Standards Institute/Architectural Aluminum Manufacturers Association.
[2] ANSI/NWMA indicates American National Standards Institute/National Woodwork Manufacturers Association.
[3] FHDA indicates Fir and Hemlock Door Associations.
[4] ASTM indicates American Society for Testing Materials.

Replacement Windows

	Standards
Replacement Windows:	
Aluminum frame	Conformance to ANSI/AAMA[1] 302.9-1977.
Steel frame	Conformance to Steel Window Institute Recommended Specifications for steel windows 1983.
Wood frame	Conformance to ANSI/NWMA[2] I.S.2-80.
Rigid vinyl frame	Conformance to ASTM[3] D4099-82.

[1] ANSI/AAMA indicates American National Standards Institute/Architectural Aluminum Manufacturers Association.
[2] ANSI/NWMA indicates American National Standards Institute/National Woodwork Manufacturers Association.
[3] ASTM indicates American Society for Testing and Materials.

Replacement Doors

	Standards
Replacement Doors:	
Hinged Doors	
—Steel	Conformance to SDI[1] 100-83.
—Wood	
Flush	Conformance to exterior door provisions of ANSI/NWMA[2] 1-80 Series.
Pine	Conformance to ANSI/NWMA I.S. 5-83.
Fir, hemlock, spruce	Conformance to FHDA[3] 7-79.
Sliding Patio Doors:	
—Aluminum	Conformance to ANSI/AAMA[4] 402.9-1977.
—Wood	Conformance to ANSI/NWMA I.S. 3-70.

[1] SDI indicates Steel Door Institute.
[2] ANSI/NWMA indicates American National Standards Institute/National Woodworkers Manufacturers Association.
[3] FHDA indicates Fir and Hemlock Door Association.
[4] If multiple glazing is used, sealed insulating glass units are preferred and should conform to ASTM E 774-81, "Standard Specifications for Sealed Insulating Glass Units."

Caulks and Sealants

	Standards
Caulks and Sealants:	
Putty	Conformance to F.S.[1] TT-P-00791P.
Glazing Compound	Conformance to ASTM[2] C669-79. (1981).
Oil and Resin Base	Conformance to ASTM C570-72 (1978).
Acrylic (Solvent Type)	Conformance to F.S. TT-S-00230C.
Butyl Rubber	Conformance to F.S. TT-S-001657.
Chlorosulfonated Polyethylene.	Conformance to F.S. TT-S-00230C.
Latex Sealing Compounds	Conformance to ASTM C834-76 (1981).
Elastomeric Joint Sealants (normally considered to include polysulfide, polyurethane, and silicone).	Conformance to ASTM C920-79.
Performed Gasket and Sealing Materials.	Conformance to ASTM C509-79.

[1] F.S. indicates Federal Specification.
[2] ASTM indicates American Society for Testing and Materials.

Weatherstripping

	Standards
Weatherstripping	Commercial availability.

Vapor Barriers

	Standards
Vapor Barrier	Selected according to the provisions cited in ASTM[1] C755-78 (1979); permeance not greater than 1 perm when determined according to the desiccant method described in ASTM E96-80.
Items to improve Attic ventilation.	Commercially available.

[1] ASTM indicates American Society for Testing and Materials.

Clock Thermostats

	Standards
Clock Thermostats	Conformance to NEMA[1] DC 3-1978 or NEMA DC 15-1979 and performance test requirements.[2]

[1] NEMA indicates National Electrical Manufacturers Association.

[1] The performance tests requirements are: (1) the operating differential should not exceed 2°F, and (2) the effective operating droops should not exceed 4°F when determined according the applicable procedures in DC 3-1978 or DC 15-1979.

Heat Exchangers

	Standards
Heat Exchangers	ASME[1] Pressure Code provisions, as applicable to pressure levels. Standards of Tubular Exchanger Manufacturers Association (last edition with 1983 Addenda, TEMA).
With Gas Fired Appliances*	AGA[2] Requirement 70-1 for Gas Fueled Equipment. AGA Laboratories Certification Seal.

*The heat reclaimer is for installation in a section of the vent connector from appliances equipped with draft hoods or appliances equipped with powered burners or induced draft and not equipped with a draft hood.

[1] ASME indicates American Society of Mechanical Engineers.

[2] AGA indicates American Gas Association.

Hot Water Heat Pumps

	Standards
Heat Pump Water Heaters	Listed by Underwriters Laboratories (UL) Standard for Electric Water Heaters Under Development. Efficiency Certification per Gas Appliance Manufacturers Association (GAMA) or Air Conditioning and Refrigeration Institute (ARI).

Thermostat Control Systems

	Standards
Automatic Set Back Thermostats.	Listed by Underwriters Laboratories (U.L.). Conformance to NEMA DC 15-1979.
Line Voltage or Low Voltage Room Thermostats.	NEMA DC 3-1978.
Automatic Gas Ignition Systems.	Conformance to ANSI Z21.21. AGA Laboratories Certification Seal.
Energy Management Systems.	Listed by Underwriters Laboratories (U.L.). Commercial availability
Hydronic Boiler Control	Commercial availability
Microcomputer Burner Control.	Commercial availability

Water Heater Modifications

	Standards
Insulate Tank and Distributing Piping.	(See Insulation Standards)
Install Heat Traps on Inlet and Outlet Piping.	Applicable local plumbing code.
How Water Pipe Heater Strips.	Listed by Underwriters Laboratories (U.L.).
Reduce Thermostat Settings	State or Local Recommendations.
Install Stack, Damper, Gas Fueled.	ANSI Z21.67, including Addendas A and B.-1978. ANSI Z223.1-1980.
Install Stack, Damper, Oil Fueled.	UL-17 NFPA[1] 31-1983.
Water flow modifiers	Commercially available.

[1] NFPA indicates National Fire Protection Association.

Waste Heat Recovery Devices

	Standards
Desuperheater/Water Heaters.	Conformance to ARI[1] 470-80. Conformance to ARI 1060-80.
Condensing Heat Exchangers.	Commercially available components and in new heating furnace systems to manufacturers specifications.
Condensing Heat Exchangers (Commercial, Multi-Story Building Institutional).	Commercially available with teflon lined tubes to manufacturer specifications.
Energy Recovery Equipment	Energy recovery equipment and systems Air-to-Air (1978) Sheet Metal and Air Conditioning Contractor's National Association (SMACNA).

[1] ARI indicates Air-Conditioning and Refrigeration Institute.

Boiler Repair and Modifications/ Efficiency Improvements

	Standards
Installation of Gas Conversion Power Burners (for Gas or Oil Fired Systems).	In conformance with, or latest, ANSI Z21.8a, ANSI Z21.17 and Installation ANSI Z223.1-1980. AGA Laboratories Certification Seal.
Replacement Oil Burner	ANSI Z96.2-1980, (UL 296). ANSI Z91.2. NFPA 31-1983.
Power Burners (Oil/Gas)	Conformance to ANSI Z2231.1, National Fuel Gas Code; ANSI Z83.1 Gas Installations; NFPA 31 Oil Equipment.
Furnaces, Oil	Installation of oil burning equipment, NFPA 31-1976.
Furnaces, Gas	Gas fired central furnaces, ANSI Z21.47-1983.
Re-Adjustment Boiler Water Temperature or Installation of Automatic Boiler Temperature Reset Control.	ANSI/ASME CSD.1-1982, applicable section of ANSI Z223.1-1980 and NFPA 31-1983.
Boilers	Boiler and pressure vessel code (eleven sections) ASME 1980 or latest Testing and Ratings Hydronics Institute (HYDI).
Clean Heat Exchangers, Adjust Burner Air Shutter(s), Check Smoke No. on Oil Fueled Equipment. Check Operation of Pump(s) and Replace Filters.	Per manufacturer's instructions.
Combustion Chambers	Refractory linings may be required for conversions.
Heat Exchangers, Tubes	Protection from flame contact with conversion burners by refractory shield.
Thermostatic Radiator Valves	Commercially available. One pipe steam systems require steam air vents on each radiator, see manufacturer requirements.
Boiler Duty Cycle Control System.	Commercially available. National Electrical Code (NEC) and local electrical codes provisions for wiring.

Heating and Cooling System Repairs and Tune-Ups/Efficiency Improvements

	Standards
Duct Insulation	Conformance to FS HH-I-558B (See Insulation Sections).

Heating and Cooling System Repairs and Tune-Ups/Efficiency Improvements—Continued

	Standards
Reduced Input of Burner, Derating Gas Fueled.[1]	In Conformance with Local Utility Company Procedures if applicable for gas fueled furnaces and Appendix H of NFPA 54 ANSI Z223.1.
Oil-Fired	Conformance to NFPA 31-1983, Standard for the Installation of Oil Burning Equipment.
Replacement Combustion Chamber, in Oil-Fired Furnance, Boiler.	Conformance to NFPA 31-1983.
Clean Heat Exchanger and Adjust Burner: Adjust air shutter and check CO_2 and stack temperature—clean or replace air filter on forced air furnace.	See ANSI Z223.1, Appendix H.
Gas Fueled Heating Systems, Vent Dampers.	Conformance with applicable sections, National Fuel Gas Code including Appendices H, I, J and K. ANSI Z21.66-1977 and addenda A and B for Electrically Operated Dampers. ANSI Z21.68-1978 and Appendices A and B for Thermally Activated Vent Dampers. ANSI Z21.67-1978 and Appendices A and B for Mechanically Actuated Vent Dampers.
Oil Fueled Systems, Vent Dampers.	Conformance with applicable sections of NFPA 31-1983 for installation and in conformance with UL 17.
Reduce Excess Dilution Air: (a) Reduction of Vent Connector Size of Gas Fueled Appliances. (b) Adjustments of Barometric Draft Regulator for Oil Fuels.	See Part 9 of ANSI Z223.1-1980 and Appendix G and H. NFPA 31-1980 for Air Fueled and per manufacturers' (furnace or burner) instructions.
Replacement of constant burning pilot with electric ignition device on gas fueled furnaces or boilers.	ANSI Z21.71-1981.
Readjustment of Fan Switch on Forced Air Gas or Oil Fueled Furnaces.[2]	In conformance with applicable sections; ANSI Z223.1-1980. Appendix H for Gas Furnaces and NFPA 31-1983 for Oil Furnaces.
Burners—See power burners, gas oil:	
Duct Furnaces (Gas)	ANSI Z223.1-1980, National Fuel Gas Code.
Heat Pumps	Listed by Underwriters Laboratories (U.L.).
Air Diffusing Equipment	Commercially available.
Outlets, Inlets, Air Flow	Do.
Warm Air Heating Metal Ducts.	Do.
Air Ducts and Connectors	Factory made air ducts and connectors (1981), UL 181.
Industrial-grade white paint used as a heat-reflective moasure on awnings, window louvers, doors, and exterior duct work (exposed).	Commercially available.

[1] This may be prohibited by local jurisdiction—it may also void the manufacturers warranty. The National Fuel Gas Code does not specifically endorse this.

[2] Applies also to forced air systems category.

Replacement Furnaces and Boilers

	Standards
Chimneys, fireplaces, vents and solid fuel-burning apparatuses.	NFPA[1] 211 (1984).

REPLACEMENT FURNACES AND BOILERS—Continued

	Standards
Gas-fired furnaces	NFPA 54/ANSI Z223.1.
Liquid petroleum gas standard.	NFPA 58.

[1] NFPA indicates National Fire Protection Association.

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federal register

Friday
January 4, 1985

Part X

Environmental Protection Agency

40 CFR Part 80

Regulation of Fuels and Fuel Additives; Banking of Lead Rights; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL-2743-5]

Regulation of Fuels and Fuel Additives; Banking of Lead Rights

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Agency is today proposing to allow banking of lead usage rights in connection with its recent proposal to require reductions in the allowable lead content of gasoline. Under this mechanism, refiners who use less lead in gasoline in certain calendar quarters than is allowed under the regulations would be allowed to use additional lead in gasoline in certain future quarters in an amount equal to the lead previously not used. The Agency is proposing to take this action because it believes banking would provide an efficient method of achieving reduced total lead levels in gasoline while allowing the affected industry greater flexibility in meeting more stringent lead in gasoline standards expected to be promulgated in 1985. It is the Agency's intent to make the banking portion of this regulation effective beginning the first quarter of calendar year 1985 (i.e., January 1–March 31, 1985), and continuing until the end of 1985, regardless of the date on which the Agency takes final action to promulgate this banking mechanism. Withdrawal and usage of banked lead rights would allowed starting in the second quarter of 1985 and ending in the last quarter of 1987 (i.e., October 1, 1987–December 31, 1987).

DATES: A public hearing will be held on January 15, 1985 from 9:00 a.m. to 4:30 p.m. at the location listed below, in order to provide an opportunity for oral presentations of data, views, or arguments concerning the revisions to the gasoline lead content regulations proposed in this notice. Persons who wish to testify at this hearing should notify Richard Kozlowski in writing at the address listed below prior to January 11, 1985. If no requests to testify are received by that date, the hearing will not be held.

Written comments on the proposed regulations must be received at the location listed below by February 19, 1985.

ADDRESSES: The public hearing will be held at the Skyline Inn, South Capitol and I Streets, S.W., Washington, D.C. Written comments should be marked as relating to the "Banking Proposal" and sent to Docket No. EN–84–05, Central Docket Section (LE–131), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. The docket is located in the West Tower Lobby of EPA at the above street address, and may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying. This is the same docket as that of the August 2, 1984, notice of proposed rulemaking on revisions to the gasoline lead content regulations.

FOR FURTHER INFORMATION CONTACT: Richard G. Kozlowski, Director, Field Operations and Support Division (EN–397F), EPA, 401 M Street, S.W., Washington, D.C. 20460; telephone (202) 382–2633.

SUPPLEMENTARY INFORMATION:

I. Background

The EPA currently limits the amount of lead in gasoline to 1.10 grams of lead per leaded gallon (gplg). See 40 CFR section 80.20. On August 2, 1984, the Agency proposed to reduce the amount of lead in gasoline to 0.10 gplg, effective January 1, 1986. 49 FR 31032–50. It also indicated that it might adopt some alternative schedule which included lead reductions prior to 1986, such as standards of 0.50 gplg on July 1, 1985, 0.30 gplg on January 1, 1986, 0.20 gplg on January 1, 1987, and 0.10 gplg on January 1, 1988. 49 FR 31040. The Agency specifically requested comment on this and other phasedown schedules, and on the general question of how soon reductions could be made. A broad range of alternative schedules has been suggested in public comments, including combining the two schedules discussed in the NPRM. The Agency is considering these and other schedules including more rapid phasedown schedules prior to final rulemaking on the August 2, 1984 proposal (e.g., 0.50 gplg in July 1, 1985 and 0.10 gplg on January 1, 1986).

Under the current rule, inter-refinery averaging of lead usage is allowed. Under this mechanism, a refinery that uses more lead than is allowed under this regulation is permitted to average its lead usage with that of another refinery that has used less lead in that quarter. All averaging may involve only lead used in the same quarter. The August 2, 1984, notice of proposed rulemaking (NPRM) proposed elimination of the inter-refinery averaging mechanism starting on January 1, 1986, the proposed effective date of the 0.10 gplg standard, in order to assure an adequate amount of lead in each gallon of leaded gasoline to protect engine valves.

II. Statutory Authority

Section 211(c)(1) of the Clean Air Act, 42 U.S.C. 7545(c)(1), confers broad authority on the Administrator to "control or prohibit the manufacture * * * or sale" of any fuel or fuel additive whose emission products cause, or contribute to, "air pollution which may be reasonably anticipated to endanger the public health or welfare" or which "will impair to a significant degree the performance of any emission control device or system * * * in general use * * *." EPA's authority to control usage of lead as an additive in gasoline under section 211(c)(1)(A) to protect public health is well-established, and prior regulations significantly curtailing lead additive usage have been upheld in court. *Ethyl Corp.* v. *EPA*, 541 F.2d 1 (D.C. Cir. (en banc)), cert. denied, 426 U.S. 941 (1976); *Small Refiner Lead Phase-Down Task Force* v. EPA, 705 F.2d 506 (D.C. Cir. 1983).

Section 301(a)(1) of the Clean Air Act authorizes the Administrator to prescribe such regulations as are necessary to carry out the functions of the Act.

III. Proposed Action

EPA is today proposing a new mechanism for use in 1985, 1986, and 1987 that would provide additional flexibility for refiners and importers in meeting future more stringent lead standards. Although many refiners indicated that they could reduce lead usage below the current 1.10 gplg standard very quickly, other public comments made clear that various refineries have different capabilities to rapidly lower their lead usage. In addition, a number of commenters on the August 2, 1984, NPRM stressed the need for flexibility in the regulatory provisions, particularly in regard to the length of the averaging period.

The banking mechanism proposed today would allow a refiner to forego lead use in the near-term when its refinery has excess refining capacity and to use this amount of lead later when presumably its capacty would be further taxed by more stringent gasoline lead standards. This would allow substantially greater flexibility in refinery operations without affecting the total reductions in lead usage that would otherwise be required during the 1985–87 period.

This banking mechanism would allow a refiner or importer to bank lead usage rights during any calendar quarter during 1985 in an amount equal to the

difference between the number of grams of lead allowed to be used under the applicable standards and the number of grams of lead actually used in the calendar quarter (or the number of grams constructively used in the quarter, if the inter-refinery averaging provisions of § 80.20(d) are utilized during the quarter). EPA proposes that no lead usage rights be banked for actual lead usage during this period of less than 0.10 gplg, but requests comments on this issue.

Banked lead usage rights could be withdrawn and used during any calendar quarter beginning April 1985 through December 31, 1987. The Agency will also consider permitting withdrawal of banked lead usage rights beyond January 1, 1988, and welcomes comments on this issue. Such rights would be usable by the refiner at whose refinery they were banked, or they would be transferable to another refinery for its use. The Agency expects that "banked" lead usage rights would be freely transferred (i.e., bought and sold) in the same manner that inter-refinery averaging now takes place, and requests public comments on whether this is likely to occur. A refinery would be in compliance with the standard if its actual amount of lead used during a calendar quarter minus the amount of withdrawn lead usage rights applied during the quarter, divided by its leaded gasoline production during the quarter, did not exceed the applicable standard in that quarter.

The regulations would contain additional reporting requirements necessary to track and verify the banking and withdrawal of lead usage rights. They would also contain other provisions similar to those contained in the interrefinery averaging regulations, including a prohibition on the use of banked lead usage rights where this would result in a violation of a state gasoline lead content standard that is not pre-empted by section 211(c)(4) of the Clean Air Act. In addition, an agreement for the transfer of lead usage rights would have to be made by the end of the calendar quarter in which the rights are used. The regulations would permit banking or "saving" of unused lead for future quarters. They would not permit "borrowing" of lead to be paid back in future quarters. Thus all refineries must have "banked" lead averages in compliance with applicable regulations in each quarter.

As noted above, the Agency believes that the banking mechanism would provide additional flexibility to refiners and importers in meeting the gasoline lead content standards. Because the costs of reducing lead usage under a less stringent standard would be lower than the savings from increased lead usage under a more stringent standard, refiners and importers would be expected to realize considerable savings through use of the banking mechanism. The Agency estimates these savings would be in the range of $200 million per year. Because total allowable lead usage during the 1985–87 period should not be increased by this mechanism, it should not cause adverse environmental impacts.

Because of the limited period in which banking would be allowed, and the limited period in which banking would be of benefit to the industry, the Agency intends to take final action on this proposal as soon as possible after the close of the public comment period. Similarly the Agency intends to make the rule applicable to lead usage foregone in the first calendar quarter in 1985, regardless of when the rule is made final. In effect, EPA would "grandfather" voluntary reductions in lead usage by refiners in 1985 that are made prior to promulgation of the final rule.

IV. Alternatives Considered

The Agency considered as alternatives: (1) not allowing banking, or (2) allowing banking beginning at some later date. It concluded that this current proposal is preferable to both of these options. Not banking reduces the flexibility refiners have to meet standards with no perceptible improvement in the environment. Postponing the effective date would not allow refiners to take full advantage of their current refining capacity under the 1.10 gplg standard.

V. Additional Information

A. Executive Order 12291

Excutive Order (E.O.) 12291 requires the preparation of a regulatory impact analysis for major rules, defined by the Order as those likely to result in:

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

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

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

EPA has determined that this proposed regulation does not meet the definition of a major rule under E.O. 12291. The proposed rule is expected to have a beneficial effect on the economy, refiner costs, consumer prices, and competition. Therefor a preliminary regulatory impact analysis (RIA) is not required. This notice of proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review under E.O. 12291. Any comments from OMB and any EPA responses to such comments are available for public inspection at the Centeral Docket Section, at the address listed above.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C., 604(a), wherever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b). Since this rule merely allows refiners (both large and small) more flexibility to meet relevant standards it would have only a beneficial impact on small facilities. On this basis the Administrator certifies that this rule will not have a significant impact on a substantial number of small entities.

C. National Academy of Sciences Recommendations

Section 307(d)(3) of the Clean Air Act, 42 U.S.C. 7607(d) (3), requires that rulemaking proceedings under section 211 of the Act, 42 U.S.C. 7545, take into account any pertinent findings, comments, and recommendations by the National Academy of Sciences. The Academy has made no such pertinent findings, comments and recommendations concerning "banking."

D. Paperwork Reduction Act

The information collection requirements contained in the rule which this notice proposes to amend have been cleared previously by OMB under control number 2000–0041. See 48 FR 13430 (March 31, 1983). The changes to the information requirements proposed in this notice will increase slightly the reporting requirements, but they would apply only to refiners who voluntarily choose to use the banking mechanism. These will be submitted to OMB for review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. Comments on proposed changes to

the information collection requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 80

Fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

(Secs. 211 and 301(a) of the Clean Air Act, as amended [42 U.S.C. 7545 and 7601(a)])

Dated: January 2, 1985.

William D. Ruckelshaus,

Administrator.

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

For the reasons set forth in the preamble, § 80.20 of Title 40 of the Code of Federal Regulations is proposed to be amended by adding new paragraph (e) to read as follows:

§ 80.20 Controls applicable to gasoline refiners and importers.

* * * * * *

(e) *Banking and Withdrawal of Lead Usage Rights.*—(1) *Banking of Lead Usage Rights.* (i) During any calendar quarter beginning on or after Janaury 1, 1985, and ending prior to January 1, 1986, a refiner may bank lead usage rights in an amount equal to the amount of lead usage allowed at a refinery in the calendar quarter minus the amount of lead actually or constructively used in the same calendar quarter at the refinery, as determined under paragraphs (e)(1) (ii) and (iii) of this section.

(ii) The amount of lead usage rights that may be banked by a refiner at a refinery pursuant to paragraph (e)(1)(i) of this section shall be equal to the number of grams of lead determined by: (A) multiplying the number of gallons of leaded gasoline reported by the refinery for the calendar quarter pursuant to paragraph (a)(3)(v) or (c)(2)(v) of this section by the lead content standard applicable to the refinery during the calendar quarter pursuant to paragraph (a)(1)(i), (a)(1)(ii), (c)(1)(i), or (c)(1)(ii) of this section; and (B) subtracting from the result in (A) the total grams of lead reported pursuant to paragraph (a)(3)(vii) or (c)(2)(iv) of this section.

(iii) When compliance with the requirements of paragraph (a)(1)(i), (a)(1)(ii), (c)(1)(i) or (c)(1)(ii) of this section is demonstrated pursuant to the inter-refinery averaging provisions of subsection (d) of this section, the total grams of lead reported pursuant to paragraph (d)(2)(iii) of this section shall be used instead of the total grams of lead reported pursuant to paragraph (a)(3)(vii) or (c)(2)(iv) of this section, for purposes of paragraph (e)(1)(ii)(B) of this section.

(iv) The total grams of lead used for purposes of paragraph (e)(1)(ii)(B) of this section may not be less than the amount calculated by multiplying the number of gallons of leaded gasoline reported by the refinery for the calendar quarter pursuant to paragraph (a)(3)(v) or (c)(2)(v) of this section by 0.10 gram of lead per gallon of such gasoline.

(v) A refiner who banks lead usage rights pursuant to this sub-section shall submit to the Administrator, as an additional part of the report required by paragraph (a)(3) or (c)(3) of this section, the information described in paragraph (e)(1)(ii) and (e)(1)(iii) of this section.

(2) *Withdrawal of Lead Usage Rights.* (i) During any calendar quarter begining on or after April 1, 1985, and ending prior to January 1, 1988, a refiner may withdraw lead usage rights banked pursuant to paragraph (e)(1) of this section. Such rights may be used by the refiner to demonstrate compliance with the requirements of paragraph (a)(1)(ii) or (c)(1)(ii) of this section, or may be transferred by the refiner for such use by another refiner.

(ii) Compliance with the requirements of paragraph (a)(1)(ii) or (c)(1)(ii) through the withdrawal of lead usage rights shall be determined by: (A) subtracting the withdrawn lead usage rights from the total grams of lead reported pursuant to paragraph (a)(3)(vii) or (c)(2)(iv) of this section; and (B) dividing the result in (A) by the number of gallons of leaded gasoline reported pursuant to paragraph (a)(3)(v) or (c)(2)(v) of this section.

(iii) A refiner who uses withdrawn lead usage rights shall submit to the Administrator, as an additional part of the report required by paragraph (a)(3) or (c)(3) of this section, the following information:

(A) the amount of the withdrawn lead usage rights used in the calendar quarter;

(B) the banked average lead content of leaded gasoline produced in the calendar quarter, as determined pursuant to paragraph (e)(2)(ii) of this section;

(C) the calendar quarter in which the lead usage rights were banked;

(D) the refinery at which the lead usage rights were banked; and

(E) if the refinery identified in paragraph (e)(2)(iii)(D) of this section is owned or controlled by another refiner, supporting documentation adequate to show the agreement by such other refiner to the transfer of the banked lead usage rights.

(3) *Other requirements.*

(i) For purposes of paragraph (e) of this section, the total amount of imported leaded gasoline sold during a calendar quarter by each importer shall be treated as the output of a single refinery, and each importer shall be treated as a refiner.

(ii) The banked average lead content of leaded gasoline produced at a refinery during a calendar quarter, as determined pursuant to paragraph (e)(2)(ii) of this section, may not exceed any state gasoline lead content standard prescribed pursuant to section 211(c)(4)(B) or (C) of the Clean Air Act.

(iii) An agreement between two (or more) refiners to transfer withdrawn lead usage rights may be made no later than the final day of the calendar quarter in which the lead usage rights are used.

[FR Doc. 85-500 Filed 1-3-85; 12:20 pm]

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LIST OF PUBLIC LAWS

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The list will be resumed when bills are enacted into public law during the first session of the 99th Congress which convenes on January 3, 1985.