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Federal Register

Thursday
February 14, 1985

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Administrative Practice and Procedure
Employment and Training Administration
Human Development Services Office

Air Pollution Control
Environmental Protection Agency

Air Transportation
Panama Canal Commission

Alcohol and Alcoholic Beverages
Alcohol, Tobacco and Firearms Bureau

Animal Drugs
Food and Drug Administration

Aviation Safety
Federal Aviation Administration

Bridges
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Copyright
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Cultural Exchange Programs
United States Information Agency

Food Assistance Programs
Food and Nutrition Service

Government Employees
Personnel Management Office

Grant Programs
Interior Department

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

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Public Health Service

Marine Safety
Coast Guard

Military Law
Defense Department

Natural Gas
Federal Energy Regulatory Commission

Radio and Radio Broadcasting
Federal Communications Commission

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Presidential Documents

Title 3—

The President

Proclamation 5300 of February 11, 1985

National Big Brothers and Big Sisters Week, 1985

By the President of the United States of America

A Proclamation

No task is more important to the future of our society than raising the next generation. And few volunteer organizations have done more over the years to help our Nation perform that task successfully than the Big Brothers and Big Sisters of America. These are men and women who take time from their own responsibilities and families to offer a helping hand to young people in need. Big Brothers and Big Sisters offer youngsters support, counseling, and—most important of all—friendship.

The spirit of voluntarism exemplified by this organization is the foundation of our way of life. Americans have always been a compassionate and decent people, and they have never waited for directions from government before devoting their time and energy to helping their neighbors. The Big Brothers and Big Sisters of America are adding new luster to this old tradition.

The Congress, by House Joint Resolution 594, has designated the week of February 17 through February 23, 1985, as a time to recognize the contributions of volunteers who give their time to become Big Brothers and Big Sisters to youths in need of adult companionship and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the period from February 17 through February 23, 1985, as "National Big Brothers and Big Sisters Week." I call upon the people of the United States and local and national governmental officials to observe this day with appropriate ceremonies.

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

Ronald Reagan

[FR Doc. 85-3844
Filed 2-12-85; 12:06 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5301 of February 12, 1985

National DECA Week, 1985

By the President of the United States of America

A Proclamation

The value of the free enterprise system in America is confirmed when the products of our research, our industry, and our agriculture improve the quality of people's lives not only in America, but throughout the world. And the genius of American business has been to make the wealth of its factories and farms accessible to all.

For thirty-eight years, the Distributive Education Clubs of America have introduced high school and college students to the challenges, skills, and responsibilities of delivering the products of our free enterprise system to those who use them. Now numbering some 150,000 members in all 50 States, the District of Columbia, and Puerto Rico, the Distributive Education Clubs of America are helping to prepare a cadre of professionals with the spirit of enterprise, the civic responsibility, and the complex skills needed to assure that America's strength in marketing keeps pace with the vast expansion of technology and the increasingly sophisticated needs of people in all parts of the world.

To give special recognition to the valuable contribution the Distributive Education Clubs of America are making to maintaining our Nation's economic strength and to introducing young Americans to the opportunities and rewards of free enterprise, the Congress, by Senate Joint Resolution 36, has designated the week of February 10, 1985, through February 16, 1985, as "National DECA Week" and authorized and requested the President to issue a proclamation in observance of that week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning February 10 through February 16, 1985, as National DECA Week, and I call upon all government agencies, interested organizations, community groups, and the people of the United States to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of February, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 85-3972
Filed 2-13-85; 11:11 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12505 of February 12, 1985

Conversion of Appointments

By the authority vested in me as President by the laws of the United States of America, including Section 3301 and 3302 of Title 5, and Section 521 of Title 31 of the United States Code, it is hereby ordered as follows:

Section 1. No later than April 1, 1985, any employee of the Office of Management and Budget serving under an appointment under Schedule A in a position not limited to one year or less, concerned with implementation of the President's paperwork reduction and regulatory review and planning programs, may have his or her appointment converted to a career or career-conditional appointment if the Director of the Office of Management and Budget determines that:

(a) The employee has completed at least one year of full-time continuous service in a position concerned with the paperwork reduction and regulatory program;

(b) There is a continuing need for the position filled by the employee;

(c) The employee's past performance has been satisfactory and the employee possesses the qualifications necessary to continue in the position; and

(d) The employee meets the citizenship requirements and qualification standards appropriate for the position.

Sec. 2. If the Director determines not to convert an employee's appointment to career or career-conditional status under the preceding Section, the employee shall be separated not later than the date of expiration of the current appointment.

Sec. 3. Employees whose appointments are converted under this Order shall become career-conditional employees, or career employees if they have completed the service requirements for career tenure, and all converted employees shall acquire a competitive status.

Ronald Reagan

THE WHITE HOUSE,
February 12, 1985.

[FR Doc. 85-3973
Filed 2-13-85; 11:12 am]
Billing code 3195-01-M

Rules and Regulations

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 317

Appointment, Reassignment, Transfer and Reinstatement in the Senior Executive Service

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: These final regulations, published as proposed regulations on July 12, 1983, are issued to implement the right of Senior Executive Service (SES) career appointees to retain certain SES provisions while serving under a Presidential appointment made by and with the advice and consent of the Senate. This benefit was provided in the Civil Service Reform Act of 1978. Regulations are needed to insure uniformity in the implementation of the law.

EFFECTIVE DATE: March 18, 1985.

FOR FURTHER INFORMATION CONTACT: Loretta Terando, (202) 632–4695.

SUPPLEMENTARY INFORMATION: On July 12, 1983, the Office of Personnel Management published proposed regulations under 5 CFR Part 317, Subpart H, pursuant to Title IV of the Civil Service Reform Act of 1978 (CSRA). (48 FR 31862.) The comment period which was for 60 days from the date of publication, ended on September 12, 1983. The Office received a small number of written comments and phone inquiries.

Section 3392(c) of 5 U.S.C. provides that an SES member, serving in a career SES appointment, who is appointed in the executive branch by the President, with the advice and consent of the Senate, to a position at Executive Level V or higher may elect:

To continue to have the provisions of this title relating to basic pay, performance awards, awarding of ranks, severance pay, leave, and retirement apply as if the career appointee remained in the Senior Executive Service position from which he was appointed.

This right was provided under the CSRA to allow SES career employees to undertake positions of the highest responsibility in the government without relinquishing their career benefits.

Under the proposed regulations, SES career employees had the option of retaining all, some, or none of their SES benefits upon receiving a Presidential appointment. One agency commented that it did not believe it was Congressional intent under the CSRA to allow a "pick and choose" approach on which benefits to keep, but rather that the individual should be required to retain either all or none of the SES benefits. Although the law is not specific on this point, allowing an SES career employee to determine which benefits to retain based on his or her individual situation is in keeping with the general intent of the CSRA to encourage SES career employees to take Presidential appointments. Therefore, the final regulations still provide that the employee may determine which benefits he or she will retain.

The same agency also suggested that SES career employees given Presidential appointment at Executive Levels II and III should not be allowed to retain eligibility for SES rank awards because of the employees' higher pay rate, and that no Presidential appointee should be allowed to retain SES leave provisions. These suggestions would require a change in law, and therefore, have not been adopted.

The proposed regulations also stated that the choice of SES benefits could be changed at a later date after initial election, but no more than once during a twelve-month period. Two commenters contended that the proposed regulations were too strict on when a change could be made. One suggested that an individual who does not completely understand his or her options at the time of accepting a Presidential appointment should be permitted to correct the initial election of SES coverage at any time, even if a year has not elapsed. The other commenter suggested that a change should be permitted more frequently than once a year, such as any time a revision in Executive Level or SES pay rates occurs. 5 U.S.C. 3392(c) states that the election of benefits shall be made "at such time and in such manner as OPM may provide." We believe that the provision for a yearly change avoids indiscriminate changes and excessive administrative processing, while still allowing an individual to make a reasoned election in light of changing conditions. We have, however, in response to an agency comment, revised § 317.801(b) to cover a situation where a Presidential appointee does not serve for a full year.

We also had an inquiry concerning guaranteed reinstatement in the SES following termination of the Presidential appointment. Guaranteed reinstatement is covered in 5 CFR 317.703, and therefore is not addressed in these regulations.

It should be noted that if an SES career appointee under the Civil Service Retirement System (CSRS) accepts a Presidential appointment requiring Senate confirmation, and elects to retain SES retirement benefits under 5 U.S.C. 3392, the individual may remain under the CSRS. This is true even if the position to which appointed by the President is an Executive Schedule position listed in 5 U.S.C. 5312–5317 which would otherwise be subject to Social Security coverage under the Social Security Amendments of 1983 (Pub. L. 98–21).

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 this regulation will not have a significant economic impact on a substantial number of small entities because it will only affect government employees who are members of the Senior Executive Service.

List of Subjects in 5 CFR Part 317

Government employees.

Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, OPM is amending 5 CFR Part 317 by adding Subpart H, § 317.801, to read as follows:

PART 317—APPOINTMENT, REASSIGNMENT, TRANSFER AND REINSTATEMENT IN THE SENIOR EXECUTIVE SERVICE

Subpart H—Retention of SES Provisions: Presidential Appointee

Sec.

317.801 Retention of SES provisions.

Authority: 5 U.S.C. 3392 and 3397.

Subpart H—Retention of SES Provisions: Presidential Appointee

§ 317.801 Retention of SES provisions.

(a) *Coverage.* This subpart applies to a career appointee in the SES appointed by the President to a civilian position in the executive branch with the advice and consent of the Senate at a rate of basic pay which is equal to or greater than the rate payable for Executive Level V.

(b) *Retention of provisions.* At the time of appointment, an appointee covered by paragraph (a) of this section may elect to retain some, all, or none of the following SES provisions: basic pay, performance awards, awarding of ranks, severance pay, leave, and retirement. That election shall remain in effect for no less than one year, unless the appointee leaves the position sooner.

(c) *Change in election.* Except as provided by paragraph (b) of this section, a career appointee is permitted to make an election for purposes of adding or dropping coverage no more than once during any twelve-month period.

(5 U.S.C. 3392 and 3397)

[FR Doc. 85-3662 Filed 2-13-85; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 17012; Amdt. 39-4934]

Airworthiness Directives; Dornier GmbH, Models Do 27 and Do 28 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 77-14-17, Amendment 39-2966, applicable to Dornier GmbH, Models Do 27 and Do 28 airplanes by eliminating the repetitive inspections of the fuel and oil hoses on these airplanes if Technical Standard Order (TSO) hoses are installed. The FAA has determined that the unairworthy condition on which this AD is based exists only on foreign non-TSO hoses. This revision will relieve the operators of unnecessarily inspecting installed TSO or equivalent hose assemblies.

EFFECTIVE DATE: March 22, 1985.

Compliance: As prescribed in the body of the AD.

ADDRESSES: The Dornier Service Bulletin (S/B) No. 1059-0000 applicable to this AD may be obtained from Dornier GmbH, Sales and Service Department, 8 Munchen, 60, Post Office Box 325, West Germany, or from the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. H. Chimerine, Brussels Aircraft Certification Office, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 513.38.30; or Mr. H. Belderok, FAA, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to revise AD 77-14-17, Amendment 39-2966 applicable to Dornier GmbH Models Do 27 and Do 28 airplanes was published in the **Federal Register** on December 13, 1984 (49 FR 48566-568). The original AD required repetitive visual and dimensional 25-hour time-in-service (TIS) inspections of all Dornier fuel and oil hoses manufactured to specification LN9226. Subsequent to the issuance of AD 77-14-17, the FAA reexamined the available information related to the issuance of Dornier Service Bulletin (S/B) No. 1059-0000, Service Difficulty reports and operator information. Based upon the foregoing, the FAA determined that the condition addressed by S/B No. 1059-0000 is an unairworthy condition, limited to certain Dornier fuel and oil hoses manufactured to specification LN9226 produced as oif the first quarter of 1970. Therefore, the FAA proposed this revision to AD 77-14-17 which would permit discontinuance of the presently required 25 hour TIS repetitive inspections of the LN9226 hoses after two such sequential satisfactory inspections and immediate discontinuance of these inspections if Technical Standard Order (TSO)-C53a Type C hoses are installed. Also, the applicability statement of the proposed revision would be simplified by applying it to all airplane models of the Do27 and Do28 series. Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change.

There are approximately fourteen Do 27 and Do 28 airplanes affected by the AD. The cost savings to the private sector involved with the AD is estimated to be $34,367.50 per year for the Do 27, Do 28 airplane fleet.

The FAA has determined that this document involves an amendment that revises an existing rule so that it is consistent with current FAA information and policy on the subject. It will reduce or have an insignificant effect on the cost of compliance with the AD, impose no additional burden on any person and maintain or increase the existing level of safety in the product involved.

Further because the potential cost reduction made available by the proposal, and the limited number of affected airplanes are distributed among a small number of owners, few if any small entities are expected to experience a significant economic impact as the result of this proposal. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291, and (2) is not a "signficant 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 regulatory evaluation 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 caption **"ADDRESSES".**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly and pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13), AD 77-14-17, Amendment 39-2966, is revised and reissued in its entirety as follows:

Dornier GmbH: Applies to all Model Do 27 and Do 28 series (all serial numbers) airplanes certificated in any Category.

Compliance: Required as indicated, unless already accomplished.

To detect defective Dornier fuel and oil hoses manufactured to specification LN9226 and to prevent possible engine failure or sudden seizure of an engine, accomplish the following:

(a) Within the next 10 hours time-in-service (TIS) after the effective date of this Airworthiness Directive (AD), or within the next 25 hours TIS since the last inspection in

accordance with AD 77-14-17, whichever occurs first, and every 25 hours thereafter until attaining more than 50 hours TIS on each hose, visually inspect each of the Dornier fuel and oil hoses, manufactured to specification LN9226 in the first quarter of 1970 and thereafter, for defects in accordance with paragraph 1 of Dornier Service Bulletin No. 1059-0000, dated September 25, 1975, or an FAA equivalent method. If the specification of a particular hose or its date of manufacture is unknown, the inspections required by this paragraph must be accomplished for that hose.

(b) If a defective hose is found during any inspection required by paragraph (a) of this AD, before further flight, replace the defective hose with a serviceable Dornier or TSO-C53a, Type C hose.

(c) The repetitive inspections required on each individual fuel and oil hose by paragraph (a) are not required:

(1) On any installed serviceable TSO-C53a, Type C hose, or

(2) On any Dornier hose which is found serviceable after the second sequential 25 hour TIS inspection, or

(3) On any Dornier hose which has more than 50 hours TIS and remains serviceable in accordance with the inspection required by paragraph (a) of this AD.

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

(e) Equivalent means of compliance may be used, if approved by the Manager, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium.

(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); § 11.89 of the Federal Aviation Regulations (14 CFR 11.89))

This amendment becomes effective on March 22, 1985.

Issued in Kansas City, Missouri, on February 4, 1985.

Murray E. Smith,

Director, Central Region.

[FR Doc. 85-3730 Filed 2-13-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-ANE-28; Amdt. 39-5002]

Airworthiness Directives; Teledyne Continental Motors TSI0-520BE Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective an amendment adopting a new airworthiness directive (AD) which was previously made effective to all known U.S. owners and operators of certain Teledyne Continental Motors TSI0-520BE engines by individual letters. The AD requires visual inspection of the turbocharger oil scavenge reservoir within 5 hours time in service, and thereafter at intervals not to exceed 10 hours of time inservice. The AD is need to prevent the loss of engine oil which could result in the total loss of engine power.

DATES: March 4, 1985, to all persons except those persons to whom it was made immediately effective by Priority Letter AD No. 84-25-05 issued December 14, 1984.

Compliance Schedule—As prescribed in body of AD.

FOR FURTHER INFORMATION CONTACT: J.C. Robinette, Propulsion Branch, ACE-140A, Atlanta Aircraft Certification Office, Federal Aviation Administration, 1075 Inner Loop Road, College Park, Georgia 30337; telephone (404) 763-7435.

SUPPLEMENTARY INFORMATION: On December 14, 1984, Priority Letter AD No. 84-25-05 was issued and made effective immediately to all known U.S. owners and operators of certain Teledyne Continental Motors TSI0-520BE engines. The AD required visual inspection of the turbocharger oil scavenge reservoir for cracks, deformation, or oil leaks, at, or near, all weld beads, within 5 hours time in service and thereafter at intervals not to exceed 10 hours of time in service. AD action was necessary to prevent the loss of engine oil which could result in total loss of engine power, which could cause the loss of the aircraft.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual letters issued December 14, 1984, to all known U.S. owners and operators of certain Teledyne Continental TSI0-520BE engines. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective to all persons.

Conclusion:

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action 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/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT".**

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety.

Adoption of the Amendment

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

Teledyne Continental Motors: Applies to Teledyne Motor Model TSI0-520BE engines S/N's 528001 through 528125 and 528138 equipped with turbocharger oil scavenge reservoir P/N's 646691 and 646692.

Compliance is required as indicated unless already accomplished

To prevent the loss of engine oil, within the next 5 hours time in service, and thereafter at intervals not to exceed 10 hours time in service, until P/N 646954 and P/N 646955 are installed:

(a) Visually inspect the turbocharger oil scavenge reservoir P/N's 646691 and 646692 for any indication of cracks, deformation, or oil leaks at, or near, all weld beads. If any cracks, deformation, or oil leak is found, replace defective part with a serviceable reservoir.

(b) Serviceable P/N's 646691 and/or 646692 may be used while continuing to inspect the turbocharger oil scavenge reservoir every 10 hours time in service, until P/N 646954 and P/N 646955 are installed.

Note.—Piper Aircraft Telex Service Bulletin No. 790 refers to this subject.

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, Atlanta Aircraft Certification Office, 1075 Inner Loop Road, College Park, Georgia 30337; telephone (404) 763-7435.

This amendment become effective March 4, 1985, to all persons except those persons to whom it was made immediately effective by Priority Letter No. 84-25-05, issued December 14, 1984.

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

Issued in Burlington, Massachusetts, on February 5, 1985.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 85-3729 Filed 2-13-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 84-AAL-16]

Alteration of Colored Federal Airway A-1—Farewell Lake, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment moves Colored Federal Airway Amber 1 (A-1) approximately six miles northeast due to relocation of the Farewell, AK, Nondirectional Radio Beacon (NDB). The NDB will better serve the users at Farewell Lake, AK, where it is now located.

EFFECTIVE DATE: 0901 Gmt, April 11, 1985.

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

SUPPLEMENTARY INFORMATION:

History

On November 28, 1984, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the description of Colored Federal Airway A-1, to reflect the relocation of the Farewell, AK, NDB in the Farewell Lake, AK, area (49 FR 46746). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.105 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations amends the description of Colored Federal Airway A-1, located in the vicinity of Farewell Lake, AK, as proposed. The airway is relocated approximately six miles northeast.

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 Polices and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Colored Federal Airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.105 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

A-1—[Amended]

By removing the words "Farewell, AK, RBN;" and substituting the words "Farewell Lake, AK, NDB;"

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

Issued in Washington, D.C., on February 5, 1985.

John W. Baier,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-3722 Filed 2-13-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 71 and 73

[Airspace Docket No. 84-ANM-19]

Establishment of Restricted Area R-7001C, Guernsey, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes a new restricted area directly above existing Restricted Areas R-7001A and R-7001B from 23,500 feet MSL to 30,000 feet MSL. This would accommodate the high angle fire of various weapons and permit maximum firing capability of these weapons. Restricted Area R-7001C is expected to be used approximately 25 percent of the total time Restricted Area R-7001B is used.

EFFECTIVE DATE: 0901 G.m.t., April 11, 1985.

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

SUPPLEMENTARY INFORMATION:

History

On November 15, 1984, the FAA proposed to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to establish Restricted Area R-7001C, Guernsey, WY (49 FR 45168). R-7001C will also be added to the Continental Control Area. The Wyoming Army National Guard has requested an increase of airspace to 30,000 feet MSL to accommodate the high angle fire of M110 8" self-propelled artillery howitzers, with extended range modification. The maximum ordinate of the weapon is approximately 23,000 feet above ground level (AGL). The ceiling of existing Restricted Area R-7001B is 23,500 feet MSL. In order to achieve maximum firing capability of the weapon within existing Restricted Area R-7001B (ground elevation 5,000 feet MSL), and provide a 2,000 foot safety buffer zone, it will be necessary to restrict airspace to 30,000 feet MSL. The amendments also would correct § 71.151 by deleting R-7001 and adding R-7001B to the Continental Control Area. These actions were inadvertently omitted from a prior amendment (44 FR 34114). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, these amendments are the same as those proposed in the notice. Sections 71.151 and 73.70 of Parts of 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6 dated January 3, 1984.

The Rule

These amendments to Parts 71 and 73 of the Federal Aviation Regulations will establish R-7001C Guernsey, WY, and add it to the Continental Control Area. This action will enable the Wyoming Army National Guard to fire self-propelled artillery howitzers at high angles.

The FAA has determined that this regulation only involves an established body of technical regulations for which

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

List of Subjects in 14 CFR Parts 71 and 73

Continental control area and restricted areas, Aviation safety.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, § 71.151 and § 73.70 of Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) are amended, as follows:

§ 71.151

R-7001 Guernsey, WY—[Revoked]

R-7001B Guernsey, WY—[New]

R-7001C Guernsey, WY—[New]

§ 73.70

R-7001C Guernsey, WY—[New]

Boundaries. Beginning at lat. 42°27'30"N., long. 104°52'30"W.; to lat. 42°27'30"N., long. 104°42'30"W.; to lat. 42°22'30"N., long. 104°42'30"W.; to lat. 42°20'00"N., long. 104°52'30"W.; to the point of beginning.

Designated altitudes. 23,500 feet MSL to 30,000 feet MSL.

Time of designation. Intermittent, 24 hours in advance by NOTAM.

Controlling agency. FAA, Denver ARTCC.

Using agency. Adjutant General, State of Wyoming.

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

Issued in Washington, D.C., on January 30, 1985.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 85-3713 Filed 2-13-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-AWA-36]

Amendment to Prohibited Area P-40, Thurmont, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects the effective date of this amendment published in the **Federal Register** on December 20, 1984 (49 FR 49436).

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

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

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 84-33149 was published on December 20, 1984, which amended the description of P-40, Thurmont, MD. A mistake was made on the effective date and this action corrects that error.

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.

List of Subjects in 14 CFR Part 71

Prohibited areas.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document 84-33149, as published in the **Federal Register** on December 20, 1984 (49 FR 49436), is corrected after the Effective Date by removing the words "February 14, 1984" and substituting the words "**February 14, 1985**".

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

Issued in Washington, D.C., on February 4, 1985.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 85-3721 Filed 2-13-85; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1115

Reporting of Substantial Product Hazards; Extension of Opportunity for Public Comment

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of extension of opportunity for written comment.

SUMMARY: The Commission extends, by 30 days, the opportunity for written comment on its enforcement policy on substantial product hazard reports that was announced in the **Federal Register** on December 28, 1984 (49 FR 50373).

DATE: Written comments may be submitted until March 15, 1985.

ADDRESSES: Written comments should be submitted to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Sheldon Butts, Office of the Secretary, telephone (301) 492-6800.

SUPPLEMENTARY INFORMATION: On December 28, 1984, the Commission published in the **Federal Register** a notice of an opportunity for written comment from the public on the Commission's enforcement policy on substantial product hazard reports that are submitted under section 15(b) of the Consumer Product Safety Act, 15 U.S.C. 2064(b). That enforcement policy had been published on April 6, 1984 (49 FR 13820). The opportunity for written comment was provided in response to requests from several organization representing manufacturers of consumer products.

The Commission has received a letter dated January 22, 1985, from the Chamber of Commerce of the United States asking that the time for submitting written comment be extended by 30 days because additional time was needed to gather data and prepare comprehensive comments and to obtain approval of industry association comments by member companies. Aslo, the request stated that a number of interested parties were absent from their offices during the holiday period when the opportunity for comment was first announced.

After considering the Chamber of Commerce's request, the Commission extended the time during which written comments on its enforcement policy for substantial product hazard reports will be received by 30 days, to March 15, 1985.

Dated: February 8, 1985.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 85-3673 Filed 2-13-85; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change of Sponsor Name; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document that amended the animal drug regulations to reflect a sponsor name change for several new animal drug applications (NADA's) from Byk-Gulden, Inc., to Altana, Inc. The name of the sponsor "Altana Inc." was incorrectly listed as "Altana, Inc." This document is being issued to correct that error.

EFFECTIVE DATE: December 4, 1984.

FOR FURTHER INFORMATION CONTACT: John W. Borders, Center for Veterinary Medicine (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6243.

SUPPLEMENTARY INFORMATION: In FR Doc. 84-31584, appearing on page 47387 in the **Federal Register** of Tuesday, December 4, 1984, the following correction is made: On page 47387, in the third column under § 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications*, in paragraph (c) (1) and (2), the sponsor name "Altana, Inc." is corrected to read "Altana Inc."

Dated: February 8, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85-3658 Filed 2-13-85; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs not Subject to Certification; Oxytocin Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Anthony Products Co. providing for safe and effective use of oxytocin injection for treatment of horses, cattle, swine, sheep, dogs, and cats.

EFFECTIVE DATE: February 14, 1985.

FOR FURTHER INFORMATION CONTACT: Adriano R. Gabuten, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: Anthony Products Co., 5600 Peck Rd., Arcadia, CA 91006, filed NADA 130-136 providing for use of oxytocin injection (containing 20 U.S.P. oxytocin units per milliliter) in horses, cattle, swine, sheep, dogs, and cats as a uterine contractor, and in cattle and swine as a milk-releasing agent. The NADA is approved and the regulations are amended accordingly. The basis for approval is discussed in the freedom of information summary.

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

The Center for Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Center's finding of no significant impact and the evidence supporting this finding, contained in a statement of exemption (pursuant to 21 CFR 25.1(f)(1)(ii)(e)(3) and (f)(1)(iv)), may be seen in the Dockets Management Branch (address above).

List of Subjects in 21 CFR Part 522

Animal drugs, injectable.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Part 522 is amended in § 522.1680 by revising paragraph (b) to read as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 522.1680 Oxytocin injection.

* * * * *

(b) *Sponsors.* See Nos. 000010, 000381, 000693, 000856, 000864, 010271, 012481, 015562, 015579, and 032420 in § 510.600(c) of this chapter.

* * * * *

Effective date. February 14, 1985.

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

Dated: February 7, 1985.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 85-3661 Filed 2-13-85; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for use in Animal Feeds; Bambermycins

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by American Hoechst Corp. requesting waiver of the requirements of section 512(m) of the Federal Food, Drug, and Cosmetic Act (the act) to make certain finished turkey feeds from premixes containing 2 or 10 grams of bambermycins per pound.

EFFECTIVE DATE: February 14, 1985.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV-128), Food and Drug Adminstration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4317.

SUPPLEMENTARY INFORMATION: American Hoechst Corp., Animal Health Division, Route 202-206 North, Somerville, NJ 08876, submitted a supplement to its approved NADA 44-759 requesting waiver of the requirements of section 512(m) of the act (21 U.S.C. 360(b)(m)) for making finished turkey feeds containing bambermycins alone from premixes containing 2 or 10 grams of bambermycins per pound. Approval for use of the 2- or 10-gram-per-pound bambermycins premix in complete turkey feeds was published in the **Federal Register** of December 1, 1981 (46 FR 58300). A section 512(m) waiver for use of premixes containing 0.4, 2, and 10 grams of bambermycins per pound to make broiler and swine feeds is

currently codified in 21 CFR 558.95(d)(1). A section 512(m) waiver for use of feed supplements containing not more than 80 grams of bambermycins per ton in producing all approved feeds is currently codified in 21 CFR 558.95(d)(2). The supplement concerning the waiver for making turkey feeds containing bambermycins alone from premixes containing 2 or 10 grams of bambermycins per pound is approved, and the regulations are amended accordingly.

Bambermycins, as the sole drug, meets the uniform criteria set forth in the 1971 Center for Veterinary Medicine memorandum for administrative waiver of the requirements of section 512(m) of the act. The pertinent provisions of the memorandum indicate that the waiver is appropriate if:

1. The feeding of 1.5X to 2X level of the product in the finished feed does not have an impact on the tissue residue picture, i.e., an impact on an existing withdrawal period or tolerance.

2. The product is not a known carcinogen or is not classed with a family of known carcinogens.

3. Appropriate documentation covering animal safety is on file. This will not require additional data since this documentation is by definition a part of the NADA.

4. The margin of safety to the animal and the consumer is such that the product label does not have to contain a statement such as "Use as the sole source of * * *."

5. Data are on file to demonstrate that the product is efficacious over the approved range. These data should generally satisfy current standards for the demonstration of efficacy.

6. Except under special circumstances, the product has been used at least 3 years in the target species without significant complaints related to or associated with it. Applications of this criterion require a review of the available Drug Experience Reports.

The 1971 memorandum explains that waiver of the ministerial requirements of section 512(m) of the act is permitted only for specific efficacy claims or at specific levels of the drugs, and that distinct products with corresponding labeling for those claims or levels should exist. This is necessary to cover those premixes that can be made into finished feeds with various concentrations of drugs.

The foregoing criteria established in the 1971 memorandum constitute an interim agency policy. In waiving the ministerial requirements of section 512(m) of the act, the agency has not waived the current good manufacturing practice regulations under Part 225 (21 CFR Part 225) for feed mills mixing such feeds.

In the **Federal Register** of January 9, 1981 (46 FR 2456), the agency published a proposal to revise the current procedures and requirements concerning conditions of approval for the manufacture of animal feeds containing new animal drugs. In that proposal (46 FR 2463), the agency announced that it would no longer grant exceptions from the requirement of an approved medicated feed application because the interim policy would be terminated by publication of a regulation establishing a permanent policy. FDA believed at that time that a final rule on the proposed medicated feed regulations could be published within a short time. Because of the length of time that has transpired since publication of the proposal, the agency concluded that it would be unfair to continue denying waivers to those drug sponsors whose products meet the criteria set forth in the 1971 memorandum on the basis that the program is to be restructured in the future. Accordingly, as stated in the **Federal Register** of May 28, 1982 (47 FR 23446), the agency has withdrawn its policy, announced in the January 9, 1981, **Federal Register**, terminating the granting of section 512(m) exemptions (based on the 1971 memorandum) and has resumed the granting of exemptions on an interim basis.

Approval of this supplement is an administrative action that did not require new effectiveness or safety data in support of the waiver. Therefore, a freedom of information summary is not required for this action.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal feeds, Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), § 558.95 is amended by revising paragraph (d)(1) to read as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.95 Bambermycins.

* * * * *

(d) * * *

(1) Premixes containing 0.4, 2, or 10 grams of bambermycins per pound used to make broiler or swine feeds and conforming to paragraph (e)(1) or (2) of this section. Premixes containing 2 or 10 grams of bambermycins per pound used to make turkey feeds and conforming to paragraph (e)(3)(i) and (ii) of this section.

* * * * *

Effective date. February 14, 1985.

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

Dated: February 6, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85-3656 Filed 2-13-85; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs not Subject to Certification; Prednisone Sterile Suspension

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations that reflect approval of a new animal drug application (NADA) for prednisone sterile suspension held by Syntex Agribusiness, Inc. The drug is labeled for use in horses and dogs for the treatment of inflammatory conditions involving joints and accessory structures. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdawing approval of the NADA.

EFFECTIVE DATE: February 25, 1985.

FOR FURTHER INFORMATION CONTACT: David N. Scarr, Center for Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1846.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of NADA 92-233 for prednisone sterile suspension. This document removes those portions of the regulations that reflect approval of the NADA.

List of Subjects in 21 CFR Part 522

Animal drugs, injectable.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), Part 522 is amended in § 522.1890 by removing paragraph (a) and marking it "[Reserved]", and by revising paragraph (b)(3)(iii) to read as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 522.1890 Sterile prednisone suspension.

(a) [Reserved]

(b) * * *

(3) * * *

(iii) *Limitations.*[1] Do not use in viral infections. Except in emergency therapy, do not use in animals with tuberculosis, chronic nephritis, or Cushings's disease. With infections, use appropriate antibacterial therapy with and for at least 3 days after discontinuance of use and disappearance of all signs of infection. Clinical and experimental data have demonstrated that corticosteroids administered orally or parenterally to animals may induce the first stage of parturition when administered during the last trimester of pregnancy and may precipitate premature parturition followed by dystocia, fetal death, retained placenta, and metritis. Not for use in horses intended for food. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective Date: February 25, 1985.

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

Dated: February 4, 1985.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 85–3663 Filed 2–13–85; 8:45 am]

BILLING CODE 4160–01–M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Exchange-Visitor Programs

AGENCY: United States Information Agency.

ACTION: Final rule.

SUMMARY: 22 CFR 514.13(b)(1) and (c)(11) are modified to remove the requirement that exchange visitor sponsors be granted tax exempt status under the provision of 501(c)(3) of the Internal Revenue Code. The regulation will continue to require tax exempt status, however, not limited to that subsection. We have indications that these tax exempt organizations may desire to sponsor international exchange visitors for educational and cultural purposes and may be interested in establishing a program. This modification will allow their participation. Further 22 CFR 514.13 (c)(5) is modified to delete "(E/XE)" from the address of the Exchange-Visitor Program Designation Division and substitute "(GC/V)".

EFFECTIVE DATE: The rule is effective February 14, 1985.

FOR FURTHER INFORMATION CONTACT: Merry Lynn, Attorney Advisor, United States Information Agency, Office of the General Counsel, 301 4th Street, SW, Washington, D.C. 20547, (202) 485–7976.

SUPPLEMENTARY INFORMATION: It has come to our attention that there may be some non-profit, tax exempt organizations which would like to participate in international exchanges but do not qualify for designation as an exchange visitor sponsor under the present regulation requiring tax exempt status under the Internal Revenue Code 501(c)(3).

For example, a Chamber of Commerce or a community association may be non-profit and may be designated by the Internal Revenue Service for tax exempt status under the Internal Revenue Code Section 501(c). However, the subsection under which these organizations qualify for tax exempt status may be one other than subsection (3). We have indications that these tax exempt organizations may desire to sponsor international exchange visitors for educational and cultural purposes and may be interested in establishing a program. This modification will allow their participation.

The regulation is also modified to correct the address.

List of Subjects in 22 CFR Part 514

Exchange-Visitor Program, Cultural exchange programs, Reporting and recordkeeping requirements.

E.O. 12291 Federal Regulation

USIA has determined that this is not a major rule for the purposes of E.O. 12291, Federal Regulation, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

PART 514—[AMENDED]

§ 514.13 [Amended]

1. Section 514.13(b)(1) is revised to read as follows:

* * * * *

(b) * * *

(1) *Tax-exempt status of sponsor.* The Exchange-Visitor Program Sponsor shall maintain current tax-exempt status from the Internal Revenue Service pursuant to section 501 of the United States Internal Revenue Code as amended.

* * * * *

2. The last sentence of § 514.13(c)(5) is revised to read as follows:

* * * * *

(c) * * *

(5) * * * If payments are to be made by third parties (i.e., parents, schools, sponsors, government or international organization agencies, etc.) in lieu of payment by the employer, the Exchange-Visitor Program Designation Division (GC/V), United States Information Agency, Washington, D.C. 20547, must be notified in writing to enable the Agency to determine the suitability of such payments.

* * * * *

3. The last sentence of § 514.13(c)(11) is revised to read as follows:

* * * * *

(c) * * *

(11) * * * Organizations which have been granted tax-exempt status under the provisions of section 501 of the Internal Revenue Code shall also submit a copy of the Form 990 report most recently filed with the Internal Revenue Service.

(Sec. 101(a)(15)(J) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(J); Mutual Educational and Cultural Exchange Act of 1961, as amended, 22 U.S.C. 2451; Reorganization Act No. 2 of 1977; E.O. 12048 of March 27, 1948; and Delegation Order No. 83–5 FR 2490)

Dated: February 7, 1985.

Thomas E. Harvey,

General Counsel and Congressional Liaison, United States Information Agency.

[FR Doc. 85–3559 Filed 2–13–85; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-197 Re: Notice No. 533]

Mesilla Valley Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This final rule establishes a viticultural area located between Dona Ana County in southern New Mexico and the west Texas border at El Paso County, Texas, to be known as the "Mesilla Valley." The southern boundary of the viticultural area reaches the U.S./Mexico border. The Bureau of Alcohol, Tobacco and Firearms (ATF) believes the establishment of the "Mesilla Valley" as a viticultural area and subsequent use as an appellation of origin on wine labels and in wine advertisements will allow wineries to better designate their specific grapgrowing areas and where their wines come from, enabling consumers to better identify the wines they may purchase.

EFFECTIVE DATE: March 18, 1985.

FOR FURTHER INFORMATION CONTACT: Edward A. Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR, Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in Subpart C of Part 9.

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to estblish a grape-growing region as a viticultural area.

Petition

ATF was petitioned by Mr. George Newman, President of the Las Cruces Chapter of the New Mexico Wine and Vine Society located at Las Cruces, New Mexico. The "Mesilla Valley" viticultural area is located in New Mexico and Texas. New Mexico State University, College of Agriculture and Home Economics located at Las Cruces, New Mexico also participated in gathering evidence for this viticultural area.

The viticultural area extends from Dona Ana County in southern New Mexico to El Paso County in the far western tip of Texas. The viticultural area follows the Mesilla Valley along the Rio Grande River from an area just north of Las Cruces, New Mexico, to El Paso, Texas. It consists of 445 square miles of land (284,800 acres) running along the Rio Grande River on which there are 3 commercial bonded wineries and 21 private grape-growers. Evidence provided by the petitioner states that there are approximately 40 acres of grapes devoted to viticulture in the Mesilla Valley viticultural area. Local forcasters estimate that during the next two years grape acreage in the Mesilla Valley is expected to increase substantially.

In response to this petition ATF published a notice of proposed rulemaking, No. 533, in the **Federal Register** on July 11, 1984, (49 FR 28260) proposing the establishment of the "Mesilla Valley" viticultural area.

After careful analysis of the evidence, ATF agrees that the viticultural area is distinguished from the surrounding areas based on the following evidence submitted by the petitioner:

(1) *Historical and current evidence regarding the name and boundaries.* (a) The Mesilla Valley derived its name from the Spanish explorer Don Juan de Onate, who, in 1598, found an Indian village on the present day site of Mesilla, New Mexico (located within the boundaries of the proposed viticultural area). He named the village "Trenquel de la Mesilla." Mesilla means "little table" and that description refers to the plateau on which the town is situated. The entire valley area is now known as the "Mesilla Valley."

(b) According to evidence provided by the petitioner and acknowledged by ATF, grapes have been planted in the Mesilla Valley for over 100 years. The first vineyards were planted in Dona Ana, the oldest settlement in the valley. The first grapes grown were of the Mission variety from Mexico.

(c) The area known as Mesilla Valley was depicted on a nineteenth century map, based on the explorations of 1849-1852, by Captain R.B. Marcy of the 5th U.S. Infantry, under orders from the U.S. War Department. A photocopy of that map was submitted by the petitioner. The area of the Mesilla Valley is also depicted on United States Geological Survey maps.

(d) According to a magazine article submitted by the petitioner, that appeared in "New Mexico Magazine" in March of 1982, the fertile Mesilla Valley was once dotted with wineries, typically small and family run.

(e) According to topographical maps submitted, elevations within the viticultural area range from approximately 3,700 feet to 4,200 feet above sea level. Elevations in the mountains outside of the viticultural area reach up to 8,700 feet above sea level. To the east of the Mesilla Valley viticultural area is the Fort Bliss Military Reservation. Also to the east are the Organ, Dona Ana and Franklin Mountains. To the west lie the Portillo, Robledo and Sierra de Las Uvas Mountains and the Aden and Sleeping Lady Hills. Much of the eastern and western boundaries are found along the 4,150 and 4,200 foot elevation contour lines. The petitioner claimed and ATF agrees that these contour lines appropriately mark the transition from valley-foothills to dry land mesas where water availability is poor and soil types differ notably. To the north lies the town of Tonuco where the river valley narrows. To the south lies the New Mexico, U.S.A.-Mexico (Chihuahua) international border. The area to the south in Mexico consists of mountains and arid plains.

(f) While most of the irrigated land in the viticultural area is found at less than 4,000 feet above sea level in elevation, some areas within it reach 4,200 feet above sea level. The higher mesa areas and mountainous elevations of the Mesilla Valley above 4,200 feet have been excluded from being within the boundaries of the viticultural area since very few grapes are grown in these locations.

The irrigation water available from the Rio Grande River watershed surrounds most of the prime farmland that makes up the viticultural area. At the higher elevations of the viticultural area, water must be pumped from wells to irrigate the land.

(g) The grape growing revival in the Mesilla Valley was first observed in the 1960's and has progressed in recent years. More than 50 different grape varieties have been grown in the valley

over the years. Some of the grape varieties grown within the boundaries of the viticultural area include Colombard, Riesling, Cabernet Sauvignon, Ruby Cabernet, Zinfandel, Chenin Blanc and Barbera.

(h) The boundaries of the Mesilla Valley viticultural area can be found on 15 U.S.G.S. 7.5 minute series quadrangle maps (Anthony, N. Mex.-Tex., Bishop Cap, N. Mex., Black Mesa, N. Mex., Canutillo, Tex.-N. Mex., Dona Ana, N. Mex., La Mesa, N. Mex., La Union, N. Mex.-Tex., Las Cruces, N. Mex., Leasburg, N. Mex., Little Black Mountain, N. Mex., Picaho Mountain, N. Mex., San Miguel, N. Mex., Smeltertown, Tex.-N. Mex., Strauss, N. Mex.-Tex. and Tortugas Mountain, N. Mex.). The boundaries of the Mesilla Valley viticultural area are described in § 9.100(c). After carefully considering the boundaries and name of the viticultural area and supporting evidence submitted by the petitioner, ATF is adopting the Mesilla Valley viticultural area boundaries and name stated in the notice of proposed rulemaking and found in this final rule.

(2) *Evidence of the geographical characteristics which distinguish the Mesilla Valley viticultural area from the surrounding areas.* (a) *Soils.* The petitioner claimed and ATF agrees that the soils found within the Mesilla Valley differ from those found in the surrounding mountain, foothill and dry mesa land areas outside of the viticultural area. The soil associations within the viticultural area are predominantly derived from the Glendale-Harkey series. Soils from the Glendale-Harkey series are stratified, deep, well drained, nearly level soils that are formed in alluvium. The surface layer is loam or clay loam and the layers below are clay loam and very fine sandy loam. These soils are formed on flood plains and stream terraces.

Soils to the east and west of the viticultural area tend to be more steeply sloped and contain more sand and stone. At the higher mountainous elevations located outside of the viticultural area the soil is formed in residium from sandstone. It contains rock out-croppings and is generally shallower. It tends to be hilly to extremely steep and contains igneous rock land and limestone rock land associations.

(b) *Climate.* According to information provided by the petitioner, the Mesilla Valley tends to have minimum temperatures as much as 5–10° cooler than the surrounding mesa regions. Weather data recorded at New Mexico State University's National Weather Service Station at Las Cruces in the Mesilla Valley was compared with weather data gathered from the Hatch, Deming and Jornada Experimental Range (National Weather Service) Stations and from the White Sands Missile Range (U.S. Government military installation), all of which are located outside of the viticultural area. Temperature differences between the Mesilla Valley and the surrounding areas were evident. To the north of the viticultural area at the Hatch Station, temperature fluctuations between daily maximums and minimums were wider. There were fewer heating degree-days (4,317) in Hatch versus 4,553 degree-days at Las Cruces (New Mexico State University's National Weather Service Station) which is located in the viticultural area.

To the west of the Mesilla Valley, at the Deming Station, the elevation was about 4,330 feet above sea level. At this location there were slightly fewer degree-days (4,541 days) and the growing season was, on the average, one week shorter.

To the northeast, at the Jornada Experimental Range Station, daily minimum temperatures were lower than at State University (Las Cruces). At Jornada there was an average of 138 days per year when the temperature fell below 32 °F. and only 1 day in 10 years when the temperature fell below 0 °F.

To the east of the Mesilla Valley, at the headquarters of the White Sands Missile Range, which is located on the mesa above the valley floor, minimum temperatures averaged 5–10 °F. warmer throughout the year. This climatic data results in a longer growing season and more degree days within the viticultural area than is found in the surrounding areas.

(c) *Distinct Valley Area of the Rio Grande River watershed.* The petitioner provided evidence and ATF agrees that the Mesilla Valley is a historically recognized valley area that is part of the Rio Grande River watershed. The Mesilla Valley viticultural area consists of approximately 445 square miles of distinctly identified valley land that runs entirely along the Rio Grande River. Since irrigation water in the Mesilla Valley comes from the Rio Grande River watershed, most of the prime farmland is found along the river. Although the viticultural area has little annual rainfall, the Rio Grande River watershed and its dams, drains, canals, laterals, wells, irrigation ditches, and pipelines for drip irrigation serve to irrigate the surrounding fertile land areas of the Mesilla Valley.

Nineteenth century historical maps and current U.S.G.S. maps reviewed by ATF, depict the unique geographical valley area known as "Mesilla Valley." The southern border of the valley runs along the New Mexico, U.S.A.-Mexico border. The western border of the valley is marked by the Portillo, Robledo and Sierra de Las Uvas Mountains, the Aden Hills and the Sleeping Lady Hills. The northern border of the valley ends at Tonuco where the river valley narrows. To the east, the valley is flanked by the higher elevations of the Dona Ana, Organ and Franklin Mountains.

(d) *Drip Irrigation method.* Since water availability in the southwest United States is limited because of natural arid conditions, the drip irrigation method of watering grape vines is rapidly becoming more widely used in the Mesilla Valley. Drip irrigation is the frequent, slow application of water to soil through mechanical devices called emitters that are located at selected points along water-delivery lines. Drip irrigation is done by a system consisting of emitters, lateral lines, main lines and a "head" or control system. Drip irrigation can reduce operating costs, and this has been the main reason for adopting this new method in the Mesilla Valley. Drip systems can irrigate crops with significantly less water than is required by other more common irrigation methods. The irrigation of grape vines can be achieved by hosing or draping them over the irrigation ditches. At the higher elevations within the viticultural area, water must be pumped from wells through pipelines to irrigate the land. According to evidence provided by the petitioner and verified by ATF, annual rainfall is minimal in the Mesilla Valley and because of this fact drip irrigation will be used more often in this grape-growing area.

As a result of the combined evidence provided by the petitioner, ATF finds the "Mesilla Valley" viticultural area to be a delimited grape-growing region distinguishable by geographical features.

Discussion of Comments

In Notice No. 533, ATF invited comments from interested parties regarding the boundaries of the viticultural area. ATF was particularly interested in receiving comments on the inclusion of the land areas in Texas within the boundaries of the viticultural area since they are mostly urban areas and show no evidence of grape growing. ATF received no comments on the boundaries. However, ATF did receive one comment supporting the evidence in the notice of proposed rulemaking from Mr. William P. Stephens, Secretary of the Department of Agriculture for the

State of New Mexico. Mr. Stephens stated that approval of the Mesilla Valley as a viticultural area would encourage the continued expansion of the local wine industry. Mr. Stephens went on to say that the Mesilla Valley has favorable grape-growing conditions on irrigated acreages within the valley which have distinct soils and climatic conditions from the surrounding foothills and dry mesa lands. Mr. Stephens said that wines produced from grapes grown in this area will be unique and the use of the name Mesilla Valley in labeling and advertising will help the wine industry develop and aid the consumer to identify the wines they purchase. ATF agrees that the evidence provided by the petitioner and the statements made by the commenter, Mr. Stephens, justifies that the "Mesilla Valley" is entitled to be designated as an American viticultural area.

Miscellaneous

ATF does not wish to give the impression by approving the "Mesilla Valley" as a viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being distinct and not better than other areas. By approving this area, wine producers are allowed to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of "Mesilla Valley" wines.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. This final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities; or impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of entities.

Accordingly, it is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact nor compliance burdens on a substantial number of small entities.

Compliance With Executive Order 12291

It has been determined that this final rule is not classified as a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have 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.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is proposed.

Disclosure

A copy of the petition and the one comment received are available for inspection during normal business hours at the following location: ATF Reading Room, Room 4407, Office of Public Affairs and Disclosure, 12th and Pennsylvania Avenue NW, Washington, DC 20226.

Drafting Information

The principal author of this document is Edward A. Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative Practice and Procedure, Viticultural Areas, Consumer Protection, and Wine.

Authority

Accordingly, under the authority in 27 U.S.C. 205, the Director proposes the amendment of 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.100 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.100 Mesilla Valley.

Par. 2. Subpart C is amended by adding § 9.100 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.100 Mesilla Valley.

(a) *Name.* The name of the viticultural area described in this section is "Mesilla Valley."

(b) *Approved maps.* The appropriate maps for determining the boundaries of Mesilla Valley viticultural area are 15 U.S.G.S. quadrangle 7.5 minute series maps. They are entitled:

(1) "Anthony, N. Mex.-Tex.," 7.5 minute series, edition of 1955;

(2) "Bishop Cap, N. Mex.," 7.5 minute series, edition of 1955;

(3) "Black Mesa, N. Mex.," 7.5 minute series, edition of 1978;

(4) "Canutillo, Tex.-N. Mex.," 7.5 minute series, edition of 1955 (photorevised 1967);

(5) "Dona Ana, N. Mex.," 7.5 minute series, edition of 1978;

(6) "La Mesa, N. Mex.," 7.5 minute series, edition of 1955;

(7) "La Union, N. Mex.-Tex." 7.5 minute series, edition of 1955;

(8) "Las Cruces, N. Mex.," 7.5 minute series, edition of 1978;

(9) "Leasburg, N. Mex.," 7.5 minute series, edition of 1978;

(10) "Little Black Mountain, N. Mex.," 7.5 minute series, edition of 1978;

(11) "Picacho Mountain, N. Mex.," 7.5 minute series, edition of 1978;

(12) "San Miguel, N. Mex.," 7.5 minute series, edition of 1955;

(13) "Smeltertown, Tex.-N. Mex.," 7.5 minute series, edition of 1955 (photorevised 1967 and 1973);

(14) "Strauss, N. Mex.-Tex.," 7.5 minute series, edition of 1955; and

(15) "Tortugas Mountain, N. Mex.," 7.5 minute series, edition of 1955.

(c) *Boundaries.* The Mesilla Valley viticultural area is located within Dona Ana County, New Mexico, and El Paso County, Texas. The boundaries are as follows: The beginning point is at the Faulkner Canyon on the "Leasburg, N. Mex." U.S.G.S. map at the northwest corner of Section 15, Township 21 South (T21S), Range 1 West (R1W).

(1) From the beginning point, the boundary runs east 3.7 miles along the north section line until it converges with the 4,200 foot elevation contour line at Section 18, T21S/R1E;

(2) Then it runs southeasterly 31 miles along the 4,200 foot elevation contour line to a point approximately 3.5 miles

south of Bishop Cap where it intersects the Fort Bliss Military Reservation boundary at the northeast portion of Section 13, T25S/R3E on the "Bishop Cap, N. Mex." U.S.G.S. map;

(3) Then it follows the Fort Bliss Military Reservation boundary south for approximately 3.7 miles and east approximately .8 mile to the intersection with the 4,200 foot elevation contour line at the southeast portion of Section 6, T26S/R4E on the "Anthony, N. Mex.-Tex." U.S.G.S. map;

(4) Then it runs south along the 4,200 foot elevation contour line for approximately 20 miles until it intersects the La Mesa Road (Mesa Avenue) in the city limits of El Paso, Texas, on the "Smeltertown, Tex.-N. Mex." U.S.G.S. map;

(5) Then it heads south on the La Mesa Road (Mesa Avenue) for 1.2 miles until it meets Executive Center Boulevard that goes to La Guna/Smeltertown;

(6) Then it travels in a southwesterly direction for 1.1 miles on Executive Center Boulevard to La Guna/Smeltertown until it crosses the Southern Pacific Railroad tracks at Smeltertown, Texas;

(7) Then it proceeds back into New Mexico northwesterly along the Southern Pacific Railroad tracks approximately 12.5 miles to a point near the switch yards at Strauss, New Mexico, where it intersects the 4,100 foot elevation contour line at the center of Section 24, T28S/R2E on the "Strauss, N. Mex.-Tex." U.S.G.S. map;

(8) Then it follows the 4,100 foot elevation contour line in a northwesterly direction for 17 miles until it intersects with the south section line of Section 29, T25S/R2E, on the "Little Black Mountain, N. Mex." U.S.G.S. map;

(9) Then it runs westerly approximately .5 mile along the south section line until it meets the 4,150 foot elevation contour line at Section 29, T25S/R2E;

(10) Then it follows the 4,150 foot elevation contour line northward for 15 miles until it meets with Interstate Highway 70/80/180 at the southeast corner of Section 19, T23S/R1E, on the "Las Cruces, N. Mex." U.S.G.S. map;

(11) Then it runs southwest along Interstate Highway 70/80/180 for approximately .9 mile until it reaches the 4,200 foot elevation contour line at the northwest corner of Section 30, T23S/R1E, on the "Picacho Mt., N. Mex." U.S.G.S. map;

(12) Then it meanders in a northerly direction on the 4,200 foot elevation contour line for 15 miles until it reaches the section line at the southwest corner of Section 15, T21S/R1W on the "Leasburg, N. Mex." U.S.G.S. map;

(13) Then finally it goes north along the section line to Faulkner Canyon until it meets with the northwest corner of Section 15, T21S/R1W, which is the beginning point.

Signed: January 9, 1985.

Stephen E. Higgins,

Director.

Approved: January 31, 1985.

Edward T. Stevenson,

Deputy Assistant Secretary (Operations).

[FR Doc. 85-3777 Filed 2-13-85; 8:45 am]

BILLING CODE 4510-31-M

DEPARTMENT OF LABOR

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Employment and Training Administration

Office of Human Development Services

29 CFR Part 56

45 CFR Part 224

Work Incentive Program for AFDC Recipients Under Title IV of the Social Security Act

AGENCIES: Employment and Training Administration, Labor, and Office of Human Development Services, HHS.

ACTION: Final rules with comment period.

SUMMARY: The Secretary of Labor and the Secretary of Health and Human Services jointly are revising the regulations for the Work Incentive Program (WIN). (See 29 CFR Part 56 and 45 CFR Part 224). These rules implement changes made in the WIN Program by the Deficit Reduction Act of 1984 (DRA), Pub. L. 98-369. Other changes in the AFDC program made by the DRA have been published separately by the Social Security Administration in the Department of Health and Human Services (49 FR 35586, September 10, 1984).

EFFECTIVE DATE: The provisions of 29 CFR 56.20(b)(12) and 56.51(b)(1) and 45 CFR 224.20(b)(12) and 224.51(b)(1) are effective on October 1, 1984 as required by the statute. The provisions of 29 CFR 56.20(b)(13) and 45 CFR 224.20(b)(13) were effective on the date of enactment of the statute, July 18, 1984. Consideration will be given to comments received on or before April 15, 1985.

ADDRESSES: Mail or deliver comments to the Executive Director, Work Incentive Program, Patrick Henry Building Room 8028, 601 D Street, NW., Washington, D.C. 20213. Agencies and organizations are requested to submit comments in duplicate. Beginning February 28, 1985 these comments will be available for public review at the above address between the hours of 9 a.m. and 4 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: William Kacvinsky, (202) 376-6890.

SUPPLEMENTARY INFORMATION:

Background

The Work Incentive Program (WIN) was established by amendments to Title IV (Parts A and C) of the Social Security Act in 1967, Pub. L. 90-248. The purpose of the program is to: (1) Assist AFDC recipients in finding employment, (2) train them to work, and (3) assist them in participating in on the job training and public service employment thus restoring them and their families to economic independence and useful roles in their communities. All persons applying for AFDC must register for WIN unless specifically exempt by law.

WIN is administered jointly, at the Federal level, by the Employment and Training Administration of the Department of Labor and the Office of Human Development Services in this Department. At the State and local levels, the program is operated jointly by the State employment services agencies and the public welfare agencies. The State employment services agencies register AFDC applicants and recipients for the program; appraise their work skills, provide labor market information; and arrange for on the job training, remedial education, job development, employment assistance, and job placement. The public welfare agencies arrange for employment related social services, including child care, counseling, health care, and other social services.

Summary of 1984 Amendments

Sections 2631 and 2634 of the Deficit Reduction Act of 1984 (DRA) include provisions which affect WIN exemption criteria and sanction policy. Section 2631 provides a new exemption for pregnant women beginning with the sixth month of pregnancy. Section 2634 modifies the protective payment requirement in sanction cases. It permits a sanctioned caretaker relative to continue to receive the AFDC payment on behalf of the remaining members of

the assistance unit if a suitable protective payee cannot be located.

Section 2638 of DRA, which did not amend the WIN statute, also affects WIN participation requirements. Section 2638(a)(4) provides that any individual participating in a work supplementation program (WSP) under section 414 of the Social Security Act (the Act) shall be excused from work requirements under Part C (WIN) or Part A (AFDC) of Title IV of the Act.

Discussion of the Amendments

1. Exemption of Pregnant Women

a. *The Statute:* Section 402(A)(19)(A)(iv) of the Social Security Act.

Under prior law, there was no explicit exemption from WIN work requirements for pregnant women. However, States had the option of exempting pregnant women in the latter stages of pregnancy by determining that pregnancy constituted incapacity under section 402(a)(19)(A)(ii). Section 2631 of the DRA adds a specific new exemption for women beginning with the sixth month of pregnancy.

b. *The Rule:* 29 CFR 56.20(b)(12) and 45 CFR 224.20(b)(12).

The new exemption is provided for in a new subparagraph of the existing regulations. This change directly affects WIN registration and WIN work requirements. Since the work programs authorized under part A of Title IV of the Act are directly tied to the WIN exemption criteria, this provision also affects participation requirements in the Community Work Experience Program (under Part 238 of Title 45) and the Employment Search Program (under Part 240 of Title 45).

This new exemption does not affect the exemption of pregnant women prior to the sixth month of pregnancy when there is medical verification of incapacity which prevents employment or training.

2. Exception to Requirements for Protective Payments

a. *The Statute:* Section 402(a)(19)(F)(i) of the Social Security Act.

Under prior law, the Act required that when a caretaker relative refused to participate in WIN (or, by reference, in a Community Work Experience Program or Employment Search Program) or to accept employment without good cause, money for his/her needs was removed from the AFDC grant, and aid to the AFDC child or children in the family would be in the form of protective or vendor payments. Section 2634 of the DRA amends section 402(a)(19)(F)(i) to allow the grant for the remaining member(s) of the assistance unit to continue to be paid to a sanctioned caretaker when the State, after making reasonable efforts, is unable to locate an appropriate individual to serve as the protective payee.

b. *The Rule:* 29 CFR 56.51(b)(1) and 45 CFR 224.51(b)(1). The regulation provides that if the State makes reasonable efforts to locate a suitable payee and is not successful, the grant for the remaining member(s) of the assistance unit may be paid to the sanctioned caretaker relative.

3. Exemption of Participants in a Work Supplementation Program

a. *The Statute:* Section 414(h) of the Social Security Act.

Under prior law, there was no provision in Parts A or C of Title IV under which a State operating a Work Supplementation Program (WSP) could exempt an AFDC recipient from any work program requirement. Section 2638 of the DRA provides such as exception to that rule for individuals while they are employed under a WSP.

b. *The Rule:* 29 CFR 56.20(b)(13) and 45 CFR 224.20(b)(13).

Although this statutory change has been addressed by the Social Security Administration in revisions to the AFDC regulations (45 CFR 239.24), we are amending the WIN regulations in order to clarify the fact that individuals employed through a WSP receive the same exemption from WIN work requirements and work requirements under Title IV–A as do other categories of individuals specifically exempt under section 402(a)(19)(A) of the Act. This means that WSP participants would not have to register with WIN, or meet WIN, Community Work Experience or Employment Search program requirements. They would also be allowed to refuse other employment offers without fear of WIN sanctions.

Regulatory Flexibility Act

The Secretaries certify in accordance with section 603 of the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 603), that these final rules with comment period will not have a significant economic impact on a substantial number of small entities including small businesses, small organizational units and small governmental jurisdictions. Consequently, a regulatory flexibility analysis has not been prepared for this regulation. The primary impact of this regulation is on State governments and individuals, and not on small entities.

Exective Order 12291

The Secretaries have also determined in accordance with Executive Order 12291 that these final rules with comment period do not constitute a major rule requiring the preparation of a regulatory impact analysis. These rules are not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in cost prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, and innovation.

They implement statutory requirements that will reduce administrative burdens on States. Program costs are expected to be minor.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, all Departments are required to submit to the Office of Management and Budget for review and approval any reporting or recordkeeping requirement inherent in a proposed and final rule. These final rules will not contain information collection requirement or increase Federal paperwork burden on the public or private sector.

Justification for Dispensing With Prior Notice of Proposed Rulemaking and 30-Day Implementation Period

These rules implement section 2631, section 2634 and one provision of section 2638 of the DRA which was signed into law on July 18, 1984. The Congress expressly stated in section 2646 of the DRA that, unless otherwise provided, these amendments were to take effect on October 1, 1984. Section 2631 and 2634 are covered by this provision. However, section 2638 was effective upon enactment. Thus, it is not possible to issue a Notice of Proposed Rulemaking (NPRM) for implementing regulations and still meet the required effective date of the amendments. Furthermore, these additions are only conforming amendments which do not expand upon the statute but merely paraphrase the legislative amendments. Accordingly we find that good cause exists for dispensing with an NPRM. Nevertheless, we are soliciting public comment concerning the rules.

We will carefully consider all comments and publish in the **Federal Register** final rules which will include a summary of the comments, together with any revisions resulting from the comments or our reasons for not accepting suggested revisions.

We are dispending with the 30-day delay in effective date after publication. These additions to the rules conform to, and only paraphrase the legislative

amendments without expanding upon them, and the statute which these rules implement contain October 1 or earlier effective dates. These circumstances have been found by both agencies to constitute good cause for the rules to become effective on or before October 1, 1984.

List of Subjects in 45 CFR Part 224 and 29 CFR Part 56

Administrative practice and procedure, Grant programs/social programs, Reporting requirements, Work incentive programs (WIN), Aid to families with dependent children.

(Catalog of Federal domestic Assistance Program No. 13.646, "Work Incentive Program" (WIN"))

Dated: September 27, 1984.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

Approved: October 30, 1984.

Margaret M. Heckler,

Secretary of Health and Human Services.

Dated: December 10, 1984.

Frank C. Casillas,

Assistant Secretary of Labor for Employment and Training.

Approved: February 11, 1985.

Ford B. Ford,

Under Secretary, Department of Labor.

TITLE 29—[AMENDED]

For the reasons set out in the preamble, Part 56 of Title 29 of the Code of Federal Regulations is amended as set forth below:

PART 56—WORK INCENTIVE PROGRAMS FOR AFDC RECIPIENTS UNDER TITLE IV OF THE SOCIAL SECURITY ACT

Subpart C—Requirements and Procedures for Registration, for Appraisal and Certification

1. The authority citation for 29 CFR Part 56 reads as follows:

Authority: Secs. 402(a)(19), 430–444 and 1102 of the Social Security Act as amended, 49 Stat. 647 (42 U.S.C. 602(a)(19), 630–44 and 1302) unless otherwise noted.

2. In § 56.20, the introductory matter in paragraph (b) is revised and paragraphs (b)(12) and (13) are added, to read as follows:

§ 56.20 Registration requirements for AFDC applicants and recipients; State plan requirements.

* * * * *

(b) The Income Maintenance Unit (IMU) of the State or local welfare agency shall determine which AFDC applicants and recipients are exempt from registration and which are required to register as a condition of eligibility for AFDC benefits, based on the following criteria: Each AFDC applicant and recipient shall register unless he or she is:

* * * * *

(12) A pregnant woman when it is verified by the IMU, on the basis of medical evidence, that the child is expected to be born in the month that registration otherwise would be required or within the next 3 months.

(13) An individual employed under a Work Supplementation Program established under 45 CFR Part 239.

* * * * *

Subpart F—Deregistration and Sanctions

3. In § 56.51, paragraph (b)(1) is revised to read as follows:

§ 56.51 Sanctions.

* * * * *

(b) * * *

(1) If the individual is a caretaker relative receiving AFDC benefits, the State will not take into account his of her needs in determining the family's need for assistance. Payments for remaining members of the assistance unit will be in the form of protective or vendor payments except that, if after making all reasonable efforts, the State agency is unable to locate an appropriate individual to whom protective payments can be made, the State may continue to make payments on behalf of the remaining members of the assistance unit to the sanctioned caretaker relative.

* * * * *

TITLE 45—[AMENDED]

For the reasons set out in the preamble, Part 224 of Title 45 of the Code of Federal Regulations is amended as set forth below:

PART 224—WORK INCENTIVE PROGRAMS FOR AFDC RECIPIENTS UNDER TITLE IV OF THE SOCIAL SECURITY ACT

Subpart C—Requirements and Procedures for Registration, for Appraisal and Certification

4. The authority citation for 45 CFR Part 224 reads as follows:

Authority: Secs 402(a)(19), 430–444 and 1102 of the Social Security Act as amended, 49 Stat. 647 (42 U.S.C. 602(a)(19), 630–444, and 1302) unless otherwise noted.

5. In § 224.20 the introductory matter of paragraph (b) is revised and paragraphs (b)(12) and (13) are added, to read as follows:

§ 224.20 Registration requirements for AFDC applicants and recipients; State plan requirements.

* * * * *

(b) The Income Maintenance Unit (IMU) of the State or local welfare agency shall determine which AFDC applicants and recipients are exempt from registration and which are required to register as a condition of eligibility for AFDC benefits. Based on the following criteria: Each AFDC applicant and recipient shall register unless he or she is:

* * * * *

(12) A pregnant woman when it is verified by the IMU, on the basis of medical evidence, that the child is expected to be born in the month that registration otherwise would be required or within the next 3 months.

(13) An individual employed under a Work Supplementation Program established under Part 239 of this chapter.

Subpart F—Deregistration and Sanctions

3. In § 224.51, paragraph (b)(1) is revised to read as follows:

§ 224.51 Sanctions.

* * * * *

(b) * * *

(1) If the individual is a caretaker relative receiving AFDC benefits, the State will not take into account his or her needs in determining the family's need for assistance. Payments for remaining members of the assistance unit will be in the form of protective or vendor payments except that, if after making all reasonable efforts, the State agency is unable to locate an appropriate individual to whom protective payments can be made, the State may continue to make payments on behalf of the remaining members of the assistance unit to the sanctioned care taker relative.

* * * * *

[FR Doc. 85-3734 Filed 2-13-85; 8:45 am]

BILLING CODE 4130-01-M, 4510-30-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 152

[DoD Directive 5500.17]

Review of the Manual for Courts-Martial

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This rule implements the requirement established by the President that the Manual for Courts-Martial be reviewed annually. It also incorporates DoD Policy on public availability of proposed changes to the Manual for Courts-Martial.

EFFECTIVE DATE: January 23, 1985.

ADDRESS: Office of the Assistant General Counsel (Manpower & Health Affairs), Department of Defense, Room 3E999, The Pentagon, Washington, D.C. 20301.

FOR FURTHER INFORMATION CONTACT: Andrew S. Effron, phone: 202/695–1078.

SUPPLEMENTARY INFORMATION: The Manual for Courts-Martial, United States, 1984, contains the procedural rules for courts-martial, maximum information concerning the military justice system. When the President promulgated a complete revision of the Manual in Executive Order 12473, as amended by Executive Order No. 12484, he directed that the Manual be reviewed annually.

The rule that follows implements this requirement by assigning responsibility for preparation of the review to the Joint Service Committee on Military Justice. The study prepared by the Joint Service Committee will be submitted to the General Counsel of the Department of Defense and to the "Code Committee". The Code Committee consists of the Judges of the Court of Military Appeals, the Judges Advocates General of the Military Departments, the Chief Counsel of the Coast Guard, and two members of the public appointed by the Secretary of Defense. The Code Committee may submit recommendations to the General Counsel. The General Counsel is responsible for approval of the annual review and coordination of any proposed changes to the Manual.

The final rule also incorporates DoD policy on public comment on proposed revisions to the Manual for Courts-Martial, which was set forth in 47 FR 3401.

List of Subjects in 32 CFR Part 152

Military law, Courts.

Accordingly, 32 CFR is amended by adding a new Part 152 as follows:

PART 152—REVIEW OF THE MANUAL FOR COURTS-MARTIAL

Sec.

152.1 Purpose.
152.2 Applicability and scope.
152.3 Policy.
152.4 Procedures.
152.5 Responsibilities.
152.6 Information requirements.

Authority: E.O. 12473; 10 U.S.C. 836; 10 U.S.C. 867(g).

§ 152.1 Purpose.

This part implements the requirement established by the President that Manual for Courts-Martial, United States 1984, Executive Order 12473 reference be reviewed annually.

§ 152.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense, the Military Departments, and, by the agreement with the Secretary of Transportation, to the Coast Guard.

(b) This part is intended only to improve the internal management of the Federal Government; it is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

§ 152.3 Policy.

It is DoD policy to review annually the Manual for Courts-Martial, to ensure that the Manual fulfills its fundamental purpose as a comprehensive body of law governing military justice procedures and as a guide for lawyers and nonlawyers in the operation and application of such law.

§ 152.4 Procedures.

(a) *Annual Review.* (1) A draft of the annual review of the Manual for Courts-Martial required by the President under Executive Order 12473 shall be prepared by the Joint Service Committee on Military Justice. The Joint Service Committee consists of one representative of each of the following: the Judge Advocate General of the Army; the Judge Advocate General of the Navy; the Judge Advocate General of the Air Force; the Director, Judge Advocate Division, Headquarters, United States Marine Corps; and the Chief Counsel, United States Coast Guard. In addition, the Court of Military Appeals shall be invited to provide a staff member to serve in a nonvoting capacity with the committee.

(2) The Joint Service Committee on Military Justice shall review the Manual (including the Discussion and Appendices) in light of judicial and legislative developments in civilian practice to:

(i) Ensure that the Manual, the Discussion, and the Appendices apply the principles of law and rules of evidence generally recognized in the trial of criminal cases in the United States District Courts to the extent practicable and to the extent that such principles and rules are not contrary to or inconsistent with the UCMJ. See Article 36, UCMJ (10 U.S.C. 836 and 10 U.S.C. 867(g)). This includes the requirement that the Manual must be workable across the spectrum of circumstances in which courts-martial are conducted, including combat conditions.

(ii) Ensure that the Manual, the Discussion, and the Appendices reflect current military practice and judicial precedent.

(3) The Joint Service Committee shall send its draft review to the General Counsel not later than April 15, 1985, and February 1 of each year thereafter. A copy of the report shall be sent to the committee, established by Article 67(g), UCMJ (10 U.S.C. 836 and 10 U.S.C. 867(g)) which may submit comments on the draft review to the General Counsel.

(4) The draft review shall set forth any specific recommendations for changes in the Manual, the Discussion, or the Appendices. If no changes are recommended, the draft review shall so state. If changes are recommended by the Joint Service Committee, the public notice procedures of § 152.4c below, are applicable. If the Joint Service Committee determines that an aspect of civilian practice should be adopted, but recommends that the Manual should not be changed because the proposal would be contrary to or inconsistent with 10 U.S.C. 836 and 10 U.S.C. 867(g) the draft review should contain a legislative proposal. Minority reports, if any, shall be included.

(5) Proposed changes to the Manual for Courts-Martial and proposed legislative changes that are recommended in the draft review are subject to the coordination requirements of DoD Directive 5500.1.

(b) *Other Changes to the Manual for Courts-Martial.* (1) Normally, changes to the Manual for Courts-Martial will be proposed as part of the annual review set forth in § 152.4a above. However, when earlier implementation is required, proposed changes may be sent to the General Counsel for coordination under DoDD 5000.19.

(2) Proposed changes to the Manual for Courts-Martial under this section are subject to the public notice procedures of § 152.4c.

(c) *Public Notice.* (1) Notice that the Department of Defense intends to

recommend changes to the Manual for Courts-Martial shall be published in the Federal Register before submission of such changes to the President, unless the Secretary of Defense proposes that the President issue the change without such notice on the basis that notice and public procedure thereon is unnecessary or contrary to the sound administration of military justice.

(2) The Joint Service Committee on Military Justice shall coordinate with the Office of General Counsel as to the timing and content of such notice.

(3) The notice shall include a brief description of the matters contained in the proposed change, the time and place where a copy of the proposed change may be examined, and the procedure for obtaining a copy of the proposed change.

(4) A period of not less than 75 days after publication of notice shall be allowed for public comment, but a shorter period may be prescribed when it is determined that a 75-day period is unnecessary or contrary to the sound administration of military justice.

(5) Comments shall be submitted to the Joint Service Committee on Military Justice.

§ 152.5 Responsibilities.

(a) The General Counsel is responsible for the administration of this part including approval of the annual review of the Manual for Courts-Martial, coordination of any proposed changes to the Manual for Courts-Martial under DoD Directive 5500.1, approval of any proposed changes to the Discussion and Appendices accompanying the Manual for Courts-Martial, and transmittal to the Congress of rules approved by the President. See Article 36, UCMJ (10 U.S.C. 836 and 10 U.S.C. 867 (g)).

(b) The Judge Advocates General of the Military Departments; the Director, Judge Advocate Division, Headquarters, United States Marine Corps; and the Chief Counsel, United States Coast Guard are responsible for appointment of representatives to the Joint Service Committee on Military Justice.

§ 152.6 Information requirements.

The reporting requirement prescribed in § 152.4a is exempt from formal approval and licensing in accordance with subsection VII.C. of enclosure 3 to DoD Directive 5000.19.

Dated: February 8, 1985.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-2987 Filed 2-13-85; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD3 83-058]

Drawbridge Operation Regulations; Shrewsbury River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of Monmouth County, NJ, the Coast Guard is changing the regulations governing the Route 520 drawbridge over the Shrewsbury River between Rumson and Sea Bright. The bridge is being allowed to begin scheduled openings at 9 a.m. instead of 11 a.m. from May 15 through September 30. This change is being made because frequent openings for vessels between 9 a.m. and 11 a.m. are contributing to vehicular traffic congestion. This action will accommodate the needs of vehicular traffic and will still provide for the reasonable needs of navigation. The section heading is also being amended to accurately reflect the present name of the river.

EFFECTIVE DATE: These regulations become effective on April 1, 1985.

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

SUPPLEMENTARY INFORMATION: On October 22, 1984, the Coast Guard published proposed rules (49 FR 41264) concerning this amendment. The Commander, Third Coast Guard District also published the proposal as a Public Notice dated October 25, 1984. In each notice interested persons were given until December 6, 1984 to submit comments.

Drafting Information

The drafters of these regulations are Ernest J. Feemster, project manager, and Mary Ann Arisam, project attorney.

Discussion of Comments

Four responses were received on proposed regulations to allow scheduled (hourly and half hourly) openings to begin at 9 a.m. instead of 11 a.m. on weekends and holidays during the boating season. One response was from a federal agency and had no objection.

One respondent favored the proposed regulations and suggested that scheduled openings be extended throughout the week during the boating season (May 15–September 30). However, review of bridge opening logs (1978–83) indicates that weekday scheduled openings would only reduce openings about 8% of the time and only to a limited extent.

Another respondent was in favor of the regulations but stated that bridge openings are now being made on signal during existing scheduled opening periods and felt that no deviation from hourly and half hourly openings should be made. This person also stated that many needless openings are being made for vessels which refuse to lower outriggers and other non-structural appurtenances which are unessential to navigation. The Coast Guard advised this respondent that regulations allow the bridge owner to deviate from scheduled openings if vehicular traffic allows, and that opening logs show that the overwhelming majority of openings are logged on the hour and half hour during the respective period. We also advised the respondent that any documented report of a vessel's refusal to lower appurtenances unessential to navigation, will be investigated by the Coast Guard and may result in a civil penalty of up to $1000 for violation of this requirement.

The other respondent objected to the proposed regulations and, in the interest of navigational safety, requested openings be on signal or in accordance with present regulations. Since existing regulations provide for scheduled openings from 11 a.m. to 7 p.m. (in effect since 1965) and no undue navigational problems have been reported as a result these objections were deemed unsubstantiated and no further action was taken. No revisions to the proposed rule have been made in this final rule.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulations, and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. These regulations merely extend by two hours the period the bridge may open on the hour and half hour on weekends and holidays during the boating season. Most vessels using the waterway are recreational and these regulations will result in no undue, singular or culmulative impacts to such vessels. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended by removing reference to "South Branch" in the heading for § 117.755 and by revising § 117.755(b) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.755 Shrewsbury River.

* * * * *

(b) The draw of the Monmouth County highway bridge, mile 4.0 at Sea Bright, shall open on signal; except that, from May 15 through September 30 on Saturdays, Sundays, and holidays from 9 a.m. to 7 p.m., the draw need be opened only on the hour and half hour. The draw need not be opened at any time for a sailboat, unless it is under auxiliary power or is towed by a powered vessel. The owners of the bridge shall provide and keep in good legible condition two board gages painted white with black figures not less than eight inches high to indicate the clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

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

Dated: February 4, 1985.

P.A. Yost,

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

[FR Doc. 85-3774 Filed 2-13-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CGDA-85-01]

Regulated Navigation Area; Mile 200.0 to Mile 201.5, Upper Mississippi River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The United States Coast Guard (USCG) will establish a regulated navigation area between Mile 200.0, Upper Mississippi River, and Mile 201.5, Upper Mississippi River. This action is necessary to enhance the safety of navigation in the area of Lock and Dam No. 26, to protect the safety of structures in and along this area of the Upper Mississippi River, and to ensure the safety of construction personnel.

DATES: This regulation becomes effective February 15, 1985.

ADDRESS: Interested persons are invited to submit comments. Comments should be mailed to Commander, Second Coast Guard District (meps), Room 310, 1430 Olive Street, St. Louis, Missouri 63103. The comments and other documents referenced in this notice will be available for inspection and copying at the foregoing address during normal office hours which are between 7:45 a.m. to 4:15 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to the foregoing address.

FOR FURTHER INFORMATION CONTACT: Commander J.C. Card, USCG Marine Safety Office, 210 North Tucker Blvd., St. Louis, Missouri 63103, (314) 425-4657, or Commander R.E. Luchun, c/o Commander, Second Coast Guard District (meps), Room 310, 1430 Olive Street, St. Louis, Missouri 63103, (314) 425-4655.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation and the regulation is being made effective in less than 30 days from the date of publication. The following of normal rulemaking procedures would have been impractical in this case. Final interagency coordination on this request was not completed until 7 January 1985, and there is not sufficient time remaining to publish a proposal in advance of the time for which the regulated navigation is needed. Likewise, there is not sufficient time to provide for a delayed effective date. Failure to have a regulated navigation area in force by the time construction starts could produce an extremely hazardous condition for both construction crews and vessels. For this reason, it is not in the public interest to delay publication of this rule. Further, the regulation should have minimal economic impact and no adverse comments are expected concerning the terms of the regulation.

Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under **"ADDRESS"** in this preamble. Commenters should include their names and addresses, identify the docket number for the regulation, and give reasons for their comments. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed. Based upon comments received, the regulation may be changed.

Drafting Information

The drafters of this notice are Commander R.E. Luchun, USCG, project officer, c/o Commander, Second Coast Guard District (meps), and Mr. Clifton M. Hasegawa, project attorney, c/o Commander, Second Coast Guard District (dl), Room 310, 1430 Olive Street, St. Louis, Missouri 63103.

Discussion of Regulation

The U.S. Army Corps of Engineers, St. Louis District, expects to begin construction of the cofferdam cells for the Illinois side of the new lock cofferdam No. 26 on or about February 15, 1985. Construction is expected to take 42 months. The regulated navigation area extends from Mile 200.0 to Mile 201.5 of the Upper Mississippi River. Within the regulated navigation area, vessels are required to use the buoyed channel paralleling the Illinois shoreline from Mile 200.0 to Mile 201.5 of the Upper Mississippi River. The navigational restrictions imposed on vessels transiting the regulated navigation area are designed to minimize the risk to navigation, to protect the integrity of the cofferdam and other structures in and along the area, and to ensure the safety of construction personnel. Within the regulated navigation area, vessel traffic will be permitted to transit in only one direction at a time. Meeting, crossing, or passing situations will not be permitted within the regulated navigation area unless specifically authorized by the USCG Captain of the Port, St. Louis, Missouri. No vessel will be permitted to anchor, stop, remain or drift without power while in the regulated navigation area. Vessels transiting the area must proceed at a safe speed producing a minimum wake along fixed structures or the shoreline. Meetings were conducted by the Captain of the Port, St. Louis, Missouri, with members of the River Industry Action Committee (RIAC) and representatives of the U.S. Army Corps of Engineers, St. Louis District in November and December 1984. The comments from those meetings support the establishment of this regulation. Comments received by the U.S. Army Corps of Engineers from the general boating public were also considered in establishing this regulation. The final rule imposes only minimal operating constraints on vessels transiting through the regulated area. This requirement is designed to avoid delays (and costs associated therewith) to vessel traffic transiting the regulated area and locking

through Lock and Dam No. 26 while still providing for the safety of life and property. Any inconvenience resulting from slight delays is justified by the need for safety in the regulated area. Moreover, protecting against damage to the cofferdam and the resulting immeasurabe delay in completing the new lock and dam far outweighs the temporary inconveniences associated with the project.

Economic Assessment and Certification

This final rule is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule is expected to be so minimal that a full regulatory evaluation is unnecessary. This rule imposes minimal operating constraints on vessels and affects only 1½ miles of the Mississippi River. The restrictions will cause only slight delay to transiting vessels and should result in no measurable cost impact to individual shippers. Since the impact of this final rule is expected to be minimal, the Coast Guard certifies that, it will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the reporting or recordkeeping provisions that are included in this regulation have been submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained and the public notified to that effect through a technical amendment to this regulation.

List of Subjects in 33 CFR Part 165

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

Final Regulation

PART 165—[AMENDED]

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended by adding § 165.201 to read as follows:

§ 165.201 Upper Mississippi River, Mile 200.0 to Mile 201.5 regulated navigation area.

(a) The following is a regulated navigation area: The waters of the Upper Mississippi River between Mile 200.0 and Mile 201.5.

(b) Transit of the regulated navigation area may be made only under the following conditions:

(1) All vessels will be required to use the buoyed channel established by the U.S. Army Corps of Engineers.

(2) Meeting, crossing, or passing situations between vessels in the regulated navigation area will not be permitted.

(3) All vessels transiting the regulated navigation area will do so at a minimum safe speed so as to prevent wake damage.

(4) No vessel shall anchor, stop, remain or drift without power at any time in the regulated navigation area.

(5) Emergencies. In an emergency, any person may deviate from any regulation in this paragraph to the extent necessary to avoid endangering persons, property, or the environment. The master of the vessel shall contact the Captain of the Port at the earliest opportunity relating the nature of the emergency and actions taken.

(6) Waiver. The Captain of the Port, may upon request, waive any regulation in this paragraph if it is found that the proposed operations can be done safely. A written application for waiver must be submitted not less than 24 hours before the intended operation, and must state the need for the waiver and describe the proposal.

(7) Compliance with this paragraph is not required to the extent necessary to carry out the following operations:

(i) Law Enforcement;

(ii) The servicing of aids to navigation or surveying, maintenance or improvement of waters in the regulated area.

(33 U.S.C. 1223 and 1231; 49 CFR 1.46; and 33 CFR 1.05–1(g)(4))

Dated: January 16, 1985.

B.F. Hollingsworth,

Rear Admiral, U.S. Coast Guard Commander, Second Coast Guard District.

[FR Doc. 85–3776 Filed 2–13–85; 8:45 am]

BILLING CODE 4910–14–M

PANAMA CANAL COMMISSION

35 CFR Parts 51 and 201

Air Navigation; Judiciary

AGENCY: Panama Canal Commission.

ACTION: Final rule.

SUMMARY: Title 35 CFR is amended by removing Parts 51 and 201. Part 51 of this title was issued to prescribe air navigation regulations for an area known as the "Canal Zone Military Airspace Restricted Area". Part 201 established regulations for the Canal Zone judiciary. In accordance with the Panama Canal Treaty of 1977 and its related agreements, the transfer of these functions to the Republic of Panama has been completed, thus making Parts 51 and 201 of Title 35 obsolete and requiring this removal.

EFFECTIVE DATE: February 14, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rhode, Jr., Secretary, Panama Canal Commission, (202) 724–0104, or Mr. John L. Haines, Jr., General Counsel, Panama Canal Commission, telephone in Balboa Heights, Republic of Panama, 52–7511.

SUPPLEMENTARY INFORMATION: The removal of Parts 51 and 201 is necessary to eliminate regulations dealing with functions which, as a result of the Panama Canal Treaty of 1977 between the United States and the Republic of Panama and the legislation implementing the terms of that international accord, are no longer the responsibility of the Panama Canal Commission.

In regard to the Air Navigation regulations, as pertains to this agency, the Commander-in-Chief, United States Southern Command, concurs in the deletion of Part 51.

Pursuant to Article XI of the Panama Canal Treaty, which provided for a 30-month transition period after the treaty went into effect on October 1, 1979, and section 2101 of the Panama Canal Act of 1979, Pub. L. 96–70, 93 Stat. 493 (22 U.S.C. 3831), the courts of the United States continued to function in the former Canal Zone. On March 31, 1982, the judicial system in the Canal Zone ceased functioning; consequently it is no longer considered necessary to have regulations covering court personnel.

The authority to issue regulations concerning air navigation and the judiciary having been superseded by virtue of the treaty, the Commission is now taking administrative action to remove Parts 51 and 201 from Title 35 CFR.

Finally, the Commission has determined that this rule does not constitute a major rule within the meaning of Executive Order 12291 dated February 17, 1981 (47 FR 13193). The bases for that determination are, first that the rule, when implemented, would not have an annual effect on the economy of $100 million or more per year. Secondly, the rule would not result in a major increase in costs or prices for consumers, individual industries or local governmental agencies or geographic regions. Finally, the agency has determined that implementation of the

rule would not have a significant adverse effect on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Further, the Commission has determined that this rule is not subject to the requirements of section 603 and 604 of Title 5, United States Code, in that its promulgation will not have a significant impact on a substantial number of small entities, and the Administrator of the Commission so certifies pursuant to 5 U.S.C. 605(b).

List of Subjects in 35 CFR Parts 51 and 201

Air transportation, Air navigation, Judiciary.

PARTS 51 AND 201—[REMOVED]

Accordingly, 35 CFR Parts 51 and 201 are hereby removed.

Dated: January 2, 1985.

D.P. McAuliffe,

Administrator, Panama Canal Commission.

[FR Doc. 85-3711 Filed 2-13-85; 8:45 am]

BILLING CODE 3640-04-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 110

Health Maintenance Organizations

AGENCY: Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: This rule amends the Public Health Service regulations on health maintenance organizations (HMOs) to elaborate on the 1981 amendments to the HMO statute regarding member protection in the event of insolvency, community rating by class, and primary care within the service area of a non-metropolitan HMO. In addition, the rule removes regulatory provisions that are considered unnecessary or burdensome, such as the specification of contractual provisions, and increases one of the regulatory limits on copayments to permit HMOs to become more competitive. These amendments are made after consideration of public comments on the notice of proposed rulemaking (NPRM) published on March 22, 1983.

EFFECTIVE DATE: March 18, 1985.

FOR FURTHER INFORMATION CONTACT: Frank H. Seubold, Ph.D., Associate Director for Health Maintenance Organizations, Bureau of Health Maintenance Organizations and Resources Development, Parklawn Building, Room 9-05, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4106.

SUPPLEMENTARY INFORMATION: On March 22, 1983, an NPRM was published in the **Federal Register** (48 FR 12060-64) proposing regulatory implementation of amendments to Title XIII of the Public Health Service Act (the Act) enacted by Subtitle F of Title IX of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35). At the same time, the Secretary proposed to amend several provisions of the regulations that were not altered by the statutory amendments. Comments on the proposals were due by May 23, 1983.

Public Comments on the NPRM

Sixteen entities—11 federally qualified HMOs and 5 associations—provided comments. The following is a summary of the comments received, responses thereto, and the changes made, if any, in the proposals described in the NPRM.

1. The Department proposed to delete § 110.104(a)(2), which states that a staff or medical group model HMO may have physician providers who have also entered into arrangements with individual practice associations (IPAs), but only if these physicians number less than 50 percent of the IPA's physicians. Several commenters objected to the proposed deletion because it could foster a confusing overlap of physician providers between competing HMO models, resulting in staff and group models losing their distinction from IPA models. This, the commenters asserted, would defeat the purpose of section 1310(b) of the Act, which requires employers in certain circumstances to offer their employees the option of membership in different model HMOs. We note that it was to address this very concern that § 110.104(a)(2) was added to the regulation in the first place, and that it was proposed for deletion because there had been no reports of adverse experience with different model HMOs using the same physicians.

The Department is, however, persuaded by public comment that the potential for confusion regarding competing HMO models, based on the sharing of physicians, still exists. Accordingly, the proposal to delete § 110.104(a)(2) is withdrawn.

2. Section 110.105(a)(4)(ii) imposes on the HMO a copayment limitation for each subscriber in each calendar year of 100 percent of the total annual premium cost which the member would be required to pay if enrolled under an option with no copayment. The Department proposed to increase this copayment limitation to 200 percent. None of the commenters opposed raising the limitation, and the change has been adopted as proposed. Several commenters did, however, propose deleting the 200 percent limitation entirely, feeling that the remaining limitations (50 percent of the total cost of providing any single service, 20 percent, in the aggregate, of the total cost of providing all basic health services) would assure that the copayments would, as required by the Act, not be a barrier to the delivery of health services. A few other commenters suggested that the 200 percent limitation should be adopted, but that the 50 and 20 percent rules should be dropped. The Department has determined that the three limitations must remain in regulation because all are necessary to implement properly the statutory restrictions on copayments used by federally qualified HMOs.

The relevant statutory directives regarding copayments are found at section 1301(b)(1)(D) of the Act, which provides:

> Each member is to be provided basic health services for a basic health services payment . . . which may be supplemented by additional nominal payments which may be required for the provision of specific services (within the basic health services), except that such payments may not be required where or in such a manner that they serve (as determined under regulations of the Secretary) as a barrier to the delivery of health services. Such additional nominal payments shall be fixed in accordance with the regulations of the Secretary.

The statute thus imposes two limitations: (1) Copayment must be nominal, and (2) copayments may not serve as a barrier to the delivery of health services. The first of these was addressed in the Conference Report (S. Rep. No. 93-621, December 31, 1973) on the HMO Act of 1973 (Pub. L. 93-222), which enacted section 1301(b). That report states that:

> . . . (1) the nominal copayments permitted by section 1301(b) are to be payments made by HMO members at the time of receipt of services, (2) such payments may not exceed 50% of the total cost of providing any single service to any given group of members, and (3) the copayments charged by an HMO shall not, in the aggregate, exceed 20% of the total costs of providing basic health services to any given group of members.

With regard to the statutory restriction that copayments for basic health services be "nominal," the Secretary's discretion in defining that term is severely limited due to the

specificity of the Conference Report. Accordingly, we are retaining the 20 percent and 50 percent limitations.

The other statutory restriction placed on an HMO's use of cost sharing is that nominal copayments may not be required when they serve as a barrier to the delivery of health services. To insure that copayments would not have this undesirable effect, Congress directed the Secretary to promulgate regulations. In this instance, the conference managers did not specify any particular method for determining what constitutes a barrier to the utilization of health services. The Department established an annual cap on out-of-pocket copayments equal to "100 percent of the total annual premium cost which that subscriber (or members) would be required to pay if he (or they) were enrolled under an option with no copayments." The Department has, however, exercised administrative discretion to change the level of the cap, and, as noted above, has increased the limit to 200 percent of the annual premium.

3. The Act requires that federally qualified HMOs fix their health service payments under a community rating system. The definition of "community rating" was broadened by Congress to permit a system of community rating by class (CRC), as explained in § 110.105(b)(2) of the regulations. The Department proposed adding to the regulations the review procedures that would be used to evaluate and approve the factors that an HMO planned to utilize its CRC system. Several commenters objected to the provision of the proposed review procedures that would permit the Department to take additional time, beyond the routine 30 days, to reach a decision regarding an HMO's application for approval of factors. The commenters felt that the reasons for extending the review period needed to be clearly stated in the regulation.

This clarification has not been added because the Department cannot anticipate every circumstance in which it might be necessary to extend the review period. We note, however, the intent of the Department to conduct a prompt review of each application and to render a decision within 30 days whenever possible.

Another commenter recommended doing away with community rating altogether. The Department does not have the discretion to do this, since community rating for federally qualified HMOs is prescribed by law.

4. Under section 1301(b)(4) of the Act, a federally qualified HMO in a non-metropolitan area is exempted in part from the requirement that all basic health services be available and accessible entirely within its service area. The exemption does not extend to primary and emergency care, which must always be available and accessible wholly within the service area of a non-metropolitan HMO. For purposes of this exemption, we proposed to define "primary care" to include the fields of general practice, family practice, general internal medicine, general pediatrics, and general obstetrics and gynecology. The Proposed rule further provided that a non-metropolitan HMO would be viewed as providing "primary care" if it provides the services covered by these fields through at least (1) a general practicioner or a family practitioner, or (2) a pediatrician and a general internist. Three commenters objected to the proposal, asserting that the description of primary care and who could provide it lacked either flexibility or clarity. The Department has adopted the definition essentially as proposed, but has made minor editorial changes to the definition in order to clarify the extent of its flexibility.

5. Section 1301(c)(8) of the Act requires the HMO to have arrangements that protect its members from being held liable for the legal obligations of the HMO. We proposed to amend § 110.108(a)(3) of the regulations to implement this section of the statute. Under the proposal, one of the arrangements that an HMO could include in its member protection provisions is a financial reserve that is held for the HMO and restricted for use only in the event of insolvency. Several commenters felt that the imposition of a restricted reserve (a) failed to recognize that an HMO might need this capital for events other than insolvency, and (b) could be interpreted to mean that a Federal insolvency reserve was required, sometimes in addition to similar State-required reserves.

We note that § 110.108(a)(3) does not require that all HMOs have restricted financial reserves. Rather, a financial reserve is only one of several arrangements that the Department would examine in reviewing the adequacy of an HMO's member protection provisions. If the HMO cannot tie up funds in a restricted reserve, other acceptable arrangements are available. The regulation would leave up to the HMO the choice of which arrangements to propose to the Department. If, however, an HMO proposes to use a reserve to protect its members from being charged for the HMO's liabilities, the reserve must be both sufficient in amount and held for the HMO for the stated purpose. Although the Department may be flexible in determining the amount needed in the restricted reserve, a reserve without restrictions would not offer the protection envisioned by the Congress. Accordingly, § 110.108(a)(3) is adopted as proposed.

Another commenter suggested adding financial guarantees to the list of arrangements that may be included in an HMO's member protection provisions. This suggestion has not been adopted. We note that § 110.108(a)(3)(D) permits an HMO to propose other arrangements. A commitment from a financially viable guarantor could be proposed under this provision.

6. Section 110.108(a)1)(iv) requires that an HMO have a plan for handling insolvency that allows for (a) continuation of subscriber benefits through the period for which payment has been made, (b) continuation of benefits to members confined in an inpatient facility from the day of insolvency until their discharge, and (c) payments to unaffiliated providers for services rendered. We proposed deleting the requirement for payments to unaffiliated providers because it is unnecessary in light of other regulatory provisions. Arrangements must be in place for payments to unaffiliated providers to meet pre-insolvency liabilities (§ 110.108(a)(3)), and services must be provided to members after insolvency through the period for which premiums have been paid, at no additional cost to the members (see the first clause of § 110.108(a)(1)(iv)).

There were no objections to the proposal and it has been adopted. Two commenters did, however, ask that the HMO's responsibility to continue benefits to a member in an inpatient facility be limited to one year of confinement. We have concluded that the current, unlimited protection is necessary so that the member will remain covered for hospital care until other coverage (which normally excludes preexisting inpatient care until discharge) can become effective. We note, moreover, that because custodial care and long-term physical therapy and rehabilitation are not required to be provided as basic health services, the obligation under these regulations to provide inpatient hospital care ends when those types of care become medically appropriate.

One of the two commenters also suggested ceasing the inpatient benefits when the member is discharged or becomes covered under other insurance. The regulation already permits the termination of benefits upon discharge if the member is discharged after the end

of the period for which benefits have been paid. If the member becomes covered by other insurance during the prescribed period of continued benefits, the HMO may use the coordination of benefits provision in its subscriber contract to seek reimbursement from the insurance carrier.

7. We propose to amend § 110.108(f)(1)(i) to relax restrictions on which members may be included in the minimum one-third member representation on the HMO's policymaking body. The proposal would allow any member owning up to five percent equity of the HMO to serve as a member representative. Two commenters were concerned that a member representative who is also an equity owner of the HMO would be influenced to vote as management, regardless of how small that ownership might be, rather than to represent the interests of the HMO membership. While this is possible, the Department believes that the 5 percent exception is a sensible one, given that it is used in section 1318 of the Act with respect to "party in interest" reporting requirements. For consistency, we decided to include the 5 percent exception in § 110.108(f)(1)(i) as well. Accordingly, we find that the proposed change in the regulations is reasonable and have adopted the new language, with two additions, as follows:

> Any person who is not directly or indirectly the beneficial owner of more than 5 percent of the equity of the HMO *or a plan-affiliated institution or organization* is deemed not to have ownership of or financial interest in the HMO *or the plan-affiliated institution or organization*. (Emphsis added.)

The underlined phrases have been added to extend the 5 percent exception to plan-affiliated institutions or organizations, consistent with the underlying limitation in the first sentence of § 110.108(f)(1)(i).

8. We proposed deleting the specific numerical requirement within § 110.108(f)(1)(ii) that the member portion of the HMO's policymaking body include representation from medically underserved populations when membership from such populations is 5 percent or more of the total enrollment. Section 110.108(f)(1)(ii) would still require, consistent with section 1301(c)(5) of the Act, "equitable representation" from medically underserved populations enrolled in an HMO in proportion to the HMO's total enrollment. There would, however, be no minimum proportion that would mandate representation.

The one comment that was submitted on this proposal misinterpreted the change to mean that, by removing the 5 percent threshold, it was now mandatory that medically underserved populations be represented on the policymaking body, regardless of the proportion of total enrollment they equaled. As explained in the preceding paragraph, this is not so. We reiterate that the removal of the 5 percent threshold allows the HMO greater flexibility to determine what "equitable representation" means. Accordingly, § 110.108(f)(1)(ii) is amended as proposed.

9. We propose to delete § 110.108(k), which requires each HMO to operate in such a way as to preserve human dignity. Two commenters suggested that the provision should be retained in order to address any criticism that HMOs provide health care in an unfeeling or callous manner. We believe that a Federal regulation is unnecessary in this regard. Accordingly, § 110.108(k) is deleted as proposed.

10. Several commenters opposed the deletion of § 110.108(a)(1)(vii) that requires each HMO to have a plan to maximize enrollment as one of the elements demonstrating that it has a fiscally sound operation. The felt that, without this provision, an insuring organization competing with an independent HMO could establish its own HMO to protect its indemnity market rather than be required to sell aggressively its HMO. The commenters believed, therefore, that it was a faulty assumption that every HMO could be expected to maximize enrollment, the reason proffered in the NPRM for deleting this particular regulatory provision.

We note that the Congress made available to federally qualified HMOs certain statutory benefits, e.g., dual choice, in exchange for their operating in such a manner as to be a distinct alternative to traditional forms of health insurance. The Congress, in affording these benefits to qualified HMOs, intended that such entities should actively and seriously market their product. The Department, however, believes that it is unlikely that an insuring organization will market its affiliated HMO with the intent to protect its indemnity market. The Department's experience is that insuring organizations which control HMOs recognize that it is in their best interest to have a successful HMO and have marketed the HMO with the intent to achieve that result. Accordingly, it is unnecessary to retain § 110.108(a)(1)(vii) and it is deleted as proposed.

11. We are deleting § 110.109, Prohibited Activities, as proposed. Section 110.109 prohibited an HMO or its employees from selling, marketing, or promoting, to an individual or group, health insurance or health service benefit plans for health benefits that are part of the HMO's prepaid health benefits package offered to that individual or group.

We proposed to delete § 110.109, believing it to be too restrictive. Three of the four commenters responding to this proposal favored the deletion of § 110.109 because they feet that § 110.109 prohibited HMOs from undertaking "non-HMO business" and did not allow the flexibility that HMOs now need to compete in a changing marketplace that has seen the emergence of new mechanisms such as preferred provider organizations. The fourth comment was submitted by an HMO industry association, and, while not opposing the deletion, expressed the concern that permitting federally qualified HMOs to offer competing lines of business, especially with no requirement to maximize HMO enrollment, could promote abuse of the statutory benefits HMOs enjoy and hamper the capacity of consumers to differentiate among the options being offered.

With regard to the concerns expressed by the HMO industry association, we believe that the existing statute and regulations address the commenter's concerns. The statutory benefit provided by section 1310 of the Act permitting a federally qualified HMO to require an employing entity in certain circumstances to offer the HMO to its employees applies only to the HMO's federally-approved benefit plan. Therefore, a federally qualified HMO may not require an employer under section 1310 to offer an alternate plan it markets. In addition, § 110.108(c)(1) of the regulations requires that the HMO provide full and fair disclosure of certain aspects of its health plan to potential members. An HMO that misleads an employer or an employee by suggesting that a nonqualifiable plan which it markets has been approved by the Department or that such a plan is required to be offered to an employing entity's employees under section 1310 may be in violation of § 110.108(c)(1).

12. We proposed deleting Subpart C, which implements the feasibility grants authorized by section 1303 of the Act. Such grants are no longer being awarded and there is none currently being administered. Two commenters objected to the proposal because Subpart C would be needed if funds for feasibility grants were provided again. We note that under section 1309(a) of the Act, there is no appropriation

authority for the Department to award feasibility grants, and, in fact, proposals to delete section 1303 have been introduced in Congress. Such legislative proposals are consistent with the initiative to transfer the role of HMO development from the Federal Government to the private sector. Accordingly, regulations implementing this expired authority are obsolete and are deleted as proposed.

13. A few commenters opposed the deletion of § 110.803(g), which states that an employer may, with the HMO's agreement, offer its employees the option of membership in the HMO at any time. They noted that the provision provided the only authority to waive, with mutual agreement, the 180-day minimum lead required for submittal of a request for inclusion of the HMO option in a health benefits plan. One other commenter recommended retaining the provision because, even though it is informational, it prevented misunderstandings. We note that § 110.803(a), which established the 180-day requirement, already offers the employer and the HMO the option of agreeing to some other timing. Accordingly, the provision has been deleted as proposed.

14. We proposed to delete § 110.808(h), requiring the employer to retain for three years the data used to compute its level of contribution to the alternatives included in the health benefits plan. While one commenter supported the proposal, eight others objected strenuously, and one of these requested that the provision be expanded, rather than deleted. Those opposing the deletion of § 110.808(h) cited the provision as the only means for an HMO to challenge a miscalculation by an employer. We are persuaded by the public comments that § 110.808(h) serves an important function, and have, therefore, decided to retain this provision.

One of the commenters opposing the deletion of § 110.808(h) recommended that authority be added for the HMO to collect underpayments when the data showed an error in the employer's computation. We have decided that such a regulatory provision is unnecessary. The Department may assess civil penalties against non-government employers who do not comply with section 1310 of the Act and may withhold certain grant payments to States when they, or their political subdivisions, do not comply. Under the authority to direct corrective action for employer noncompliance (see sections 1310 (e) and (g), and 44 FR 31046 (May 30, 1979)), the Department can deal appropriately with actual cases of underpayment. The statutory sanctions for noncompliance are available if corrective action is not undertaken.

15. Three commenters objected to the proposal to delete § 110.810, which states that employers shall make the HMO offer to eligible employees consistent with obligations under the National Labor Relations Act, the Railway Labor Act, and other laws of similar effect. The commenters believed that the provision serves a useful purpose in calling attention to other laws that must be considered in the context of an HMO offering. We agree and have decided to retain § 110.810.

Technical Changes

Subsequent to publication of the NPRM, a number of typographical errors in 42 CFR Part 110 were discovered. This final rulemaking corrects those errors.

Executive Order 12291, Federal Regulation

The Department of Health and Human Services has determined that this rule is not "a major rule" for the purposes of Executive Order 12291, Federal Regulation. The provision in the rule which doubles the current copayment cap will have some impact on HMO enrollees. However, as was discussed in the NPRM, we believe that the lower premium levels this will permit can offset the higher copayment, resulting in a minor net economic impact. Because the remainder of this rule simply removes some restrictions in the present regulations, clarifies certain provisions, and sets forth procedures under which the Department will administer other provisions, we have concluded that it will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

For the same reasons, the Department of Health and Human Services certifies that the rule has no significant economic impact on a substantial number of small entities, including HMOs, small businesses, small organizational units, and small governmental jurisdictions.

Paperwork Reduction Act

Section 110.105(e) of this rule contains information collection requirements related to approval of factors under CRC systems. As required by the Paperwork Reduction Act of 1980, a copy of the NPRM was submitted to the Office of Management and Budget (OMB) for its review. The OMB has approved the information collection required by § 110.105(e) through May 31, 1986 (OMB No. 0915-0051).

List of Subjects in 42 CFR Part 110

Grant programs/health, Health care, Health facilities, Health insurance, Health Maintenance Organizations, Loan programs/health.

Accordingly, the Assistant Secretary for Health of the Department of Health and Human Services, with the approval of the Secretary of Health and Human Services, hereby amends 42 CFR Part 110, as set forth below.

Authority: Sec. 215 of the Public Health Service Act, as amended, 58 Stat. 690, 67 Stat. 631 (42 U.S.C. 216); secs. 1301-1318, as amended, Pub. L. 97-35, 95 Stat. 572-578 (42 U.S.C. 300e-300e-17).

Dated: February 8, 1984.

Edward N. Brandt, Jr.,

Assistant Secretary for Health.

Approved: December 11, 1984.

Margaret M. Heckler,

Secretary.

PART 110—HEALTH MAINTENANCE ORGANIZATIONS

Amend 42 CFR Part 110 as follows:

Subpart A—Requirements for a Health Maintenance Organization

§ 110.104 (Amended)

1. In § 110.104(a)(1), change the reference to paragraph "(e)" in the first sentence to paragraph "(c)".

2. In § 110.104, remove paragraph (b) and redesignate paragraphs (c) as (b), (d) as (c), (e) as (d), and (f) as (e).

3. In § 110.104, amend the paragraph redesignated (e)(2) by replacing the reference to paragraph "(g)(1)" with "(e)(1)".

4. In § 110.104, revise paragraph (b) as redesignated above to read as follows:

* * * * *

(b) HMOs shall have effective procedures to monitor utilization and to control cost of basic and supplemental health services and to achieve utilization goals, which may include mechanisms such as risk sharing, financial incentives, or other provisions agreed to by providers.

* * * * *

§ 110.105 (Amended)

5. In § 110.105(a)(4)(ii), change the percentage in the first sentence from "100" to "200".

6. In § 110.105, remove paragraph (d) and redesignate paragraph (e) as (d).

7. In § 110.105, a new paragraph (e) is added to read:

* * * * *

(e) *Review procedures for evaluating the community rating by class system under paragraph (b)(2).*[1] An HMO may establish a community rating system under paragraph (b)(2) of this section or revised factors used to establish classes after it receives written approval of the factors from the Secretary. The Secretary will give approval if he or she concludes that the factors can reasonably be used to predict the use of health services by individuals and families.

(1) An HMO must make a written request to the Secretary, listing the factors to be used in the community rating by class system under paragraph (b)(2) of this section.

(2) The Secretary will notify each HMO within 30 days of receipt of the request and application of one of the following:

(i) The application is approved;

(ii) Additional information or data are required and the Secretary will notify the HMO of his or her decision within 30 days from the date of receipt of this information or data; or

(iii) The Secretary needs additional time to review the written request and the HMO will be notified of the Secretary's decision within 90 days.

(Approved by the Office of Management and Budget under control number 0915–0051)

§ 110.106 [Amended]

8. In § 110.106, remove paragraph (c).

§ 110.107 [Amended]

9. In § 110.107, amend paragraph (b)(1) by replacing "; and" with a period and by adding at the end, the following:

* * * * *

(b) * * *

(1) * * * For purposes of this paragraph, the term primary care includes the fields of general practice, family practice, general internal medicine, general pediatrics, and general obstetrics and gynecology. An HMO providing the services that are covered by these fields through at least (i) a general or family practitioner, or (ii) a pediatrician and a general internist, would be viewed as providing primary care; and

* * * * *

§ 110.108 [Amended]

10. In § 110.108, revise paragraph (a)(1)(iv) to read:

* * * * *

(a) * * *

(1) * * *

(iv) A plan for handling insolvency which allows for continuation of benefits for the duration of the contract period for which payment has been made and continuation of benefits to members who are confined on the date of insolvency in an inpatient facility until their discharge.

* * * * *

11. In § 110.108, remove paragraph (a)(1)(vii).

12. In § 110.108, revise paragraph (a)(3) to read:

* * * * *

(a) * * *

(3) *Protection of members.* (i) Each HMO shall adopt and maintain arrangements satisfactory to the Secretary to protect its members from incurring liability for payment of any fees which are the legal obligation of the HMO. These arrangements may include:

(A) Contractual arrangements with health care providers used by the members of the HMO prohibiting the providers from holding any member liable for payment of any fees which are the legal obligation of the HMO;

(B) Insurance, acceptable to the Secretary;

(C) Financial reserves, acceptable to the Secretary, that are held for the HMO and restricted for use only in the event of insolvency; or

(D) Any other arrangements acceptable to the Secretary.

(ii) The requirements of this paragraph do not apply to an HMO if the Secretary determines that applicable State law provides that members of the HMO may not be liable for payment of any fees which are the legal obligation of the HMO.

* * * * *

13. In § 110.108, revise paragraph (f)(1)(i) to read:

* * * * *

(f) * * *

(1) * * *

(i) No member having ownership of or financial interest in, or employed by, or gaining financial reward from direct dealings with, the HMO or a plan-affiliated institution or organization, and no members of the immediate family of such member shall be included in the minimum one-third representation on the policymaking body. However, none of the foregoing prohibits the payments of directors' fees or other similar fees, or interest and dividends derived from membership in an HMO cooperative, to persons serving on the policymaking body. Any person who is not directly or indirectly the beneficial owner of more than 5 percent of the equity of the HMO or a plan-affiliated institution or organization is deemed not to have ownership of or financial interest in the HMO or the plan-affiliated institution or organization.

* * * * *

14. In § 110.108, revise paragraph (f)(1)(ii) to read:

* * * * *

(f) * * *

(1) * * *

(ii) There shall be equitable representation on the member portion of the policymaking body of members from the medically underserved populations served by the HMO in proportion to their enrollment relative to the entire enrollment.

* * * * *

15. In § 110.108, remove paragraph (k) and redesignate paragraph (l) as (k), (m) as (l), and (n) as (m).

§ 110.109 [Removed]

§§ 110.110 and 110.111 [Redesignated as §§ 110.109 and 110, 110]

16. In § 110.109 and redesignate § 110.110 as § 110.109 and § 110.111 as § 110.110.

Subpart B—Federal Financial Assistance: General

§ 110.203 [Amended]

17. In § 110.203, revise paragraph (a) to read:

* * * * *

(a) *Financial information.* On the basis of the information submitted by the applicant, the Secretary will determine whether the applicant would not be able to complete the project without the assistance for which it has applied.

* * * * *

18. In § 110.203, revise paragraph (e) to read:

* * * * *

(e) *Health planning agency reviews.* Each applicant must show in its application that it has sent to each health systems agency whose health service area covers any part of the area to be served by the HMO for which the application is submitted (or if there is no such agency, the State health planning and development agency whose State includes any part of the area to be served) a copy of the application. The

[1] Further information entitled "Guidelines for Rating by Class" may be obtained by requesting it from the Associate Director for Health Maintenance Organizations, Parklawn Building, Rm. 9–05, 5600 Fishers Lane, Rockville, Maryland 20857.

agency may then review and comment on the application in accordance with § 110.204.

* * * * *

§ 110.204 [Amended]

19. In § 110.204, revise the introductory language of paragraph (a) to read:

* * * * *

(a) *Time, manner and considerations for review and comment.* If the appropriate health systems agency or State health planning and development agency elects to review and comment upon the application, it shall within 67 days after receiving an application for financial assistance under this part provide to the Secretary comments and recommendations regarding the application. Except as provided in paragraph (c) of this section, the agency shall base its review and comment solely on the following considerations:

* * * * *

§ 110.207 [Removed]

§§ 110.207, 110.208, 110.209, 110.210 [Redesignated from §§ 110.208, 110.209, 110.210 and 110.211]

20. Remove § 110.207 and redesignate § 110.208 as § 110.207, § 110.209 as § 110.208, § 110.210 as § 110.209, and § 110.211 as § 110.210.

Subpart C—Grants for Feasibility [Removed]

21. Remove Subpart C.

Subpart H—Employees' Health Benefits Plans

§ 110.803 [Amended]

22. In § 110.803, remove paragraph (g).

§ 110.805 [Amended]

23. In § 110.805(a), replace the reference to "§ 110.802(a)(2)(ii)" with "§ 110.802".

Subpart I—Continued Regulation of Health Maintenance Organizations and Other Entities

§ 110.904 [Amended]

24. In § 110.904, amend paragraph (d)(1) by replacing the words "fifth working day after the HMO receives" with the words "tenth calendar day after the date of", and replacing the words "fifth working day after the HMO received" with the words "tenth calendar day after the date of the".

§ 110.905 [Amended]

25. In § 110.905, remove paragraph (d).

[FR Doc. 85-3740 Filed 2-13-85; 8:45 am]
BILLING CODE 4160-16-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 12

Administrative Requirements and Cost Principles for Assistance Programs

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Final rule.

SUMMARY: This rule implements Government-wide requirements established by the Office of Management and Budget (OMB) under OMB Circulars for the administration of assistance agreements. During the development of these requirements, OMB obtained public participation so proposed rulemaking procedures are considered unnecessary.

EFFECTIVE DATE: March 18, 1985.

FOR FURTHER INFORMATION CONTACT: Ms. Ceceil Coleman, Office of Acquisition and Property Management, Division of Acquisition and Grants, 18th and C Streets, NW., Washington, D.C. 20240, (202) 343-6431.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget has published several circulars in the Federal Register to establish administrative requirements and cost principles for assistance agreements. This rule adopts the use of these circulars for the Department.

Public Participation

The administrative and cost requirements under this rule are required by OMB Circulars to be applied to all affected assistance activities. These Circulars have already been implemented through individual program regulations and requirements of bureaus and offices. Since this rule will not impose any new requirements beyond those in existence, public participation is not required.

Primary Authors

The primary authors of this rule are William Opdyke and Ceceil Coleman, Office of Acquisition and Property Management, telephone (202) 343-6431.

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The Department has determined that this is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities since no new requirements are being imposed. This rule is subject to section 3504(h) of the Paperwork Reduction Act and clearance numbers include:

1018-0048, 1018-0007, 1024-0009, 1024-0018, 1024-0038, 1029-0016, 1029-0079, 1029-0078, 1029-0064, 1029-0070, 1029-0072, 1029-0074, 1029-0075, 1029-0069, 1029-0017, 1029-0073, 1029-0076, 1029-0077, 1029-0068, 1029-0059, 1076-0006, 1076-0062, 1076-0063, 1076-0069, 1076-0077, and 1076-0078.

Environmental Effects

The Department has determined that this rule does not constitute a major Federal action having a significant impact on the human environment under the National Environmental Policy Act of 1969.

List of Subjects in 43 CFR Part 12

Cooperative agreements, Grants administration, Grant program.

For the reasons set out in the Preamble, the Department of the Interior amends Title 43, Code of Federal Regulations, by adding Part 12 as set forth below pursuant to the authority of the Secretary of the Interior contained in 5 U.S.C. 301.

Dated: January 30, 1985.

Joseph E. Doddridge,

Deputy Assistant Secretary of the Interior.

PART 12—ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS

Sec.

12.1 Scope of part.
12.2 Policy.
12.3 Effect on prior issuances.
12.4 Information collection requirements.
12.5 Waiver.

Authority: 5 U.S.C. 301.

§ 12.1 Scope of part.

This part prescribes administrative requirements and cost principles for grants and cooperative agreements entered into by the Department.

§ 12.2 Policy.

(a) All financial assistance awards and subawards, in the form of grants

and cooperative agreements, in accordance with paragraph (b) below, are subject to OMB Circulars A–102, "Uniform Administrative Requirements for Grants-in-Aid to State and Local Government," A–110, "Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations," A–87, "Cost Principles for State and Local Governments," A–21, "Cost Principles for Educational Institutions," and A–122, "Cost Principles for Nonprofit Organizations," as revised. The Bureau of Indian Affairs (BIA) is exempt from the requirements of paragraph B 21 on lobbying in OMB Circular A–122, until May 1, 1985. The Office of Territorial and International Affairs (TIA) is exempt from the requirements of this regulation until June 1, 1985.

(b)(1) Governmental recipients and subrecipients are subject to Circulars A–102 and A–87.

(2) Institutions of higher education which are recipients or subrecipients are subject to Circulars A–110 and A–21.

(3) Nonprofit organizations which are recipients or subrecipients are subject to Circulars A–110 and A–122.

(c) The Circulars prescribed by this Part published in the **Federal Register** are made a part of this regulation and include changes published in the **Federal Register** by OMB.

§ 12.3 Effect on prior issuances.

(a) All provisions of Department of the Interior nonregulatory program manuals, handbooks and other materials which are inconsistent with the above OMB Circulars are superseded, except to the extent that they are (1) required by statute, or (2) authorized in accordance with the exceptions provisions of each Circular.

(b) All existing Department of the Interior regulations in 25 CFR Parts 23, 27, 39, 40, 41, 256, 272, 278, and 276; 30 CFR Parts 725, 735, 884, 886, and 890; 36 CFR Parts 60, 61, 63, 65, 67, 72, and 800; 43 CFR Parts 26 and 32; and 50 CFR Parts 80, 81, 82, 83, and 401 are not superseded by these regulations nor are any paperwork approvals under the Paperwork Reduction Act.

§ 12.4 Information collection requirements.

Information collections in addition to those required by applicable OMB Circulars will be cleared by responsible bureaus and offices on an individual basis.

§ 12.5 Waiver.

Only OMB can grant exceptions from the requirements of these Circulars when exceptions are not prohibited under existing laws.

[FR Doc. 85–3809 Filed 2–13–85; 8:45 am]
BILLING CODE 4310–10–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[BC Docket No. 82–536]

Use of Subsidiary Communications Authorization

AGENCY: Federal Communications Commission.

ACTION: Final rule; inclusion of commissioner's statement.

SUMMARY: On May 9, 1984, the Commission published a Memorandum Opinion and Order (FCC 84–187; 49 FR 19659) concerning the Use of Subsidiary Communications Authorization. In that document, it was mentioned that Commissioner Henry Rivera would issue a statement regarding this action at a later date. That statement is included here.

FOR FURTHER INFORMATION CONTACT: Brian F. Fontes, Mass Media Bureau, (202) 632–6302.

William J. Tricarico,

Secretary, Federal Communications Commission.

Statement of Commissioner Henry M. Rivera Dissenting in Part

RE: Petition for Reconsideration of Amendment of Parts 2 and 73 of the Commission's Rules Concerning Use of Subsidiary Communications Authorizations (BC Docket No. 82–536).

I dissent to that part of the majority's decision which preempts state entry regulation of local radio common carrier paging services operating on FM subcarriers.[1] I do not endorse "protectionist" regulatory action either at the state or federal level. However, I dissent because I do not believe the Communications Act permits this Commission to preempt local radio common carrier paging services and because even if the Communications Act permitted such preemption, the record here is inadequate to support the majority's action.[2]

Congress defined the scope of state and federal authority over the telecommunications industry in sections 2(b)[3] and 221(b)[4] of the Communications Act. These two provisions expressly reserve to the states all regulatory functions for intrastate communications services[5] that have to do with charges.

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[1] To the extent that this proceeding similarly resolves the preemption issue with respect to TV subchannels and AM broadcasting I likewise dissent. *Memorandum Opinion and Order*, BC Docket No. 82–536, FCC 84–187, released May 2, 1984 (Reconsideration Order), at footnote 6.

[2] In contrast, our legal authority and the record support preemptive action with regard to interstate paging systems, *e.g.*, nationwide or regional services encompassing several states. See Reconsideration Order at para. 20. Such a result is consistent with our recent decision to preempt state regulation of the three 900 MHz nationwide paging systems offered by conventional common carrier mobile services. *See Nationwide Paging Service*, Third Report and Order, Gen. Docket No. 80–183, FCC 84____, adopted April 11, 1984, released____.

[3] 47 U.S.C. 152(b) provides, in pertinent part, ". . . subject to the provisions of section 301, nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier. . . .".

[4] 47 U.S.C. 221(b) provides, in pertinent part, ". . . subject to the provisions of section 301, nothing in this Act shall be construed to apply, or to give the Commission jurisdiction, with respect to charges, classifications, practices, services, facilities, or regulations for or in connection with wire, mobile, or point-to-point radio telephone exchange service . . . in any case where such matters are subject to regulation by a State commission or by local governmental authority."

[5] It cannot be rationally argued that the type of paging service under discussion here properly is not an intrastate communications service. *See Mobile Tariff Filings*, 53 FCC 2d 579 (1975); *Illinois Bell Telephone Co.*, CC Docket Nos. 78–314 and 315, FCC 83–489, released October 21, 1983.

Despite the self-serving reservations to the contrary in the Reconsideration Order at footnote 29, presently and in the past, the Commission has consistently treated common carrier paging services as "telephone exchange service" within the meaning of Section 221(b). *See e.g.*, Public Notice: FCC Announces New Policy Regarding Filing of Mobile Tariffs, 1 FCC 2d 830 (1965); FCC Policy Regarding Filing of Tariffs for Mobile Service, 53 FCC 2d 579 (1975); and MTS and WATS Market Structure, Phase I, FCC 84–36, 49 FR 7810 (March 2, 1984), at para. 149. The majority admits this fact in footnote 29: "At the federal level, paging appears to have been viewed historically as an adjunct or complement to two-way mobile telephone service and therefore deserving of identical regulation." Furthermore, such services are provided by divested BOCs under the Modification of Final Judgment [*United States* v. *American Telephone & Telegraph Co.*, 552 F. Supp. 131 (D.D.C. 1982), *Aff'd sub nom. Maryland* v. *United States*, 103 S. Ct. 1240 (1983)] and are specifically defined as "exchange telecommunications services" for that purpose. *United States* v. *American Telephone and Telegraph Co.*, Civ. No. 82–0192 (D.D.C. November 1, 1983), slip op. at 4–6. The statutory language and legislative history confirm the appropriateness of the above determinations. *See e.g.*, 47 U.S.C. Sections 3(n) and 331(c)(3); H.R. Rep. No. 765, 97th Cong., 2d Sess. at 56 (August 19, 1982).

classifications, practices, services, facilities, or regulations.[6] These statutory reservations are subject only to the legitimate exercise of this Commission's Section 301 licensing powers.

Thus, the Communications Act frames the issue before the Commission as: to what extent does the exercise of section 301 licensing powers override state regulatory authority as delineated in sections 2(b) and 221(b)? The answer is clear. Section 301 was never intended to establish federal economic regulatory jurisdiction that negates the jurisdiction over local common carrier activities Congress expressly reserved to the states. A contrary interpretation would render the reservations to the states meaningless.[7] Under the majority's expansive interpretation of its section 301 powers, federal jurisdiction is unlimited, given that virtually every form of intrastate service uses some from of radio service licensed by the FCC.[8] This result is manifestly contrary to congressional intent.

Commenting (on behalf of this Commission) on a version of the 1954 amendments to section 221(b) which added the "subject to section 301" proviso, Chairman Rosel Hyde stated:

> The apparent intent of the proposed amendment to section 221(b) is to assure that, where radio service is provided as part of telephone exchange service, including mobile as well as point-to-point service, it should be construed as exchange service under the section and hence not subject to the Commission's jurisdiction with respect to charges, classifications, practices, services, facilities, and regulations of common carriers, unless such service is not subject to regulation by State or local authorities.

Regarding the effect of the "subject to section 301" proviso upon the relative jurisdictions of the FCC and states, Chairman Hyde noted:

> Such a provision which is presently included in section 2(b)(2) of the act, is desirable in order to avoid any implication that the radio stations to which the section would have reference, would not be subject to the general radio regulatory provisions of title III of the act. The possibility that such radio operations, left unregulated, would cause destructive interference with other interstate radio operations makes essential that this Commission retain jurisdiction over the *noncommon carrier regulatory aspects of the radio stations* involved, and it is believed that the proposed legislation is not intended to restrict such jurisdiction.

H.R. Rep. No. 910, 83d Cong., 1st Sess. at 45 (1953) (emphasis added).

The House and Senate Reports are consistent with Chairman Hyde's understanding of the proviso's effect on the relative jurisdictions of the states and this Commission. For example, the Senate Report (repeating in substance the House Report) states that the purpose of the provisio is to clarify the Commission's common carrier jurisdiction where radio facilities are used by such carriers in lieu of wirelines:

> Questions have been raised, however, with regard to the possibility that such companies might become subject to Federal regulation on account of the use by such companies of radio as a medium instead of wire lines. Under certain circumstances the use of radio is the best engineering solution as, for example, in the case of telephone service to moving vehicles. . . . The legislation is designed to make certain that the *use of radio will not subject to Federal regulation* companies engaged primarily in intrastate operations.

The Senate Report goes on to state:

> The adoption of this amendment is merely a perfecting amendment and would obviate any possible technical argument that the Commission may attempt to assert *common carrier* jurisdiction over point-to-point communication by radio between two points within a single state. . . . The commission has not attempted to assert itself under such circumstances in the past. This amendment would crystallize the present regulatory practice. . . .

S. Rep. No. 1090, 83d Cong., 2d Sess. at 1–2 (1954) (emphasis added).

Furthermore, the recent legislative history of section 331(c)(3) clearly reaffirms[9] that sections 2(b) and 221(b) preclude federal preemption of state entry regulation for strictly local services:

> . . . [T]he Commission may not use its licensing powers to circumvent limitations in its economic regulatory jurisdiction over common carrier stations.

H.R. Rep. No. 765, 97th Cong., 2d Sess. at 56 (August 19, 1982).[10]

Most damning to the majority's view (and totally ignored in the majority's opinion) is the fact that this Commission has previously ruled that it has no jurisdiction over "entry" regulation of an intrastate mobile radio service pursuant to section 221(b). Shortly after the enactment of the 1954 amendments to section 221(b), the Commission stated:

> . . . [I]t is evident that this Commission has no jurisdiction with respect to the charges, classifications, practices, services, facilities, or regulations for, or in connection with the mobile radio service in issue here, and this Commission's jurisdiction is limited to the jurisdiction flowing from section 301 and title III of the Communications Act. Thus, while this Commission, in passing upon a grant of radio license in these circumstances, must consider the question of "public interest," it is evident that such "public interest" consideration is *predicated upon the question of whether the local regulatory body has certificated, or franchised, or in any other manner authorized, or permitted, the applicant to engage in the requested communications service.* Where it appears (as it does here) that the local telephone company has been so authorized or empowered, and that showing having been made to us, we are bound to determine that the "public interest" will be served by a grant to a properly qualified applicant. Thus, the *remaining examination of the application is limited to a determination only of the basic qualifications of the applicant and the technical sufficiency of the operation which he proposes.* That is what we have done in this case.
>
> Thus, insofar as the controversy in this case relates to the matter of *competitive impact of one telephone company's operation* upon the other, it is a matter for local regulation and determination. If the State commission were to determine that the complained of competition is undesirable, and were to withdraw its franchise or authorization to either company, *we would be bound to respect that determination and to govern our actions with respect to the radio authorization accordingly.* The only part of the controversy, here presented by Northern, in which we have primariy jurisdiction is the question of the legal qualification of Souris to serve the public.

Souris River Telephone Mutual Aid Corp., 28 FCC 275, 280 (1960) (emphasis added).

Even if our statutory authority to preempt were not suspect, the record upon which this preemption is founded is, to put it charitably, meager. It could scarcely be otherwise when one

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[6] While "entry" regulation is not expressly enumerated, state "facilities" regulation encompasses the public convenience and necessity standard determination of "entry" regulation. Likewise, at the federal level, unspecified "entry" regulation is exercised through "facilities" authorizations. *See* 47 U.S.C. 214. *See also* 47 U.S.C. 331(c)(3); H.R. Rep. No. 765, 97th Cong., 2d Sess. at 56 (August 19, 1982).

[7] The majority's reliance upon our general Title III and section 7 regulatory authority (presumed to be encompassed by section 301 licensing powers) as a basis for preemption is misplaced in light of the explicit contraints upon the exercise of that authority imposed by section 2(b) and 221(b).

[8] I take no comfort from the majority's assertion that its action is limited to state actions that impede entry. See footnotes 15, 24 and 31 of the majority's opinion. This action is anything but a measured response. Its breadth is indicated in footnote 31 where the majority states that even local zoning, health and safety ordinances which have the effect of prohibiting or impeding entry are preempted.

[9] The majority concedes that this language was "not intended to alter the status of state and federal jurisdictions over radio common carriers under existing law". Reconsideration Order at footnote 30.

[10] Notwithstanding this most recent declaration of congressional intent, the majority cites, at footnote 28, a less than definitive earlier pronouncement by the court in *dicta* in *National Association of Regulatory Utility Commissioners* v. *F.C.C.*, 525 F.2d 630, 173 U.S. App. D.C. 413, 429 (1976) in support of its position.

considers that this issue first arose in petitions for reconsideration—hardly a situation conducive to development of a full record. The record on this issue consists solely of anecdotal affidavits which purport to characterize the states' regulatory policies regarding common carrier paging service. Not a single state regulatory commission participated. In fact, during closing moments of the reconsideration process, the National Association of Regulatory Utility Commissioners (NARUC) raised the question of the adequacy of notice to the states regarding the preemption issue.[11] NARUC requested, but was denied, an opportunity to file comments on this issue.[12]

The law is clear that federal regulation should not be presumed to preempt state regulation without clear evidence of either congressional design to preempt the field or that state regulatory activities would obstruct the accomplishment and execution of the full purposes and objectives of Congress. *Florida Lime and Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132, 141 (1963), *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1947). Here, congressional design was most certainly to reserve to the states the authority to regulate local paging service. Additionally, we have no record on which to base a claim that state action frustrates congressional intent. Preemption, under these circumstances cannot withstand judicial scrutiny.

[FR Doc. 85-3682 Filed 2-13-85; 8:45 am]

BILLING CODE 6712-01-M

[11] Letter of Paul Rogers, General Counsel, and Genevieve Morelli, Deputy Assistant General Counsel, NARUC, to FCC Chairman Mark S. Fowler, April 13, 1984. In its haste to preempt, the majority does not even acknowledge the letter's existence.

[12] The decision to preempt state entry regulation of local paging on FM subcarriers is not only without adequate record support (even if, *arguendo*, not beyond the FCC's preemptive authority), but also arbitrarily results in two disparate schemes of regulation, *i.e.*, one for paging services offered on FM subcarriers and another for paging services offered on conventional common carrier radio services—dividing regulatory power over a potentially competitive market in an illogical way. *Cf. National Association of Regulatory Utility Commissioners* v. *FCC*, 533 F.2d 601, 616, (D.C. Cir. 1976). The majority acknowledges as much, *see* Reconsideration Order at para. 18, but offers no reasoned justification, contrary to established principles of administrative law. *See e.g., Greater Boston Television Corp.* v. *FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970) *cert. denied*, 403 U.S. 923 (1971); *Garrett* v. *FCC*, 515 F.2d 1056 (D.C. Cir. 1975); *Telocator Network of America* v. *FCC*, 691 F.2d 525, 537 (D.C. Cir. 1982); *Office of Communications of the United Church of Christ* v. *FCC*, 707 F.2d 1413, 1425 (D.C. Cir. 1983).

47 CFR Part 73

[MM Docket No. 84-438; RM-4666]

FM Broadcast Station in Vienna, WV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns FM Channel 261A to Vienna, West Virginia, as that community's first local FM service in response to a petition filed by Randy Jay Communications.

EFFECTIVE DATE: April 15, 1985.

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

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order; Proceeding Terminated

In the matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations, Vienna, West Virginia, MM Docket No. 84-438, RM-4666.

Adopted: January 14, 1985.
Released: February 5, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 49 FR 20314, published May 14, 1984, proposing the assignment of FM Channel 261A to Vienna, West Virginia, as that community's first local FM service, at the request of Randy Jay Communications ("petitioner"). The petitioner has submitted comments reaffirming its intention to apply for the channel, if assigned.

2. The channel can be assigned in compliance with the minimum distance separation and other technical requirements with a site restriction 1.8 miles northeast of Vienna, West Virginia, to avoid short-spacing to the pending application for a noncommercial educational FM station at Belpre, Ohio. Concurrence of the Canadian government has been received since Vienna is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

3. The Commission believes that the public interest would be served by the assignment of FM Channel 261A to Vienna, West Virginia, in order to provide a first local FM service to the community. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 204(b) and 0.283 of the Commission's Rules, it is ordered, That effective April 15, 1985, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, IS AMENDED, for the following city:

City	Channel No.
Vienna, WV	261A

4. It is further ordered, that this proceeding is terminated.

5. For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau (202) 634-6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-3685 Filed 2-13-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 90

[PR Docket No. 84-109; FCC 85-27]

Amendment of the Commission's Rules to Eliminate the Permissible Communications Restrictions in the Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Report and Order which eliminates the rules regarding permissible communications in the Private Land Mobile Radio Services as they pertain to licensees with exclusive channel assignments. The present rules require that communications in these services be essential to or necessary for the official or business activities of licensees. Further, the Report and Order eliminates certain specific permissible communications restrictions in the Telephone Maintenance and Special Industrial Radio Services. This action is consistent with both spectrum efficiency and the reduction of unnecessary regulatory burdens.

EFFECTIVE DATE: March 11, 1985.

FOR FURTHER INFORMATION CONTACT: Mary Beth Hess, Private Radio Bureau, Land Mobile and Microwave Division, Rules Branch, (202) 634-2443.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 90

Private land mobile radio services, Radio.

Report and Order

In the matter of amendment of Part 90 of the Commission's Rules and Regulations to eliminate the permissible communications restrictions in the Private Land Mobile Radio Services, PR Docket 84-109.

Adopted: January 18, 1985.
Released: January 31, 1985.

By the Commission.

Introduction

1. On February 3, 1984, the Commission adopted a Notice of Proposed Rule Making (NPRM) to eliminate certain restrictions on the type of communications which are permissible in the private land mobile radio services.[1] The NPRM proposed the elimination of the general restrictions on the communications of stations licensed in these services, as well as the specific restrictions in each service.[2] More specifically, the NPRM suggested relaxing those rules which require licensees to limit their radio transmissions to those communications which are essential to the official or business activities which made them eligible in a particular private land mobile radio service. Instead we proposed to allow licensees to send any communications they considered to be desirable for the efficient and effective operation of their businesses.

Comments

2. Thirty-nine comments and seven reply comments were received.[3] While the commenters were generally supportive of the Commission's overall deregulatory efforts, most expressed concern that this proposal would adversely affect the efficient and effective use of the limited spectrum resource available to the private land mobile radio services. The majority of the comments urged us to reconsider the proposal and leave intact the permissible communications restrictions.

Decision

3. After considering the record of this proceeding, we have determined to relax the permissible communications rules as they pertain to operations on exclusive channel assignments in the private land mobile radio services. On shared channel assignments, we are retaining the existing rules.

Discussion

4. Our underlying objective in this proceeding was to remove unnecessary regulatory burdens on spectrum users. We believed that the limitations on radio use outlined above are limiting the usefulness of these licensees' radio systems in a way which is unnecessary. Examples range from the ban on the use of Fire Radio Service channels by volunteer fire departments for the announcement of memorial services or charitable fund raising events, through the use of Petroleum Radio Service channels by roughnecks on drilling rigs to talk with their families in emergencies, to the restriction on the use of Business Radio Service paging channels by doctors' spouses to ask the doctors to bring home some milk.

5. Under existing rules the fire company must telephone each member to disseminate the information; the person on the drilling platform must use a common carrier radio system, if it is available, or forego communicating altogether; and the doctors' spouses either telephone to speak with the doctors directly or get the milk themselves. We therefore proposed that rather than flatly precluding these types of radio communications, we could permit them where they would not result in interference to the official communications of co-channel licensees. Where this was not feasible because of heavy channel usage, our proposal would not have allowed such transmissions. The reception to this idea was tepid, by and large, among most who commented. These parties were concerned that the radio channels would cease to be available for the underlying activity which was the basis of eligibility, as licensees allowed their employees to make non-essential transmissions. In brief, the reasons most often given by these parties for opposing the proposal were: (1) The elimination of restrictions on shared channels would lead to increased congestion on already crowded frequencies; (2) although licensees would be able to successfully monitor the communications of their own users, they would not be able to curtail abuses by other licensees sharing the channel; (3) the Commission's reliance on enforcement action under § 90.173(b) of the Rules was viewed as unrealistic in light of budgetary constraints and personnel reductions; and (4) the increased congestion in certain services could threaten the safety of life and property. Those who supported the proposal generally gave the types of reasons we have already discussed for initiating this docket.[4]

6. The balancing of interests in this proceeding is a difficult matter. Under our Congressional guidelines we are charged with improving the efficiency of spectrum use and relaxing unnecessary regulatory burdens.[5] On the other hand, we must also provide for the orderly and efficient use of the limited spectrum resource. There is little to be gained from relaxing a rule if it would result in increased congestion between licensees sharing a channel. After weighing the matter, a middle course appears feasible. Where a single base station licensee has a channel assignment on an exclusive basis, as can be the case at 470-512 MHz and 800 MHz,[6] we need not continue to restrict the type of communications which are permissible. The base station licensee with exclusivity is better able than we are to determine the best, most efficient use of the radio facility it controls and has business incentives to minimize channel

[1] Notice of Proposed Rule Making (FCC 84-33), released March 12, 1984, 49 FR 10560 (March 21, 1984).

[2] General restrictions are found in 47 CFR 90.405. Specific restrictions appear throughout 47 CFR Part 90.

[3] A complete list of commenters in this proceeding is attached as Appendix A. Rupp Rental and Sales Corp. filed comments on August 6, 1984, which have been associated with this docket but will not be treated as timely filed comments or reply comments.

[4] Those parties who supported the proposal were Don R. Davis, Millicom Information Services, Inc., the Division of North Dakota Disaster Emergency Services, Pacific Bell, Penzoil Company, and the Personal Radio Steering Group. In addition, there were a number of parties who supported partial relaxation of certain portions of the rules. Those parties include the American Iron Ore Association (AIOA), the Associated Public Safety Communication Officers, Inc. (APCO), Bell South Corporation on behalf of South Central Bell Telephone Company and Southern Bell Telephone Telegraph Company (Bell South), the California Public-Safety Radio Association, Inc., the Central Committee on Telecommunications of the American Petroleum Institute, Illinois Bell Telephone Company, *et al.* (American Operating Companies), the Manufacturing Radio Frequency Advisory Committee (MRFAC), Motorola, Inc., the National Agricultural Aviation Association (NAAA), the National Crushed Stone Association (NCSA), Southwestern Bell Telephone Company, the Special Industrial Radio Service Association, Inc. (SIRSA), and William R. Turner.

[5] Congress mandated guidelines for the Commission's management of the spectrum made available to the private land mobile radio services in the "Communications Act of 1982." Section 331 (47 U.S.C. 332) of the Communications Act provides:

(a) In taking actions to manage the spectrum to be made available for use by the private land mobile services, the Commission shall consider, consistent with section 1 of this Act, whether such actions will—

(1) Promote the safety of life and property;

(2) Improve the efficiency of spectrum use and reduce the regulatory burden upon spectrum users, based upon sound engineering principles, user operational requirements, and marketplace demands;

(3) Encourage competition and provide services to the largest feasible number of users; or

(4) Increase interservice sharing opportunities between private land mobile services and other services.

[6] Private radio frequencies below 470 MHz are all shared; there is no Commission authorized channel exclusivity.

congestion. None of the commenters expressed any objection to the elimination of the permissible use rules where a single base station licensee has been authorized to use a channel on an exclusive basis, and none of the problems which are associated with relaxing this restriction on shared channel assignments pertain. We are therefore eliminating the restrictions which now exist on permissible communications on exclusive channel assignment and will allow the base station licensees and their stations' authorized users to transmit any communications they deem beneficial to their efficient and effective business or local governmental operations. We are keenly aware of the current congestion on shared frequencies and the problems associated with shared use. In light of the concerns expressed that elimination of the rules in bands where assignments are made on a shared basis would lead to unacceptable congestion between co-channel operations and would prevent licensees from using their systems effectively for their business activities, we have determined to leave the existing rules in place for those systems. Relaxing the permissible communications rules as they pertain to exclusive assignments and retaining the rules on bands with shared assignments is consistent with both spectrum efficiency and the reduction of unnecessary regulatory burdens.

Miscellaneous Matters

7. A number of commenters, in response to the NPRM, also pointed out that certain restrictions pertaining to specific radio services were also unnecessary and inefficient and should be amended because they would require the unnecessary duplication of radio facilities. Parties representing licensees in the Special Industrial Radio Service stated that the special limitations on use found in § 90.73(b), which preclude the transmission of communications that relate to such things as sales reports, payrolls, and retail delivery messages may be unnecessarily restrictive.[7] [8] We agree and are therefore deleting that section. Licensees in that service will still be governed by the general restrictions found in § 90.405; however, they will no longer be further limited by those restrictions in § 90.73(b).

8. Several licensees in the Telephone Maintenance Radio Service also suggested we eliminate the restrictions found in § 90.81(b) which preclude the transmission of communications for administrative or other sales related business activities.[9] [10] Again, we agree those restrictions are unnecessary and inefficient because they would require duplication of facilities and are amending that section to remove those restrictions. Licensees in this service will still be limited by the restrictions found in § 90.405. Further, the current restrictions found in § 90.81(b) regarding the transmission of any common carrier or public correspondence communications remain.

9. In the NPRM we stated that the proposal, if adopted, could cause increased congestion on shared channels and therefore could have a substantial impact on small businesses. Consequently, we served a copy of the NPRM on the Small Business Administration and invited specific comments on the point by interested parties. However, in light of the fact that the permissible communications restrictions will still apply to shared channel use, we do not believe there will be an impact. Therefore, we certify that section 603 and 604 of the Regulatory Flexibility Act of 1980 do not apply to the rule changes in this Report and Order because these changes will not have a significant economic impact on a substantial number of small entities. The Secretary shall cause a copy of this Report and Order, including the above certification, to be published in the **Federal Register**, and to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 605(b) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

10. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure, or record retention requirements, and will not increase or decrease burden hours imposed on the public.

11. Accordingly, it is ordered, that effective March 11, 1985, Part 90 of the Commission's Rules, 47 CFR Part 90, is amended as shown in the attached Appendix B. Authority for this action is found in sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303.

12. It is further ordered, that this proceeding is terminated.

13. For further information on this proceeding, contact Mary Beth Hess of the Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, Federal Communications Commission, Washington, D.C., (202) 634-2443.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

1. Comments were filed by:

The American-Iron Ore Association (AIOA)
The Associated Public Safety Communications Officers, Inc. (APCO)
The Association of American Railroads (AAR)
The Associated General Contractors of America (AGC)
Bell South Corporation on behalf of South Central Bell Telephone Company and Southern Bell Telephone and Telegraph Company (Bell South)
The California Public-Safety Radio Association, Inc. (CPRA)
The Central Committee on Telecommunications of the American Petroleum Institute (Central Committee)
The Colorado Search and Rescue Board
Don R. Davis
The Florida Fruit and Vegetable Association (FFVA)
Forest Industries Telecommunications (FIT)
Robert J. Hajek
Illinois Bell Telephone Company, Indiana Bell Telephone Company, Inc., Michigan Bell Telephone Company, The Ohio Bell Telephone Company and the Wisconsin Bell, Inc. (Ameritech Operating Companies)
The International Municipal Signal Association (IMSA)

[7] AIOA, NAAA, NCSA and SIRSA.

[8] Section 90.73(b) provides:

(b) *Special limitations on use of service.* Communications relating to any of the following shall not be transmitted by any station licensed in the Special Industrial Radio Service.

(1) Sales reports or the dispatching of salemen;

(2) Payrolls, accounts, or inventory controls; and

(3) Any message relating to the retail delivery of any item or product, except where such retail delivery is specifically included in the eligibility provisions of this section.

[9] Bell South, Ameritech Operating Companies and Southwestern Bell.

[10] Section 90.81(b) provides:

(b) *Special limitations on use.* The facilities authorized in this service shall only be used for transmission of communications directly related to the construction, repair, maintenance or operation of communications common carrier facilities. The facilities authorized in this service shall not be used for administrative or other sales related business activities of the licensee, nor for the transmission of any common carrier or public correspondence communication.

The Manufacturers Radio Frequency Advisory Committee (MRFAC)
Maryland State Police
Millicom Information Services, Inc.
Motorola, Inc.
The Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company and Pacific Northwest Bell Telephone Company (MTN)
The National Association of Business and Educational Radio, Inc. (NABER)
The National Agricultural Aviation Association (NAAA)
The National Crushed Stone Association (NCSA)
The National LP-Gas Association (NLPGA)
The National Ready Mixed Concrete Association (NRMCA)
The National Telecommunications and Information Administration (NTIA)
The New England Fuel Institute (NEFI)
New York Telephone Company and New England Telegraph Company (NYNEX Companies)
Offshore Navigation, Inc. (ONI)
Pacific Bell
Pennzoil Company
The Personal Radio Steering Group
John E. Rahtes
Rocky Mounty Rescue Groups, Inc.
The Search and Rescue Unit of Greater Philadelphia Emergency Radio Team
Southwestern Bell Telephone Company (Southwestern Bell)
The Special Industrial Radio Service Association, Inc. (SIRSA)
The Texas Department of Health
William R. Turner
The Utilities Telecommunications Council (UTC)

2. Reply comments were filed by:

The Association of American Railroads
The Central Committee on Telecommunications of the American Petroleum Institute
The Division of North Dakota Disaster Emergency Services (North Dakota)
Forest Industries Telecommunications
Henry Ledyard[1]
The Manufacturers Radio Frequency Advisory Committee
The Special Industrial Radio Service Association, Inc.

[1] Although labeled "comments", Mr. Ledyard's filing will be considered a timely filed reply comment because it was filed before the close of the reply comment period but after the close of the comment period.

Appendix B

PART 90—[AMENDED]

Part 90 of Chapter I of Title 47 of the Code of Federal Regulation is amended as follows:

1. Section 90.73 is amended by removing and reserving paragraph (b) as follows:

§ 90.73 Special Industrial Radio Service.

* * * * *

(b) [Reserved]

* * * * *

2. Section 90.81 is amended by revising paragraph (b) to read as follows:

§ 90.81 Telephone Maintenance Radio Service.

* * * * *

(b) *Special limitations on use.* The facilities authorized in this service shall only be used for transmission of communications directly related to the construction, repair, maintenance or operation of communications common carrier facilities. The facilities authorized in this service shall not be used for the transmission of any common carrier or public correspondence communication.

* * * * *

3. Section 90.405 is revised to read as follows:

§ 90.405 Permissible Communications.

(a) Stations licensed under this part may transmit only the following types of communication:

(1) Any communication related directly to the imminent safety-of-life or property;

(2) Communications directly related and necessary to those activities which make the licensee eligible for the station license held under this part. In addition, when communication service is provided under the cooperative sharing provisions of § 90.179, the licensee providing such service may transmit communications related to the activities for which the parties receiving the service would be eligible to be licensed.

(3) Communications for testing purposes required for proper station and system maintenance. However, each licensee shall keep such tests to a minimum and shall employ every measure to avoid harmful interference.

(b) The restrictions contained in paragraph (a) of this section shall not apply where a single base station licensee has been authorized to use a channel on an exclusive basis in the 470–512 MHz or 800 MHz frequency band.

[FR Doc. 85–3684 Filed 2–13–85; 8:45 am]
BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1051, 1320, 1321, 1322, 1323, and 1324

[Ex Parte No. MC–1][1]

Payment of Rates and Charges of Motor Carriers

AGENCY: Interstate Commerce Commission.

ACTION: Postponement of effective date of final rule.

SUMMARY: By a notice published in the **Federal Register** January 16, 1985 (50 FR 2289), the Commission revised credit regulations for all carrier modes. The schedule effective date of the new rule is February 15, 1985. Petition by American Trucking Association, Inc., National Motor Freight Traffic Association, and the Association of American Railroads show that an extension of the effective date to May 1, 1985 is needed to properly implement the revisions. Other parties have also filed petitions to postpone the effective date of all or part of the new rules for various time frames. The action taken here is not inconsistent with the thrust of the other petitions. Accordingly, action on these other pleadings will be subject to a separate decision at a later date.

DATE: The effective date of the credit regulations revisions published January 16, 1985 is extended to May 1, 1985.

FOR FURTHER INFORMATION CONTACT:

Louis E. Gitomer, (202) 275–7245, or Mont L. Burrup, (202) 275–6447.

Decided: February 8, 1985.

By the Commission, Reese H. Taylor, Jr., Chairman.

James H. Bayne,

Secretary.

[FR Doc. 85–3750 Filed 2–13–85; 8:45 am]
BILLING CODE 7035-01-M

[1] Embraces also Ex Parte Nos. 73, 73 (Sub-No. 1), 143, and 170. Embraces also No. 37152, Southern Railway Company—Petition for Rulemaking—Modification of 49 CFR 1320.1 (Credit Regulations).

Proposed Rules

Federal Register
Vol. 50, No. 31
Thursday, February 14, 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.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

Advance Payments in the Child Care Food Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Child Care Food Program (CCFP) regulations to reorganize and simplify the current provisions regarding the payment of advances to institutions. In addition, the Department is proposing three substantive modifications. First, sponsors will have to disburse all payments, including operating advances, to their facitities within five working days of receipt; secondly, no advance can exceed the amount of reimbursement earned by the institution for the same month in the previous year; and thirdly, State agencies will be required to compare advances to earnings for each institutions on a monthly basis and take appropriate actions to ensure that advances do not exceed claims. Interested parties are invited to comment on this proposal.

DATE: To be assured of consideration, comments must be postmarked on or before April 15, 1985.

ADDRESS: Comments should be addressed to Mr. Lou Pastura, Branch Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Mr. Lou Pastura or James C. O'Donnell at the above address or by telephone at (703) 756-3620.

SUPPLEMENTARY INFORMATION:

Classification

This rulemaking has been reviewed to accordance with 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 the ability of U.S. enterprises to compete with foreign based enterprises. This rule has also been reviewed with regard to the requirements of Pub. L. 97-354. The Administrator of the Food and Nutrition Service has certified that this rule does 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), the reporting or recordkeeping requirements that are included in this proposed rule have been submitted to the Office of Management and Budget (OMB) for approval. They are not effective until OMB approval has been obtained.

Background.

Pub. L. 95-627, enacted in November 1978, included a provision that advance payments are to be made available to institutions participating in the Child Care Food Program (CCFP). These advances are to be made available by the first day of each month of operation and are to reflect the level of claims customarily received from the institution. Advance payments which exceed claims for reimbursement are to be repaid to the State upon demand. The Deparment implemented this provisions in the January 22, 1980, CCFP regulations (45 FR 4960), and these requirements continue to appear in § 226.10 (a) and (b) of the current regulations.

At this time, the Department is proposing to reorganize and streamline these regulations in order to clarify both the direction and the intent of the statutory provision. Moreover, the Department is proposing three substantive amendments to limit the potential for advances to exceed earnings, to ensure the prompt recovery of excess advances and to require that advance operating payments made to sponsoring organizations to be passed through to their facilities within five days of receipt. In order to provide for consistent treatment of all payments made to all sponsored facilities, the Department is further proposing to require a five-day pass through of all reimbursements as well. These provisions are discussed separately below.

1. Limitation on Advances

As mentioned above, section 17(f)(4) of the National School Lunch Act requires that advance payments be made available to each institution by the first day of each month of operation, in an amount that reflects the full level of claims customarily received. The law further specifies that the advances are not to exceed the actual reimbursement earned by the institution. This mandate is implemented by § 226.10 (a) and (b) of the CCFP regulations, which also provides directions on determining the amount of initial advances for each fiscal year and establishes certain safeguards to ensure that institutions do not receive excessive advances. In response to comments and suggestions received on occasion, the Department believes these provisions should be revised and reorganized to clarify the essential requirements associated with advance payments. Also, the Department is removing requirements which are no longer necessary, such as the direction that the first advance of each fiscal year is to equal the average reimbursement of the previous six months. The six month average was originally proposed (July 3, 1979—44 FR 39094) because the Department wished to obtain a representative amount based on reasonably current rates and program size. However, the proposal also would have allowed the State agency to limit the intitial advance to the full amount of reimbursement which the State agency has estimated the institution would earn for that month. In the January 22, 1980 final rule, the Department retained the six month benchmark for the initial advance but modified the proposal to allow the State agency to "adjust" (rather than "limit") this amount to equal the full reimbursement expected to be earned. In making this change, the Department intended to allow States to make the initial advance in an amount either more or less than the six month average as determined by its estimate of the institution's needs.

At that time, the Department considered this benchmark to be needed because State agencies had little experience in making advances to

institutions. That situation no longer exists as States have been making advances for several years. The Department's experience with the CCFP indicates that participation patterns vary significantly by seasons. Participating during summer months tends to be lower than during the fall and winter months. As a result, the Department believes that a more reliable benchmark for both initial and subsequent advances would be the reimbursement earned during the same month in the previous year. By tying the amount of advances to that earned in the previous year, the Department can ensure that advances reflect participation and reimbursement trends, while still providing needed controls to prevent excessive advances. Therefore, the Department is proposing to amend paragraph (a) to rescind the six month average for initial advances and to implement the requirement that the advance issued to an institution for a given month shall not exceed the reimbursement earned by the institution for the same month in the preceding year.

2. Recovery of Excess Advance Payments

The Department is also proposing a substantive change to the advance payment provision in subparagraph (b)(3) to require State agencies to conduct monthly comparisons of reimbursement claims to advances and to take steps to recover any part of the advance which exceeds the amount of reimbursement that the institution is entitled to receive. Any recovery which might be required by this offset process would be accomplished either by demanding full repayment of the outstanding amount or by adjusting subsequent advances. In keeping with this provision, the Department also proposes to amend § 226.7(i) to require monthly, rather than periodic, comparison of advances to earned reimbursement.

The Department is making this proposal because, as stated above, the law does not intend that advances should be allowed to exceed earned reimbursement. The Department finds, however, that there is presently no uniform method of fulfilling this mandate nationwide. Rather, States are using a variety of methods with varying degrees of effectiveness. The Department consideres that this lack of uniformity can result in losses to the program from failure to recover excess advances in a timely manner. The proposed system will ensure greater control over disbursement of advances by beginning the comparison and recovery process as soon as claims are received.

3. Disbursement of Advance Payments to Facilities

The intent of the advance payment provision of the statute is to alleviate any cash-flow difficulties which participating child care facilities might otherwise experience if they could not meet ongoing expenses until their reimbursement claim were paid. In the case of day care homes, however, the Department finds that this intent is frequently not fulfilled. While sponsoring organizations can, and do, request operating advances for their homes, these advances are often not disbursed until the monthly meal counts and menu records are submitted to the sponsor. Consequently, the homes, themselves, may be experiencing cash-flow problems despite the fact that advance funds have been made available to the sponsor. When advance funding was originally discussed in the July 3, 1979, proposed rulemaking (44 FR 39078) the Department, in fact, proposed to require that operating advances to sponsors be passed on to their homes. Some commentors, however, expressed concern that if advances were passed on to homes, losses could occur due to fluctuations in home participation. At that time, the Department agreed with these commentors' concerns, and the pass through requirement was withdrawn for sponsoring organizations of day care homes, although a pass through was retained for sponsors of centers.

The Department believes, however, that the original proposal requiring sponsors to pass operating advances along to day care homes better fulfilled the intent of the statutory provision. The Department believes that participation is fairly stable, and, therefore, we do not believe that frequent large fluctuations in the participation are likely to occur. Therefore, the Department is proposing to amend § 226.16(g) to mandate that sponsors of day care homes which elect to receive operating advances for their homes, pass these advances through to their homes within five days of receipt. The Department is proposing a five day deadline to ensure that day care homes are able to use these funds as soon as possible. Furthermore, to ensure consistency for all sponsored facilities, the Department is proposing to amend § 226.16(h) to apply the same five-day pass through requirement to sponsors of centers and outside-school-hours care centers. The amount to be passed through must be the full amount which the sponsor expects the home to earn for that month, within the limitation established by § 226.10(a), discussed above. If the advance to the sponsor is less than the total amount of operating reimbursement expected to be earned for that month, the sponsor shall pass through to each home a prorated portion of its expected earnings. Finally, the Department is proposing to establish a five-day limit for sponsors to pass through reimbursement to all of their facilities.

List of Subjects in 7 CFR Part 226

Day care, Food assistance programs, Grant programs—health, Infants and children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, the Department is proposing to amend 7 CFR Part 226 as follows:

§ 226.7(i) [Amended]

1. Section § 226.7(i) is amended by revising the phrase "on a periodic basis" to read "on a monthly basis."

2. Section § 226.10, is amended by revising paragraphs (a) and (b) to read as follows:

§ 226.10 Program payment procedures.

(a) By the first day of each month of operation, the State agency shall provide an advance payment to each institution electing to receive such payments, in accordance with § 226.6(b)(10). Advance payments shal equal the full level of claims estimated to be submitted in accordance with paragraph (c) of this section, considering prior reimbursement claims and other information such as fluctuations in enrollment, except that the amount of the advance for any month shall not exceed the total reimbursement earned by the institution for the same month in the previous year. The institution may decline to receive all or any part of the advance.

(b) For each fiscal year, the amount of payment made, including funds advanced to an institution, shall not exceed the amount of valid reimbursement claimed by that institution. To ensure that institutions do not receive excessive advance payments, the State agency shall observe the following procedures:

(1) After three advance payments have been made to an institution, the State agency shall ensure that no subsequent advance is made until the State agency has validated the institution's claim for reimbursement for the third month prior to the month for which the next advance is to be paid.

(2) If the State agency has audit or monitoring evidence of extensive Program deficiencies or other reasons to believe that an institution will not be able to submit a claim for reimbursement, advance payments shall be withheld until the claim is received or the deficiencies are corrected.

(3) Each month the State agency shall compare incoming claims against advances to ensure that the level of funds authorized under paragraph (a) of this section does not exceed the claims for reimbursement received from the institution. Whenever this process indicates that excessive advances have been authorized, the State agency shall either demand full repayment or adjust subsequent payments, including advances.

(4) If, as a result of year end reconciliation as required by the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015), the State agency determines that reimbursement earned by an institution during a fiscal year is less than the amount paid, including funds advanced to that institution, the State agency shall demand repayment of the outstanding balance or adjust subsequent payments.

* * * * *

3. Section 226.16, is amended by revising the first three sentences of paragraph (g) and the first clause of paragraph (h) to read as follows:

§ 226.16 Sponsoring organization provisions.

* * * * *

(g) Each sponsoring organization electing to receive advance payments of program funds for day care homes shall disburse such payments to each home within five working days of receipt from the State agency. Advances to day care homes shall be the full amount which the sponsor expects the home to earn based on the number of meals projected to be served to enrolled children during the period covered by the advance multiplied by the applicable payment rate as specified in § 226.13(c), within the limitation established by § 26.10(a). If the advance to the sponsor is less than the total amount of operating reimbursement expected to be earned for that month, the sponsor shall disburse to each home a prorated portion of its expected earnings. Each sponsor shall disburse any reimbursement payments for food service due to each day care home within five working days of receipt from the State agency. * * *

(h) Sponsoring organizations shall make payments of programs funds to child care centers or outside-school-hours care centers within five working days of receipt from the State agency. * * *

* * * * *

(Sec. 17, National School Lunch Act, Pub. L. 95-627, 92 Stat. 3608 (42 U.S.C. 1773))

Dated: February 8, 1985.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 85-3794 Filed 2-13-85; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-85-2]

Petitions for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Denied or Withdrawn

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking and of dispositions of petitions denied or withdrawn.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and be received on or before, May 15, 1985.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB-10A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C. on February 8, 1985.

Donald P. Byrne,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR RULEMAKING

Docket No.	Petitioner	Description of the petition
24397	(AFA) Association of Flight Attendants	Description of petition: Petitioner requests flight and duty time regulations in Parts 121 and 135 equivalent to those applying to the pilots. Insofar as the pilot rules are amended during the time this petition is under consideration, AFA seeks to have the amended rules applied to flight attendants, except insofar as they allow longer than eight (8) hours of daily flight time in a single duty period, and except insofar as they allow for any rest period less than nine (9) hours. Additionally, petitioner seeks to eliminate the ambiguity of the phrase "free from duty". Training, deadheading, stand-by and ready reserve status or retroactive notification to cover an elapsed period of off-time would not constitute the intent of "free from duty". Regulations affected: 14 CFR Portions of Parts 121 & 135. Petitioner's reason for rule: The basis for this proposal is that flight attendants perform crucial safety duties during normal and emergency situations, and should have the same degree of rest as the pilots.
24171	National Rifle Assoc. (NRA) [1]	Description of petitions: Add a new subsection to read as follows: "Each certificate holder required to conduct security screening under a security program, where such certificate holder provides no location at which to check baggage before screening, or directs passengers to proceed through security screening prior to checking their baggage, shall adopt a procedure to allow a person in whose property an unloaded firearm has been found during screening to proceed with the property containing the unloaded firearm from the location of the screening to a location where the property containing the unloaded firearm may be transferred to an area within the aircraft, other than the flightcrew compartment, that is inaccessible to passengers." Regulation affected: 14 CFR 108.9.

PETITIONS FOR RULEMAKING—Continued

Docket No.	Petitioner	Description of the petition
		Petitioner's reason for rule: "The rule change requires airlines which have no location at which to check baggage before screening, or which direct passengers to proceed through security screening prior to checking their baggage, to establish a procedure to allow a person carrying an unloaded firearm in his baggage who goes through the metal detector and who is discovered to have the firearm in his baggage to check the baggage. The reasons for the rule change is the fact that current rules do not take into account people who are transporting unloaded firearms in baggage they must, due to airline's own action, check at the place of loading and not at the check-in counter. That such a change is needed is apparent from the fact that there have been numerous instances in which individuals who are transporting unloaded firearms in baggage which they intend to check at the airline counter, and who, because they were late for their flight or because the airline had no counter at which the baggage could be checked, have been arrested and charged with a violation of 49 USC Section 1472(L)(1)(A) even though they had not "attempted to board" an aircraft."

[1] This petition was previously published on September 21, 1984, at the request of the petitioner it is being republished in a modified form and the comment period reopened in order to allow commenters to supply additional information based on this modified summary.

[FR Doc. 85-3719 Filed 2-13-85; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 33

[Docket No. 24466; Notice No. 85-6]

Airworthiness Standards; Aircraft Engines, Engine Control Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to establish requirements for the certification of electronic aircraft engine control systems. Such control systems have already been developed for turbine engines and the potential exists for reciprocating engine applications. Electronic control systems, however, have unique characteristics which are not addressed in the current regulations pertaining to engine controls. Therefore, this proposal would add a new section to Federal Aviation Regulations (FAR) Part 33, to establish uniform functional standards specifically designed for electronic controls.

DATES: Comments must be received on or before May 20, 1985.

ADDRESSES: Comments on this proposal may be delivered or mailed in duplicate to: Federal Aviation Administration, Office of the General Counsel, Room 916, Attention: Rules Docket No. 24466, 800 Independence Avenue, S.W., Washington, D.C. 20591.

Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: H. Alden Jackson, Engine and Propeller Standards Staff, ANE-110, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7078.

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. Comments relating to the environmental, energy, or economic impact that might result from adoption of the proposals contained in this notice are invited. Comments are specifically requested concerning the implementation and effective date of the final rule. The FAA proposes to establish an effective date of 180 days after the issuance of the final rule. All initial comments received on or before May 20, 1985, and all reply comments received on or before July 20, 1985, will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 24466." The postcard will be date/time stamped and returned to the commenter. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of the NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

Background

State-of-the-art technology has led to the development of more complex and more nearly automated control systems for aircraft engines. This is particularly true in the cases of electrical and electronic engine control systems. Although electronic controls have, so far, only been developed for turbine engines, the potential exists that they may be developed for future use with reciprocating engines. Presently, there are no established definitive regulations that provide the certification basis for these engine control systems. The FAA has in recent years relied upon generalized interpretations of the FAR, Advisory Circular information, and certain aviation committee documentation to allow for such certification on a case-by-case basis. Therefore, the need has become evident for an addition to Part 33 of the FAR that establishes and standardizes the certification basis for electrical and electronic engine control systems for both turbine-powered and reciprocating-powered engines.

Electronic controls vary from a simple trimming device with full hydromechanical control backup to a complex, full authority, digital system with no mechanical backup. The operation of mechanical and analog electronic control systems may be verified by testing, since measured outputs are continuous functions of known inputs and dedicated hardware is used to perform each function. However, control systems based on digital computer technology are discontinuous and use shared hardware resources which cannot be completely tested. Although discontinuities can be made small, they raise the problem of finding if any are larger than expected

and finding the set of circumstances which would cause them to occur. Undiscovered software errors which could cause significant discontinuities, rather than failures, are the primary concern. As all engines on an aircraft could experience such as effect simultaneously, the resulting loss of power could be greater than a single engine failure. To identify these discontinuities by testing would require tests for each and every combination of individual inputs. Since this is impractical, the method used for the design of the system software must be a part of the certification review.

It has been a consistent certification requirement that engine operational integrity must be isolated from dependence on aircraft power or data inputs. This requirement shall continue with respect to electronic controls. Therefore, if aircraft power or data is used, a loss of either must not result in a significant change in engine operation.

Continued safe operation must be provided in the event of failures of the electrical or electronic components over a required range of power or thrust. Judgment must be used in establishing the required range, which depends on the intended application of the engine. The proposal concerning component failures is intended to permit flexibility and not impede design improvements or impose economic penalties, such as excessive redundancy, in the configuration of the control systems.

Lightning is a potential hazard which, in the past, has been primarily associated with the fuel within a fuel system and not the control of the fuel system. With the advent of electronic engine controls and the increased use of aircraft composite materials, however, the possibility exists that lightning strikes may affect engine operation. Therefore, the maximum level of lightning induced transients, which the control system can tolerate, must be specified for certification.

Economic Impact

There is no known increased cost impacts over current industry practice associated with the proposed rule. This proposed rule codifies and standardizes existing FAA practice with regard to the certification of engine control systems, particularly with those systems that are electrical or electronic in nature and more recently with the full authority digital electronic control (FADEC) system of the Pratt & Whitney 2037 turbine engine. Because these systems are state-of-the-art and there are presently no definitive regulations which provide for their certification, the FAA has relied upon generalized interpretations of the FAR, Advisory Circular information, and other aviation committee documentation to allow for certification on a case-by-case basis. The FAR rules which have been applied generally to the certification of electronic and electrical engine control systems include Part 25.901, Installation; Part 33.75, Safety Analysis; and Part 33.91, Engine Components Tests. None of these rules, however, provide explicit requirements with regard to engine controls. In consonance with existing FAA practice, this proposed rule underlies the FAA's intent to promulgate a regulation which institutes functional objective requirements rather than mandate design requirements in order to accomplish the certification of engine control systems.

Proposal 1 requires that control systems which rely on electrical or electronic means for operation must have the degree of authority of the primary control system and secondary system(s), if provided, specified in percent of power or thrust output. This essentially requires the manufacturer to state the control parameters to which the system is designed so that evaluation of the software design methodology may be made and the need for dedicated power sources may be established. This proposal does not require manufacturers to perform any additional testing or activities beyond current certification practices.

Proposal 2 requires that electrical or electronic control systems must be designed and constructed so that any failure of aircraft supplied power or data will not result in an excessive change of power or thrust or prevent continued safe operation of the engine. This proposal provides the engine manufacturer with alternatives in order to meet this requirement. For example, the manufacturer may meet the requirement through supply of an independent power supply such as a generator, or through a secondary power supply such as batteries, if the above conditions can be proved and documented. Establishing the certification requirement through the latter alternative may be difficult given present state-of-the-art technology. Regardless, the FAA has strictly interpreted this certification issue in the existing FAR as requiring engine isolation.

Proposal 3 requires that electrical or electronic control systems be designed and constructed so that any probable failure or malfunction of electrical or electronic components will not prevent continued safe operation of the engine. All manufacturers have chosen in the past to design and construct a hydro-mechanical or electronic control backup system that accomplishes this objective, and the FAA has approved these methods. Therefore, this requirement codifies current practices.

Proposal 4 requires that electrical or electronic control systems have environmental limits, including transients due to lightning strikes, specified. As with current certification practice, the requirement that the aircraft withstand lightning transients and continue operation, remains.

Proposal 5 requires that electrical or electronic control systems have all associated software designed and implemented to prevent errors which would result in an excessive loss of power or thrust or unsafe conditions, and have the method used to design and implement the software specified and be suitable for application. Software components are generally designed to critical levels. This proposed rule would provide the flexibility to allow the design of certain software components to less than critical levels if the manufacturer can show that unsafe conditions would not result from it.

Therefore, the proposed rule will establish clearer functional objective requirements that provide the basis for the certification of engine control systems. Furthermore, codifying these functional requirements will provide unquantified benefits to manufacturers and the Federal government by allowing them to standardize their certification efforts, thus resulting in reduced design, testing, and administrative costs.

This regulatory action merely proposes to codify and standardize in Part 33 Subpart B, functional requirements (objectives) pertaining to the certification of electrical and electronic engine control systems. This proposed rule is in consonance with present certification requirements as pertains to engine control systems and does not mandate specific design requirements. Because this proposed rule would not impose certification standards (objective) beyond those currently applied in practice by the FAA, there is no cost impact associated with the proposal. Furthermore, as described above, this proposed rule provides benefits to manufacturers and the Federal government through standardization of certification efforts. The FAA invites comments on the benefit and cost aspects of this proposed rule.

Trade Impact

The FAA cannot discern what impact, if any, this regulation would have on foreign trade. FAA invites comments on

what impact this regulation would have on the sale of foreign aviation products or services in the U.S. and on the sale of U.S. aviation products and services in foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to insure, among other things, that small entities are not disproportionately affected by government regulations. The RFA requires agencies to review rules which may have a "significant economic impact on a substantial number of small entities." There are no known engine manufacturers, airframe manufacturers, or manufacturers of electrical or electronic engine control systems which are considered to be "small entities" under the definitions of the RFA. Therefore, under the criteria of the RFA, it is certified that this proposal will not have a significant economic impact on a substantial number of small entities.

Conclusion

The FAA has determined that this is not a major regulation under Executive Order 12291. Its adoption will result in savings to the private sector, to consumers, and to the governmental sector by lowering design, testing, and administrative costs incurred in the type certification of aircraft and engines. In addition, the FAA has determined that this amendment is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The 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 33

Aircraft engines, Aircraft aviation safety.

The Proposed Amendment

Accordingly, the FAA proposes to amend Part 33 of the FAR (14 CFR Part 33) as follows:

PART 33—AIRWORTHINESS STANDARDS: AIRCRAFT ENGINES

By adding new § 33.XX to read as follows:

§ 33.XX Electronic engine control systems.

Each control system which relies on electrical or electronic means for operation must:

(a) Have the degree of authority of the primary control system and secondary system(s), if provided, specified in percent of power or thrust output for normal operation and failure conditions.

(b) Be designed and constructed so that any failure of aircraft supplied power or data will not result in a significant change of power or thrust or prevent continued safe operation of the engine.

(c) Be designed and constructed so that any probable failure or malfunction of electrical or electronic components of the control will not result in an unsafe condition or loss of ability to control the engine over an approved range of power or thrust.

(d) Have environmental limits, including transients due to lightning strikes, specified.

(e) Have all associated software designed and implemented to prevent errors which would result in an excessive loss of power or thrust or other unsafe condition, and have the method used to design and implement the software specified and be suitable for the applications.

(Sec. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354a), 1421, and 1423); (49 U.S.C. 106(g) revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.45)

Issued in Burlington, Massachusetts on December 21, 1984.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 85-3733 Filed 2-13-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-103-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend an existing airworthiness directive (AD) which requires inspection and replacement, as required, of the engine pylon and spar attach bolts (fuse pins) on certain Boeing Model 747 airplanes. This amendment would eliminate the reporting requirements specified in the existing AD because they are no longer necessary and, in addition, would correct an error in the Service Bulletin reference.

DATES: Comments must be received by February 26, 1985.

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

Comments on the proposal may be mailed in duplicate to FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-NM-103-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM-120S; telephone (206) 431-2923. Mailing address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they desire. Communications should identify the regulatory docket number and be submitted to duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-NM-103-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

Amendment 39-3529 (44 FR 47924; August 16, 1979), as amended by Amendment 39-4335 (47 FR 9812; March 8, 1982), requires repetitive inspections of the engine plyon midspar attach bolts (fuse pins) for cracks on certain Boeing Model 747 airplanes. This AD contains a requirement for operators to report to the FAA the results of inspections of the

plyon attach bolts. The purpose of these reports was to assist the FAA in initially determining the extent of failed parts found in service and the need, if any, for further rulemaking. Between 1979 and 1982, the FAA used the results reported, together with other data, and amended the rule to include termining action specified in Amendment 39-4335, which provides for incorporation of an improved part. A review of the results reported since 1982 has disclosed there is no further need for these reports.

In addition, one of the references in the AD to the Boeing Service Bulletin contains an incorrect number: SB 747-53-2063 should be SB 747-54-2063. The remaining references cite the bulletin correctly.

Inasmuch as this amendment would merely correct an editorial error and delete a reporting requirement which is no longer necessary, it will not impose any additional regulatory or economic burden on any person.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model 747 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

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 further amending Amendment 39-3529 (44 FR 47924; August 16, 1979), as amended by Amendment 39-4335 (47 FR 9812; March 8, 1982), as follows:

1. Remove paragraph F.; and

2. Revise the reference to the service bulletin in the introductory paragraph to read "747-54-2063."

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

Issued in Seattle, Washington, on February 6, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-3725 Filed 2-13-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-93-AD]

Airworthiness Directives; Boeing Model 767 Airplanes Equipped With CF6 Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This document proposes to amend an existing airworthiness directive (AD) which requires periodic inspection and replacement, as necessary, of the engine fuel feed hose on certain Boeing Model 767 airplanes. This amendment would provide terminating action for the AD by providing for the installation of a more durable hose.

DATES: Comments must be received no later than February 26, 1985.

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

Comments on the proposal may be mailed in duplicate to FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-NM-93-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

FOR FURTHER INFORMATION CONTACT: Mr. Bernie Gonzalez, Propulsion Branch, ANM-140S, Seattle Aircraft Certification Office; telephone (206) 431-2964. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of the proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-NM-93-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

AD 84-11-02, Amendment 39-4873 (49 FR 21920; May 24, 1984), requiring periodic inspection of the Boeing P/N S332T012-3 engine fuel feed hose, was issued following discovery of leaking hoses on several Model 767 airplanes in service. The AD requires inspection and replacement, as required, in accordance with Boeing Service Bulletin 767-73-11 dated March 24, 1984, or later FAA approved revisions. The Service Bulletin was later revised to include replacement with an approved hose, Boeing P/N S332T012-11. This hose contains a wound steel spring providing internal reinforcement. Continued inspection and replacement was initially required for this hose (P/N S332T012-11) pending additional qualification testing. Testing of the Boeing P/N S332T012-11 hose has shown that this hose can withstand the operating pressure cycles contributory to the in-service fuel leaks of the original hose, P/N S332T012-3. Therefore, the FAA is proposing to amend Amendment 39-4873 by incorporating a terminating action consisting of replacement of the fuel feed hose (P/N S332T012-3) with the wound steel spring reinforced hose (P/N S332T012-11).

Approximately 23 airplanes of U.S. registry would be affected by this AD. The replacement hose would be provided to operators at no additional charge by the manufacturer. Should an operator choose to install the replacement hose, it would require approximately 4 manhours to install, at an average charge of $40 per manhour. Based on these figures, the total cost impact of this AD would be $3,680.

For these reasons, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model 767 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

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 AD 84-11-02, Amendment 39-4873 (49 FR 21920; May 24, 1984), to add a new paragraph E. which reads as follows:

"E. Installation of fuel feed hose P/N S332T012-11 in accordance with Service Bulletin 767-73-11, Revision 2 dated May 25, 1984, terminates the repetitive inspection requirement of paragraph A., above."

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

Issued in Seattle, Washington, on February 6, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-3727 Filed 2-13-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-121-AD]

Airworthiness Directives; British Aerospace Model BAC 1-11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a revision to an existing airworthiness directive (AD) applicable to British Aerospace Model BAC 1-11 200 and 400 series airplanes which requires repetitive inspection and repairs, as necessary, of the flap drive screwjacks. This action would increase the time interval between repetitive inspections. In addition, reference would be made to the latest service bulletin revision.

DATES: Comments must be received no later than April 8, 1985.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to British Aerospace Inc., Box 17414, Dulles International Airport, Washington, D.C. 20041, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Foreign Aircraft Certification Branch; telephone: (206) 431-2979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified under the caption "Availability of NPRM." All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-NM-121-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The FAA issued AD 67-25-02, on September 20, 1967, to detect wear and prevent failure of the flap screwjack assemblies on British Aerospace BAC 1-11 airplanes. Since then, the manufacturer has conducted tests and evaluated service history. This led to the issuance of Alert Service Bulletin 27-A-PM2992, Issue 4, which allows an increase from 600 to 800 hours time in service for the visual inspection intervals, and from 2800 to 4800 hours time in service for measurement of the nut-to-screw backlash. The United Kingdom Civil Aviation Authority (CAA) concurs with this action and has classified Issue 4 as mandatory.

Based on the above, the FAA has determined that safety would not be impaired by revising AD-67-23-02 to extend these intervals accordingly. In addition, the AD would be rewritten to the format currently in use and reference would be made to the latest service bulletin revision issued.

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

Since this document proposes only to revise an existing AD to the format currently used and to amend the existing AD by extending the repetitive inspection intervals, it would not impose any additional regulatory or economic burden on any person.

For the reasons discussed above, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, British Aerospace Model BAC 1-11 airplanes are operated by small entities. A copy of a draft regulatory evaluation has been prepared for this action and has been placed in the regulatory docket. A copy may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by revising Airworthiness Directive 67-25-02, Amendment 39-477 (32 FR 12911; September 9, 1967), as amended by Amendments 39-485 (32 FR 13269; September 20, 1967) and 39-909 (35 FR

13805; December 9, 1969), to read as follows:

British Aerospace: Applies to BAC 1-11 200 and 400 series airplanes, certificated in all categories. Compliance required as indicated unless previously accomplished. To prevent serious deterioration and failure of the flap drive screwjacks, accomplish the following:

A. Perform a visual inspection of the flap drive screwjacks for evidence of unusual wear in accordance with paragraph 2.1.1 of British Aerospace BAC 1-11 Alert Service Bulletin 27-A-PM2992, Issue 4, dated November 30, 1979, prior to the accumulation of 750 landings or 800 hours time in service from the last inspection, whichever occurs earlier. Repeat the inspection at intervals not to exceed 800 hours time in service thereafter.

B. Measure the nut-to-screw backlash in accordance with paragraph 2.2 of British Aerospace BAC 1-11 Alert Service Bulletin 27-A-PM2992, Issue 4, dated November 30, 1979, prior to the accumulation of 3,000 landings or 4,800 hours time in service from the last check, whichever occurs earlier, and thereafter at intervals not to exceed 4,800 hours time in service or 3,000 landings, whichever occurs first. If the nut-to-screw backlash exceeds 0.03-inch, the screwjack assembly must be replaced with serviceable parts.

C. Incorporation of modification PM2992, which introduces a new seal for the ball nut, constitutes terminating action for this AD.

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

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

F. Upon the request of the operator, an FAA Maintenance Inspector, subject to prior approval of the Manager, Seattle 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.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

Issued in Seattle, Washington, on February 5, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-3728 Filed 2-13-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 84-NM-129-AD]

Airworthiness Directives; McDonnell Douglas Model DC-10 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) that would require modification of certain lavatory waste containers to provide improved container sealing capability for enhanced fire containment on McDonnell Douglas DC-10 series airplanes. This action is a consequence of the results of lavatory waste container fire containment testing recently conducted by Douglas Aircraft Company in response to FAA requests subsequent to a series of in-service inspections. This proposed AD is required to assure the fire containment capability of the affected lavatory waste containers.

DATES: Comments must be received on or before April 5, 1985.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Gilbert L. Thompson, Aerospace Engineer Systems & Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2831.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified under the caption "Availability of NPRM." All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-NM-129-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The initial design for lavatory waste containers on DC-10 airplanes consisted of two basic types: lavatory E/F type (includes lavatory 1,2,8,9,A-F,L,M,T) and lavatory H/J type (includes lavatory 3-7,H,J). Both types utilized non-removable containers, which require scooping out trash through a flapper door on the container. In 1973, both types of lavatory waste containers on DC-10 airplanes, fuselage numbers 92 and subsequent, were modified to a removable container ("rapid service" installation). DC-10 Service Bulletin 25-130 was issued in March 1974, for in-service retrofit of DC-10 airplanes, fuselage numbers 1 through 91.

Recent in-service inspections of the DC-10 lavatory waste containers have revealed that the sealing of the "rapid service" waste container installation is not adequate to ensure the containment of fires which might occur in that area. Other fire containment testing conducted by Douglas Aircraft Company indicates that improvement in the sealing of the lavatory H/J type waste containers should be accomplished. This AD proposes to relocate the lavatory trash container disposal door from the under wash basin access door to the trash container shroud (chute), and require the installation of a closeout strip on the trash container of the affected lavatories. These modifications will improve the sealing of the waste container and ensure the container's fire containment capability.

Cost Estimate

It is estimated that 101 U.S. registered airplanes would be affected by this proposed AD, that it would take approximately 7.5 manhours per airplane to accomplish the required actions, and that the average labor costs

would be $40 per manhour. The actual cost of modified parts is estimated to be $1,921 per airplane. Based on these figures, the total cost of this proposed AD to U.S. operators is estimated to be $224,321.

For the reasons discussed above, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model DC-10 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 identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-10 series airplanes, certificated in all categories. Compliance required as indicated, unless previously accomplished.

To assure the fire containment capability of the lavatory waste containers, accomplish the following:

A. Within 18 months after the effective date of this airworthiness directive (AD), modify the H/J type lavatory waste containers in accordance with the Accomplishment Instructions of McDonnell Douglas DC-10 Service Bulletin 25-330, Original Issue, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

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

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

Issued in Seattle, Washington, on February 4, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-3726 Filed 2-13-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-AWA-34]

Proposed Alteration of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to redesignate segments of VOR Federal Airways V-15, V-70, V-289, V-291, V-306 and V-477; and establish a new segment of V-359 to enhance the traffic flow within the Albuquerque, Fort Worth, Houston and Memphis Air Route Traffic Control Centers' (ARTCC) areas. Additionally, segments of V-15, V-70 and V-198 are also being amended due to the relocation of the Scholes, TX, VORTAC to an on-airport site at the Galveston, TX, Airport.

DATES: Comments must be received on or before April 1, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southwest Region, Attention: Manager, Air Traffic Division, Docket No. 84-AWA-34, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-AWA-34." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

In conjunction with efforts to eliminate unnecessary airways and to comply with a resolution of the International Civil Aviation Organization to redesignate alternate airways, the FAA is considering an

amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to renumber V–15W between Hobby, TX, and Waco, TX; renumber V–70N between Lafayette, LA, and Baton Rouge, LA; renumber V–198N between Junction, TX, and Stonewall, TX; renumber V–198S between Eagle Lake, TX, and Sabine Pass, TX; renumber V–289E between Beaumont, TX, and Lufkin, TX; renumber V–291N between Winslow, AZ, and Flagstaff, AZ; renumber V–306S between Navasota, TX, and Lake Charles, TX; renumber V–477W between Navasota, TX, and Scurry, TX, and establish a new segment of V–359 from Laredo, TX, to Corpus Christi, TX, to enhance the traffic flow within their respective ARTCC areas. Additionally, segments of V–15, V–70 and V–198 are also being amended due to the relocation of the Scholes, TX, VORTAC to an on-airport site at the Galveston, TX, Airport; (lat. 29°16'08.75"N., long. 94°52'03.09"W.). Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

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

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

V–289—[Amended]

By removing the words "Lufkin, including an E alternate;" and by substituting the word "Lufkin;"

V–569 [New]

From Beaumont, TX, via INT Beaumont 338°T(331°M) and Lufkin, TX, 146°T(138°M) radials; to Lufkin.

V–291 [Amended]

By removing the words "Flagstaff, AZ, including a N alternate from Winslow to Flagstaff via INT Winslow 292° and Flagstaff 063° radials" and by substituting the words "to Flagstaff, AZ;"

V–572 [New]

From Winslow, AZ, via INT Winslow 292°T(278°M) and Flagstaff, AZ, 063°T(049°M) radials; to Flagstaff.

V–306 [Revised]

From Junction, TX, via Austin, TX; Navasota, TX; INT Navasota 084°T(076°M) and Daisetta, TX, 283°T(275°M) radials; Daisetta; to Lake Charles, LA.

V–574 [New]

From Navasota, TX, via Humble, TX; Daisetta, TX; Beaumont, TX; to Lake Charles, LA.

V–359 [Revised]

From Nuevo Laredo, Mexico, via Laredo, TX; to Corpus Christi, TX; excluding the airspace within Mexico.

V–477 [Revised]

From Humble, TX, via Leona, TX; to Scurry, TX.

V–571 [New]

From Humble, TX, via Navasota, TX; Leona, TX; INT Leon 330°T(322°M) and Scurry, TX, 182°T(174°M) radials; to Scurry.

V–573 [New]

From Texarkana, AR, via INT Texarkana 037°T(030°M) and Hot Springs, AR, 225°T(221°M) radials; Hot Springs; to Little Rock, AR.

V–15 [Revised]

From Hobby, TX, via Navasota, TX; College Station, TX; Waco, TX; Scurry, TX; Blue Ridge, TX; Ardmore, OK; Okmulgee, OK; INT Okmulgee 048°T(040°M) and Neosho, MO, 223°T(216°M) radials; to Neosho. From St. Joseph, MO, via INT St. Joseph 343°T(335°M) and Neola, IA, 157°T(149°M) radials; Neola; INT Neola 322°T(314°M) and Sioux City, IA, 159°T(150°M) radials; Sioux City; INT Sioux City 340°T(331°M) and Sioux Falls, SD, 169°T(160°M) radials; Sioux Falls; Huron, SD, including a west alternate from Sioux Falls to Huron via Mitchell, SD, Aberdeen, SD, including a W alternate; 18 miles, 89 miles, 42 MSL, Bismarck, ND; to Minot, ND.

V–70 [Amended]

By removing the words "Baton Rouge, LA, including a N alternate via INT Lafayette 012° and Baton Rouge 264° radials;" and by substituting the words "Baton Rouge, LA;"

V–198 [Revised]

From San Simon, AZ, via Columbus, NM; El Paso, TX; 6 miles wide; INT El Paso 109°T(097°M) and Hudspeth, TX, 287°T(275°M) radials; 6 miles wide; Hudspeth; 29 miles, 38 miles, 82 MSL, INT Hudspeth 109°T(097°M) and Fort Stockton, TX, 284°T(273°M) radials; 18 miles, 82 MSL; Fort Stockton; 20 miles, 116 miles, 55 MSL; Junction, TX; San Antonio, TX; Eagle Lake, TX; Hobby, TX; INT Hobby 091°T(085°M) and Sabine Pass, TX, 265°T(258°M) radials; Sabine Pass; White Lake, LA; Tibby, LA; Harvey, LA; 69 miles, 33 miles, 25 MSL; Brookley, AL; INT Brookley 056°T(052°M) and Crestview, FL, 226°T(263°M) radials; Crestview; Marianna, FL; Tallahassee, FL; Greenville, FL; Taylor, FL; INT Taylor 093°T(093°M) and Jacksonville, FL, 287°T(290°M) radials; to Jacksonville.

V–556 [New]

From San Angelo, TX, via INT San Angelo 181°T(171°M) and Junction, TX, 310°T(302°M) radials; Junction; Stonewall, TX; INT Stonewall 113°T(105°M) and Eagle Lake, TX, 270°T(262°M) radials; Eagle Lake; INT Eagle Lake 116°T(108°M) and Scholes, TX, 278°T(270°M) radials; to Scholes.

V–548 [New]

From Hobby, TX, via INT Hobby 290°T(284°M) and College Station, TX, 151°T(143°M) radials; College Station; INT College Station 307°T(299°M) and Waco, TX, 173°T(164°M) radials; to Waco.

V–559 [New]

From Lafayette, LA, via INT Lafayette 012°T(006°M) and Baton Rouge, LA, 264°T(258°M) radials; to Baton Rouge.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.65)

Issued in Washington, D.C., on February 5, 1985.

John W. Baier,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85–3731 Filed 2–13–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 84–AWA–13]

Proposed Alteration of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to redesignate segments of VOR Federal Airways V–9, V–16, V–17, V–20, V–68 and V–71; revoke segments of V–13, V–16, V–20, V–66, V–68 and V–71; and establish new segments of V–13, V–202, and V–507 to enhance the traffic flow within the Albuquerque, Fort Worth, Houston and Memphis Air Route Traffic Control Centers' (ARTCC) areas.

DATES: Comments must be received on or before April 1, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southwest Region, Attention: Manager, Air Traffic Divison, Docket No. 84–AWA–13, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84–AWA–13." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

In conjunction with efforts to eliminate unnecessary airways and to comply with a resolution of the International Civil Aviation Organization to redesignate alternate airways, the FAA is considering an amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to renumber V–9E between New Orleans, LA, and Greenwood, MS; renumber V–9W between McComb, MS, and Greenwood, MS; renumber V–16S between Tucson, AZ, and Cochise, AZ, and Wink, TX, and Big Spring, TX; renumber V–17E between Cotulla, TX, and San Antonio, TX; renumber V–17W between McAllen, TX, and Laredo, TX, and San Antonio, TX, and Austin, TX, and Oklahoma City, OK, and Gage, OK; renumber V–20N between Beaumont, TX, and Lafayette, LA, and New Orleans, LA, and Semmes, AL; renumber V–20S between Lafayette, LA, and New Orleans, LA, and Semmes, AL, and Monroeville, AL; renumber V–68S between San Angelo, TX, and Junction, TX; renumber V–71W between Monroe, LA, and Natchez, MS; revoke V–13W between Shreveport, LA, and Texarkana, AR; revoke V–16N between Columbus, NM, and El Paso, TX; revoke V–66N between Columbus, NM, and El Paso, TX; revoke V–68S between Hobbs, NM, and San Antonio, TX; revoke V–71E between Baton Route, LA, and Monroe, LA; establish new segments of V–13 from Laredo, TX, to McAllen, TX, V–202 from Tucson, AZ, to Cochise, AZ, and V–507 from Oklahoma City, OK, to Gage, OK, to enhance the traffic flow within their respective ARTCC areas. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

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

List of Subjects in 14 CFR Part 71

Aviation safety VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

V–9 [Amended]

By removing the words "McComb, MS, including an E alternate from New Orleans to McComb via Picayune, MS; Jackson, MS, including an E alternate and also a W alternate via INT McComb 348° and Jackson 199° radials; Greenwood, MS, including an E alternate and also a W alternate;" and by substituting the words "McComb, MS; Jackson, MS; Greenwood, MS;"

V–555 [New]

From New Orleans, LA, via Picayune, MS; McComb, MS; INT McComb 019°T(013°M) and Jackson, MS, 169°T(164°M) radials; Jackson; INT Jackson 010°T(005°M) and Greenwood, MS, 159°T(156°M) radials; to Greenwood.

V–557 [New]

From McComb, MS, via INT McComb 348°T(342°M) and Jackson, MS, 199°T(194°M) radials; Jackson; INT Jackson 340°T(335°M) and Greenwood, MS, 189°T(186°M) radials; to Greenwood.

V–13 [Revised]

From Laredo, TX, via INT Laredo 156°T(147°M) and McAllen, TX, 306°T(297°M) radials; McAllen; Harlingen, TX; INT Harlingen 003°T(024°M) and Corpus Christi, TX, 178°T(169°M) radials; Corpus Christi; INT Corpus Christi 039°T(030°M) and Palacios, TX, 241°T(233°M) radials; Palacios, Humble, TX; Lufkin, TX; Shreveport, LA; Texarkana, AR; Rich Mountain, OK; Fort Smith, AR; INT Fort Smith 006°T(359°M) and Razorback, AR, 190°T(183°M) radials; Razorback; Neosho, MO; Butler, MO; Napoleon, MO; INT Napoleon 336°T(329°M) and St. Joseph, MO, 132°T(124°M) radials; Lamoni, IA; Des Moines, IA; Mason City, IA; Farmington, MN, Grantsburg, WI; Duluth, MN; to Thunder Bay, ON, Canada. The airspace outside the United States is excluded.

V-16 [Amended]

By removing the words "Cochise, AZ, including a S alternate via INT Tucson 122° and Cochise 257° radials; Columbus, NM; El Paso, TX, including a N alternate via INT Columbus 075° and El Paso 286° radials;" and substituting the words "Cochise, AZ; Columbus, NM; El Paso, TX;" and by removing the words "Big Spring, including a S alternate from Wink to Big Spring via Midland, TX;" and substituting the words "Big Spring;"

V-17 [Revised]

From Brownsville, TX, via Harlingen, TX; McAllen, TX; 29 miles 12 AGL, 34 miles 25 MSL, 37 miles 12 AGL; Laredo, TX; Cotulla, TX; INT Cotulla 046°T(037°M) and San Antonio, TX, 198°T(190°M) radials; San Antonio; INT San Antonio 042°T(034°M) and Austin, TX, 229°T(222°M) radials; Austin; Waco, TX; Acton, TX; Bridgeport, TX; Duncan, OK; INT Duncan 011°T(002°M) and Oklahoma City, OK, 180°T(171°M) radials; Oklahoma City; Gage, OK; Garden City, KS; to Goodland, KS.

V-546 [New]

From Wink, TX, via Midland, TX; to Big Spring, TX.

V-202 [Revised]

From Tucson, AZ, via INT Tucson 122°T(109°M) and Cochise, AZ, 257°T(244°M) radials; Cochise; San Simon, AZ; Silver City, NM; to Truth or Consequences, NM.

V-550 [New]

From Cotulla, TX, via INT Cotulla 046°T(037°M) and San Antonio, TX, 183°T(175°M) radials; San Antonio; INT San Antonio 027°T(019°M) and Austin, TX, 244°T(237°M) radials; Austin; INT Austin 041°T(034°M) and Waco, TX, 173°T(164°M) radials; Waco.

V-552 [New]

From Beaumont, TX, via INT Beaumont 058°T(049°M) and Lake Charles, LA, 272°T(265°M) radials; Lake Charles; INT Lake Charles 064°T(057°M) and Lafayette, LA, 285°T(279°M) radials; Lafayette; Tibby, LA; New Orleans, LA; Picayune, MS; Semmes, AL; INT Semmes 063°T(058°M) and Monroeville, AL, 216°T(212°M) radials; to Monroeville.

V-20 [Amended]

By removing the words "including a north alternate via INT Beaumont 056° and Lake Charles 272° radials; Lafayette, LA, including a N alternate via INT Lake Charles 064° and Lafayette 285° radials; New Orleans, LA, including a S alternate from Lafayette to New Orleans via Tibby, LA;" and by substituting the words "Lafayette, LA; New Orleans, LA;" and by removing the words "Semmes, AL, including a N alternate from New Orleans to Semmes via Picayune, MS, excluding the airspace between the main and this N alternate;" and by substituting the words "Semmes, AL;" and by removing the words "Monroeville, including a S alternate via INT Semmes 063° and Monroeville 216° radials;" and by substituting the word "Monroeville;"

V-66 [Amended]

By removing the words "El Paso, TX, including a N alternate via INT Columbus 075° and El Paso 286° radials;" and by substituting the words "El Paso, TX;"

V-68 [Amended]

By removing the words "Midland, including a S alternate via INT Hobbs 136° and Midland 283° radials; San Angelo, TX, including a S alternate via INT Midland 128° and San Angelo 278° radials; Junction, TX, including a S alternate via INT San Angelo 181° and Junction 310° radials; San Antonio, TX, including a south alternate via Center Point, TX;" and by substituting the words "Midland; San Angelo, TX; Junction, TX; San Antonio, TX;"

V-71 [Amended]

By removing the words "via Natchez, MS, including an E alternate via INT Baton Rouge 026° and Natchez 157° radials; Monroe, LA, including a W alternate;" and by substituting the words "via Natchez, MS; Monroe, LA;"

V-554 [New]

From Natchez, LA, via INT Natchez 310°T(307°M) and Monroe, LA, 160°T(154°M) radials; to Monroe.

V-507 [Revised]

From Oklahoma City, OK, via INT Oklahoma City 282°T(273°M) and Gage, OK, 152°T(142°M) radials; Gage; Liberal, KS; to Garden City, KS.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 [49 U.S.C. 1348(a) and 1354(a)]; [49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)]; and 14 CFR 11.65)

Issued in Washington, D.C., on February 7, 1985.

John W. Baier,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-3732 Filed 2-13-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-AWA-14]

Proposed Alteration of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to redesignate segments of VOR Federal Airways V-76, V-94, V-95, V-102, V-105, V-114, V-163 and V-212; revoke a segment of V-94; and establish a new segment of V-358 to enhance the traffic flow within the Albuquerque, Fort Worth, Los Angeles, Houston and Memphis Air Route Traffic Control Centers' (ARTCC) areas.

DATES: Comments must be received on or before April 1, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southwest Region Attention: Manager, Air Traffic Division, Docket No. 84-AWA-14, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

Brent A. Fernald, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-AWA-14." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

In conjunction with efforts to eliminate unnecessary airways and to comply with a resolution of the International Civil Aviation Organization to redesignate alternate airways, the FAA is considering an amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to renumber V–76N between Lubbock, TX, and Industry, TX; renumber V–76S between Llano, TX, and Hobby, TX; renumber V–94N between Newman, TX, and Salt Flat, TX; renumber V–95W between Phoenix, AZ, and Winslow, AZ; renumber V–102S between Salt Flat, TX, and Carlsbad, NM; renumber V–105E between Prescott, AZ, and Peach Springs, AZ, and between Coaldale, NV, and Reno, NV; renumber V–114N between Shreveport, LA, and New Orleans, LA; renumber V–163W between Corpus Christi, TX, and Acton, TX, and between Ardmore, OK, and Oklahoma City, OK; renumber V–212N between Alexandria, LA, and McComb, MS; revoke V–94S between Deming, NM, and Newman, TX; establish a new segment of V–358 from Ardmore, OK, to Oklahoma City, OK, to enhance the traffic flow within their respective ARTCC areas. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

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

List of Subjects in 14 CFR Part 71

VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

V–76 [Revised]

From Lubbock, TX, via INT Lubbock 188°T(177°M) and Big Spring, TX, 286°T(275°M) radials; Big Spring; Hyman, TX; San Angelo, TX; Llano, TX; Austin, TX; Industry, TX. INT Industry 101°T(093°M) and Hobby, TX, 290°T(284°M) radials; to Hobby.

V–563 [New]

From Lubbock, TX; to Big Spring, TX.

V–565 [New]

From Llano, TX, via INT Llano 135°T(127°M) and Austin, TX, 280°T(273°M) radials; to Austin.

V–558 [New]

From Llano, TX; via INT Llano 096°T(088°M) and Austin, TX, 314°T(307°M) radials; Austin; INT Austin 090°T(083°M) and Industry, TX, 310°T(302°M) radials; Industry; Eagle Lake, TX; to Hobby, TX.

V–94 [Amended]

By removing the words "Newman, TX, including a S alternate via INT Deming 119° and Newman 271° radials; Salt Flat, TX, including a north alternate via INT Newman 091° and Salt Flat 312° radials;" and by substituting the words "Newman, TX; Salt Flat, TX;"

V–560 [New]

From Newman, TX, via INT Newman 091°T(079°M) and Salt Flat, TX, 312°T(300°M) radials; Salt Flat; INT Salt Flat 085°T(073°M) and Carlsbad, NM, 220°T(208°M) radials; to Carlsbad.

V–95 [Revised]

From Gila Bend, AZ, via INT Gila Bend 096°T(082°M) and Phoenix, AZ, 204°T(190°M) radials; Phoenix; 49 miles, 40 miles, 95 MSL; Winslow, AZ; 66 miles, 39 miles, 125 MSL; Farmington, NM; Durango, CO; Gunnison, CO; 15 miles 125 MSL, 12 miles 145 MSL, 22 miles 157 MSL, 23 miles 135 MSL, 9 miles 128 MSL; to Kiowa, CO. The airspace 14,000 feet MSL and above is excluded from 23 NM northeast of Phoenix to 22 NM southwest of Winslow, from 1300 GMT to 0200 GMT, Monday through Friday, and other times as advised by a Notice to Airmen.

V–567 [New]

From Phoenix, AZ; via INT Phoenix 006°T(352°M) and Winslow, AZ, 224°T(210°M) radials; 52 miles, 95 MSL; to Winslow. The airspace 14,000 feet MSL and above is excluded from 23 NM north of Phoenix to 26 NM southwest of Winslow, from 1300 GMT to 0200 GMT, Monday through Friday, and other times as advised by a Notice to Airmen.

V–102 [Revised]

From Salt Flat, TX, via Carlsbad, NM; Hobbs, NM; Lubbock, TX; Guthrie, TX; to Wichita Falls, TX.

V–105 [Revised]

From Tucson, AZ, via INT Tucson 298°T(285°M) and Casa Grande, AZ, 145°T(131°M) radials; Casa Grande; Phoenix, AZ; Prescott, AZ; 25 miles, 22 miles 85 MSL; Boulder City, NV; Las Vegas, NV; INT Las Vagas 266°T(251°M) and Beatty, NV, 142°T(126°M) radials; 17 miles, 105 MSL Beatty; 105 MSL Coaldale, NV; 82 miles 110 MSL; to Reno, NV.

V–562 [New]

From Prescott, AZ; 25 miles 85 MSL, via INT Prescott 319°T(305°M) and Peach Springs, AZ, 134°T(119°M) radials; 8 miles 85 MSL; Peach Springs; INT Peach Springs 305°T(290°M) and Las Vegas, NV, 081°T(066°M) radials; to Las Vegas.

V–564 [New]

From Coaldale, NV, 110 MSL via Mina, NV, 110 MSL; INT Mina 300°T(283°M) and Reno, NV, 135°T(117°M) radials; to Reno.

V–114 [Revised]

From Amarillo, TX, via Childress, TX; Wichita Falls, TX; INT Wichita Falls 117°T(107°M) and Blue Ridge, TX, 285°T(277°M) radials; Blue Ridge; Quitman, TX; Gregg County, TX; Alexandria, LA; INT Baton Rouge, LA, 307°T(301°M) and Lafayette, LA, 042°T(036°M) radials; 7 miles wide (3 miles north and 4 miles south of centerline); Baton Rouge; to New Orleans, LA; excluding the portion within R–3801B and R–3801C.

V–566 [New]

From Gregg County, TX, via Shreveport, LA; INT Shreveport 176°T(169°M) and Alexandria, LA, 302°T(295°M) radials; Alexandria; INT Alexandria 109°T(102°M) and New Orleans, LA, 312°T(306°M) radials; to New Orleans; excluding the portion within R–3801B and R–3801C.

V–163 [Revised]

From Matamoros, Mexico; via Brownsville, TX; 27 miles standard width, 37 miles 7 miles wide (3 miles E and 4 miles W of centerline); Corpus Christi, TX; Three Rivers, TX; INT Three Rivers 345°T(337°M) and San Antonio, TX, 168°T(160°M) radials; San Antonio; Lampasas, TX; Acton, TX; Bridgeport, TX; Armdore, OK; INT Ardmore 342°T(333°M) and Oklahoma City, OK, 154°T(145°M) radials; to Oklahoma City. The airspace within Mexico is excluded.

V–568 [New]

From Corpus Christi, TX, via INT Corpus Christi 296°T(287°M) and Three Rivers, TX, 165°T(157°M) radials; Three Rivers; INT Three Rivers 327°T(319°M) and San Antonio, TX, 183°T(175°M) radials; San Antonio;

Stonewall, TX; Llano, TX; INT Llano 026°T(018°M) and Acton, TX, 215°T(206°M) radials; to Acton.

V-358 [Amended]

By removing the words "to Ardmore, OK." and by substituting the words "Ardmore, OK; INT Ardmore 327°T(318°M) and Oklahoma City, OK, 180°T(171°M) radials; to Oklahoma City."

V-212 [Amended]

By removing the words "to McComb, MS, including a north alternate via Natchez, MS." and by substituting the words "to McComb, MS."

V-570 [New]

From Alexandria, LA, via Natchez, LA; to McComb, LA.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65)

Issued in Washington, D.C. on February 5, 1985.

John W. Baier,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-3723 Filed 2-13-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-ASO-1]

Proposed Revocation of Control Zone, Knoxville, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revoke the Knoxville Downtown Island Airport, Tennessee, control zone. The intended effect of this action is to raise the floor of controlled airspace, in the vicinity of the airport, from the surface to 700 feet above ground level. One of the basic requirements for retention of a control zone is that weather observations be taken at least hourly and reported to the air traffic control facility having jurisdiction over the control zone. Knoxville Downtown Island Airport no longer meets this basic requirement since weather observation reports are not available.

DATES: Comments must be received on or before: April 1, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Manager, Airspace and Procedures Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. ———." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the propose rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) that will revoke the Knoxville Downtown Island Airport, Tennessee, control zone and raise the floor of controlled airspace in the vicinity of the airport from the surface to 700 feet above ground level. This action will provide additional uncontrolled airspace for the conduct of Visual Flight Rules aeronautical activity. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6A dated January 2, 1985.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Control zone.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend the Knoxville Downtown Island Airport, Tennessee, control zone under § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Knoxville Downtown Island Airport, TN—[Revoked]

By revoking the title and text.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983.)); and 14 CFR 11.65)

Issued in East Point, Georgia, on January 31, 1985.

S. Oberlander,

Acting Director, Southern Region.

[FR Doc. 85-3724 Filed 2-13-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 84-ANM-34]

Proposed Alteration of Jet Route J-157—Denver, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Jet Route J-157 to aid flight planning and improve the flow of air traffic at Denver, CO.

DATES: Comments must be received on or before March 18, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Northwest Mountain Region, Attention: Manager, Air Traffic Division, Docket No. 84-ANM-34, Federal Aviation Administration, 17900 Pacific Highway South, C-68966, Seattle, WA 98168.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-ANM-34." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 75.100 of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to amend Jet Route J-157 by extending it from Denver, CO, to KEANN Intersection. This is the result of a request by the flying public and will aid flight planning and improve the flow of traffic to Denver, CO. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

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

List of Subjects in 14 CFR Part 75

Jet routes, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 75.100 of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

J-157 [Amended]

By removing the words "From the INT of Denver, CO, 058° and Gill, CO, 151° radials, via INT Denver 058°" and substituting the words, "From Denver, CO, via INT of Denver 058°T(046°M)"

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983.)); and 14 CFR 11.65)

Issued in Washington, D.C. on January 30, 1985.

John W. Baier,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-3712 Filed 2-13-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-243 (Colorado-39 Addition II)]

High-Cost Gas Produced From Tight Formations; Colorado

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982), to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703 (1983)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the

recommendation of the State of Colorado that the Niobrara Formation be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on March 28, 1985.

Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on February 26, 1985.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Edward Gingold (202) 357-5491, or Victor Zabel (202) 357-8616.

SUPPLEMENTARY INFORMATION:

Issued: February 11, 1985.

I. Background

On January 29, 1985, the State of Colorado Oil and Gas Conservation Commission (Colorado) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (18 CFR 271.703 (1983)), that the Niobrara Formation located in Weld County, Colorado, be designated as a tight formation. This Notice of Proposed Rulemaking is issued under § 271.703(c)(4) to determine whether Colorado's recommendation that the Niobrara Formation be designated a tight formation should be adopted. Colorado's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

The recommended acreage is located within the Denver-Julesberg Basin near the city of Greeley, Colorado. The recommended formation underlies approximately 14,720 acres in Weld County, Colorado, and has an average gross thickness of 300 feet in this area. The average depth to the top of the Niobrara Formation is 7,000 feet. The Niobrara in this area is found between the bottom of the Sharon Springs Shale and the top of the Codell Sandstone.

III. Discussion of Recommendation

Colorado claims in its submission that evidence gathered through information as testimony presented at a public hearing in Cause No. NG-44, Order No. NG-44-3 convened by Colorado on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Colorado further asserts that existing State and Federal Regulations assure that development of this formation will not adversely affect any fresh water aquifers.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, [Reg. Preambles 1977-1981] FERC Stats. and Regs. ¶ 30,180 (1980), the Director gives notice of the proposal submitted by Colorado that the Niobrara Formation as described and delineated in Colorado's recommendation as filed with the Commission, be designated as a tight formation under § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, D.C. 20426, on or before March 28, 1985. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79-76-243 (Colorado—39 Addition II), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they want to make an oral presentation and so request a public hearing. The person shall specify the amount of time requested at the hearing, and should file the request with the Secretary of the Commission no later than February 26, 1985.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

Accordingly, the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, will be amended as set forth below, in the event the Commission adopts Colorado's recommendation.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

Section 271.703 is amended as follows:

1. The authority citation for Part 271 reads as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703 is amended by revising paragraph (d)(209) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(187) through (208) [Reserved]

(209) *Niobrara Formation in Colorado.* RM79-76-243 (Colorado—39 Addition II).

(i) *Delineation of formation.* The Niobrara Formation is located in Weld County, Colorado, in Township 4 North, Range 66 West, 6th P.M., Sections 1, 11 through 14, and 19 through 36.

(ii) *Depth.* The average depth to the top of the Niobrara Formation is 7,000 feet. The vertical limits are defined as the base of the Sharon Springs Shale and the top of the Codell Sandstone. The formation is approximately 300 feet thick.

[FR Doc. 85-3772 Filed 2-13-85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 341

[Docket No. 76N-052H]

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Tentative Final Monograph for OTC Antihistamine Drug Products

Correction

In FR Doc. 85-680 beginning on page 2200 in the issue of Tuesday, January 15, 1985, make the following corrections:

1. On page 2201, second column, second complete paragraph, fourteenth line, "show" should read "order".

2. On page 2203, second column, nineteenth line, "11" should read "II".

3. On page 2204, second column, thirteenth line, "5337" should read "5737".

4. On page 2206, second column, second line, insert the word "under" after the word "to".

5. On page 2208, second column, six lines from the bottom, "the" should read "be".

6. On the same page, third column, second complete paragraph, tenth line, "56736" should read "56756".

7. On page 2209, third column, eighth line, "exemptiong" should read "exempting".

8. On page 2211, second column, first complete paragraph, fifth line from the bottom, "subject" should read "subjective".

9. On the same page, third column, in the table at the bottom, the last line of the table should read "pheniramine maleate".

10. On page 2212, first column, in the table, the second line should read "Promethazine hydrochloride".

11. On page 2214, second column, in "Reference (6)", third line, "methylephenyl" should read "methylphenyl". In the fourth line, "-ene" should read "-1-ene".

12. On page 2215, first complete paragraph, second line from the bottom, insert the word "been" between "has" and "deleted".

13. On page 2216, first column, third complete paragraph, first line, "40002" should read "30002".

§ 341.72 [Corrected]

14. On page 2216, third column, in § 341.72(c)(6)(ii), ninth line, "hyrochloride"should read "hydrochloride".

15. On page 2217, first column, in § 341.72(d)(4), third line, "§ 341.12(c)" should read "§ 341.12(d)".

16. On page 2217, second column, in § 341.72(d)(10), third line, "to 6" should be removed. In the fourth line, "8 to 8" should read "6 to 8". In the eleventh line, the material beginning with "(e)" should be a separate paragraph.

§ 341.90 [Corrected]

17. On page 2217, third column, in § 341.90(i), in the fourth and fifth lines, "4 to 6" should read "6 to 8".

18. On the same page, same column, in § 341.90(k), third line, "2" should read "4". In the fifth line, "4 to 6" should read "6 to 8".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-16-79]

Tax Treatment of Cafeteria Plans; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the tax treatment of cafeteria plans (transition rules).

DATES: The public hearing will be held on Monday, March 11, 1985, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Monday, March 4, 1985.

ADDRESS: The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, ATTN: CC:LR:T (EE-16-79), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: B. Faye Easley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, telephone 202-566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 125 of the Internal Revenue Code of 1954 relating to the general and special transition relief provided by the Tax Reform Act of 1984. These proposed regulations contain amendments to the notice of proposed rulemaking which appeared in the **Federal Register** for May 7, 1984 (49 FR 19321). The proposed amendments for which the public hearing is being held appeared in the **Federal Register** for Monday, December 31, 1984 (49 FR 50733). On Thursday, July 26, 1984, a public hearing was held on the proposed regulations which appeared at 49 FR 19321.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who submitted comments within the time prescribed in the notice of proposed rulemaking which appeared at 49 FR 50733 and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Monday, March 4, 1985, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

James McGovern,

Director, Employee Plans and Exempt Organizations Division.

[FR Doc. 85-3805 Filed 2-13-85; 8:45 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 19

[Notice No. 557; Ref: Notice No. 370]

Reporting Taxes Due to the Governments of Puerto Rico and the Virgin Islands on Bulk Distilled Spirits

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Amended notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing this notice of proposed rulemaking as an amendment to Notice No. 370, published in the **Federal Register** on April 13, 1981 (46 FR 21624). ATF is proposing to revise the reporting requirements for bulk Puerto Rican and Virgin Islands rum and other spirits, and rum imported from other areas bottled by domestic distilled spirits plants. The reporting procedure forms the basis for the transfer of excise taxes to the Treasuries of Puerto Rico and the Virgin Islands.

DATE: Comments must be received on or before April 15, 1985.

ADDRESS: Comments may be mailed to Chief, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385 (Notice No. 557).

FOR FURTHER INFORMATION CONTACT: Susan McCarron or Robert White, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202–566–7531).

SUPPLEMENTARY INFORMATION:

Background

Prior to the implementation of the Distilled Spirits Tax Revision Act of 1979 on January 1, 1980, the excise taxes on bulk distilled spirits that were produced by distilled spirits plant permittees, or brought into the United States, were determined at the time the bulk spirits were withdrawn from the bonded storage area of a distilled spirits plant. The spirits were reported on ATF Form 179, Withdrawal of Spirits Tax Determined, prior to processing and bottling operations. For bulk rum and spirits brought into the U.S. from Puerto Rico and the Virgin Islands, the ATF regional office personnel prepared summary reports based on the Forms 179, and made adjustments to the amounts reported (i.e., operational losses, destruction, etc.), to determine the amount of taxes that would be transferred from the United States to the Treasuries of Puerto Rico and the Virgin Islands.

Impact of Pub. L. 98–67, Title II

Prior to the passage of the Caribbean Basin Economic Recovery Act (Pub. L. 98–67, Title II) on August 5, 1983, the reporting procedures discussed in this document only affected Puerto Rican and Virgin Islands rum and other spirits. Effective July 1, 1983, this Act mandated that the excise taxes collected on all rum imported into the United States are to be paid over to the Treasuries of Puerto and the Virgin Islands by means of a formula prescribed by regulation. The purpose of this portion of the Act was to ensure that the economies of Puerto Rico and the Virgin Islands are not adversely affected y the elimination of duties on selected goods imported into the United States from certain countries in the Caribbean basin area.

Existing Regulations

With the implementation of the Distilled Spirits Tax Revision Act of 1979 and temporary regulations issued in T.D. ATF–62 (44 FR 71613), the previsous regulations in 17 CFR Part 201 were revised and recodified as 27 CFR Part 19.

Under present law and regulations, the bonded premises of a distilled spirits plant is extended to include all operations from original production through bottling operations. Therefore, the excise taxes on distilled spirits are determined at the time the spirits are physically removed from the plant premises.

Since the point of tax determination for Puerto Rican and Virgin Islands rum and spirits, and all other imported rum under the previous regulations occurred when the bulk spirits were removed from bonded storage prior to processing (including bottling) operations, the reporting point for these spirits that was incorporated into the temporary regulations was also made prior to processing and bottling. This provided a smooth transition from the previous system to the present regulations.

Currently, proprietors of distilled spirits plants are required under 27 CFR 19.377 to maintain a separate accounting in proof gallons of Puerto Rican and Virgin Islands rum and spirits, and other imported rum that is received into the processing account for nonindustrial use. Each month proprietors determine the percentage of overall gains or losses for all nonindustrial spirits received in their processing account. The proof gallons of Puerto Rican and Virgin Islands rum and spirits, and other imported rum received in processing each month are adjusted by that percentage. Proprietors file monthly reports on ATF Form 5110.28, Monthly Report of Processing Operations, showing separately the adjusted proof gallons of Puerto Rican rum, other Puerto Rican spirits, Virgin Islands rum, other Virgin Island spirits, and other imported rum received in processing. ATF regional office personnel compile these reports, and prepare a summary report that forms the basis for the remittance of excise taxes from the United States to the Treasuries of Puerto Rico and the Virgin Islands.

Proposed Change

The system proposed in this document requires proprietors of distilled spirits plants to report the quantities of Puerto Rican and Virgin Islands rum and spirits, and other imported rum when such spirits are actually removed from the bonded premises taxpaid or tax determined. Since the system currently used only approximates tax determinations by making adjustments for processing losses computed on the basis of all products in processing, it is potentially imprecise in accounting for actual quantities of Puerto Rican and Virgin Islands rum and spirits, and other imported rum removed taxpaid or tax determined. This fact substantiates the need for the changes proposed in this notice.

Presently, adjustments must be made to the excise tax remittances to Puerto Rico and the Virgin Islands for voluntary destructions, export transactions, accidental losses, and claims for drawback filed by manufacturers of nonbeverage products. The proposed system would eliminate adjustments for any occurrences involving Puerto Rican and Virgin Islands rum and spirits, and other imported rum prior to tax determination, such as voluntary destructions, accidental losses prior to tax determination, and taxfree removals for exportation. Adjustments to the remittances will still be required for claims that are filed for: accidental losses of spirits in these categories that have been tax determined but not removed from bonded premises; drawback of the excise taxes for spirits exported after tax determination; and drawback of the excise taxes paid on spirits used in the manufacture of nonbeverage products.

Although proprietors will be required to adjust their recordkeeping procedures to account for quantities of these spirits contained in products removed from their bonded premises taxpaid or tax determined on ATF F 5110.28, their total recordkeeping burden will not be substantially increased. Regulations in Part 19 currently require that spirits removed from bonded premises be recorded by kind and quantity in the daily records; therefore, any additional records and recordkeeping required by this notice should be available to distilled spirits plant proprietors in their daily records.

Discussion of Comments

ATF published a notice of proposed rulemaking in the **Federal Register** on April 13, 1981 (46 FR 21624), requesting comments to a proposed system of reporting Puerto Rican and Virgin Islands spirits for excise tax remittance purposes by accounting for them in two distinct categories. The first category would contain spirits mixed in processing with other alcoholic ingredients, and the second category would account for spirits not mixed in processing with any other alcoholic ingredient. Spirits in the first category would be reported upon completion of bottling or packaging, whereas spirits in the second category would be reported when removed from bond or taxpayment or tax determination.

The general consensus of the comments received subsequent to Notice No. 370 favored a new system of reporting taxes due to Puerto Rico and the Virgin Islands. Proprietors of the distilled spirits plants that responded to the notice suggested that instead of

requiring a dual system of accounting for the spirits from Puerto Rico and the Virgin Islands, all quantities of these spirits contained in final products should be reported at actual tax determination on removal from the bonded premises. One proprietor stated that using this system would actually save the company 3 to 4 clerical hours per month at each plant, compared to the current system.

Suggestions were received from proprietors of distilled spirits plants to simplify or alter the reporting procedure for these spirits. Taking all of these recommendations into consideration, we are proposing to revise ATF F 5110.28, Monthly Report of Processing Operations, to simplify and clarify the reporting of quantities of these spirits that are removed taxpaid or tax determined from the bonded premises.

Transition Plan

At the time of conversion to the new tax reporting system, distilled spirits plants will be in possession of Puerto Rican and Virgin Islands rum and spirits, and rum from other areas on which the taxes have already been credited to the insular treasuries. These spirits, which have already been reported when they were transferred to the processing account, will be reported again at the actual time of tax determination. Therefore, proprietors will be required to take a one-time inventory of spirits in these categories that are in the processing account, including cased goods on the bonded premises, on the date of conversion to the new system. This inventory will be reported in a letter to the regional director (compliance), and will be used by ATF to offset the double reporting of taxes to be credited to the insular treasuries.

Payments to the Virgin Islands Treasury for products manufactured in that possession are made in advance and adjusted at the end of each fiscal year; consequently, the conversion inventory amounts will be taken as decreasing adjustments at the end of the fiscal year. Payments to the Puerto Rican Treasury for products manufactured in that possession, and payments to both of these treasuries for rum imported from other areas, are made monthly; therefore, the inventory amounts will be amortized to reduce the economic effect of the conversion. The amortization plan is discussed in the next section of the preamble.

In order to ensure a smooth transition to this proposed system, impose a minimal burden on domestic bottlers, and ease the impact of the conversion on these treasuries, the following transition plan and new reporting procedures are proposed.

During the last month under the old system proprietors would continue to report these spirits transferred into the processing account, adjusted by the net processing loss or gain, as previously reported on ATF F 5110.28, Monthly Report of Processing Operations.

On the first day of the new system, proprietors would begin reporting tax determinations of these spirits, including quantities of these spirits contained as ingredients of other distilled spirits products tax determined. The proposed regulation in this document allows for standard reporting, averaging, or any approved alternative for reporting mixed products.

The standard reporting method of determining the amount of these spirits contained as ingredients of other products would be computed by using the minimum quantity of these spirits reported in the approved formulas for each product removed tax determined. The averaging method would allow distilled spirits plant proprietors to use the average quantity of these spirits contained in batches of each type (formulation) of mixed products that were produced and bottled during the preceding six month period. This average would be adjusted each month to include only the immediately preceding six month period.

Beginning with the first month of the new system, proprietors would report total monthly tax determinations of Puerto Rican and Virgin Islands rum and spirits, and other imported rum, on ATF F 5110.28, which will reflect revised captions in Part III.

Amortization Plan

Choosing a conversion date to put this plan into effect will require an examination of several distilled spirits plants' taxable removals and inventory fluctuations. The most viable date would be when the companies have maximum taxable removals and a small inventory in the processing account. Since these two events seem to be mutually exclusive, the ATF regional offices will rely on an analysis of tax returns and monthly reports to determine the optimum date for this conversion.

The conversion inventories will be used as decreasing adjustments to monthly taxable removal payments of these spirits that will be due to Puerto Rico and the Virgin Islands; therefore, this plan will amortize the decreasing adjustments over a period of twelve months.

To illustrate this proposed amortization plan, the followng example is given. The closing inventory of Puerto Rican rum and spirits contained in the processing account is 500,000 pg × $10.50 = $5,250,000. Rather than deduct this from payments to Puerto Rico in one lump sum, it will be amortized over 12 months, amounting to a deduction of $437,500 per month from the amount due the Puerto Rican Treasury. At the end of the 12 months, the entire conversion inventory amount ($5,250,000) will have been deducted.

The distilled spirits plant proprietors will only be responsible for reporting the conversion inventory quantities to the ATF regional director (compliance). Personnel of the ATF regional offices will be responsible for computing the amortization quantities, and deducting them each month from the summary report they prepare.

Executive Order 12291

It has been determined that this notice of proposed rulemaking is not a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (February 17, 1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investments, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposed rule because the proposal, if promulgated as a final rule, is not expected to have a significant economic impact on a substantial number of small entities. This proposed rule is not expected to: have significant secondary or incidental effects on a substantial number of small entities; impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities; or generate significant interest or attention from small entities through comments, either formal or informal.

Accordingly, the Secretary of the Treasury has certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rule, if promulgated as a final rule, will not have a significant

economic impact on a substantial number of small entities.

Paperwork Reduction Act

The requirements to collect information imposed by this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review under Sec. 3504(h) of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35. Comments relating to ATF's compliance with 5 CFR Part 1320, Controlling Paperwork Burdens of the Public, should be submitted to: Office of Information and Regulatory Affairs, Attention: ATF Desk Officer, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

Public Participation

Interested persons may submit written comments and suggestions regarding this proposal. All pertinent comments will be considered prior to the issuance of final regulations. Comments are not considered confidential. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of any person submitting comments is not exempt from disclosure.

Any person who desires an opportunity to comment orally at a public hearing on this proposal should submit a written request to the Director within the comment period. However, the Director reserves the right to determine whether a public hearing will be held.

Disclosure of Comments

Any person may inspect the written comments and suggestions during normal business hours at the ATF Reading Room, Office of Public Affairs and Disclosure, Room 4407, Federal Building, 12th Street and Pennsylvania Avenue, NW, Washington, DC.

Drafting Information

The principal authors of this document are Susan McCarron and Robert White, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

These regulations are proposed under the authority contained in 26 U.S.C. 7805 (68A Stat. 917, as amended). Accordingly, ATF is proposing to amend Title 27 of the Code of Federal Regulations as follows:

PART 19—DISTILLED SPIRITS PLANTS

Paragraph 1. The table of contents for Part 19 is amended to reflect the removal of § 19.377 in Subpart L, and the addition of § 19.526 in Subpart O. As amended, the table of contents for Part 19 reads as follows:

* * * * *

Subpart L—Processing Operations Other Than Denaturation and Manufacture of Articles

* * * * *

Sec.
19.377 [Removed]
* * * * *

Subpart O—Transfers and Withdrawals

* * * * *

19.526 Removal of Puerto Rican and Virgin Islands rum and spirits, and rum from other areas.

* * * * *

§ 19.377 [Removed]

Par. 2. Section 19.377 is removed.

Par. 3. Subpart O is amended to reflect the addition of § 19.526 to read as follows:

Subpart O—Transfers and Withdrawals

* * * * *

§ 19.526 Removal of Puerto Rican and Virgin Islands rum and spirits, and rum from other areas.

(a) *General.* Proprietors shall maintain a separate accounting of quantities of Puerto Rican rum, other Puerto Rican spirits, Virgin Islands rum, other Virgin Islands spirits, and other imported rum removed from the bonded premises on tax payment or tax determination. Quantities of spirits in these categories that are contained in products mixed in processing with other alcoholic ingredients may be reported either by using standard reporting, averaging, or any other approved alternative for reporting mixed products. Proprietors shall report these quantities monthly on Form 5110.28, as provided in § 19.786.

(b) *Standard reporting.* The proprietor may determine the standard amount of spirits in these categories contained as ingredients of other distilled spirits products by using the minimum quantity of these spirits used in each product removed tax determined as stated in the approved formula, ATF F 5110.38.

(c) *Averaging.* The proprietor may determine the average amount of spirits in these categories contained as ingredients of other distilled spirits products by computing the average quantity of these spirits contained in all batches of the same product formulation during the preceding 6 month period. The average shall be adjusted each month so as to include only the immediately preceding 6 month period.

(d) *Alternative method.* Distilled spirits plant proprietors who wish to use an alternative method for reporting the amount of spirits in these categories contained as ingredients of other distilled spirits products shall file an application with the Director. The written application shall specifically describe the proposed alternative method, and shall set forth the reasons for using the alternative method.

Signed: October 2, 1984.

Stephen E. Higgins,

Director.

Approved Feburary 4, 1985.

John W. Walker, Jr.

Assistant Secretary (Enforcement and Operations).

[FR Doc. 85-3779 Filed 2-13-85; 8:45 am]

BILLING CODE 4810-31-M

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27 CFR Part 250

[Notice No. 558]

Formula for Distribution of Excise Taxes on Imported Rum to Puerto Rico and the Virgin Islands

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is proposing to amend 27 CFR Part 250 to change the formula used for distributing to the Treasuries of Puerto Rico and the Virgin Islands the excise taxes collected on rum imported into the United States from all areas other than Puerto Rico and the Virgin Islands. The distribution of these taxes is mandated by the Caribbean Basin Economic Recovery Act (Pub. L. 98-67, Title II).

A temporary rule (T.D. ATF-175) was published in the Federal Register on May 16, 1984 (49 FR 96), which provided for a distribution that was proportional to the average excise taxes collected on rum brought into the U.S. from Puerto

Rico and the Virgin Islands during fiscal years 1980, 1981, and 1982. As a result, Puerto Rico has been receiving 86.4 percent and the Virgin Islands 13.6 percent of the taxes collected on rum from other areas.

DATE: Comments must be submitted on or before April 15, 1985.

ADDRESS: Comments may be mailed to Chief, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385 (Notice No. 558).

FOR FURTHER INFORMATION CONTACT: Susan McCarron or Robert White, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226 (202-566-7531).

SUPPLEMENTARY INFORMATION:

Background

Section 7652 of the Internal Revenue Code of 1954 (as amended) provides for the excise taxes collected on merchandise, including distilled spirits, made in Puerto Rico and the Virgin Islands, and transported to the United States, to be deposited in the Treasury of the possession which manufactured the merchandise.

On August 5, 1983, Pub. L. 98-67 was signed by President Reagan. Title II of the law, entitled the Caribbean Basin Economic Recovery Act, was intended to promote economic revitalization and facilitate expansion of economic opportunities in the Caribbean Basin region. Subtitle A of Title II eliminated duties on certain merchandise, including rum, imported from Caribbean Basin countries which are certified by the President. The elimination of the duties on rum imported from Caribbean Basin countries may result in a reduction of Puerto Rican and Virgin Islands rum sold in the United States. This would cause a reduction in the amounts transferred from the U.S. Treasury to the Treasuries of Puerto Rico and the Virgin Islands for excise taxes collected on rum coming into the United States from these two possessions.

This Act was not intended to reduce the revenues of Puerto Rico and the Virgin Islands. Therefore, a provision was placed in Section 221 of the Act, with an effective date of July 1, 1983, which amended 26 U.S.C. 7652 to allow for the transfer of the excise taxes collected on all rum imported into the United States from areas other than Puerto Rico and the Virgin Islands, to the Treasuries of these two possessions. These payments are reduced by the estimated amount necessary for payment of refunds and drawbacks.

Section 7652(e) further states that the Secretary of the Treasury shall, from time to time, prescribe by regulation a formula for the division of these excise tax collections between Puerto Rico and the Virgin Islands.

Present Formula

ATF previously published a temporary rule (Treasury decision) in the **Federal Register** (49 FR 96) that set forth a formula for the distribution to the Treasuries of Puerto Rico and the Virgin Islands the excise taxes colleted on rum imported from other areas after July 1, 1983. That formula provided for a proportional distribution based on the average excise taxes collected on rum brought into the U.S. from Puerto Rico and the Virgin Islands during the fiscal years 1980 thrugh 1982. This resulted in Puerto Rico receiving 86.4 percent, and the Virgin Islands receiving 13.6 percent, of the excise taxes collected on rum imported into the United States from all areas other than Puerto Rico and the Virgin Islands.

The present formula stated in 27 CFR 250.31 does not take into consideration a situation whereby one of these possessions loses more revenue than the other as a result of an increase in the share of foreign countries in the U.S. rum market. The formula proposed in the next section of this document provides for a greater allocation of U.S. taxes collected on rum from areas other than Puerto Rico and the Virgin Islands to the possession (Puerto Rico or the Virgin Islands) whose relative share in the total U.S. rum market has decreased. The formula will take into account the total shipments of rum to the United States, the shipments of rum from Puerto Rico and the Virgin Islands, and the relative shares of rum brought into the U.S. from each of these two possessions prior to passage of the Caribbean Basin Economic Recovery Act.

The timing and method of making the payments to Puerto Rico and the Virgin Islands will not change. Puerto Rico currently receives the excise taxes collected on its merchandise, and its share of the taxes collected on rum imported from other areas, on a monthly basis. The Virgin Islands receives fiscal year advances based on the estimated excise taxes to be collected on its merchandise brought into the U.S. Actual amounts are subtracted from the advance monthly, and adjustments are made at the end of each fiscal year to reflect actual taxes collected on its merchandise that is brought into the U.S. The Virgin Islands receives its share of the taxes collected on rum imported from other areas on a monthly basis.

Proposed Formula

The formula proposed in this notice will provide for an annual calculation using a permanent base distribution percentage and the previous calendar year's figures for rum brought into the U.S. from all areas outside the U.S. The permanent base distribution represents the average amount of bulk and cased rum brought into the U.S. from Puerto Rico and the Virgin Islands during fiscal years 1980, 1981, and 1982. (As used here, the fiscal year period is from October 1 through September 30.) Puerto Rico received an average of $233,762,604 in excise taxes collected on its rum during those years, and the Virgin Islands averaged $36,877,733. Therefore, the base distribution percentage is 86.373796 percent for Puerto Rico and 13.626204 percent for the Virgin Islands.

The formula will apply only to the distribution of the excise taxes collected on rum imported into the United States from areas other than Puerto Rico and the Virgin Islands. The excise taxes collected on rum brought into the U.S. from these two possessions will continue to be paid over to the Treasury of the possession in which the rum was produced.

The distribution percentages will be calculated once a year, taking into account each previous calendar year's figures for the total amount of rum brought into the U.S. from all areas outside the U.S., including Puerto Rico and the Virgin Islands. Since it takes several months for these statistics to be compiled, and several more months to prepare notification of the distribution percentage, it will be effective on October 1 of each year and continue until September 30 of the next year.

The distribution percentages for Puerto Rico and the Virgin Islands will be calcuated as follows:

(1) Multiply the total excise taxes collected on rum imported or brought into the U.S. from all areas (including Puerto Rico and the Virgin Islands) during the previous year by .86373796 and .13626204 to determine the respective shares of excise taxes collected on the entire rum market that will be allotted to Puerto Rico and the Virgin Islands.

(2) Subtract from those respective shares the excise taxes collected on rum brought into the U.S. from Puerto Rico and the Virgin Islands, respectively, during the previous year to determine each possession's loss (or gain) in excise taxes in relation to the previous year's U.S. rum market. Then divide the results by the excise taxes collected on rum imported during the previous year from

areas other than Puerto Rico and the Virgin Islands to determine the respective distribution percentages. (Note: If the formula calculations result in an excess of 100 percent for one of these possessions, then the distribution percentages will be 100 percent to that possession, and 0 percent to the other possession.)

To illustrate the use of this formula, the following examples are given. (Note: the permanent base percentages, representing the average excise tax revenues on rum from Puerto Rico and the Virgin Islands during the fiscal years 1980 through 1982, are 86.373796 percent ($233,760,604) for Puerto Rico, and 13.626204 percent ($36,877,733) for the Virgin Islands.)

Example 1—In calendar year 1984, excise taxes collected on rum brought into the U.S. from Puerto Rico and the Virgin Islands remained unchanged from the base period. Excise taxes collected on rum from other areas amounted to $10,000,000.

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Step 1 - $233,760,604(P.R.)    $280,638,337   $280,638,337
          36,877,733(V.I.)       x.86373796     x.13626204
          10,000,000(other)    $242,397,984   $ 38,240,352
         $280,638,337

Step 2 - P.R.  $242,397,984.70
               - 233,760,604.00
               $  8,637,380.70 ÷ $10,000,000 = 86.3738%

         V.I.  $36,240,352.30
               -36,877,733.00
              -$ 1,362,619.30 ÷ $10,000,000 = 13.6262%
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Result: During fiscal year 1986 (10-1-85 to 9-30-86), the percentages for the distribution of excise taxes collected on rum imported from other areas would be 86.3738% to Puerto Rico and 13.6262% to the Virgin Islands.

Example 2—In calendar year 1984, excise taxes collected on rum brought into the U.S. from Puerto Rico and the Virgin Islands dropped slightly, while the amount of excise taxes collected on rum imported from other areas rose.

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Step 1 - $230,000,000(P.R.)    $280,000,000   $280,000,000
          35,000,000(V.I.)       x.86373796     x.13626204
          15,000,000(other)    $241,846,628   $ 38,153,371
         $280,000,000

Step 2 - P.R.  $241,846,628.80
               -230,000,000.00
               $ 11,846,628.80 ÷ $15,000,000 = 78.9775%

         V.I.  $38,153,371.20
               -35,000,000.00
              -$ 3,153,371.20 ÷ $15,000,000 = 21.0225%
```

Result: During fiscal year 1986 (10-1-85 to 9-30-86), the percentages for the distribution of excise taxes collected on rum imported from other areas would be 78.9775% to Puerto Rico and 21.0225% to the Virgin Islands.

Example 3—In calendar year 1984, the excise taxes collected on rum brought into the U.S. from Puerto Rico rose, while the amount from the Virgin Islands dropped. Excise taxes collected on rum from other areas rose to $12,000,000.

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Step 1 - $235,000,000(P.R.)    $282,000,000    $282,000,000
           35,000,000(V.I.)      x.86373796      x.13626204
           12,000,000(other)   $243,574,104    $ 38,425,895
         $282,000,000

Step 2 - P.R.  $243,574,104.70
               -235,000,000.00
               $  8,574,104.70 ÷ $12,000,000 = 71.4509%

         V.I.  $38,425,895.30
               -35,000,000.00
              -$ 3,425,895.30 ÷ $12,000,000 = 28.5491%
```

Result: During fiscal year 1986 (10–1–85 to 9–30–86), the percentages for the distribution of excise taxes collected on rum imported from other areas would be 71.4509% to Puerto Rico and 28.5491% to the Virgin Islands.

Example 4—In calendar year 1984, the excise taxes collected on rum brought into the U.S. from Puerto Rico rose dramatically, while the amount from the Virgin Islands dropped dramatically.

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Step 1 - $242,000,000(P.R.)    $280,000,000    $280,000,000
           28,000,000(V.I.)      x.86373796      x.13626204
           10,000,000(other)   $241,846,628    $ 38,153,371
         $280,000,000

Step 2 - P.R.  $241,846,628.80
               -242,000,000.00
              -$    153,371.20 ÷ $10,000,000 =  -1.5337%

         V.I.  $38,153,371.20
               -28,000,000.00
              +$10,153,371.20 ÷ $10,000,000 = 101.5337%
```

Result: During fiscal year 1986 (10–1–85 to 9–30–86), the percentages for the distribution of excise taxes collected on rum imported from other areas would be 100% to the Virgin Islands and 0% to Puerto Rico.

Alternative Formulas

There are several alternative formulas that could be used to distribute the excise taxes collected on rum imported from other areas to the Treasuries of Puerto Rico and the Virgin Islands. As stated in the Public Participation section of this notice, ATF is requesting comments regarding the proposed formula, the alternatives discussed below, and any other alternative formulas that may be devised.

In evaluating any formula for this distribution, the Congressional intent of the Caribbean Basin Economic Recovery Act must be considered. According to the Committee report for this Act, it was the intent of Congress "that the bill not cause an inadvertent reduction in Federal tax payments to the Treasuries of Puerto Rico and the Virgin Islands with respect to rum excise tax collection". The report did not specify any particular formula or set guidelines for the distribution of these excise tax collections between Puerto Rico and the Virgin Islands.

Alternative 1. The excise taxes collected on rum brought into the U.S. from areas other than Puerto Rico and the Virgin Islands would continue to be divided in proportion to the average excise taxes collected on rum from Puerto Rico and the Virgin Islands during the fiscal years 1980, 1981, and 1982. Puerto Rico would continue to receive 86.4 percent, and the Virgin Islands would receive 13.4 percent. The distribution of excise taxes on foreign rum under this method does not take into consideration the possibility that one possession may lose more revenue than the other as a result of rum imports from other areas.

Alternative 2. Since the cover over of excise taxes collected on the other rum imports is in addition to the cover over to each possession of the excise taxes collected on rum which is manufactured, the distribution could be accomplished through an even 50–50 split. This method, like Alternative 1, would not fully compensate the possession (Puerto Rico or the Virgin Islands) which lost more revenues than the other due to an increase in the share of foreign countries in the U.S. rum market.

Alternative 3. As a variation on the 50–50 method, allowances could be formulated to compensate Puerto Rico and the Virgin Islands for loses to their revenues due to an increase in the share of foreign countries in the U.S. rum market.

The permanent base distribution used in the proposed formula (the average excise taxes collected on rum from Puerto Rico and the Virgin Islands during fiscal years 1980 through 1982) would also be used under this method. The rum brought into the U.S. from these two possessions in the previous year would be compared with their base distributions (P.R.—$233,760,604; V.I.—$36,877,733) to determine the percentage that each of these possessions lost (or gained) due to other rum imports. Those percentages would then be converted into their relative portions of 100 percent in order to determine the distribution of the excise taxes collected on other rum imports for the following fiscal year.

The two examples given below illustrate the use of Alternative 3. The facts in these examples are the same as in examples 1 and 4, respectively, which illustrate the proposed formula.

Example 1—The excise taxes collected on rum from Puerto Rico and the Virgin Islands remain unchanged from the base period.

```
1)     P.R.                                  V.I.
   $233,760,604  (previous year)        $36,877,733
   -233,760,604  (base amount)          -36,877,733
   $     -0-     (revenue lost)         $     -0-

2) $ 0  ÷ $233,760,604 = 0% (P.R. percentage lost)
   $ 0  ÷ $ 36,877,733 = 0% (V.I. percentage lost)

3)  0%                          50%      100%        (Relation of
   -0      0% ÷ 2 = 0%          -0      - 50          % lost to
    0%                          50%      50%           100%)
```

Result: Puerto Rico and the Virgin Islands each would receive 50% of the excise taxes collected on rum imported from other areas during the next fiscal year.

Example 2—The excise taxes collected on rum showed a dramatic increase for Puerto Rico, and a decrease for the Virgin Islands.

```
1)     P.R.                                  V.I.
   $242,000,000 (previous year)        $28,000,000
   -233,760,604 (base amount)          -36,877,733
   $  8,239,396 (rev. lost/gained)     -$ 8,877,733

2)  $8,239,396 ÷ 233,760,604 =   3.52% P.R. percentage gain
   -$8,877,733 ÷  36,877,733 = -24.07% V.I. percentage loss

3)     3.52%                    50.00%    100.00%  (Relation
   -(-)24.07                   -13.795   - 36.205     to 100%)
    27.59% ÷ 2 = 13.795%       36.205%    63.795%
```

Result: The Virgin Islands would receive 63.8% of the excise taxes collected on other rum imports, while Puerto Rico would receive the remaining 36.2%.

Executive Order 12291

It has been determined that this notice of proposed rulemaking is not classified as a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (9181), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, emplyment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) do not apply to this proposed rule because the proposal, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b) that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no additional requirement to collect information is proposed.

List of Subjects in 27 CFR Part 250

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Beer, Customs duties and inspection, Electronic fund transfers, Excise taxes, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bond, Transportation, Virgin Islands, Warehouses, Wine.

Public Participation

ATF requests interested persons to submit comments regarding the formula proposed in this document. Commenters are asked to make specific comments and suggestions regarding the proposed and alternative formulas in this notice, and to propose additional alternative formulas. Specific reasons should be stated as to why any altenative formulas are better than the one proposed. All pertinent comments will be considered prior to the issuance of final regulations. Comments are not considered confidential. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of any person submitting comments is not exempt from disclosure. Comments received after the closing date will be used as possible suggestions for future ATF actions.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should make a request, in writing, to the Director within the comment period. The Director, however, reserves the right to determine whether a public hearing will be held.

Disclosure of Comments

Any person may inspect the written comments and suggetions during normal business hours at the ATF Reading Room, Office of Public Affaris and Disclosure, Room 4407, Federal Building, 12th Street and Pennsylvania Avenue, NW, Washington, DC.

Drafting Information

The principal authors of this document are Susan McCarron and Robert White, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

These regulations are proposed under the authority contained in 26 U.S.C. 7805 (68A Stat. 917, as amended). Accordingly, ATF proposes to amend

Title 27 of the Code of Federal Regulations as follows:

PART 250—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

Section 250.31 is revised to reflect the new formula proposed by this notice, reading as follows:

§ 250.31 Formula.

(a) The amount of excise taxes collected on rum that is imported into the United States from areas other than Puerto Rico and the Virgin Islands shall be deposited into the Treasuries of Puerto Rico and the Virgin Islands. The distribution of such amount between Puerto Rico and the Virgin Islands will be computed by using a permanent base percentage, which represents the average excise taxes collected on rum brought into the United States from Puerto Rico and the Virgin Islands during fiscal years 1980, 1981, and 1982. This base percentage is 86.373796 percent for Puerto Rico, and 13.626204 percent for the Virgin Islands. The formula shall be as follows:

(1) Multiply the total excise taxes collected on rum brought into the United States (including rum from Puerto Rico and the Virgin Islands) during the previous calendar year by the base percentages to determine the relative shares of the entire U.S. rum market that will be allotted to Puerto Rico and the Virgin Islands;

(2) Substract each of these shares from the excise taxes collected on rum transported to the United States from Puerto Rico and the Virgin Islands, respectively, during the previous calendar year to determine each possession's loss or gain in relation to the previous year's U.S. rum market. Divide these results by the excise taxes collected on rum imported during the previous calendar year from areas other than Puerto Rico and the Virgin Islands.

(b) The percentage for the distribution of the excise taxes collected on rum imported from other areas into the United States, that will be paid over to the Treasuries of Puerto Rico and the Virgin Islands, shall be effective on October 1 of each year, and shall remain in effect until September 30 of the following year.

(c) The method for transferring the excise tax collections on rum imported from other areas into the Treasuries of Puerto Rico and the Virgin Islands shall be the same as the method used for transferring excise taxes on distilled spirits (including rum) brought into the United States from Puerto Rico, and deposited into that Treasury.

(Aug. 16, 1954, Chapter 736, 68A Stat. 907, as amended (26 U.S.C. 7652))

Signed: October 4, 1984.

Stephen E. Higgins,

Director.

Approved: February 4, 1985.

John M. Walker, Jr.,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 85-3778 Filed 2-13-85; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 117 and 118

Bridge Lighting and Other Signals

Correction

In FR Doc. 85-2508, beginning on page 4529 in the issue of Thursday, January 31, 1985, make the following correction:

On page 4529, first column, under **FOR FURTHER INFORMATION CONTACT,** the telephone number should have read "202-426-0942".

BILLING CODE 1505-01-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket RM 84-2]

Registration of Claims To Copyright Deposit Requirements

AGENCY: Copyright Office, Library of Congress.

ACTION: Proposed regulations.

SUMMARY: This notice is issued to inform the public that the Copyright Office of the Library of Congress is considering adopting amendments to 37 CFR 202.19, 202.20 and 202.21 of its regulations. Those regulations implement portions of sections 407 and 408 of the Copyright Act of 1976, title 17 of the U.S. Code. Those sections embody the deposit requirements for the benefit of the Library of Congress and for copyright registration. The amendments revise certain requirements governing such deposits.

DATES: All comments should be received on or before March 29, 1985.

ADDRESSES: Interested persons should submit ten copies of their written comments to:

Office of the General Counsel, Copyright Office, Library of Congress, Department DS, Washington, D.C. 20540

or if by hand to:

Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room 407, First and Independence Avenue, SE., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, D.C. 20559 (202) 287-8380.

SUPPLEMENTARY INFORMATION: Under 17 U.S.C. 407 the owner of copyright, or of the exclusive right of publication, in a work published with notice of copyright in the United States is required to deposit copies of the work in the Copyright Office for the use or disposition of the Library of Congress. Section 408 of the statute also requires deposit of material in connection with applications for copyright registration of unpublished and published works. After establishing general rules governing the nature of the required deposit, section 408 authorizes the Register of Copyrights to prescribe regulations governing "the nature of the copies or phonorecords to be deposited" and to "require or permit * * * the deposit of identifying material instead of copies or phonorecords * * *."

On September 19, 1978, the Copyright Office published in the **Federal Register** (43 FR 41975) final regulations implementing the deposit requirements of sections 407 and 408. On the basis of its experience with the deposit regulations over the past several years, the Copyright Office has decided that a number of amendments are needed to liberalize, clarify or, in limited instances, expand the requirements.

1. *Prints, Labels and Other Advertising Matter.* The Copyright Office has always regarded advertising catalogs as included in the category of works referred to in the deposit regulations as "prints, labels, and other advertising matter published in connection with the rental, lease lending, licensing, or sale of articles of merchandise, works of authorship, or services." To clarify a widespread misunderstanding among members of the public on this issue, catalogs would be added as a specific category in the two places where this wording appears in the regulation, i.e. § 202.19(c)(7) where such works are exempted from mandatory deposit and § 202.20(c)(2)(v) where deposit requirements for the registration of such works are specified.

2. *Special Relief and the Deposit of Identifying Material.* Section 202.21 of the present regulations governs the form, quantity, and dimensions of any

identifying material submitted in lieu of or in addition to a required deposit, as permitted or required by §§ 209.19 or 202.20. In some cases, supplying identifying material which conforms to the specifications of § 202.21 may cause unnecessary hardship to a depositor. Amendments have been proposed to make it clear that, in cases of hardship, it is possible to modify the requirements for identifying material by using the "special relief" provisions in §§ 202.19 and 202.20. A new subsection would be added to § 202.19(e)(1) and to § 202.20(d)(1) to make it clear that special relief may be extended to permit the deposit of identifying material which does not comply with the specifications of § 202.21. Wording would also be added to § 202.21(a) making the specifications for identifying material subject to special relief action under §§ 202.19 and 202.20.

3. *Use of Mandatory Deposit To Satisfy Registration Requirements.* A single deposit can be used to satisfy both the mandatory deposit requirements and the voluntary registration deposit requirements if registration is desired. For one deposit to serve both purposes, the statute requires that the deposit be "accompanied by the prescribed application and fee."

When the 1976 Act first became effective, it was believed that time was needed for the public to become familiar with the new law and to change mailing procedures. Therefore, the "accompanied by" requirement was interpreted liberally. The regulations provided that a deposit of copies of phonorecords that was accompanied by a "clear written request" that the deposit be held for connection with a separately forwarded application and fee would be considered to have been "accompanied by" the application and fee.

The volume of registration material sent separately has increased and the impact on the workflow is significant, especially in the case of motion pictures. The efficiency of the automation procedures being instituted in the Copyright Office could be impaired by this practice. Consequently, the Office intends to apply more strictly the requirements of 17 U.S.C. 408(b) that one deposit may satisfy the requirements of both 17 U.S.C. 407 and 408 if a deposit is "accompanied by the prescribed application and fee." The language providing the option of sending the copies with a "clear written request" that they be held for connection with subsequently submitted applications and fees would be deleted from §§ 202.19(f) and 202.20(e). An application or remittance received without a deposit would be returned immediately. In general, published deposits received without an application and adequate fee or a deposit account number on the application would be transferred to the collections of the Library of Congress and considered deposited only in compliance with 17 U.S.C. 407. A second deposit of copies or phonorecords "accompanied by the prescribed application and fee" would be required subsequently if copyright registration is desired.

4. *Contribution to Collective Works.* Presently the deposit of one complete copy of the collective work, or in the case of a contribution to a newspaper, one copy of the entire section in which the contribution is published, is required for the registration of a contribution to a collective work. It is proposed to add a new subsection (xv) to § 202.20(c)(2) that would, instead of permitting only the deposit of one complete copy of the collective work, allow the deposit of a photocopy of the contribution itself in the form in which it was published.

5. *Non-viewable Copies of Motion Pictures Submitted for Copyright Registration.* Technology has led to the development, and consequent deposit for registration, of a number of different formats in which motion pictures are fixed. It is impractical and fiscally irresponsible for the Copyright Office to attempt to procure all of the hardware necessary to enable it to examine each different format in which motion pictures may be deposited for registration. Therefore, the regulations would be amended to require that certain identifying material be deposited with each actual copy required, whenever the lack of equipment makes it impossible to examine a deposit for registration purposes. The identifying material would be intended to provide the information necessary to examine works for registration. An effort has been made to make this additional requirement as easy and inexpensive to comply with as possible. Still photographs, for example, would not be required since this could constitute a significant expense for some depositors. Language embodying this requirement would be added to § 202.20(c)(2)(ii); specifications for this identifying material would be given in § 202.21(h). Generally, that material would consist of a written description of the work which includes enough information to enable the Examining Division to determine copyrightability and to record all necessary facts.

6. *Published Multimedia Kits.* Section 202.20(c)(2)(i)(G) required the deposit of one copy of "published multimedia kits that are prepared for use in systematic instructional activities and that include literary works, audiovisual works, sound recordings, or any combination of such works." A new § 202.20(c)(2)(i)(F), would refer to only "published multimedia kits" and delete the remainder of the phrase after "prepared for use in systematic instructional activities," thereby eliminating the organized educational function formerly required.

7. *Literary, Dramatic, and Musical Works Published Only As Embodied in Phonorecords.* A literary, dramatic, or musical work, published only as embodied in a phonorecord is exempt from mandatory deposit under § 202.19(c)(4). To make it clear that the copyright owner need only deposit one phonorecord for registration, a new subsection (H) would be added to § 202.20(c)(2)(i).

8. *Choreographic Works and Pantomimes Published Only As Embodied in Motion Pictures.* A new subsection (I) would be added to § 202.20(c)(2)(i) providing for the deposit of only one copy of choreographic works and of pantomimes published only as embodied in a motion picture. In such cases, no claim of copyright would be made in the motion picture itself.

9. *Two-dimensional works.* The copyright owner of a work published in the form of two-dimensional games, decals, fabric patches or emblems, calendars, instructions for needle work, needle work and craft kits, under a new subsection (J) of § 202.20(c)(2)(i), would be required to deposit only one copy of the work.

10. *Works Reproduced on Three-dimensional Containers.* A new subsection (K) would be added to the deposit regulations at § 202.20(c)(2)(i) to require that the owner of copyright in a box, case, carton, or other three-dimensional container, deposit only one copy of the work.

11. *Holograms.* A new sentence would be added to § 202.20(c)(2)(iii) differentiating the deposit requirements for two and three-dimensional holograms. In the case of three-dimensional works, the required deposit is display instructions and photographs or other identifying material. The new clause would require, for two-dimensional works, that where the image is visible without the aid of a machine or device, an actual copy of the work must be deposited.

12. *Machine-readable copies.* Section 202.20(c)(2)(vii), presently titled

"Machine-readable works," would be divided into three clauses: One for computer programs and data bases embodied in machine-readable copies; a second for machine-readable copies of works other than computer programs and data bases; and, finally, a third for works with visually-perceptible and machine-readable copies. The Copyright Office has decided to consistently substitute the term "copy" for "works" in these sections, since the latter are literary, musical, and other creations which are embodied in machine-readable copies. The machine-readable aspect is the embodiment, and not the work itself.

New language would be added to clause (vii)(A) concerning the deposit for revised versions of computer programs. If the revisions occur throughout the entire program, the deposit would be the same as for other computer programs. If the revisions are not contained within the first and last 25 pages, the requisite would be any 50 pages representative of the revised material.

13. *Machine-readable Copies of Works Other Than Computer Programs and Databases.* In a new § 202.20(c)(2)(viii), the required deposit for musical compositions, pictorial and graphic works, sound recordings, videogames and other machine-readable copies of works other than computer programs and databases, would be identifying material which best represents the copyrightable content of the work. This new section would specify the appropriate deposit for five types of works commonly embodied in machine-readable copies, and provide that for works not covered by the subsection, the form of identifying material would be determined by the Copyright Office, in consultation with the application, on a case-by-case basis.

14. *Works with Visually-perceptible and Machine-readable Copies.* Where a published literary work is comprised of a visually-perceptible and machine-readable copy, as in the case of a manual for computer instruction and its accompanying software, a new § 202.20(c)(2)(ix) would require the deposit of both a visually-perceptible copy and a visually-perceptible reproduction of the machine-readable material, such as a printout of a computer program.

15. *Deposit of Identifying Material for Registration of Wearing Apparel.* Presently, identifying material is required as a deposit for the registration of copyrightable works reproduced on wearing apparel, sheets, and pillow cases. This requirement creates a burden for both the depositor and the Copyright Office. A proposed amendment to § 202.20(c)(2)(x) would allow the deposit of one actual copy of the work if that copy can be folded for storage in a form that does not exceed four inches in thickness. That section would also be altered by the removal of the words "wearing apparel" in the last sentence as an example of a three-dimensional object. Following this change, wearing apparel, sheets and pillow cases would not be included in the language of § 202.20(c)(2)(xi)(A)(2), which requires the deposit of identifying material instead of actual copies of three-dimensional works.

16. *Work reproduced in or on three-dimensional objects.* Section 202.20(c)(2)(xi)(A)(1) presently requires that identifying material be submitted instead of a copy or copies or any "three-dimensional sculptural work, including any illustration or formulation of artistic expression or information in three-dimensional form." Subsection (2) also includes "any . . . three-dimensional work that . . . has been published only in or on jewelry . . . ."

Section 202.20(c)(2)(xi)(B) provides, as an exception to subsection (A), for the deposit of actual copies of three-dimensional works. The Office now proposes to omit under subsection (B) "works that are reproduced by intaglio or relief printing methods on two-dimensional materials such as paper or fabrics." Deposit of identifying material for these works would thereafter be permitted.

Moreover, because the deposit of identifying material often causes hardship to the depositor, the Office proposes to permit the deposit of published jewelry made of base metal and small enough to conform to Office storage limitations. An exception would be added to the end of § 202.20(c)(2)(xi)(B) to allow the deposit of such jewelry. Section 202.20(c)(2)(i)(G) would also be altered to reduce the required number of copies from two to one.

Additionally, the "published works" language presently in § 202.20(c)(2)(ix)(B)(5) would be changed to "published games" in the proposed § 202.20(c)(2)(xi)(B)(3). The Office presently requires the deposit of an actual copy of a published work of dimensions no greater than 12x24x6 inches, with three or more three-dimensional physically separable parts. For published works with less than three three-dimensional physically separable parts, the deposit of identifying material is required. To simplify the deposit requirements, the Office proposes to change the language in subsection (B)(3) to require the deposit of an actual copy of published games consisting of multiple parts in a box or container of the specified dimensions. Identifying material would be required for the registration of games consisting of multiple parts that are packaged in containers larger than 12x24x6 inches.

(17) *Camera-Ready Copy.* For advertising material, a proposed § 202.20(c)(2)(xiv) would allow the deposit of either camera-ready copy or a copy as published.

(18) *Phonorecords.* Proposed § 202.20(c)(2)(xvi) would require the applicant to submit a special deposit where the Office does not have equipment capable of playing the type or form of the phonorecord submitted for copyright registration. The precise form of the deposit would be established through consultation with the applicant.

(19) *General Identifying Material Specifications.* The Copyright Office proposes to ease the general specifications for identifying material by making three of them more flexible: the requirement that the identifying material reproduce the actual colors in a work; that all pieces of identifying material be the same size; and that the identifying material include the actual dimensions of the work. The identifying material must in the ordinary case show the entire copyrightable content, but the requirement would be liberalized by removing the word "clearly" and by providing that in every case the identifying material must constitute an "adequate representation of copyrightable content."

In § 202.21(a) the amendment would replace the word "shall" with "should," making the reproduction of actual colors less rigid. Subsection (b) would be changed to allow an adequate representation of copyrightable content in exceptional cases. Subsection (c) would be changed to eliminate the requirement that all pieces of identifying material be the same size. The Copyright Office would impose only a maximum size of 9x12 inches for identifying material. Subsection (d) would be rewritten to state an Office preference for inclusion of dimensions.

(20) *Applicability of the Motion Picture Agreement to Owners of Copyright in Works Published Only Abroad.* The Motion Picture Agreement, a negotiated contract between copyright owners and the Library of Congress, allows the return of deposit copies subject to later recall by the Library of Congress. The agreement was made available to interested members of the public in a July 20, 1978 amendment to § 202.19 and 202.20 of the deposit regulations and is referred to in

§§ 202.19(d)(2)(ii) and 202.20(c)(2)(ii). Since that time, an important question has arisen with respect to the use of the agreement. Wording in the agreement indicates that the contract is not available to depositors of copyright in works published only abroad. The Library of Congress has decided, however, to make the agreement available in such cases. To implement this decision, the Copyright Office prepared and is using a modification of the agreement in the case of motion pictures published only abroad.

(21) *Availability of the Motion Picture Agreement to Multimedia Kits.* The Copyright Office has been asked whether the Motion Picture Agreement, referred to in §§ 202.19(d)(2)(ii) and 202.20(c)(2)(ii), is available to owners of copyright in multimedia kits which include audiovisual works as well as literary works, sound recordings, or any combination of such items. The position of the Copyright Office is that the agreement is not available for use with such works. The Motion Picture Agreement is a contract entered into at the discretion of the Library of Congress. Because of handling and processing problems with audiovisual works that are part of a multimedia kit, it is impossible for the Library to offer the contract in such situations.

* * * * *

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, Chapter 5 of the U.S. Code, Subchapter II and Chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[1]

Alternatively, if it is later determined by a court of compents jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation will have no significant impact on small businesses.

[1] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e., "all actions taken by the Register of Copyrights under this title [17]," except with respect to the making of copies of copyright deposits). [17 U.S.C. 709(b)]. The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the office are not subject to APA–FOIA requirements.

List of Subjects in 37 CFR Part 202

Claims, Claims to copyright, Copyright, Registration requirements.

Proposed Regulations

In consideration of the foregoing, the Copyright Office proposes to amend Part 202 of 37 CFR, Chapter II by revising §§ 202.19, 202.20 and 202.21 as follows:

§ 202.19 Deposit of published copies of phonorecords for the Library of Congress.

(a) *General.* This section prescribes rules pertaining to the deposit of copies and phonorecords of published works for the Library of Congress under section 407 of title 17 of the United States Code, as amended by Pub. L. 94–553. The provisions of this section are not applicable to the deposit of copies and phonorecords for purposes of copyright registration under section 408 of title 17, except as expressly adopted in § 202.20 of these regulations.

(b) *Definitions.* For the purposes of this section:

(1)(i) The "best edition" of a work is the edition, published in the United States at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes.

(ii) Criteria for selection of the "best edition" from among two or more published editions of the same version of the same work are set forth in the statement entitled "Best Edition of Published Copyrighted Works for the Collections of the Library of Congress" (hereafter referred to as the "Best Edition Statement") in effect at the time of deposit. Copies of the Best Edition Statement are available upon request made to the Acquisitions and Processing Division of the Copyright Office.

(iii) Where no specific criteria for the selection of the "best edition" are established in the best Edition Statement, that edition which, in the judgement of the Library of Congress, represents the highest quality for its purposes shall be considered the "best edition". In such cases: (A) When the Copyright Office is aware that two or more editions of a work have been published it will consult with other appropriate officials of the Library of Congress to obtain instructions as to the "best edition" and (except in cases for which special relief is granted) will require deposit of that edition; and (B) when a potential depositor is uncertain which of two or more published editions comprises the "best edition", inquiry should be made to the Acquisitions and Processing Division of the Copyright Office.

(iv) Where differences between two or more "editions" of a work represent variations in copyrightable content, each edition is considered a separate version, anbd hence a different work, for the purpose of this section, and criteria of "best edition" based on such differences do not apply.

(2) A "complete" copy includes all elements comprising the unit of publication of the best edition of the work, including elements that, if considered separately, would not be copyrightable subject matter or would otherwise be exempt from mandatory deposit requirements under paragraph (c) of this section. In the case of sound recordings, a "complete" phonorecord includes the phonorecord, together with any printed or other visually perceptible material published with such phonorecord (such as textual or pictorial matter appearing on record sleeves or album covers, or embodied in leaflets or booklets included in a sleeve, album, or other container). In the case of a musical composition published in copies only, or in both copies and phonorecords: (i) if the only publication of copies in the United States took place by the rental, lease, or lending of a full score and parts, a full score is a "complete" copy; and (ii) if the only publication of copies int he United States took place by the rental, lease, or lending of a conductor's score and parts, a conductor's score is a "complete" copy. In the case of a motion picture, a copy is "complete" if the reproduction of all of the visual and aural elements comprising the copyrightable subject matter in the work is clean, undamaged, underteriorated, and free of splices, and if the copy itself and its physical housing are free of any defects that would interfere with the performance of the work or that would cause mechanical , visual, or audible defects or distortions.

(3) The terms "copies", "collective work", "device", "fixed", "literary work", "machine', "motion picture", "phonorecord", "publication", "sound recording", and "useful article", and their variant forms, have the meanings given to them in section 101 of title 17.

(4) "Title 17" means title 17 of the United States Code, as amended by Pub. L. 94–553.

(c) *Exemptions from deposit requirements.* The following categories of material are exempt from the deposit requirements of section 407(a) of title 17:

(1) Diagrams and models illustrating scientific or technical works or formulating scientific or technical information in linear or three-

dimensional form, such as an architectural or engineering blueprint, plan, or design, a mechanical drawing, or an anatomical model.

(2) Greeting cards, picture postcards, and stationery.

(3) Lectures, sermons, speeches, and addresses when published individually and not as a collection of the works of one or more authors.

(4) Literary, dramatic, and musical works published only as embodied in phonorecords. This category does not exempt the owner of copyright, or of the exclusive right of publication, in a sound recording resulting from the fixation of such works in a phonorecord from the applicable deposit requirements for the sound recording.

(5) Literary works, including computer programs and automated data bases, published in the United States only in the form of machine-readable copies (such as magnetic tape or disks, punched cards, or the like) from which the work cannot ordinarily be visually perceived except with the aid of a machine or device. Works published in a form requiring the use of a machine or device for purposes of optical enlargement (such as film, filmstrips, slide films and works published in any variety of microform), and works published in visually perceivable from but used in connections with optical scanning devices, are not within this category and are subject to the applicable deposit requirements.

(6) Three-dimensional sculptural works, and any works published only as reproduced in or on jewelry, dolls, toys, games, plaques, floor coverings, wallpaper and similar commercial wall coverings, textile and other fabrics, packaging material, or any useful article. Globes, relief models, and similar cartographic representations of area are not within this category and are subject to the applicable deposit requirements.

(7) Prints, labels, and other advertising matter, including catalogs, published in connection with the rental, lease, lending, licensing, or sale of articles of merchandise, works of authorship, or services.

(8) Tests, and answer material for tests when published separately from other literary works.

(9) Works first published as individual contributions to collective works. This category does not exempt the owner of copyright, or of the exclusive right of publication, in the collective work as a whole, from the applicable deposit requirements for the collective work.

(10) Works first published outside the United States and later published in the United States without change in copyrightable content, if: (i) Registration for the work was made under 17 U.S.C. 408 before the work was published in the United States: or (ii) registration for the work was made under 17 U.S.C. 408 after the work was published in the United States but before a demand for deposit is made under 17 U.S.C. 407(d).

(11) Works published only as embodied in a soundtrack that is an integral part of a motion picture. This category does not exempt the owner of copyright, or of the exclusive right of publication, in the motion picture, from the applicable deposit requirements for the motion picture.

(12) Motion pictures that consist of television transmission programs and that have been published, if at all, only by reason of a license or other grant to a nonprofit institution of the right to make a fixation of such programs directly from a transmission to the public, with or without the right to make further uses of such fixations.

(d) *Nature of required deposit.* (1) Subject to the provisions of paragraph (d)(2) of this section, the deposit required to satisfy the provisions of section 407(a) of title 17 shall consist of (i) in the case of published works other than sound recordings, two complete copies of the best edition; and (ii) in the case of published sound recordings, two complete phonorecords of the best edition.

(2) In the case of certain published works not exempt from deposit requirements under paragraph (c) of this section, the following special provisions shall apply:

(i) In the case of published three-dimensional cartographic representations of area, such as globes and relief models, the deposit of one complete copy of the best edition of the work will suffice in lieu of the two copies required by paragraph (d)(1) of this section.

(ii) In the case of published motion pictures, the deposit of one complete copy of the best edition of the work will suffice in lieu of the two copies required by paragraph (d)(1) of this section. Any deposit for a published motion picture must be accompanied by a separate description of its contents, such as a continuity, pressbook, or synopsis. The Library of Congress may, at its sole discretion, enter into an agreement permitting the return of copies of published motion pictures to the depositor under certain conditions and establishing certain rights and obligations of the Library with respect to such copies. In the event of termination of such an agreement by the Library it shall not be subject to reinstatement, nor shall the depositor or any successor in interest of the depositor be entitled to any similar or subsequent agreement with the Library, unless at the sole discretion of the Library it would be in the best interests of the Library to reinstate the agreement or enter into a new agreement.

(iii) In the case of any published work deposited in the form of a hologram, the deposit shall be accompanied by: (A) Two sets of precise instructions for displaying the image fixed in the hologram; and (B) two sets of identifying material in compliance with § 202.21 of these regulations and clearly showing the displayed image.

(iv) In any case where an individual author is the owner of copyright in a published pictorial or graphic work and (A) less than five copies of the work have been published, or (B) the work has been published and sold or offered for sale in a limited edition consisting of no more than three hundred numbered copies, the deposit of one complete copy of the best edition of the work or, alternatively, the deposit of photographs or other identifying material in compliance with § 202.21 of these regulations, will suffice in lieu of the two copies required by paragraph (d)(1) of this section.

(v) In the case of a musical composition published in copies only, or in both copies and phonorecords, if the only publication of copies in the United States took place by rental, lease, or lending, the deposit of one complete copy of the best edition will suffice in lieu of the two copies required by paragraph (d)(1) of this section.

(vi) In the case of published multi-media kits that are prepared for use in systematic instructional activities and that include literary works, audiovisual works, sound recordings, or any combination of such works, the deposit of one complete copy of the best edition will suffice in lieu of the two copies required by paragraph (d)(1) of this section.

(e) *Special relief.* (1) In the case of any published work not exempt from deposit under paragraph (c) of this section, the Register of Copyrights may, after consultation with other appropriate officials of the Library of Congress and upon such conditions as the Register may determine after such consultation: (i) Grant an exemption from the deposit requirements of section 407(a) of title 17 on an individual basis for single works or series or groups of works; or (ii) permit the deposit of one copy or phonorecord, or alternative identifying material, in lieu of the two copies or phonorecords required by paragraph (d)(1) of this section; or (iii) permit the deposit of incomplete copies or

phonorecords, or copies or phonorecords other than those normally comprising the best edition; or (iv) permit the deposit of identifying material which does not comply with section 202.21 of these regulations.

(2) Any decision as to whether to grant such special relief, and the conditions under which special relief is to be granted, shall be made by the Register of Copyrights after consultation with other appropriate officials of the Library of Congress, and shall be based upon the acquisition policies of the Library of Congress then in force.

(3) Requests for special relief under this paragraph shall be made in writing to the Chief, Acquisitions and Processing Division of the Copyright Office, shall be signed by or on behalf of the owner of copyright or of the exclusive right of publication in the work, and shall set forth specific reasons why the request should be granted.

(4) The Register of Copyrights may, after consultation with other appropriate officials of the Library of Congress, terminate any ongoing or continuous grant of special relief. Notice of termination shall be given in writing and shall be sent to the individual person or organization to whom the grant of special relief had been given, at the last address shown in the records of the Copyright Office. A notice of termination may be given at any time, but it shall state a specific date of termination that is at least 30 days later than the date the notice is mailed. Termination shall not affect the validity of any deposit earlier made under the grant of special relief.

(f) *Submission and receipt of copies and phonorecords.* (1) All copies and phonorecords deposited in the Copyright Office will be considered to be deposited only in compliance wth section 407 of title 17 unless they are accompanied by an application for registration of claim to copyright in the work represented by the deposit, and either a registration fee or a deposit account number on the application. Copies or phonorecords deposited without such an accompanying application and either a fee or a deposit account notation will not be connected with or held for receipt of separate applications, and will not satisfy the deposit provisions of section 408 of title 17 or § 202.20 of these regulations.

(2) All copies and phonorecords deposited in the Copyright Office under section 407 of title 17, unless accompanied by written instructions to the contrary, will be considered to be deposited by the person or persons named in the copyright notice on the work.

(3) Upon request by the depositor made at the time of the deposit, the Copyright Office will issue a certificate of receipt for the deposit of copies or phonorecords of a work under this section. Certificates of receipts will be issued in response to requests made after the date of deposit only if the requesting party is identified in the records of the Copyright Office as having made the deposit. In either case, requests for a certificate of receipt must be in writing and accompanied by a fee of $2. A certificate or receipt will include identification of the depositor, the work deposited, and the nature and format of the copy or phonorecord deposited, together with the date of receipt.

§ 202.20 Deposit of copies and phonorecords for copyright registration.

(a) *General.* This section prescribes rules pertaining to the deposit of copies and phonorecords of published and unpublished works for the purpose of copyright registration under section 408 of title 17 of the United States Code, as amended by Pub. L. 94–553. The provisions of this section are not applicable to the deposit of copies and phonorecords for the Library of Congress under section 407 of title 17, except as expressly adopted in § 202.19 of these regulations.

(b) *Definitions.* For the purposes of this section:

(1) The "best edition" of work; has the meaning set forth in § 202.19(b)(1) of these regulations.

(2) A "complete" copy or phonorecord means the following:

(i) *Unpublished works.* Subject to the requirements of paragraph (b)(2)(vi) of this section, a "complete" copy or phonorecord of an unpublished work is a copy or phonorecord representing the entire copyrightable content of the work for which registration is sought;

(ii) *Published works.* Subject to the requirements of paragraph (b)(2) (iii) through (vi) of this Section, a "complete" copy or phonorecord of a published work includes all elements comprising the applicable unit of publication of the work, including elements that, if considered separately, would not be copyrightable subject matter. However, even where certain physically separable elements included in the applicable unit of publication are missing from the deposit, a copy or phonorecord will be considered "complete" for purposes of registration where: (A) The copy or phonorecord deposited contains all parts of the work for which copyright registration is sought; and (B) the removal of the missing elements did not physically damage the copy or phonorecord or garble its contents; an (C) the work is exempt from the mandatory deposit requirements under section 407 of title 17 of the United States Code and § 202.19(c) of these regulations, or the copy deposited consists entirely of a container, wrapper, or holder, such as an envelope, sleeve, jacket, slipcase, box, bag, folder, binder, or other receptable acceptable for deposit under paragraph (c)(2) of this section;

(iii) *Contributions to collective works.* In the case of a published contribution to a collective work, a "complete" copy or phonorecord is the entire collective work including the contribution or, in the case of a newspaper, the entire section including the contribution;

(iv) *Sound recordings.* In the case of published sound recordings, a "complete" phonorecord has the meaning set forth in § 202.19(b)(2) of these regulations;

(v) *Musical scores.* In the case of a musical composition published in copies only, or in both copies and phonorecords: (A) If the only publication of copies took place by the rental, lease, or lending of a full score and parts, a full score is a "complete" copy; and (B) if the only publication of copies took place by the rental, lease, or lending of a conductor's score and parts, a conductor's score is a "complete" copy;

(vi) *Motion pictures.* In the case of a published or unpublished motion picture, a copy is "complete" if the reproduction of all of the visual and aural elements comprising the copyrightable subject matter in the work is clean, undamaged, underteriorated, and free of splices, and if the copy itself and its physical housing are free of any defects that would interfere with the performance of the work or that would cause mechanical, visual, or audible defects or distortions.

(3) The terms "copy," "collective work," "device," "fixed," "literary work," "machine," "motion picture," "phonorecord," "publication," "sound recording," "transmission program," and "useful article," and their variant forms, have the meanings given to them in section 101 of title 17.

(4) A "secure test" is a nonmarketed test administered under supervision at specified centers on specific dates, all copies of which are accounted for and either destroyed or returned to restricted locked storage following each administration. For these purposes a test is not marketed if copies are not sold but it is distributed and used in such a manner that ownership and control of

copies remain with the test sponsor or publisher.

(5) "Title 17" means title 17 of the United States Code, as amended by Pub. L. 94–553.

(6) For the purposes of determining the applicable deposit requirements under this § 202.20 only, the following shall be considerd as unpublished motion pictures: motion pictures that consist of television transmission programs and that have been published, if all all, only by reason of a license or other grant to a nonprofit institution of the right to make a fixation of such programs directly from a transmission to the public, with or without the right to make further uses of such fixations.

(c) *Noture of required deposit.* (1) Subject to the provision of paragraph (c)(2) of this section, the deposit required to accompany an application for registration of claim to copyright under section 408 of title 17 shall consist of:

(i) In the case of unpublished works, one complete copy or phonorecord.

(ii) In the case of works first published in the United States before January 1, 1978, two complete copies or phonorecords of the work as first published.

(iii) In the case of works first published in the United States on or after January 1, 1978, two complete copies or phonorecords of the best edition.

(iv) In the case of works first published outside of the United States, whenever published, one complete copy or phonorecord of the work as first published. For the purposes of this section, any works simultaneously first published within and outside of the United States shall be considered to be first published in the United States.

(2) In the case of certain works, the special provisions set forth in this clause shall apply. In any case where this clause specifies that one copy or phonorecord may be submitted, that copy or phonerecord shall represent the best edition, or the work as first published, as set forth in paragraph (c)(1) of this section.

(i) *General.* In the following cases the deposit of one complete copy or phonorecord will suffice in lieu of two copies or phonorecords: (A) Published three-dimensional cartographic representations of area, such as globes and relief models; (B) published diagrams illustrating scientific or technical works or formulating scientific or technical information in linear or other two-dimensional form, such as an architectural or engineering buleprint, or a mechanical drawing; (C) published greeting cards, picture postcards, and stationery; (D) lectures, sermons, speeches, and addresses published individually and not as a collection of the works of one or more authors; (E) musical compositions published in copies only, or in both copies and phonorecords, if the only publication or copies took place by rental, lease, or lending; (F) published multimedia kits; (G) works exempted from the requirement of depositing identifying material under paragraph (c) (2) (xi) (B) (*5*) and (*7*) of this section; (H) literary, dramatic, and musical works published only as embodied in phonorecords, although this category does not exempt the owner of copyright in a sound recording; (I) choreographic works and pantomines published only as embodied in motion pictures (J) published works in the form of two-dimensional games, decals, fabric patches or emblems, calendars, instructions for needle work, needle work and craft kits; and (K) works reproduced on three-dimensional containers such as boxes, cases, and cartons.

(ii) *Motion pictures.* In the case of published or unpublished motion pictures, the deposit of one complete copy will suffice. The deposit of a copy or copies for any published or unpublished motion picture must be accompanied by a separate description of its contents, such as a continuity, pressbook, or synopsis. In any case where the deposit copy or copies required for registration of a motion picture cannot be viewed for examining a purposes on equipment in the Examining Division of the Copyright Office, the description accompanying the deposit must comply with section 202.21(h) of these regulations. The Library of Congress may, at its sole discretion, enter into agreement permitting the return of copies of published motion pictures to the depositor under certain conditions and establishing certain rights and obligations of the Library of Congress with respect to such copies. In the event of termination of such an agreement by the Library, it shall not be subject to reinstatement, nor shall the depositor or any successor in interest of the depositor be entitled to any similar or subsequent agreement with the Library, unless at the sole discretion of the Library it would be in the best interests of the Library to reinstate the agreement or enter into a new agreement. In the case of unpublished motion pictures (including televison transmission programs that have been fixed and transmitted to the public, but have not been published), the deposit of identifying material in compliance with § 202.21 of these regulations may be made and will suffice in lieu of an actual copy.

(iii) *Holograms.* In the case of any work deposited in the form of a three-dimensional hologram, the copy or copies shall be accompanied by: (A) Precise instructions for displaying the image fixed in the hologram; and (B) photographs or other identifying material complying with § 202.21 of these regulations and clearly showing the displayed image. The number of sets of instructions and identifying material shall be the same as the number of copies required. In the case of a work in the form of a two-dimensional hologram, the image of which is visible without the use of a machine or device, one actual copy of the work shall be deposited.

(iv) *Certain pictorial and graphic works.* In the case of any unpublished pictorial or graphic work, deposit of identifying material in compliance with § 202.21 of these regulations may be made and will suffice in lieu of deposit of an actual copy. In the case of a published pictorial or graphic work, deposit of one complete copy, or of identifying material in compliance with § 202.21 of these regulations, may be made and will suffice in lieu of deposit of two actual copies where an individual author is the owner of copyright, and either: (A) Less than five copies of the work have been published; or (B) the work has been published and sold or offered for sale in a limited edition consisting of no more than 300 numbered copies.

(v) *Commercial prints and labels.* In the case of prints, labels, and other advertising matter, including catalogs, published in connection with the rental, lease, lending, licensing, or sale of articles of merchandise, works of authorship, or services, the deposit of one complete copy will suffice in lieu of two copies. Where the print or label is published in a larger work, such as a newspaper or other periodical, one copy of the entire page or pages upon which it appears may be submitted in lieu of the entire larger work. In the case of prints or labels physically inseparable from a three-dimensional object, identifying material complying with § 202.21 of these regulations must be submitted rather than an actual copy or copies except under the conditions of paragraph (c)(*2*)(ix)(B)(*6*) of this section.

(vi) *Tests.* In the case of tests, and answer material for tests, published separately from other literary works, the deposit of one complete copy will suffice in lieu of two copies. In the case of any secure test the Copyright Office will return the deposit to the applicant promptly after examination: *Provided,*

That sufficient portions, description, or the like are retained so as to constitute a sufficient archival record of the deposit.

(vii) *Computer programs and data bases embodied in machine-readable copies.* In cases where a computer program, data base, compilation, statistical compendium or the like, if unpublished is fixed, or if published is published only in the form of machine-readable copies (such as magnetic tape or disks, punched cards, or the like) from which the work cannot ordinarily be perceived except with the aid of a machine or device, the deposit shall consist of:

(A) For published or unpublished computer programs, one copy of identifying portions of the program, reproduced in a form visually perceptible without the aid of a machine or device, either on paper or in microform. For these purposes, "identifying portions" shall mean either the first and last 25 pages or equivalent units of the program if reproduced on paper, or at least the first and last 25 pages or equivalent units of the program if reproduced in microform, together with the page or equivalent unit containing the copyright notice, if any. In the case of revised versions of such works, if the revisions occur throughout the entire computer program, the deposit of the first and last 25 pages will suffice; if the revisions are not contained in the first and last 25 pages, the deposit should consist of any 50 pages representative of the revised material.

(B) For published and unpublished automated data bases, compilations, statistical compendia, and other literary works so fixed or published, one copy of identifying portions of the work, reproduced in a form visually perceptible without the aid of a machine or device, either on paper or in microform. For these purposes: (*1*) "identifying portions" shall mean either the first and last 25 pages or equivalent units of the work if reproduced on paper, or at least the first and last 25 pages or equivalent units of work if reproduced on microform, or, in the case of automated data bases comprising separate and distinct data files, representative portions of each separate data file consisting of either 50 complete data records from each file or the entire file, whichever is less; and (*2*) "data file" and "file" mean a group of data records pertaining to a common subject matter, regardless of the physical size of the records or the number of data items included in them. (In the case of revised versions of such data bases, the portions deposited must contain representative data records which have been added or modified.) In any case where the deposit comprises representative portions of each separate file of an automated data base as indicated above, it shall be accompanied by a typed or printed descriptive statement containing: The title of the data base; the name and address of the copyright claimant; the name and content of each separate file within the data base, including the subject matter involved, the origin(s) of the data, and the approximate number of individual records within the file; and a description of the exact contents of any machine-readable copyright notice employed in or with the work and the manner and frequency with which it is displayed (e.g., at user's terminal only at sign-on, or continuously on terminal display, or on printouts, etc.). If a visually perceptible copyright notice is placed on any copies of the work (such as magnetic tape reels or their container) a sample of such notice must also accompany the statement.

(viii) *Machine-readable copies of works other than computer programs and data bases.* Where a literary, musical, pictorial, graphic, or audiovisual work, or a sound recording, except for literary works which are computer programs, data bases, compilations, statistical compendia or the like, if unpublished has been fixed or, if published, has been published only in machine-readable form, the deposit must consist of identifying material. The type of identifying material submitted should generally be appropriate to the type of work embodied in machine-readable form, but in all cases should be that which best represents the copyrightable content of the work. In all cases the identifying material must include the title of the work. A synopsis may also be requested in addition to the other deposit materials as appropriate, in the discretion of the Copyright Office. In the case of any published work subject to this section, the identifying material must include a representation of the copyright notice, if one exists. Identifying material requirements for certain types of works are specified below. In the case of the types of works listed below, the requirements specified shall apply except that, in any case where the specific requirements are not appropriate for a given work the form of the identifying material required will be determined by the Copyright Office in consultation with the applicant, but the Copyright Office will make the final determination of the acceptability of the identifying material.

(A) For pictorial or graphic works, the deposit shall consist of identifying material in compliance with section 202.21 of these regulations.

(B) For audiovisual works, the deposit shall consist of either a videotape of the work depicting representative portions of the copyrightable content, or a series of photographs or drawings, depicting representative portions of the work, plus in all cases a separate synopsis of the work;

(C) For musical compositions, the deposit shall consist of a transcription of the entire work such as a score, or a reproduction of the entire work on an audiocassette or other phonorecord;

(D) For sound recordings, the deposit shall consist of a reproduction of the entire work on an audiocassettee or other phonorecord;

(E) For literary works, the deposit shall consist of a transcription of representative portions of the work including the first and last 25 pages or equivalent units, and five or more pages indicative of the remainder.

(ix) *Works with visually-perceptible and machine-readable copies.* Where a published literary work is comprised or a visually-perceptible copy and a machine-readable copy, the deposit shall consist of one copy of the visually-perceptible material and a visually-perceptible reproduction of the machine-readable material.

(x) *Works reproduced in or on sheet-like materials.* In the case of any unpubished work that is fixed, or any published work that is published, only in the form of a two-dimensional reproduciton on sheetlike materials such as textile and other fabrics, wallpaper and similar commercial wall coverings, carpeting, floor tile, and similar commercial floor coverings, and wrapping paper and similar packaging material, the deposit shall consist of one copy in the form of an actual swatch or piece of such material sufficient to show all elements of the work in which copyright is claimed and the copyright notice appearing on the work, if any. If the work consists of a repeated pictorial or graphic design, the complete design and at least part of one repetition must be shown. If the sheetlike material in or on which a published work has been reproduced has been embodied in or attached to a three-dimensional object, such as furniture, or any other three-dimensional manufactured article, and the work has been published only in that form, the deposit must consist of identifying material complying with section 202.21 of these regulations instead of a copy. If the sheetlike material in or on which a published work has been reproduced has been embodied in or attached to a two-

dimensional object such as wearing apparel, bed linen, or a similar item, and the work has been published only in that form, the deposit must consist of identifying material complying with section 202.21 of these regulations instead of a copy unless the copy can be folded for storage in a form that does not exceed four inches in thickness in which case one actual swatch or piece of the material as provided in the first two sentences of this clause (x) is acceptable as a deposit.

(xi) *Works reproduced in or on three-dimensional objects.* (A) In the following cases the deposit must consist of identifying material complying with § 201.21 of these regulations instead of a copy or copies: (*1*) Any three-dimensional sculptural work, including any illustration or formulation of artistic expression or information in three-dimensional form. Examples of such works include statues, carvings, ceramics, moldings, constructions, models, and maquettes; and (*2*) any two-dimensional or three-dimensional work that, if unpublished, has been fixed, or, if published, has been published only in or on jewelry, dolls, toys, games, except as provided in paragraph (c)(2)(xi) (B)(*3*) below, or any three-dimensional useful article.

(B) In the following cases the requirements of paragraph (c)(2)(ix) (A) of this section for the deposit of identifying material shall not apply: (*1*) Three-dimensional cartographic representations of area, such as globes and relief models; (*2*) works that have been fixed or published in or on a useful article that comprises one of the elements of the unit of publication of an educational or instructional kit which also includes a literary or audiovisual work, a sound recording, or any combination of such works; (*3*) published games consisting of multiple parts that are packaged and published in a box or similar container with flat sides and with dimensions of no more than 12 x 24 x 6 inches; (*4*) works reproduced on three-dimensional containers or holders such as boxes, cases, and cartons, where the container or holder can be readily opened out, unfolded, slit at the corners, or in some other way made adaptable for flat storage, and the copy, when flattened, does not exceed 96 inches in any dimension; or (*5*) any three-dimensional sculptural work that, if unpublished, has been fixed, or, if published, has been published only in the form of jewelry cast in base metal which does not exceed four inches in any dimension.

(xii) *Soundtracks.* For separate registration of an unpublished work that is fixed, or a published work that is published, only as embodied in a soundtrack that is an integral part of a motion picture, the deposit of identifying material in compliance with § 202.21 of these regulations will suffice in lieu of an actual copy or copies of the motion picture.

(xiii) *Oversize deposits.* In any case where the deposit otherwise required by this section exceeds ninety-six inches in any dimension, identifying material complying with § 202.21 of these regulations must be submitted instead of an actual copy or copies.

(xiv) *Pictorial advertising material.* In the case of published pictorial advertising material, except for advertising material published in connection with motion pictures, the deposit of either one copy as published or prepublication material consisting of camera-ready copy is acceptable.

(xv) *Contributions to collective works.* In the case of published contributions to collective works, the deposit of either one complete copy of the best edition of the entire collective work, photocopy of the contribution itself as it was published in the collective work, the entire page of paper containing the contribution or, for newspapers, one section containing the contribution will suffice in lieu of two complete copies of the entire collective work.

(xvi) *Phonorecords.* In any case where the deposit phonorecord or phonorecords submitted for registration of a claim to copyright is inaudible on audio play back devices in the Examining Division of the Copyright Office, the Office will seek an appropriate deposit in accordance with paragraph (d) of this section.

(d) *Special relief.* (1) In any case the Register of Copyrights may, after consultation with other appropriate officials of the Library of Congress and upon such conditions as the Register may determine after such consultation: (i) Permit the deposit of one copy or phonorecord, or alternative identifying material, in lieu of the one or two copies or phonorecords otherwise required by paragraph (c)(1) of this section; (ii) permit the deposit of incomplete copies or phonorecords, or copies or phonorecords other than those normally comprising the best edition; or (iii) permit the deposit of an actual copy or copies, in lieu of the identifying material otherwise required by this section; or (iv) permit the deposit of identifying material which does not comply with § 202.21 of these regulations.

(2) Any decision as to whether to grant such special relief, and the conditions under which special relief is to be granted, shall be made by the Register of Copyrights after consultation with other appropriate officials of the Library of Congress, and shall be based upon the acquisition policies of the Library of Congress then in force and the archival and examining requirements of the Copyright Office.

(3) Requests for special relief under this paragraph may be combined with requests for special relief under § 202.19(e) of these regulations. Whether so combined or made solely under this paragraph, such requests shall be made in writing to the Chief, Examining Division of the Copyright Office, shall be signed by or on behalf of the person signing the application for registration, and shall set forth specific reasons why the request should be granted.

(4) The Register of Copyrights may, after consultation with other appropriate officials of the Library of Congress, terminate any ongoing or continuous grant of special relief. Notice of termination shall be given in writing and shall be sent to the individual person or organization to whom the grant of special relief had been given, at the last address shown in the records of the Copyright Office. A notice of termination may be given at any time, but it shall state a specific date of termination that is at least 30 days later than the date the notice is mailed. Termination shall not affect the validity of any deposit or registration earlier made under the grant of special relief.

(e) *Use of copies and phonorecords deposited for the Library of Congress.* Copies and phonorecords deposited for the Library of Congress under section 407 of title 17 and § 202.19 of these regulations may be used to satisfy the deposit provisions of this section if they are accompanied by an application for registration of claim to copyright in the work represented by the deposit, and either a registration fee or a deposit account number on the application.

§ 202.21 Deposit of identifying material instead of copies.

(a) *General.* Subject to the specific provisions of paragraphs (f) and (g) of this section, and to §§ 202.19(e)(1)(iv) and 202.20(d)(1)(iv), in any case where the deposit of identifying material is permitted or required under § 202.19 or § 202.20 of these regulations for published or unpublished works, the material shall consist of photographic prints, transparencies, photostats, drawings, or similar two-dimensional reproductions or renderings of the work, in a form visually perceivable without the aid of a machine or device. In the case of pictorial or graphic works, such

material should reproduce the actual colors employed in the work. In all other cases, such material may be in black and white or may consist of a reproduction of the actual colors.

(b) *Completeness; number of sets.* As many pieces of identifying material as are necessary to show the entire copyrightable content in the ordinary case, but in no case less than an adequate representation of such content, of the work for which deposit is being made, or for which registration is being sought shall be submitted. Except in cases falling under the provisions of § 202.19(d)(2)(iii) or § 202.20(c)(2)(iii) with respect to holograms, only one set of such complete identifying material is required.

(c) *Size.* Photographic transparencies must be at least 35 mm in size and, if such transparencies are 3 x 3 inches or less, must be fixed in cardboard, plastic, or similar mounts to facilitate identification, handling, and storage. The Copyright Office prefers that transparencies larger than 3 x 3 inches be mounted in a way that facilitates their handling and preservation, and reserves the right to require such mounting in particular cases. All types of identifying material other than photographic transparencies must be not less than 3 x 3 inches and not more than 9 x 12 inches, but preferably 8 x 10 inches. Except in the case of transparencies, the image of the work must be either lifesize or larger, or if less than lifesize must be large enough to show clearly the entire copyrightable content of the work.

(d) *Title and dimensions.* At least one piece of identifying material must, on its front, back, or mount, indicate the title of the work; and the indication of an exact measurement of one or more dimensions of the work is preferred.

(e) *Copyright notice.* In the case of works published with notice of copyright, the notice and its position on the work must be clearly shown on at least one piece of identifying material. Where necessary because of the size or position of the notice, a separate drawing or similar reproduction shall be submitted. Such reproduction shall be no smaller than 3 x 3 inches and no larger than 9 x 12 inches, and shall show the exact appearance and content of the notice, and its specific position on the work.

(f) For separate registration of an unpublished work that is fixed, or a published work that is published, only as embodied in a soundtrack that is an integral part of a motion picture, identifying material deposited in lieu of an actual copy of the motion picture shall consist of: (1) A transcription of the entire work, or a reproduction of the entire work on a phonorecord; and (2) photographs or other reproductions from the motion picture showing the title of the motion picture, the soundtrack credits, and the copyright notice for the soundtrack, if any. The provisions of paragraphs (b), (c), (d), and (e) of this section do not apply to identifying material deposited under this paragraph (f).

(g) In the case of unpublished motion pictures (including transmission programs that have been fixed and transmitted to the public, but have not been published), identifying material deposited in lieu of an actual copy shall consist of either: (1) An audio cassette or other phonorecord reproducing the entire soundtrack or other sound portion of the motion picture, and a description of the motion picture; or (2) a set consisting of one frame enlargement or similar visual reproduction from each 10-minute segment of the motion picture, and a description of the motion picture. In either case the "description" may be a continuity, a pressbook, or a synopsis but in all cases it must include: (i) The title or continuing title of the work, and the episode title, if any; (ii) the nature and general content of the program; (iii) the date when the work was first first and whether or not fixation was simultaneous with first transmission; (iv) the date of first transmission, if any; (v) the running time; and (vi) the credits appearing on the work, if any. The provisions of paragraphs (b), (c), (d), and (e) of this section do not apply to identifying material submitted under this paragraph (g).

(h) In the case where the deposit copy or copies of a motion picture cannot be viewed for examining purposes on equipment in the Examining Division of the Copyright Office, the "description" required by § 202.20(c)(2)(ii) of these regulations may be a continuity, a pressbook, or a synopsis but in all cases must be sufficient to indicate the copyrightable material in the work and include (1) the continuing title of the work and the episode title, if any; (2) the nature and general content of the program and of its dialogue or narration, if any; (3) the running time; and (4) the credits appearing on the work. The provisions of paragraphs (b), (c), and (d) of this section do not apply to identifying material submitted under this paragraph (h).

(17 U.S.C. 407, 408, 702)

Dated: February 6, 1985.

Donald C. Curran,

Acting Register of Copyrights.

Approved:

Daniel J. Boorstin,

The Librarian of Congress.

[FR Doc. 85-3755 Filed 2-13-85; 8:45 am]

BILLING CODE 1410-03-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-9-FRL-2777-7]

Approval and Promulgation of Implementation Plans; Merced County and San Francisco Bay Area, Air Pollution Control Regulations, State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing rulemaking to disapprove revisions to the San Francisco Bay Area and Merced County portions of the California State Implementation Plan (SIP). The revisions are relaxations of existing SIP requirements for food processors pertaining to New Source Review (NSR) and particulate emissions prohibitory regulations. EPA proposes disapproval because the revisions violate Federal NSR requirements and because the State could not demonstrate that the relaxations would not jeopardize attainment and maintenance of the National Ambient Air Quality Standards (NAAQS).

DATE: Comments may be submitted up to March 18, 1980.

ADDRESSES: Comments may be sent to: Regional Administrator, Attn: Air Management Division (A-3-1), Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105.

Copies of EPA's Evaluation Report are available for public inspection during normal business hours at the EPA Region 9 office at the above address and at the following locations:

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

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

Merced County Air Pollution Control District, 210 East 15th Street, Merced, CA 95341

FOR FURTHER INFORMATION CONTACT: Dave Jesson, Air Management Division, Air Operations Branch, New Source Section, Environmental Protection Agency, Region 9, (415) 974–8220, FTS 8–454–8220.

SUPPLEMENTARY INFORMATION:

Background

In September 1983 the California State Legislature approved and the Governor signed Senate Bill 664, which added and revised Sections 41511.5, 41511.6, and 41511.7 of the State Health and Safety Code, relating to air pollution control requirements applicable to food processors. This legislation mandated revisions to the existing California air pollution control district rules and regulations, pertaining to NSR and emissions level prohibitory rules. The legislation established a requirement that district particulate prohibitory rules be consistent with a level of 480 pounds per day, but not to exceed 20 pounds per hour. District NSR rules are required to be amended to reflect an applicability cutoff level for new sources of 1,000 pounds per day, but not to exceed 50 tons per year. Food processors are exempted from NSR if they modify to convert from gaseous fuel to liquid or alternative fuels and if emission increases do not exceed 40 tons per year of nitrogen oxides, 40 tons per year of sulfur dioxide, 40 tons per year of ozone (volatile organic compounds), or 25 tons per year of particulate matter. The State law further mandated that food processors not be subject to PSD requirements more stringent than the Federal PSD regulations. Finally, SB664 provided that its sections shall be "inoperative" if EPA disapproves the amended SIP or if sanctions are imposed under the Clean Air Act as a result of the law's requirements.

Description of Regulations

On August 21, 1984 and September 19, 1984, respectively, the Merced County Air Pollution Control District (MCAPCD) and Bay Area Air Quality Management District (BAAQMD) adopted revisions to their regulations to conform to the State law pertaining to food processors. These revisions were submitted to EPA by the State on October 5, 1984, as official amendments to the SIP.

Revisions to the MCAPCD and BAAQMD rules addressing the requirements of SB664 are as follows:

MCAPCD

Rule 210.1–II–J (Definition of Food Processing Facility) (new)
Rule 210.1–VII–F (Exemptions—Food Processors) (new)
Rule 408–C Fuel Burning Equipment (revised; new sentences two and three)

BAAQMD

Section 2–2–119 Exemption, New Food Processing Facilities (new)
Section 2–2–120 Exemption, Modification of Food Processing Facility Shortage of Natural Gas and/or Economic Advantage (new)
Section 2–2–121 Food Processing Facility PSD Limitation (new)
Section 2–2–232 (Definition of food processor) (new)
Section 2–2–421 Effective Date (new)
Section 6–312 Food Processing Facility Particulate Matter Limitation (new)
Section 6–205 (Definition of food processor) (new)

Both the MCAPCD and BAAQMD revisions contain language making the rules effective upon EPA approval.

It should be noted that the October 5, 1984 SIP revision also contains two MCAPCD NSR revisions which do not directly respond to the SB664 mandatory food processor exemptions. These additions to Rule 202 (Exemptions) and Rule 210.1–V–D (Calculations) are minor amendments that strengthen the existing Merced NSR rule. EPA intends to address these rules at the time of final action of the entire MCAPCD NSR rule.

Evaluation

EPA has evaluated the submitted rules and has determined that the NSR rule revisions should be disapproved because they violate requirements of the Federal permit regulations (40 CFR 51.18) concerning source applicability. SB664 and the Districts' revised rules exempt major modifications from NSR regardless of carbon monoxide or lead emissions while the Federal NSR regulations impose NSR review requirements for sources with CO increases above 100 tons per year and lead increases above .6 tons per year (cf. MCAPCD Rule 210.1–VII–F–2 and BAAQMD Section 2–2–120 with 40 CFR 51.18(j)(1)(x)). Moreover, the NSR rule revisions and the particulate matter limitation must be disapproved, since they represent relaxations of the existing SIP requirements and are not accompanied by a demonstration that the SIP, despite the relaxation, will continue to provide for attainment and maintenance of the standards.

EPA's Evaluation Report contains evidence that the applicable SIP would be made less stringent if the NSR (MCAPCD 210.1–VII, BAAQMD 2–2–119 and 2–2–120) and particulate matter limitation (MCAPCD 408, BAAQMD 6–312) revisions were approved. Neither the MCAPCD, BAAQMD, nor the State Air Resources Board were able to adopt additional regulations to compensate for the substantial emission increases that would result from the food processor relaxations. Since the proposed relaxations would jeopardize attainment and maintenance of the NAAQS, EPA proposes to disapprove the revisions.

In response to SB664 requirements that food processors not be subjected to local district Prevention of Significant Deterioration (PSD) requirements which are more stringent than required by EPA, the MCAPCD rules have a provision (specifically, 210.1–VII–F–3) requiring that, for attainment criteria pollutants, a food processing facility be exempted from the NSR requirements (control technology and offsets) if the applicant demonstrated that the facility meets the Federal PSD requirements in effect on August 21, 1984. MCAPCD has not yet adopted PSD regulations.

Proposed Actions

For the reasons stated above, EPA is proposing to disapprove MCAPCD revisions to Rules 210.1 (new Rules 210.1–II–J and 210.1–VII–F) and 408 (408–C, new sentences two and three) and BAAQMD new Sections 2–2–119, 2–2–120, 6–205, and 6–312. EPA will act on BAAQMD Sections 2–2–232 (Definition of Food Processing Facility), Section 2–2–121 (Food Processing Facility PSD Limitation), and Section 2–2–421 (Effective Date) at a later date in conjunction with rulemaking on the entire BAAQMD PSD rule. EPA will act on MCAPCD minor revisions to Rule 202 (Exemptions) and Rule 210.1–V–D (Calculations), which do not specifically apply to food processors, at the time of final rulemaking approval of the entire MCAPCD NSR rule.

The effect of EPA's proposed disapproval will be to maintain the present SIP requirements for food processors. Any food processor using the relaxed rule provisions in conformance with SB664 may be subject to Federal enforcement action under section 113 of the Clean Air Act.

EPA intends to propose disapproval of similar SB664 revisions by other California air pollution control districts. Disapproval would result from the provision in SB664 prohibiting districts from imposing NSR requirements on food processor facility modifications even though the modifications exceed the federal NSR thresholds for CO and lead. Disapproval of SB664-mandated relaxations of existing district NSR and particulate matter SIP requirements is also necessary under the Clean Air Act, unless a demonstration is made that the relaxations would not jeopardize the attainment and maintenance of the NAAQS. In the interim before EPA

action, as well as after EPA has disapproved the SIP revisions, food processor sources statewide are liable to federal enforcement if they act in accordance with the State-mandated relaxations in SB664.

Regulatory Process

Under Executive Order 12291, today's action is not major. It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA and any EPA response are available for public inspection at the locations listed in the **ADDRESSES** section of the notice. Under 5 U.S.C. section 605(b), EPA has determined that this proposed action will not have a significant economic impact on a substantial number of small entities, since the proposed disapproval imposes no new requirements on any new or existing source.

List of Subjects in 40 CFR Part 52

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

Authority: Secs. 110, 129, 171 to 173, and 301(a) of the Clean Air Act is amended (42 U.S.C. 7410, 7429, 7501 to 7503 and 7601(a)).

Dated: December 5, 1984.

John Wise,

Acting Regional Administrator.

[FR Doc. 85-3705 Filed 2-13-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[FCC 85-40, PR Docket No. 85-22]

Frequency Coordination of Repeaters in the Amateur Radio Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: This document proposes to amend FCC rules to define the relative rights and responsibilities of amateur stations in repeater operation because of an increasing number of instances of interference associated with amateur repeater operation.

DATES: Comments are due by July 1, 1985 and replies by September 30, 1985.

FOR FURTHER INFORMATION CONTACT: John J. Borkowski, Private Radio Bureau, Washington, D.C. 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 97

Amateur radio, Repeaters, Malicious interference.

Notice of Proposed Rule Making

In the matter of amendment of Part 97 of the Commission's rules concerning frequency coordination of repeaters in the Amateur Radio Service, PR Docket No. 85-22.

Adopted: January 23, 1985.
Released: January 30, 1985.

By the Commission.

1. On September 8, 1972, we adopted rules for repeater operation in the Amateur Radio Service. Report and Order, Docket No. 18803, 37 FCC 2d 225 (September 8, 1972).[1] We adopted those rules in response to the increasing use of repeaters in the Amateur Radio Service. We sought to provide flexibility and a framework for accommodating future technical and operational advancements in amateur radiocommunications.[2]

2. When we adopted these rules, we recognized that over 90% of the licensed amateurs in the United States at that time had access to all of the frequencies where repeater stations were permitted to operate. Consequently, measures to insure against interference relating to repeater operations were an absolute necessity.[3] We stated:

> Operation of a repeater station in the Amateur Radio Service can present unique problems not comparable to other radio services such as Land Mobile or Citizens Class A,[4] where control operators are not required at repeater stations. For instance, specific frequencies are not assigned to amateur radio stations, as they are in other radio services. An amateur radio station operating frequency must be selected by the control operator. Good amateur practice requires that he monitor his selected frequency prior to transmitting, in order to insure that the transmission will not interfere with radio communications already in progress on that frequency. Repeater stations are no more exempt from this requirement than are other type of amateur radio stations. Memorandum Opinion and Order, Docket No. 18803, 38 FCC 2d 920, 922 (January 2, 1973).

3. In that proceeding we also concluded that "regional and national frequency planning and coordination by amateur radio operators themselves can result in the best spectrum utilization appropriate to the service." Report and Order, Docket No. 18803, *supra*, at 229. We expected planning and implementation of such coordination to occur within a reasonable period. When we eliminated "WR" call signs we said that:

> We presume that the frequencies used by new stations placed in repeater operation, without "WR" call signs, will be coordinated as they have been in the past, with amateur repeater councils. We further presume that most new stations placed in repeater operation will, upon successful frequency coordination, be listed in the various published repeater directories * * *." Second Report and Order, Docket No. 21135, 67 FCC 2d 1120, 1124 (April 6, 1978).

4. Since we instituted repeater rules in the Amateur Radio Service, the service has grown from 275,778 licensees as of the end of fiscal year (FY) 1972 to 409,923 total individual amateur operators as of the end of FY 1984. The number of amateurs engaged in repeater operation and the number of amateur repeaters have increased proportionately. So too have the number of reported cases of interference to amateurs by amateurs, from 407 in FY 1975 to in excess of 1,150 in FY 1979 and every year since. The number of annual complaints of interference by amateur stations to amateur repeaters has tripled since 1979. The number of reported instances of amateur repeaters causing interference to one another in FY 1984 is more than three times the number recorded in FY 1983.

5. Most of the reported cases of amateur repeater-to-repeater interference appear to involve one or more non-coordinated repeaters. In the past two years we have had to resolve amateur repeater-to-repeater interference disputes in which at least one non-coordinated repeater was involved and in which the parties to the dispute could reach no amicable solution. We attribute the growing number of instances of amateur repeater-to-repeater interference and the need for increased intervention in these matters to the mounting pressure which develops as the desirable repeater frequencies become fully assigned.

6. When we have intervened in such interference disputes, we have, consistent with the statements referenced above in Docket Nos. 18803 and 21135, favored the repeater which has been operating in accordance with the recommendation of a local

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[1] Repeater operation in the Amateur Radio Service, as defined in 47 CFR 97.3(c), is radio communication, other than auxiliary operation, for retransmitting automatically the radio signals of other amateur radio stations.

[2] Over the years some modifications have been made. For example, separate licensing of amateur repeater stations with "WR" call signs has been discontinued. See Second Report and Order, Docket No. 21135, 67 FCC 2d 1120 (April 6, 1978). However, specific operating requirements and procedures for amateur radio stations engaged in repeater operation remain. See 47 CFR 97.85.

[3] Currently, 80% of the licensed amateurs in the United States have access to all of the frequencies where repeater stations are permitted to operate (with the exception that Technician Class licensees do not have access to the 29.500-29.700 MHz band).

[4] The former Class A Citizens Band Service is now known as the General Mobile Radio Service (GMRS). It is a Part 95 Personal Radio Service.

frequency coordinator. Notwithstanding the ARRL's disclaimer of any affiliation with the frequency coordinators listed in its *Repeater Directory*, its publication appears to be the only current authoritative listing of repeater coordinators and the thousands of coordinated repeaters throughout the United States (and Canada).[5] It represents by far the largest single national effort or movement in the amateur community with regard to repeater frequency coordination.

7. The rules we propose in Appendix C would grant preferred status in instances of harmful repeater-to-repeater interference to amateur repeater operators whose repeater input and output frequencies have been recommended by a frequency coordinator. These rules would also impose equal responsibility upon repeater operators of similar status (both not coordinated or both coordinated) to mutually resolve instances of harmful interference. Harmful interference in this context is not merely annoying interference, such as being able to hear distant signals due to termporary propagation phenomena, but is interference which seriously degrades or obstructs repeater operation, such as repeated interruption of operations caused by two different mobiles trying to access two different repeaters on the same frequency. See Radio Regulation 163, International Telecommunication Union (Geneva, 1979). We believe that these rules would significantly reduce the number of repeater interference disputes requiring FCC intervention by resolving this amateur interference problem at its root cause.[6]

8. Because much of this type of interference occurs in heavily populated areas, we seek comment on whether we should require an amateur operator to seek the recommendation of a local frequency coordinator for the input and output frequencies of any repeater located within a Central Metropolitan Statistical Area (CMSA) or a Metropolitan Statistical Area (MSA) as set forth in government census documents (see Appendices A and B). We also request comments on whether we should consider alternative methods of frequency coordination. Additionally, we seek comment on whether the voluntary or required use of modern technological innovation (such as the use of narrow band technologies, amplitude-compandored sideband (ACSB) or tone-operated squelch techniques) is a more appropriate or desirable solution to the increasing number of cases of amateur repeater interference than the proposed solution.

9. Comments are also sought with regard to whether the FCC should recognize a single national frequency coordinator for the Amateur Radio Service. Such a coordinator could either be an individual national organization or an umbrella organization comprised of local coordination groups. We would expect this type of organization to promulgate coordination (and de-coordination) standards, to facilitate the use of advancing technology, to consider alternative frequency assignments, to consider frequency spacing and repeater separation distances and, in the case of an umbrella organization, to advise local coordinators.

10. During the pendency of this proceeding there will be a moratorium on new repeater operation in CMSA's and MSA's. Only existing repeater operations will be permitted in all CMSA's and MSA's. For purposes of this moratorium, we will consider a listing in the next edition of the ARRL *Repeater Directory* as creating a rebuttable presumtion of pre-existing repeater operation in a CMSA or an MSA.

11. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting. Presentations are prohibited between the time this public notice is issued until a full text of the order is released, or until it becomes clear that the Commission has postponed final consideration and returned the matter to the staff for further work. Thereafter, in either case, *ex parte* presentations are again permitted. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Comissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of the presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally § 1.1231 of the Commission's rules (47 CFR 1.1231). A summary of the Commission's procedures governing *ex parte* contacts in informal rule makings is available from the Commission's Consumer Assistance Office, FCC, Washington, D.C. 20554, (202) 632-7000.

12. Authority for issuance of this Notice is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Pursuant to applicable procedures set forth in § 1.415 of the Commission's Rules (47 CFR 1.415) interested persons may file comments on or before July 1, 1985, and reply comments on or before September 30, 1985. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and providing that the fact of the Commission's reliance on such information is noted in the Report and Order.

13. In accordance with § 1.419 of the Commission's Rules (47 CFR 1.419), formal participants must file an original and five copies of their comments and other materials. Participants who wish

[5] The ARRL *Repeater Directory*, 1984–85 edition, states at page 14: "Frequency coordinators are volunteers unaffiliated with ARRL who keep extensive records of repeater input, output and control frequencies, including those not published in directories (at the owner's request). The coordinator will recommend frequencies for a proposed repeater in order to minimize interference with other repeaters and simplex frequencies. Therefore, anyone considering the installation of a repeater should check with the local frequency coordinator."

[6] Of course, in a worst case scenario where the appropriate repeater operator(s) still failed to resolve harmful repeater-to-repeater interference, field personnel could and would enforce this new rule just like any other. A Notice of Apparent Liability to Monetary Forfeiture or a Notice of Violation could be issued to each offending repeater operator in such a circumstance. We seek comment on whether alternatives to these standard FCC enforcement procedures should be employed by field personnel in instances of repeater interference, such as mandatory time limits in which to resolve interference, Commission-imposed time-sharing constraints or binding arbitration. We expect that amateur volunteers would provide us assistance in resolving cases of repeater interference. See 47 U.S.C. 154(f)(c).

each Commissioner to have a personal copy of their comments should file an original and eleven copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. Each set of comments must state on its face the proceeding to which it relates (PR Docket Number) and should be submitted to: The Secretary, Federal Communications Commission, Washington, D.C. 20554. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

14. In accordance with section 605 of the Regulatory Flexibility Act of 1980 (5 U.S.C. 605), the Commission certifies that these rules would not, if promulgated, have a significant economic impact on a substantial number of small entities, because these entities may not use the Amateur Radio Service for commercial radiocommunication (See 47 CFR 97.3(b)). Moreover, the proposed rules regarding frequency coordination would not require the use of or significantly enhance the sale of any additional amateur radio equipment.

15. It is ordered, that the Secretary shall cause a copy of this *Notice* to be served upon the Chief Counsel for Advocacy of the Small Business Administration and that the Secretary shall also cause a copy of this *Notice* to be published in the **Federal Register.**

16. For information concerning this proceeding, contact John J. Borkowski, Federal Communications Commission, Private Radio Bureau, Washington, D.C. 20554, (202) 632-4964.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

This Appendix lists all the Consolidated Metropolitan Statistical Areas set forth in List II of the Office of Management and Budget (OMB) as described in OMB Public Affairs Release OMB-83-20 dated June 27, 1983, and modified in OMB Public Affairs Release OMB 84-16 dated June 29, 1984, based upon application of published Metropolitan Statistical Area (MSA) standards to demographic data drawn from the 1980 decennial census. Reference must be made to List II to determine whether a particular county, city or town is within a CMSA.

Consolidated Metropolitan Statistical Areas (CMSA's):

Boston-Lawrence-Salem, MA-NH
Buffalo-Niagara Falls, NY
Chicago-Gary-Lake County, IL-IN-WI
Cincinnati-Hamilton, OH-KY-IN
Cleveland-Akron-Lorain, OH
Dallas-Fort Worth, TX
Denver-Boulder, CO
Detroit-Ann Arbor, MI
Hartford-New Britain-Middletown, CT
Houston-Galveston-Brazoria, TX
Los Angeles-Anaheim-Riverside, CA
Miami-Fort Lauderdale, FL
Milwaukee-Racine, WI
New York-Northern New Jersey-Long Island, NY-NJ-CT
Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD
Pittsburgh-Beaver Valley, PA
Portland-Pawtucket-Fall River, RI-MA
St. Louis-East St. Louis-Alton, MO-IL
San Francisco-Oakland-San Jose, CA
San Juan-Caguas, PR
Seattle-Tacoma, WA

Appendix B

This Appendix lists all the Level A Metropolitan Statistical Areas (MSA's) other than Consolidated Metropolitan Statistical Areas (CMSA's) or Primary Metropolitan Statistical Areas (PSMA's) set forth in List I of the Office of Management and Budget (OMB) as described in OMB Public Affairs Release OMB-83-20 dated June 27, 1983, and modified in OMB Public Affairs Release OMB-84-16 dated June 29, 1984 based upon application of published Metropolitan Statistical Area (MSA) standards to demographic data drawn from the 1980 decennial census. Level A MSA's are MSA's with a population size of one million or more. Reference must be made to List I to determine whether a particular county, city or town is within an MSA.

Level A Metropolitan Areas (MSA's):

Atlanta,GA
Baltimore, MD
Columbus, OH
Indianapolis, IN
Kansas City, MO-KS
Minneapolis-St. Paul, MN-WI
New Orleans, LA
Norfolk-Virginia Beach-Newport News, VA
Phoenix, AZ
Sacramento, CA
San Antonio, TX
San Diego, CA
Tampa-St. Petersburg-Clearwater, FL
Washington, DC-MD-VA

Appendix C

PART 97—[AMENDED]

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations would be amended as follows:

1. In § 97.3 paragraph (k) would be revised, and paragraphs (aa) and a new (cc) would be added to read as follows:

§ 97.3 Definitions.

* * * * *

(k) *Coordinated repeater.* A station in repeater operation for which the transmitting and receiving frequencies have been chosen by a licensee in accordance with the recommendation of a frequency coordinator.

* * * * *

(aa) *Frequency coordinator.* An organization recognized by the amateur community as a body representative of all amateur radio station licensees eligible to engage in repeater operation in the area it serves, which recommends prospective frequencies for amateur repeater operation in order to avoid or minimize potential interference.

* * * * *

(cc) *Harmful interference.* Interference which seriously degrades, obstructs or repeatedly interrupts the operation of an amateur radio station.

2. A new paragraph (h) would be added to § 97.85 to read as follows:

§ 97.85 Repeater operation.

* * * * *

(h) Where an amateur radio station in repeater operation causes harmful interference to the repeater operation of another amateur radio station, the two stations are each equally and fully responsible for resolving the interference unless one repeater is coordinated (see § 97.3 (k)) and the other is not. Where one repeater is coordinated and the other is not the station with the non-coordinated repeater has primary responsibility to resolve the interference.

[FR Doc. 85-3681 Filed 2-13-85; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 50, No. 31
Thursday, February 14, 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.

ACTION

Information Collection Request Under OMB Review

AGENCY: ACTION.

ACTION: Information Collection Request Under Review.

SUMMARY: This notice set forth certain information about an information collection proposal by ACTION, the national volunteer agency.

Background

Under the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Office of Management and Budget (OMB) reviews and acts upon proposals to collection information from the public or to impose recordkeeping requirements. ACTION has submitted the information collection proposal described below to OMB. OMB and ACTION will consider comments on proposed collect of information and recordkeeping requirements. Copies of the proposed forms and supporting documents [request for clearance (SF 83), supporting statement, instructions, transmittal letter and other documents] may be obtained from the agency clearance officer.

Information About This Proposed Collection: Melvin E. Beetle, Director, Evaluation Division, (202) 634–9322.

Agency Address: ACTION, 806 Connecticut Ave., NW., Washington, D.C. 20525.

Office of ACTION Issuing Proposal: Office of Policy and Planning, Evaluation Division.

Title of Form: Young Volunteers in ACTION (YVA) Effects.

Type of Request: New Evaluation.

Frequency of Collection: Nonrecurring.

General Description of Respondents: YVA project directors, volunteers, workstation supervisors, community leaders/members.

Estimated Number of Responses: 774.

Estimated Reporting or Disclosure Burden: 396.5 hours.

Respondent's Obligation to Reply: Voluntary.

Person responsible for OMB Review: Bruce Artim, (202) 395–7316.

James B. Williams,

Assistance Director for Policy and Planning.

[FR Doc. 85–3773 Filed 2–13–85; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Section 22 Import Fees; Adjustment of Import Fees on Sugar

February 11, 1985.

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: Headnote 4(c) of Part 3 of the Appendix to the Tariff Schedules of the United States (TSUS) requires the Secretary of Agriculture to increase by one cent the amount of the fees which shall be imposed on imports of raw and refined sugar (TSUS items 956.05, 956.15, and 957.15) under the authority of section 22 of the Agricultural Adjustment Act of 1933, as amended, whenever the average daily (domestic) spot price quotation for raw sugar for 10 consecutive market days within any calendar quarter is less than the market stabilization price by more than one cent. This notice announces such an adjustment.

EFFECTIVE DATE: 12:01 a.m. (local time at point of entry) February 12, 1985. (See Supplementary Information).

FOR FURTHER INFORMATION CONTACT: Robert G. Harper, Foreign Agricultural Service, Department of Agriculture, Washington, D.C. 20250 ((202) 382–9061).

SUPPLEMENTARY INFORMATION: By Presidential Proclamation No. 5164, dated March 19, 1984, headnote 4 of Part 3 of the Appendix to the TSUS was amended to provide for quarterly adjusted fees on imports of raw and refined sugar (TSUS items 956.05, 956.15, and 957.15). Paragraph (c)(ii) of headnote 4 provides that the quarterly adjusted fee for item 956.15 shall be the amount by which the average of the adjusted daily spot (domestic) price quotations for raw sugar for the 20 consecutive market days immediately preceding the 20th day of the month preceding the calendar quarter during which the fee shall be applicable (as reported by the New York Coffee, Sugar, and Cocoa Exchange) expressed in United States cents per pound, in bulk, is less than the market stabilization price. However, whenever the average of the daily spot (domestic) price quotations for 10 consecutive market days within any calendar quarter (1) exceeds the market stabilization price by more than one cent, the fee then in effect shall be decreased by one cent, or (2) is less than the market stabilization price by more than one cent, the fee then in effect shall be increased by one cent. Paragraph (c)(i) further provides that the quarterly adjusted fee for items 956.05 and 957.15 shall be the amount of the fee for item 956.15 plus one cent per pound.

The average of the daily spot (domestic) price quotations for raw sugar (item 956.15) for the 10 consecutive market day period January 24–February 6, inclusive, within the first calendar quarter of 1985, is 20.5650 cents per pound. This is more than one cent below the market stabilization price of 21.57 cents. Accordingly, the fee of 0.2875 cents per pound for item 956.15 is required to be increased by one cent, resulting in a fee for item 956.15 of 1.2875 cents per pound and a fee for items 956.05 and 957.15 of 2.2875 cents per pound.

Headnote 4(c) requires the Secretary of Agriculture to determine and announce any adjustment in the fees made within a calendar quarter, certify such adjusted fees to the Commissioner of Customs, and file notice thereof with the **Federal Register** within 3 market days of such determination. This notice, therefore, is being issued in order to comply with the requirements of headnote 4(c).

Effective Date

In accordance with headnote 4(c)(vii) of Part 3 of the Appendix to the Tariff Schedules of the United States, the adjustment in fees made herein shall not apply to the entry or withdrawal from warehouse for consumption of sugar exported (as defined in 19 CFR 152.1) on a through bill of lading to the United States from the country of origin before the effective date of the adjustment.

Notice

Notice is hereby given that, in accordance with the requirements of

headnote 4(c) of Part 3 of the Appendix to the Tariff Schedules of the United States, it is determined that the fees for raw and refined sugar (TSUS items 956.05, 956.15, and 957.15) for the remainder of the first calendar quarter of 1985, unless further adjusted in accordance with headnote 4(c), shall be as follows:

Item	Fee
956.05	2.2875 cents per lb.
956.10	1.2875 cents per lb.
957.15	2.2875 cents per lb.

The amounts of such fees have been certified to the Commissioner of Customs in accordance with paragraph (c)(v) of headnote 4.

Signed at Washington, D.C., on February 11, 1985.

John R. Block,

Secretary of Agriculture.

[FR Doc. 85-3807 Filed 2-11-85; 8:45 am]

BILLING CODE 3410-10-M

Forest Service

Fire Management in Wilderness

AGENCY: Forest Service, USDA.

ACTION: Notice of final policy.

SUMMARY: The Forest Service hereby gives notice of adoption of a revised wilderness fire management policy that allows the use of prescribed fire, ignited by lightning or by qualified Forest Service Officers, to be used in wilderness areas.

EFFECTIVE DATE: The policy became effective January 22, 1985.

FOR FURTHER INFORMATION CONTACT: Ed Blodel, Recreation Management Staff, Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013 (202) 447-2311.

SUPPLEMENTARY INFORMATION: A notice of a proposed change in wilderness fire policy to permit prescribed fires ignitied by qualified Forest Service Officers was published June 5, 1984, in the **Federal Register** at 49 FR 23203. Comments were invited for the period ending August 6, 1984. During this period 114 responses were received. Seventy three respondents supported the change, and 41 were against it.

The opportunity to reduce fire danger, to manipulate plant communities, and to maintain wildlife habitat were the reasons most often cited for supporting the proposed change. The majority of letters received in opposition to the use of management ignited prescribed fires in wilderness argued that the policy change was contrary to the intent of the Wilderness Act. Other reasons stated for opposing ignited prescribed fires included fear of escape, visitor safety, smoke pollution, and adverse impacts on the environment.

An analysis of the major comments on each section of the proposed policy and the Forest Service responses follows.

Section 2320.3e proposed policy (2324.03—final policy).

Comment: Many respondents strongly objected to the use of management ignited prescribed fires they felt it was contrary to the Wilderness Act. They argued that when man is the source of ignition, fire ceases to be a natural force and instead becomes a manipulative tool. Several letters stated that the Wilderness Act allows for the control of fire but not the prevention of fire.

Response: The use of management ignited prescribed fire is authorized by the Wilderness Act when used for fire control purposes. Section 4(d)(1) of the 1964 Wilderness Act (Pub. L. 88-577) states ". . . such measures may be taken as may be necessary in the control of fire. . .". The Endangered American Wilderness Act of 1978 (Pub. L. 95-237) provides specific direction for the Forest Service to take fire prevention and presuppression measures in the Santa Lucia and Ventana Wilderness areas. The law states, ". . . the management plan for the Santa Lucia (Ventana) area to be prepared following designation shall authorize the Forest Service to take whatever appropriate actions are necessary for fire prevention and watershed protection including, but not limited to, acceptable fire presuppression and fire suppression measures and techniques."

House Report 95-540 and Senate Report 95-490 accompanying Pub. L. 95-237 clarify Congressional intent that prescribed fire in wilderness is not limited to the Santa Lucia and Ventana Wilderness areas. Both reports state, "The uses authorized by such special management language should not be construed by any agency or judicial authority as being precluded in other wilderness areas, but should be considered as direction and reaffirmation of Congressional policy."

The final policy retains the option of using management ignited prescribed fire as well as lightning ignited prescribed fire, but makes it clear that lightning ignited fires are preferred in wilderness where they can be safely allowed. The final policy also makes it clear that management ignited fires cannot be used as a vegetative manipulative tool.

Comment: Some of the respondents suggested that "unacceptable risk" in 2320.3e 3(a) (proposed policy) be further defined. If not more clearly defined, ignited fires would always be chosen over natural lightning fires.

Response: The term "unacceptable risk" has been clarified and changed to "serious threats to life and/or property within wilderness or to life, property or natural resources outside of wilderness" in the final policy. This item has also been moved to 2324.03, 3(d).

Comment: Other reasons for opposing the use of ignited prescribed fires included the potential for adverse impacts on the environment, smoke pollution, and danger of escape.

Response: As part of the planning process for prescribed fires in wilderness, the impacts of fire on resources such as air quality, water, soils, adjacent nonwilderness lands, and aesthetics as well as human safety, must be carefully evaluated by interdisciplinary teams following procedures prescribed by the National Environmental Policy Act.

In addition, the policy text will be recoded as 2324.03.

Definitions: (Sec. 2324.05 final policy)

Comment: Analysis of public comment indicated that confusion existed on the definition of prescribed fire.

Response: We have added a new section, 2324.05, to the policy to define both a prescribed fire and a wildfire.

Section 2324.21 Objectives (Sec. 2324.02 -final policy).

Comment: Several respondents did not believe that Forest Service managers could duplicate the effects of natural fire and opposed the use of management ignited fires to maintain wilderness values.

Response: These comments indicated a need to clarify the objectives for the use of management ignited prescribed fires in wilderness. One objective of planned ignitions in wilderness is to reduce unnatural buildups of fuels that present a fire danger in excess of that which would have existed had fire been allowed to occur naturally. Once that has been accomplished, natural fires as the result of lightning will be allowed to control fuel accumulations and vegetative succession.

The second objective of management ignited prescribed fire is to reduce the risk and consequences of wildfire within wilderness or escaping from wilderness.

The manipulation of vegetative communities to maintain, reverse or advance ecological succession or to maintain wildlife species is not an objective of the use of management ignited fires in wilderness. Accordingly, the objectives statements have been

rewritten to improve their precision and clarity.

Comment: Several respondents questioned the need for direction to maintain fire dependent communities because no current or proposed wilderness legislation requires the maintenance of fire dependent communities.

Response: Analysis of public comment indicated that this objective and the following paragraph contributed to confusion concerning what the objectives for management ignited prescribed fire are. Fire dependent communities are maintained only through the management of lightning ignited fire. Since no current or proposed legislation requires maintenance of fire dependent communities, this objective has been eliminated in the final policy. The paragraph describing other possible indirect benefits of prescribed fire has been rewritten as a policy statement in section 2324.03.

Section 2324.22 Fire Management Activities (Sec. 2324.2—final policy).

Comment: Four government agencies expressed the need to give special emphasis to visibility and other air quality related values in Class I wilderness areas.

Response: We agree. The final policy includes direction to use the national goals for air quality and visibility in Class I areas, established by Section 169A of the Clean Air Act, during the planning process for the prescribed fires.

Printed here is the final policy on use of prescribed fire in wilderness as it will appear in the Forest Service Manual, which is the primary component of the agency's internal directive system through which instructions are issued to Forest Service line and primary staff officers. In addition to the changes made in response to public comment on the proposed policy, there are changes in word choice, sentence construction, coding, and captions from that in the proposed policy. These latter changes result from a review to bring the direction into compliance with Forest Service policy and guidelines governing the issuance of agency directives. For example, the "responsibility section" has been rephrased to remove ambiguity and to clearly specify that Regional Foresters are to approve the use of prescribed fire on a wilderness by wilderness basis. These changes do not alter the nature or intent of the policy as presented to the public. Rather they improve the clarity and precision of that direction. When published in the Forest Service Manual (FSM), the text will appear together with direction for insect and disease control. In this notice, asterisks indicate where intervening text will appear.

Chapter 2320—Wilderness, Primitive Areas, and Wilderness Study Areas

2324—Protection

2324.02—Objectives. The objectives of fire management in wilderness are to:

1. Permit lightning caused fires to play, as nearly as possible, their natural ecological role within wilderness.

2. Reduce unnatural buildups of fuels that present a fire danger in excess of that which would have existed had fire been allowed to occur naturally.

3. Reduce, to an acceptable level, the risks and consequences of wildfire within wilderness or escaping from wilderness.

2324.03—Policy. Only two types of prescribed fires may be approved for use within wilderness: Those ignited by lightning and allowed to burn under prescribed conditions and those ignited by qualified Forest Service officers. The use of prescribed fire in wildnerness is subject to preplanned, specified conditions.

Specific objectives, standards, and guidelines for the control of wildfire and the use of prescribed fire within each wilderness (FSM 5100, 5150, and 5190) must be set forth in either a forest plan or a wilderness implementation plan prepared pursuant to a forest plan. Where the forest planning process has not been completed, Forest Officers shall document decisions and provide appropriate guidelines for control of wildfire and use of prescribed fire within each wilderness in either wilderness management plans or fire management area plans.

All standards, guidelines, and direction for fire management in wilderness must be consistent with the following policies:

1. Suppress all wildfires within wilderness in accordance with the direction in FSM 5130.

2. Fire ignited by lightning may be permitted to burn if prescribed in an approved plan (FSM 2324 and 5150).

3. Forest Service Managers may ignite a prescribed fire within wilderness if the decision to do so meets at least one of the wilderness fire management objectives set forth in FSM 2324.02 and if all of the following conditions are met:

(a) The use of prescribed fire or other fuel treatment measures outside of wilderness is not sufficient to achieve fire management objectives within wilderness.

(b) An interdisciplinary team of resource specialists has evaluated and recommended the proposed use of prescribed fire.

(c) The interested public has been involved appropriately in the decision.

(d) Lightning caused fires must be suppressed to avoid serious threats to life and/or property within wilderness or to life, property, or natural resources outside of wilderness.

4. A decision to use prescribed fire in wilderness shall not be based on benefits to wildlife, maintenance of vegetative types, improvement in forage production, or enhancement of other resource values. These can be additional benefits which may result from a decision to use prescribed fire but are not objectives for managing fire within wilderness.

5. Management ignited fire will not be used to achieve wilderness fire management objectives where lightning caused fires can achieve them.

2324.04—Responsibility.

2324.04—Regional Forester. Regional Foresters shall approve the use of prescribed fire on a wilderness by wilderness basis through approval of the appropriate management plan. The management plan sets forth the standards and guidelines for the use and application of prescribed fire and the methods of monitoring results.

2324.05—Definitions.

1. Wildfire. Any wildland fire not designated and managed as a prescribed fire.

2. Prescribed Fire. A wildland fire burning under preplanned, specified conditions, to accomplish specific, planned resource management objectives.

* * * * *

2324.2—Fire Management Activities. Conduct all fire management activities within wilderness in a manner compatible with overall wilderness management objectives. Give preference to using methods and equipment that causes the least:

1. Alteration of the wilderness landscape.

2. Disturbance of the land surface.

3. Disturbance to visitor solitude.

4. Reduction of visibility during periods of visitor use.

5. Adverse effect on other air quality related values.

Locate fire camps, helispots, and other temporary facilities or improvements outside of the wilderness boundary whenever feasible. Rehabilitate

disturbed areas within wilderness to as natural an appearance as possible.

John H. Ohman,

Acting Chief, Forest Service.

January 31, 1985.

[FR Doc. 85-3706 Filed 2-13-85; 8:45 am]

BILLING CODE 3410-11-M

The Committee of State Foresters; Meeting

The Committee of State Foresters will meet in Salt Lake City, Utah, on March 12, 1985. The meeting will convene at 8:00 a.m. in Conference Room 250, Hotel Utah, Main and South Temple.

The Committee, comprised of the seven members of the Executive Committee of the National Association of State Foresters, consults with the Secretary of Agriculture and various agencies of the Department on the implementation of the Cooperative Forestry Assistance Act of 1978 (Pub. L. 95-313). The Assistant Secretary for Natural Resources and Environment will chair the meeting. He and representatives of the Forest Service and other interested agencies will attend from the Department of Agriculture.

The meeting will be open to the public. Persons who wish to attend should notify the Committee's Executive Secretary, John H. Ohman, Deputy Chief for State and Private Forestry, USDA—Forest Service, P.O. Box 2417, Washington, DC 20013, telephone (202) 447-6657. Written statements may be filed with the Committee before or after the meeting.

R. Max Peterson,

Chief.

February 7, 1985.

[FR Doc. 85-3707 Filed 2-13-85; 8:45 am]

BILLING CODE 3410-11-M

Stanislaus National Forest Grazing Advisory Board; Meeting

The Stanislaus National Forest Grazing Advisory Board will meet at 8:00 p.m. on March 14, 1985 in Conference Room A of the Forest Supervisor's Office, 19777 Greenley Road, Sonora, California 95370. The purpose of the meeting is for recommendations on allotment management plans and use of range betterment funds.

The meeting will be open to the public. Persons who wish to attend should notify me at 19777 Greenley Road, Sonora, California, 95370. Written statements may be filed with the committee before or after the meeting.

The committee has established rules for public participation.

Wesley E. Lewis,

Acting Forest Supervisor.

February 4, 1985.

[FR Doc. 85-3762 Filed 2-13-85; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Hamlin Lions Club Field Critical Area Treatment and Land Drainage RC&D Measure Plan, WV

AGENCY: Soil Conservation Service, Agriculture.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR Part 1500); and the Soil Conservation Service Guidelines, (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Hamlin Lions Club Field Critical Area Treatment and Land Drainage RC&D Measure, Lincoln County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, Morgantown, West Virginia 26505 telephone 304-291-4151.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Rollin N. Swank, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure consists of critical area treatment and land drainage at a park located on the west side of the Town of Hamlin. The 10-acre site will be revegetated as an intensive use area. Other conservation practices include subsurface drainage, open ditch and vegetative waterways.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Rollin N. Swank, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable).

February 4, 1985.

Rollin N. Swank,

State Conservationist.

[FR Doc. 85-3696 Filed 2-13-85; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration

Title: Application for an Export Trade Certificate of Review

Form Number: Agency—ITA-4093P; OMB—0625-0125

Type of Request: Revision of currently approved collection

Burden: 100 respondents; 3,200 reporting hours

Needs and Uses: The information provided by private or public entities on the application enables the Departments of Commerce and Justice to perform an analysis to determine whether an antitrust Export Trade Certificate of Review should be issued in accordance with Title III of the Export Trading Company Act of 1982

Affected Public: State or local governments; businesses or other for-profit institutions; small businesses or organizations

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Sheri Fox, 395-3785

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Sheri Fox, OMB Desk Officer, Room

3235, New Executive Office Building, Washington, D.C. 20503.

Dated: February 11, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85-3741 Filed 2-13-85; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: June 1985 Marital History and Fertility Supplement
Form Number: Agency—CPS-1; OMB—0607-0460
Type of Request: Reinstatement
Burden: 58,000 respondents; 7,500 reporting hours
Needs and Uses: This survey provides data on the marital and childbearing characteristics of female household members and continues the data series structured from previous marital history and fertility supplements
Affected Public: Individuals or households
Frequency: Annually and other
Respondent's Obligation: Voluntary
OMB Desk Officer: Timothy Sprehe, 395-4814

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: February 7, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85-3742 Filed 2-13-85; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Annual Survey of State and Local Government Finances
Form Number: RS-5, 5A, 5B, 8, 9, 9A, 9E, 9F, 12C OMB—0607-0191
Type of Request: Extension of a currently approved collection
Burden: 41,481 respondents; 34,768 reporting hours
Needs and Uses: Census collects tax and intergovernmental revenue data from all local general purpose governments. The data is used to publish benchmark statistics on governmental finance and to comply with commitments to the Department of Treasury. Treasury uses this information in calculating revenue sharing entitlements
Affected Public: State and local governments
Frequency: Annually
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Timothy Sprehe, 395-4814

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: February 7, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85-3743 Filed 2-13-85; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[A-580-405]

Grand and Upright Pianos From the Republic of Korea; Postponement of Preliminary Antidumping Determination

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: The preliminary antidumping determination involving grand and upright pianos from the Republic of Korea is being postponed at petitioners' request. We intend to issue the preliminary antidumping determination not later than April 19, 1985.

EFFECTIVE DATE: February 14, 1985.

FOR FURTHER INFORMATION CONTACT: Francis R. Crowe, Office of Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-4087.

SUPPLEMENTARY INFORMATION: On October 11, 1984, we initiated an antidumping investigation to determine whether grand and upright pianos from the Republic of Korea are being, or are likely to be, sold in the United States at less than fair value within the meaning of the antidumping law (49 FR 40627). The products under investigation are grand and upright pianos as currently provided for under item numbers 725.0320 and 725.0100, respectively, of the *Tariff Schedules of the United States, Annotated.* The notice of initiation stated that if the investigation proceeded normally we would make our preliminary determination on or before February 28, 1985.

Section 733(c) of the Tariff Act of 1930, as amended (the Act), provides that the Department of Commerce may postpone its preliminary determination if petitioner makes a timely request for an extension of the period within which the determination must be made. On January 31, 1985, counsel for petitioners requested that we postpone the determination for 50 days. Accordingly, we intend to issue a preliminary determination no later than April 19, 1985.

This notice is published pursuant to section 733(c) of the Act.

Dated: February 8, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-3780 Filed 2-13-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-402]

Oil Country Tubular Goods (OCTG) From Brazil; Postponement of Final Antidumping Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that the Department of Commerce (the Department) has received a request from counsel for Persico Pizzamiglio, S.A. and Confab Industrial, S.A., respondents in this investigation, that the final determination be postponed, as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the

Act) (19 U.S.C. 1673d(a)(2)(A); and, that we have determined to postpone our final determination as to whether sales of OCTG from Brazil have occurred at less than fair value, until not later than May 31, 1985.

EFFECTIVE DATE: February 14, 1985.

FOR FURTHER INFORMATION CONTACT: Paul Tambakis, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, N.W. Washington, D.C. 20230; telephone (202) 377-0186.

SUPPLEMENTARY INFORMATION: The Department of Commerce published on July 10, 1984, notice in the **Federal Register** (49 FR 28084-28088) that is was initiating an antidumping investigation to determine whether OCTG from Brazil were being, or were likely to be, sold at less than fair value. On January 16, 1985, we published a preliminary determination of sales at less than fair value with respect to this merchandise (50 FR 2309). The notice stated that if this investigation proceeded normally we would make our final determination by March 25, 1985.

On January 28, 1985, counsel for respondents Persico Pizzamiglio, S.A. and Confab Industrial, S.A., requested that we extend the period for the final determination until May 31, 1985, 135 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2)(A) of the Act. Section 735(a)(2)(A) of the Act provides that the Department may postpone its final determination concerning sales at less than fair value until not later than 135 days after the date on which it published notice of its preliminary determination, if exporters who account for a significant proportion of exports of the merchandise request an extension after an affirmative preliminary determination. Confab and Persico are qualified to make such a request since they account for a significant proportion of exports of the merchandise under investigation. If an exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request.

Accordingly, the Department will issue a final determination in this case not later than May 31, 1985.

Rescheduling of Public Hearing

The Public hearing announced in the January 16, 1985 preliminary determination of sales at less than fair value (50 FR 2309) has been rescheduled from February 7, 1985, to March 29, 1985, at 10:00 a.m., at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW. Washington, D.C. 20230.

Prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by March 21, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice.

This notice is published pursuant to section 735(d) of the Act.

Dated: February 8, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-3781 Filed 2-13-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-003]

Shop Towels of Cottom From the People's Republic of China; Preliminary Results of Administrative Review of Antidumping Duty Order

AGENCY: International Trade Administration Import Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Antidumping Duty Order.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping duty order on shop towels of cotton from the People's Republic of China. The review covers the three known Chinese exporters and three of the four known third-country resellers of this merchandise to the United States and the period March 28, 1983, through December 31, 1983.

The Chinese exporters failed to respond to our questionnaire. For those non-responsive firms we used the best information available for assessment and estimated antidumping duties cash deposit purposes.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: February 14, 1985.

FOR FURTHER INFORMATION CONTACT: Maureen A. Flannery or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On October 4, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 45277) an antidumping duty order on shop towels of cotton from the People's Republic of China and announced its intent to conduct an administrative review. The Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of cotton shop towels. Cotton shop towels are currently classifiable under item 366.2740 of the Tariff Schedules of the United States Annotated.

The review covers the three known Chinese exporters and three of the four known third-country resellers of the merchandise to the United States and the period March 28, 1983, through December 31, 1983.

The three Chinese exporters failed to respond to the Department's questionnaire. For those non-responsive firms the Department used the best information available for assessment and estimated antidumping duties cash deposit purposes. We determined that during the review period Chinese shop towels were sold for exportation to the United States at prices lower than prices during the period of the fair value investigation. Further, the average inflation rate in Indonesia (the country in which Chinese factors of production were valued during the fair value investigation) rose 10.6 percent between 1982 (the period of review for the fair value investigation) and 1983. These factors preclude the use of the fair value rates as the best information available for our determination of assessment and estimated antidumping duties cash deposit rates.

The best information available for United States price was United States Customs Service data on Chinese shop towels entered into the United States during the period, adjusted for freight and insurance. The best information available for foreign market value was supplies by the petitioner, Milliken & Company.

Two third-country resellers, Cuisininere Co., Ltd. and Fabric Enterprise Limited, did not ship Chinese cotton shop towels to the United States during the period. The estimated antidumping duties cash deposit rates for these firms will be the fair value rates.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist for the period March 28, 1983, through December 31, 1983:

Exporter/third-country reseller (country)	Margin (percent)
China National Arts & Crafts Import & Export Corp. (CNART)	41.36
CNART/Cuisininere Co., Ltd. (Hong Kong)	[1] 37.2
CNART/Fabric Enterprise, Ltd., (Hong Kong)	[1] 36.2
China National Native Produce & Animal By-Products Import & Export Corp.	85.04
China National Textiles Import & Export Corp. (Chinatex)	75.27
Chinatex/Trans-Atlantic Sales Co., Ltd. (Canada)	66.78

[1] No entries during the period.

Interested parties may submit written comments on these preliminary results withing 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 working thereafter. Any request for an administrative protective order must be made within 5 days of the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, dumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly the the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for those firms. For any future entries from a new exporter not covered in this administrative review, whose first shipments of Chinese cotton shop towels occurred after December 31, 1983, and who is unrelated to any reviewed firm, a cash deposit of 85.04 percent shall be required. These deposit requirements are effective for all shipments of Chinese shop towels entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-3749 Filed 2-13-85; 8:45 am]

BILLING CODE 3510-DS-M

Technical Regulations Subcommittee of the Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee

A meeting of the Technical Regulations Subcommittee of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee will be held March 5, 1985 at 9:30 a.m., Herbert C. Hoover Building, Room 3708, 14th Street and Constitution Avenue, NW., Washington, D.C. The Technical Regulations Subcommittee was formed to review the procedural aspects of exports licensing and recommend areas where improvements can be made.

General Session

1. Opening remarks by the Subcommittee Chairman.
2. Presentation of papers or comments by the public.
3. Review and adoption of Subcommittee plan for 1985.
4. Review new proposed form ITA 6031P.
5. New business
6. Action items underway.
7. Action items due at next meeting.

Executive Session

8. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 1984, pursuant to section 10 (d) of the Federal Advisory Committee Act, as amended by Section 5 (c) of the Government In The Sunshine Act, Public Law 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department to Commerce, Telephone: 202-377-4217. For further information or copies of the minutes contract Margaret A. Cornejo (202) 377-2583.

Dated: February 8, 1985.

Milton M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 85-3744 Filed 2-13-85; 8:45 am]

BILLING CODE 3510-DT-M

Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee will be held March 6, 1985 at 1:00 p.m., Herbert C. Hoover Building, Room B841, 14th Street and Constitution Avenue, NW. Washington, D.C. The Committee advises the Office of Export Administration with respect to technical questions which affect the level of export controls applicable to computer peripherals, components and related test equipment or technology.

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Report on Membership by the Chairman.
4. Discussion of subcommittee effectiveness.
5. Briefing on current status of interpretation of 1565A by the Department of Commerce.
6. Development agenda for May meeting.
7. Action items underway.
8. Action item due at next meeting.

Executive Session

9. Discussions of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meeting of the Committee to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on February 6, 1984, in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room

6628, U.S. Department of Commerce, (202) 377–4217.

For further information or copies of the minutes contact Margaret A. Cornejo (202) 377–2583.

Dated: February 11, 1985.

Milton M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 85–3745 Filed 2–13–85; 8:45 am]

BILLING CODE 3510-DT-M

Foreign Availability Subcommittee of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Foreign Availability Subcommittee of the Computer Perpherals, Components and Related Test Equipment Technical Advisory Committee will be held March 5, 1985, at 11:30 a.m., Herbert C. Hoover Building, Room 3708, 14th Street and Constitution Avenue, NW., Washington, D.C. The Foreign Availability Subcommittee was formed to ascertain if certain kinds of equipment are available in non-COCOM and Communist countries, and if such equipment is available, then to ascertain if it is technically the same or similar to that available elsewhere.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Review and adoption of Subcommittee plan for 1985.
4. New business.
5. Action items underway.
6. Action items due at next meeting.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 1984, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meeting and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202–377–4217. For further information or copies of the minutes contact Margaret A. Cornejo 202–377–2583.

Dated: February 8, 1985.

Milton M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 85–3746 Filed 2–13–85; 8:45 am]

BILLING CODE 3510-DT-M

Input/Output Subcommittee of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Input/Output Subcommittee of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee will be held March 5, 1985, at 2:30 p.m., Herbert C. Hoover Building, Room 3708, 14th Street and Constitution Avenue, NW., Washington, D.C. The Input/Output Subcommittee was formed to study the various forms of input/output equipment and technologies as used in computer peripherals.

General Session

1. Opening remarks by the Subcommittee Chairman.
2. Presentation of papers or comments by the public.
3. Review and adoption of Subcommittee plan for 1985.
4. New business.
5. Action items underway.
6. Action items due at next meeting.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 1984, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202–377–4217. For further information or copies of the minutes contact Margaret A. Cornejo, 202–377–2583.

Dated: February 8, 1985.

Milton M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 85–3747 Filed 2–13–85; 8:45 am]

BILLING CODE 3510-DT-M

Memory and Media Subcommittee of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Memory and Media Subcommittee of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee will be held on March 6, 1985, at 9:30 a.m., Herbert C. Hoover Building, Room B841, 14th Street and Constitution Avenue, NW., Washington, D.C. The Memory and Media Subcommittee was formed to study random and sequential access computer related peripheral memory devices and to provide the Committee with information to include in reports to the Department related to the Committee's charter.

General Session

1. Opening remarks by the Subcommittee Chairman.
2. Presentation of papers or comments by the public.
3. Review and adoption of Subcommittee plan for 1985.

4. New business.
5. Action items underway.
6. Action items due at next meeting.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 1984, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department to Commerce, Telephone: 202–377–4217. For further information or copies of the minutes contact Margaret A. Cornejo (202) 377–2583.

Dated: February 8, 1985.

Milton M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 85–3748, Filed 2–13–85; 8:45 am]

BILLING CODE 3510–01–M

Applications for Duty-Free Entry of Scientific Instruments; Harvard College, et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84–59R. Applicant: Harvard College, Purchasing Department, 1350 Massachusetts Avenue, Cambridge, MA 02138. Instrument: STEM System for Scanning Transmission Electron Microscope. Original notice of this resubmitted application was published in the **Federal Register** of March 2, 1984.

Docket No. 84–229R. Applicant: Iowa State University, U.S.D.O.E., Ames Laboratory, 139 Spedding Hall, Ames, IA 50011. Instrument: Superconducting Magnet System, Model 360–89 with Accessories. Original notice of this resubmitted application was published in the **Federal Register** of August 2, 1984.

Docket No. 85–059. Applicant: Texas A&M Research Foundation, Box 3578, College Station, TX 77843. Instrument: Experimental chamber to be set up on a cyclotron. Manufacturer: Federal Institute of Technology, Switzerland. Intended use: Research project to devise high sensitivity detection techniques for B, C, N, and O through the use of radioactivation with 3–6 MeV/amu beams of ^{6}Li, ^{7}Li, ^{9}Be, and ^{11}Be. The aim is to achieve detection limits at the 0.01 ppm level. Application received by Commissioner of Customs: December 13, 1984.

Docket No. 85–068. Applicant: California State University, Los Angeles, 5151 State University Drive, Los Angeles, CA 90032. Instrument: Electron Paramagnetic Spectrometer System, Model ER/200. Manufacturer: Bruker-Physik AG, West Germany. Intended use: Investigation of hemoglobin, chlorophyll, galactolipid dispersions, phosphorus and arsenic persistent radicals, carborane radicals, ruthenium replaced heme protein and nicotinamide. The magnitude of the EPR signal and hyperfine coupling constants of the signals from the paramagnetic species associated with or produced by the above listed chemical systems will be studied. Application received by Commissioner of Customs: January 15, 1985.

Docket No. 85–070. Applicant: St. Francis Hospital, Department of Pathology, 5959 Park Avenue, Memphis TN 38119. Instrument: Electron Microscope/TV Scanning Attachment, Model EM 109 with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: The instrument will be used to examine biological material including human tissue, body fluids, cytology specimens and microbiological material, i.e. bacteria, viruses, fungi and chlamydiae. Specific studies to be conducted will include:

a. Study of kidney tissue to determine the ultrastructural alterations of immune mechanisms in the pathogenesis of glomerulonephritis.

b. Study of lung tissue to determine specific ultrastructural markers of malignant tumors.

c. Study of liver tissue to determine the role of viruses and viral particles in inflammatory liver diseases.

d. Study of cervical tissue to identify herpetic and condyloma viruses to establish their role as a factor in etiology of cancer of the cervix.

e. Study of culture negative granulomatous lesions to determine etiological agents.

f. Identification and study of viruses that are not readily isolated by culture techniques.

g. Study of the role of fibrinogen in coagulation.

Application received by Commissioner of Customs: January 17, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85–3786 Filed 2–13–85; 8:45 am]

BILLING CODE 3510–DS–M

Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes; National Institutes of Health, et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 85–000. Applicant: National Institutes of Health, Bethesda, MD 20205. Instrument: Electron Microscope, Model EM 410LS with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended use: See notice at 49 FR 47282. Instrument ordered: June 14, 1984.

Docket No. 85–001. Applicant: University of Washington, Seattle, WA 98195. Instrument: Electron Microscope,

Model EM 410LS with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended use: See notice at 49 FR 47282. Instrument ordered: August 2, 1984.

Docket No. 85–002. Applicant: University of Kansas Medical Center, Kansas City, KS 66103. Instrument: Electron Microscope, Model JEM–100CX with Accessories. Manufacturer: JEOL, Ltd., Japan. Intended use: See notice at 49 FR 47282. Instrument ordered: June 26, 1984.

Docket No. 85–009. Applicant: University of Wyoming, Laramie, WY 82071. Instrument: Electron Microscope, Model EM 410LS with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended use: See notice at 49 FR 47283. Instrument ordered: October 26, 1983.

Docket No. 85–021. Applicant: Research Medical Center, Kansas City, MO 64132. Instrument: Electron Microscope, Model EM 109 with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: See notice at 49 FR 47284. Instrument ordered: July 11, 1984.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered.

Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or of any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85–3783 Filed 2–13–85; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; Smithsonian Institution

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84–230. Applicant: Smithsonian Institution, Cambridge, MA 02138. Instrument: Automated Electron Microprobe System, Model JXA–733. Manufacturer: JEOL, Inc., Japan. Intended use: See notice at 49 FR 30986.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides: (1) a secondary electron image resolution of 7.0 nanometers, (2) magnification from 20 × to 360 000 ×, (3) a wavelength range of 0.087 to 8.5 nanometers and (4) element detection from atomic number 5 (boron) to 92 (uranium). The National Bureau of Standards advises in its memorandum dated December 13, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85–3788 Filed 2–13–85; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application For Duty-Free Entry of Scientific Instrument; University of Colorado

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84–250. Applicant: University of Colorado, Boulder, CO 80309. Instrument: Mass Spectrometer, Model 7070 EQHF with Model 11/250 Data System. Manufacturer: VG Analytical Ltd., United Kingdom. Intended use: See notice at 49 FR 32638.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides (1) mass ranges of 1 to 3100 mass units and of 1 to 15 600 mass units at accelerating voltages of 5000 kilovolts and 1000 kilovolts, respectively and (2) capability for MS/MS analysis. The National Institutes of Health advises in its memorandum dated November 20, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85–3787 Filed 2–13–85; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes; University of New Mexico, et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket No. 84–306. Applicant: The University of New Mexico, Albuquerque, NM 87131. Instrument: Electron Microscope, Model JEM–2000EX with Accessories. Manufacturer: JEOL, Ltd., Japan. Intended use: See notice at 49 FR 42775. Instrument ordered: June 8, 1984.

Docket No. 84–312. Applicant: Medical College of Ohio at Toledo, OH 43699. Instrument: Electron Microscope, Model EM 410LS with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended use: See notice at 49 FR 39357. Instrument ordered: May 22, 1984.

Docket No. 84–320. Applicant: North Texas State University, Denton, TX 76203. Instrument: Electron Microscope,

Model JEM-100CX with Accessories. Manufacturer: JEOL, Ltd., Japan. Intended use: See notice at 49 FR 41080. Instrument ordered: July 19, 1984.

Docket No. 84-323. Applicant: Environmental Protection Agency, Research Triangle Park, NC 27711. Instrument: Electron Microscope, Model EM 410LS. Manufacturer: N.V. Philips, The Netherlands. Intended use: See notice at 49 FR 42775. Instrument ordered: August 31, 1984.

Docket No. 84-325. Applicant: University of Cincinnati, Cincinnati, OH 45267-0521. Instrument: Electron Microscope, Model JEM-100CX with Accessories. Manufacturer: JEOL, Ltd., Japan. Intended use: See notice at 49 FR 42775. Instrument ordered: August 7, 1984.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered.

Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or of any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-3784 Filed 2-13-85; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Circular Dichroism Spectrometers; University of Texas, et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84-283. Applicant: The University of Texas at Dallas. Intended use: See notice at 49 FR 37136.

Docket No. 84-311. Applicant: Research Foundation of the City of New York/Queens College. Intended use: See notice at 49 FR 40069.

Instrument: Circular Dichroism Spectrometers, Model J-500C. Manufacturer: Japan Spectroscopic Co., Ltd., Japan. Advice submitted by: National Institutes of Health: November 20, 1984.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments, for such purposes as they are intended to be used, is being manufactured in the United States.

Reasons: The foreign instruments measure circular dichroism spectra from 185 to 1000 nanometers with high frequency switching (50,000 times per second) between right- and left-circularly polarized light. The National Institutes of Health advises in its memoranda that (1) the capability of the foreign instruments described above is pertinent to the applicants' intended purposes and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instruments for the applicants' intended uses.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instruments which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-3785 Filed 2-13-85; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Export Visa Requirement and Exempt Certification for Certain Wool Textile Products Produced or Manufactured in the Republic of Uruguay

February 8, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 1, 1985. For further information contact James Nader, International Trade Specialist (202) 377-4212.

Background

The Governments of the United States and the Republic of Uruguay have exchanged letters establishing a new visa and exempt certification mechanism, as an administrative arrangement under the terms of their Bilateral Wool Textile Agreement of January 23, 1984. Shipments shall be visaed or certified by the placing of the original stamped marking in blue ink on the front of the original commercial invoice. Each visa and certification will include its number and date and the signature of the issuing official. The visa shall also state the correct categories and quantities in the shipment in applicable category units. However, if the quantity indicated on the export visa is more than that of the shipment, entry shall be permitted. Facsimiles of the visa and exempt certification stamps are published as enclosures to the letter to the Commissioner of Customs which follows this notice.

The Government of the Republic of Uruguay has authorized the following officials to issue export visas and exempt certifications:

Clotilde Giambruno
Rodolfo Perez Blanco
Susana G. de Sarachaga
Esther Ortellado
Tomas Garrido

Interested persons are advised to take all necessary steps to insure that wool textile products, produced or manufactured in Uruguay, which are to be entered into the United States for consumption, or withdrawn from warehouse for consumption, will meet the stated visa and certification requirements.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 8, 1985.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Wool Textile Agreement of January 23, 1984, between the Governments of the United States and the Republic of Uruguay; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed, effective on April 1, 1985 and until further notice, to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Categories 410, 431 and 444, produced or manufactured in Uruguay and exported on and after January 1, 1985, which are not visaed or certified for exemption in accordance with the procedures

outlined below. Wool textile products in the foregoing categories which have been exported before January 1, 1985 shall not be denied entry for lack of a visa.

Wool textile products in the foregoing categories exported from Uruguay on and after January 1, 1985 shall be visaed with a circular stamp in order to be entered into the United States for consumption or withdrawn from warehouse for consumption.

Commercial shipments of wool textile products in Categories 410, 435 and 444, valued at $250 or less, which are exempt from the restraint limits shall be certified by the Government of the Republic of Uruguay prior to exportation using a rectangular-shaped stamp. The basis for exemption shall be stated on the certification by the use of the description, "$250 or less."

Each shipment shall be visaed or certified by the placing of the original visas in blue ink on the front of the original commercial invoice. The original visa shall not be affixed to duplicate copies of the invoice. The original copy of the invoice with the original visa will be required to enter the shipment into the United States. Duplicate copies of the invoice and/or visa may not be used. Each visa and certification will include its number and date and the signature of the issuing official. The visa shall also state the correct categories and quantities in the shipment in applicable category units. However, if the quantity indicated on the export visa is more than that of the shipment, entry shall be permitted. After the entry is conditionally accepted, the U.S. Customs Service will not return the original copy of the invoice, if that document is deficient; rather, Customs will provide the importer with a certified copy of the invoice for use in obtaining a new original invoice with an original visa or a waiver. If import quotas are in force, the original category and/or quantity (if corrected) will be deducted and only the correct quantity and/or category noted on the replacement invoice will be charged to the quota. Facsimiles of the visa and certification stamps are enclosed.

Merchandise imported for the personal use of the importer, and not for resale, does not require a visa or certification for entry, regardless of value.

Merchandise covered by an invoice which has an exempt certification but contains both exempt and non-exempt textile products shall not be permitted entry.

You are directed to permit entry into the United States for consumption and withdrawal from warehouse for consumption of designated shipments of wool textile products, produced or manufactured in Uruguay and exported to the United States, notwithstanding the designated merchandise does not fulfill the aforementioned visa and certification requirements, whenever requested to do so in writing by the Chairman of the Committee for the Implementation of Textile Agreements.

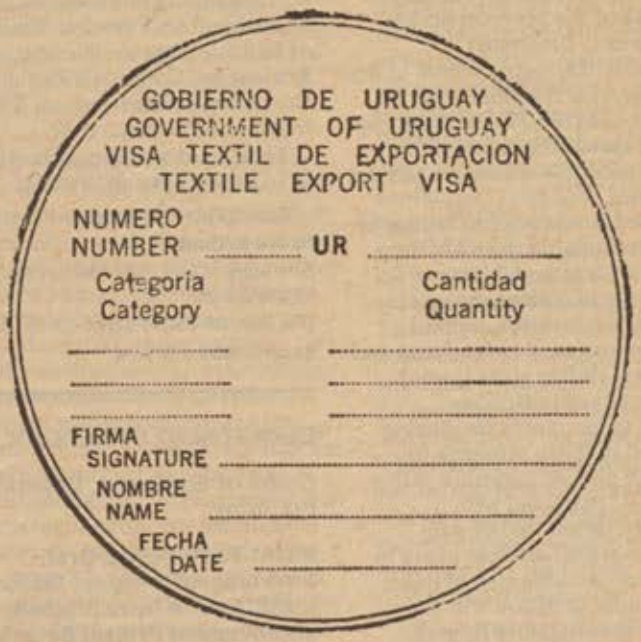
In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.



[FR Doc. 85-3782 Filed 2-13-85; 8:45 am]
BILLING CODE 3510-DR-M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Proposed Collection of Information

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. 3501 *et seq.*), the Consumer Product Safety Commission has resubmitted to the Office of Management and Budget a request for approval of a proposed collection of information in the form of a Compliance Program for the Architectural Glazing Standard, with a request expiration date of September 30, 1985.

This request for approval of an information collection activity was previously submitted to the Office of Management and Budget on August 29, 1984, and was denied on November 14, 1984. The Commission is accompanying

its resubmission with additional information about the Commission's reasons for seeking the information to be gathered in this survey, and the manner in which the Commission will use the information once it is obtained.

The purpose of the program under consideration is to determine compliance with the requirements of the Safety Standard for Architectural Glazing Materials (16 CFR Part 1201) by manufacturers and fabricators of the architectural products which are subject to that standard.

The standard is intended to reduce or eliminate unreasonable risks of injury associated with accidental human-impact breakage of glazing materials used in doors, storm doors, bathtub doors and enclosures, shower doors and enclosures, and sliding glass (patio) doors. The standard prescribes performance requirements for glazing materials used in those products to assure that the glazing materials either will not break if impacted with a specific energy, or will break with characteristics which are less likely to present an unreasonable risk of injury.

The compliance program will be conducted by investigators from the Commission's field staff, who will inspect firms which manufacture or fabricate the five products subject to the architectural glazing standard at a plant or factory, or by on-site installation of new or replacement glazing. The investigators will inspect manufacturing establishments, examine records, question employees of the firms, and observe manufacturing operations.

Information about the Proposed Collection of Information:

Agency address: Consumer Product Safety Commission, 1111 18th Street, NW., Washington, D.C. 20207.

Title of information collection: Compliance Program—Architectural Glazing Materials.

Type of request: Approval of new plan.

Frequency of collection: Once a year.

General description of respondents: Firms which manufacture or fabricate doors, storm doors, bathtub doors and enclosures, shower doors and enclosures, and sliding glass (patio) doors at a plant or factory, or on-site by installation of new or replacement glazing.

Estimated number of respondents: 200.

Estimated average number of hours per response: 3.

Comments: Comments on this proposed collection of information should be addressed to Andy Velez-Rivera, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503; telephone (202) 395-7340, not later than March 1, 1985. Copies of the proposed collection of information and additional justification accompanying this resubmission are available from Francine Shacter, Office of Budget, Program Planning and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6529.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: February 8, 1985.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 85-3676 Filed 2-13-85; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Iowa Highway 415 Improvement Project Segment C, in Polk County, IA

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a draft environmental impact statement.

SUMMARY:

1. Description of Proposed Action

Since the completion of Saylorville Reservoir in 1975, the volume of traffic on Iowa Highway 415 has increased significantly. A large proportion of this increase is traffic destined for the beach, picnic, and camping areas adjacent to the reservoir. Highway 415 requires several modifications to safely and efficiently handle the increasing traffic volumes. These modifications require the improvement of existing roadway and acquisition of new rights-of-way for construction of new sections. The new highway section, located in Crocker Township of Polk County, will extend from the Big Creek Barrier Dam to the intersection of Oralabor Road and existing Highway 415.

Segment "C" will complete the transportation corridor from Interstate 35 to the reservoir. A portion of segment A of the project which links segment C with I-35 is currently under construction and the remaining part of segment A and a portion of segment B will be constructed in 1985. National Environmental Policy Act (NEPA) requirements for segments A and B alignments were completed in August 1984.

2. Alternatives for the Proposed Action

All three alternative alignments begin near the intersection of Highway 415 and Oralabor Road, and end at the Big Creek Barrier Dam just south of Polk City.

a. Alternative one is the extension of Oralabor Road (NW. 78th Ave.) westerly for 1 mile, then turning north across Rock Creek in alignment with NW. 35th Street. It then follows NW. 35th Street until it approaches existing Highway 415, whence it turns in a northwesterly direction paralleling present Highway 415. After approximately 1,500 feet, the alignment turns due north onto the existing ROW. After 2,500 feet, the alignment veers northwesterly again toward the Big Creek Barrier Dam in a more or less linear alignment across agricultural fields.

b. The second alternative is a modification of alternative one. Instead of proceeding west from the intersection of Oralabor Road and existing Highway 415, the alignment will follow the current alignment north for approximately 5,000 feet before turning west. Following a westerly direction for approximately 2,000 feet, the right-of-way then veers northwest for about 5,500 feet where it rejoins existing Highway 415. The remainder of the alignment follows that of alternative one to the Big Creek Barrier Dam.

c. The third alternative follows alternative one westerly from the intersection of Oralabor Road and existing Highway 415 for approximately 5,000 feet and continues westerly approximately 1,000 feet until it intersects NW. 37th Street. It then follows NW. 37th Street north for approximately 4,500 feet and then turns to the northwest across NW. 84th Avenue until it is on the NW. 35th Street alignment, where it then follows the same alignment as alternative one.

d. The No Action alternative will also be considered.

3. Public Involvement

A scoping meeting will be held in 1985, before circulation of the DEIS, to solicit public input concerning the alternative alignments. Notice of this meeting and further design details will be made available to the public before the meeting.

4. Significant Issues to be Addressed

Impacts of the highway upon upland wildlife habitat will be addressed in depth. Some parcels located in potential

rights-of-way are known to be important refuges for wildlife, white tailed deer in the Rock Creek valley in particular. Direct and indirect impacts upon local farmsteads and housing developments are also an issue.

5. Public Availability

It is anticipated that the Draft EIS will be available by January 1986.

Additional information concerning the proposed project may be requested from: William C. Burns, Colonel, Corps of Engineers, District Engineer, U.S. Army Engineer District, Rock Island, Clock Tower Building—P.O. Box 2004, Rock Island, IL 61204-2004.

Dated: February 6, 1985.

William C. Burns,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 85-3697 Filed 2-13-85; 8:45 am]

BILLING CODE 3710-HY-M

Department of the Army

Army Science Board; Meeting/Study Effort Cancellation

The following meeting of the Army Science Board Ad Hoc Subgroup of the U.S. Army Advanced Antitank Weapon System-Medium (AAWS-M) which was originally announced in the Federal Register issue of Wednesday, 30 January 1985 (50 FR 4254), FR Doc. #85-2400, has been cancelled due to the cancellation of the entire study effort:

Meeting Dates

Friday, February 15 thru Friday, February 22, 1985.

Place: U.S. Army Infantry School, Fort Benning, Georgia.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85-3948 Filed 2-13-85; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Request Under Review by OMB

AGENCY: Department of Education.

ACTION: The Deputy Under Secretary for Management invites comments on the proposed information collection request as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before March 18, 1985.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education Office of Management and Budget, 726 Jackson Place, NW, Room 3208 New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426-7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB may amend or waive the requirement for public consultation to the extent that the public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Under Secretary for Management publishes this notice containing a proposed information request prior to the submission of the request to the OMB. The proposed information collection contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3)(Agency form number (if any); (4) Frequency of the collection; (5)(The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; (8) Abstract.

Special attention is drawn to the Annual Report on the Number of Full Time Equivalent Migratory Children. Under requirements for the Migrant Education Program under Chapter 1 of the Education Consolidation and Improvement Act of 1981, each State educational agency is requested to identify eligible migrant children. The States currently supply this information to the Migrant Student Records Transfer System (MSRTS) as required by the regulations of the Department (Part 204). The MSRTS produces aggregate statistical reports for the Department, which uses data generated by MSRTS to determine the allocation for each State under the Chapter 1 Migrant Education Program. The Department supports the MSRTS through a contract with the State of Arkansas so that the Department may have access to the aggregate statistical data necessary to make these allocations.

The MSRTS contains information regarding the health and education and individual students that is maintained in individually identifiable form. This information is collected and maintained to assist the States in meeting their obligations to provide education to migrant children. The Department of Education has no interest in collecting or maintaining individually identifiable information about migrant students that is contained in the MSRTS. The Secretary has determined that the individually identifiable information contained in the MSRTS is not maintained to accomplish a Federal agency function and, therefore, that this information does ot constitute a Federal system of records subject to the Privacy Act of 1974. The Department will continue to seek access only to aggregate statistical records necessary for making allocation decisions and for research purposes. Individually identifiable records in the MSRTS do not belong to the Federal government, and any access to those records must be gained in conformance with the provisions of the Family Educational Rights and Privacy Act.

Public comment is solicited on the sole question of the Federal Government's requiring the State educational agencies to collect information as described in this Notice of Proposed Information Collection.

The OMB invites public comments at the address specified above. Copies of the information collection request are available from Margaret B. Webster at the address specified above.

Dated: February 11, 1985.

Linda M. Combs,

Deputy Under Secretary for Management.

Type of Review Requested: Existing

Title: Annual Report of the Number of Full Time Equivalent Migratory Children

Agency From Number: ED 2475

Frequency: Annually

Affected Public: Individuals or Household; State or Local Governments

Reporting Burden: Reponses: 51; Burden Hours: 134,524

Recordkeeping Burden: Recordkeeping: 0; Burden Hours: 0

Abstract: State educational agencies, or combinations of such agencies, are required to determine and report the number of eligible migratory children ages 5-17, residing full time in the State and the full time equivalents of part time residents to obtain Chapter 1 migrant

education funds to provide education and education suppport services.

[FR Doc. 85-3802 Filed 2-13-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

National Energy Extension Service Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: National Energy Extension Service Advisory Board.

Date and Time:

Wednesday, March 6, 1985, 1:30 p.m.-5:00 p.m.

Thursday, March 7, 1985, 8:00 a.m.-5:00 p.m.

Friday, March 8, 1985, 8:00 a.m.-2:00 p.m.

Place: Georgetown Marbury House, 3000 M Street, NW., Washington, D.C. 20007.

Contact: Susan D. Heard, Department of Energy, Forrestal Building—6A081, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone: 202-252-8292.

Purpose of the Board: The Board was established to carry on a continuing review of the National Energy Extension Service and the plans and activities of each State in implementing Energy Extension Service programs.

Tentative Agenda

Wednesday, March 6, 1985

- Energy Extension Service Overview
- Review of State Energy Conservation Program
- Presentation of Energy Extension Service Projects
- Public Comment (10 minute rule)

Thursday, March 7, 1985

- Review of State Programs Branch Budget
- Overview of Low Income Home Energy Assistance Program, Weatherization Assistance Program, and Petroleum Violation Escrow
- Review Draft of Sixth Annual Report
- Public Comment (10 minute rule)

Friday, March 8, 1985

- Review and finalize Sixth Annual Report
- Public Comment (10 minute rule)

Public Participation

The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Susan D. Heard at 202-252-8292. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts

Available for public review and copying at the Public Reading Room 1E-190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on February 8, 1985.

Howard H. Raiken,

Deputy Advisory Committee Management Officer.

[FR Doc. 85-3668 Filed 2-13-85; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Armstrong Petroleum Corp. and City of Newport Beach, California; Proposed Consent Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed consent order and opportunity for comment.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces a proposed Consent Order with Armstrong Petroleum Corporation (Armstrong) and the City of Newport Beach, California (the City) and provides an opportunity for public comment on the terms and conditions of the proposed Consent Order.

DATE: Comments by: March 18, 1985.

ADDRESS: Send comments to: Milton C. Lorenz, Special Counsel, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Milton C. Lorenz, Special Counsel, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. Copies of the Consent Order may be obtained free of charge by writing or calling this office (202/252-8900).

SUPPLEMENTARY INFORMATION: On December 4, 1984, the ERA executed a proposed Consent Order with Armstrong and the City. Under 10 CFR 205.199J(b), a proposed Consent Order which involves the sum of $500,000 or more, excluding interest and penalties, becomes effective no sooner than thirty days after publication of a notice in the **Federal Register** requesting comments concerning the proposed Consent Order. Although the ERA has signed and tentatively accepted the proposed Consent Order, the ERA may, after consideration of the comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate a modification of the Consent Order or issue the Consent Order as signed.

I. Background

On November 16, 1978 ERA issued a Proposed Remedial Order (PRO) to Armstrong. The PRO alleged that during the period September 1976, through December 1977 (audit period), Armstrong, under contract to the City, was engaged in the production and sale of crude oil as the operator of the D.W. Eliot Lease in Orange County, California, and that Armstrong had sold crude oil in excess of the price allowed by the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart D. In the PRO, ERA determined that during the period September 1976 through December 1977, Armstrong had overcharged its customers by $606,676 exclusive of interest. The PRO contemplated that Armstrong (1) refund the overcharges, plus interest, (2) do a self audit of violations which may have occurred after December 1977, and (3) refund, with interest, those overcharges made after December 1977.

On August 4, 1982, the Office of Hearings and Appeals issued the PRO, with slight modifications, as a final Remedial Order. In the final Remedial Order, the Office of Hearings and Appeals ordered that the City pay one-eighth of the refund, the portion of the profits from the sale of the crude oil received by the City.

Armstrong has appealed the issuance of the final Remedial Order to the Federal Energy Regulatory Commission.

II. The Consent Order

The proposed Consent Order has been entered into to resolve all civil and administrative disputes, claims, and causes of action by DOE relating to Armstrong's and the City's compliance with the federal petroleum price and allocation regulations during the period September 1976, through January 27, 1981. Although Armstrong contends that in all aspects it correctly construed and applied the applicable regulations, Armstrong and the City have entered into this proposed Consent Order to avoid the expense of litigation and the disruption of business. DOE believes the Consent Order is in the public interest

and provides a satisfactory resolution of the issues raised by its audit.

III. Refunds

Under the terms of the proposed Consent Order, Armstrong and the City, in the proportion of seven-eighth and one-eighth, respectively, shall pay to the DOE the sum of $1,450,000, plus interest actually earned on that sum since July 1, 1982, in an escrow account set up jointly by Armstrong, the City, and Kern Oil and Refining Corporation. The refund will be disbursed pursuant to the procedures of 10 CFR Part 205, Subpart V.

The settlement amount of $1,450,000 represents 100 percent of principal, plus interest through June 30, 1982, of overcharges made during September 1976, through December 1977, together with an amount, plus interest through June 30, 1982, estimated to be overcharges made after December 1977.

IV. Submission of Written Comments

Interested persons are invited to submit written comments concerning the terms and conditions of this Consent Order to the address given above. Comments should be identified on the outside of the envelope and on the documents submitted with the designation, "Comments on the Consent Order with Armstrong Petroleum Corporation and the City of Newport Beach, California." The ERA will consider all comments it receives by 4:30 p.m., local time, on the 30th day after the date of publication of this notice. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures in 10 CFR 205.9(f).

Issued in Washington, D.C. on the 5th day of February 1985.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 85-3672 Filed 2-13-85; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 85-03-NG]

Natural Gas Imports; Dome Petroleum Corp.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) gives notice of receipt on January 16, 1985, of the application of Dome Petroleum Corporation (Dome Corp.) to import natural gas from Dome Petroleum Limited (Dome), its Canadian parent corporation, for resale to St. Regis Corporation (St. Regis), a pulp and paper manufacturer located in Tacoma, Washington. The current gas purchase contract between Dome and St. Regis provides for the purchase of up to 3.3 MMcf per day and up to a maximum annual volume of 1 Bcf over a two-year period commencing upon the date of first delivery. Purchases and deliveries will be made on a "reasonable efforts" basis, and there is no minimum purchase or take-or-pay obligation. The initial price of natural gas delivered to St. Regis will be $4.00 (U.S.) per MMBtu, subject to monthly adjustment; the initial price for natural gas at the Sumas, Washington, point of importation is estimated to be $3.20 (U.S.) per MMBtu.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of interventions, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m., on March 18, 1985.

FOR FURTHER INFORMATION CONTACT:

Robert McCann, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-007, 1000 Independence Avenue, SW., Washington, DC. 20585, (202) 252-6600.

Diane J. Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252-6667.

SUPPLEMENTARY INFORMATION: Dome Corp., a North Dakota corporation, is a wholly-owned subsidiary of Dome, a Canadian natural gas producer and corporation located in Calgary, Alberta. Dome Corp. is authorized to do business in the U.S. and, among other activities, to purchase, import, transport, store and sell natural gas.

The applicant seeks authorization to import up to 2.0 Bcf for a term of two years for resale to St. Regis, a pulp and paper manufacturer. St. Regis will be entitled to purchase from Dome a quantity of natural gas up to the maximum annual volume of 1 Bcf at a rate of up to 3.3 MMcf per day. Purchases and deliveries will be made on a "reasonable efforts" basis, and there is no minimum purchase obligation or take-or-pay requirement. On October 17, 1984, Dome and St. Regis executed a gas purchase agreement proposing this agreement. Dome Corp. has indicated an agreement assigning this contract to Dome Corp. currently is being prepared, as well as an import agreement between Dome Corp. and Dome. Both agreements will be submitted as supplementary filings upon execution.

Under the gas purchase agreement, the price for natural gas to be paid at the international border will be the price charged by Dome Corp. to St. Regis, less the sum of the distribution tariff of Washington Natural Gas Company (Washington Natural), included associated taxes, the transmission tariff of Northwest Pipeline Corporation (Northwest) and the margin to be retained by Dome. The initial price for natural gas delivered to St. Regis' facility at Tacoma, Washington will be $4.00 (U.S.) per MMBtu. This price will be adjusted on a monthly basis to reflect any fluctuation in the price of No. 6 high sulfur residual fuel oil in the Seattle-Tacoma area.

According to the application, no new facilities will be required to implement the proposed import. The imported volumes are to be transported from the field gate in British Columbia by Westcoast Transmission Company Limited (Westcoast) to the international boundary near Sumas, Washington, and then through the pipeline facilities of Northwest to the point of interconnection with Washington Natural's distribution system in Washington. Dome is currently negotiating with Westcoast to deliver Canadian gas to the international border. Dome Corp. is currently negotiating with Northwest and Washington Natural for gas transportation services from the import point to St. Regis' pulp and paper facility at Tacoma, Washington. Northwest holds a blanket certificate from the Federal Energy Regulatory Commission issued in Docket No. CP82-433-000 to transport natural gas.

According to Dome Corp., the Tacoma facility of St. Regis is currently using high sulfur No. 6 residual fuel oil for all fossil fuel requirements except flame stabilization and pilot fuel. St. Regis has been using fuel oil in its No. 1 and No. 2 kilns since 1982 due to the high cost of natural gas in the area. The gas price stipulated in the gas purchase contract between Dome and St. Regis provides a delivered price which is sufficiently attractive to encourage St. Regis to convert to cleaner burning natural gas and displace consumption of high sulfur fuel oil.

Dome Corp. maintains that the import arrangement it proposes will be competitive and not inconsistent with the public interest. In its application Dome Corp. asserts that it has negotiated an import arrangement that is designed to serve a carefully and specifically defined incremental market at market-oriented and flexible price and volume terms. Therefore, Dome Corp. contends that this import conforms with the Secretary of Energy's policy guidelines.

The decision on this application will be made consistent with the Secretary of Energy's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest. Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Other Information

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received by persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-033-B, RG-43, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585. They must be filed no later than 4:30 p.m., March 18, 1985. A 30-day comment period has been provided to allow sufficient time to evaluate the application and any responses to this notice.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issues show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Dome Corp.'s application is available for inspection and copying in the Natural Gas Division Docket Room, GA-033-B, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on February 6, 1985.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-3669 Filed 2-13-85; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed; Week of January 11 through January 18, 1985

During the week of January 11 through 18, 1985, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

February 6, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Jan. 11 through Jan. 18, 1985]

Date	Name and location of applicant	Case No.	Type of submission
Nov. 13, 1984	Economic Regulatory Administration Houston, TX	HRZ-0230	Motion for interlocutory order. If granted: Certain portions of the Oct. 3, 1984 submission filed on behalf of Sabine Refining & Trading Co., Inc. would be stricken from the record in that firm's proposed remedial order proceeding (Case No. HRO-0130).
Jan. 14, 1985	Lantern Petroleum Corp., Washington, DC	HRD-0265, HRH-0265	Motion for discovery and request for evidentiary hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the statement of objections submitted by Lantern Petroleum Corp. in response to the proposed remedial order issued to it (Case No. HRO-0251).
Jan. 11, 1985	People's Oil & Gas Co., Pigeon, MI	HEE-0113	Exception to the reporting requirements. If granted: People's Oil and Gas Co. would not longer be required to file form EIA-782B "Monthly Product Sales Report".
Jan. 15, 1985	Northrup Oil Co., Chillicothe, IL	HEE-0112	Exception to the reporting requirements. If granted: Northrup Oil Co. would no longer be required to file form EIA-782B "Resellers and Retailers Monthly Petroleum Product Sales Report".
Jan. 18, 1985	David W. Ratliff and John T. Troland, Abilene, TX	HRZ-0113	Supplemental order. If granted: The subpoenas issued to John T. Troland and David W. Ratliff (Case No. HRO-0095) would be reviewed to clarify the commandment set forth in the subpoenas and the nature of the obligation imposed thereby.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Jan. 11 through Jan. 18, 1985]

Date	Name and location of applicant	Case No.	Type of submission
Do	Ralph Lowen, Washington, DC	HFA-0270	Appeal of an information request denial. If granted: The Dec. 17, 1984 freedom of information request denial issued by the Office of Military Application would be rescinded, and Ralph Lowen would receive access to the Department of Energy's records concerning Irving S. Lowen.

REFUND APPLICATIONS RECEIVED

[Week of Jan. 11, 1985 to Jan. 18, 1985]

Date	Name of refund proceeding/ name of refund applicant	Case No.
1/14/85	Richards Oil/Munsingwear	RF70-11
1/14/85	Richards Oil/Paper, Calmerson & Co.	RF70-10
1/14/85	Van Gas/Raymond L. Reynaud	RF68-3
1/11/85	Aztex Energy/Quickway Market	RF71-1
1/14/85	Richards Oil/Local Roofing Co.	RF70-12
1/15/85	Belridge/South Dakota Amoco/ South Dakota.	RQ8-149 RQ21-150
1/16/85	Belridge/Maryland Amoco/Maryland.	RQ8-151 RQ21-152
1/16/85	Richards Oil/Ziegler, Inc.	RF70-13
1/14/85	Richards Oil/St. Paul Ramsey Hospital.	RF70-14
1/16/85	Amoco/Colonial Car Wash Amoco/Northpoint Car Wash.	RF21-12371 RF21-12372
1/14/85	Parade Co./Morgan Products	RF74-1
1/16/85	J.A.L./Alan's Car Mart	RF71-2
1/11/85 thru 1/18/85.	Gulf Refund Applications	RF40-1561 thru RF40-162

[FR Doc. 85-3670 Filed 2-13-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of December 17 through December 21, 1984

During the week of December 17 through December 21, 1984, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy.

Appeals

James T. O'Reilly, 12/21/84, HFA-0258

On October 22, 1984, Mr. James T. O'Reilly filed an Appeal from a partial denial by the Authorizing Official of the Oak Ridge Operations Office of the DOE of a Request for Information which O'Reilly had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that two documents, designated as "drafts," were properly withheld under Exemption 5. A third document, also characterized as a "draft," was remanded to the Authorizing Official for a more adequate justification of its draft status. Additionally, the DOE found that certain documents were improperly withheld pursuant to Exemption 6 and should be released to the public. Important issues that were considered in the Decision and Order were (1) whether the duty to release factually segregable portions of pre-decisional and deliberative documents applies to drafts, and (2) the balancing test employed in Exemption 6 cases.

Transcomm, Inc., 12/21/84, HFA-0264

Transcomm, Inc. filed an Appeal from a partial denial by the Authorizing Official of the Office of Procurement Operations of a Request for Information which the firm had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that certain of the documents which were initially withheld under Exemption 4 should be released to the public. In addition, the DOE found that Transcomm's request for personnel resumes should be remanded to the Office of Procurement Operations for further consideration under Exemption 6.

Remedial Order

Shell Oil Co.; HRO-0021; State of New York, 12/21/84, HRD-0057

The Shell Oil Company objected to a Proposed Remedial Order which the DOE's Southwest District Office of Special Counsel (OSC) issued to the firm on October 28, 1981. In the Proposed Remedial Order, the OSC concluded that Shell had improperly included labor and tax costs incurred in the construction of a chemical plant in its non-product costs which the firm passed through to purchasers under the refiner price rule. The OSC's conclusion was based upon its findings that the chemical plant did not produce a covered product, that Shell did not historically and consistently account for such construction costs as expenses associated with refining operations, and that Shell's method of allocating costs on the basis of projected production capacity failed to match actual costs to actual production. In considering Shell's Statement of Objections, the DOE found that Shell's treatment of its labor and tax costs incurred in construction of the chemical plant violated the requirements of § 212.83(c)(2)(iii)(E) of the refiner price rule since (i) construction costs are per se not "attributable to refining operations," and (ii) Shell's treatment of construction costs as current expenses was not consistent with "generally accepted accounting practices." The DOE also modified the remedial provisions of the PRO to provide that any overcharges produced by the violations be refunded to the DOE and distributed pursuant to 10 CFR Part 205, Subpart V. Accordingly, the DOE concluded that the Proposed Remedial Order, as modified, should be issued as a final Order of the DOE, and that a Motion for Discovery concerning the remedial provisions filed by the State of New York should be dismissed.

Request for Modification and or Rescission

State of Texas, 12/20/84, HRR-0097

A Motion for Clarification was granted to the State of Texas (Texas), regarding the disposition of refunds in *Petro-Thermo Corp.*, 12 DOE ¶ 83,019 (1984). In its motion, Texas requested that the plans for the disposition of the monies remitted by Petro-Thermo pursuant to a consent order with the Department of Energy be clarified, and brought into conformity with current Department of Energy policy. Specifically, the Decision and Order stated that the money should be deposited in an interest-bearing account for later distribution through the mechanism provided by 10 CFR Part 205, Subpart V.

Motion for Discovery

Leonard D. Rice d/b/a Rice Oil Company, HRD-0143; Rice-Lindquist, Inc., 12/19/84, HRH-0143

Leonard D. Rice d/b/a Rice Oil Co. and Rice-Lindquist, Inc. (referred to collectively as "Rice") filed Motions for Discovery and Evidentiary Hearing in connection with a Proposed Remedial Order (PRO) issued to Rice on April 21, 1983. In considering the Motion for Discovery, the DOE concluded that audit workpapers already provided to Rice would be sufficient to enable the firm to understand the findings of fact and conclusions of law set forth in the PRO, and that further discovery, including the requested depositions of certain DOE officials, was therefore unnecessary.

In considering the Motion for Evidentiary Hearing, the DOE concluded that Rice had failed to demonstrate the relevance and materiality of the issues it sought to examine at such a hearing, and had failed to identify the persons to be questioned with sufficient specificity and to state with sufficient detail the necessity of questioning such persons. The DOE therefore concluded that an evidentiary hearing would not substantially assist in analyzing the issues underlying the PRO. Accordingly, both Motions were denied.

Request for Stay

AWECO, Inc., 12/21/84, HRS-0046

AWECO, Inc. filed a Request for Stay regarding an enforcement proceeding pending before the Office of Hearings and Appeals. Noting that it is in a chapter 11 bankruptcy proceeding, AWECO based its request on its assertion that settlement with the Economic Regulatory Administration is a virtual certainty, and that continued litigation will only diminish the amount of AWECO's funds available for disbursement to the DOE. The DOE determined that the firm failed to meet the criteria for a stay set forth at 10 CFR 205.125(b). The DOE found that the public policy reasons asserted by AWECO do not favor the approval of the stay because there is no certainty that the settlement

negotiations will be successful. Accordingly, the Request for Stay was denied.

Interlocutory Order

Texaco, Inc., 12/18/84, HRZ-0170

Texaco Inc. sought an order deeming the Office of Special Counsel to have admitted certain factual matters in connection with the firm's objections to a Proposed Remedial Order that OSC had issued to the firm on May 1, 1979. Consistent with precedent permitting the filing of motions for admissions in the case, the DOE granted the majority of the admissions sought by Texaco.

Implementation of Special Refund Procedures

J.A.L. Oil Company, Inc., 12/20/84, HEF-0098

The DOE issued a Decision and Order implementing a plan for the distribution of $14,204.00 received as a result of a consent order entered into by J.A.L. Oil Co., Inc. and the DOE on May 15, 1981. The DOE determined that the entire settlement fund should be distributed to twenty-eight customers who purchased motor gasoline from J.A.L. during the November 1, 1979 through April 8, 1980 consent order period. These customers were identified by a DOE audit and will be allotted refunds (after each customer files an application for refund), based on presumptions of injury which have been employed in prior, similar proceedings. Applications for refunds filed by firms not identified by the DOE audit may also be filed. Any such application will, of course, be analyzed and, if necessary, refunds to the identified purchasers will be adjusted to accommodate all successful applicants.

Reinhard Distributors, Inc., 12/20/84, HEF-0163

The DOE issued a Decision and Order implementing a plan for the distribution of $25,483.59 received as a result of a consent order entered into by Reinhard Distributors, Inc. and the DOE on September 14, 1979. The DOE determined that a portion of the settlement fund should be distributed to six customers who purchased refined petroleum products from Reinhard during the November 1, 1973 through May 15, 1974 consent order period. These customers were identified by a DOE audit and will be allotted refunds (after each customer files an application for refund), based on presumptions of injury which have been employed in prior, similar proceedings. Applications for refunds filed by firms not identified by the DOE audit may also be filed. Any such application will, of course, be analyzed and, if necessary, refunds to the identified purchasers will be adjusted to accommodate all successful applicants.

Refund Applications

Conoco Inc./Site Oil Company, et al., 12/19/84, RF34-00001, et al.

In connection with the Conoco, Inc. Subpart V proceeding, the DOE issued a Decision and Order concerning Applications for Refund filed by five resellers of motor gasoline and No. 2 heating oil. The applicants purchased these Conoco products from M&A Petroleum Company or Foremost Petroleum company, a necessary prerequisite for application to this Conoco refund proceeding. One claimant applied for a refund based on the monthly presumption threshold and procedures for small claims outlined in *Office of Special Counsel*, 11 DOE ¶ 85,226 (1984). The remaining four claimants submitted evidence to establish that they were injured by Conoco's alleged overcharges. After examining the statements and supporting information submitted by the applicants, the DOE decided to approve refunds totalling $558,349.00 (including interest).

Standard Oil Company (Indiana)/American Propane Corporation, 12/17/84, RF21-10709

American Propane filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into by the agency and the Standard Oil Company (Indiana). In considering the request the DOE found that American Propane purchased a relatively small amount of Amoco propane. Using the volumetric methodology, the DOE determined that the firm's allocable share was below the presumption of injury level of $5,000. The DOE decided, therefore, that American Propane would receive a refund equal to its allocable share of $4,248. With interest, the refund granted in this proceeding totals $7,185.

Standard Oil Company (Indiana)/Aspen Hill Amoco, et al., 12/19/84, RF21-6180, et al.

The DOE issued a Decision and Order concerning four Applications for Refund filed by three retailers, of Amoco motor gasoline and a reseller of Amoco middle distillates. Although the firms did not elect to apply for refunds according to the presumption of injury method, they failed to provide sufficient proof of injury to entitle them to more than the presumption amount. Consequently, each of the retailers received a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982), and calculated according to the total volume of each firm's Amoco motor gasoline or middle distillate purchases. The refunds granted in this proceeding total $5,106.

Standard Oil Company (Indiana)/Martinez Piedra Amoco Spillane's Servicenters, 12/21/84, RF21-12364; RF21-12365

The DOE issued a Decision and Order concerning two Applications for Refund filed by retailers of Amoco motor gasoline. Both firms elected to apply for refunds based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering these applications, the DOE concluded that both of the applicants should receive refunds based upon the total volume of their Amoco motor gasoline purchases. The refunds granted in this proceeding total $1,250.

Standard Oil Company (Indiana)/Northern Propane Gas Company, 12/21/84, RF21-8195

The DOE issued a Decision and Order concerning an Application for Refund filed by a retailer of propane, Northern Propane Gas Company, in connection with the Standard Oil Company (Indiana) (Amoco) refund proceeding. The DOE found that Northern experienced a competitive disadvantage as a result of its purchases of propane from Amoco. The DOE concluded therefore that the firm should receive its maximum allocable share of the consent order funds based on the volumetric methodology. The refund granted in this proceeding totals $52,496.

Standard Oil Company (Indiana)/Texas, et al., 12/17/84 RQ21-138, et al.

The States of Texas and Tennessee and the Grand Traverse Band of Ottawa and Chippewa Indians of Michigan filed proposed second-stage refund plans with the Office of Hearings and Appeals, pursuant to consent orders entered with Standard Oil Co. (Indiana), Belridge Oil Co., Palo Pinto Oil and Gas, Worldwide Energy Corp., Loveladdy Oil Co., Gas Engine and Compressor Service, Fagadau Energy Corp., and Ada Resources, Inc. Texas proposed to spend $980,467 plus accrued interest on three programs that would provide workshops and distribute energy conservation information to the public, inform the public of a new child safety seat law, and increase enforcement efforts directed against overweight commercial haulers. Tennessee proposed to use $640,791 plus accrued interest to fund ridersharing, vanpool, congeneration, gasoline-octane testing, and energy conservation education projects, and to purchase radar equipment for speed limit enforcement. The Ottawa and Chippewa Indians planned to use $3,300 to provide transportation services for tribal members to local health care facilities and to retrofit oil burning furnaces. The OHA found that the beneficiaries of these plans would be those consumers who were injured as a result of their purchases of motor gasoline and middle distillates sold by the consent order firms. Accordingly, the refund applications were granted.

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: February 6, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85-3667 Filed 2-13-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals; DOE.

ACTION: Notice of implementation, of special refund procedures and solicitation of comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $220,000 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving the Southern Union Company, its wholly owned subsidiary, Southern Union Refining Company, and the following predecessors in interest to the Southern Union Refining Company: Famariss Oil Corporation, Famariss Oil & Refining Company, Southern Union Oil Products Company, and Southern Union Production Company. Southern Union is a refiner of petroleum products located in Hobbs, New Mexico.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF–0223.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a consent order entered into by the Southern Union Company which settled possible violations of DOE price controls in sales of all refined petroleum products by the firm an its predecessors to their customers, and possible violations concerning Southern Union's participation in the Entitlements Program, during the August 19, 1973 through January 27, 1981 period.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account funded by Southern Union pursuant to the consent order. The DOE has tentatively established procedures under which purchasers of covered Southern Union products and participants in the Entitlements Program during the audit period may file clams for refunds from the consent order fund. Applications for Refund should *not* be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: February 6, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Southern Union Company.

Date of Filing: October 13, 1983.

Case Number: HEF–0223.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request the Office of Hearings and Appeals (OHA) to formulate and implement a specially-designed process to distribute funds obtained at the resolution of an enforcement proceeding in order to remedy the effects of alleged or actual violations of DOE regulations. 10 CFR Part 205, Subpart V. Pursuant to the provisions of Subpart V, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order that it entered into with Southern Union Company and its wholly owned subsidiary, Southern Union Refining Company (Southern). According to the consent order, the following companies are predecessors in interest to the Southern Union Refining Company: Famariss Oil Corporation, Famariss Oil & Refining Company, Southern Union Oil Products Company, and Southern Union Production Company. For purposes of the current proceeding, purchases of covered products from any of these companies are considered to be purchases from Southern Union Company.

I. Background

Southern was a refiner, as that term was defined in 10 CFR § 212.31, which maintained its corporate headquarters in Dallas, Texas and based its refining operations in Hobbs, New Mexico. Two DOE audits of Southern's records revealed possible regulatory violations by the firm. The two ERA audits, which form the basis for the Southern consent order, covered several different aspects of Southern's business activities and different time periods. In order to settle all claims and disputes between Southern and the DOE regarding the firm's compliance with DOE regulations during the period August 19, 1973 through January 28, 1981, Southern and the DOE entered into a consent order on October 20, 1981. Under the terms of the consent order, Southern agreed to remit $220,000 to the DOE, and $200,000 to the Defense Fuel Supply Center (DFSC). The portion of the settlement fund remitted to the DOE is being held in an interest-bearing escrow account established with the United States Treasury pending a determination of its proper distribution, and as of December 31, 1984, the Southern escrow account had earned $84,616 in interest. This Proposed Decision concerns the distribution of the funds in the escrow account, plus the accrued interest.

II. Jurisdiction

We have considered ERA's Petition for the Implementation of Spicial Refund Procedures and determined that it is appropriate to establish such a proceeding with respect to the Southern consent order fund. As we have stated in previous dedisions, refunding moneys obtained through DOE enforcement proceedings is the focus of Subpart V proceedings. *See, e.g., Office of Enforcement*, 8 DOE ¶ 82,597 (1981). Based upon our experience with Subpart V cases, we believe that the distribution of refunds in the present case should take place in two stages. In the first stage, we will refund money to identifiable purchasers of covered petroleum products and participants in the Entitlements Program who may have been injured by Southern's alleged regulatory violations during the period August 19, 1973 through January 28, 1981. After meritorious claims are paid in the first stage, a second stage refund procedure may become necessary. *See generally Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (hereinafter cited as *Amoco*) (refund procedures established for first stage applicants, second stage refund procedures proposed).

III. Proposed Refund Procedures

A. Crude Oil Claims

Because the consent order resolves two different kinds of violations, we propose to divide the escrow account

funds into two pools. *See Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). According to information in the audit file, $20,000 of the consent order fund remitted to DOE was intended to settle claims relating to Southern's participation in the Crude Oil Entitlements Program during the consent order period. *See* 10 CFR § 211.67. We therefore propose that this portion of the consent order fund, including a pro rata share of the accrued interest, be set aside to satisy claims filed by participants in the Crude Oil Entitlements Program. Claimants in this category must show that they were injured by Southern's alleged violations of those regulations.

We have previously established refund procedures for consent orders involving crude oil-related violations comparable to those resolved in the current consent order. In *Office of Enforcement: In the Matter of Alfred B. Alkek*, 9 DOE ¶ 82,521 (1982), 47 FR 2196 (January 14, 1982) (hereinafter cited as *Alkek*) and *Office of Enforcement: In the Matter of Adams Resources and Energy, Inc.*, 9 DOE ¶ 82,553 (1982), 47 FR 16381 (April 16, 1982) (hereinafter cited as *Adams*) and *A. Johnson & Company, Inc.*, 12 DOE ¶ 85,102 (1984) (hereinafter cited as *Johnson*) which involved settlements with 252 firms, we established a two-stage refund procedure for funds received as a result of alleged crude oil violations. Because the types of alleged violations that underlie the crude oil portion of the present proceeding would have an impact similar to those that were the subject of the *Alkek*, *Adams*, and *Johnson* proceedings, we have determined that it is appropriate to follow the precedent established in those proceedings. We therefore propose to establish first-stage refund procedures for the Southern crude oil pool in which we will accept first-stage refund applications to be adjudicated in the same manner and using the same principles as those refund applications that were filed pursuant to the *Alkek*, *Adams*, and *Johnson* determinations.

Parties who have filed claims in the *Alkek*, *Adams*, or *Johnson* refund proceedings, and have not had a decision on those claims, will be deemed to have filed similar applications in this proceeding and therefore will not need to file a separate application. As we noted in *Alkek*, it would be premature for consumers and consumer groups to file applications for refund until the refiners' and resellers' claims have been resolved. *Alkek* at 85,136.

B. Refunds to Refined Product Purchasers

We propose that the remainder of the Southern settlement remitted to DOE, $200,000 plus accrued interest, be distributed to claimants who can demonstrate that they have been adversely affected by Southern's alleged violations in sales of refined petroleum products during the consent order period. The information available to use at this time regarding Southern's operations during that period does not provide names and addresses of all of the firm's customers. However, from our experience with Subpart V proceedings, we believe that the claimants in this proceeding will fall into the following categories: (1) Resellers (including retailers), and (2) firms, individuals, or organizations that were consumers (end-users). The petroleum products purchased by these claimants were purchased either directly from Southern or from other firms in a chain of distribution leading back to Southern. In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of Southern motor gasoline or other covered products for the period August 19, 1973 through January 28, 1981. If the product was not purchased directly from Southern the claimant must include a statement setting forth its reasons for maintaining the product originated with Southern.

In addition, a reseller or retailer that files a claim generally will be required to establish that it was injured by the alleged overcharges. To make this showing, a reseller or retailer claimant will be required to show initially that it maintained "banks" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover those costs by increasing its prices. *See Office of Enforcement*, 10 DOE ¶ 85,029 at 88,125 (1982) (hereinafter cited as *Ada*). In addition, it must provide some further evidence of injury. *See Amoco* at 88,215.

As in many prior special refund cases, we will adopt certain presumptions. First, we will adopt a presumption that the alleged overcharges were dispersed equally in all sales of products made by Southern during the consent order period. OHA has referred to this presumption in the past as a volumetric refund amount. Second, we will adopt a presumption of injury with respect to small claims.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we will adopt in this case are used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges were spread equally over all gallons of product marketed by a particular firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact on an individual purchaser could have been greater, and any purchaser is allowed to file a refund application based on a claim that it bore a disproportionate share of the alleged overcharges. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984) and cases cited therein at 88,164.

The presumption that claimants seeking smaller refunds were injured by the pricing practices settled in the Southern consent order is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost (to the firm) of gathering this factual information, and the cost (to the OHA) of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it

allows the OHA to process a large number of routine refund claims quickly, and use its limited resources more efficiently. Finally, these smaller claimants did purchase covered products from Southern and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the presumptions we are adopting, a reseller or retailer claimant will not be required to submit any additonal evidence of injury beyond purchase volumes it its refund claim is based on purchases below a threshold level. Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consenting firm, or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We believe that the same approach should be followed in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low, and the time period of the consent order is quite distant, we believe that the establishment of a presumption of injury for all claims of $5,000 is reasonable.(1) *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984); *Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ 85,226 (1984) and cases cited therein.

In addition to the presumptions we are adopting, we are making a fining that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209 and cases cited therein. We have therefore concluded that end-users of Southern petroleum products need only document their purchase volumes from Southern to make a sufficient showing that they were injured by the alleged overcharges.

We note that if a reseller or retailer made only spot purchases from Southern, it is not likely to have suffered an injury. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of the [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers at 85,396–97. We believe the same rationale holds true in the present case. Accordingly, a spot purchaser which files a claim should submit specific and detailed evidence to establish that it was unable to recover the increased prices it paid for Southern petroleum products. *See Amoco at 88, 200.*

Finally, we have tentatively concluded that the DFSC should not be eligible for any further refunds from the Southern settlement. Under the terms of the consent order, the DFSC has already received $200,000 in direct restitution from Southern, in settlement of any claims between the agency and the firm. Any additional refund to the DFSC would be beyond the scope of the Southern settlement as embodied in the consent order. Therefore, the calculation of the volumetric refund amount is based on the total number of gallons of covered products which were sold to Southern customers other than the DFSC.

A successful refund applicant will receive a refund based upon a volumetric method of allocating refunds. Under this method, a volumetric refund amount is calculated by dividing the settlement amount by the total gallonage of products covered by the consent order. In the present case, based on the information available to us at this time, the volumetric refund amount is $0.000176 per gallon, exclusive of interest.(2) As of December 31, 1984, accumulated interest increased the per gallon refund amount to $.000241 per gallon.

As in previous cases, we will establish a minimum refund amount of $15.00 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

Detailed procedures for filing applications will be provided in a final Decision and Order. Before disposing of any of the funds received as a result of the consent order involved in this proceeding, we intend to publicize the distribution process to solicit comments on the proposed refund procedures and to provide an opportunity for any affected party to file a claim. In addition to publishing notice in the **Federal Register**, notice will be provided to the Independent Gasoline Marketers Council, the National Association of Manufacturers, the Petroleum Marketers Association of America, the Service Station Dealers of America, the National Association of Truck Stop Operators, the Society of Independent Gasoline Marketers of America, and to local newspapers in Southern's market area. These organizations should be helpful in advising potential claimants of this proceeding.

C. Refunds to Purchasers of Other Covered Products

The Consent Order does not cover any possible overcharges relating to first sales or resales of crude oil. Therefore, purchasers of crude oil from Southern at these levels of distribution shall not be eligible for refunds.

D. Distribution of the Remainder of the Consent Order Funds

In the event that money remains after all first stage claims have been disposed of, undistributed funds could be distributed in a number of different ways. For example, the funds may be distributed through plans formulated by state governments to benefit consumers who were likely injured by Southern alleged overcharges. *See, e.g., Northeast Petroleum Industries*, 11 DOE ¶ 85,199 (1983). However, we will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by the Southern Union Company pursuant to the consent order executed on October 20, 1981 will

be distributed in accordance with the foregoing Decision.

Notes

(*1*) Resellers or retailers whose monthly purchases during the period for which a refund is claimed result in a volumetric refund of greater than $5,000 but who cannot establish that they did not pass through the price increases, or who limit their claims to the threshold amount, will be eligible for a refund of the $5,000 threshold amount without being required to submit additional evidence of injury. *See Vickers* at 85,396; *see also Ada* at 88,122.

(*2*) During the consent order period, we estimate that Southern sold 1,135,927,254 gallons of refined petroleum products to customers other than DFSC. The volumetric refund amount is obtained by dividing the portion of money remitted by Southern set aside for refunds to refined product purchasers by the volume of products sold ($200,000 divided by 1,135,927,254 gallons = $0.000176 per gallon).

[FR Doc. 85-3671 Filed 2-13-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for filing Applications for Refund from funds obtained as the result of DOE enforcement proceedings involving alleged crude oil pricing violations by Westates Petroleum Company.

DATE AND ADDRESS: Applications for refund must be postmarked by May 15, 1985, should conspicuously display a reference to case number HEF-0457, and should be addressed to: Office of Hearings and Appeals Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2094.

SUPPLEMENTARY INFORMATION: The Department of Energy's Office of Hearings and Appeals hereby gives notice of the issuance of the Decision and Order set out below. The Decision and Order establishes procedures to distribute funds obtained as a result of a DOE enforcement proceeding involving alleged crude oil pricing violations by Westates Petroleum Company during the period September 1, 1973, to January 28, 1981. This proceeding was culminated by a consent order which DOE entered with Westates Petroleum Liquidation Trust. Pursuant to the consent order, Westates made refunds totaling $825,000 in settlement of alleged violations of the DOE pricing regulations. Those funds have been paid to DOE and are being held in escrow under the jurisdiction of DOE pending receipt of instructions from OHA regarding their final distribution.

Any members of the public who believe that they are entitled to a refund in this proceeding may file Applications for Refund. All Applications should be postmarked by May 15, 1985, and should be sent to the address set forth at the beginning of this notice. Applications for refunds in excess of $100 must be filed in duplicate and these applications will be made available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Date: February 5, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

February 5, 1985.

Name of Case: Westates Petroleum Company Liquidation Trust.

Date of Filing: October 13, 1983.

Case Number: HEF-0457.

This proceeding involves a Petition for the Implementation of Special Refund Procedures filed by the Economic Regulatory Administration (ERA) with the Office of Hearings and Appeals (OHA) pursuant to the provisions of 10 CFR Part 205, Subpart V. Under those procedural regulations, ERA may request that OHA formulate and implement a specially-designed process to distribute funds received as a result of enforcement proceedings in order to remedy the effects of alleged or actual violations of Department of Energy (DOE) regulations. ERA filed the petition in this proceeding in connection with a consent order which it entered into with Westates Petroleum Company Liquidation Trust (formerly Westates Petroleum Company, hereinafter referred to as "Westates").(*1*) Pursuant to the consent order, Westates made refunds totaling $825,000 in settlement of alleged violations of the DOE pricing regulations. Those funds have been paid to DOE and are being held in escrow under the jurisdiction of DOE pending receipt of instructions from OHA regarding their final distribution.(*2*)

Among its business activities, Westates produced and sold domestic crude oil. Accordingly, Westates was subject to the Mandatory Petroleum Price Regulations set forth in 6 CFR Part 150 and 10 CFR Part 212.(*3*) ERA and its predecessor agencies conducted an audit and investigation of Westates. ERA alleged that it found that Westates sold crude oil at prices exceeding the applicable ceiling prices in violation of the Mandatory Petroleum Price Regulations during the period of September 1, 1973, to January 28, 1981.

ERA agreed to terminate the pending investigation and administrative proceeding through a consent order, and Westates agreed to pay $825,000 to the DOE. Notice of the consent order was published in the **Federal Register.**(*4*) Interested parties were provided an opportunity to comment on the terms of the consent orders and to submit written notices to ERA of potential claims against the settlement funds.

On December 18, 1984, we issued a Proposed Decision and Order which tentatively set forth procedures to distribute refunds to parties who were injured by Westates' alleged violations. 50 FR 157 (January 2, 1984). In the proposed decision we described a two-stage process for the distribution of the funds made available by the consent order. We proposed to refund money in the first stage to identifiable purchasers of crude oil who were injured by the alleged overcharges. We stated that a second stage of the refund procedure may be necessary if funds remain after meritorious claims are paid in the first stage.

This decision establishes procedures for filing claims in the first stage of the refund proceeding. We will describe the information that a claimant should submit in order to demonstrate that it is eligible to receive a portion of the funds. In establishing these requirements, we will address comments filed in response to the first-stage proposals in the December 18 decision. We will not, however, determine procedures for a second stage of the refund process in this decision. It is premature for us to address the issues raised by commenters regarding the disposition of any remaining funds until all the first-stage claims have been paid.

Jurisdiction

We have considered ERA's Petition for the Implementation of Special Refund Procedures in light of the comments we received. We have

determined that it is appropriate to establish such a proceeding with respect to the Westate settlement funds. In recent decisions, we have discussed at length our jurisdiction and authority to fashion special refund procedures. *See, e.g., Office of Enforcement,* 9 DOE ¶ 82,553 at 85,284 (1982). We will therefore grant ERA's petition and assume jurisdiction over the distribution of these funds.

Refund Procedures

We have previously established refund procedures for consent orders involving the same type of crude oil-related violations as those which are the subject of the present proceeding. In *Office of Enforcement: In the Matter of Alfred B. Alkek,* 9 DOE ¶ 82,521 (1982), 47 FR 2196 (January 14, 1982) (hereinafter cited as *Alkek*) and *Office of Enforcement: In the Matter of Adams Resources and Energy, Inc.,* 9 DOE ¶ 82,553 (1982), 47 FR 16381 (April 16, 1982) (hereinafter cited as *Adams*); which involved consent orders and remedial orders with 58 firms, we established a two-stage refund procedure for consent order and remedial order funds received as a result of alleged crude oil regulatory violations. *See also A. Johnson & Co., Inc.,* 12 DOE ¶ 85,102 (1984), 49 FR 44541 (November 7, 1984) (hereinafter cited as *Johnson*). The types of alleged violations that underlie the present proceeding are substantially the same as those that were the subject of the *Alkek, Adams,* and *Johnson* proceedings. After having considered the comments we received concerning the first-stage proceedings tentatively adopted in our proposed decision, we have determined that it is appropriate to formulate a two-stage refund proceeding modeled after the *Alkek, Adams,* and *Johnson* proceedings in which we will accept refund applications to be adjudicated in the same manner and using the same principles as those first-stage refund applications that were filed pursuant to the *Alkek, Adams,* and *Johnson* determinations.

We will now accept applications for refund for portions of the Westates consent order funds. *See* 10 CFR 205.283. Parties who have filed claims in the *Alkek, Adams,* or *Johnson* refund proceedings, and have not had a decision on those claims, will be deemed to have filed similar applications in this proceeding. As we noted in *Alkek,* it would be premature for consumers and consumer groups to file applications for refund until the refiners' and resellers' claims have been resolved. *Alkek* at 85,136.

An application must be in writing, signed by the applicant, and must specify the settlement or remedial order fund to which it pertains, along with the appropriate case number. An applicant should indicate from whom the crude oil was purchased, and, if the applicant was not a direct purchaser, it should also indicate the basis for its belief that it was injured by the alleged regulatory violations that form the basis underlying this proceeding. In addition, a claimant who was subject to the DOE regulations must show that it was unable to pass through to its customers the price increases caused by the actual or alleged violations. Each applicant should report any past or present involvement as a party in DOE enforcement actions. If these actions have terminated, the applicant should furnish a copy of a final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. The applicant is under a continuing obligation to keep OHA informed of any change in status during while its application for refund is being considered. *See* 10 CFR 205.9(d). Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name, position title, and telephone number of a person who may be contacted by us for additional information concerning the application.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E-234, 1000 Independence Avenue, S.W., Washington, D.C. Any applicant that believes that its application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the confidential information has been deleted, together with a statement specifying why any such information is privileged or confidential.

All applications should be sent to: Westates Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. Applications for refund of a portion of the settlement and remedial order funds must be postmarked within 90 days after publication of this Decision and Order in the Federal Register. *See* 10 CFR 205.286. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284.

Conclusion

The refund mechanisms and procedures outlined above for first-stage claims filed with DOE will be adopted. With respect to the second-stage of the refund process, as in previous cases, we shall hold in abeyance our determination as to appropriate second-stage procedures until we know how much money will remain after successful first-stage claimants are paid. *See Office of Enforcement,* 9 DOE ¶ 82,508 (1982).

It is Therefore Ordered That:

(1) Applications for Refunds from the funds remitted to the Department of Energy by the Westates Petroleum Company Liquidation Trust pursuant to the Consent Order executed on September 28, 1981 may now be filed.

(2) All applicants must be postmarked within 90 days after publication of this Decision and Order in the Federal Register.

Dated: February 5, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Notes

(1) A copy of the consent order filed by ERA may be obtained from the OHA Public Docket Room. As the consent order contains little specific information regarding the crude oil pricing violations that were alleged before settlement, we have not included in this decision specific identification of the violations underlying this consent order.

(2) The funds were deposited into an escrow account which, along with accrued interest, totaled $1,122,497.89 as of October 12, 1984.

(3) Those regulations generally required crude oil producers to determine the first sale price of crude oil based on the level of production from a property during a specified base period, i.e., the base production control level (BPCL). *See* 6 CFR 150.354; 10 CFR 212.72–.74. The term "property" was defined as the right to produce crude oil which arises from a lease or fee interest. 6 CFR 150.354(b)(2); 10 CFR 212.72. Crude oil production that did not exceed the BPCL for a particular property was generally subject to the lower tier ("old" oil) ceiling price rule. 6 CFR 150.354; 10 CFR 212.73. Crude oil production that exceeded the BPCL ("new" oil) could generally be sold without regard to the ceiling price rule before February 1, 1976, and at the upper tier ceiling price level after that date. 6 CFR 150.354(c)(2); 10 CFR 212.74(a). Before February 1, 1976, in months in which new oil could be sold from a property, additional volumes of crude oil could be sold as "released" oil at prices in excess of the applicable lower tier ceiling price level. 6 CFR 150.354(c)(3); 10 CFR 212.74(b). Additionally, crude oil produced from a "stripper well property" could generally be sold at market price levels. Producers and resellers of crude oil were

generally required to certify in writing to each purchaser in the distribution chain the respective volumes of the various categories of price-controlled domestic crude oil included in each purchase. 10 CFR 212.131(a)(4), (b)(1). Each refiner was required to report these certifications to DOE and its predecessors when the refiner processed the crude oil. See CFR 211.67.

(4) DOE procedural regulations require the publication for public comment in the **Federal Register** of consent orders which call for the payment of sums exceeding $500,000. *See* 10 CFR 205.199J(b).

[FR Doc. 85-3666 Filed 2-13-85; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL COMMUNICATIONS COMMISSION

Allocations Subgroup of Radio Advisory Committee Resumes Meeting February 26, 1985

The Allocations Subgroup of the Advisory Committee on Radio Broadcasting resumes its continuing meeting on Tuesday, February 26, 1985, at 2:00 p.m. in the Vincent Wasilewski Room of the National Association of Broadcasters, 1771 N Street NW., Washington, D.C.

The Subgroup will give consideration to the development of recommendations to the Federal Communications Commission concerning matters pertinent to preparations for the upcoming Region 2 Conference on expansion of the AM band. In particular, these relate to identifying specific broadcast requirements and the means of addressing these requirements through use of the spectrum to become available through expansion of the AM band.

The Allocations Subgroup meeting, a continuing one, will be resumed after the February 26, 1985, session at such time and place as is decided at that session.

All meetings of the Allocations Subgroup are open to the public. All interested parties are invited to attend and participate in these meetings.

For further information, please call the Subgroup Chairman, Jonathan David, at (202) 632-7792.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-3680 Filed 2-13-85; 8:45 am]

BILLING CODE 6712-01-M

Technical Subgroup of Radio Advisory Committee Resumes Meeting February 12, 1985

The technical subgroup of the Advisory Committee on Radio Broadcasting resumes its continuing meeting Tuesday February 12, 1985, at 11:00 a.m. in room 7317, 2025 M Street NW.

The subgroup will continue its consideration of recommendations to the Federal Communications Commission concerning matters pertinent to preparations for the upcoming Region 2 Conference on expansion of the AM band.

The subgroup also may discuss matters relating to the ongoing discussions between the United States and Mexico looking toward the development of a new bilateral AM Agreement. In addition, the Subgroup also may consider other relevant matters of concern to the participants at the meeting.

The meeting, a continuing one, will be resumed after the February 12, 1985, session at such time and place as is decided at that session.

All metings of the Technical Subgroup are open to the public. All interested parties are invited to participate in these meetings.

For further information, please call the Subgroup Chairman, Mr. Wallace E. Johnson, at (703) 841-0500.

William J. Tricarico,

Secretary, Federal Comunications Commission.

[FR Doc. 85-3679 Filed 2-13-85; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1496]

Petitions for Reconsideration and Clarification of Actions in Rule Making Proceedings

February 7, 1985.

The following listings of petitions for reconsideration and clarification filed in Commission rulemaking proceedings is published pursuant to CFR 1.429(e). Oppositions to such petitions for reconsideration and clarification must be filed within 15 days after publication of this Public Notice in the **Federal Register**. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject:

Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services. (Second Computer Inquiry) (CC Docket No. 81-893)

Amendment of Part 31, the Uniform System of Accounts for Class A and Class B Telephone Companies, to provide for nonregulated activities.

Filed by:

James S. Golden & Maurice P. Talbot, Jr., Attorneys for the Bell Telephone Company of Pennsylvania, et al., on 12-27-84.

Subject:

AT&T's Earnings on Interstate and Foreign Services During 1978. (CC Docket No. 79-187)

Filed by:

J. Manning Lee & Jeffery H. Matsuura for Satellite Business Systems on 1-22-85.

Thomas J. O'Reilly, Attorneys for United States Telephone Association on 1-22-85.

David Cosson & Paul G. Daniel, Attorneys for National Telephone Cooperative Association, Margot Smiley Humphrey, Attorney for National Rural Telecom Association & James G. Mercer, Executive Vice President for Organization for the Protection and Advancement of Small Telephone Companies for The Rural Telephone Coalition on 1-22-85.

Robert W. Barker, Kenneth D. Patrich & Robert B. McKenna, Attorneys for The Mountain States Telephone and Telegraph Company, et al on 1-22-85.

Richard C. Schramm & Thomas L. Welch, Attorneys for The Bell Atlantic Telephone Companies on 1-22-85.

James S. Golden & Charles P. Featherstun, Attorneys for Nevada Bell, et al., on 1-22-85.

Francine J. Berry, J. Richard Devlin & Mark C. Rosenblum, Attorneys for American Telephone and Telegraph Company on 1-22-85.

William Malone, L. Russell Mitten, II and James R., Hobson, Attorneys for GTE Service Corporation and its affiliated domestic operating companies on 1-22-85.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-3683 Filed 2-13-85; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket 83-842; FGC 85-24]

Elimination of Unnecesssary Broadcast Policies

AGENCY: Federal Communications Commission.

ACTION: Policy statement and order.

SUMMARY: This action eliminates a Commission policy concerning broadcast announcements.

This action is taken by the Commission in its ongoing efforts to eliminate unnecessary broadcast

regulation no longer warranted or required by the public interest.

This action will permit the more efficient utilization of Commission resources.

EFFECTIVE DATE: March 11, 1985.

FOR FURTHER INFORMATION CONTACT: James A. Hudgens, Office of Plans and Policy, (202)653–5940.

Policy Statement and Order

In the matter of elimination of unnecessary broadcast regulation, MM Docket 83–842.

Adopted: January 18, 1985.

Released: January 31, 1985.

By the Commission.

1. This is the fourth in a series of ongoing actions in this proceeding, in which we proposed to eliminate or modify various broadcast regulatory "underbrush" policies and rules which our review indicates are no longer warranted or required by the public interest. "Underbrush" is the accumulation of Commission policies, doctrines, declaratory rulings, rules, informal rulings and interpretive statements that have grown up over the years. These "underbruch" policies concern activities which have the potential to unnecessarily restrict broadcast operations and for which the Commission belives it should no longer expend resources.

2. The first action in this proceeding was adopted in July of 1983[1] and deleted two policies relating to distortion of audience ratings and the use of inaccurate or exaggerated coverage maps by broadcast licensees. The second dealt with policies which, directly or indirectly, affected broadcast program content. That action consisted of two parts: (1) A *Policy Statement*[2] which eliminated some ten such policies—e.g., matters such as the broadcasting of astrology programming, foreign language programs, and even a policy which looked askance at the repetitious broadcasting of a single record, and (2) a *Notice of Proposed Rule Making*[3] proposing to eliminate three policies which severely restricted the broadcast of horse race programming and betting advertising. The third action was a recent *Report and Order*[4] stemming from the latter NPRM which eliminated the subject horse race policies. Today's action also concerns a program content policy—a 1966 Policy Statement entitled *"Contests and Promotions Which Adversely Affect the Public Interest."* [5]

The 1966 Policy

3. Explaining that it had received complaints concerning licensee-conducted contests and promotions such as "Treasure Hunts", the Commission issued a *Public Notice* to all broadcast licensees cautioning them against carrying contests and promotions which "adversely affect the public interest", citing the following examples:

> A contest which resulted in a vast accumulation of scrap metal in a certain location, blocking access to nearby commercial establishments.
>
> A contest which led listeners to choose names at random from the telephone directory and to call the persons listed at all hours of the day and night causing great annoyance and effectively blocking use of their telephones for normal purposes.
>
> Contests which, by requiring the participants to travel to a specified place in a very short time, have caused traffic violations and endangered life.
>
> The broadcast of "scare" announcements or headlines which either are untrue or are worded in such a way as to mislead and frighten the public; e.g., a sudden announcement delivered in a tone of excitement to the effect that "amoebas" were invading a certain city, implying that the amoebas were dangerous creatures.

The *Notice* stated that the adverse consequences of such contests and promotions were: "Alarm to the public about imaginary dangers; infringement of public or private property rights or the right of privacy; annoyance or embarrassment to innocent parties; hazards to life and health; and traffic congestion or other public disorder requiring diversion of police from other duties." The *Notice* cautioned that contests or promotions which result in such consequences "raise serious question as to the sense of responsibility of the broadcast licensee involved."

4. In 1974, the Commission issued another *Public Notice* entitled *"Failure of Broadcast Licensees to Conduct Contests Fairly."* [6] The purpose of that *Notice* was to caution licensees against conducting contests and promotions which were fraudulent in nature, and it cited some seven practices which would trigger Commission inquiry—*e.g.*, contests where it was impossible to win all the prizes, contests where prizes were not awarded, etc. Although dealing with a different aspect of contests and promotions than the 1966 *Notice*, the 1974 *Notice* took the occasion to reiterate the 1966 policy. Then, in 1975, the Commission initiated a proceeding to consider the feasibility of adopting rules in this area.[7] In 1976, the Commission enacted § 73.1216, "Licensee-conducted contests." [8] The new rule only encompassed fraudulent contests and did not include prohibitions against the type of contests which were the subject of the 1966 *Notice*—i.e., "scare" anouncements or "disruptive" contests. The *Report and Order*[9] stated:

> We also emphasize our continued concern for the abuses described in our 1966 and 1974 Public Notices [footnote omitted] and, to the extent that they have not been superseded by the new rule, we shall continue to enforce the policies summarized therein.

The 1966 Policy Statement thus is separable from our rule and is appropriate for treatment in this *Policy Statement and Order*. Section 73.1216 is not affected by our instant action.

Discussion and Conclusion

5. This 1966 Policy Statement is precisely the type of regulatory "underbrush" which we seek to eliminate in this Docket. Here, as in the case of our previous review in this Docket of selected policies affecting program content (see footnotes 2–4), we conclude that the subject policy, by cautioning licensees not to engage in this programming or establishing rigid guidelines within which such programming should be conducted, unnecessarily restricts the editorial discretion of licensees to develop innovative programming generally

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[1] *Elimination of Unnecessary Broadcast Regulation*, adopted July 14, 1983, FCC 83–339, FCC 2d , 1983.

[2] *Elimination of Unnecessary Broadcast Regulation and Inquiry into Subscription Agreements Between Radio Broadcast Stations and Music Format Companies*, MM Docket 83–842 and No. 19743, adopted August 4, 1983, FCC 83–375, FCC 2d , 1983.

[3] *Notice of Proposed Rule Making in the Matter of Elimination of Unnecessary Broadcast Regulation*, MM Docket No. 83–842, adopted August 4, 1983, FCC 83–376, FCC 2d , 1983.

[4] *Report and Order in the Matter of Elimination of Unnecessary Broadcast Regulation*, MM Docket No. 83–842, adopted August 8, 1984, FCC 84–388, FCC 2d , 1984.

[5] *Public Notice*, 2 FCC 2d 464, 1966, 31 FR 2568, February 9, 1966.

[6] *Public Notice*, 45 FCC 2d 1056, 1974.

[7] *Notice of Proposed Rule Making in the Matter of Amendment of Part 73 of the Commission's Rules Relating to Licensee-Conducted Contests*, Docket No. 20500, FCC 75–642, 40 FR 26692, June 25, 1975.

[8] Section 73.1216 Licensee-conducted contests.

A licensee that broadcasts or advertises information about a contest it conducts shall fully and accurately disclose the material terms of the contest, and shall conduct the contest substantially as announced or advertised. No contest description shall be false, misleading or deceptive with respect to any material term. [Notes Omitted.]

[9] *Report and Order in the Matter of Amendment of Part 73 of the Commission's Rules Relating to Licensee-Conducted Contests*, Docket No. 20500, 60 FCC 2d 1072 (1976).

without the requisite showing that the public interest requires governmental intervention.[10] But most important by far in our conclusion to delete the policy is that it is simply unwarranted and unnecessary—the raison d'etre of this "underbrush" proceeding. While the stated purposes for the policy of public safety, etc. are important, the examples cited therefore and the resultant policy constitute regulatory overkill. To issue a *Public Notice* cautioning all broadcast licensees against engaging in such an obvious hoax as "amoebas" invading a city is simply an overreaction.[11] With respect to the cited "disruptive" announcements such as Treasure Hunts or the scrap pile example, such matters should not be of primary concern to this Commission. We believe it is confusing to continue to single out certain violations for special emphasis which already are proscribed by more general policies (see FN#11). To do so gives the inference that certain misdeeds are more reprehensible than others, or that actions not specifically prohibited are permissible. Moreover, alternative remedies exist. Treasure hunts and contests and promotions resulting in traffic congestion or other pulbic disorder can all be ably handled at the local level through both civil means[12] (*e.g.*, actions for trespass, personal injury, private nuisance, invasion of privacy, or injunctive relief) and criminal means (*e.g.*, disturbing the peace or public nuisance), possibly resulting in damages or fines. With respect to contests and promotions resulting in annoying phone calls, there are civil remedies against the station,[13] and section 223 of the Communications Act and similar provisions in the laws of many states make certain types of harassing phone calls a criminal offense.[14]

6. This Commission certainly does not encourage and advocate the broadcast of programming which in actual effect would disrupt the public safety, but we simply believe that the instant policy imposes requirements that are unnecessarily restrictive in light of the potential for abuse, and we cannot justify the retention of this overly-broad statement of policy and its frivolous examples. As with our previous actions in this Docket concerned with program content policies, the end result of our action is to delete overly burdensome restrictions upon program content and to return to basic statutory principles, relying upon the basic obligation of licensees to operate their stations in the public interest, and leaving the mechanism of compliance to licensees. This action is consistent with our determination to reduce the regulatory role played by Commission policies and rules and instead to place greater reliance on licensee discretion and editorial judgment.

7. Accordingly it is ordered that the statement of policy contained in the 1966 *Public Notice, supra,* is hereby eliminated, effective March 11, 1985.

8. Pursuant to section 605 of the Regulatory Flexibility Act, 5 U.S.C. section 601 *et seq.*, the Commission certifies that the action proposed will not have a significant economic impact on a substantial number of small entities.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-3368 Filed 2-13-85; 8:45 am]

BILLING CODE 6712-01-M

[10] *See, e.g., CBS* v. *Democratic National Committee*, 412 U.S. 94 (1973).

[11] In this general connection, we note that a current broadcast of a program such as "War of the Worlds", without cautionary language, would violate Commission policies—*i.e.*, both our general policy requiring licensees to program their stations in the public interest, and our more specific policy against deliberate distortion or falsification of programming *(see, e.g., 1960 En Banc Programming Inquiry*, 44 FCC 2303 (1960)).

[12] *See, e.g., Weirum* v. *RKO General, Inc.*, 15 Cal. 3d 40, 539 P. 2nd 36, 123 Cal. Rptr. 468 (1975).

[13] *See, e.g., Harms* v. *Miami Daily News, Inc.*, Fla. 127 So. 2d 715, [3 D.C.A. 1961].

[14] *See, U.S.* v. *Lampley*, 573 F. 2d 783 [3rd Cir. 1978].

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket FEMA-REP-5-MN-3]

Minnesota Radiological Emergency Response Plan

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of Receipt of Plan.

SUMMARY: For continued operation of nuclear power plants, the Nuclear Regulatory Commission requires approved licensee and State and local governments radiological emergency response plans. Since FEMA has the responsibility for reviewing the State and local government plans, the State of Minnesota has submitted its radiological emergency plans to the FEMA Regional office. These plans provide the required offsite emergency response to an accident at the Dairyland Power Cooperative LaCrosse Nuclear Generating Station located in Vernon County, Wisconsin, which impacts on Minnesota and Houston County.

Date Plans Received: June 14, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Edward J. Roche Sr., Regional Director, FEMA Region V, South Wacker, 24th Floor, Chicago, Illinois, 60606, (312) 353-1500.

SUPPLEMENTARY INFORMATION: In support of the Federal requirement for emergency response plans, FEMA Rule 44 CFR 350.12 (FEMA Headquarters Review and Approval) describes the procedures for review and approval of State and local government's radiological emergency response plans. Pursuant to the Rule, the Minnesota Radiological Emergency Response Plan was received by the Federal Emergency Management Agency Region V.

Included are plans for local governments which are wholly or partially within the plume exposure pathway emergency planning zone. For the LaCrosse Nuclear Generating Station, plans are included for Houston County.

Copies of the Plan are available for review at the FEMA Region V Technological Hazards Branch, Natural and Technological Hazards Division, Federal Center, Battle Creek, Michigan 49016. Copies will be made available upon request in accordance with the fee schedule for FEMA Freedom of Information Act requests, as set out in subpart 44 CFR Part 5. There are 151 pages in the document; reproduction fees are $.10 a page payable with the request for copy.

Comments on the Plan may be submitted in writing to Mr. Edward J. Roche Sr., Regional Director, at the above address within thirty days of this Federal Register Notice.

FEMA Rule 44 CFR 350.10 calls for a public meeting prior to approval of the plans. A public meeting was held on the State and local government plans for the LaCrosse Nuclear Generating Station on October 22, 1981, at 7:30 p.m., at the Caledonia City Auditorium, Caledonia, Minnesota.

Frank Finch,

Chief, Natural and Technological Hazards Division.

[FR Doc. 85-3675 Filed 2-13-85; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-421]

Home Federal Savings Bank, Northern Ohio; Final Action; Approval of Conversion Application

Dated: February 7, 1985.

Notice is hereby given that on January 17, 1985 the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Home Federal Savings Bank, Northern Ohio, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Cincinnati, Post Office Box 598, Cincinnati, Ohio 45201.

By the Federal Home Loan Bank Board.

J.J. Finn,

Secretary.

[FR Doc. 85-3550 Filed 2-13-85; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Petition for Rulemaking Concerning Shippers' Associations; Order Denying Petition

Eleven conferences (Conferences or Petitioners)[1] serving the Latin American trades have filed a joint Petition for Rulemaking (Petition), requesting the Commission to initiate a rulemaking proceeding to set forth procedures by which common carriers or conferences could determine whether an entity claiming to be a "shippers' association," within the meaning of section 3(24) of the Shipping Act of 1984 (1984 Act or Act), actually meets that definition.[2]

Notice of filing of the Petition was published in the **Federal Register** and interested persons were invited to submit their views. Comments were submitted by: (1) Chemical Manufacturers Association (CMA); (2) American Institute for Shippers' Association, Inc. (AISA); (3) Wine and Spirits Shippers Association, Inc. (WSSA); (4) Pacific-Straits Conference and Pacific/Indonesian Conference (Pacific Conferences); (5) Transportation Brokers Conference of America (TBCA) Shippers' Association (TBCA/SA); and, (6) a group of North European Conferences.[3]

The Conference in their Petition note that section 8(c) of the Act (46 U.S.C. app. 1707(c)) authorizes ocean common carriers and conferences to enter into service contracts with shippers' associations and that section 10(b)(13) (46 U.S.C. app. 1709(b)(13)) makes it a prohibited act for a common carrier to "refuse to negotiate with a shippers' association." They further point out, however, that the Act provides no method by which common carriers can determine whether an organization purporting to be a "shippers' association" actually meets the statutory definition. The Petitioners fear that they may be exposed to private antitrust penalties if it is later determined that a "shippers' association" with which they have dealt did not qualify as such. They are also concerned that if they refuse to negotiate with what they believe is not a *bona fide* shippers' association they could be exposed to Shipping Act penalties if they are incorrect.

Petitioners therefore suggest a procedure whereby the chief executive officer of a shippers' association seeking to negotiate with a common carrier or conference would submit to that carrier or conference: (1) A notarized request, which included a copy of the association's charter, articles of incorporation, or other document establishing it; (2) a designation of individuals authorized to speak for the association; (3) a statement that the organization meets the requirements of section 3(24) of the Act; and, (4) a statement that the individual designated to speak is authorize to negotiate on behalf of and bind the organization and all its members. In addition, if a shippers' association has obtained a Business Review Letter, advisory opinion, or antitrust certification, it would be required to provide a copy of that document to the carrier or conference.

The Pacific Conferences fully support the Petition. The North European Conferences generally support the Petition, alleging a need for rules of industry-wide application which would allow carriers to obtain the information necessary to determine what their rights and obligations are vis-a-vis shippers' associations.

CMA believes that the Commission should clarify who may comprise a "shippers' association," but questions whether, in all circumstances, associations need designate one person to speak for or bind all their members. CMA further notes that not all shippers' associations will have formal documents establishing their existence.

WSSA sees no need for formal rulemaking in this area and requests that the Petition be denied. It believes that ocean common carriers are fully protected under section 7(a)(2) of the Act (46 U.S.C. 1706(a)(2)), if negotiations with shippers' associations are later challenged.[4] WSSA does concede that it might be commerically prudent for a common carrier or conferecne to request certain information prior to negotiating with a shippers' association, but contends that such information will generally be provided as a matter of course. WSSA suggests that, if the Commission determines that some type of rulemaking is warranted, it not adopt any provision which would attempt to bind every member of a shippers' association to any commitment made by the association.

TBCA/SA generally agrees with WSSA. It further advises, however, that it would have no problem supplying on a voluntary basis the type of information the Conferences would require by rule.

AISA also opposes the Petition. It argues that the Conferences' proposed regulation will not substantially resolve all uncertainties and that, moreover, such regulation could come close to a procedure whereby the Commission would "certify" shippers' associations, something allegedly contrary to Congress' desires.

Discussion

Petitioners have proposed that the Commission adopt a rule which would require any purported shippers'

[1] Petitioners are: Associated Latin American Freight Conferences; Atlantic & Gulf/West Coast of South America Conference; East Coast Colombia Conference; West Coast of South America Northbound Conference; United States Atlantic & Gulf/Southeastern Caribbean Conference; United States Atlantic & Gulf/Jamaica and Hispaniola Steamship Freight Association; United States Atlantic & Gulf/Ecuador Freight conference; United States Florida/Ecuador Steamship Conference; South Atlantic & Gulf/Panama & Costa Rica Rate Agreement; and, South Atlantic & Gulf/Guatemala El Salvador & Honduras Rate Agreement.

[2] Section 3(24) states:

"Shippers' association" means a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volume rates or service contracts.

46 U.S.C. app. 1702(24).

[3] North Atlantic United Kingdom Freight Conference; North Atlantic French Atlantic Freight Conference; North Atlantic Continental Freight Conference; North Atlantic Baltic Freight Conference; Scandinavia Baltic/U.S. North Atlantic Westbound Freight Conference; Continental North Atlantic Westbound Freight Conference; North Atlantic Westbound Freight Association; United Kingdom & U.S.A. Gulf Westbound Rate Agreement; Continental-U.S. Gulf Freight Association; Gulf-United kingdom Conference; Gulf-European Freight Association; North Europe-U.S. South Atlantic Rate Agreement; and, U.S. South Atlantic-Europe Rate Agreement (North European Conferences).

[4] Section 7(a)(2) states—

The antitrust laws do not apply to—

(2) Any activity or agreement within the scope of the Act, whether permitted under or prohibited by the Act, undertaken or entered into with a reasonable basis to conclude that (A) it is pursuant to an agreement on file with the Commission and in effect when the activity took place. * * *

association to submit certain verified information to a carrier or conference before the carrier or conference would have an obligation to negotiate with it. In short, they are concerned lest they otherwise be exposed to penalties under the antitrust laws (for negotiating with a group of shippers which was not actually a shippers' association) or the Shipping Act (for refusing to negotiate with what was in fact a *bona fide* shippers' association).

The legislative history of the Act suggests that shippers' associations are generally to be "regulated," if at all, by agencies other than the Commission. The Conference Report notes:

> Section 7 omits a provision in the Senate bill which would have conferred antitrust immunity on concerted action by domestic shippers. Cooperative activities of shippers in obtaining shipping services would not be proscribed by the antitrust laws if the cooperating group does not possess threatening market power. Business Review Letters of the Department of Justice and Advisory Opinions of the Federal Trade Commission are available to provide advice to such shippers. In addition, Title III of the Export Trading Company Act of 1982 allows groups of exporters to apply to the Secretary of Commerce for antitrust certification.

H.R. Rep. No. 600, *supra* at 38. Earlier versions of the Shipping Act had contained provisions for Commission certification of shipper groups. These provisions were dropped by the time the final bill was passed, indicating what appears to us to be a Congressional desire that the Commission generally not involve itself in the formation or operation of shippers' associations. To the extent the Commission has any direct interest in shippers' associations it is through section 10(b)(13), which prohibits common carriers from refusing to negotiate with such an association. It would appear, however, that the Commission can enforce this proscription without the necessity of promulgating rules of industry-wide application.

Even if one concludes that potential liability under section 10(b)(13) justifies some sort of advance information from purported shippers' associations, no need has been shown for a Commission rule mandating it. Carriers or conferences can on their own initiative set forth rules in their tariffs indicating the advance information they need. Any questions concerning the reasonableness of such rules will be resolved on an *ad hoc* basis under sections 10(b)(12) or 10(c)(1), if and when the need arises. Such an approach is consistent with our May 23, 1984 Notice addressing the status of shippers' associations under the 1984 Act, where we stated:

> To the extent shippers' associations become involved in activities which may be subject to the Shipping Act of 1984, it is the Commission's intention to address any matters and issues that arise therefrom on an *ad hoc* basis.

As for Petitioners' antitrust concerns, it would appear that there is little potential for conference exposure to the antitrust laws, should a conference deal with an association of shippers which is not a true shippers' association, so long as it acts in good faith and not collusively with the shippers' group. Section 7(a) (2) of the Act, quoted above at footnote 4, exempts from the antitrust laws any activity or agreement undertaken or entered into with a reasonable basis to conclude that it is pursuant to an effective agreement. Therefore, if a conference agreement contains language authorizing negotiations with shippers or shippers' associations, the conference would appear to have antitrust protection. The Conference Report on S. 47 reinforces this conclusion where it states:

> Section 10 (b) (13) prohibits carriers from refusing to negotiate with a shippers' association. A carrier or group of carriers need not fear antitrust liability arising out of such negotiations. Thus, even if group conduct exposes shippers to antitrust liability, a carrier or conference that has dealt with the shippers is protected as long as its conduct was within the scope of an effective agreement. Both the carriers and shippers receive additional antitrust immunity from private antitrust suits under section 7[(c)] (2).

H.R. Rep. No. 600, 98th Cong., 2d Sess. 37, 38 (1984).[5]

Unlike conferences of carriers, individual common carriers would not have section 7(a)(2) protection in their dealings with shippers' associations. However, whatever the antitrust exposure of an individual carrier dealing with a shippers' association may be, it would appear, given section 10(b)(13)'s requirement that carriers *must* negotiate with shippers' associations, that an individual carrier would have available a defense of implied immunity from the antitrust laws should its conduct be challenged.

In the final analysis, the only "protection" a carrier or conference may need is a certification from the chief executive officer of a shippers' organization that the group meets the definition contained in section 3 (24) of the Act. It is conceivable that such a statement may be provided as a matter of course during normal business negotiations. In any event, shippers' associations should generally be allowed to operate with a minimum of governmental intervention. While the Commission will involve itself in situations where there is a regulatory purpose to be served, there has been no such need established here. The Commission will, accordingly, deny the Petition.

Therefore, it is ordered, that the "Petition for Rulemaking" filed by the Conferences in this matter is denied.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 85-3708 Filed 2-13-85; 8:45 am]

BILLING CODE 6730-01-M

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[5] The Conference Report, in discussing the omission from the 1984 Act of certain provisions "that would have conferred antitrust immunity on agreements with foreign shippers' councils," further explains:

> These * * * are not required in order to confer antitrust immunity on common carriers, or groups of common carriers, that negotiate or enter into agreements with a shipper, or group of shippers. Cooperative arrangements among carriers to discuss and fix rates or to pool or apportion traffic are, for example, within the scope of the Act. Section 7(a) (2) confers antitrust immunity on such conduct if it is within the scope of an agreement filed with the Commission and in effect. This immunity applies regardless of whether the carrier or conference is dealing with a single shipper or a group of shippers and regardless of whether the service is offered pursuant to a published tariff or a service contract.

H.R. Rep. No. 600, *Supra* at 37.

This discussion further suggests, that, assuming the appropriate enabling authority in its agreement, a conference's antitrust immunity extends to "groups of shippers" not necessarily meeting the Act's definition of a "shippers' association."

Request for Additional Information

Agreement No.: 202-010390-005.

Title: United States Atlantic and Gulf/Ecuador Conference.

Parties: Coordinated Caribbean Transport, Inc., Delta Steamship Lines, Inc., Ecuadorian Line, Inc., Lykes Bros. Steamship Co., Inc., Transportes Navieros Equatorianos.

Synopsis: Notice is hereby given that the Federal Maritime Commission pursuant to section 6(d) of the Shipping Act of 1984 (46 U.S.C. app. 1701-1720), has requested additional information from the United States Atlantic and Gulf/Ecuador Conference in order to complete the statutory review of Agreement No. 202-010390-005 required by section 6(g) of the Act. This action extends the review period as provided in section 6(c) of the Act.

By Order of the Federal Maritime Commission.

Dated: February 11, 1985.

Bruce A. Dombrowski,

Assistant Secretary.

[FR Doc. 85-3709 Filed 2-13-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Seconn Holding Co., 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 application must be received not later than March 8, 1985.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Seconn Holding Company*, Waterford, Connecticut; to become a bank holding company by acquiring 100 percent of the voting shares of the Bank of Southeastern Connecticut, Waterford, Connecticut, a *de novo* bank.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Allied Bankshares, Inc.*, Thomson, Georgia; to acquire 100 percent Bank of Rutledge, Rutledge, Georgia.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Victoria Bankshares, Inc.*, Victoria, Texas; to acquire 100 percent of the voting shares of First Schulenburg Financial Corporation, Schulenburg, Texas, thereby indirectly acquiring First National Bank of Schulenburg, Schulenburg, Texas.

2. *Benson Investment Company*, San Antonio, Texas; to become a bank holding company by acquiring 92.08 percent of the voting shares of Kelly Field Bancshares Corporation, San Antonio, Texas, thereby indirectly acquiring Kelly Field National Bank, Leon Valley, Texas and Exchange National Bank, San Antonio, Texas.

Correction

3. *Carlsbad National Bancshares*, Carlsbad, New Mexico; to acquire 100 percent of the voting shares of The Carlsbad National Bank, Carlsbad, New Mexico. Comments on this application must be received not later than March 1, 1985.

Board of Governors of the Federal Reserve System, February 8, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-3677 Filed 2-13-85; 8:45 am]

BILLING CODE 6210-01-M

Tennessee Eastern Bancshares, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y 12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 8, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Tennessee Eastern Bancshares, Inc.*, Oak Ridge, Tennessee; to acquire Springbrook Insurance Agency, Inc., Knoxville, Tennessee, thereby engaging in underwriting credit life and accident and health insurance. These activities would be conducted in the State of Tennessee.

Board of Governors of the Federal Reserve System, February 8, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-3678 Filed 2-13-85; 8:45 am]

BILLING CODE 6210-01-M54-999 (folio 277)%118.0

GENERAL SERVICES ADMINISTRATION

General Services Administration Advisory Board; Meeting

Notice is hereby given that the General Services Administration (GSA) Advisory Board's Subcommittee on Finance will meet on February 22, 1985 from 10:00 a.m. to 3:30 p.m. in Room 6120, 18th & F Streets, NW., Washington, D.C. This meeting shall be open to the public.

The meeting will be devoted to a review of GSA's Fiscal Year 1984 report on implementation of OMB Circular A-123, Internal Management Controls; agency plans for improving the A-123 process; and, progress in enhancing the availability of financial information.

Less than fifteen (15) days notice of this meeting is being provided due to scheduling difficulties.

Questions regarding this notice may be directed to Mr. James Dean on (202) 566-0382.

Dated: February 11, 1985.

Thomas J. Simon,

Director of Program Initiatives.

[FR Doc. 85-3738 Filed 2-13-85; 8:45 am]

BILLING CODE 6820-26-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Syntex Agribusiness, Inc.; Prednisone Sterile Suspension; Withdrawal of Approval

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) sponsored by Syntex Agribusiness, Inc., for prednisone sterile suspension. The firm requested withdrawal of approval.

EFFECTIVE DATE: February 25, 1985.

FOR FURTHER INFORMATION CONTACT: David N. Scarr, Center for Veterinary Medicine (HFV–214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1846.

SUPPLEMENTARY INFORMATION: Syntex Agribusiness, Inc., 3401 Hillview Ave., Palo Alto, CA 94304, is the sponsor of NADA 92–233 for Zenadrid * Sterile Suspension (prednisone sterile suspension). The drug is labeled for use in dogs and horses for the treatment of inflammatory conditions involving joints and accessory structures.

Syntex Agribusiness stated by letter dated November 7, 1984, that it had no plans to market Zenadrid *, requested withdrawal of approval of the NADA, and waived their opportunity for a hearing.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84) and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 92–233 and all supplements thereto is hereby withdrawn, effective February 25, 1985.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing that portion of the regulations that reflect this NADA approval.

Dated: February 4, 1985.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 85–3664 Filed 2–13–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 84C–0426]

Davis and Geck, American Cyanamid Co.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Davis and Geck, American Cyanamid Co., has filed a petition proposing to amend the color additive regulations to provide for the safe use of D&C Green No. 6 for coloring an absorbable suture, 1,4-dioxan-2,5-dione polymer with 1,3-dioxan-2-one, for general surgery.

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

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1), 74 Stat. 402–403 (21 U.S.C. 476(d)(1))), notice is given that a petition (CAP 4C0186) has been filed by Davis and Geck, American Cyanamid Co., Danbury, CT 06810, proposing that § 74.3206 *D&C Green No. 6* (21 CFR 74.3206) be amended to allow the use of D&C Green No. 6 for coloring an absorbable monofilament suture, 1,4-dioxan-2,5-dione polymer with 1,3-dioxan-2-one, for general surgery.

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: February 6, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85–3660 Filed 2–13–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 79N–0371/CP]

Purac Inc.; Filing of Petition for Affirmation for Gras Status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Purac, Inc., has filed a petition (GRASP 4G0292) proposing that sodium lactate and potassium lactate are generally recognized as safe (GRAS) as direct human food ingredients.

DATE: Comments by April 15, 1985.

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

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–8950.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that a petition (GRASP 4G0292) has been filed by Purac, Inc., Arlington Height, IL 60004, proposing that sodium lactate and potassium lactate are GRAS as direct human food ingredients.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the format requirements outlined in § 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

Interested persons may, on or before April 15, 1985, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether this use is or is not GRAS. A copy of the petition and received comments may be seen in the Dockets Management Branch, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 6, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85–3659 Filed 2–13–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 83V–0388]

Availability of Approved Variance for Laser Product

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a variance from the performance standard for laser products has been approved by FDA's Center for Devices and Radiological Health (CDRH) for the Laser Point 2001 manufactured by Applied Optics Associates. The laser

product functions as a portable pointer. It employs a Class II or Class I helium-neon laser.

DATES: The variance became effective November 2, 1984, and ends November 2, 1989.

ADDRESS: The application and all correspondence on the application have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tracy Summers, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), FDA has granted Applied Optics Associates, 26541 Valpariso, Mission Viejo, CA 92691, a variance from § 1040.10(f)(5) and (6) (21 CFR 1040.10(f)(5) and (6)) of the performance standard for laser products for the Laser Point 2001.

The specific requirements of the standard for which a variance has been granted pertain to: (1) The provisions of § 1040.10(f)(6) that otherwise would require the Laser Point 2001 to be equipped with a beam attenuator to reduce the laser radiation output of the helium-neon laser to below Class I limits, and (2) the provision of § 1040.10(f)(5) that would require the Laser Point 2001 to have a laser radiation emission indicator that provides a visible or audible signal during emission of accessible laser radiation in excess of the accessible emission limits of Class I. All other provisions of the performance standard remain applicable to the product.

CDRH has determined that: (1) The requirements of § 1040.10(f)(5) and (6) are not appropriate for the product, and (2) suitable means of radiation safety and protection are provided by constraints on the physical and optical design. Therefore, on November 2, 1984, FDA approved the requested variance by letter to the manufacturer from the Deputy Director of CDRH.

So that each product may show evidence of the variance approved for the manufacturer, the Laser Point 2001 shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the docket number appearing in the heading of this notice, and the effective date of the variance.

In accordance with § 1010.4, the application and all correspondence on the application have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 6, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-3665 Filed 2-13-85; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee Meeting; Filing of Annual Reports

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that, as required by the Federal Advisory Committee Act, the agency has filed with the Library of Congress the annual reports of those FDA advisory committees that have held closed meetings.

ADDRESS: Copies are available from the Dockets Management Branch (HFA-305), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1751.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

SUPPLEMENTARY INFORMATION: Under section 13 of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), FDA has filed with the Library of Congress the annual reports for the following FDA advisory committees that held closed meetings during the period July 1, 1983, through June 30, 1984:

Center for Drugs and Biologics, Blood Products Advisory Committee, Dermatologic Drugs Advisory Committee, Panel on Review of Allergenic Extracts, Vaccines and Related Biological Products Advisory Committee, Pulmonary-Allergy Drugs Advisory Committee.

Center for Devices and Radiological Health, Immunology Devices Panel, Ophthalmic Devices Panel, Neurological Devices Panel.

Annual reports are available for public inspection at (1) the Library of Congress, Newspaper and Current Periodical Reading Room, Rm. 1026, Thomas Jefferson Bldg., 2d and Independence Ave. SE., Washington, DC, (2) the Department of Health and Human Services Library Rm. 1436, 330 Independence Ave. SW., Washington, DC, on weekdays between 9 a.m. and 4:30 p.m., and (3) the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4:30 p.m., Monday through Friday.

Dated: February 6, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-3655 Filed 2-13-85; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Availability of Funds for Home Health Services and Training

AGENCY: Health Resources and Services Administration, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that funds are available for grants and loans for the development and expansion of home health programs and services. Public Law (Pub. L.) 98-619, the Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriations Act of 1985, signed on November 8, 1984, appropriates $3 million under section 339 of the Public Health Service (PHS) Act (42 U.S.C. 255) to provide home health services and for the training of paraprofessionals to provide home health services. This notice contains information of interest to prospective applicants for such funding.

DATE: To receive consideration as being on time, mailed applications must be postmarked on or prior to April 30, 1985, and must be received at the appropriate HHS regional office (see Appendix) in time for processing. Hand-delivered applications must be received by close of business April 30, 1985. Awards will be made in August 1985.

FOR FURTHER INFORMATION CONTACT: Appropriate Regional Health Administrator (see Appendix).

SUPPLEMENTARY INFORMATION: The Orphan Drug Act (Pub. L. 97-414), which was enacted on January 1, 1983, revised title III of the PHS Act (the Act) to establish the Home Health Services Program. This authority was recently extended through fiscal year 1987 by

Pub. L. 98-555. Section 339(a) of the Act provides that the Secretary may make grants to public and private non-profit entities to meet the initial costs of establishing and operating home health programs, and may make loans to proprietary entities for these purposes. Grants and loans may also be awarded to existing entities for expanding home health services to a new geographic service area. Under section 339(b) of the Act, the Secretary may award grants to public and private entities for programs to train paraprofessionals, including homemaker home health aides, to provide home health services.

HRSA has decided to allocate the $3 million provided by Pub. L. 98-619 for carrying out section 339 as follows: Approximately $2 million will be awarded as grants and loans under section 339(a) of the Act for establishing and operating programs of home health services in areas in which such services are inadequate or not readily accessible, including services in rural towns and villages, and approximately $1 million will be awarded as grants under section 339(b) of the Act for training programs for home health paraprofessionals.

In making loans or awarding grants for the development of new home health service programs or the expansion of existing home health service programs into new areas, HRSA will give preference to those applicants which intend to provide services in areas where there is a high percentage of the population composed of individuals who are elderly (persons over 65 years of age), medically indigent (persons at or below the HHS poverty income guidelines, see 49 FR 7151, February 27, 1984), or disabled (those disabled persons receiving assistance under old age survivors disability insurance and supplemental security income programs). HRSA also intends to give special consideration to those applicants which propose to provide services in areas with inadequate means of transportation to obtain necessary health services.

HRSA intends to give special consideration in the award of grants for training paraprofessionals (including homemaker home health aides) to applicants which propose to train persons over 50 years of age and which propose to provide a program to train paraprofessionals for an entire State or a geographic area of at least one million persons.

HRSA advises and encourages training grant applicants to include as part of their training curriculum, an orientation to high technology services often offered in the home today. This orientation should include an updated training curriculum which will provide appropriate training for paraprofessionals who may need additional skills to enable them to provide home health services in association with high technology nursing services.

For example, homemaker home health aides must know how to bathe a patient who is receiving intravenous therapy, respiratory therapy (ventilation), or enteric/parenteral feedings through nasogastric or duodenal tubes. Paraprofessionals should understand the complexities of the treatment modalities and precautions to be taken while caring for such a patient. The purpose of this training is to assist the paraprofessionals to adapt their services to high technology therapies provided to the homebound patients. It is not intended to train persons to provide these therapies themselves. HRSA will give special consideration to applications that appropriately include this element in their proposed curricula. HRSA also encourages the teaching and supervisory staff of projects to pursue continuing education to ensure qualified instructors for the program. Such continuing education activities may be an allowable cost of the grant.

Applicants should be aware that HRSA intends to accept applications for section 339(a) support only as follows: Applications for grants and loans to provide home health services under section 399(a) will be accepted from entities which are home health agencies, that is, entities which are recognized as providers of home health services by the Health Care Financing Administration (HCFA) and are eligible for reimbursement under the Medicare program, and from entities which intend to become home health agencies.

Applications will also be accepted from entities which are at the present time directly providing or can directly provide one or more of the kinds of services listed in section 1861(m) of the Social Security Act and which propose to provide home health services to an area under a co-applicant arrangement with a home health agency.

Applications may be made by completing the standard PHS Grant Application (form PHS-5161) for services grants and loans and for training grants. This application form calls for a program narrative giving a full description of the proposed project, including current and proposed services, a description of the service area and a budget justification. A competitive review of applications will be the basis for selecting succeeding proposals for grants and loans.

Grants and Loans for Projects for Developing and Operating Programs of Home Health Services

Applicants for grants and loans for home health services projects may wish to consider including the following information in the narrative: a time-phased staffing plan, information on their status as a HCFA provider, evidence of community support and compliance with State and local certificate of need laws, proposed fee structure, and other information showing the need of the area for home health services.

A description of a plan, if any, to train paraprofessionals including homemaker home health aides (including continuing education for teaching staffs) to provide services as described in section 339(b)(2)(C) would be helpful in reviewing applications.

Grants for Training Projects

Applicants for training grants may wish to consider including in their applications a training plan and curriculum, a description of the need in the area for the persons to be trained, the number of persons to be trained, plans for continuing education for training staffs and plans or arrangements, if any, for the utilization of trainees.

Regulations are now being developed to implement fully the home health services program. Applicants are advised to begin developing applications for submission by April 30, 1985, based upon the guidelines of this notice. Awards will be made in August 1985.

Consultation, technical assistance and additional information regarding applying for these funds are available from the appropriate HHS regional offices. Curriculum content information may be obtained in the document entitled: *A Model Curriculum and Teaching Guide for the Instruction of the Homemaker-Home Health Aide*, as published by the National Home Caring Council, 235 Park Avenue South, New York, N.Y. 10003, Telephone (212) 674-4990.

The Home Health program is listed as No. 13.888 in the OMB Catalog of Federal Domestic Assistance.

Dated: February 8, 1985.

Robert Graham, M.D.,

Administrator, Assistant Surgeon General.

Appendix

Regional Health Administrators

Edward J. Montminy, Regional Health Administrator, PHS-Region I, John F.

Kennedy Building, Boston, Massachusetts 02203, (617) 223–6827
Vivian Chang, M.D., Regional Health Administrator, PHS-Region II, 26 Federal Plaza Building, New York, New York 10007, (212) 264–2560
William Lassek, M.D., Regional Health Administrator, PHS-Region III, P.O. Box 13716, Philadelphia, Pennsylvania 19101, (215) 596–6637
George A. Reich, M.D., M.P.H., Regional Health Administrator, PHS-Region IV, 101 Marietta Tower, Atlanta, Georgia 30323, (404) 221–2316
E. Frank Ellis, M.D., Regional Health Administrator, PHS-Region V, 300 South Wacker Drive, Chicago, Illinois 60606, (312) 353–1385
Sam Bell, Regional Health Administrator, PHS-Region VI, 1200 Main Tower Building, Dallas, Texas 75202, (214) 767–3879
Youn Bock Rhee, Regional Health Administrator, PHS-Region VII, 601 East 12th Street, Kansas City, Missouri 64106, (816) 374–3291
Audrey Nora, M.D., Regional Health Administrator, PHS-Region VIII, 1961 Stout Street, Denver, Colorado 80294 (303) 844–6163
Sheridan L. Weinstein, M.D., Regional Health Administrator, PHS-Region IX, 50 United Nations Plaza, San Francisco, California 94102, (415) 556–5810
Dorothy H. Mann, Regional Health Administrator, PHS-Region X, 2901 Third Avenue, Seattle, Washington 98121, (206) 442–0430

[FR Doc. 85-3654 Filed 2-13-85; 8:45 am]
BILLING CODE 4160-16-M

Grant Application Cycles; Health Systems Agency Grants and State Health Planning and Development Agency Grants

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice Regarding Grant Application Cycles in Accordance with Intergovernmental Review Requirements.

SUMMARY: This Notice is issued in accordance with Executive Order 12372, Intergovernmental Review of Federal Programs as implemented by HHS in 45 CFR Part 100. The scheduled application due dates and funding dates for Health Systems Agencies (HSAs) and State Health Planning and Development Agencies (SHPDAs) are provided below to assist States and other entities within a State in determining the comment period as required under 45 CFR 100.

SUPPLEMENTARY INFORMATION: States which have selected these programs for review will have 60 days to complete their review. The 60-day comment period begins on the receipt date of the application in the HHS regional office, which is 90 days prior to the funding date. States should contact HSAs and SHPDAs if they do not receive applications approximately 90 days from the funding dates as shown.

Applicants should contact their State Governor's Office to determine if the State has selected the program for review and the procedures to be followed. Also, applicants are encouraged to discuss projects with, and provide copies of their applications to, State contact points as early as possible. At the latest, an applicant must provide the application to the State for review at the same time it is submitted to the regional office. If no State comments are received within the 60-day comment period, the applicant should notify the regional office.

The application submitted to the regional office must contain either State comments, if completed, or documentation indicating the date the application was submitted to the State for review. If not included with the application, State comments should be forwarded to both the applicant and the regional office. If comments are provided by the State, the applicant should submit those comments and its reaction to them to the regional office, and, if applicable, any revisions to the application. Regional offices will notify States if an application is received without an indication that it was submitted to the State for review.

All SHPDA applications are due in the regional office April 1, 1985 and have funding dates of July 1, 1985. The following is a list of the health systems agencies to be funded in Fiscal Year 1985 along with their application due dates and funding dates.

Health System Agencies	Application due date in regional office	Funding date
West Arkansas HSA, Russellville, AR	09/01/84	12/01/84
Delta-Hills HSA, Newport, AR	09/01/84	12/01/84
Central Arkansas HSA, Little Rock, AR	09/01/84	12/01/84
South Arkansas HSA, El Dorado, AR	09/01/84	12/01/84
Hlth. Plng. & Res. Dev. of Cen. Ohio River Valley, Inc. Cin. OH	10/13/84	02/01/85
Miami Valley HSA, Enon, OH (Dayton)	10/13/84	02/01/85
Health Systems Assoc., Lima, OH	10/13/84	02/01/85
N.W. Ohio Hlth. Plng., Inc., Toledo, OH	10/13/84	02/01/85
Scioto Valley HSA, Columbus, OH	10/13/84	02/01/85
Ohio Hills Hlth. Plng. Agency, Marietta, OH	10/13/84	02/01/85
Hlth. Plng. & Dev. Council, Millersville, OH	10/13/84	02/01/85
Community Hlth. Research Group, Akron, OH	10/13/84	02/01/85
Greater Cleveland Vol. Hlth. Plng. Assoc. Cleveland, OH	10/13/84	02/01/85
HSA of Eastern Ohio, Youngstown, OH	10/13/84	02/01/85
Southwest Illinois HSA, Belleville, IL	12/13/84	03/01/85
HSA of Southeastern Penn., Philadelphia PA	12/01/84	03/01/85
Alameda-Contra Costa HSA, Oakland, CA	12/02/84	03/02/85
East Central Georgia HSA, Augusta, GA	01/01/85	04/01/85
HSA of Northeast Kansas, Topeka, KS	01/01/85	04/01/85
HSA of Southeast Kansas, Wichita, KS	01/01/85	04/01/85
Central Maryland HSA, Baltimore, MD	01/01/85	04/01/85
Capital HSA, Durham, NC	01/01/85	04/01/85
New Mexico HSA, Oklahoma City, OK	01/01/85	04/01/85
Three Rivers HSA, Columbia, SC	01/01/85	04/01/85
Pee Dee HSA, Florence, SC	01/01/85	04/01/85
Palmetto-Lowcountry HSA, Summerville, SC	01/01/85	04/01/85
ARCHA HAS, Johnson City, TN	01/01/85	04/01/85
Northwestern Virginia HSA, Charlottesville, VA	01/01/85	04/01/85
HSA of South Central Conn., Woodbridge, CT	01/01/85	04/01/85
HSA of Eastern Conn., Norwich, CT	01/01/85	04/01/85
HSA of North Central Conn., Hartford, CT	01/01/85	04/01/85
Northwest Connecticut HSA, Waterbury, CT	01/01/85	04/01/85
Western Massachusetts HPC, West Springfield, MA	01/01/85	04/01/85
Merrimack Valley HPC, Lawrence, MA	01/01/85	04/01/85
HPC for Greater Boston, Boston, MA	01/01/85	04/01/85
North Shore HPC, Peabody, MA	01/01/85	04/01/85
Bergen-Passaic HSA, Hackensack, NJ	01/01/85	04/01/85
Regional HPC, Newark, NJ	01/01/85	04/01/85
Central Health Planning Council, Princeton, NJ	01/01/85	04/01/85
Fingerlakes HSA, Rochester, NY	01/01/85	04/01/85
HSA of Northeastern New York, Albany, NY	01/01/85	04/01/85
Hudson Valley HSA, Tuxedo, NY	01/01/85	04/01/85
HSA of New York City, New York, NY	01/01/85	04/01/85
Agassiz HSA, Grand Forks, ND	01/01/85	04/01/85
Southern New Jersey HSA, Bellmawr, NJ	01/30/85	04/30/85
North Central Georgia HSA, Atlanta, GA	02/01/85	05/01/85
Central Georgia HSA, Warner Robins, GA	02/01/85	05/01/85
Iowa HSA, Des Moines, IA	02/01/85	05/01/85
Clark County Health Coalition, Las Vegas, NV	02/01/85	05/01/85
Western North Carolina HSA, Morganton, NC	02/01/85	05/01/85
Piedmont HSA, Greensboro, NC	02/01/85	05/01/85
HSA of Northeastern Pennsylvania, Avoca, PA	02/01/85	05/01/85
Health Resources Plan. & Dev., Harrisburg, PA	02/01/85	05/01/85
East TN Health Improv. Council, Knoxville, TN	02/01/85	05/01/85
Northern Virginia HSA, Falls Church, VA	02/01/85	05/01/85
Southwest Virginia HSA, Roanoke, VA	02/01/85	05/01/85
Central Virginia HSA, Richmond, VA	02/01/85	05/01/85
Eastern Virginia HSA, Norfolk, VA	02/01/85	05/01/85
CHP of Northwest Illinois, Rockford, IL	02/01/85	05/01/85
East Central Illinois HSA, Champaign, IL	02/01/85	05/01/85
HSA for Kane, Lake and McHenry Counties, Cary, IL	02/01/85	05/01/85
Iowa-Illinois Health Allisnce, Davenport, IA	02/01/85	05/01/85

Health System Agencies	Application due date in regional office	Funding date
CHPC of Southeast Michigan, Detroit, MI	02/01/85	05/01/85
Michigan Mid-South HSA, Mason, MI	02/01/85	05/01/85
Southwest Michigan HSA, Kalamazoo, MI	02/01/85	05/01/85
West Michigan HSA, Grand Rapids, MI	02/01/85	05/01/85
Genesee, Lapeer & Shiawassee HSA, Flint, MI	02/01/85	05/01/85
East Central Michigan HSA, Saginaw, MI	02/01/85	05/01/85
Upper Peninsula HSA, Marquette, MI	02/01/85	05/01/85
Central Minnesota HSA, Sauk Rapids, MN	02/01/85	05/01/85
Southeastern Wisconsin HSA, Milwaukee, WI	02/01/85	05/01/85
Western Wisconsin HSA, Lacrosse, WI	02/01/85	05/01/85
Northwest Oregon HSA, Portland, OR	02/01/85	05/01/85
Puget Sound HSA, Seattle, WA	02/01/85	05/01/85
Southwest Washington HSA, Olympia, WA	02/01/85	05/01/85
Hudson HSA, Jersey City, NJ	02/17/85	05/17/85
Southern Piedmont HSA, Charlotte, NC	02/27/85	05/27/85
Central Arizona HSA, Phoenix, AZ	03/01/85	06/01/85
Navajo HSA, Window Rock, AZ	03/01/85	06/01/85
Northern California HSA, Chico, CA	03/01/85	06/01/85
Central California HSA, Visalia, CA	03/01/85	06/01/85
Appalachian Georgia HSA, Cartersville, GA	03/01/85	06/01/85
Southwestern Pennsylvania HSA, Pittsburgh, PA	03/01/85	06/01/85
SC Appalachian Health Council Greenville, SC	03/01/85	06/01/85
Middle Tennessee HSA, Nashville, TN	03/01/85	06/01/85
Western New York HSA, Buffalo, NY	03/01/85	06/01/85
Nassau-Suffolk HSA, Plainview, NY	03/01/85	06/01/85
Illinois Central HSA, Peoria, IL	03/01/85	06/01/85
West Central Illinois HSA, Springfield, IL	03/01/85	06/01/85
Commission for Health Planning, Chicago, IL	03/01/85	06/01/85
South Central Health Plan., & Dev., Anchorage, AK	03/01/85	06/01/85
HSA of Southeastern Arizona, Tucson, AZ	04/01/85	07/01/85
Golden Empire HSA, Sacramento, CA	04/01/85	07/01/85
Mid-Coast HSA, Salinas, CA	04/01/85	07/01/85
Ventura-Santa Barbara HSA, Ventura, CA	04/01/85	07/01/85
Delaware, HSA, Wilmington, DE	04/01/85	07/01/85
Montgomery Country HSA, Rockville, MD	04/01/85	07/01/85
Southern Maryland HSA, Clinton, MD	04/01/85	07/01/85
HPC of the Eastern Shore, Cambridge, MD	04/01/85	07/01/85
Cardinal Health Agency, Lumberton, NC	04/01/85	07/01/85
Central Pennsylvania HSA, Lewisburg, PA	04/01/85	07/01/85
Keystone HSA, Altoona, PA	04/01/85	07/01/85
Central Massachusetts HSA, Shrewsbury, MA	04/01/85	07/01/85
Southeastern Mass., HSA, Middleboro, MA	04/01/85	07/01/85
Vermont HSA, Waterbury, VT	04/01/85	07/01/85
Central New York HSA, Syracuse, NY	04/01/85	07/01/85
New York-Penn HSA, Binghamton, NY	04/01/85	07/01/85
Comprehensive Health Plan., Carbondale, IL	04/01/85	07/01/85
Northern Michigan HSA, Petoskey, MI	04/01/85	07/01/85
HSA of Western Lake Superior, Duluth, MN	04/01/85	07/01/85
Metropolitan Council, St. Paul, MN	04/01/85	07/01/85
Health Planning Council, Madison, WI	04/01/85	07/01/85
N. Central Health Planning Assoc., Wausau, WI	04/01/85	07/01/85
Southeast Colorado HSA, Colorado Springs, CO	04/01/85	07/01/85
Utah HSA, Salt Lake City, UT	04/01/85	07/01/85
MIN-OAK HSA Inc., Moorhead, MN	04/01/85	07/01/85
Idaho HSA Boise, ID	04/01/85	07/01/85
Eastern Oregon HAS, Redmond, OR	04/01/85	07/01/85
Central Washington HSA, Ellensburg, WA	04/01/85	07/01/85
Metropolitan Council, St. Paul, MN	04/01/85	07/01/85
Health Planning Council, Madison, WI	04/01/85	07/01/85
N. Central Health Planning Assoc., Wausau, WI	04/01/85	07/01/85
Southeast Colorado HSA, Colorado Springs, CO	04/01/85	07/01/85
Utah HSA, Salt Lake City, UT	04/01/85	07/01/85
Western Arizona HSA, Yuma, AZ	04/22/85	07/22/85
Health Resources Development Corp., Memphis, TN	05/01/85	08/01/85
Inland Counties HSA, Riverside, CA	05/01/85	08/01/85
Mississippi HSA, Jackson, MS	05/01/85	08/01/85
Minnesota HSA Six, Redwood Falls, MN	05/01/85	08/01/85
Montana HSA, Helena, MT	05/01/85	08/01/85
Southeast Alaska HSA, Ketchikan, AK	05/01/85	08/01/85
North Bay HSA, Petaluma, CA	06/01/85	09/01/85
Western Maryland HSA, Cumberland, MD	06/01/85	09/01/85
HSA of Eastern Pennsylvania, Allentown, PA	06/01/85	09/01/85
Northern Alaska HSA, Fairbanks, AK	06/01/85	09/01/85
Western Oregon HSA, Eugene, OR	06/01/85	09/01/85
Eastern Washington HSA, Spokane, WA	06/01/85	09/01/85
Suburban Cook/DuPage HSA, Oak Park, IL	06/13/85	09/13/85
Santa Clara HSA, San Jose, CA	06/21/85	09/21/85
Greater Nevada HSA, Reno, NV	06/23/85	09/23/85
HSA of San Diego & Imperial Counties, CA	06/24/85	09/24/85
North San Joaquin Valley HSA, Modesto, CA	06/28/85	09/28/85
Orange County HPC, Tustin, CA	06/29/85	09/29/85
Northern Arizona HSA, Flagstaff, AZ	07/01/85	10/01/85
Eastern Carolina HSA, Greenville, NC	07/01/85	10/1/85
Region IX HSA, Joliet, IL	07/01/85	10/01/85

FOR FURTHER INFORMATION CONTACT: Glenna Wilcom, Grants Management Officer, Office of Health Planning, 5600 Fishers Lane, Room 13A–56, Rockville, Maryland 20857, 301 443–6753.

Dated: February 8, 1985.

Robert Graham, M.D.,

Administrator, Assistant Surgeon General.

[FR Doc. 85–3657 Filed 2–13–85; 8:45 am]

BILLING CODE 4160–16–M

Public Health Service

Alcohol, Drug Abuse, and Mental Health Administration; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HM, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (39 FR 1654, January 11, 1974, as amended most recently at 48 FR 5601, February 7, 1983) is amended to reflect a transfer of the correspondence control function from the Office of Administration (HMH15), National Institute on Drug Abuse, to the Office of Policy Development and Implementation (HMH13). This transfer more closely allies the correspondence control function with responsibility in the Institute for liaison with Congress, other government agencies, and the public.

Section HM–B, Organization and Functions, is amended as follows:

(1) Under Office of Policy Development and Implementation (HMH13), delete the "and" before item (5), change the period to a semicolon after the last function and add a new function as follows: "and (6) provides correspondence control services for the Institute."

(2) Under Office of Administration (HMH15), insert an "and" before item (3), change the semicolon to a period after the third function, and delete function (4).

Dated: January 8, 1985.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

[FR Doc. 85–3739 Filed 2–13–85; 8:45 am]

BILLING CODE 4160–20–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

December 6, 1984.

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget desk officer, at (202) 395–7340.

Title

Competitive Oil and Gas and Geothermal Resources Lease Bid and Notice of Intent to Conduct Geothermal Resource Exploration Operations.

Abstract

Respondents supply information which will be used to determine the highest qualified bonus bid submitted for a competitive lease (Form 3000–2) and enable the Bureau of Land Management to complete environmental reviews in compliance with the National Environmental Policy Act of 1969 (Form 3200–9). The information supplied allows the Bureau of Land Management to determine whether a bidder is qualified to hold a lease and to conduct geothermal resource operation under the terms of the Mineral Leasing Act of 1920 and the Geothermal Steam Act of 1970.

Bureau Form Numbers: 3000–2 and 3200–9

Frequency: On Occasion

Description of Respondents: General public, small businesses, and oil companies.

Annual Responses: 450

Annual Burden Hours: 900

Bureau Clearance Officer: Evelyn Weeks (202) 653–8853

James M. Parker,

Associate Director.

[FR Doc. 85–3699 Filed 2–13–85; 8:45 am]

BILLING CODE 4310–84–M

[4–00164–ILM; M 62073(ND)]

Request for Public Comment on Fair Market Value and Maximum Economic Recovery; Emergency Coal Lease Application

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: On January 31, 1985, the Bureau of Land Management published notice FR Doc. 85–2513, Vol. 50, page 4601, in which the address of the public hearing was incorrectly stated. The correct address for the public hearing is 204 Sims Street (Second Floor), Dickinson, North Dakota.

Dated: February 7, 1985.

Dean Stepanek,

State Director.

[FR Doc. 85–3693 Filed 2–13–85; 8:45 am]

BILLING CODE 4310–84–M

[OR 35382]

Realty Action; Exchange of Public and Private Lands in Crook County, OR

The following described lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

T. 15 S., R. 16 E., W.M.,
Sec. 26 N½N½;
Sec. 28 N½NE¼.
T. 16 S., R. 16 E., W.M.,
Sec. 2 Lots 1, 3, 4, S½NW¼, SW¼, NW¼SE¼, S½SE¼;
Sec. 4 Lots 1, 2, 3, SE¼NE¼;
Sec. 10 SW¼NW¼;
Sec. 11 NE¼, E½SE¼;
Sec. 13 S½SE¼;
Sec. 14 SW¼NW¼.

Comprising 1,277.37 acres of public land.

In exchange for all or a portion of these lands, the United States will acquire the following described lands from Roberts Bay Recreation Group, Oregon, LTD.:

T. 16 S., R. 17 E., W.M.,
Sec. 35 E½SW¼, W½SE¼;
Sec. 36 All.
T. 17 S., R. 17 E., W.M.,
Sec. 1 Lots 1, 2, 4, SW¼NE¼, S½NW¼, E½SE¼;
Sec. 2 Lots 1, 2, 3, SW¼NE¼;
Sec. 12 SE¼NE¼, E½SE¼, SW¼SE¼.
T. 16 S., R. 18 E., W.M.,
Sec. 19 Lots 1, 2, 3, 4, E½W½;
Sec. 30 Lots 2, 3, 4, E½NW¼, NE¼SW¼.
T. 17 S., R. 18 E., W.M.,
Sec. 6 Lots 6, 7;
Sec. 7 Lots 1–4, E½, E½W½;
Sec. 8 W½W½;
Sec. 17 NW¼NW¼.

Comprising 1,805.12 acres of private land.

The purpose of this exchange is to acquire the non-Federal lands which have high public values for critical watershed to Prineville Reservoir, crucial mule deer winter range, recreation and livestock grazing. The public interest will be served by completing the exchange.

The values of the lands to be exchanged are approximately equal; full equalization of values will be achieved by adjusting the acres of public lands to be exchanged or by payment to the United States by Roberts Bay Recreation Group, Oregon, LTD. of funds in an amount not to exceed 25 percent of the total value of the lands to be transferred out of Federal ownership.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions:

(1) A reservation to the United States of a right-of-way for ditches and canals under the Act of August 30, 1890.

(2) A reservation to the United States of all minerals.

(3) Valid, existing rights including but not limited to any right-of-way or lease of record.

Publication of this notice segregates the described public land from appropriation under the public land laws including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, for a period of 2 years from the date of first publication.

Further information concerning the exchange, including the environmental assessment and land report is available for review at the Prineville District Office.

For a period of 45 days from the date of first publication, interested parties may submit comments to Prineville District Office, P.O. Box 550, Prineville, Oregon 97754.

Dated: February 7, 1985.

Gerald E. Magnuson,

District Manager.

[FR Doc. 85–3703 Filed 2–13–85; 8:45 am]

BILLING CODE 4310–33–M

[AA–2838 AK–965–5–00262; GP–5–037]

Amended Proposed Withdrawal Application and Opportunity for Public Meeting: Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice provides an opportunity for public comment pursuant to an amended proposed withdrawal and reservation of lands requested by the U.S. Air Force for 130 acres of land near King Salmon Airport, Alaska. The lands will be added to a withdrawal application received on May 6, 1968, and previously published in the **Federal Register.** The lands are presently withdrawn from all forms of appropriation as air navigation sites for use by the Federal Aviation Administration.

EFFECTIVE DATE: Date of publication; comments must be received on or before May 15, 1985.

ADDRESS: Comments and meeting requests should be sent to: Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

FOR FURTHER INFORMATION CONTACT: Mary Jane Clawson, Alaska State Office, (907) 271–5060.

On May 6, 1968, the Department of the Air Force filed an application (Anchorage Serial No. AA–2838) to withdraw, subject to valid existing rights, 1,481.25 acres of land from all forms of appropriation. The lands for the

original withdrawal application were described in a notice published in the issue of the **Federal Register** of June 15, 1968 (33 FR 8782–8783) and were amended in a correction published in the issue of August 1, 1969 (34 FR 12600). On July 18, 1984, the Department of the Air Force filed an application to amend and add to their proposed withdrawal the following described lands:

Seward Meridian, Alaska

T. 17 S., R. 45 W.
Sec. 24, S½N½SE¼SW¼, S½SE¼SW¼, SW¼SW¼SE¼;
Sec. 25, W½NW¼NE¼, W½NW¼SW¼NE¼, NE¼NW¼SW¼NE¼, SW¼SW¼SW¼NE¼, NE¼NW¼, N½SE¼NW¼.

The areas described aggregate 130 acres located near King Salmon Airport, Alaska.

The purpose of the proposed withdrawal is for operation of the King Salmon Airport Military Reservation and for defense purposes. These lands have been considered under section 3(e) of the Alaska Native Claims Settlement Act, and were reduced to the smallest practicable tracts enclosing lands actually used. Those lands which were determined not to be actually used, were approved for conveyance to Paug-Vik Incorporated, Limited. The lands described above are presently segregated from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, by Air Navigation Site Withdrawal No. 169 of October 15, 1941, as amended, and enlarged, for use as an air navigation facility.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled, or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are licenses, permits, cooperative agreements, or other discretionary land use authorizations of a temporary nature.

The temporary segregation of the lands in connection with a withdrawal application or proposal shall not affect administrative jurisdiction over the lands.

Mary Jane Clawson,
Chief, Branch of Lands.
[FR Doc. 85–3702 Filed 2–13–85; 8:45 am]
BILLING CODE 4310–JA–M

Cedar City District Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 92–463, that a meeting of the Cedar City District Advisory Council will be held March 12, 1985.

The meeting will begin at 9:30 a.m. at the BLM's Cedar City District Office, Cedar City, Utah. The agenda will include election of officers for 1985, Forest Service/BLM Interchange, wild horse roundup, Tar Sands EIS, planning update, fees for use of public lands, firewood program, and update on past agenda items.

All Advisory Council meetings are open to the public. Interested persons may make oral statements at 11:30 a.m. or may submit written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, P.O. Box 724, Cedar City, Utah 84720 by March 8, 1985. Depending on the number of persons wishing to make a statement, a per person time limit may be established by the District Manager or Council Chairman.

J. Kent Giles,
Acting District Manager.
February 8, 1985.
[FR Doc. 85–3766 Filed 2–13–85; 8:45 am]
BILLING CODE 4310–DQ–M

Montrose District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Montrose District Grazing Advisory Board Meeting Notice.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92–463 that the Montrose District Grazing Advisory Board will meet on March 11, 1985. The Board will convene at 10:00 a.m. in the conference room of the San Miguel Basin State Bank, East Grand Avenue, Norwood, Colorado. The business meeting will include the following topics:

1. Review District Policy on criteria for assigning priority expenditures to Rangeland Improvement proposals;
2. Update on the BLM/FS Interchange Program;
3. Update on the Montrose District Planning efforts;
4. Advisory Board expenditures for Range Improvement work;
5. Arrangements for the next meeting.

The meeting is open to the public. Anyone wishing to make an oral statement must notify the District Manager, BLM, 2465 South Townsend, Montrose, Colorado 81401 by March 8, 1985. Depending on the number of persons requesting time, a per person time limit may be established by the District Manager.

Summary minutes of the board meeting will be maintained in the District Office and be available for public inspection and reproductions (during regular business hours) within 30 days following the meeting.

Paul W. Arrasmith,
District Manager.
[FR Doc. 85–3767 Filed 2–13–85; 8:45 am]
BILLING CODE 4310–JB–M

Susanville District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting and Selection of Team Members; Susanville District Advisory Council, Susanville, California 96130.

SUMMARY: Notice is hereby given, in accordance with Pub. L. 94–579 (FLPMA), that a District Advisory Council meeting will be held on February 27, 1985 at 10:00 a.m. to 3:00 p.m. in the Susanville BLM District Office, 705 Hall Street, Susanville, California. The Council will be developing goals and objectives for a citizens advisory group which will be directed to solve some significant conflicts associated with development of facilities for motorcycle use in the Fort Sage Mountains east of Doyle, California.

The council will also finish selecting Team members.

The meeting is open to the public and time will be provided for public comment.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction within 30 days following the meeting.

C. Rex Cleary,
District Manager.

[FR Doc. 85-3763 Filed 2-13-85; 8:45 am]
BILLING CODE 4310-09-M

[5-22823-GP5-035; W-55519]

Wyoming; Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of Pub. L. 31-245 and Title 43 Code of Federal Regulations, § 3108.2-1(c), and Pub. L. 97-451, a petition for reinstatement of oil and gas lease W-55519 for lands in Fremont County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-55519 effective August 1, 1984, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,
Chief, Leasing Section.

[FR Doc. 85-3701 Filed 2-13-85; 8:45 am]
BILLING CODE 4310-22-M

Final Decision on Plan Amendment and Realty Action; Sale of Lands in San Juan County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Final Decision on Montezuma Plan Amendment and Notice of Realty Action for Sale of Public Lands in San Juan County, Utah; U-52797.

SUMMARY: Notice is given to the public that the Bureau of Land Management has made the final decision on the Montezuma Plan Amendment, San Juan Resource Area, which reclassifies the following described lands as suitable for disposal rather than suitable for retention for hunting purposes:

Legal Description	Acreage
T. 34 S., R. 24 E., SLBM; Section: SW¼SE¼, SE¼SW¼	80

A land use analysis determined that the parcel is suitable for disposal because it is an isolated parcel that is uneconomic to manage and would be more beneficial to the government to dispose of the parcel into private ownership.

Based on the plan amendment and field examination it has been determined that the 80 acres previously described is suitable for sale at no less than the appraised fair market value of $12,000.00 ($150.00 per acre) under the authority of section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713). The parcel will be divided and be offered at direct sale to the three adjacent landowners in accordance with 43 CFR 2711.3-3(a), as follows:

Tract 1: A 40 acre portion of the parcel described as the SE¼SW¼, to Suzanne A. Halliday; Tract 2: A 20 acre portion of the parcel described as the N½SW¼SE¼ to the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints; and Tract 3: A 20 acre portion of the parcel described as the S½SW¼SE¼, to William H. Gonzales.

All of the tracts are subject to the following:

1. All valid existing rights.
2. A reservation to the United States for all minerals, with right to mine and remove same under such regulation as the Secretary may prescribe.
3. A reservation for ditches and canals constructed by the authority of the United States. Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945; (1970)).
4. Those rights for County road purposes for County road #146 as have been granted to San Juan County, Utah, its successors or assigns by right-of-way U-53767 under the authority of R.S. 2477 (43 U.S.C. 932).

Additionally, tract 1 to Suzanne A. Halliday is subject to the following:

5. Those rights for road purposes as have been granted to William H. Gonzales, his successors or assigns by right-of-way U-53770 under the Act of October 21, 1976, as amended (90 Stat. 2776; 43 U.S.C. 1761).

The terms and conditions applicable to the sales are:

Prior to acceptance of any monies and issuance of any patents, archaeological mitigation will be performed in compliance with Section 106 of the Historic Preservation Act of 1966 (Pub. L. 89-665; 80 Stat. 915).

Upon acceptance by the Bureau of Land Management of the archaeological mitigation, each proponent will be required to submit an oral or a sealed bid at no less than the appraised fair market value for his/her designated tract. Such bid will be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Bureau of Land Management for not less than twenty (20) percent of the bid. The remainder of the full bid price will be submitted within 180 days of acceptance of the bid.

Dates: Protests on the plan amendment may be filed by adversely affected parties in accordance with 43 CFR 1610.5.2(a), until March 25, 1985.

Comments on the Notice of Realty Action may be filed in accordance with 43 CFR 2711.1-2(a) until April 10, 1985.

Addresses: Protests on the plan amendment should be sent to: Director, Bureau of Land Management, 18 and C Street NW., Washington, D.C. 20240.

Comments on the Notice of Realty Action should be sent to: District Manager, Bureau of Land Management, P.O. 970, Moab, Utah 84532.

Further information: Information on both the plan amendment and the sale is available from the Moab District Office, P.O. Box 970, Moab, Utah 84532, or the San Juan Resource Area, P.O. Box 7, Monticello, Utah 84535.

Kennety V. Rhea,
Acting District Manager.

February 7, 1985.

[FR Doc. 85-3700 Filed 2-13-85; 8:45 am]
BILLING CODE 4310-DQ-M

[N-33989; 5-00253]

Nevada; Conveyance

Notice is hereby given that, pursuant to the Act of October 21, 1976 (90 Stat. 2756; 43 U.S.C. 1716), Glaser Land & Livestock Company has received a patent for the following public lands in Elko County, Nevada:

Mount Diablo Meridian

T. 35 N., R. 57 E.,
Sec. 2;
Sec. 10, E½, E½W½, SW¼SW¼;
Sec. 12, N½, N½S½.
T. 36 N., R. 57 E.,
Secs. 4, 14, 16, 24, 26 and 36.
T. 38 N., R. 57 E.,
Sec. 16, NE¼, NE¼NW¼, W½W½, N½SE¼, SE¼SE¼;
Sec. 28, E½NE¼, W½NW¼, SE¼NW¼.
T. 35 N., R. 58 E.,
Sec. 6.
T. 36 N., R. 58 E.,
Secs. 18, 20 and 30;
Sec. 32, N½, W½SW¼, SE¼SW¼, E½SE¼.
Containing 9,241.73 acres.

The purpose of this notice is to inform the public and interested State and local governmental officials of the conveyance.

Marla B. Bohl,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-3758 Filed 2-13-85; 8:45 am]

BILLING CODE 4310-HC-M

Intent To Amend the East Mendocino Management Framework Plan and To Prepare a Wilderness Environmental Impact Statement for the Thatcher Ridge and Eden Valley—Middle Fork Eel River Wilderness Study Areas

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to 43 CFR 1610.2(c) and 40 CFR 1501.7 notice is hereby given that the Arcata Resource Area, Ukiah District, California will prepare an amendment to the East Mendocino Management Framework Plan (MFP). This amendment will identify issues and alternatives for preparation of an environmental impact statement of the wilderness recommendations for the Thatcher Ridge Wilderness Study Area (WSA) and the Eden Valley—Middle Fork Eel River WSA.

DATE: Scheduled for completion by June 1986 and the draft study report and the preliminary final environmental impact study for the two WSAs.

FOR FURTHER INFORMATION CONTACT: Earle G. Curran, Wilderness Coordinator, P.O. Box 940, 555 Leslie Street, Ukiah, California 95482, Telephone (707) 462-3873.

SUPPLEMENTARY INFORMATION: The two wilderness study areas are situated 135 miles north of San Francisco near the Mendocino National Forest. These two WSAs will be studied for wilderness suitability through this planning amendment process. An interdisciplinary team will prepare the amendment and environmental impact statement. Disciplines to be represented on the team include specialists in forestry, recreation, wildlife and fisheries, geology, soils, cultural resources, visual resources, and wilderness.

Alternatives to be analyzed are: (1) All wilderness, (2) no wilderness (no action) which is continued implementation of the East Mendocino MFP, as well as an array of feasible partial wilderness alternatives. The details of these alternatives will be developed further during the study process.

Opportunities for public participation will be announced through the media, a mailing list, and personal contact. A public hearing will be scheduled; the time, date and location of hearings or meetings will be announced through the media, the mail and the **Federal Register.**

Dated: February 6, 1985.

Van W. Manning,

District Manager.

[FR Doc. 85-3760 Filed 2-13-85; 8:45 am]

BILLING CODE 4310-84-M

[NM 27574; 5-00252-GP5-047]

New Mexico; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97-451, Union Oil Company of California and Belco Development Corporation petitioned for reinstatement of oil and gas lease NM 27574 covering the following described lands located in Lea County, New Mexico:

T. 19 S., R. 33 E., NMPM
Sec. 25: NW¼
Containing 160.00 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $5.00 per acre per year and royalties shall be at the rate of 16⅔ percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, June 1, 1984.

Dated February 6, 1985.

Monte G. Jordan,

Associate State Director.

[FR Doc. 85-3765 Filed 2-13-85; 8:45 am]

BILLING CODE 4310-FB-M

[24330; 5-00258-GPS-017]

Oil and Gas Lease; Colorado; Proposed Reinstatement

Notice is hereby given that a petition for reinstatement of oil and gas lease C-24330 for lands in Los Animas County, Colorado was timely filed and was accompanied by all the required rentals and royalties accruing from November 1, 1984, the date of termination.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the estimated cost of this **Federal Register** notice.

Having met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920, as amended, (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective November 1, 1984, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Karen Purvis of the Colorado State Office at (303) 294-7600.

Evelyn W. Axelson,

Chief, Mineral Leasing Section.

[FR Doc. 85-3764 Filed 2-13-85; 8:45 am]

BILLING CODE 4310-JB-M

Clear Lake Resource Area; Realty Action for Sale of Public Lands in Sonoma Count, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Sale of Public Lands, Amendment.

SUMMARY: This action amends the Notice of Realty Action originally published in the **Federal Register** on Wednesday, November 28, 1984 (49 FR 46812, November 28, 1984).

The correct legal description for CA-15341 is T. 8 N., R. 6 W., Section 32, SW¼SW¼.

These lands are hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action.

FOR FURTHER INFORMATION CONTACT: Cathie Dokken (707) 462-3873.

Van W. Manning,

District Manager, Ukiah.

[FR Doc. 85-3761 Filed 2-13-85; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Outer Continental Shelf; Development Operations Coordination Document; Huffco Petroleum Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Huffco Petroleum Corporation has submitted a DOCD describing the activities it proposes to conduct on

Lease OCS–G 1831, Block 206, High Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Galveston, Texas.

DATE: The subject DOCD was deemed submitted on February 4, 1985. Comments must be received within 15 days of the date of this notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: February 5, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–3757 Filed 2–13–85; 8:45 am]

BILLING CODE 4310–MR–M

Outer Continentals Shelf; Development Operations Coordination Document; Tenneco Oil Exploration and Production Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production Company has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 5599 and 5602, Blocks 100 and 111, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Fourchon, Louisiana.

DATE: The subject DOCD was deemed submitted on February 6, 1985. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: February 7, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–3759 Filed 2–13–85; 8:45 am]

BILLING CODE 4310–MR–M

Outer Continental Shelf; Development Operations Coordination Document; Mesa Petroleum Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Mesa Petroleum Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 2786, Block A–315, High Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Freeport, Texas.

DATE: The subject DOCD was deemed submitted on February 4, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production;

Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: February 4, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–3695 Filed 2–13–85; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than (ten days after publication). Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, Ms. Melita E. Yearwood, (202) 632–3378, IRM/PE, Room 708B, SA–12, Washington, D.C. 20523.

Date Submitted: February 5, 1985
Submitting Agency: Agency for International Development
OMB Number: 0412–0020
Form Number: AID 1450–4
Type of Submission: Extension
Title: Supplier's Certificate and Agreement with AID for Project Commodities/Invoice and Contract Abstract
Purpose: When AID is not a party to a contract which it finances, it must monitor those contracts to assure adherence to AID requirements. This information collection item enables AID to keep records of commodity expenditures for program management purposes and required reports. It also allows AID to measure the extent of small and minority business participation in the commodity program
Reviewer: Francine Picoult (202) 395–7231, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

Dated: February 5, 1985.

Fred D. Allen,

Planning and Evaluation Division.

[FR Doc. 85–3770 Filed 2–13–85; 8:45 am]

BILLING CODE 6116-01-M

Board for International Food and Agricultural Development Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the sixty-eighth meeting of the Board for International Food and Agricultural Development (BIFAD) on March 7, 1985.

The purpose of the meeting is to hear a presentation on a proposed Central American Regional University for the Human Tropics by Daniel Chaij, AID Mission Director for Costa Rica; receive and discuss reports on: the Joint Career Corps (JCC); activities and plans of the International Science and Education Council (ISEC); the Joint Committee on Agricultural Research and Development (JCARD); and "Private Sector Initiative—One Company's Perspective" by Milton Capps, manager of the Monsanto DIALOGUE project.

The meeting will begin at 9:00 a.m. and adjourn at 12:00 noon. The location for this meeting had not been determined at the time of publication of this notice. (Persons interested in attending the meeting should call John C. Rothberg, BIFAD staff, area code 202/632–7310.) The meeting is open to the public. Any interested person may attend, may file written statements with the Board before or after the meeting, or may present oral statements in accordance with procedures established by the Board, and to the extent the time available for the meeting permits.

Dr. Erven J. Long, Director, Research and University Relations, Bureau for Science and Technology, Agency for International Development, is designated as A.I.D. Advisory Committee Representative at this meeting. It is suggested that those desiring further information write to him in care of the Agency for International Development, International Development Cooperation Agency, Wshington, D.C. 20523, or telephone him at (703) 235–8929.

Dated: February 11, 1985.

Erven J. Long,

A.I.D. Advisory Committee Representative, Board for International Food and Agricultural Development.

[FR Doc. 85–3803 Filed 2–13–85; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–19; Sub-No. 101]

The Baltimore and Ohio Railroad Co.; Abandonment in Braxton County, NV; Findings

The Commission has issued a certificate authorizing The Baltimore and Ohio Railroad Company to abandon its 6.72-mile rail line between Gassaway (milepost 0.00) and Sutton (milepost 6.72) in Braxton County, NV. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 85–3761–Filed 2–13–85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–33; Sub-No. 27]

Union Pacific Railroad Co.; Abandonment in Buffalo, Custer and Dawson Counties, NE; Findings

The Commission has issued a certificate authorizing Union Pacific Railroad Company to abandon its 72.8-mile rail line between Riverdale (milepost 10.31) and Arnold (milepost 83.11) in Buffalo, Custer and Dawson Counties, NB. The abandonment certificate will become effective 30 days

after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 85-3752 filed 2-13-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30598]

Railroads; Carolina and Northwestern Railway Co. and Norfolk and Western Railway Co.; Lease Exemption; Danville and Western Railway Co. Exemption

Under a notice of exemption filed December 21, 1984, as amended January 17, 1985, Carolina and Northwestern Railway Company (CNW) and Norfolk and Western Railway Company (N&W) will lease and operate separate portions of the properties of Danville and Western Railway Company (DW).

CNW presently leases all of the properties of DW under an agreement dated July 1, 1951. That agreement will be cancelled and superceded by two new agreements. One agreement permits CNW to lease the lines of DW extending 48.46 miles between Danville, VA (m.p. 0.0-DW) and Eden, NC (m.p. 27.16-L) and between Leaksville Jct., VA (m.p. 19.7-DW) and a point east of Hill Top, VA (m.p. 41.0-DW). The other agreement permits N&W to lease the remaining DW trackage extending 7.6 miles between a point east of Hill Top, VA (m.p. 41.0-DW) and Fieldale, VA (m.p. 48.6-DW). The transaction is designed to achieve operating economies, increased labor productivity, coordination of agency functions, and decreased operation of light-density DW branch lines.

CNW and DW are wholly-owned subsidiaries of Southern Railway Company (Southern). In *Norfolk Southern Corporation—Control—Norfolk & W. Ry. Co.*, 366 I.C.C. 171 (1982), Southern and N&W, together with their subsidiary railroads, were consolidated. Therefore, CNW, DW, and N&W belong to the same corporate family, and the lease transaction falls within the categories of transactions in 49 CFR 1180.2(d)(3) that the Commission has declared exempt under 49 U.S.C. 10505. The two leases will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

As a condition to the use of this exemption, any rail employees affected by this transaction will be protected pursuant to *Mendocino Coast Ry., Inc.—Lease and Operate*, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980).[1]

Decided: February 7, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-3753 Filed 2-13-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. International Business Machines, Corp. and ROLM Corp.; Proposed Consent Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (a) and (b), the United States publishes below a comment it received from Data General Corporation on a proposed consent decree judgment in *United States v. International Business Machines Corporation and ROLM Corporation*, Civil No. 84-3508, United States District Court for the District of Columbia. There is no response of the United States to the comment.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

December 19, 1984

P. Terry Lubeck, Acting Chief,
Intellectual Property Section, Antitrust Division, 700 Safeway Building, U.S. Department of Justice, Washington, D.C.

Re: Proposed Judgment Concerning U.S. v. IMB and Rolm Corporation in the U.S. District Court for the District of Columbia

Dear Mr. Lubeck: We write to you to provide our comments concerning the proposed consent decree between the Justice Department and IBM which provides for the divestiture of the Mil-Spec Computer Division of Rolm Corporation. These comments are being submitted pursuant to the Antitrust Procedures and Penalties Act of 1974, 15 U.S.C. 16(d).

Data General supports the proposed consent decree as serving the public interest and upholding the goals of the antitrust laws by attempting to insure the continued viability of Rolm's Mil-Spec Computer Division, thus preserving competition in the marketplace.

As the Department of Justice has concluded, the mil-spec computer market is highly concentrated. In addition, there are substantial barriers to entry into this market. If IBM were permitted to retain direct or indirect control or an interest in Rolm's Mil-Spec Computer Division, or in any portion of the assets or technology thereof, competition would be substantially lessened to the detriment of the U.S. military, and to the country as a whole.

The proposed consent decree, in its present form is, therefore, essential for the preservation and protection of the integrity of this vitally important market sector.

As a supplier of highly proprietary and technical information to Rolm (Rolm licenses certain of Data General's computer program materials and computer designs, for example, for incorporation into its mil-spec computers), we possess a special interest in the instant proceedings. Since Data General's rights under agreements with Rolm will be impacted by a divestiture, we would urge that we be given an opportunity to contribute our insight in and to any divestiture proposal. This request is made based upon such special interest, and notwithstanding the fact we have communicated to IMB that Data General is an interested purchaser.

We stand ready to cooperate with and assist the Department of Justice in connection with this matter.

Very truly yours,

Jacob Frank,

Assistant Vice President & Director, Law Department.

[FR Doc. 85-3691 Filed 2-13-85; 8:45 am]

BILLING CODE 4410-01-M

Vertical Restraints Guidelines

Notice is hereby given that the Department of Justice is publishing the Vertical Restraints Guidelines. The Guidelines were issued by the Department on January 23, 1985. The Guidelines explain the enforcement policy of the U.S. Department of Justice concerning nonprice vertical restraints subject to sections 1 and 2 of the Sherman Act or section 3 of the Clayton Act. They set forth the general principles and specific standards used by the Department in analyzing the likely competitive effects of nonprice

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[1] The notice of exemption urges imposition of the labor protective conditions in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979). However, the Commission found in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino, supra*, that labor protective conditions of lesser scope than those in *New York Dock* should be imposed when trackage rights or leasing arrangements are involved.

vertical restraints. By stating its policy as simply and clearly as possible, the Department hopes to contribute to the orderly development of vertical restraints case law, and thereby help reduce the uncertainty associated with enforcement of the antitrust laws in this area.

Joseph H. Widmar,

Department of Justice Antitrust Division.

U.S. Department of Justice Vertical Restraints Guidelines

January 23, 1985.

1. Purpose of the Guidelines

These Guidelines explain the enforcement policy of the U.S. Department of Justice ("Department") concerning nonprice vertical restraints [1] subject to sections 1 and 2 of the Sherman Act [2] or section 3 of the Clayton Act.[3] They set forth the general principles and specific standards used by the Department in analyzing the likely competitive effects of nonprice vertical restraints.[4] By stating its policy as simply and clearly as possible, the Department hopes to contribute to the orderly development of vertical restraints case law, and thereby help reduce the uncertainty associated with enforcement of the antitrust laws in this area. A reduction in antitrust uncertainty should assist business planning and encourage the use of lawful vertical practices.

Vertical restraints are arrangements between firms operating at different levels of the manufacturing or distribution chain (for example, between a manufacturer and a wholesaler or a wholesaler and a retailer) that restrict the conditions under which firms may purchase, sell, or resell. Although vertical restraints can take a variety of forms, these Guidelines focus primarily on two major categories of restraints that may give rise to anticompetitive concerns:

Territorial and Customer Restraints—restrictions on the territory in which, or customers to which, a buyer is permitted to resell goods purchased from the seller including location clauses, areas of primary responsibility, and profit pass-over arrangements.

Exclusive Dealing Arrangements—requirements that a buyer deal only with particular seller or that a seller deal only with a particular buyer or group of buyers including exclusive distributorships, sole outlet provisions, and requirements contracts.

In addition, the Guidelines discuss separately a third category of vertical restraints, tying arrangements, which are requirements that the buyer of a product or service purchase a second, distinct product or service as a condition of purchasing the first.[5]

As the Supreme Court recognized in *Continental T.V., Inc.* v. *GTE Sylvania, Inc.*, 433 U.S. 36, 54–57 (1977), vertical restraints may promote competition by allowing a manufacturer to achieve efficiencies in the distribution of its products and by permitting firms to compete through different methods of distribution. In some cases, however, vertical restraints also may be used to facilitate collusion among competitors or to exclude rivals. Therefore, the legality of a vertical restraint in each case depends on its economic effect, assessed under a "rule-of-reason" standard.[6]

The courts have been applying the economic analysis required by *Sylvania* to the facts of particular cases before them, but the method of antitrust analysis in this area remains somewhat uncertain. As a result, businesses may be deterred from using procompetitive vertical practices by the prospect of long and costly litigation with unpredictable results. The economy is harmed when lawful, efficient conduct is avoided because of legal uncertainty. Conversely, the economy is harmed when vertical restraints, on balance, have an anticompetitive effect.

These Guidelines are intended to eliminate as much uncertainty as possible by describing relatively simple standards to analyze vertical restraints. Section 2 discusses the coverage of these Guidelines. Section 3 examines the most prominent procompetitive and anticompetitive effects of vertical restraints. Section 4 outlines the Department's two-step rule of reason analysis. In Step One, the Department uses a market power "screen" to identify cases in which the risk of competitive harm from a restraint is so insignificant that there is no need to inquire further. It should be emphasized that a restraint is not to be deemed somehow suspect merely because it is not screened out under Step One. Failure to be screened out under Step One simply means that more analysis is needed. In Step Two, the Department undertakes a more in-depth analysis, incorporating a variety of other factors to determine whether a restraint that was not screened out under Step One actually has anticompetitive effects. Section 5 deals with tying arrangements. Section 6 describes market definition principles used by the Department in analyzing vertical restraints.

2. Coverage of the Guidelines

The initial step in analyzing cooperative conduct involving several independent firms is to decide whether the activity falls into a category of conduct that is per se illegal. A restraint found to be in such a category is illegal regardless of its competitive effect.

The per se rule is a special aspect of rule of reason analysis. A restraint is per se unlawful if it has a "pernicious effect on competition and * * * lack[s] any redeeming virture." [7] For example, naked agreements among competitors to set prices are per se unlawful because they are almost certainly aimed at increasing price and restricting output and they are highy unlikely to offer plausible competitive benefits. More generally, a practice is per se unlawful if it appears highly likely that it will restrict the output of the collaborators or increase their price *and* there is no plausible procompetitive justification for the practice (i.e., there is no plausible argument that the practice actually increases efficiency and consumer welfare).[8]

The Supreme Court has made clear in several recent decisions that the per se rule may not be applied in situations where the conduct in question is reasonably necessary to achieve significant efficiencies or where the requisite "pernicious effect on competition" is absent.[9] The Court's

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[1] These Guidelines deal only with nonprice vertical restraints, which the Supreme Court has ruled are subject to a rule of reason analysis, and with tying arrangements. Resale price maintenance is not treated in these Guidelines. (See discussion of the distinction between price and nonprice restraints at section 2.4 *infra*.)

[2] 15 U.S.C. 1, 2 (1982). Section 1 prohibits "[e]very contract, combination, * * * or conspiracy in restraint of trade." Section 2 prohibits monopolization, attempts to monopolize, and combinations or conspiracies to monopolize any part of trade or commerce.

[3] 15 U.S.C. 14 (1982. Section 3 makes it unlawful to "lease or make a sale or contract for sale of * * * commodities * * * on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the * * * commodities of a competitor or competitors of the seller or lessor where the effect* * * may be to substantially lessen competition or tend to create a monopoly in any line of commerce."

[4] The standards by which the Department analyzes vertical mergers are set forth in U.S. Department of Justice, Merger Guidelines § 4.2.

[5] Tying arrangements are discussed in Section 5 of the Guidelines.

[6] For the somewhat different treatment applied to tying arrangements, see section 5 *infra*.

[7] *Northern Pac. Ry. v. U.S.*, 356 U.S. 1, 5 (1958).

[8] *See NCAA v. Board of Regents of University of Oklahoma*, 104 S. Ct. 2948 (1984).

[9] *NCAA v. Board of Regents of University of Oklahoma*, 104 S. Ct. 2948 (1984); *Broadcast Music, Inc. v. Columbia Broadcasting System*, 441 U.S. 1 (1979); *Continental T.V., Inc. v. GTE Sylvania, Inc.*, 443 U.S. 36 (1977); and *Northern Pac. R. Co. v. United States*, 356 U.S. 1, 5 (1958).

admonition against literal or blind application of per se rules is especially appropriate when dealing with vertical restraints, because experience and economic theory suggest that most nonprice vertical restraints do not "always or almost always tend to restrict competition and decrease output." [10]

By providing a relatively simple, easy-to-use analysis that can effectively distinguish truly anticompetitive vertical restraints from all others, these Guidelines should minimize the need to rely on per se rules in this area. These Guidelines should eliminate the need to classify potentially anticompetitive vertical restraints as per se violations of the antitrust laws because of a concern that it is so difficult, time-consuming, and costly to prove an antitrust violation under the alternative—a cumbersome and unfocused rule of reason. Thus, where there are doubts, characterization issues involving vertical restraints should be resolved in favor of a determination that the rule of reason, rather than the per se rule, applies.

2.1 Distinguishing Between Vertical Restraints and Horizontal Restraints

The appropriate focus of the antitrust laws should be the effect of restraints on competition among manufacturers of competing brands—interbrand competition—rather than their effect on competition among dealers of a single manufacturer's brands—intrabrand competition. The competitive consequences of restraints that affect interbrand competition are different from those that only affect intrabrand competition. Restraints on interbrand competition may have a significant negative impact on economic welfare. By contrast, vertical restraints that only affect intrabrand competition generally represent little anticompetitive threat and involve some form of economic integration between different levels of production or distribution that tend to create efficiencies.

Even though, in some cases, intrabrand restraints can be characterized as horizontal agreements because competing dealers act in concert, it is inappropriate to treat intrabrand agreements in the same manner that other horizontal agreements are treated. Such restraints can have no effect that could not also be obtained through the unilateral action of the manufacturer of the particular brands in question. An intrabrand agreement should not create the inference that a restraint is being "imposed" on a manufacturer. A manufacturer's dealers may be in a far better position than the manufacturer to observe shortcomings in the current method of distribution that reduce the ability of the manufacturer's brands to compete with other brands.[11] If a single manufacturer complies with a request of its dealers, the resulting restraint would be properly characterized as a vertical restraint imposed by the manufacturer.

The Department will not treat a restraint as horizontal merely because of communication among sellers of a single manufacturer's product. To establish that there is a horizontal agreement among manufacturers or among sellers of more than one manufacturer's brands, the antitrust analysis typically used to establish a horizontal conspiracy will be applied.[12] If, under normal antitrust principles, a restriction is found to be the result of an agreement among distributors of competing brands affecting competition among those brands or of an agreement among competing manufacturers, the agreement is more properly labeled as horizontal.

Vertical restraints adopted as a result of agreement among firms in interbrand competition are far more likely to harm competition than those adopted unilaterally and therefore merit close scrutiny without regard to the structural criteria of the screens below. The Department also will carefully examine any agreements not to purchase from or sell to any particular person or type of person among sellers at the same level of distribution. For example, if several retailers agree among themselves not to carry the products of certain manufacturers, the Department will not apply the Step One screens below. Such agreements may be used to foreclose competitors and may have no efficiency justifications.

2.2 Dual Distribution

Some companies choose total vertical integration into distribution rather than reliance on contracts with independent distributors, and, in such cases, vertical integration may well be more efficient and lead to lower prices to consumers. Among possible savings from such vertical integration are more efficient planning, lower transaction costs, better control over performance, quicker implementation of marketing innovations, and better access to market information. Other companies may choose to integrate partially, making some of their sales directly while making other sales indirectly through independent dealers. Such variety in distribution may enable the companies to realize the efficiencies of vertical integration (for example, in dealing with large customers or special orders), while taking advantage of independent distributors in other circumstances (for example, in dealing with smaller customers or ones in more remote geographic areas). "Dual distribution" refers to suppliers' practice of selling to final consumers both directly and through independent dealers.

Situations involving dual distribution have sometimes erroneously been characterized as horizontal, and subjected to a per se analysis, because the supplier also acts as dealer. However, the fact that a supplier also engages in distribution does not make a restraint "horizontal." Accordingly, vertical restraints involving dual distribution will be analyzed in the same manner as other vertical restraints as outlined in section 4 of these Guidelines, except that the existence of dual distribution affects the calculation of the market structure screen set forth in section 4.1.[13]

2.3 Distinguishing Between Price and Nonprice Restraints

For many years resale price maintenance has been held to be illegal per se, and so these Guidelines do not apply to resale price maintenance. All vertical restraints, however, even those that result in substantial procompetitive benefits, may have some effect on price. Therefore, it is important to avoid characterizing a particular restraint as resale price maintenance merely because it may have an effect on price. Before characterizing a practice as a price restraint subject to per se condemnation, there must be an agreement between a supplier and its distributors as to resale prices. Thus, if a supplier adopts a bona fide distribution program embodying nonprice restraints, these Guidelines will apply *unless* there is direct or circumstantial evidence (other than effects on price) establishing an explicit agreement as to the specific

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[10] *Broadcast Music Inc. v. Columbia Broadcasting System*, 441 U.S. 1, 19-20 (1979).

[11] *See Monsanto Co. v. Spray-Rite Service Corp.*, 104 S. Ct. 1464, 1470 (1984). The Court in *GTE Sylvania* recognized that "[t]here may be occassional problems in differentiating vertical restrictions from horizontal restrictions originating in agreements among the retailers." 433 U.S. 36, 58 n.28. The Court did not regard this difficulty as sufficient justification for a per se rule against vertical nonprice restraints. *Id.*

[12] *See, e.g., First Nat'l Bank v. Cities Serv. Co.*, 391 U.S. 253, 288-90 (1968).

[13] *See* note 27, *infra*. Thus, vertical integration in itself does not raise an antitrust problem unless there is a violation of section 7 of the Clayton Act. *See* Merger Guidelines § 4.2

prices at which goods or services would be resold.

Further, in accordance with *Eastern Scientific Co. v. Wild Heerbrugg Instruments, Inc.*, 572 F.2d 883 (1st Cir.), *cert. denied*, 439 U.S. 833 (1978), if a supplier adopts a bona fide distribution program embodying both nonprice and price restrictions, the Department will analyze the entire program under the rule of reason if the nonprice retraints are plausibly designed to create efficiencies and if the price restraint is merely ancillary to the nonprice restraints.

2.4 Restrictions in Intellectual Property Licenses

These Guidelines also do not apply to restrictions in licenses of intellectual property (e.g., patent, a copyright, trade secret, and know-how). Such restrictions often are essential to ensure that new technology realizes its maximum legitimate return and benefits consumers as quickly and efficiently as possible. Moreover, intellectual property licenses often involve the coordination of complementary, not competing, inputs. Thus, a rule of reason analysis is appropriate. Unless restrictions in intellectual property licenses involve naked restraints of trade unrelated to development of the intellectual property, or are used to coordinate a cartel among the owners of competing intellectual properties, or suppress the creation or development of competing intellectual properties, the restrictions should not be condemned. However, because the anticompetitive risks and the procompetitive benefits of restrictions in licenses are somewhat different from the potential of typical vertical restraints, the rule of reason analysis may also differ from (and be even more lenient than) that set out in these Guidelines.

2.5 Vertical Restraints that are Always Legal

Certain types of vertical restraints are widely recognized as legal, and are subject to very little antitrust uncertainty. For example, manufacturers may lawfully choose to deal through a limited number of outlets—so-called "selective distribution"—and their mere refusal to sell through other outlets is clearly proper.[14] Moreover, arrangements under which a manufacturer assigns areas of "primary responsibility" to a dealer without imposing absolute territorial limits generally have been upheld by the courts.[15] Likewise, "location clauses," establishing or restricting the outlets from which dealers can sell, have been consistently upheld.[16] Finally, "profit passover" arrangements, whereby a dealer is required to compensate other dealers for sales made in their territories, have been approved, especially where such arrangements are reasonably related to reimbursing dealers for their advertising, promotional, and post-sale servicing efforts.[17] Because these forms of vertical restraints pose negligible anticompetitive risks and have significant potential to enhance efficiency, these Guidelines are not intended to cast doubt on the legality of these forms of vertical restraints and do not apply to them. The Guidelines are directed instead at those airtight vertical restraints (territorial and customer restraints and exclusive dealing arrangements) the legal status of which remains somewhat uncertain.[18]

3. Procompetitive and Anticompetitive Effects of Vertical Restraints

Vertical restraints exist in a variety of forms and combinations and may produce a variety of competitive effects. This section of the Guidelines examines some of the more prominent procompetitive and anticompetitive effects of vertical restraints.

3.1 Procompetitive Effects of Vertical Restraints

In recent years, there has been increased recognition of the procompetitive functions performed by vertical restraints. The following discussion highlights those functions that generally are regarded as the most significant. It is not intended, however, to be an exhaustive list of efficiency-enhancing functions that vertical practices may serve or that should be considered in evaluating the competitive effect of a particular restraint.[19]

First, and perhaps most important, vertical restraints that limit the number of outlets may lower distribution costs by enabling each distributor to obtain scale economies, to spread such fixed costs as facilities and training of service personnel over a higher volume of sales, and thus to lower the cost of distributing a product. Second, restraints such as exclusive distribution may facilitate entry of a new producer into a market by enabling distributors to recover initial market development costs. Third, limiting the number of distribution outlets may be the most efficient method of insuring the provision of pre-sale demonstration and other informational services that consumers want and that are necessary to effective marketing of a technically complex product. In those circumstances, in the absence of vertical restraints a dealer may invest too little in such services because other dealers that do not provide the services may 'free ride' on the services that the dealer has provided. By reducing the threat of free-riding, vertical restraints may enable a dealer to capture a significant fraction of the increase in total demand that is generated by his investment in informational services and, therefore, encourage dealers to expend the effort required to provide those services. Fourth, vertical restraints, such as exclusive dealerships, may allow a supplier to protect its investment in services provided to dealers (e.g., advertising) by preventing dealers from using those services to sell the goods of other suppliers. Fifth, vertical restraints—for example, requirements contracts—may permit firms to allocate costs or risks among themselves in a manner that may permit the accomplishment of transactions that otherwise would be impossible or at

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[14] *Monsanto Co. v. Spray-Rite Service Corp.*, 104 S. Ct. 1464 (1984).

[15] *See, e.g., Kestenbaum v. Falstaff Brewing Corp.*, 575 F.2d 564, 572–73 (5th Cir. 1978), *cert. denied*, 440 U.S. 909 (1979); *Santa Clara Valley Distrib. Co. v. Pabst Brewing Co.*, 556 F.2d 942 (9th Cir. 1977); and other cases cited at ABA Antitrust Section, *Antitrust Law Developments* 73–74 n.495 (2d ed. 1984).

[16] *See, e.g., GTE Sylvania, Inc. v. Continental T.V., Inc.*, 537 F.2d 980 (9th Circ. 1976) (en banc), *aff'd*, 433 U.S. 36 (1977), *on remand*, 461 F. Supp. 1046 (N.D. Cal. 1978), *aff'd*, 684 F.2d 1132 (9th Cir. 1982) (summary judgment for defendant); *Golden Gate Acceptance Corp. v. General Motors Corp.*, 597 F.2d 676 (9th Cir. 1979) (summary judgment for defendant); and other cases cited at *Antitrust Law Developments, supra* note 16, at 73 n.491.

[17] *See United States v. Arnold, Schwinn & Co.*, 291 F. Supp. 564 (N.D. Ill. 1968), *vacated*, 442 F. Supp. 1366 (N.D. Ill. (1977) (profit passover permitted in final judgment). *Compare Superior Bedding Co. v. Serta Assoc., Inc.*, 353 F. Supp. 1143, 1150–51 (N.D. Ill. 1972) (seven percent passover fee based on gross sales paid to licensees in whose territory sales were made to compensate for advertising and sales expense by that licensee upheld) *with Eiberger v. Sony Corp. of Am.*, 622 F.2d 1068, 1076–81 (2d Cir. 1980) (warranty fee passover unreasonable when it was designed to penalize extraterritorial sales and impede intrabrand competition without enhancing interbrand competition).

[18] Airtight territorial and customer restraints impose restrictions on the territory in which, or the customers to whom, a buyer is permitted to resell goods. Similarly, airtight exclusive dealing arrangements explicitly limit the sellers with whom a buyer may deal, or the buyers to whom a seller may sell.

[19] The reason that a particular restraint is successful in increasing consumer welfare may not be clear until long after the restraint is first used. For that reason, the antitrust laws should not deter business from experimenting with vertical practices that do not pose a substantial anticompetitive risk simply because the practices' procompetitive benefits are unclear.

least much less feasible. Finally, vertical restraints can improve product quality and safety and reduce transactions costs in numerous circumstances.

3.2 Anticompetitive Effects of Vertical Restraints

Although vertical restraints generally have a procompetitive or competitively neutral effect, in some cases they may facilitate collusion among competitors or may be used by one or more competitors to exclude their rivals. This Section describes the minimal market structure conditions that must exist before it is plausible that vertical restraints have such anticompetitive effects.

3.21 Facilitating Collusion

Vertical restraints may be used to facilitate collusion among dealers of different suppliers.

For example, dealers may induce all or almost all suppliers of a product to award exclusive territories. This could facilitate collusion among dealers by limiting the number of dealers that must agree to fix prices or restrict output and by protecting colluding dealers within a geographic market from the threat of outside competition in response to supracompetitive prices. In addition, suppliers copuld police the cartel by replacing uncooperative dealers.

In addition, suppliers may be able to use vertical restraints to facilitate a collusive scheme of their own. In particular, suppliers may attempt to facilitate collusion among dealers where: (i) Direct collusion among suppliers is impractical or more costly that collusion among dealers, and (ii) suppliers can share in the dealers' supracompetitive profits. Unless both of these conditions are met, it would not be in the ecomomic interest of a supplier to foster the development of market power among its dealers.

Vertical restraints are likely to facilitate collusion only if (after the imposition of the restraints) relatively few dealers account for most sales of the product in the geographic area, relatively few suppliers account for most of the sales in the geographic area, and the practice is widely used by large suppliers in the geographic area. Facilitation of collusion through the use of vertical restraints is unlikely unless the level of the market that instigates the restraints (the "primary market") is relatively highly concentrated (prior to the imposition of the restraints). If the primary market is unconcentrated, the coordination and policing of the competitors' conduct will be very costly, if not impossible, in the absence of an explicit agreement among the competitors.[20] In addition, if the combined market share of the firms in the other market (the "secondary market") is small, the practice is unlikely to facilitate collusion because it is unlikely significantly to increase the effective level of market concentration in the secondary market. Finally, vertical restraints are unlikely to facilitate successful collusion unless entry into the primary market is difficult. If entry is easy, new competitors would quickly enter and undercut attempted collusion.

Thus, vertical restraints are unlikely to facilitate collusion unless three market conditions are met:

(1) Concentration is high in the primary market;

(2) The firms in the secondary market using the restraint account for a large portion of sales in that market; and

(3) Entry into the primary market is difficult.

3.22 Excluding Rivals

It is also possible that vertical restraints—particularly, exclusive dealing—may have the effect of excluding rivals by prohibitively raising either their cost of a vital input or their cost of distribution. For example, in the case of exclusive dealing, a supplier (or group of suppliers acting independently) may require that its dealers not deal in the goods of competing suppliers. This would force rival suppliers either to secure alternative independent dealer outlets or to integrate vertically into distribution. If these two alternatives are much more costly than dealing with the "foreclosed" dealers would have been,[21] rivals of the supplier may be prevented from entering the market or from expanding output, or may be forced to exit the market.[22]

Alternatively, a firm (or firms) at any stage of the manufacturing or distribution chain may enter into long-term exclusive contracts for the supply of a vital input, leaving little or no present production of the input for new entrants or fringe firms. In the short run, a rival firm would be unable to obtain a sufficient amount of the input to allow it to operate at minimum efficient scale, or would be required to use more costly substitutes. Over the long run, a rival firm either would have to enter into the production of the input itself, operate at a suboptimal scale or use more costly inputs until the exclusive contracts with existing firms expire, or rely on new entry into production of the input by others. If these three alternatives are significantly more costly than dealing with the "foreclosed" suppliers would have been, rival firms may be prevented from entering the market or from expanding output, or may be forced to exit the market.

An exclusive dealing arrangement is unlikely to be used to exclude rivals unless it has two characteristics: (a) It must significantly raise rivals' costs of gaining access to an input or to distribution facilities, and (b) if the restraint raises a firm's own costs, the firm (or firms) employing this restraint must be able to collect a sufficiently large return from the practice to offset the increase in its (or their) costs caused by the restraint.

In turn, for exclusive dealing to facilitate anticompetitive exclusion, the following market conditions normally must be met:

(1) The "nonforeclosed market" is concentrated and leading firms in the market use the restraint;

(2) The firms subject to the restraint control a large share of the "foreclosed market"; and

(3) Entry into the "foreclosed market" is difficult.

Anticompetitive exclusion is not likely to result from exclusive dealing arrangements if any of these conditions is absent. If the firms in the "nonforeclosed market" using the restraint are small and numerous, they cannot, on an individual basis, foreclose a great deal of the market, or raise their rivals' costs by more than their own (condition one). Furthermore, foreclosing inputs or distribution facilities would present no problem to a firm seeking to expand in or enter into the output market if it could easily enter into the "foreclosed market" itself or count on entry by other firms in response to the increased demand for input production or distribution facilities (condition three). If the restraint does not affect all or a large share of the "foreclosed market," firms can use remaining available capacity (condition two). For example, rivals are unlikely to be foreclosed if a firm signs all of its dealers to exclusive dealing contracts, but its dealers represent only a small proportion of the dealers in the geographic market.

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[20] If the Department has evidence of such an agreement, it will scrutinize the agreement under normal antitrust principles discussed in Section 2 and will not apply the Step One market structure screen discussed in Section 4.

[21] These Guidelines are not intended to penalize firms that develop very efficient distribution systems that make distribution less costly because of, for example, superior management.

[22] While vertical restraints may only delay entry, and not block it entirely, the delay may be significant enough to warrant antitrust action. The relevant question is whether entry is delayed for a period that is sufficiently long to affect consumer welfare significantly.

3.3 Vertical Restraints and Regulated Industries

Industries that have entry or rates reglated (such as energy, communications, and transportation) may be subject to competitive distortions that alter the normal economic effects of various business practices, including vertical restraints. Accordingly, the Department may be required to apply a somewhat different analysis to vertical restraints in industries that have entry or rates regulated.

4. Competitive Analysis of Vertical Restraints

The Department employs a two-step process to analyze vertical restraints. First, it takes a "quick look" in order to screen out particular restrictions that are extremely unlikely to have any anticompetitive consequences. It does this by roughly defining markets [23] and then applying a simple "market structure screen" against which firms using restraints are evaluated. Uses of vertical restraints that pass muster under this screen, because the firms using the restraints have small market shares, because the restraints are not widely used, or because the restraints are used in markets too unconcentrated for the exercise of market power, are not subjected to further scrutiny. Step One's reliance on easy-to-apply market definitions and rules of thumb is designed to encourage its use by the courts and by private parties and thereby to facilitate the use of restraints that clearly pose no threat to competition.

Uses of vertical restraints that are not "screened out" in Step One are examined more closely by the Department. (Because even though vertical restraints not "screened out" in step One are unlikely to have anticompetitive effects, a restraint is not deemed suspect merely because it is not screened out under Step One.) In Step Two, the Department will more carefully delineate the markets in which the restraints operate and then will assess ease of entry, concentration levels, and other factors bearing on the likelihood that market power can be exercised. This "structured rule of reason" identifies those restraints that are likely to have anticompetitive consequences.

4.1 Step One: Market Structure Screen

After having defined product and geographic markets, the Department will employ a "market structure screen" in order to eliminate from further consideration those restraints that, in all likelihood, have no anticompetitive effects. Uses of vertical restraints by firms with small market shares, those restraints operating in unconcentrated markets, and of those that do not cover a substantial percentage of the sales or capacity in the secondary (foreclosed) market, are unlikely effectively to facilitate collusion or to foreclose competitors from the market. Accordingly, if a firm has a very low market share or operates in a market that is unconcentrated or that is not covered extensively by the restraint, it normally cannot use vertical restraints to accomplish an anticompetitive effect, and its use of such restraints will not be challenged.[24]

The Department will employ the following screen in evaluating territorial and customer restrictions and exclusive dealing arrangements. The use of a vertical restraint by a particular firm will not be challenged if:

(1) The firm employing the restraint has a share of the relevant market of 10 percent or less; or

(2) The VRI [25] is under 1,200 and the coverage ratio [26] is below 60 percent in the same (e.g., supplier or dealer) relevant market; or

(3) The VRI is under 1,200 in both relevant markets; or

(4) The coverage ratio is below 60 percent in both relevant markets.

In short, this screen provides four alternative tests that can be applied by a firm considering using a restraint. If any one of the tests is satisfied, the Department will not challenge the use of the restraint in question.[27]

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[23] Market definition is discussed *infra* in Section 6. The Department employs this market definition framework at both stages of its two-step process for analyzing restraints. Under the first step, the Department roughly applies the framework and assesses the class of products subject to a restraint and the geographic area in which firms using a restraint face significant competition. If a restraint is not "screened out" under Step One, the Department will delineate the market more carefully and painstakingly before subjecting the restraint to further scrutiny under Step Two If the boundaries of the market are immediately apparent—as may often be the case—little or no market definition "fine tuning" may be needed prior to the second step of the analysis.

[24] It should be emphasized, however, that horizontal agreements among competitors are not legalized because the firms involved are small or the markets they operate in are unconcentrated.

[25] The Vertical Restraints Index (VRI) is calculated by squaring the market share of each firm in the market that is a party to a contract or other arrangement that contains the vertical restraint and then summing the values obtained for firms at the same level of operations. For example, if only two firms in a dealer market employ a restraint, one with a 5 percent and one with a 20 percent market share, the dealer market VRI equals $5^2 + 20^2 = 25 + 400 = 425$. If four suppliers, each with a 25 percent market share employ a restraint, the supplier market VRI equals $25^2 + 25^2 + 25^2 + 25^2 = 625 + 625 + 625 + 625 = 2{,}500$. If all firms in the relevant market use the restraint, the VRI is equal to the HHI used in merger analysis. (*See* Merger Guidelines § 3.) The maximum possible value of the VRI is 10,000, achieved when there is only one firm in a market and that firm employs a vertical restraint. The VRI reflects both the distribution of the market shares of firms using a vertical restraint and the extent to which it is used in the relevant market.

[26] The coverage ratio is the percent of each market involved in a restraint. For example, if 10 suppliers with 5 percent market shares each employ a restraint, the coverage ratio equals 50 percent. The coverage ratio also would equal 50 percent if two 25 percent suppliers (or one 50 percent supplier) used a restraint. In computing the coverage ratio, several problems present themselves. In computing the coverage ratio for the upstream market (e.g., manufacturing if the two markets under consideration are manufacturing and retailing), it frequently is necessary to use shares that are different from those that would be used in merger analysis. The upstream market (e.g., national manufacturing) frequently will have a much greater geographic scope than the downstream market (e.g. local retailing). In such situations, the appropriate market shares for use in computing the coverage ratio in the upstream market are those for sales to firms in the relevant retailing market. Such shares would be used in merger analysis only if price discrimination against that locality were possible. *See* Merger Guidelines § 2.33.

In computing the coverage ratio for the downstream market, it is appropriate to make important distinctions according to whether the potential competitive problem is collusion or exclusion. If collusion is the potential problem, the issue is whether the restraints affect a significant proportion of actual sales. Thus, the relevant market should be delineated and market shares should be calculated under the assumption that the restraint is in place, and shares should be measured on the basis of sales or shipments. If exclusion is the potential problem, the extent to which capacity is foreclosed is the issue. Thus, markets should be delineated and shares should be calculated under the assumption that the restraint is *not* in place, and, ideally, shares should be measured on the basis of capacity. Unfortunately, at this stage of the analysis, it generally is not possible to determine whether collusion or exclusion is the potential competitive problem. Therefore, the Department will adopt in Step One whatever approach to market delineation and share measurement produces the largest coverage ratio. In Step Two, a more refined analysis will be conducted if necessary.

Measuring shares in retailing on the basis of capacity may be extremely difficult, particularly with the information likely to be available at early stages of an investigation. As a proxy, the Department may use the number of retailing outlets owned or controlled by a firm in the relevant geographic area as the basis for computing its market share.

[27] The screen is applied separately for each vertical practice. There often will be a range of similar practices that are likely to have similar effects on facilitating collusion or exclusion. Very similar practices will be considered the same practice for purposes of applying the screen. Vertically integrated firms will be included in the relevant markets for purposes of doing the required calculations and assumed to be using the practice in question. Partially integrated firms will be assumed to be using the practice in question to the extent that they transfer products internally rather than buying or selling in the market.

The first part of the screen provides a safe harbor for the use of vertical restraints by any firm having ten percent of less of the market at its level of distribution. Firms with such small shares do not posses market power individually, and are unlikely to be prominent in any cartel, in any agreement to facilitate a cartel, or in any exclusionary scheme. Usually, a cartel or exclusionary scheme requires that firms having far larger market shares employ restraints, and they, rather than small firms, merit the closest scrutiny. Of course, if there is evidence that a small firm employing restraints is part of an illegal cartel among direct competitors, the Department will not hesitate to investigate its activities.

The second, third, and fourth tests identify situations in which neither collusion nor anticompetitive exclusion is plausible. As previously explained, it is highly unlikely that vertical restraints will be used to facilitate collusion unless the primary market is concentrated and the practice is widely used by leading firms. Moreover, for a vertical restraint to facilitate collusion, the practice must be applied to firms accounting for a large percentage of the secondary market. Furthermore, it is unlikely that vertical restraints will be used to exclude rivals unless leading firms in one market are parties to exclusive dealing and these firms control a large share of the second, "foreclosed" market.

The second test deems vertical restraints legal if either market fails to satisfy the conditions for the primary (nonforeclosed) or secondary (foreclosed) market that are necessary for an anticompetitive effect. For an anticompetitive effect to be plausible, the primary (nonforeclosed) market would have to be at least moderately concentrated and firms employing the restraint would have to account for a large share of the market (i.e., the VRI would have to exceed 1200).[28] For an anticompetitive effect to be plausible, a substantial portion of the secondary (foreclosed) market also would have to be subject to the restraint (i.e., the coverage ratio would have to exceed 60). The third test treats the use of restraints as legal if both markets are unconcentrated or the restraint is not used by the leading firms (i.e., if both markets have a VRI below 1,200) because neither market could be a primary (nonforeclosed) market in which an anticompetitive effect is plausible under these circumstances. The fourth test provides that restraints will not be further scrutinized if substantial portions of both markets are not subject to restraint. Under such market conditions, neither market satisfies the condition in the secondary (foreclosed) market necessary for a restraint plausibly to have an anticompetitive effect.

The Step One screen allows firms to employ the information that is most accessible to them in determining how the Department will assess their restraints. This should encourage the use of procompetitive restraints by making it as simple as possible to decide whether a restraint will be subject to close Departmental scrutiny. Small firms can rely on the first test, and need not concern themselves with market structure. Firms that only have information on one market can use the second test. Firms that have information either on market concentration or on the share of the market under restraint—but not both—can apply the third or fourth test.

Four examples illustrate how the Department's screen will be applied.

Example One. Two suppliers with 8 percent market shares and two dealers with 9 percent market shares employ vertical restraints. Applying the first test, the Department will not challenge the use of vertical restraints by these firms.

Example Two. Two suppliers with 20 percent market shares and one supplier with a 10 percent market share employ territorial and customer restrictions. The supplier market VRI = $20^2 + 20^2 + 10^2 = 400 + 400 + 100 = 900$. Fifty percent of the supplier market is subject to restraint. Applying the second test, the Department will not challenge these vertical restraints.

Example Three. Five suppliers with 15 percent market shares and three dealers with 19 percent market shares are subject to territorial and customer restrictions. The dealer level VRI = $19^2 + 19^2 + 19^2 = 361 + 361 + 361 = 1,083$.

The supplier level VRI = $15^2 + 15^2 + 15^2 + 15^2 + 15^2 = 225 + 225 + 225 + 225 + 225 = 1,125$. Applying the third test, the Department will not further scrutinize these restraints.

Example Four. Fifty percent of the supplier market and 55 percent of the capacity in the dealer market are subject to exclusive dealing restrictions. Applying the fourth test, the Department will not further scrutinize these restraints.

The Department recognizes that a national manufacturer (or national distributor) operating in a large number of local markets may be concerned about whether it satisfies the Step One screen in each individual market. It should be emphasizd that the Department will *not* further scrutinize a firm's entire network of restraints merely because a restraint fails to pass the Step One screen in a small number of markets. Rather, the Department will only further examine the use of restraints in those makets where the Step One screen is not satisfied. Furthermore, the Department will view the fact that a firm's restraints pass muster under Step One in most markets as tending to indicate that the restraints in those few markets analyzed in Step Two are more likely to be procompetitive than anticompetitive.

4.2 Step Two: A Structured Rule of Reason Analysis

The Department will apply a "structured rule of reason" analysis to those vertical restraints that are not eliminated from consideration under the Step One screen delineated above. The Step One screen merely determines whether two of the minimal conditions that must exist in order for vertical restraints to be anticompetitive are present. Although those conditions are necessary, they are by no means sufficient; in fact, their presence does not even imply that an anticompetitive effect is reasonably likely. Vertical restraints rarely have a significant anticompetitive effect. In Step Two of the analysis, various other conditions are examined to determine whether an anticompetitive effect is likely to be present. In most cases, restraints not "screened out" in Step One will be found not to have an anticompetitive effect through direct evidence of market performance or other evidence indicating that the markets in which the restraint appear are functioning competitively. In addition, other facts may indicate that, under the circumstances, the restraint will not produce a significant exclusionary or collusion facilitating effect. In some cases, further investigation will uncover persuasive evidence indicating that the restraint actually serves an efficient, procompetitive purpose.

The Step Two structured rule-of-reason analysis is not a broad-ranging inquiry into all aspects of the business and industry under examination. Rather, it focuses exclusively on effects on competition. A Step Two structured

[28] A VRI of 1,200 is equivalent to the use of a vertical restraint by one firm with a 34.6 percent market share, by two firms with 24.5 percent market shares each, by three firms with 20 percent market shares each, or by seven firms with 13 percent market shares each. Accordingly, the use of vertical restraints by several relatively large firms—or by one dominant firm—is associated with a VRI of over 1,200.

rule-of-reason analysis proceeds as follows. Having failed under Step One to exclude the possibility that a vertical restraint might promote collusion or the exclusion of rivals, the Department seeks to determine whether the restraint on balance is anticompetitive.[29] After more carefully defining markets, the Department first examines entry conditions at both the supplier and dealer level.

Both collusion and exclusion require that entry be difficult in at least one market. Thus, if entry is easy in both markets, the Department will conclude that the use of vertical restraints is lawful. If entry is easy in just one market, the Department generally will look at other factors to determine the likelihood that an anticompetitive consequence will flow from the vertical restraint under consideration. The finding of easy entry in just one market will cause the Department to conclude that the vertical restraint is lawful if: (1) It is clear that exclusion is the only possible anticompetitive effect of the restraint, and entry is very easy in the foreclosed market; or (2) it is clear that collusion is the only possible anticompetitive effect of the restraint and entry is easy in the primary market.

If entry considerations do not indicate that it is highly implausible that anticompetitive consequences will flow from a restraint, the Department will analyze other factors bearing on the likelihood that the restraint is anticompetitive rather than procompetitive. If, on balance, these other factors suggest that anticompetitive consequences are implausible, the Department will not challenge the restraint.

4.21 Ease of Entry

In examining a restraint under Step Two, the Department first examines entry conditions at both the supplier and dealer levels. The analysis of entry conditions parallels that used in merger analysis, i.e., the Department will ask whether significant entry would be likely to occur within a relatively short time in the event of a significant and nontransitory increase in price.[30] While there is no single yardstick used to measure ease of entry, several factors may be examined in evaluating relative ease of entry. Entry is relatively difficult if it requires a costly investment in specialized production or distribution facilities or if it can only be accomplished over a long period of time. For example, if entry into the manufacture of a product requires the construction of a high-cost plant that cannot readily be adapted to other uses, entry at the supplier (manufacturing) level is difficult. Entry into a market at the dealer level will be relatively difficult if, for the product in question, it normally takes years for a dealer to establish sufficient goodwill to achieve a significant level of sales. Entry at either the supplier or dealer level may be relatively difficult if commercial success can be achieved only with extensive investments over time in marketing, training, and promotional activities or with operation at a large scale.

FInally, it should be noted that the ease of entry in distribution is assessed with respect to the product under consideration. Thus, for a product sold through supermarkets, the issue is the ease of entering the distribution of that one product—not necessarily the ease of entering grocery retailing. If, however, it were necessary to construct a chain of retailers in order to enter the distribution of a single product, then entry into the distribution of the product could be difficult in the sense that a very large price increase for the product would be necessary to induce entry.

4.22 Other Factors

If an anticompetitive explanation for the vertical restraint under study cannot be ruled out after an analysis of structural considerations under Step One and of entry conditions, the Department will look at other factors, as explained below.

Where vertical restraints have been in existence for a sufficient length of time to make it possible to evaluate their actual competitive effects, the Department will look primarily to an analysis of those effects in deciding whether or not to challenge the restraints. The Department recognizes that in many instances it may not be possible to determine what actual economic effect vertical restraints may have had. The restraints may have been in effect for too short a time to permit a meaningful analysis of their actual competitive consequences, or for some other reason the results of such an inquiry may be inconclusive. In such instances, the Department will look to the relevant factors that indicate the likelihood that the restraint is anticompetitive. Below is an illustrative list of such factors.

4.221 How High is the VRI and Coverage Ratio?

In Step Two the Department uses a somewhat more refined delineation of the relevant markets. It also determines whether collusion or exclusion is the more likely competitive problem and which of the two markets is the primary or nonforeclosed market. Having done this, the Department computes the VRI for the primary (nonforeclosed) market and the coverage ratio to the secondary (foreclosed) market. If the recomputed VRI for the primary (nonforeclosed) markets falls below 1200 or the recomputed coverage ratio for the secondary (foreclosed) market falls below 60, the Department will deem the restraint lawful. If such is not the case, the Department will take magnitudes of the VRI and coverage ratio into account in assessing the likely effect of the restraint. The higher the VRI or the coverage ratio, the greater is the likelihood of a significant anticompetitive effect.[31]

4.222 Are Conditions in the Relevant Markets Conducive to Collusion?

Vertical restraints are more likely to be used to facilitate collusion in markets with conditions conducive to collusion. For example, collusion is a more likely explanation if only the price need be agreed upon (as in the case of homogeneous goods) than if several aspects of a product—such as price, style, and quality—need be coordinated (as in the case of a heterogeneous product). Collusion also is a more likely explanation if there is a history of collusion in the supplier or dealer markets in which the restraints exist than if there is no such history. (For other conditions conducive to collusion, see Merger Guidelines §§ 3.42–3.44.)

4.223 How Exclusionary is the Restraint?

Whether and to what extent vertical restraints have an exclusionary effect depends on the extent to which they make it difficult for a small or entering firm to secure the inputs needed to operate at efficient scale. If within a reasonably short time a small or entering firm is able to contract for the inputs and distribution outlets needed to operate at an efficient scale on terms equivalent to those achieved by existing firms, then there is no exclusionary effect. A number of factors determine whether such will be the case. In general, the longer the term of a vertical

[29] The Department recognizes that a vertical practice can have more than one consequence, and that a single practice can have both positive and negative effects on consumer welfare.

[30] *See* Merger Guidelines § 3.3.

[31] As noted above, however, a high VRI and coverage ratio are not sufficient alone to cause the Department to challenge a restraint.

restraint (especially if such a term cannot be justified by the need to encourage investment) the more likely it is that the restraint is exclusionary. For example, large suppliers' exclusive dealing arrangements that are limited to a one-year term and that do not penalize dealers that subsequently switch suppliers are unlikely to exclude new suppliers from the market. In contrast, an exclusionary effect is more likely where large suppliers' exclusive dealing contracts have very long terms and assess major financial penalties against dealers who change suppliers.

Also relevant is the size of the minimum efficient scale of operations in the supplying or distributing markets as compared with that in the manufacturing market. For example, if the minimum efficient scale of distribution is very large, exclusionary effects are more likely. The Department will take into account the surrounding circumstances of each case in evaluating the duration and restrictiveness of vertical restraint provisions. Depending on the content, particular restrictions may bring about efficiencies in certain market settings but unjustifiably restrain competition in other very different marketplace situations.

4.224 The Intent of the Parties

On occasion there may be direct evidence of the intent of firms employing restraints, and this may be a good indication of the likely consequences of the practice. For example, if the responsible officials of a firm involved in a vertical restraint adopted it solely to facilitate collusion, that would be a strong indication that suppression of competition is the most likely explanation for the restraint. Evidence indicating an apparent anticompetitive purpose must be evaluated carefully, however, because it may merely be an expression of excessive zeal on the part of low-level employees with little ability to influence corporate decisions or it may simply reflect a purpose to prevail over competitors by lawful means.

4.225 Are Restraints Used by Small Firms or New Entrants?

If many of the firms employing vertical restraints have small market shares or have entered the market recently (e.g., within the past two years), there is good reason to believe that the restraints in question are not being used for an anticompetitive purpose, unless the restraints were imposed by dominant firms at the adjacent level of distribution. Small firms are unlikely to be using a vertical restraint to exclude larger rivals or to facilitate a collusive scheme. Thus, if small firms use a restraint at their own initiative, the motivation is most likely to be the pursuit of efficiency. If recent entrants employ the restraint, the most likely purpose is to persuade dealers to carry and promote a product—a procompetitive purpose. While a vertical practice may be used for both efficiency and anticompetitive purposes, its voluntary use by new entrants or firms with small market shares makes it more credible that its use by other firms in the market is designed to achieve potential efficiency gains.

4.226 Can the Firm or Firms Engaging in the Restraint Identify Credible Procompetitive Efficiencies From the Practice?

While an inability to demonstrate efficiencies should not be interpreted as proof of an anticompetitive explanation for a restraint (efficiencies may be present but the firms may be unable to demonstrate them), an ability to demonstrate efficiencies that withstand scrutiny indicates that an anticompetitive explanation is less plausible than it would be in the absence of an efficiency justification. For example, an exclusive territorial arrangement justified on the ground that it prevents dealers from free riding is more likely to withstand scrutiny if suppliers can point to promotional activities or other dealer-provided services that are fostered by the existence of exclusive territories.

5. Tying Arrangements

5.1 Nature and Effects of Tying

Under a tying arrangement, a seller requires that the buyer of a product [32] purchase a second, distinct product as a condition of purchasing the first. The first product is referred to as the "tying" product and the second product is referred to as the "tied" product.

Tying arrangements often serve procompetitive or competitively neutral purposes. One procompetitive use is to protect the integrity or reputation of a product. Where the manner in which purchasers use a product may affect a manufacturer's reputation and future sales, the manufacturer may ensure that the purchaser maintains desired standards by tying the sale of the product to a maintenance contract or to sales of "approved" parts, and thus reduce the risk of inferior service by distributors.

Another procompetitive use of tying is to redistribute risk. For example, a manufacturer may induce distributors to carry a new product by selling it to them at a low price, while relying on expected sales of some tied item used in conjunction with the new product to generate his profits. The manufacturer, thus, assumes a greater share of the risk that the new product will be rejected by consumers. If the new product proves very popular, the distributors will require many of the related items, and the manufacturer will receive a large reward. If the new product does not succeed, however, the distributors will require very few of the related items and will have to pay very little. This "risk sharing" efficiency may apply to a wide range of licensing, franchising, and similar distributional arrangements that involve tying.

Tying arrangements also have uses that are neither clearly procompetitive nor clearly anticompetitive, such as to achieve price discrimination.[33] Because price discrimination has ambiguous or unpredictable welfare effects (e.g., some consumers may benefit from the practice, while others may be harmed), there is no firm basis for condemning the use of tying to further this goal.

Tying arrangements generally do not have a significant anticompetitive potential. It has been posited that tying arrangements may be used to eliminate independent suppliers of the tied product and thereby exclude rivals who produce the complementary, tying product. The exclusionary effect in such cases flows, however, not from tying but from any exclusive dealing or vertical integration that accompanies the tying. In the absence of exclusive dealing requirements, the supplier of the tying product cannot deprive its rivals' customers of access to other sellers of the tied product. Thus, rival producers of the tying product will be able to compete effectively for customers with the firm employing the tie.

5.2 Judicial Treatment of Tying

The Supreme Court recently held that tying arrangements are illegal per se when: (1) The seller has market power in the tying market, (2) the tying and tied products are separate,[34] and (3) there is

[32] The term "product" as used in this discussion refers to both goods and services.

[33] For example, where the volume of purchases of a tied good differs according to the intensity to use of the tying product, a tying arrangement may allow heavy users of a product to be charged a higher effective per unit price than infrequent users.

[34] The Department does not view tied products as separate unless the "tied" product has a use separate from the "tying" product. Moreover, when the economic advantages of jointly packaging and merchandising two different products are substantial, the products will not be viewed as separate.

a substantial adverse effect in the tied product market. *Jefferson Parish Hospital District No. 2 v. Hyde*, 104 S. Ct. 1551 (1984). If the seller does not possess "dominant" market power in the market for the tying product, the tying arrangement will be upheld under the rule of reason, unless it can be proved that the arrangement otherwise unreasonably restrained competition in the market for the tied product.

5.3 Screen and Competitive Analysis of Tying Arrangements

The Department will employ the following screen in evaluating tying cases:

The use of tying will not be challenged if the party imposing the tie has a market share of thirty percent or less in the market for the tying product. This presumption can be overcome only by a showing that the tying agreement unreasonably restrained competition in the market for the tied product.

This screen recognizes that where the party imposing a tie has a share of thirty percent or less in the market for the tying product, 'dominant"[35] market power does not exist—and the tie is not per se illegal. It recognizes as well that where a tying agreement does not unreasonably or significantly restrain competition in the tied product market, it is legal. In many cases, it may be immediately apparent that a tie has not significantly blunted competition in the tied product market. In such instances, the Department will conclude, without detailed inquiry, that the tie should not be challenged.

If the market share in the tying product market is over thirty percent, the Department will attempt to determine whether the seller has "dominant" market power. Where the seller has dominant power, and the other factors necessary to find a per se violation are present, a tie will be considered per se illegal. In those situations where dominant market power is not present, the Department will apply a rule of reason analysis. Employing this analysis, it will only challenge those ties that unreasonably restrain competition in the tied product market, taking into account the competitive considerations previously described. In short, the mere fact that a seller has more than thirty percent of the market for the tying product does not necessarily indicate that the use of tying is anticompetitive.

[35] Four purposes of these Guidelines, "dominant" market power refers to a degree of market power in the tying market that approaches monopoly proportions. *See Jefferson Parish Hospital District No. 2 v. Hyde*, 104 S. Ct. 1551, 1559–1561, 1566

6. Market Definition Principles

Using the standards described below, the Department will define the relevant markets at each level of distribution affected by the restraint. These standards are designed to enable the Department to analyze the likely competitive impact of a restraint within economically meaningful markets—i.e., markets in which a firm or firms employing a particular restraint could effectively exercise market power. The group of goods or services (hereinafter "product") and geographic area that comprise a market are referred to respectively as the "product market" and the "geographic market."

6.1 Product Market Definition

Where a vertical restraint involves a single identifiable product or group of products that remain essentially unchanged through the distribution chain, the product market will be the same at each level of distribution. Where, however, a vertical restraint involves an input that is used by the purchaser to manufacture a separate identifiable product for resale or a "tied" or "tying" product, separate product markets will be defined for both levels of distribution.

In defining product markets, the Department will employ the general market definition principles set forth in its Merger Guidelines.[36] At each level of distribution, the Department will begin by considering each, narrowly defined product subject to the restraint under scrutiny. It will then ask what would happen if a hypothetical monopolist of that product imposed a small but significant and nontransitory increase in price. If the price increase would cause so many buyers to shift to other products that the price increase would not be profitable for the hypothetical monopolist, the Department will add to the product group the product that is the next best substitute for the product subject to the vertical restraint and ask the same question again. This process will continue until a group of products is identified for which a hypothetical monopolist's price increase would be profitable.

As in the case of anlayzing markets for mergers, application of this market definition procedure normally will lead the Department to include more than a single brand of a product in the market. In most cases, there is significant competition among competing brands of a product, and defining a product market to correspond to a single brand of a product would yield unrealistic answers to the Department's economic analysis.

[36] *See* Merger Guidelines § 2.1.

6.2 Geographic Market Definition

Taking into consideration the existence and nature of vertical restraints, the Department also will define the relevant geographic market for each level of the distribution chain. The purpose of geographic market definition is to establish a geographic boundary that roughly separates firms that are important factors in the competitive analysis of a vertical restraint from those that are not.

In defining the geographic market or markets affected by a vertical restraint, the Department will employ the general market definition principles set forth in its Merger Guidelines.[37] At each level of distribution, the Department will begin with the location of each firm employing the restraint under scrutiny and ask what would happen if a hypothetical monopolist of the product subject to the restraint imposed a small but significant and nontransitory price increase at that location. If this action caused so many buyers to shift to products produced in other areas that a hypothetical monopolist producing or selling the relevant product at the firm's location would not find it profitable to impose such an increase in price, the Department will add the location from which production is the next-best substitute for production at the location of the firms subject to restraint and ask the same question again. This process will be repeated until the Department identifies an area in which a hypothetical monopolist could profitably impose a small but significant and nontransitory increase in price.

6.3 Step One v. Step Two

For purposes of the Department's Step One inquiry, it will often be easy quickly to identify in rough terms the relevant geographic and product markets. For example, the product market may be defined as the product or products subject to the restraint and obvious substitutes. The geographic market may often be shaped by existing well-established patterns of distribution channels and territories. Such "quick look" market definition usually will suffice for the Step One inquiry; more refined analysis would defeat the purpose of the "quick look" step.

Step Two, however, sometimes may require a more refined analysis of the relevant market structure and, therefore, a more precise definition of the relevant markets. Therefore, in Step Two, the

[37] *See* Merger Guidelines § 2.3.

Department will rely on the market definition approach outlined above, which is essentially the analysis used by the Department in analyzing mergers.

[FR Doc. 85-3692 Filed 2-13-85; 8:45 am]

BILLING CODE 4410-01

United States v. Waste Management, Inc., et al.; Proposed Consent Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (a) and (b), the United States publishes below six comments it received from ESA, Inc., SeaBurn Inc., City of Northwood, Mobile Bay Audubon Society, Applied Technology, Inc. and the State of Illinois on a proposed consent decree judgment in *United States* v. *Waste Management, Inc.*, et al. Civil No. 84-2632, United States District Court for the District of Columbia, together with the responses of the United States to those comments.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

United States District Court for the District of Columbia

[Civil Action No. 84-2832 (Judge Pratt)]

Comments of ESA, Inc., SeaBurn Inc., City of Northwood, Mobile Bay Audubon Society, Applied Technology, Inc. and the State of Illinois

In the matter of United States of America, plaintiff, v. Waste Management, Inc. and WM Acquiring Corp., defendants.

Plaintiff, the United States of America, hereby files with the Court the comments of ESA, Inc., SeaBurn Inc., City of Northwood, Mobile Bay Audubon Society, Applied Technology, Inc. and the State of Illinois in compliance with the provisions of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h). Plaintiff responds to the comments in a separate filing.

J. Robert Kramer II and

John W. Clark,

Attorneys: Department of Justice. Antitrust Division, Washington, D.C. 20530, Telephone: (202) 724-6583.

October 30, 1984.

John W. Clark, Chief,

Special Trial Section, Antitrust Division, U.S. Dept. of Justice, 10th and Pennsylvania Avenue NW., Washington, DC 20530

Dear Sir: I am writing to you in the matter of the acquisition of SCA Services by Waste Management Inc. We are a manufacturer of analytical and clinical instruments and reagents, as well as a provider of clinical laboratory services.

As a result of these operations, we generate chemical and biological wastes, whose disposal is governed by the EPA. We currently have a choice between SCA and WMI for waste disposal. Under the proposed acquisition, the currently existing competition will be eliminated and we will have no choice but to use WMI for waste disposal. I have been dealing with SCA—Recycling Industries in Braintree, MA for over four years now and have found their services to be far superior to those of WMI in every regard.

There are a couple of small waste receiving facilities located in the Boston area, but in light of the cradle to grave process, we do not feel comfortable employing their services. We are caught in the middle here. On one hand, we are legally required to ensure correct handling and disposal of all hazardous waste. (After touring the two small facilities around Boston we *can not* use their services and still fulfill the spirit of RCRA.) Therefore, our only choice is to use WMI regardless of convenience, degree of compliance, or cost. We view this as a no win situation.

Due to the nature of our business, we are wholeheartedly in favor of the RCRA regulations, but please don't force us to use a waste processor against our will. Give us a choice.

Certain SCA operations are currently slated for divestiture according to the **Federal Register** notice of October 17, 1984. We request that you also require WMI to divest SCA—Recycling Industries of Braintree, MA and allow us a choice as well as continuing competition in the Boston area. The combination of two of the three largest chemical waste firms in the U.S. seems to me to be in gross violation of the antitrust laws. Would the U.S. allow Exxon and Mobil to merge? The answer is obviously no and in the case of the petroleum market, significant competition would remain even if the merger was allowed. How then, can this situation be allowed in the chemical waste field? In the interest of increasing compliance with RCRA regulations, please continue to allow industry a choice. Thank you for your time.

Sincerely,

Douglas A. Lord,

QA/Regulatory Affairs Manager.

November 8, 1984.

Mr. John W. Clark, Chief,

Antitrust Division, Special Trial Section, U.S. Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, D.C. 20530

Dear Mr. Clark:

Subject: Competitive Impact Statement, WMI & WMAC

The Department of Justice announcement appearing in the **Federal Register** of October 17, 1984 speaks incorrectly in several instances of the relationship of Stolt-Nielsen, Inc. or SeaBurn, Inc. with SCA Services, Inc. Clearly the impression is conveyed to the court and to any readers that a business relationship existed between SeaBurn and SCA which had value and was transferrable and hence had to be accounted for in any distribution of SCA assets.

Note the following:

a. Page 40680, 1st and 2nd columns, "It (meaning Genstar) will also acquire any interest SCA has in SeaBurn, Inc. or Stolt-Nielsen, Inc.".

b. Page 40682, 1st column, subparagraph I., "Relevant businesses mean . . . (ii) any right, interest or contract of SCA in or with SeaBurn, Inc. or Stolt-Nielsen, Inc.".

c. Page 40710, 2nd column, under Exhibit B—GRS Businesses, ". . . areas where the businesses or operations of SCA are to be distributed to GRS, subject to the terms and conditions of the Agreement . . . (ii) any right, interest or contract of SCA in or with SeaBurn, Inc. or Stolt-Nielsen, Inc.".

d. Page 40713, middle of 1st column, "the decree also requires divestiture of any interest SCA may have . . . in SeaBurn, Inc., which is a potential entrant into ocean incineration of hazardous waste".

e. Page 40714, middle of 2nd column, "SCA is also a potential entrant into ocean-based incineration under a joint venture agreement it has with Stolt-Nielsen, Inc. (SeaBurn, Inc.) which is a potential entrant.

f. Page 40714, top of 3rd column, "The decree does provide, however, that any surviving interest of SCA in the SeaBurn, Inc. joint venture agreement must be divested to GRS. . .".

We were told by the top executives of SCA that the Justice Department was made fully aware of the embryonic nature of the SeaBurn/SCA discussions and the exploratory status of the relationship. This was announced by a jointly issued press release (copy enclosed)[1] which was carried by newspapers and trade journals. We also discussed it with a principal DOJ staff investigator during lengthy phone consultations.

The strongest alliance between us and SCA that can be concluded from our meetings with SCA was this—we would explore the possibility and advisability of a joint venture into ocean incineration using the SeaBurn concept. We had made no agreement for a joint venture as you maintain in the **Federal Register** announcement and this misinformation has caused confusion among other firms we have been dealing with.

We specifically stated in writing to SCA, which they acknowledged and accepted, that if SCA's corporate control changed because of takeover proceedings, further exploration of a joint venture would cease. On the day it was announced by SCA that their company had been officially acquired, we notified them by telex that our agreement was terminated.

With the above in mind, it can be seen that there is no residual benefit, contract, right or asset which might pass from SCA to any successor or assignee. Consequently, it is inappropriate and misleading even to discuss in the Proposed Final Judgement and Competitive Impact Statement our dissolved relationship with SCA. It only tends to constrain any other interested party from entering into a business agreement with us. We request that all references to SeaBurn, Inc. or Stolt-Nielsen, Inc. be deleted from the Final Judgement.

[1] Filed with the original and available for inspection at the office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C.

Very truly yours,

Vincent G. Grey,

President.

December 14, 1984.

John W. Clark,

Chief Trial Section, Antitrust Division, U.S. Department of Justice, 10th and Pennsylvania Avenue NW., Washington, D.C. 20530

Joseph H. Widmar,

Director of Operations, Antitrust Division, United States District Court, District of Columbia, Washington, D.C. 20530

Re: U.S. District Court 84-2832, In re Waste Management, et al.

Dear Mr. Clark and Mr. Widmar: The City Council of Northwood, Ohio has directed me as Mayor to report that the City of Northwood, Ohio desires that all hazardous waste operations at Evergreen Landfill be terminated and that only nonhazardous material be placed in Evergreen Landfill in our city.

Competition does not require a hazardous waste landfill at Evergreen Landfill for the following reasons:

1. Less than 1/10 of 1% of the hazardous waste delivered to Evergreen in 1983 came from the Toledo area. 72% of it was from outside Ohio. Hazardous waste is currently being transported from the East coast and other distant locations. Thus, location is not a prime factor in competition.

2. The approval of the pending application by Waste Management for the part "B" of its application before the Ohio Hazardous Waste Facility Board is not guaranteed.

3. There is local opposition to that application for expanded waste streams at Evergeen Landfill.

4. Genstar could apply for a hazardous waste permit at some other location in Ohio and if granted by the Ohio Hazardous Waste Facility Board such location could better optimize the competiveness by Genstar.

5. The expanded facility for hazardous waste proposed by Waste Management for Evergreen Landfill was designed to be an integral part of other Waste Management operations. If Genstar takes over Evergreen Landfill it would be unable to utilize those other operations of Waste Management. This would decrease competition instead of increasing competition.

Very truly yours,

John Hageman,

Mayor.

December 9, 1984.

John Clark, Chief,

Special Trial Section, Anti-trust Section, Dept. of Justice, Washington, D.C. 20530

Dear Mr. Clark: As spokesperson for the Board of Directors of the Mobile Bay Audubon Society I offer these concerns and questions for the record before the December 17th deadline onthe "consent degree" regarding the merger of Waste Management, Inc., SCA and Genstar. It is felt this merger does pose serious problems is not in the public interest and could affect and impose restraint of trade.

When modern technology demonstrates that its power for destruction is great, its victims inevitably seem to be the poor.

Union Carbide Corp. has much to answer for in the killing of thousands; the threat posed for the thousands of natives of India as the poison's longer-range effects take hold and the epidemics threatening from the wholesale killing of livestock in the area, which is already hard-pressed to cope with the human victims.

Americans should shed the shield of complacency because our technology has not produced the guaranteed safeguards to protect human life, property or the environment.

Bigger is not necessarily better. President Reagan's administrative policy and priority has been to try and control "big government" by returning controls to local and state governments. How then can this administration support mego-monopolies such as this one? Private enterprise has been the backbone of this Nation and the allowed merger of this nature in our mind placed a strong restraint of trade. In a recent conversation with a member of an industrial development board in Livingston County, Alabama the comment made by the gentleman was a subsidiary of Waste Management, Inc., Chemical Waste Management, Inc. has made a promise to promote industrial growth through their numerous contacts in a new port being developed on the Tombigbee River. There has not been any effort made by Chemical Waste Management, Inc. (CWMI) to encourage industries to locate and recently a recycling company showed interest in locating, but were quietly discouraged.

The track record of CWMI is exceptionally shocking. In March 1983, a New York Times article cited allegations by four former Waster Management employees who claimed the company altered or destroyed records, ignored testing procedures and violated regulations governing hazardous waste disposal.

(1) In Illinois a $1.1 million lawsuit filed by Attorney General Neil F. Hartigan states the company managers "consciously and by deception and omission" tried to withhold information from the state about hazardous waste disposal at a Calumet City, Ill. site. The company's "coverup of illegal activities is a case of utter corporate irresponsibility."

(Ala. Dept. of Environmental Management had refused to release CWMI manifests, as they were "confidential" because of an unwritten policy which granted "trade secret" status to CWMI.)

(2) In Colorado, CWMI personnel failed to inform state officials about a leak in a liner of a hazardous waste solar evaporation cell for a period of 14 months. On February 7, 1983, EPA fined the company $48,000 for violations at the site, including failure to repair a leaking liner in the evaporation pond, failure to maintain adequate inspection records and failure to operate a proper groundwater monitoring program.

The Colorado site also had trouble with a hazardous waste disposal cell built below groundwater level. The groundwater table is 12 feet into the waste disposal site. The company put 10,000 drums of organic solvents into the cell before the problem was discovered. The company is now pumping 600 gallons of liquids a day from the cell, and monitoring shows 1,000 parts per million of organic contamination in the liquid, which is "pretty ripe".

The hazardous waste disposal section of the Colorado site is now closed. State officials have demanded the company clean it up and the report of the cleanup may cost $10 million or more.

(CWMI and the City of Denver had signed contracts containing clauses which assign title to the waste to Denver once the waste is disposed. Under the Ala. Hazardous Waste Management Act of 1978—commercial hazardous waste landfills shall be dedicated to the State of Ala. after they are closed.)

(3) In Ohio, a former CWMI chemist said the company improperly stored and disposed of PCB's (polychlorinated biphenyls) at its disposal site near Vickery. The company was said to have altered or destroyed test results about wastes received at Vickery. An EPA lawyer in Chicago said nearly 1 million gal. of PCB contaminated oil were stored illegally and the wastes were later transferred to Emelle, Ala.

(4) (Emelle, Al.—a former technical manager told the New York Times CWMI had failed to test wastes before burying them, buried drums of waste without adequate space between drums, had improperly disposed of PCB's and had by its practices endangered the health of workers and area residents.)

(Also at Emelle—ADEM last year fined the company $150,000 for failure to properly install a moisture collection system in the bottom of a waste burial trench—cited the company for its failure to record location of wastes in the trenches, which is a violation of federal regulations—and an ongoing investigation and an effort to decide what to do about the CWMI illegal storing of 300,000-800,000 gallons of PCB's, substances believed to cause cancer and was banned by EPA in 1977.)

To continue on the Vickery, Ohio situation—as much as 45 million gallons of toxic waste had seeped into layers of sandstone rock surrounding five underground injection wells at the site. Investigators reported personnel failed to detect the leakage for a period of years because the company analyzed data using outmoded equipment and undertrained employees.

The Ohio EPA officials had consulted with the state attorney general on a possible lawsuit. CWMI agreed to pay the second largest environmental penalty in U.S.—$10 million in fines.

(5) In Kansas, a CWMI disposal facility near Wichita was closed by the state in January 1982 when contamination of groundwater beneath the site was detected. CWMI eventually agreed to pay a civil penalty of $8,550. Testimony regarding the site in Kansas was it wouldn't leak in 10,000 years. In four years, it was leaking.

Dr. Alan Block of the Univ. of Delaware believes there is "hard evidence" that the Mafia is deeply involved in illegal hazardous waste disposal. He cited evidence for New Jersey, New York, Rhode Island, Pennsylvania, Connecticut, and Massachusetts and strong suspicions for Delaware, Florida, Ohio, California and

Michigan. CBS News broadcast reports show organized crime dumping wastes into heating oil then brought to New York City to be used to heat apartment buildings and taped illegal waste transactions.

Steve Madonna, head of environmental prosecution in New Jersey said, "There is evidence of the infiltration of traditional organized-crime elements into the hazardous waste disposal industry" and "overwhelming evidence" to support the EPA's recent decision to give EPA enforcement agents guns.

Officials in India said five Indian managers of Union Carbide's facility were arrested Monday on criminal negligence charges and suits filed against the company is in the multibillion dollar range. Until the United States take strong enforcement action and jail the officials of companies such as CWMI instead of the paltry fines we will continue to have human life threatening situations and our quality of life will degrade. Allowing companies to merge thereby becoming bigger does pose a threat to the public interest and places a very tight restraint of trade. It is hoped the Dept. of Justice will withdraw the "consent judgment" and file anti-trust actions and set a national precedent.

Thank you.

Sincerely,

Mrs. Myrt Jones,

President.

December 14, 1984.

VIA Purolator Courier

John W. Clark, Esquire,

Chief, Special Trial Section, Anti-Trust Division, U.S. Department of Justice, 10th & Pennsylvania Avenues Northwest, Washington, D.C.

RE: *Waste Management Acquisition of SCA Services*

Dear Mr. Clark: Waste Management's proposed acquisition of SCA Services will have profound detrimental effects upon the health, safety and economic well-being of the American public now and in years to come.

The consent decree to which the U.S. Department of Justice has given its blessing is aimed largely (80% in the Justice Department's estimation) at competition in the solid-nonhazardous waste disposal industry. Whether Waste Management hauls away our weekly garbage is an issue of minimal concern; whether Waste Management can be trusted with our deadly toxic waste is a matter of paramount importance. Waste Management and its subsidiaries have been convicted of violations of waste laws; Waste Management and its subsidiaries are under federal, state and local investigations nationwide for improper handling, transport and disposal of hazardous waste; Waste Management and its subsidiaries are the target of numerous law suits filed nationwide alleging damages as a result of their illegal disposal practices. Numerous violations have been found to have been committed by Waste Management, and fines levied. Former Waste Management employees have exposed illegal and improper practices followed by Waste Management. Waste Management has tried to sweep the issues beneath the rug by paying huge sums of money in consideration for consent decrees admitting no liability for wrongdoing. But the fact of wrongdoing remains. It is a fact to be faced by this generation, our children, and our children's children. The American public is entitled to freedom from the fear that the water they drink or the air they breath is contaminated with chemical agents that could bring about disability or death. The American public is also entitled to free competition allowing small businessmen to offer safe, well supervised services to compete with industry giants such as Waste Management, known to have violated the law with impunity. Waste Management's acquisition of SCA Services endangers both these freedoms of the American public.

Waste Management's acquisition has profound business ramifications. I am a small businessman—a transporter and broker of hazardous waste generated by private industry and the government. To serve my customers and stay in business, I must be permitted free access to fully licensed secure chemical landfills able to accept a broad spectrum of waste—the sites chosen and preferred by my customers. My business has been literally obliterated by the unfair business practices of Waste Management and its subsidiaries at the Emelle, Alabama landfill. Waste Management had solicited my customers in the northeast corridor, through my provision of transportation and brokerage services, then began creating difficulties so that the generators would abandon my company as a transporter and broker of their waste and turn to Waste Management for those services. Waste Management's acquisition of SCA Services will exacerbate this problem not only for my company, but hundreds of small transport and brokerage companies across the nation.

Prior to the acquisition, Waste Management was the single largest hazardous waste disposal company in the nation. Following the merger, Waste Management has cinched an even tighter grip on the industry as a whole. The government seems placated by the transfer of many of SCA's disposal sites (including the Pinewood, South Carolina secure landfill) to Genstar Services. This transfer—which is limited to scope and time—will not alleviate the problem of Waste Management gaining ever more monopoly power in the hazardous waste industry. The government has admitted that the consent decree makes no mention of the fate of the transport and brokerage arms of SCA's services. Since the consent decree does not require the divestiture of these businesses, it is assumed that Waste Management has fallen heir to these substantial assets. Waste Management has managed to acquire—with government blessing—the entire transportation division of SCA Services (which prior to its takeover by Waste Management, had been the third largest company in the nation in hazardous waste business.)

As a consequence, the Pinewood landfill has begun using the same pressure tactics as Waste Management has used with much success. Last week, my company hauled waste from Standard Chlorine of Delaware City, Delaware to the Pinewood facility. Where Pinewood had been extremely cooperative in offloading waste from conventional long-nosed tractor-trailers (such as those used by my company), it now, under the new management of Genstar and/or Waste Management, actively discouraged offloading of waste transported in that fashion. This created dissatisfaction for the generator. The same tactic of creating generator dissatisfaction with individual transporters has been a hallmark of Waste Management's practices. As a result of the acquisition of SCA, Waste Management now has free reign in the brokerage and transport aspects of the industry, and has more power than ever to squeeze out small competitors such as myself.

The problem of Waste Management's acquisition of the third largest hazardous waste company in the nation, is magnified by the fact that the hazardous waste industry is not easily penetrated. The industry is extremely concentrated, and barriers to entry by new companies, whether in disposal brokerage or transport, are extremely high. These entry barriers have been noted by the government in their original complaint for permanent injunctive relief of stop Waste Management's acquisition of SCA. The Complaint, paragraphs 26–32, notes that entry into the hazardous waste industry is inhibited by cost and uncertainties of the pervasive RCRA regulatory scheme, long term liabilities imposed upon disposers of hazardous waste for future adverse environmental effects, the increasingly stringent requirements of RCRA for transportation, storage and disposal of hazardous waste, and factors such as local opposition to siting of new landfills. Since entry into the industry is so difficult, Waste Management's accumulation of yet more power in the industry, creates a serious threat to competition that is not addressed by the consent decree entered into by the government.

It has been said that in the land of the blind, the one-eyed man is king. In this instance, Waste Management is the one-eyed man—king of the hazardous waste industry—and that one eye is on the profit line and not on the health safety or welfare of the American public. The American public, represented by the Justice Department, have turned a blind eye and a deaf ear to Waste Management's predatory, illegal and dangerous practices. The Justice Department is perfectly happy with an agreement 80% to their satisfaction, and has ignored the 20% of the agreement addressing a turnover of a major portion of the waste industry to Waste Management. The government ignores that the turnover is to a company which has been accused and convicted of crimes, violations of the environmental law, and mishandling of hazardous wastes. The government ignores that the divestiture to Genstar lasts only five years, after which Waste Management is free to acquire *all* of SCA's disposal facilities. When asked if anything could be brought to their attention, which would cause the government to withdraw consent and pursue the permanent injucntion originally sought—officials of the Justice Department replied "not really." When asked if it would make a difference if the entire management staff of the Emelle, Alabama facility of Waste

Management were carted off to jail for violations of environmental laws. Justice replied "no, not really. That is not necessarily a concern of this office." Blind justice.

The American public deserves to be protected from any increase in power granted to Waste Management. The prophylactic provisions of the consent decree do not protect the public from Waste Management's growth in transportation and brokerage aspects of the hazardous waste industry. The decree does not protect the American public from Waste Management's acquisition of SCA's disposal services after only five years have passed. The decree does not protect the American public from a significant decrease in competition in the hazardous waste industry. The decree does not protect the American public from Waste Management's gaining ever more monopoly power in an industry where it has acted irresponsibly and in violation of laws designed to protect the public. The merger should not be permitted. Government consent should be withdrawn, and the honorable U.S. District Court for the District of Columbia should refuse to approve the merger.

Respectfully submitted,

Applied Technology, Inc.

By Dennis J. Miele,

President.

DJM/cmc

Comments of the State of Illinois to the United States Department of Justice, Antitrust Division, Special Trial Section Upon the Acquisition of SCA Services, Inc. by Waste Management, Inc.

[Civil Action No. 84-2832]

Comments of the State of Illinois Through its Attorney General Neil F. Hartigan

I. Introduction And Summary of Position

In the matter of United States of America, plaintiff, v. Waste Management, Inc. and WM Acquiring Corp., Defendants.

The United States Department of Justice, Antitrust Division, filed a Complaint For Injunctive Relief in the United States District Court for the District of Columbia in the above matter on or about September 12, 1984, opposing the acquisition of SCA Services, Inc. ("SCA") by Waste Management, Inc. ("WMI") and WM Acquiring Corp. ("WMAC"), a corporation formed solely for the purpose of acquiring SCA.

The govenment's complaint was instituted under Section 15 of the Clayton Act, as amended, 15 U.S.C. Sec. 25, in order to prevent and restrain the violation by the defendants of Section 7 of the Clayton Act, as amended, 15 U.S.C. sec. 18. On or about the date of filing its Complaint, the Justice Department filed a proposed Final Judgment with certain exhibits in settlement of the action along with a Competitive Impact Statement pursuant to the Antitrust Procedures & Penalty Act, 15 U.S.C. sec. 16(b)–(h).

The comments of the State of Illinois are filed pursuant to 15 U.S.C. sec. 16 (b) & (d) which provided that the government shall receive and consider all written comments and that any comments and the Department's responses will be filed with the Court and published in the **Federal Register**.

Basically, the proposed Final Judgment attempts to solve the anticompetitive effects of the acquisition by requiring the divestiture of certain facilities of WMI and/or SCA to a third entity, Genstar Refuse Corporation ("Genstar"). The State of Illinois, through its Attorney General, asserts that the anticompetitive effects will *not* be cured. Illinois maintains that there exists an insufficient basis or record upon which a proper determination can be made by the Court as to whether the public interest is served by the entry of the proposed final or consent judgment. Under the authority of 15 U.S.C. section 16 (e) and (f) a full and public hearing should be held by the Court upon the competition questions raised by the acquisition and proposed final judgment.

Such a hearing is particularly necessary in light of the Department's refusal, upon written and oral requests, to provide access to the materials and documents which the Department considered determinative in formulating its proposed final judgment. The denial persists, despite the clear language of 15 U.S.C. sec. 16(b) commanding such access and the recent Connecticut Court decision in *Lieberman* v. *FTC*, No. H–84–716, 1984–2 Trade Cases, par. 66,285 (CCH) (D.Conn. 11/26/84) holding that section 6(f) of the FTC Act, 15 U.S.C. sec. 46(f) "is an affirmative grant of power to the FTC" to make disclosure of materials generated under the premerger notification program to state attorneys general and further that section 7A(h) of the Clayton Act, 15 U.S.C. sec. 18A(h), does not prohibit the FTC or Justice Department from disclosing Hart-Scott-Rodino (premerger) materials to state law enforcement authorities.

II. Denial of Access to the Hart-Scott-Rodino Premerger Information and Denial of a Real Opportunity To Assess the Full Impact of the Acquisition On Competition and Other Areas of Public Interest

The denial of access to the Hart-Scott-Rodino premerger materials has deprived Illinois of a real opportunity to comment upon and fully assess the effects of the acquisition. Illinois does not have, nor do other States, a statutory provision similar to section 7A of the Clayton Act requiring the production of documentary material and other information prior to the consummation of a merger. Further, Illinois and the other states do not have the substantial resources available for antitrust enforcement as does the federal government through the Department of Justice, Antitrust Division and the Federal Trade Commission. For example, the total amount budgeted for FY 1984 for antitrust enforcement for all states was approximately $11.5 million; the FY 1984 budget for the Department of Justice Antitrust Division was approximately $44 million and the FTC (Maintaining Competition Mission) was approximately $30 million. Given these and other considerations, the Congress clearly intended that, and sound public policy dictates that, the state attorneys general be given, at a minimum, confidential access to the premerger information.

Further, the review period for significant acquisitions, such as this, should be extended at least an additional 60 days to give interested parties a more adequate period in which to investigate the consequences of the merger. Hold separate orders should not terminate until all required divestitures have been reviewed and approved after public comment. Adverse effects on the rights of employees should be considered. These points are addressed in a formal resolution adopted by the National Association of Attorneys General in June 1984 (attached as Exhibit A). The Department must take note of the legislation pending in Congress, which although introduced in response to the recent mega-oil mergers, should be applied in concept to the instant acquisition. *See* S. 2589 and H.R. 5452 calling for the extended review and "hold separate" periods.

15 U.S.C. sec. 16 (e) and (f) authorizes the Court to hold a hearing including testimony of government officials or experts and other expert witnesses; to appoint a special master and other outside consultants or expert witnesses, to allow participation in proceedings before the Court by interested persons or agencies, including appearance *amicus curiae*, or intervention under the Federal Rules of Civil Procedure and to take such other action as the Court may deem appropriate in the determination of the public interest regarding the entry of a consent judgment. This acquisition merits a most thorough examination prior to the entry of any final judgment including a full public hearing as permitted by 15 U.S.C. sec. 16(f).

III. Anticompetitive Effects of the Acquisition

Section 7 of the Clayton Act proscribes any acquisition which "may substantially lessen competition or tend to create a monopoly". 15 U.S.C. Sec. 18. Under this incipiency standard, it is not necessary to show actual adverse impact of a merger on competition. The merger may be attacked if it possesses the potential to impede a substantial amount of competition. As often stated by the Supreme Court:

> Section 7 requires not merely an appraisal of the immediate impact of the merger upon competition, but a prediction of its impact upon competitive conditions in the future; this is what is meant when it is said that the amended Section 7 was intended to arrest anticompetitive tendencies in their incipiency.

United States v. *Von's Grocery Co.*, 384 U.S. 270, 86 S.Ct. 1478, 1482 (1966), *quoting United States* v. *Philadelphia National Bank*, 374 U.S. 321, 362 (1963). Even without the benefit of the Department's premerger notification documents, the potential anticompetitive effects of the proposed WMI/SCA merger are apparent.

The acquisition of the third largest company in the United States in the business of providing waste collection and disposal services by the largest company in this same business, even with the "spin-off" of certain assets to third party Genstar, is an unhealthy event for the national economy and Illinois, both as to appearance and in substance. The government's own analysis, particularly as to the hazardous waste management industry, discloses that the leading measure of market concentration, the Herfindahl-Hirschman Index (HHI), dictates against this merger.

The HHI of over 2,000 in the midwest area (and increasing after the merger) evidences a highly concentrated market in an industry with a high concentration trend. The government's documents [1] no doubt, trace WMI's pattern of systematic acquisitions nationwide over the past several years and the potential for decreased competition as a result thereof.

> We cannot avoid the mandate of Congress that tendencies toward concentration in industry are to be curbed in their incipiency, particularly when those tendencies are being accelerated through giant steps striding across a hundred cities at a time.

Brown Shoe Company v. *United States*, 270 U.S. 249, 82 S.Ct. 1502, 1535 (1962). Moreover, the lower HHI in the solid waste market does not automatically validate the WMI/SCA merger since a low concentration figure may be "misleading as to actual future competitive effect." *United States* v. *General Dynamic Corp.*, 415 U.S. 486 (1974).

In reality, the proposed merger will reduce competition in all the primary relevant product markets at issue:

1. National Municipal Market for Solid Waste Disposal and Local Solid Waste Markets

Despite the conclusion reached in the competitive impact statement, there can be no doubt that competition for the large municipal waste collection and disposal contracts nationwide will be adversely affected by the WMI/SCA merger. The government concedes that this market is highly concentrated and that SCA and WMI are two of a small number of waste companies that compete for the business. The elimination of SCA as a competitor can only adversely affect competition. Moreover, the government's position that Genstar will become a competitor of WMI in this large national market misses two important points. First, Genstar was already a potential market entrant as the result of its landfill operations in the Southwest. The government has aptly noted that a company may bid on a large municipal contract even though it is not providing solid waste collection and disposal services in the area. The elimination of potential competition in a relevant market is a crucial factor in determining the legality of a merger. For example, in *United States* v. *Falstaff Brewing Corp.*, 410 U.S. 526 (1973), the Supreme Court ruled that the very existence of Falstaff as a potential entrant in the northwestern region of the country had to be consided in gauging a proposed merger's effect on competition. *See also FTC* v. *Proctor & Gamble Co.*, 386 U.S. 568 (1967); *United States* v. *Penn-Olin Chemical Co.*, 378 U.S. 158 (1964). The WMI/SCA merger will eliminate the possibility that Genstar, as a third competitor, will bid against SCA and WMI for municipal contracts. The result may be higher prices for many citizens in our nation's cities.

Second, without the benefit of the government's documents, it seems safe to conclude that Genstar will not immediately begin to bid on new contract work. As a result of the merger, Genstar will suddenly be conducting major business operations in 14–20 new markets across the country. Arguably, Genstar will need some time to become familiar with these massive new day to day operations before stepping out to test new markets. WMI's ability to dominate the municipal contract business will thus be further enhanced. In sum, the merger will reduce three potential competitors to one—a substantial reduction of competition.

2. Hazardous Waste Management Market

As to the hazardous waste industry, the government's implicit finding that hazardous waste transportation, treatment, storage and disposal services can be examined almost entirely upon on a local geographical market basis as opposed to a national or, at least, a large regional market basis, is clearly erroneous. Hazardous waste as defined under the Resource Conservation & Recovery Act of 1976 ("RCRA") and under related state regulatory provisions and polychlorinated biphenyls ("PCB") as regulated under the Toxic Substances Control Act ("TOSCA"), are frequently shipped great distances for treatment and/or disposal. While transportation costs are obviously a factor, making it desirable for a generator of hazardous wastes to have his hauler dispose of the wastes at the nearest landfill or other facility, the relatively small number of source chemical landfills in the nation (approximately 38) and a much smaller number of incinerators, etc., combined with other factors, force haulers and disposers to transport hazardous wastes over distances in excess of one thousand miles for disposal.

Thus, it is no answer to the anticompetitive problems to mildly dilute the merger of the number one firm in the nation in hazardous waste management revenues and the number four firm, by merely requiring a "spin-off" to Genstar of a limited number of facilities of either WMI or SCA, some of which are geographically close to one another. For exampe, under the

[1] The amount of concentration/trend towards concentration in a specific market has a direct effect on the amount of market share of the merged firm that is necessary to find a merger anticompetitive. In an industry that has a high concentration factor, or has a trend towards concentration as here, even a slight increase in market share will invalidate a merger as anticompetitive. In concentrated (or tending towards concentrated) markets, the Supreme Court found that market shares as low as 7.5 percent (*United States* v. *Van's Grocery*, 348 U.S. 270 S.Ct. (1966)) and 4.49 percent (*United States* v. *Pabst Brewing Co.*, 348 U.S. 540, 86 S.Ct. 1665 (1966)) to be anticompetitive and violative of Clayton sec. 7. In *Pabst*, Justice Douglas' concurrence recognizes the absurd consequences of allowing a trend that validates large anticompetitive mergers to continue. Attached as Exhibit B is the appendix to Justice Douglas' concurring opinion. *United States* v. *Pabst*, 348 U.S. 546, 553.

Note: Exhibit B is on file with the original and is available for public inspection at the Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C.

proposed final judgment WMI acquires the prized Fort Wayne, Indiana (Adams Center) chemical landfill which was in competition not only with the WMI Toledo, Ohio landfill ("old" and "new" Evergreen) but also with WMI's Calumet City/Chicago, CID, and Joliet, Illinois, ESL, chemical landfills. In return it merely gives up to Genstar the much less desirable "old" and "new" Evergreen landfills. Furthermore, the divestiture of the Evergreen landfills to Genstar inures to the benefit of WMI in view of the expected local opposition to expansion of the Evergreen site.

3. Hazardous and PCB Waste Incineration

Incineration will probably be the single most important waste disposal process over the next few decades. Indeed, the SCA incineration plant near Chicago no doubt played a large part in WMI's decision to acquire SCA. The government admits that it initially decided to require WMI to divest the Chicago PCB incinerator to Genstar. In view of the stranglehold WMI will have on this crucial relevant market, the government's rationale for changing its mind is wholly lacking in merit.

The government notes that there are only four commercial PCB incinerators in the U.S. and that severe barriers exist to market entry. Moreover, the Chicago incinerator accounts for nearly one-half of the national capacity. In addition, WMI already is on the verge of entering this market through two ocean incinerator vessels. After these vessels are permitted in approximately one year, the HHI for PCB incineration will explode off the charts.[2]

The government points to the fact that the vessel permits will not likely be issued this year. The government's rationalization, however, merely postpones a tremendous adverse impact on competition for one year and does absolutely nothing to satisfy the incipiency standard of the Clayton Act.

The government predicts Genstar as WMI's competitor in the incineration market. Once again, however, the government fails to recognize that, by its own admission, Genstar was already a potential entrant into the incinerator market.[3] Therefore, where there were three potential competitors (Genstar, SCA and WMI) the merger will leave only two. In a highly concentrated market with severe market entry barriers, the lessening of competition will be substantial.

Curiously, the government insists that WMI will have significant competition in the incineration market from several new competitors. For example, the government notes that there will be at least one other potential ocean incinerator, and one other PCB disposal company employing a new ocean technology, and another potential land-based competitor. To read the government's analysis, the number of PCB incinerators will soon begin to increase without restraint. Needless to say, PCB incineration permits are difficult to obtain. Thus, WMI's control of the market post merger "may" not only substantially lessen competition, but is likely to do so.

Finally, it is likely that WMI will use the incinerator almost exclusively for its own use in disposing of the millions of gallons of PCB's and PCB contaminated materials presently stored at the WMI site in Emelle, Alabama and Vickery, Ohio which must be removed pursuant to governmental enforcement actions and would cost $60 to 75 million to incinerate Thus, with only four offsite land-based incinerators licensed to burn PCB in the United States, WMI's use of the entire capacity of the SCA southeast Chicago incinerator will have a further anticompetitive effect.

IV. No Showing of Economic Efficiencies Has Been Made Nor Is There a Failing Company Consideration

Of course, a factor in any merger consideration is the economic efficiencies to be gained by the merger. There are no serious economies of scale, better integration of production facilities, plant specialization or lower transportation costs, etc., that can be observed by this purchase of SCA (#3) by WMI (#1).

While SCA lost $12.4 million last year it has been a solid performer in the industry with $391.2 million in revenue in that same year. WMI and Genstar are paying $432.9 million in cash. SCA can hardly be considered a failing firm as that term is employed in antitrust merger analysis.

V. The Specific Industry and Acquiring Firm Involved in the Acquisition

The Department's approval of this merger is particularly disturbing upon considering the nature of the waste disposal industry and the particular acquiring firm involved herein. It is common knowledge and, in fact, the subject of numerous newspaper articles and other media presentations that the major waste disposal companies such as WMI, more particularly certain subsidiaries, have been alleged to engage in anticompetive activities.[4] In this highly concentrated market with pending cases and investigation concerning alleged antitrust violations, the government should closely and more publicly examine this major acquisition. Not only is this factor an expression of preferred policy, but the government considered it of sufficient import to include it in the 1982 Department of Justice Merger Guidelines. *See* Section III(C)(3) of the 1982 Merger Guidelines, (CCH) Trade Reg. Reptr., 4503 at 6881-14.

VI. Conclusion

The divestiture of certain SCA or WMI facilities to Genstar does not appear to cure the anticompetitive aspects of the merger of the number one and three waste management firms in the country. At the very least, public hearings should be held to further examine the antitrust consequences of this merger consistent with the provisions of 15 U.S.C. Sec. 16. Public hearings would allow a rich diversity of voices to be heard including large and small business concerns, consumer groups, state governments, economists of the various schools of economic thought, and other antitrust experts. The clear intent of section 16 is a public and thorough examination of any antitrust proposed consent judgment, especially one in settlement of a major national acquisition.

Respectfully Submitted,

Neil F. Hartigan,

Attorney General, State of Illinois, 160 N. LaSalle Street, Chicago, Illinois 60601.

Dated: December 17, 1984.

Robert E. Davy, *Acting Chief.*

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[2] In *United States* v. *Waste Management Inc., et al.*, ___F.2d, 47 ATRR (BNA) 546 (2nd Cir. 9/6/84), the Second Circuit found that the "ease of entry" into a market could counterbalance a high market share and validate a merger. In theory, market participants could not engage in anticompetitive conduct without being flooded by new participants. Conversely, the Department of Justice Merger Guidelines, 46 ATRR (BNA) No. 1169, Spec. Supp., provide that "the more difficult entry into the market is, the more likely the Department is to challenge the merger". Here, the government concedes that entry barriers both to the hazardous waste treatment and solid waste disposal markets are exceptionally high, but fails to adequately address this problem as it relates to the proposed merger.

[3] The importance of the decision in *Falstoff*, 410 U.S. 526 (1973), relating to potential competition, cannot be overemphasized in this regard.

[4] A WMI subsidiary was convicted of price fixing in Atlanta, Georgia in *United States v. Browning-Ferris Industries of Georgia, Inc., Georgia Waste Syustems, In. et al.*, No. CR 80-136A (N.D. Ga.). The Justice Department recently filed an $800,000 treble damage price fixing case in Atlanta arising from the same set of facts. In addition, an antitrust indictment was recently returned against a general manager of a WMI subsidiary in *United States v. Hoopengardner*, No. 84-6107-CR-JLK (S.D. Fla. 7/22/84).

Thomas J. DeMay, James N. O'Hara, *Assistant Attorneys General*, Antitrust Division, 188 W. Randolph Street, Suite 2118, Chicago, Illinois 60601, (312) 793–2582.

EXHIBIT A

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

San Francisco, California

June 13–17, 1984

Resolution

X

State Attorney General Access to Hart-Scott-Rodino Act Pre-Merger Documents and Pre-Merger Notification Time Periods

WHEREAS, the Federal Trade Commission recently has held that, under current federal law, the state Attorneys General are not entitled to access to pre-merger documents submitted pursuant to the Hart-Scott-Rodino Act in order to permit the states to conduct their own independent review of the competitive effects of such mergers and acquisitions; and

WHEREAS, the remedies available to federal antitrust authorities to eliminate the anticompetitive and other adverse effects of such mergers may not be adequate; and

WHEREAS, the review and decisions by the Federal Trade Commission of recent mega-mergers have demonstrated that the Hart-Scott-Rodino Antitrust Act provides federal antitrust authorities with insufficient time to evaluate the competitive impact of such multi-billion dollar mergers; and

WHEREAS, the United States Congress is considering legislation that would address the inadequacies of existing antitrust law;

NOW, THEREFORE, BE IT RESOLVED, that the National Association of Attorneys General:

1. Expresses its strong support of legislation:

a. to provide state and territorial Attorneys General access to documents submitted pursuant to the Hart-Scott-Rodino Antitrust Act; and

b. to require that any hold separate order entered by the Federal Trade Commission not be terminated until all required divestitures have been reviewed and approved by the Federal Trade Commission after public comment; and

c. to permit the federal antitrust authorities to extend the review period for significant acquisitions up to an additional 60 days; and

d. to require federal antitrust authorities to take into consideration the adverse effects on the rights of employees of any federally-required divestitures; and

2. Authorizes its Executive Director and General Counsel to transmit these views to the members of Congress, the administration, federal agencies, and other appropriate parties.

Certificate of Service

I hereby certify that I have served the foregoing Comments of ESA, Inc., SeaBurn Inc., City of Northwood, Mobile Bay Audubon Society, Applied Technology, Inc., and the State of Illinois upon the following counsel by hand delivery on January 23, 1985,

Michael Sennett, Bell, Boyd & Lloyd, Three first National Plaza, Chicago, Illinois 60602

Dennis C. Thelen, McNair, Glenn, Konduros, Corley, Singletary, Porter & Dibble, P.A., 1155 15th Street NW., Washington, D.C. 20005

and upon the following counsel by mail, postage prepaid: Clarence W. Olmstead, Jr., Shearman & Sterling, 53 Wall Street, New York, New York 10005.

J. Robert Kramer II.

[Civil Action No. 84–2832 (Judge Pratt)]

Plaintiff's Response to the Comments of ESA, Inc., Seaburn Inc., City of Northwood, Mobile Bay Audubon Society, Applied Technology, Inc. and the State of Illinois

In the matter of: United States of America, plaintiff, v. Waste Management, Inc. and WM Acquiring Corp., defendants.

Plaintiff, the United States of America, responds herewith to the comments of ESA, Inc. ("ESA"), SeaBurn Inc. ("SeaBurn"), City of Northwood ("Northwood"), Mobile Bay Audubon Society ("Audubon"), Applied Technology, Inc. ("AT") and the State of Illinois ("Illinois"). The responses are all contained in this document, since the comments raise common issues of fact and law. Each comment is addressed separately, however.

Before making our specific responses we briefly consider the applicable legal standard in this proceeding. The Antitrust Procedures and Penalties Act ("APPA" also referred to as the "Tunney Act"), 15 U.S.C. 16(b)–(h), clearly provides that the public interest is the relevant consideration in a case such as this. The governing provision, 15 U.S.C. 16(e), reads in full as follows:

(e) Public interest determination

Before entering any consent judgment proposed by the United States under this section, the court shall determine that the entry of such judgment is in the public interest. For the purpose of such determination, the court may consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

In addressing the duties imposed by Section 16(e), the Court must balance two considerations—the need to review the proposed judgment and the competing need to preserve the negotiated consent decree as a viable means of settling antitrust cases. Since the APPA was enacted in December, 1974, there have been a number of decisions dealing with this balance, and certain principles have been clearly and consistently established.

First, the courts have fully recognized that an important goal of the Tunney Act was to ensure that the courts would be more than mere "rubber stamps," entering consent judgments with no examination of their results and no ventilation of the process that produced them. *See United States* v. *American Telephone and Telegraph Co.*, 552 F. Supp. 131, 148–49, 151 (D.D.C. 1982). To this end, the Act requires that the provisions of the proposed decree be explained by the Department of Justice, that the decree and the explanation be published, that interested third parties be permitted to tender comments, that the defendants reveal all non-attorney contacts with the Government concerning the decree and that the Court make a specific "public interest" determination.

At the same time, the courts have taken care to emphasize that the Act does not require, and Congress did not intend, that a court replace the Department's judgment with its own, or with settlements proposed by third parties. It is, after all, the Department which is charged with enforcing the antitrust laws and protecting the public interest, a responsibility of which the Department was not relieved by the APPA:

The APPA codifies the case law which established that the Department of Justice has a range of discretion in deciding the terms upon which an antitrust case will be settled.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 61,508 at 71,980 (W.D. Mo. 1977). (citations omitted).

Preliminary negotiation over the content of the proposed final judgment is a function vested in the government in the first instance.

United States v. *Stroh Brewery Co.*, 1982–2 Trade Cas. ¶ 64,804 at 71,960 (D.D.C. 1982).

In federal antitrust litigation, it is the United States, not private parties, which "must alone speak for the public interest." * * * Congress has vested in the United States the duty to protect the public interest. Any disagreement with the wisdom of the United States' decision concerning the adequacy of proposed relief does not indicate inadequate representation of the public interest. For these reasons, the courts have consistently denied intervention to private parties whose views about the proper terms for an antitrust settlement differed from those of the United States.

United States v. *G. Heileman Brewing Co., Inc.*, 563 F. Supp. 642, 648 (D. Del. 1983) (citations omitted).

The balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. * * * The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree.

United States v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981) (citation omitted).

In recognition of the continuing role of the Department as the primary representative of the public interest, and the virtual impossibility of conducting true *de novo* reviews of the facts underlying each case which the Department has determined it should settle,[1] the courts have concluded that their discretion must necessarily be limited. Judge Harold Greene, in connection with the *AT&T* settlement, made the following observations:

Where, as here, a court is evaluating a settlement, it is not as free to exercise its discretion in fashioning a remedy as it would be upon a finding of liability. * * * If courts acting under the Tunney Act disapproved proposed consent decrees merely because they did not contain the exact relief which the court would have imposed after a finding of liability, defendants would have no incentive to consent to judgment and this element of compromise would be destroyed. The consent decree would thus as a practical matter be eliminated as an antitrust enforcement tool, despite Congress' directive that it be preserved. See S. Rep. No. 93–298, *supra*, at 6; H.R. Rep. No. 93–1463, *supra*, at 6.

It follows that a lower standard of review must be applied in assessing proposed consent decrees than would be appropriate in other circumstances. H.R. Rep. No. 93–1463, *supra*, at 12. For these reasons, it has been said by some courts that a proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is "within the reaches of public interest." * * * Although these decisions are not necessarily binding, this Court will follow a similar approach.

United States v. *American Telephone and Telegraph Co., supra* at 151 (citations omitted). An even more comprehensive analysis was undertaken by Judge Aldrich in one of the seminal decisions in this area:

The legislative history shows clearly that Congress did not intend the court's action to be merely pro forma, or to be limited to what appears on the surface. Nor can one overlook the circumstances under which the act was passed, indicating Congress' desire to impose a check not only on the government's expertise—or at the least, its exercise of it—but even on its good faith. See 120 Cong. Rec. S 20662 (daily ed. Dec. 9, 1974); BNA Antitrust & Trade Reg. Report No. 630, at A–15 (1973). At the same time, both by the statute's listing various alternatives short of a comprehensive examination, 15 U.S.C. 16(f), and by the announced expectancy of both congressional committees, the court is adjured to adopt "the least complicated and least time-consuming means possible." See S. Rep. No 93–298, 93d Cong., 1st Sess. 6 (1973); H. Rep. No. 93–1463, 93 Cong., 2d Sess. 8 (1974), 1974 U.S. Code Cong. & Admin. News 6539. In this situation the court cannot provide the best of all possible worlds. Just as the parties are compromising, so in its process of weighing the public interest, must the court.

This seems neither improper nor unwise. Fear has been expressed that the act's "elaborate procedure * * * will prove counterproductive and may, indeed, undermine [by placing too great obstacles on the consent process] effective enforcement of our antitrust laws." * * * Courts' involvement in preventing potential harm to competition can become excessive. * * * I agree that in terms of the important role of the consent decree in antitrust procedure, too much tillage can destroy the garden.

Nor do I think Congress had, in fact, any contrary intention. The Senate Judicary Committee reported that a high percentage of government antitrust actions are settled prior to trial, and recognized that the consent decree process was a "legitimate and integral part of antitrust enforcement." S. Rep., ante, at 3, 5. "Obviously, the consent decree is of crucial importance as an enforcement tool, since it permits the allocation of resources elsewhere." S. Rep. at 5. "[T]he Committee wishes to retain the consent judgment as a substantial antitrust enforcement tool." S. Rep. at 7. "The court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24598 (1973).

United States v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975) (citations omitted).

The review called for by Congress requires the Court to receive and evaluate comments and proposals submitted by interested third parties. It does not, however, require the Court to give deference to such proposals:

All of the foregoing issues and conflicting conditions relating thereto have been considered by the Court; each contention has been weighed on the scale of whether it tilts for or against "the public interest"; each has been considered in light of the special interest of the respective proponents thereof. None of the proponents strikes the Court as an advocate for "the public interest." Although each proponent has been of assistance to the Court in its consideration of "the public interest," none has offered a solution that meets "the public interest." The government in its role as protector of "the public interest" appears to have accomplished an acceptable result.

United States v. *National Broadcasting Co., Inc.*, 449 F. Supp. 1127, 1141 (C.D. Cal. 1978).

The APPA does not permit or require the Court to determine ultimate issues of fact or law that would have been decided if this case were fully litigated.

* * * * *

While it is clear that it was the intention of Congress in passing APPA to require that a reviewing Court make an independent public interest determination, it is equally clear that APPA does not permit or require the reviewing court to make a *de novo* determination of facts and issues presented by the pleadings in the case.

Absent a showing 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 in the competitive impact statement and its response 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 or the determination of appropriate injunctive relief for the settlement of such cases absent proof of an abuse of discretion.

United States v. *Mid-America Dairymen, Inc., supra* at 71,979–80. *See also United States* v. *Agri-Mark, Inc.*, 512 F. Supp. 737, 739 (D. Vermont 1981).

These principles were clearly affirmed by this Court in the *Stroh Brewery* and *LTV Steel* litigation. In *Stroh*, this Court, after reviewing the purposes of the Tunney Act, took note of the importance of consent decrees to effective antitrust enforcement:

Despite the fact that the 1974 Tunney Act appears to require a higher level of judicial

[1] *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975).

scrutiny of consent decrees than was previously the case, it was clearly not intended to discourage settlement of government antitrust suits. H.R. Rep. No. 1463, 93d Cong., 2d Sess. 5, *reprinted in* 1974 U.S. Code Cong. & Ad. News at 6539 (quoting S. Rep. No. 298, 93d Cong., 1st Sess.). As with any form of settlement, the consent decree process saves the parties the considerable time and expense of litigation. In the particular context of antitrust enforcement, the consent decree mechanism permits the Department to spread its limited resources over more suits and, thus, achieve broader antitrust enforcement. In the current climate of austerity in public spending, the consent decree mechanism is likely to play an even more significant role in the Department's enforcement scheme.

United States v. *Stroh Brewery Co.*, Civil Action No. 82–1059, slip op. at 4 (D.D.C. Nov. 10, 1982) (unpublished opinion by Judge Pratt). The Court then adopted the *Gillette* standard of review:

Therefore, our function in reviewing antitrust consent decrees, as Senior Circuit Judge Bailey Aldrich has stated in an oft-quoted opinion, is:

not . . . to determine whether this is the best possible settlement that could have been obtained if, say, the government had bargained a little harder. The Court is not settling the case. It is determining whether the settlement is within the reaches of the public interest. Basically . . . [we] must look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass. (emphasis supplied).

* * * * *

Although we have authority to scrutinize consent decrees under the Tunney Act, the power to negotiate the terms of any particular consent decree is lodged in the Executive Branch.

Id. (citations omitted).

In *United States* v. *LTV Corp.*, 1984–2 Trade Cas. ¶ 66,133 (D.D.C. 1984) this Court reiterated the appropriate standard of review.

The public interest is to be determined in the context of the anti-trust laws whose fundamental premise is the protection and safeguarding of free competition. The effect on competition of the proposed settlement is of paramount importance in the determination which we are required to make. Other factors, however, enter into the calculus. Any remedy should be framed with a view to causing the least possible injury to interests of the general public and relevant private interests. The court should consider the impact of the remedy in relation to other important public policies and avoid any unnecessary conflict or friction. It is not free, in making its public interest determination, to decide whether the settlement is the best that could have been reached or, if not, to substitute its own separate notions as to the proper remedy.

* * * * *

It is in light of this background that this court has considered the foregoing submissions and makes the following determination as to whether the proposed settlement is 'within the reaches of public interest'.

Id. at 66,342.

The Government has concluded, after considering these six comments, that the proposed Final Judgment is fully consistent with the public interest. The record now before the Court clearly supports that conclusion. We therefore urge that the Court enter the proposed Final Judgment.

Response to ESA, Inc.

ESA is a Massachusetts manufacturer of analytical and clinical instruments and reagents, and as such is a producer of hazardous wastes. ESA states in its comment that the relief relating to hazardous waste should be expanded to include divestiture of SCA-Recycling Industries of Braintree, Massachusetts ("Braintree"), formerly a subsidiary of SCA Services, Inc. ("SCA"), for essentially two reasons: (1) The acquisition of Braintree by Waste Management , Inc. ("WMI") eliminates the possibility of competition between them for ESA's business; and (2) there are a limited number of firms able to compete for ESA's business. Additionally, ESA comments that "[t]he combination of two of the three largest chemical waste firms in the U.S. seems to me to be in gross violation of the antitrust laws."

The Government responsds that ESA's objections to the effect of the merger in hazardous waste transportation in Massachusetts are not relevant to this proceeding because those issues were not part of any allegation in the Complaint and are not the subject of the proposed agreement between the parties. This Court, in the exercise of its responsibilities under the APPA, is not the appropriate forum for the resolution of ESA's concerns. The Government will also explain, however, why it concluded that the merger of WMI and SCA would not create the Clayton Act violation alleged by ESA.

We first address the appropriateness of ESA's objection. The relevant provision of the APPA, 15 U.S.C. 16(e), quoted in full above in the discussion of applicable legal principles, states that in making its determination of whether the entry of the judgment is in the public interest the Court may consider, among other things:

(1) the competitive impact of such judgment, including termination of *alleged violations*. . . . (2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the *violations set forth in the complaint* . . . (emphasis supplied)

Thus, it is clear from the statute itself that the public interest determination is to be made within the context of the violations alleged in the complaint.

The purpose of these proceedings is to consider the adequacy of the proposed Judgment, not the Complaint. As stated by one District Court: "APPA, under the circumstances of this case, [does not] permit or require this Court to force the Attorney General to assert additional claims not alleged at the outset of the case." *United States* v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 61,508, at 71,979 (W.D. Mo. 1977). In *United States* v. *Nat'l Assn. of Broadcasters*, 1982–83 Trade Cas. ¶ 65,050 (D.D.C. 1982), Judge Greene declined to consider a particular concern raised in a comment since it was "not involved in the instant lawsuit nor is it directly affected by the proposed judgment." *Id.* at 70,851 n. 7.

In enacting the APPA Congress did not intend to affect in any way the usual exercise of prosecutorial discretion by the Government in bringing antitrust cases. The posture of this proceeding with respect to ESA is the same as if the originally proposed acquisition had involved only the sale of SCA's hazardous waste operations in Massachusetts to WMI and the Government had decided not to challenge the acquisition. Under such circumstances, which occur often in the Government's exercise of its responsibilities under the premerger review provisions of 15 U.S.C. 18a, the matter would never have been presented to the Court, and the appropriate avenue for a private party would have been the filing of a private action against the defendants. The present case is no different simply because the Government found violations in other markets and negotiated a settlement to rectify those violations. The Government respectfully submits that the proposed Final Judgment should not be rejected because the Government did not allege a Clayton Act violation in hazardous waste collection in Massachusetts.

The Government disgrees with ESA's comment that the mere size of WMI and SCA in the waste management industry makes their merger illegal and is aware of no judicial decision that supports ESA's position. Only mergers that create or enhance "market power" or facilitate its exercise are a competitive concern. Such a determination cannot be based on size alone, however. It can only be made by analyzing the likely competitive impact of a merger within properly defined and economically meaningful markets. In analyzing WMI's

acquisition of SCA, the Government utilized this approach, as described in its 1984 Merger Guidelines, and determined the likely effect of the acquisition, market by market.

The Government's investigation revealed that there was no competitive concern created by WMI's acquisition of SCA's Braintree facility. Braintree provides a number of hazardous waste management services including the incineration of liquid and biomedical waste, solvent recovery, waste water treatment, transportation services and the clean-up of hazardous waste contaminated sites. Because of its location, Braintree is particularly advantaged in serving the New England area, and it is also complimented by an SCA processing facility in Newark, New Jersey and an SCA secure chemical landfill in Niagara Falls, New York. On the other hand, WMI had no hazardous waste disposal or processing facilities east of Toledo, Ohio, and was rarely competitive in hazardous waste disposal and processing in the area served by Braintree.

The only meaningful competitive overlap between WMI and Braintree in Massachusetts was in the transportation of hazardous waste and in the site clean-up business. In all of New England and upper New York, however, WMI's hazardous waste transportation revenues were only $3.6 million in 1984, less than two percent of WMI's national hazardous waste revenues. In fact, WMI regarded "entry" into New England as a major benefit of the SCA acquisition. The Government determined that, while WMI and SCA were actual competitors in New England, the hazardous waste transportation and site clean-up businesses were not concentrated and were much easier to enter than hazardous waste processing or disposal. Therefore, the Government does not regard WMI's acquisition of Braintree as a competitive concern.

Response to SeaBurn Inc.

SeaBurn, a potential entrant into the ocean based incineration of hazardous wastes, objects to the inclusion in the proposed Judgment of any reference to an agreement between SeaBurn and SCA. Under the terms of that agreement, SeaBurn and SCA were to consider a joint venture into ocean-based hazardous waste incineration and agreed not to enter into any such venture with any third party. SeaBurn comments that the relationship, embryonic in nature, automatically terminated upon the change in control of SCA. Therefore, no residual interest exists to divest to Genstar Corporation ("Genstar").

The Government agrees that it is likely that the SCA-SeaBurn agreement terminated upon SCA's acquisition by WMI, but we understood that WMI might conclude otherwise, and could decide to try to enforce what rights it believed it had acquired. To guard against this contingency and to ensure potential competition in ocean-based hazardous waste incineration, we determined that WMI should not acquire any interest in the agreement that continued to exist and we therefore insisted that it be on the list of businesses to be divested to GenStar. The Government regards the issue as moot, however, since by its terms the agreement terminated on December 31, 1984. It is therefore unnecessary that "all references to SeaBurn Inc. or Stolt-Nielsen, Inc. be deleted from the Final Judgment," as requested by SeaBurn.

Response to City of Northwood

Northwood, Ohio is the city within which WMI operates the Evergreen secure chemical landfill. WMI's proposed expansion of the landfill on an adjacent 90-acre site is also located in Northwood. This expansion site is to be divested to Genstar under the proposed Judgment. Northwood comments that it desires all hazardous waste operations at Evergreen to be terminated and opposes the proposed divestiture. The city raises several reasons for its opposition.

Northwood comments that the approval of any permit application to expand Evergreen is not guaranteed and that an application to broaden the waste streams allowed at Evergreen will face local opposition. These comments are, of course, true. They do not change our judgment, however, that the site should be divested. Evergreen and SCA's Adams Center secure chemical landfill in Ft. Wayne, Indiana are situated to allow them to compete effectively with each other throughout parts of Indiana, western Ohio, Michigan and Kentucky. There is currently little competition between them because Evergreen has permit limitations and only one year of useful life. WMI has proposed an expansion of Evergreen, however, that would allow it to accept a broad range of hazardous wastes. If a permit is granted for the new Evergreen site, substantial future competition would exist between it and Adams Center. In analyzing the effect of the loss of potential competition, the Government had to make a judgment about the likelihood of WMI's success in obtaining a permit for the site. *See United States v. General Dynamics Corp.*, 415 U.S. 486 (1974). After several discussions with state and federal environmental officials we concluded that while approval was not free of doubt it was likely it would be granted. To satisfy our concern over potential competition between Evergreen and Adams Center, WMI agreed to divest the future Evergreen site.

While it is our judgment that it is likely that WMI's permit application will be granted, this does not grant Genstar a "right" to such approval. Should Genstar seek a permit, Northwood's rights under the Resource Conservation and Recovery Act of 1976 ("RCRA") would not be affected by the Final Judgment. The Government understands the opposition of communities to having secure chemical landfills within their borders, but it is these concerns that RCRA and other laws and regulations enforced by federal and state authorities are designed to meet. Northwood will be completely able to pursue its rights under existing law if Genstar seeks a permit, just as it could have done if there had been no divestiture. APPA proceedings, however, are not the proper forum in which to decide the environmental merits of a possible application to expand Evergreen.

Northwood also comments that, since much of the waste coming to Evergreen comes, from outside of Ohio, location is not a "prime factor in competition [between landfills]." We disagree. Location and the attendent transportation costs to particular generators of waste are an important factor in determining where a landfill can effectively compete. This is especially true in a market such as this where transportation costs represent a substantial portion of the customer's total disposal costs. While there is no special competitive significance to divesting a proposed landfill site in Northwood rather than some other town in the relevant market, WMI simply has no alternative site to divest to protect potential competition.

Northwood comments that Genstar could apply for a hazardous waste permit somewhere else to "better optimize the competitiveness of Genstar." We agree that Genstar is free to apply for whatever permit it desires. The possibility that Genstar or some other entity may enter elsewhere does not address the loss of potential competition between Adams Center and Evergreen, however, and does not obviate the need for divestiture, especially here where barriers to entry are high. Divestiture will place Genstar in a competitively advantageous position by giving it a site that is likely to be permitted. By avoiding the time and expense of finding an acceptable

site, divestiture should significantly hasten entry into the market.

Finally, Northwood comments that the divestiture of the expanded Evergreen site will result in a loss of competition, apparently because of the loss of synergies with other (unspecified) WMI operations. Northwood provides no support for this hypothesis, however, and we do not understand why it should be so. WMI has never raised such an objection and it is our belief that no such synergies exist.

While Northwood's written comments do not change our view as to the propriety of divesting WMI's proposed hazardous landfill site, Northwood has orally informed the Department of an error in the proposed Judgment. The description of the Northwood site found on pages seven and eight of the proposed Judgment is wrong and should read:

(v) Any right, interest, asset or contract of WMI relating to its proposed hazardous waste landfill permit and site (a ninety-acre site on the LOF property bounded on the north by Wales Road and on the east by the Chesapeake and Ohio R.R.) in Northwood, Ohio;

We expect WMI to inform the Court of its agreement to this change and ask that the Court substitute the correct description in its Final Judgment. We thank the City of Northwood for bringing this error to our attention.

Response to the Mobile Bay Audubon Society

Audubon is an environmental organization located in Mobile, Alabama, the site of a proposed WMI terminal for the ocean-based incineration of hazardous waste. Audubon's comment focuses on environmental problems at WMI hazardous waste sites and argues that the broader public interest in protecting the environment will not be served by allowing WMI's acquisition of SCA.

It has been stated that while protecting competition is the principal goal of an antitrust consent decree, other important policies can also be relevant in an APPA proceeding. *United States* v. *American Telephone and Telegraph Co., supra* at 150; *United States* v. *LTV Corp., supra* at 66,342. Whether or not such an inquiry into other public policies is permitted under the APPA, it is clear that Audubon has not stated any basis for rejecting this proposed consent decree.

The proposal cures every antitrust violation found by the Department, and it does so in a way that saves the Government the time, expense and risk of litigating a complex merger case involving over 40 discrete markets. In reaching this result, the decree neither causes injury to public or private interests nor conflicts with environmental policies. There is no provision in the decree that relieves WMI or Genstar of any of their responsibilities under any federal or state environmental law or regulation. There is no immunity from prosecution for either of the two corporations or their officers. No private right of action against either firm has been constrained. Thus, we believe the decree to be environmentally neutral.

Audubon would have the Court go several steps farther and decide whether WMI can be trusted with additional hazardous waste facilities. This clearly is improper. While we do not necessarily defend WMI's record of compliance with environmental or other laws, we believe that an inquiry into the corporate character of the company is well beyond the intended scope of the Court's APPA review. Such an inquiry is the type of open-ended inquiry that places a great obstacle to effective enforcement of the antitrust laws by discouraging the settlement of antitrust suits. The proceeding would apparently consist of detailed proofs of each alleged violation by WMI and, by way of comparison, other competitors in the market. Not only would such a trial of WMI's character discourage future antitrust settlements, but it would serve no useful purpose. In the course of the Department's investigation, staff met several times with U.S. Environmental Protection Agency (EPA) officials and were informed that EPA intended to take no position for or against the merger. Also, no state environmental agency approached the Department to oppose the proposed acquisition.

Response to Applied Technology, Inc.

AT is a New Jersey transporter and broker of hazardous waste and a competitor of WMI and SCA on the Eastern seaboard. It is also a plaintiff in a $45 million antitrust damage action against WMI alleging unfair business practices and predatory pricing. AT's opposition to the entry of the proposed Judgment, therefore, must be considered in the context of its private suit against WMI.

AT states in its comment that the relief relating to hazardous waste in the proposed Judgment is inadequate and not in the public interest for two principal reasons. First, AT contends that WMI's environmental violations raise an issue of whether WMI "can be trusted with our deadly toxic waste." Second, AT claims that the acquisition will increase WMI's "monopoly power" over the "brokerage and transport aspects of the industry." According to AT, WMI's monopoly power will be enhanced both by the acquisition of SCA's hazardous waste transportation business and by its acquisition of additional disposal sites which will allow it, through unfair business practices, to "squeeze out small competitors." AT, therefore, urges the Government to withdraw its consent and the Court to refuse to approve the acquisition.

The Government responds that AT's objections relating to competition in the transportation of hazardous wastes are not relevant to this proceeding because such issues were not part of any allegation in the Complaint and are not the subject of the proposed Final Judgment. This argument is more fully addressed in our response to ESA. We will discuss below why we concluded that the transaction created no competitive problems in transportation of hazardous wastes. The environmental issues raised by AT are completely answered in our response to Audubon and require no further reply.

AT's comment contains several errors and mistatements of fact. For example, AT comments: "The Justice Department is perfectly happy with an agreement 80% to their satisfaction, and has ignored the 20% of the agreement addressing a turnover of a major portion of the waste industry to Waste Management." Nothing could be farther from the truth. While the proposed Judgment may be 80% to the satisfaction of AT, it is 100% satisfactory to the Department. For its own purposes WMI determined that it was necessary to avoid Government opposition to its acquisition of SCA. Thus, Section 5.1 of the Acquisition Agreement signed by WMI, SCA and Genstar on August 13, 1984 required WMI to divest all assets and businesses of SCA "that may be necessary to secure government antitrust approval." [2] The Government, therefore, was able to obtain relief for each violation that we concluded would result from a WMI–SCA merger.

In its comment AT relates statements allegedly made orally by Government personnel to AT. In conversations with AT the Government explained in considerable detail its competitive analysis and market definitions. We candidly discussed the difficulties of litigating such a case [3] and expressed

[2] The Acquisition Agreement is Exhibit B of the Government's Competitive Impact Statement.

[3] *See e.g., United States* v. *Waste Management, Inc.*, 743 F.2d 976 (2nd Cir. 1984).

our view that the proposed Judgment is unusually strong. AT was not told that nothing they brought to our attention could change our position. We expressed confidence in our analysis, but specifically challenged AT to provide the Department and the Court with a thoughtful antitrust analysis that would prove that our position was wrong. AT has declined to accept this invitation and has failed to provide any information to support its allegations.

AT alleges that the acquisition of SCA's hazardous waste transportation business [4] is anticompetitive, but provides no information on geographic markets, the number of firms providing hazardous waste transportation services or their relative sizes, or other information to support its claim. The Government found this segment of the hazardous waste business to be unconcentrated, however, and to have significantly lower barriers to entry than the processing or disposal of hazardous waste. AT similarly fails to support its claims that the acquisition of SCA processing and disposal facilities will enhance the monopoly power of WMI. The Government examined the competitive effects of the acquisition of each SCA processing and disposal facility and determined that the only two substantial overlaps were Evergreen-Adams Center and Emelle-Pinewood.[5] Both of these problems have been cured by the proposed Judgment. Without any increase in market power the acquisition will not enhance WMI's ability to "squeeze" small transporters from the market. In any event, firms that believe that they have been injured by WMI in violation of the antitrust laws may, like AT, file private actions. Courts then may determine whether illegal acts have occurred or whether the plaintiffs merely seek to be protected from competition.

AT also objects that "the divestiture to Genstar lasts only five years, after which Waste Management is free to acquire all of SCA's disposal facilities." AT misreads the proposed Judgment, however. Sections IV and XVI of the proposed Judgment together prohibit WMI from acquiring any divested facility for ten years,[6] the standard term of Department of Justice divestiture decrees since early 1979. While WMI is, of course, "free" to acquire Genstar in ten years, it would be bound by the premerger notification provisions of the Hart-Scott-Rodino Act and by the Clayton Act, under which the Government could challenge the transaction.

Response to the State of Illinois

Illinois' comment covers several issues, each of which will be examined in detail. The comment can be summarized in this way: 1. The Court should hold a public hearing on the merits of the proposed Judgment because Illinois has been denied access to materials that it needs to write a meaningful comment; 2. the proposed divestiture does not cure the anticompetitive effects of the acquisition in the national contract market; 3. the proposed Judgment does not cure the effects of the acquisition in the hazardous waste landfill market; 4. the proposed Judgment does not address the effects of the acquisition in the PCB incineration market; 5. the proposed Judgment does not adequately consider WMI's history of antitrust violations. Illinois, therefore, asks the Court to conduct a full public hearing on the above issues. We have reviewed Illinois' comments and concluded that they are mistaken and that the proposed Judgment is in the public interest.

A. Availability of Discovery to Commenters

Illinois complains that it has been denied access to Hart-Scott-Rodino premerger materials and thus, deprived "of a real opportunity to comment upon and fully assess the effects of the acquisition." In support of its position Illinois cites the recently decided *Lieberman* v. *FTC*, 1984–2 Trade Cas. ¶ 66,295 (D.Conn. 1984), holding that the FTC and, in dictum, the Department of Justice, have the discretion to share premerger materials with state attorney generals on a non-public basis. Illinois has in fact requested access to all of the Department's Hart-Scott-Rodino files, which include more than 50,000 documents from WMI and SCA.[7] It is the Government's position, notwithstanding the dictum in *Lieberman*, that we are without authority to provide such materials to the State of Illinois.

In any case, the issue of whether or not the Government has discretion to share premerger materials with Illinois is not relevant to this proceeding. Illinois does not request that the Court order discovery, but argues that the Court should hold hearings in which a further inquiry into the proposed Final Judgement would be made.[8] Illinois has not established that any need for such a hearing exists, however. The substantive objections to the proposed Final Judgment made by Illinois are specific and pointed, and are based upon the detailed information already filed in this matter. The Government responds fully to each objection below, and it is clear that no further purpose would be served by a hearing of the kind proposed by Illinois.

B. National Contract Market

Illinois contends that the proposed divestiture to Genstar will not cure the alleged violation in the national market for large municipal solid waste collection and disposal contracts. It advances two reasons in support of this proposition. First, Genstar is already a potential competitor in this market and its acquisition of portions of SCA therefore eliminates this potential competition. Second, Illinois concludes that Genstar will not immediately begin to bid on large contracts until it has had an opportunity to absorb its new business and thus, for some period of time, there will be a substantial lessening of competition in the national contract market.

The Government agrees that a divestiture to a potential competitor could itself eliminate competition. Our investigation led us to conclude, however, that Genstar was at best a marginal potential entrant and that its acquisition of approximately 40 percent of SCA would not adversely effect competition. Prior to its agreement to become the "antitrust solution" to WMI's acquisition of SCA, Genstar was only marginally involved in the landfilling of solid waste, operating

[4] AT's comment states that all of SCA's transportation services are being acquired by WMI. This is not true. With the divestiture of the Pinewood landfill business and TRI, approximately 35 percent of SCA's transportation business is being divested to Genstar. SCA's 1984 revenues for transportation services were $16.5 million, of which $5.9 million is being divested to Genstar. In fact, since the divestiture Genstar has been granted licenses to transport hazardous waste in over 20 states.

[5] See pp. 7–10 of the Government's Competitive Impact Statement.

[6] What WMI is prevented from doing for five years is acquiring any secure chemical landfill or PCB incineration without the approval of the Government or the Court.

[7] While Illinois, in its introduction, styles the issue as a failure to provide "determinative documents", it is later clear that what Illinois desires is all premerger material regardless of how determinative. We take exception to Illinois' charge as all determinative documents, in full compliance with 15 U.S.C. § 16(b), were provided to the Court as attachments to the Government's Competitive Impact Statement.

[8] It is clear that the APPA does not provide for wholesale access to Government files for the purpose of making comments, as Illinois desires. In a recent case this Court denied such a request by two interested parties who opposed a Government consent judgment. *United States* v. *LTV Corp.*, Civ. No. 84–0884 (Unpublished Excerpt of the Proceedings of May 1, 1984 at 8–9.)

three solid waste landfills on the West Coast and one in Western Canada. It provided no solid waste collection services and its landfills did not compete with either WMI or SCA. To determine whether Genstar, despite this marginal involvement, was a serious potential competitor the Government interviewed Genstar executives and also subpoenaed its documents through the use of Civil Investigative Demands.[9] It was found that Genstar had no plans to become a major nationwide competitor for disposal contracts. Also, we found that despite the fact that solid waste collection revenues account for the vast majority of revenues from municipal contracting, Genstar had no intent to enter independently solid waste collection. Genstar was, therefore, no more likely a potential entrant at a national level than are dozens of local and regional firms who currently bid on municipal contracts. Nor did Genstar have any special advantage over these dozens of firms. The divestiture to Genstar, therefore, does not independently raise competitive concerns relating to potential competition.[10]

Additionally, it appears that Illinois misunderstands the Government's allegations about a national contract market. It is not true, as Illinois states, that any waste company can effectively bid on large municipal contracts anywhere in the country. If this were the case, and WMI might well have argued at trial that it was, then the WMI-SCA acquisition would not violate Section 7 in the national contract market, since each local or regional competitor would be a viable competitor anywhere in the country. What we found, however, was that large, national companies are advantaged in competing for large contracts throughout the United States *because* they have operating locations throughout the country. Regional and local firms, such as Genstar was before the divestiture, seldom bid on contracts far from their bases of operation. The Government insisted, therefore, not only that all divested operations be sold to a single entity, but that operations throughout the country had to be divested to *make* Genstar a national competitor. Our insistence on divestitures in Los Angeles, southern New Jersey, Detroit and Boston was based not only on violations in local markets, but also on the need to permit Genstar to become quickly an effective national competitor.

Illinois also argues that competition will be injured until Genstar has digested its new business and is able to compete for municipal contracts. We disagree. Genstar is uniquely positioned to step quickly into SCA's shoes. This is not a situation where the acquiring defendant (WMI) or a trustee must attempt to sell facilities to restore competition. Rather, divestiture to Genstar has already been accomplished and Genstar is already vigorously competing in the marketplace. Genstar's waste management executives are former SCA officials and include the SCA employees who were responsible for bidding on municipal contracts. Regional officials with responsibility for municipal bidding have been appointed and Genstar's new collection operations have considerable experience in serving major municipal customers such as the cities of Boston and Phoenix. Genstar has already begun advertising its availability for municipal work in the trade press. It is also already effectively bidding against WMI. One large contract recently won by Genstar in competition with WMI is a $1.5 million contract to serve Wright Patterson Air Force Base in Dayton, Ohio.

C. Secure Chemical Landfill Market

Illinois comments generally that the Government is wrong in concluding that hazardous waste disposal markets are "local" in nature and argues that such markets are national or involve large regions of the country. Specifically, Illinois questions the exclusion of WMI's Illinois secure chemical landfills from the midwestern market alleged in the Government's Complaint. Furthermore, Illinois comments that divesting the Evergreen landfill in Ohio rather than Adams Center in Indiana gives WMI the more attractive of the two sites.

Illinois misstates the Government's analysis of geographic markets in the landfilling of hazardous wastes. The two markets alleged in the Government's Complaint are clearly regional markets, not local. The first covers the Southeastern United States and ranges from Tennessee to Florida and from Alabama to the Carolinas. The second involves portions of four midwestern states.

The real issue raised by Illinois is whether SCA's Adams Center secure chemical landfill in Ft. Wayne, Indiana competes with WMI's two Chicago area landfills, CID in Calumet City and ESL in Joliet. While we believe that this issue is technically irrelevant in an APPA proceeding because it was not part of the Government's Complaint, it is, no doubt, important and was a major focus of our investigation. In analyzing this issue the Government conducted a telephone survey of hazardous waste customers in Indiana and Illinois and analyzed all customer records of the three landfills. What we discovered was that SCA's Adams Center landfill derived no business from Illinois other than incinerator ash from SCA's own incinerator there. In fact, few hazardous waste generators in Illinois had even heard of Adams Center. We also found that the Indiana customers of ESL and CID were concentrated in the Chicago metropolitan area, where Adams Center had very few customers. There was, therefore, no substantial competition between Adams Center and ESL-CID. Under the Department's Merger Guidelines, however, ESL-CID and Adams Center can be considered in the same geographic market even if they do not currently compete, if either could undermine a small but significant price increase by the other.[11] An analysis of freight rates showed that neither ESL-CID or Adams Center could profitably so constrain each other's prices because of the substantial cost disadvantage that each would face if it tried to serve the other's customers. The Government concluded, therefore, that Adams Center and ESL-CID were not in the same geographic market.

Finally, Illinois comments that by divesting the proposed Evergreen landfill rather than Adams Center WMI is obtaining the best site. It is true that an open landfill is preferable to a potential one, but that is not relevant to the competitive issue. The investigation determined that common control of both Adams Center and the potential Evergreen landfill would raise significant competitive problems. By divesting one of the facilities, albeit the less attractive one, WMI is eliminating the problem.

D. Incineration of PCBs

Illinois criticizes the Government's decision not to challenge WMI's acquisition of SCA's Chicago PCB incinerator on potential competition grounds.[12] It is true that the PCB

[9] Illinois' comments are based on the theory of actual potential competition. The Government examined not only this theory, but also the question of whether Genstar exerted a "wings effect" as a perceived potential entrant. We concluded that it did not.

[10] Section 4.133 of the Department's Merger Guidelines states that "[i]f more than a few firms have the same or a comparable advantage in entering the acquired firm's market, the elimination of one firm is unlikely to have any adverse competitive effect."

[11] The Department usually utilizes a hypothetical five percent price increase in its analysis. That was done in this investigation.

[12] Illinois' comment states that the Government "initially *decided* to require WMI to divest the

Continued

incineration market is highly concentrated and that barriers to entry are high. SCA's Chicago incinerator is one of only four commercial incinerators in the country permitted to burn PCB, and accounts for nearly half of available capacity. WMI is not presently a competitor in PCB incineration, but is a potential entrant into the market. It owns two incinerator ships, the Vulcanus I and Vulcanus II, which are capable of burning large volumes of liquid PCB at sea, and for which it is currently seeking permits. Until it receives such permits, however, it cannot compete with SCA in PCB incineration.

For a number of reasons it was decided that the elimination of WMI as a potential entrant was unlikely to adversely effect competition. The permitting of ocean-based incineration has been substantially delayed already and whether the Vulcanus or any other vessel will ever be permitted is speculative.[13] In any event, the delay in the permitting process has eliminated any advantage that WMI once had as the most favorably situated potential entrant. Another firm, At Sea Incineration, will soon have two ships employing existing technology. SeaBurn, Inc., has an alternative technology, described in its comment to the Court. It also has permission to use a port and could build and permit a ship within a year of final EPA regulations. There are also other land and ocean-based potential entrants, such as Huber Technology, Genstar and American Sea Mount, in various stages of the entry process. Furthermore, General Electric and Rollins are seeking permits for substantial additions to their current land-based capacity. Illinois apparently discounts these additional potential entrants,[14] but there is no good reason for doing so. Under applicable law and the Merger Guidelines the elimination of one potential competitor by acquisition is competitively harmful only if few other potential entrants remain. Under the facts that exist here, including the existence of several other potential entrants and substantial doubts about the ability of WMI to obtain permits for sea-based incineration, the Government's conclusion that the effect of the transaction on potential competition in this market was not substantial is clearly justified.[15]

E. Waste Industry Antitrust Violations

Finally, Illinois points out that WMI and other major trash haulers have been accused of anticompetitive behavior and sometimes convicted of it. We are well aware of the industry's and WMI's antitrust history and agree that solid waste collection is subject to cartelization. This was one reason for our insistence on complete divestitures in any market where there was substantial competition between WMI and SCA. Indeed, the divestitures have created a new and significant competitor in these several markets.

Conclusion

The Government has given careful consideration to the six comments submitted in this case and concludes, for all of the reason given above, that the entry of the proposed Final Judgment is in the public interest. We therefore urge the Court, after consideration of the comments and the responses thereto, to enter the Final Judgment. The Department will notify the Court when the publication requirements of the APPA have been complied with.

Respectfully Submitted.

J. Robert Kramer II and
John W. Clark,
Attorneys: Department of Justice. Antitrust Division, Washington, D.C. 20530, Telephone: (202) 724-6583.

Certificate of Service

I hereby certify that I have served the foregoing Plaintiff's Response to the Comments of ESA, Inc., SeaBurn Inc., City of Northwood, Mobile Bay Audubon Society, Applied Technology Inc., and the State of Illinois upon the following counsel by hand delivery on January 23, 1985.

Michael Sennett, Bell, Boyd & Lloyd, Three First National Plaza, Chicago, Illinois 60602
Dennis C. Thelen, McNair, Glenn, Konduros, Corley, Singletary, Porter & Dibble, P.A., 1155 15th Street NW., Washington, D.C. 20005

and upon the following counsel by mail, postage prepaid

Clarence W. Olmstead, Jr., Shearman & Sterling, 53 Wall Street, New York, New York 10005.

J. Robert Kramer III.

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Chicago PCB incinerator to Genstar." This is not correct since no such determination was ever made. As the Competitive Impact Statement makes clear, the Government *considered* requiring divestiture, but ultimately determined that there was no violation in that market.

[13] In addition to a federal permit for its vessel, WMI must obtain local permits for terminal facilities. Vigorous opposition at many ports has made WMI's efforts to this end unavailing so far.

[14] *See* Illinois' comment at 11.

[15] Illinois also points out that WMI has been ordered to dispose of millions of gallons of PCB and PCB contaminated materials stored at its Emelle, Alabama landfill. Having obtained SCA's Chicago incinerator, it is expected that WMI will now burn this backlog itself rather than pay other firms to incinerate it. Illinois argues, without support, that this will have an anticompetive effect. It is evident, however, that the PCB must be burned regardless of the acquisition, and it is irrelevant to competition what incinerator it is burned in.

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Harris Graphics Corp. 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 January 28, 1985–February 1, 1985.

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 deceased 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.

In the following cases the investigation revealed that criterion (3) has been met. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-15,540; Harris Graphics Corp., Newspaper Press Div., Cleveland, OH

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-15,551; Caryco Mining, Limited, Mine # 4, Rita WV

Aggregate U.S. imports of metallurgical coal are negligible.

TA-W-15,537; Universal Firearms, Hialeah, FL

Separations from the subject firm resulted from a transfer of production to another domestic facility.

TA-W-15,536; Berg Steel Pipe Corp., Panama City, FL

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations

TA-W-15,562; Texaco, Inc., Port Arthur, Texas Refinery

A certification was issued covering all workers separated on or after September 1, 1984 and before April 30, 1985.

TA-W-15,550; Buffalo Color Corporation, Buffalo, NY

A certification was issued covering all workers separated on or after January 1, 1984.

TA-W-15,484; Tanglewood Manufacturing, Lakeland, GA

A certification was issued covering all workers separated on or after September 14, 1983 and before December 31, 1984.

TA-W-15,543; Pfister & Vogel Tanning Co., Milwaukee, WI

A certification was issued covering all workers separated on or after October 26, 1983.

TA-W-15,519; Emhart Industries, Inc., Hardware Group, Berlin, CT

A certification was issued covering all workers separated on or after October 17, 1983.

TA-W-15,545; Rexnord, Inc., Mechanical Power Div., Roller Chain Operation, Worcester, MA

A certification was issued covering all workers separated on or after February 1, 1984 and before December 31, 1984.

TA-W-15,557; Equitable Fashions, New Brunswick, NJ

A certification was issued covering all workers separated on or after October 9, 1983 and before July 15, 1984.

TA-W-15,561; Mercury Sportswear Co., Inc., New York, NY

A certification was issued covering all workers separated on or after October 31, 1983 and before January 15, 1984.

I hereby certify that the aforementioned determinations were issued during the period January 28, 1985–February 1, 1985. 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: February 5, 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 85-3737 Filed 2-13-85; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; A.N. Wolf 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 Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 25, 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 February 25, 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, D.C., this 4th day of February 1985.

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.N. Wolf Shoe Co. (workers)	Denver, PA	1/25/85	1/18/85	TA-W-15,718	Shoes, boots, casual duty, women's.
Auburn Die Co. (United Paper-workers)	Auburn, ME	1/23/85	1/18/85	TA-W-15,719	Dutting dies for shoe industry.
Elite Thames Co., Inc. (ILGWU)	Brooklyn, NY	1/8/85	1/2/85	TA-W-15,720	Blouses.
Fafnir Bearings (UAW)	Newington, CT	1/23/85	1/21/85	TA-W-15,721	Ball bearings and roller bearings.
Fafnir Bearings (UAW)	New Britain, CT	1/23/85	1/21/85	TA-W-15,722	Ball bearings and roller bearings.
LTV Steel Corp., Indiana Harbor Works (UAW)	E. Chicago, IL	1/25/85	1/18/85	TA-W-15,723	Steel.
Quoddy Manufacturing (workers)	Auburn, ME	1/8/85	12/27/85	TA-W-15,724	Shoes, slippers.
Rajah Ventures, Ltd (company)	Grand Junction, CO	1/10/85	1/4/85	TA-W-15,725	Mining of uranium and vanadium.
Royltype., Div. of Triumph-Adler Co (UAW)	Newington, CT	1/29/85	1/25/85	TA-W-15,726	Ribbons—typewriters, computers, work processors, etc.
The Timberland Co. (company)	Newmarket, NH	1/29/85	1/10/85	TA-W-15,727	Water proof insulated boots, men's and women shoes, cut, low men's.
Weisner Products (workers)	Long Island, NY	1/8/85	1/2/85	TA-W-15,728	Slippers.
Amedco Casket Hardware Co. (workers)	Connersville, IN (E. 10th St. and 932 Eastern).	1/28/85	1/17/85	TA-W-15,729	Casket hardware.
American Southern Textile Co., Velnit Knitting Div. (wkrs)	Opa Locka, FL	1/28/85	1/12/85	TA-W-15,730	Fabrics—garment industry.
B-W Footwear (workers)	E. Corinth, ME	1/23/85	1/18/85	TA-W-15,731	Stich men's casual shoes and men's and women's golf shoes.
Everything Special (company)	W. Palm Beach, FL	1/29/85	1/22/85	TA-W-15,732	Stuffed animals toys.
Montgomery Manufacturing Co., Inc. (ILGWU)	Montgomery, PA	1/23/85	1/17/85	TA-W-15,733	Women's sleepwear housecoats.
E.F. Manufacturing Corp. (ILGWU)	Montgomery, PA	1/23/85	1/17/85	TA-W-15,734	Women's sleepwear housecoats.
National Mines Corp., Isabella Mine (UMWA)	Isabella, PA	1/23/85	1/18/85	TA-W-15,735	Metallurgical coal.
North and Judd, Inc. (UAW)	Middletown, CT	1/29/85	1/25/85	TA-W-15,736	Parts and accessories for boats.
Prestige Sportswear, Inc. (workers)	Boston, MA	1/23/85	1/8/85	TA-W-15,737	Skirts, slacks, jackets blouses.

APPENDIX—Continued

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Tecumseh Products (UAW)	Marion, OH	1/25/85	1/22/85	TA-W-15,738	Cooler compressors.
Viner Brothers, Inc. (workers)	Bangor, ME	1/28/85	1/24/85	TA-W-15,739	Shoes, casual, sandals, boots, womens loafers, boat shoes, men's.
West Point Pepperell Alamac Div. (wkrs)	Ahoskie, NC	1/28/85	1/22/85	TA-W-15,740	Double knit material.

[FR Doc. 85-3736 Filed 2-13-85; 8:45 am]
BILLING CODE 4510-30-M

LIBRARY OF CONGRESS

Copyright Office

[Docket RM 85-1]

Compendium of Copyright Office Practices

AGENCY: Library of Congress, Copyright Office.

ACTION: Announcement of issuance.

SUMMARY: This notice is issued to inform the public of the availability for inspection and copying of a new *Compendium of Copyright Office Practices.*

EFFECTIVE DATE: February 14, 1985.

FOR FURTHER INFORMATION CONTACT: Waldo H. Moore, Associate Register of Copyrights for Special Programs, U.S. Copyright Office, Library of Congress, Washington, D.C. 20559 (202) 287-8378.

SUPPLEMENTARY INFORMATION: The Copyright Office has prepared a new *Compendium of Copyright Office Practices* (designated as Compendium II). This new manual reflects examining and certain related practices under the copyright law ehich became fully effective on January 1, 1978, including Title 17 of the United States Code and amendments thereof. Compendium II includes an extensive index.

The Compendium and Index are available for public inspection and copying in the Copyright Office, Room LM-401 of the James Madison Memorial Building of the Library of Congress, First Street and Independence Avenue, SE., Washington, D.C.

It is anticipated that copies of Compendium II will be available on or about February 11, 1985 for purchase from the Superintendent of Documents, United States Government Printing Office, as a looseleaf publication. Amendments and supplements will be published by the Superintendent of Documents in the form of additional or replacement pages as such changes are made.

An earlier Compendium (now called Compendium I) was issued a number of years ago to reflect Copyright Office Practices under the Copyright Act of 1909, as amended. Compendium I applies to Copyright Office actions, in situations which it covers, where the provisions of the Copyright Act of 1909, as amended, are dispositive. Copies of Compendium I may be purchased from the National Technical Information Service, United States Department of Commerce.

Dated: February 4, 1985.

Donald C. Curran,

Acting Register of Copyrights.

[FR Doc. 85-3754 Filed 2-13-85; 8:45 am]
BILLING CODE 1410-03-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Overview Section) to the National Council on the Arts will be held on March 1, 1985, from 9:00 a.m.-5:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public on March 1, 1985, from 9:00 a.m.-3:30 p.m. The topics for discussion will be guidelines, multi-year plan and musical theater.

The remaining sessions of this meeting March 1, 1985, from 3:30-5:30 p.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682-5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85-3768 Filed 2-13-85; 8:45 am]
BILLING CODE 7537-01-M

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Forums Section) to the National Council on the Arts will be held on March 5-7, 1985, from 9:00 a.m.-6:00 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552 of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682-5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85-3769 Filed 2-13-85; 8:45 am]
BILLING CODE 7537-01-M

President's Committee on the Arts and Humanities; Meeting

Plenary Meeting VIII of the President's Committee on the Arts and Humanities will convene at 9:00 a.m. on Thursday, February 28, 1985, in the Council Room, Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. This is a regularly scheduled meeting at which

committee activities will be reviewed and progress reported.

The Committee, charged with exploring ways to increase private support for the arts and the humanities, has generated private funds which augment their operational costs and support projects and programs which have been initiated by the President's Committee.

Agenda items on February 28, will include:

• Summary of recent activities of the President's Committee on the Arts and Humanities

• Briefings by the chairmen of:

The National Endowment for the Arts
The National Endowment for the Humanities
The Institute for Museum Services

• Provisions of the Treasury tax proposal affecting charitable tax deductions, special presentations by:

The Honorable Douglas Dillon, former Secretary of the Treasury
Roger L. Stevens, Chairman, John F. Kennedy Center for the Performing Arts

The meeting is expected to adjourn before lunch. Please notify the President's Committee (202) 682-5409 or (212) 883-6764 if you wish to attend.

February 4, 1985.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85-3694 Filed 2-13-85; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Engineering; Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Engineering.

Date and time: March 4-5, 1985:

9:00 a.m.-5:00 p.m., March 4
9:00 a.m.-3:00 p.m., March 5

Place: National Science Foundation, 1800 "G" Street, NW., Room 540, Washington, D.C. 20550.

Type of meeting: Open.

Contact person: Mrs. Mary Poats, Executive Secretary, Advisory Committee for Engineering, Room 537, National Science Foundation, Washington, D.C. 20550, Telephone: (202) 357-9571.

Summary Minutes: Mrs. Mary Poats at the above address.

Purpose of Advisory Committee meeting: To provide advice, recommendations, and counsel on major goals and policies pertaining to Engineering programs and activities.

Summarized Agenda

Discussions on issues, opportunities and future directions for the Engineering Directorate; discussion of the Engineering Directorate budget for FY 86; reports from Directorate Advisory Committee Chairmen; discussion with NSF Director as well as other items.

M. Rebecca Winkler,

Committee Management Officer.

February 11, 1985.

[FR Doc. 85-3796 Filed 2-13-85; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Availability of Responses, Recommendation Responses

Responses From

Highway—*Federal Highway Administration: Dec. 28: H-74-38, H-75-5, H-77-13, H-77-14, H-80-25, H-80-26, H-80-64, H-80-65, and H-80-66:* Continuing to pursue research in the development of highway traffic barriers. *H-81-75:* Has completed a study to investigate the role of rail-highway crossings in hazardous materials routing, published in Sept. 1984 *Public Roads* magazine, "Railroad-Highway Crossings and Route Selection for Transportating Hazardous Materials". *Jan. 10: H-76-11, H-77-4, H-77-12, H-80-64, H-80-65, and H-80-66:* Has issued two research reports regarding bridge barrier system standards and retrofitting: "Upgrading Safety Performance in Retrofitting Traffic Railing Systems" (FHWA/RD-77-40) and "Safer Bridge Railings Volume 1—Summary Report" (FHWA/RD-82-072). Has distributed a movie depicting crash tests and findings to field offices and briefed Safety Board members on FHWA's response to these recommendations.

International Association of Chiefs of Police, Inc.: Jan. 11: H-83-62 and -63: Has resolved to emphasize the active role of police officers in promoting the proper use of child safety seats and seat belts. This resolution will be sent to various state and local law enforcement agencies in accordance with general procedures.

Commonwealth of Massachusetts, Executive Office of Public Safety: Dec. 11: H-84-77 through -86: Current statutes and regulations do not allow the use of preliminary breath test devices; however state and local enforcement agencies are utilizing the NHTSA recommended three-part field sobriety test, including the horizontal gaze nystagmus test. Agrees with the need for an alcohol awareness training program for court personnel; will develop training seminars for court personnel dealing with DWI cases. Of the total number of DWI arraignments, the number of juvenile DWI offenders is minimal.

State of Connecticut Executive Chamber: Jan. 10: H-83-39, -40, and -48: Has encouraged local boards of education to follow Safety Board recommendations on school bus inspections for accident prevention. *H-83-47:* Has asked local contractors to ground pupil transportation vehicles with defects discovered by school bus drivers. *H-83-46:* State of Connecticut Office of Public Transportation inspects school buses regularly; gives five days notice to transportation companies, and focuses on inspection of brakes, tires, exhaust systems, suspension and steering. The local superintendent of schools is notified of inspection results and has discretion over the development of standard acceptable levels of vehicle maintenance.

State of Arkansas State Crime Laboratory: Jan. 15: H-84-94 and -95: Blood samples received from State Police, collected for alcohol and drug analysis in serious/fatal accident investigations, shall be treated as any other evidence. Establishes procedures for the handling and transportation of such evidence and stipulates that the collection sample size should be 10 mls.

State of New York Executive Chamber: Jan. 2: H-89-77 through -86: New York police agencies have used preliminary breath test devices for several years, and have completed a training seminar on this test and the horizontal gaze nystagmus test. Recent legislation includes a law requiring telephone authorization from the judge to the arresting officer for the acquisition of blood samples in cases involving serious physical injury or death. Additionally, a 1980 law prohibits reduction of an alcohol-related charge except when the District Attorney finds the charge to be unwarranted. Other laws include the requirement that courts impose a suspension or revocation of youthful offenders' drivers' licenses in cases where suspension is mandated, the imposition of enhanced penalties for subsequent violations in youthful offender adjudications, and the requirement levied upon the court to submit this information with respect to the above actions to the Commissioner of Motor Vehicles.

State of Rhode Island and Providence Plantations, Governor's Office on

Highway Safety: Jan. 4: H–84–77 through –86: Forwarded a copy of the recent report, "Governor's Task Force on Driving While Drunk", which used the Presidential Commission on Drunk Driving as a primary reference.

State of Florida Office of the Governor: Dec. 21: H–84–77 through –86: The use of the preliminary breath test device is not evidentiary nor admissable in court, and is left to the discretion of local law enforcement officials. Refusal to submit to blood or breath alcohol tests, however, results in automatic driver license suspension of six months for a first offender and one year for the subsequent offender. Florida's implied consent law considers a driver to have consented to the blood alcohol test upon issuance of the driver license. Reasonable force may be used to extract blood in the event of an accident. There is no statewide standard regarding the length of time a detention agency must hold an alcohol offender. Adjudication is mandated for any person charged with vehicular homicide or manslaughter resulting from the operation of a motor vehicle. A lesser plea may not be accepted. A 40-hour Traffic Adjudication Seminar is held yearly, focusing on DUI laws. Periodic seminars are held for county court judges several times a year, devoting one to three hours to DUI enforcement. All licensed drivers are considered to be of the age of majority, and any traffic offense committed by a licensed juvenile remains on the records after the juvenile reaches adulthood.

Marine—*Department of the Navy: Jan. 10: M–84–20 and –21:* Has issued Ship Manning Documents and has promulgated instructions prescribing minimum watchstanding requirements. Has added the principle of vesting a single individual with the responsibility for controlling the ship's engines and rudders, and directing the action of tugs in use during docking evolutions to their ship's Standard Organization and regulations Manual.

Offshore Marine Service Association: Dec. 8: M–84–38 through –40: Association members have been provided copies of these recommendations, which have been calendared as an agenda item for the next meeting of the Board of Directors.

Railroad—*Cambria and Indiana Railroad Company: Jan. 4: R–84–20:* Does not use high strength alloy rail. All main track rail is ultrasonic. Has reviewed standing order against oxyacetylene cutting of rail in main track.

Illinois Central Gulf: Jan. 11: R–84–20: Has .71 track mile of chrome-vanadium alloy rail in the Louisville, Kentucky district, which was installed for testing purposes. Have experienced no failures in this rail section and have been satisfied with its performance. There is no other high-strength alloy rail on their system.

Chicago and Northwestern Transportation Company: Jan. 7: R–84–20: Do not permit the use of torch-cut chrome-vanadium rail and blown bolt holes in such rail on their railroad, regardless of class of track or speed.

Union Railroad Company: Jan. 15: R–83–1: Currently operates under rules requiring employees to be held responsible for the conduct of other employees with whom they are working, vesting the conductor of a train with the general direction and government of that train. Feels that the elimination of drug or drinking problems among employees is conceivable given the drug/alcohol rehabilitation program which is now available to employees.

Missouri Pacific Railroad Co.: Jan. 17: R–83–57 through –59: Has asked its Operating Department to review the Board's recommendations requiring engine crews to communicate fixed signal aspects to conductors while trains are en route on signalized track, to monitor employee fitness regardless of duty hour, and to enhance training of all operating employees, especially conductors. Will make a formal response as soon as review and investigation are completed.

The Belt Railway Company of Chicago: Jan. 4: R–84–20: Does not have any alloy rail in track; however, it is scheduled for laying this spring. Has issued instruction that alloy rail cut with a torch should not be used in track.

Norfolk Southern: Jan. 4: R–84–20: Has one eight-mile stretch of chrome-vanadium alloy rail. When it is necessary to torch cut the rail ends in this segment to provide a temporary joint, a 10 mph slow order is imposed.

Conrail: Dec. 27: R–83–27: Issued written instructions to General Managers concerning the insurance of safety of operations in extraordinary weather conditions, and distributed the NTSB report to all responsible personnel. Has contracted with Accu-Weather, Inc. of State College, Pennsylvania to furnish daily weather forecasts which show anticipated three-day weather outlook over the entire Conrail system. Has equipped each of its dispatchers' offices and each regional transportation office with "Weatherradio Alert" receivers, which sound an alarm whenever an emergency weather report is broadcast by the National Weather Service.

Pipeline—*American Gas Association: Jan. 14: P–84–10:* Has urged members to take corrective action against improperly dimensioned or secured weight-loaded equipment.

Washington Gas: Jan. 11: P–84–31: Has initiated written procedures for high-risk gas bypass facilities, for isolating segments of piping from gas under pressure, and for testing the adequacy of isolation actions before any work is performed on the isolated segment. *P–84–32:* Departmental assessments of training activities are underway to identify improvements needed to prepare employees to carry out all duties safely. An officer-level safety committee has been established to ensure a comprehensive oversight of all company safety activities. *P–84–33:* In accordance with company procedures, a person with supervisory responsibility is present to direct all operations which, through employee error, would jeopardize continued safe operation of a gas system, posing substantial threats to the safety of employees and the public. *P–84–34:* Checklists will be developed and implemented for all major work projects in which actions must be taken to avert safety hazards.

Intermodal—*National Fire Protection Association: Jan. 4: I–84–1, –2, –3:* Has published announcements of NTSB request to develop standards on the design and construction of chemical protective suits and has assigned the subject to the NFPA Technical Committee on Protective Equipment for Fire Fighters.

Aviation—*Federal Aviation Administration: Jan. 11: A–85–01:* Based on testing by Embraer Models, the FAA concluded there was no need to ground airplanes with horizonal stabilizer attachments which has not been modified to comply with AD 83–14–09. *A–85–02 and –03:* Testing is being completed to determine residual strength of EMB–110P1 and –110P2 model airplanes' horizontal tail-to-fuselage attachment areas. *A–85–04:* Under the International Civil Aviation Organization, Annex 8, Part II, paragraph 4.2, it would be more appropriate for the CTA to inform foreign airworthiness authorities of the circumstances of the Provincetown-Boston Airlines accident of Dec. 6, 1984, and of the actions recommended by the Board to U.S. operators than for the FAA to do this. *Jan. 18: A–84–82:* Has, during the last two years, conducted a task force review of aeronautical charts sand related aeronautical information publications. No recommendation was developed concerning standardized altitude symbology to be used in the profile view of approach procedure

charts. Prefers to await findings of human performance studies before undertaking any regulatory initiative to establish compulsory standards. *A–84–83:* Maintains previous position that audio signals associated with low altitude alerts should not be distinguished from those associated with conflict alerts. Plans no further action. *A–84–84:* Is developing an article for the next Air Traffic Service Bulletin alerting controllers to problems encountered at Washington National Airport. Does not feel it is necessary to require controllers to issue low altitude alerts to any airplanes which has activated the Minimum Safety Altitude Warning System. Controllers currently can visually determine aircraft position; to issue an alert to an aircraft in a noncompromising situation could dilute the urgency of the message. *A–82–98:* Has instructed Principle Operations Inspectors to assure that their assigned 14 CFR Part 135/121 air carriers/operators establish standardized communication and coordination procedures between flightcrew and cabin crew to improve safety during potentially hazardous conditions of flight. *Jan. 22: A–83–73:* Has completed its evaluation of the lavatory flush pump motor systems on transport category airplanes and has concluded that only the McDonnell Douglas DC–9 airplanes, fuselage No. 855 and prior, reveal a potentially hazardous condition requiring mandatory action. No action will be taken with regard to lavatory flush pump motors themselves, since electrical load and temperature tests have determined that these are not a fire ignition source. *A–83–76:* Since there is no practical device to protect passengers from smoke, toxic fumes and decompression during in-flight emergencies aboard transport category airplanes, the FAA is emphasizing development of rules to increase cabin fire safety, reducing the chance for a cabin fire occurrence. *A–83–77:* Believes primary efforts should be directed towards fire prevention and control rather than towards the control and removal of smoke. Has analyzed specific specific smoke detection, penetration and evacuation systems and procedures and concludes that certification tests satisfactorily address the possibility of continuous smoke source. *Jan. 28:A–81–162:* Will require all new applicants for a multiengine airplane class rating who hold an instrument rating for airplanes to demonstrate competancy to operate a multiengine airplane solely by reference to instruments. However, if the applicant elects not to demonstrate competency in instrument flight, the applicant's multiengine airplane privileges will be limited to visual flight only. *A–82–130 and –131:* Has collected comments from manufacturers of small, single-engine airplanes concerning the feasibility of requiring means of assuring that a carburator mixture control level will move automatically to the full-rich position in the event that it becomes disconnected from the mixture control linkage. Responses indicated that such a requirement would not increase airworthiness, and may lead to a greater reliability problem than it was intended to eliminate. The FAA plans to elicit comments from the general public on this matter, and will prepare a proposed regulatory change to the Federal Aviation Regulations to be published for comments in response to this proposed regulatory change. *A–84–56:* Periodically contacts operators known to use aircraft in parachute jump activities and reviews operations to assure adherence to applicable regulations. Strongly encourages good safety practices. *A–79–93:* Has revised the Beech Model 99 Airplane Flight Manual to include a checklist procedure that requires the crew to verify the operational status of the stabilizer out-of-trim warning system. Beech Model 100 Pilot's Operating Manual is still in the process of being revised.

Note.—Single copies of these response letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C., 20594. Please include respondent's name, date of letter, and recommendation number(s) in your request. The photocopies will be billed at a cost of 14 cents per page ($1 minimum charge).

Catherine T. Kaputa,

Alternate Federal Register Liaison Officer.

February 11, 1985.

[FR Doc. 85–3797 Filed 2–13–85; 8:45 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Document Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C Chapter 35).

1. Type of submission, new, revision or extension: Revision.

2. The title of the information collection: Microform to Paper Request.

3. The form number if applicable: NRC Form 171B.

4. How often the collection is required: On occasion.

5. Who will be required or asked to report: Individuals.

6. An estimate of the number of responses: 2,000.

7. An estimate of the total number of hours needed to complete the requirement or request: 1200.

8. Section 3504(h), Pub. L. 96–511 not applicable.

9. Abstract: This form is used by the public in requesting microform to paper reproduction of NRC documents through the Public Document Room in Washington, D.C. NRC has a private contractor providing reproduction services and this form provides necessary controls.

ADDRESSES: Copies of the submittal will be made available for inspection or copying for a fee at the NRC Public Document Room, 1717 H Street, NW., Washington, D.C. 20555.

FOR FURTHER INFORMATION CONTACT: Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 295–7340.

NRC Clearance Officer R. Stephen Scott, (301) 492–8585. Dated at Bethesda, Maryland, this 11th day of February 1985.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 85–3789 Filed 2–13–85; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on the Medical Uses of Isotopes; Meeting Notice and Request for Comments

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting and request for comments.

SUMMARY: The Nuclear Regulatory Commission (NRC) has planned a meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) to discuss training and experience criteria for physician users, and, if time permits, to discuss other issues pertaining to the medical use of byproduct material.

Date and time of meeting: Friday, May 3, 1985, at 9:00 a.m.

Location: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD.

FOR FURTHER INFORMATION CONTACT: Norman L. McElroy, Material Licensing Branch 396-SS, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 427-4108.

Submit comment to: Richard E. Cunningham, Director, Division of Fuel Cycle and Material Safety, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Submit comments by: Friday, April 12, 1985.

SUPPLEMENTARY INFORMATION: The ACMUI advises the NRC staff on issues or questions that arise in regulating the use of byproduct material for diagnosis and thereapy in humans. This includes recommending training and experience criteria for physicians who want to use byproduct material for medical purposes, and providing advice on NRC regulations and guidance concerning medical uses.

The NRC has received some suggestions for changes in its training and experience criteria for physicians who want to use radiopharmaceuticals for imaging. The NRC staff needs the advice of the ACMUI on the suggestions before deciding whether changes are in order.

Background

For several years the NRC has had training and experience criteria for physicians who want to use byproduct materials in the practice of medicine. The criteria are comprised of the training generally believed necessary for a physician to use byproduct materials safely and to protect workers, patients, and the public from unnecessary radiation exposure. The evolution of the training and experience criteria is more fully described in a **Federal Register** Notice published December 2, 1982 (47 FR 54376).

Until recently, physicians who wanted to use the byproduct materials listed in 10 CFR 35.100 (b) and (c) (Groups II and III) for imaging could satisfy the training criteria by completing a three-month program that integrated basic classroom training, supervised handling experience, and supervised clinical experience. However, at various ACMUI public meetings, several experts from the medical community indicated that, because of the increase in the complexity of the diagnostic interpretation of nuclear medicine studies, the training time devoted to basics and supervised handling experience had decreased. In response, the NRC published in the December 1982 notice a new statement of training and experience criteria for physicians who apply for authorization to perform nuclear medicine procedures. The notice said that, in order to qualify as an authorized user for routine diagnostic imaging procedures using materials listed in 10 CFR 35.100, Groups I through III, a physician should have 200 hours of classroom training, 500 hours of supervised experience handling unsealed radioactive materials, and 500 hours of supervised clinical training. Alternatively, the necessary training could be obtained by completing a formal integrated six-month training program that included all of the elements of the classroom, handling, and clinical portions. The notice also said, "A physician who wishes to be authorized for only one or two specific diagnostic procedures should have training in basic radioisotope handling techniques and clinical experience commensurate with the types, quantities and uses of byproduct material being requested. Such requests will be examined case by case by the Commission with advice from the ACMUI."

In December 1983 and American College of Cardiology proposed alternative standards for physicians who wanted to perform only cardiovascular imaging procedures. Representatives of that organization and experts from several other medical disciplines that use byproduct materials met in June 1984 to discuss the proposal. The result of that meeting was the formation of a task force of physicians representing the American College of Cardiology (ACC), the American College of Chest Physicians (ACCP), the American College of Nuclear Physicians (ACNP), the American College of Physicians (ACP), the American College of Radiology (ACR), the American Heart Association (AHA), and the Society of Nuclear Medicine (SNM).

Suggested Alternative Criteria

The task force has submitted alternative criteria for cardiologists who want to use radiopharmaceuticals listed in 10 CFR 35.100, Groups I through III, to perform cardiovascular nuclear medicine imaging studies, and for phsicians who want to perform all types of imaging studies.

The NRC notes that the purpose of training criteria is to avoid unwarranted radiation exposure to the physician, workers, and the public, including patients; successful completion of the specified training does not connote achievement of a particular level of clinical expertise.

Based on the report submitted by the task force, the NRC staff has drown the following conclusions:

1. All of the organizations represented by task force members believe that the current criterion for classroom training, described in Table 1, is a necessary component of a physician training program.

TABLE 1.—BASIC CLASSROOM TRAINING

Topic	Hours
Radiation physics and instrumentation	100
Radiation protection	30
Mathematics of radioactivity	20
Radiation biology	20
Radiopharmaceutical chemistry	30

The ACNP and SNM recommended that basic computer science be included in basic classroom training.

2. All of the organizations believe that the current criterion for supervised experience in handling unsealed radioactive materials, described in Table 2, is a necessary component of a physician training program.

TABLE 2.—SUPERVISED HANDLING EXPERIENCE

Ordering and receiving materials;
Calibrating equipment;
Calculating, preparing, and measuring dosages;
Administering dosages;
Establishing control procedures to prevent misadministrations;
Controlling spilled material and decontaminating; and
Eluting Mo-99/Tc-99m generators, measuring for Mo-99 and alumina concentrations, and preparing radiopharmaceuticals.

3. All of the organizations believe that the current criterion for supervised clinical experience, described in Table 3 and obtained at a medical institution, is a necessary component of a physician training program.

TABLE 3.—SUPERVISED CLINICAL EXPERIENCE

Examining patients to determine whether a nuclear procedure is appropriate;
Selecting the radiopharmaceutical and dosage and interpreting the test results;
Following patient progress; and
Discussing the patients' case histories with the preceptor to determine appropriate tests, limitations, contraindications, etc.

4. There is a difference of opinion among the organizations on the duration of the integrated program (which includes the basic classroom training) and on the operational wording of the handling and clinical experience portions. The proposals from the organizations are summarized in Table 4.

TABLE 4.—OPERATIONAL WORDING FOR TRAINING DURATION

TABLE 4a.—ALL NUCLEAR MEDICINE IMAGING PROCEDURES

Proponent	Duration	Type of program
ACC/ACCP/ACP/AHA and ACR	700 hours (4 months) in blocks of at least 100 hours, and at least 100 patients.	Radiology or nuclear medicine.
ACNP/SNM	6 months	Radiology or nuclear medicine.

TABLE 4b.—CARDIOVASCULAR NUCLEAR MEDICINE IMAGING PROCEDURES ONLY

Proponent	Duration	Program
ACC/ACCP/ACP/AHA, ACR, and ACNP/SNM	700 hours (4 months) in blocks of at least 100 hours, and at least 100 patients.	Cardiology

Comments

The NRC invites comments on the proposed criteria provided by the task force as outlined above. Commenters may indicate whether they believe the topics and durations suggested in the proposals are adequate, inadequate, or excessive, and why; whether there are other management mechanisms (for example, common hospital management practices or the State regulation of medicine) that NRC should be aware of when setting standards, and the impact of those mechanisms on radiation safety; and whether there are any other issues that the NRC should be aware of when considering physicians' training and experience criteria. A summary of the comments will be distributed to the ACMUI before the meeting, and will also be available to the public at the meeting, or may be requested by contacting Mr. McElroy after the meeting.

When preparing comments, persons should keep several points in mind. Authorization to use byproduct materials in humans for diagnosis and treatment implies that the user's training is sufficient to avoid unwarranted radiation exposure to the physician, workers, and the public, including patients; authorization does not connote achievement of a particular level of clinical expertise. The public comment process is not a voting mechanism; it is a request for information that might not be available to NRC but that should be considered during the regulatory process.

Other Matters

If time permits, the staff will ask the ACMUI for its advice on other issues pertaining to the medical use of byproduct materials.

Conduct of the Meeting

Mr. Richard Cunningham, Director, Division of Fuel Cycle and Material Safety, U.S. Nuclear Regulatory Commission, will serve as Chairman at the meeting. Mr. Cunningham will conduct the meeting in a manner that will facilitate the orderly conduct of business.

The following procedures apply to public participation in the meeting.

1. Persons may submit written comments by sending a reproducible copy to Mr. Cunningham. Comments must be received by Friday, April 12, 1985 to ensure consideration at the meeting. The transcript of the meeting will be kept open until Friday, May 17, 1985 for the inclusion of written comments.

2. Persons who want to make oral statements should inform Mr. Cunningham in writing by Friday, April 12, 1985. Statements must pertain to the topic at hand. The Chairman will rule on requests to make oral statements. Opportunity for members of the public to make oral statements, within the time available, will be based on the chronological order in which requests are received. In general, oral statements should be limited to approximately 5 minutes. Oral statements may be supplemented by detailed written statements for the record. Rulings and time allotments may be obtained by calling Mr. Cunningham at (301) 427–4485 between 9:00 a.m. and 5:00 p.m. EST on Friday, April 26, 1985.

3. At the meeting, questions may be asked only by Committee members, consultants, and NRC staff.

4. The transcript of the meeting and written comments will be available for inspection, and copying for a fee, at the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555 on or about May 31, 1985.

5. Seating for the public will be on a first come-first served basis.

The meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily section 161a), Federal Advisory Committee Act (Pub. L. 92–45), Executive Order 11769, and the Commission's regulations in Title 10, Code of Federal Regulations, Part 7.

Dated at Washington, DC, this 11th day of February, 1985.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 85–3791 Filed 2–13–85; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Nine Mile Point Unit 2; Meeting Time Change

The **Federal Register** published on Friday, January 25, 1985 (50 FR 3608) contained notice of a meeting of the ACRS Subcommittee on Nine Mile Point Unit 2, to be held on February 20 and 21, 1985, at the Hotel Syracuse, 500 South Warren Street, Syracuse, NY. The starting time for the part of the meeting to be held on Wednesday, February 20, 1985 has been *changed to 1:15 p.m.*; the starting time for the part of the meeting to be held on Thursday, February 21, 1985 remains *8:30 a.m.* All other items regarding this meeting remain the same as previously announced.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. John O. Schiffgens (telephone 202/634–1413) between 8:15 a.m. and 5:00 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: February 11, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85–3790 Filed 2–13–85; 8:45 am]

BILLING CODE 7590–01–M

Florida Power and Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4); Order Scheduling Prehearing Conference

[Docket Nos. 50–250–OLA, 50–251–OLA, ASLBP No. 84–496–03 LA (Vessel Flux Reduction)]

February 8, 1985.

Before Administrative Judges: Dr. Robert M. Lazo, Chairman, Dr. Richard F. Cole, Dr. Emmeth A. Luebke.

Please take notice that a prehearing conference in the above-identified proceeding will be held on March 26, 1985, commencing at 9:30 a.m., local time, at a location in the greater Miami area to be designated at a later date.

Florida Power and Light Company (Licensee) should be prepared to respond in a didactic manner through its experts to questions and issues raised in the various filings:

For example:

- The calculations used to determine critical heat flux (CHF) and peak cladding temperature (PCT) for Low-parasitic (LOPAR) fuel, Optimized Fuel Assemblies (OFA) and mixed LOPAR/OFA fuel.
- The hydraulic and thermal effect of spacer grids (as related to calculations of CHF and PCT values).
- The procedure and calculations used in arriving at the 10°F increase in PCT identified in items 5 and 8 of the Parvin affidavit.
- The uncertainties listed in Joette Lorion's affidavit at pages 4, 5 and 8 and item 9(d) of Dr. Edward's affidavit at pages 6–7.[1]

It is so ordered.

Dated at Bethesda, MD, this 8th day of February 1985.

For the Atomic Safety and Licensing Board.

Robert M. Lazo,

Chairman, Administrative Judge.

[FR Doc. 85–3792 Filed 2–13–85; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Initiation of General Review Under the U.S. Generalized System of Preferences (GSP)

Summary

The purpose of this notice is to announce the initiation of a general review under the U.S. Generalized System of Preferences (GSP), as described in section 504(c)(2) of the Trade and Tariff Act of 1984 (the Act), to be completed by January 4, 1987. The purpose of this review is to determine which particular GSP-eligible articles from which particular beneficiary countries should be subjected to lower limitations regarding their duty-free entry into the United States under the GSP. In addition, requests for competitive need limit waivers with respect to specific articles from specific beneficiaries will be entertained during the course of this review, as will comments concerning waivers of the 50-percent competitive need limit on the basis of a finding of no U.S. production of like or directly competitive products. Finally, this notice sets forth the procedures and timetable pertaining to the submission of views by interested parties.

Part 2007 of Chapter XX of Title 15 of the Code of Federal Regulations is currently being revised to accommodate the implementation of the amendments to Title V of the Trade Act of 1974 contained in the Trade and Tariff Act of 1984. The revised regulations will be published on an interim basis in the **Federal Register** in the near future. The regulations will address, inter alia, issues such as the designation and removal of articles and beneficiaries which do not fall within the scope of the general review described herein.

1. Lowering Competitive Need Limits on Specific Articles From Specific Beneficiaries

a. Background

The recently passed Trade and Tariff Act of 1984 directs the President to complete by January 4, 1987, a general review of GSP-eligible articles to determine whether beneficiary countries have demonstrated a sufficient degree of competitiveness. It is important to note that the President is to examine separately each individual article from each individual beneficiary.

For those products for which a beneficiary is determined to have demonstrated a sufficient degree of competitiveness, the GSP's competitive need limits will be lowered. Specifically, the beneficiary will lose GSP duty-free treatment with respect to the article if U.S. imports of the article from the beneficiary during the preceding calendar year exceeded (1) 25 percent of the value of total U.S. imports of the article or (2) $25 million (1984 base year). The latter dollar value limit will be adjusted annually in accordance with changes in the nominal U.S. GNP. For any instances in which the beneficiary is not found to have demonstrated a sufficient degree of competitiveness, the GSP's original limits will continue to apply. Those limits are 50 percent and $63.8 million (1974 base year), respectively.[1]

Any changes resulting from this aspect of the general review will be implemented by Executive order and announced by January 4, 1987. The changes will take effect on July 1, 1987.

b. Factors To Be Considered

In determining whether a beneficiary country should be subjected to the lower competitive need limits with respect to a particular article, the President is directed to take into account the factors listed in sections 501 and 502(c) of the Act. These factors generally fall into three areas, as discussed below.

First, the President must take into account the beneficiary country's general level of development. In this context, consideration must be given to a beneficiary's per capita gross national product, the living standards of its inhabitants and other factors relevant to the beneficiary's level of economic development.

A beneficiary's general level of development has been an important factor in GSP deliberations regarding the policy of discretionary graduation. Under that policy, products of seven of the program's leading beneficiaries (Taiwan, Korea, Hong Kong, Mexico, Brazil, Singapore and Israel) have been affected. Parties may wish to refer to the President's *Report to the Congress on the First Five Years' Operation of the U.S. Generalized System of Preferences (GSP)*, April 1980, which announced the policy.

A second area to be considered concerns practices maintained by beneficiary countries. In determining the extent to which the lower competitive need limits might be applied to the products of a particular beneficiary, the President is directed to take into account the following:

—The extent to which the beneficiary has assured the United States it will provide equitable and reasonable access to its markets and basic commodity resources (section 502(c)(4));

—The extent to which the beneficiary has assured the United States it will refrain from engaging in unreasonable export practices (section 502(c)(4));

—The extent to which the beneficiary is providing adequate and effective means under its laws for foreign nationals to secure, exercise and enforce exclusive rights in intellectual property, including patents, trademarks and copyrights (section 502(c)(5));

—The extent to which the beneficiary has taken action to reduce trade-distorting investment practices and policies, including export performance requirements (section 502(c)(6));

—The extent to which the beneficiary has taken action to reduce or eliminate barriers to trade in services (section 502(c)(6)); and

—Whether the beneficiary has taken or is taking steps to afford to workers of the beneficiary (including any designated zone in the country)

[1] See Intervenors' Response to Licensee's Motion for Summary Disposition of Intervenors' Contentions (b) and (d), dated September 4, 1984.

[1] Actually, the statute refers to the latter dollar value limit as $25 million, with 1974 as the base year. After allowing for the appropriate indexing, the number ws adjusted to the indicated $63.8 million figure for 1984.

internationally recognized workers rights (section 502(c)(7)).

Finally, the President is directed to take into account the beneficiary's competitiveness with respect to the individual products which are eligible for GSP treatment. In this regard, the President will examine the beneficiary's competitiveness with respect to other developing countries, with respect to developing countries, and with respect to U.S. producers of like or directly competitive products. In evaluating a beneficiary's competitiveness with respect to a product, consideration will be given to such factors as the beneficiary's share of U.S. imports and its share of U.S. consumption of the product, to its price competitiveness, to its production capacity and degree of technological sophistication, and to any other data or information that may be relevant.

For further information regarding the factors to be examined, parties should refer to the Act and its legislative history.

c. Solicitation of Comments From Interested Parties

For organizational purposes, the general review will be divided into two components. One will consist of issues pertaining to practices in beneficiary countries; the other will consist of issues pertaining to specific beneficiary country products and their competitiveness in the United States. The two components will differ with respect to the timetable and, to some extent, the process for participation by interested parties, as explained below.

i. Beneficiary Country Practices

Any interested party desiring to submit written comments with respect to the beneficiary country practices contained in sections 502(c) (4) through (7), must submit such comments *by the close of business July 15, 1985.* In addition to the general requirements noted in section 6 of this notice, such comments should include: (1) A detailed description of the practice of concern; (2) an estimate of the value of trade affected by the practice, if applicable; and (3) what measures a beneficiary could take to reduce or eliminate any adverse effect resulting from the practice. Also, parties will be afforded an opportunity to testify at a public hearing to be held in June in Washington, D.C. Details concerning the hearing will be contained in a **Federal Register** notice to be published in the near future.

For those parties interested in commenting on the issue of intellectual property rights (section 502(c)(5)), it should be noted that all written comments provided to the Trade Policy Staff Committee (TPSC) pursuant to the notice published on January 28, 1985 (50 FR 3853) will be examined in the context of the general review. Thus, there is no need for those parties who have submitted statements in accordance with that notice to make separate representation in this review.

ii. Beneficiaries' Competitiveness With Respect to Individual Articles

The other component of the general review will commence with a request by the U.S. Trade Representative on behalf of the President for U.S. International Trade Commission (USITC) advice regarding the competitiveness of beneficiaries with respect to all GSP-eligible articles on a product-by-product basis. Public reviews will be conducted by both the TPSC and the USITC. The timetable for the USITC's review will be announced in a separate notice. Regarding the TPSC's review, *any party interested in submitting a written statement concerning the competitiveness of a beneficiary with respect to a particular product must file such a statement by November 15, 1985. Any party interested in submitting a written statement rebutting a statement filed pursuant to the above procedures must do so by December 15, 1985.* Also, parties will be afforded an opportunity to testify at a public hearing to be held in October in Washington, D.C. Details concerning the hearing, including the date, place and deadline for submitting requests to appear, will be contained in a **Federal Register** notice to be published on or about August 1, 1985.

2. Requests for a Waiver of Competitive Need Limits With Respect to Specific Articles From Specific Beneficiaries

a. Background

Under section 504(c)(3) of the Act, the President may waive completely the competitive need limits applicable to a particular GSP-eligible article from a particular beneficiary beginning in 1987. During the general review, consideration will be given to requests to exercise this waiver with respect to a particular GSP-eligible article. Any waivers granted pursuant to the review will take effect on July 1, 1987.

The President's authority to exercise the waiver authority is limited. The value of imports from all beneficiaries benefiting from the waiver during any calendar year cannot exceed 30 percent of the value of total imports entering duty free under the GSP program during the preceding calendar year. There is a further restriction pertaining to those beneficiaries with per capita GNPs in excess of $5,000 and/or those which account for over 10 percent of the value of total imports entering under the GSP program.[2] The value of imports from this latter group of beneficiaries that benefits from the waiver cannot exceed 15 percent of the value of total duty-free GSP imports.

b. Factors To Be Considered

Before exercising the competitive need waiver with respect to any beneficiary's product, the President is required to take into account advice by the U.S. International Trade Commission (USITC) on whether any industry in the United States is likely to be affected adversely by the waiver. He is also required to examine the factors listed in sections 501 and 502(c) (see 1(b) above). Of this latter list of factors, "great weight" must be given to:

—The extent to which the beneficiary has assured the United States that it will provide equitable and reasonable access to its markets and basic commodity resources; and

—The extent to which the beneficiary provides adequate and effective means under its law for foreign nationals to secure, exercise and enforce exclusive rights in intellectual property, including patent, trademark and copyright rights.

The President must then determine, based on the above-described advice and considerations, that the waiver would be in the national economic interest of the United States. Those requests for competitive need waivers which are granted will take effect on July 1, 1987.

c. Solicitation of Requests and Comments

Any party interested in submitting a request that the waiver be exercised with respect to a particular article from a particular beneficiary must file such a request by May 31, 1985. In addition to the general requirements noted in section 6 of this notice, such requests should contain the type of information identified at 15 CFR Part 2007 that applies to requests to add new articles to GSP eligibility.

The TPSC will examine all requests, taking into account relevant statutory considerations, and will publish in the **Federal Register** a list of those requests which have been accepted for formal review. The TPSC reserves the right to reject for review those requests which,

[2] Beneficiaries included in these categories at this time are: Taiwan, Korea, Hong Kong, Singapore, Israel, Brunei and Trinidad and Tobago.

in its view, fail to conform to the requirements set forth above or which, based on available information, do not warrant further consideration. It is anticipated that the list of those requests accepted for review will be published on or about August 1. There will be no separate notification to parties as to whether or not their requests have been accepted for formal review.

Any party interested in submitting a written statement with respect to a waiver request that has been accepted for review may do so by November 15, 1985. Any party interested in submitting a written statement rebutting a statement filed pursuant to the above procedures must do so December 15, 1985. Parties are also invited to testify in the public hearing referred to in section 1(c)(ii) of this notice.

3. Determinations of No U.S. Production of Like or Directly Competitive Articles

a. Background

Under the GSP's original statutory authorization in section 504(d) of Title V of the Trade Act of 1974, the President could not apply the 50-percent competitve need limit with respect to any article for which he determined there was no production in the United States of a product like or directly competitive with the GSP article on January 3, 1975.[3] The new Act has extended section 504(d) but the relevant date for determining the existance of like or directly competitive production has been changed to Janaury 3, 1985.

During the course of the general review, section 504(d) determinations will be made with respect to each GSP-eligible article on the basis of the revised date. Interested parties are invited to submit comments with respect to this issue as it applies to any GSP-eligible article. Any modifications made as a result of this provision will take effect on July 1, 1986.

b. Factors To Be Considered

In deciding whether to grant the waiver of the 50-percent competitive need limits pursuant to this provision of the Act, the President is directed to examine the existence or non-existence of U.S. production of a like or directly competitive article on January 3, 1985.

c. Solicitation of Comments

Any party interested in submitting a written statement concerning the existence or non-existance of production in the United States on January 3, 1985 of an article like or directly competative with a GSP-eligible article must file such a statement by November 15, 1985. Any party interested in submitting a written statement rebutting a statement filed pursuant to the above procedures must do so by December 15, 1985. Parties are also invited to testify at the public hearing referred to in section 1(c)(ii) of this notice.

4. Other Issues

The general review announced in this notice is not intended to encompass and/or replace consideration of all types of GSP determinations. Matters to be addressed separately include: (1) The complete removal of beneficiary status from a country for its failure to meet the mandatory criteria set forth in section 502(b); (2) the complete removal of a product from GSP treatment; (3) the addition of a new product to the list of articles eligible for GSP treatment; and (4) the exemption of "least" developed beneficiaries from competitive need limits.

As has been the case in the past, any party wishing to request that a country be removed from beneficiary status based on any of the criteria set forth in section 502(b) may submit such a request at any time. In making any recommendations with respect to the section 502(b) criteria, the Trade Policy Staff Committee (TPSC) will also take into account all information pertaining to parallel criteria in section 502(c) that is submitted during the course of the general review.

Petitions to add or remove products from the list of articles eligible for GSP treatment will not be considered during the general review. Such petitions will continue to be examined in accordance with the GSP program's regular "product review" procedures. Because of the complexity and scope of the issues to be addressed during the general review, the next product review will not begin until 1986. In the meantime, only those petitons which "indicate the existence of unusual circumstances warranting an immediate review" (section 2007.3(b) of the applicable regulations) will be accepted for review.

Further information regarding the above issues will be contained in proposed changes to the applicable regulations (15 CFR Part 2007), which will be published in the **Federal Register** in the near future.

Another issue to be addressed outside the context of the general review concerns the designation of least developed beneficiaries. Under the Act, the President is directed to designate a list of such countries that will be exempted completely from the application of the GSP's competitive need limits. It is anticipated that the President will notify the Congress in the near future of the list of beneficiaries to be designated as least developed and that the competitive need exemption will take effect no later than July 1, 1985. It is further anticipated that the list will include all countries currently recognized by the United Nations as least developed countries with the exception of those that are not beneficiaries under the U.S. GSP program. [4]

5. Chronology of Deadlines for Comments by Interested Parties

May 31, 1985—deadline for submission of product-specific competitive need waiver requests.

July 15, 1985—deadline for comments regarding beneficiary country practices.

August 1, 1985—announcement by TPSC of competitive need waiver requests accepted for formal review.

November 15, 1985—deadline for comments regarding competitiveness of beneficiaries with respect to individual articles.

November 15, 1985—deadline for comments regarding competitive need waiver requests accepted for formal review.

November 15, 1985—deadline for comments regarding issue of existence of U.S. production of like or directly competitive articles.

December 15, 1985—deadline for statements rebutting submissions made pursuant to the above three items with November 15 deadlines.

6. Procedures for Submitting Comment and Requests

All comments and communications concerning beneficiary country practices, product competitiveness, and waiver of competitive need limits should be submitted in 20 copies and should be addressed to the Chairman, GSP Subcommittee, Trade Policy Staff Committee, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, D.C. 20506. All comments, except those labeled as confidential in accordance with 15 CFR 2007.7, shall be open to public inspection by appointment at the GSP Information Center located in Room 316 at the above

[3] This provision does *not* apply to the competitive need limit based on a specific dollar value.

[4] The list of countries to be given least developed status is expected to include: Bangladesh, Benin, Bhutan, Botswana, Burundi, Cape Verde, Central African Republic, Chad, Comoras, Djibouti, Equatorial Guinea, Gambia, Guinea, Guinea-Bissau, Haiti, Lesotho, Malawi, Maldives, Mali, Nepal, Niger, Rwanda, Sao Tome and Principe, Sierra Leone, Somalia, Sudan, Tanzania, Togo, Uganda, Upper Volta, Western Somon, and Yemen (Sana).

address. Procedures and schedules of submission of statements in connection with any public hearings to be conducted by the Trade Policy Staff Committee and the U.S. International Trade Commission will be announced in a later **Federal Register** notice.

For further information, contact the GSP Information Center at (202) 395–6971.

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

[FR Doc. 85–3653 Filed 2–13–85; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 14360; 812–5986]

The PaineWebber TAGS Trust, Series 1 (and Subsequent Trusts and Similar Series of Trusts) and PaineWebber Inc.; Application for Order Granting Exemption from the Act Granting Confidential Treatment

February 7, 1985.

Notice is hereby given that PaineWebber TAGS Trust, Series 1 ("Series 1") and subsequent trusts and similar series of trusts (collectively "Trusts"), unit investment trusts registered or to be registered under the Investment Company Act of 1940 (the "Act"), and their sponsor, PaineWebber Incorporated, 140 Broadway, New York, NY 10005 (the "Sponsor" collectively with the Trusts, "Applicants") filed an application on November 15, 1984, and an amendment thereto on January 23, 1985, for an order of the Commission, pursuant to Section 6(c) of the Act granting exemption from the provisions of Sections 14(a) and 22(c) of the Act and Rule 22c–1 thereunder, and pursuant to Section 45(a) of the Act granting confidential treatment to the profit and loss statements of the Sponsor supplied in connection with certain registration statements filed with the Commission. 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 Series 1 is a unit investment trust which will be organized under the laws of the State of New York. The Sponsor presently intends to act as sponsor of Series 1 and proposes to act as sponsor for all Trusts. It is stated that Applicants have filed a registration statement under the Securities Act of 1933 for an indefinite number of units of undivided interests of Series 1 (together with units of all series of the Trusts, the "Units").

Applicants state that Series 1 and each future Trust will be governed by a trust agreement for that Trust ("Agreement") to be entered into prior to or on the date of the filing of the Trust's registration statement with the Commission under which the Sponsor will act as such, and The Bank of New England, N.A. (the "Trustee") will act as trustee and evaluator. Pursuant to each Agreement, when the portfolio is completed, the Sponsor will deposit with the Trustee in excess of $100,000 aggregate value of stripped United States Treasury obligations, or evidences thereof, debt securities, common and preferred stock or other equity interests or any combination of or contracts to purchase the above ("Securities") which the Sponsor shall have accumulated for such purpose.

According to the application, simultaneously with the deposit ("Date of Deposit") the Trustee will deliver to the Sponsor registered certificates for Units which will represent the entire ownership of the Trust. These Units are in turn to be sold to the public by the Sponsor. Applicants represent that the Securities will not be pledged or be in any other way subjected to any debt by the Trust at any time after the Securities are deposited in the Trust. Applicants represent further that the Sponsor will follow a similar procedure for acquiring the Securities of each Trust.

The application states that each Trust will consist of the Securities, such securities as may continue to be held from time to time in exchange or substitution for any of the Securities upon certain refundings, accrued and undistributed interest and undistributed cash. Initially each Unit for a particular Trust will represent a fractional undivided interest in that Trust. The numerator of the fractional interest represented will be 1; the denominator, the number of Units of the Trust then outstanding. Units will be redeemable by the Trustee. Applicants represent that, in the event that any Units are redeemed, the denominator of the fraction will be reduced and the fractional undivided interest represented by outstanding Units increased.

Applicants state that, while the Sponsor is not obligated to do so, the Sponsor presently intends to maintain a market for the Units of Series 1 and subsequent Trusts, and continuously offer to purchase such Units at prices based on the most recent evaluation which is generally the same as the redemption price at the time of such evaluation for such Units. Applicants represent that the Trusts will not repurchase Units.

Applicants represent that, on the Date of Deposit of the Securities for each series and before any Unit of a series is offered to the public, each Trust will have a net worth far in excess of $100,000 represented by the market value of the Securities on that date. It is the intention of the Sponsor to sell all Units to the public at a public offering price disclosed in the Trust's prospectus. Information concerning the Securities will be disclosed in the prospectus of each Trust. Applicants note again that while the Sponsor is not obligated to do so, it is the Sponsor's intention to maintain a secondary market for Units of Series 1 and subsequent series at prices at least equal to the redemption value of the Securities as of the time of each regular evaluation of the Securities. Although Applicants contend that the proposed operations of Series 1 and the Trusts are in compliance with the provisions of Section 14(a)(1) of the Act and eliminate the necessity to separately comply with the provisions of Section 14(a)(3) of the Act, they request an exemption from the provisions of Section 14(a)(3) of the Act to the extent deemed necessary to permit them to operate as described above. Applicants maintain that separate compliance with the provisions of Section 14(a)(3) of the Act under the circumstances described would increase the cost to the Sponsor of marketing the Units without creating any significant increase in the protection of purchasers of the Units ("Unit-holders").

In connection with the requested exemption from the provisions of Section 14(a) of the Act, Applicants represent that the Sponsor will refund, on demand and without deduction, all sales charges to purchases of Units of a series if, within ninety days from the time that series becomes effective under the Securities Act of 1933, the net worth of the series is reduced to less than $100,000 or if the series is terminated. The Sponsor further undertakes to instruct the Trustee on the Date of Deposit of each series that in the event that redemption by the Sponsor of Units, within ninety days of effectiveness of the series, constituting a part of the unsold Units shall result in that series having a net worth of less than 20% of the aggregate value of Securities originally deposited in the series, the Trustee shall terminate the series in the manner provided in the Agreement and distribute any Securities or other assets deposited with the Trustee pursuant to the Agreement as provided therein. The Sponsor undertakes, in such event, to

refund any sales charges to any purchaser of Units purchased from the Sponsor on demand and without deduction. Applicants consent to having any order granting the relief requested conditioned upon their compliance with the undertaking summarized in this paragraph.

Applicants further request exemption from the provisions of Section 22(c) of the Act and Rule 22c–1 thereunder to the extent necessary to permit the Sponsor to sell Units pursuant to purchase orders received on the date of Deposit for that series at a public offering price based on the net asset value per Unit determined with reference to the values of the Securities at the close of the New York Exchange on the preceding business day. The Sponsor agrees, as a condition to the requested order, that if the public offering price determined on the basis of the net asset value per Unit as of the close of business on the Date of Deposit is more than 2.50% below the public offering price determined at the close of the preceding business day (a $25 decline on a $1,000 Unit), it will effect all purchase orders received on the Date of Deposit at the lower (forward) price.

Applicants state that, beginning on the business day following the Date of Deposit, the public offering price will be based on the current net asset value per Unit next determined after receipt of the purchase order, plus the applicable sales charge. The net asset value next determined will also be used in calculating the Unit price for all redemptions, and for all purchases and sales by the Sponsor in connection with its secondary market activities.

Applicants believe that the proposed method of pricing the Units for purchase orders received on the Date of Deposit is fair to Unitholders and does not present the potential for any of the abuses that Rule 22c–1 under the Act was designed to prevent. Applicants assert that, where, as here, a sponsor forms a trust by depositing portfolio securities in return for all units of the trust, trust assets are in no way affected by the method of pricing the units in the initial public offering. Thus, Applicants represent that the proposed method of pricing will not result in dilution of the interest of Unitholders.

Applicants assert further that the proposed method of pricing Units on the Date of Deposit offers the advantage to investors of providing a uniform, specified public offering price for purchasers submitted orders on that date. Applicants contend that another factor favoring the known purchase price is that sales of Units will be made in connection with Individual Retirement Accounts. Because such purchasers will be subject to an annual contribution limit of $2,000, purchasers need to know the exact amount which they will be investing.

Applicants submit that the only potential risk to investors from the one-day backward pricing is that Unitholders might purchase Units at a price which is based on a net asset value in excess of that next determined following receipt of their purchase orders. Nevertheless, Applicants believe that potential investors would strongly prefer the opportunity to purchase Units on the Date of Deposit at a fixed price, particularly in light of the Sponsor's agreement that a forward price will be used if the public offering price determined as of the end of the Date of Deposit had declined by more than 2.50%.

Applicants represent further that purchasers of Units on the Date of Deposit benefit in that, if the market rises, Units may be purchased at a price based on a lower net asset value without limitation, while Unitholders are protected in the event of a market decline against paying a price which exceeds the forward price by more than 2.50%. Applicants state that, while the Sponsor receives the benefits of protection against certain declines in the public offering price on the Date of Deposit, it is not protected against any decline on that date in excess of 2.50% of such price, and it is not protected in any amount against any decline in the net asset value with respect to Units remaining unsold at the end of the first day of the offering. Applicants state further that the Sponsor must bear the market risk of any decline in the market value of the Securities between the time of purchase of the Securities and the close of business on the business day preceding the Date of Deposit.

Applicants assert that the possibility of speculation from offering the units at a price determined on the day preceding the Date of Deposit will be minimal. Applicants submit that, for a speculator to benefit from a purchase and immediate redemption, net asset value would have to increase in excess of the sales charge which will probably be approximately 4.50% of the public offering price (approximately $45 for a 1,000 Unit minimum purchase). Applicants believe that, in light of the applicable sales charges, such one day price changes will not offset the transactional costs related to any attempted speculation by investors. Applicants maintain that, even though Series 1 will be comprised primarily of equity securities and intermediate term United States Treasury securities, the volatility of market prices in any one day is not likely to be of such magnitude to overcome the related costs of speculation.

Applicants submit that, even if there were sufficient volatility in the Trusts' portfolio securities to offset the costs of speculation, it is unlikely that a prospective investor would know what specific securities and what proportions of types of securities were in a portfolio prior to receipt of a prospectus. Accordingly, Applicants represent that it would be practically impossible for an investor to accurately determine the amount, if any, of a change in the Trust's net asset value on the Date of Deposit. Moreover, because the redemption price is determined as of the close of business on the day the redemption request is received, the speculator would be required to tender the Units for redemption prior to the time the price was determined, thereby taking at least a temporary market risk.

Applicants represent that, to eliminate any possibility of speculation on the part of the Sponsor, as a condition to the granting of the requested order, the Sponsor agrees that, during the initial public offering period for any Trust, it will not tender back to the Trustee for redemption any of its unsold Units. Applicants represent that the Sponsor will not allow its registered representatives (or any dealer through which it might in the future distribute Units) to convert an increase in the market into a speculative gain by tendering any Units they might purchase to the Trustee for redemption during the initial public offering period.

Applicants request confidential treatment for the profit and loss statements of the Sponsor, pursuant to Section 45(a) of the Act. It is submitted that public disclosure of this financial information is neither necessary nor appropriate in the public interest or for the protection of investors. Investors in the Trust are not offered an opportunity to acquire any interest in the Sponsor. Apart from the Sponsor's obligation under the Agreement to recommend disposition of underlying securities (which obligations may be performed by the Trustee or successor Sponsor if not performed by the current sponsor), the Sponsor functions solely as an underwriter of the Trusts. According to the application, there is no legitimate interest on the part of the investors in the public disclosure of the profit and loss statements of the underwriters from whom Units are purchased.

Applicants state that, to the extent that the Sponsor's solvency may conceivably be thought relevant to the maintenance of the secondary market in

the Units of Trusts, the Sponsor's statement of financial condition which is filed with the Commission and various stock exchanges and is readily available to the public contains fully adequate information in this regard. It is asserted that the financial operations of the Sponsor will in no way enhance or diminish the prospect for an orderly payment of the underlying Securities.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than February 27, 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. 85-3686 Filed 2-13-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14353; 812-5978]

Venture Muni (+) Plus, Inc. (formerly Santa Fe Cash Reserves, Inc.); Filing of Application for an Order Exempting Applicant Permitting Certain Exchange Transactions

February 4, 1985.

Notice is hereby given that Venture Muni (+) Plus, Inc. ("Applicant"), 309 Johnson Street, Santa Fe, NM., 87501, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on November 9, 1984, for an order (1) pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rules 22c-1 and 22d-1 thereunder to the extent necessary to permit Applicant to assess a contingent deferred sales charge on redemptions of its shares, and to permit Applicant to waive the contingent deferred sales charge in certain cases, and (2) pursuant to Section 11(a) of the Act to permit certain exchange transactions. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and rules thereunder for the text of the provisions cited in the application.

Applicant represents that, pursuant to a vote of its shareholders on October 10, 1985, Applicant changed from a no-load, money market fund to a municipal bond fund. Applicant proposes to sell its shares through its investment adviser and principal underwriter, Venture Advisers, Inc. ("Adviser"). According to the application, the Adviser also serves as the investment adviser to Retirement Planning Funds of America, Inc. ("RPF Funds"), a series fund consisting of a no-load Money Market Fund, and an Equity Fund and Bond Fund which impose a contingent deferred sales charge on certain redemptions of their shares. Applicant states that all its shareholders were given the opportunity to exchange their shares for shares of the Money Market Fund at relative net asset value without payment of any sales charge.

It is stated that Applicant's board of directors has approved a distribution agreement with the Adviser providing for a distribution plan pursuant to Rule 12b-1 under the Act ("12b-1 Plan"). According to the application, the 12b-1 Plan provides that Applicant may incur certain distribution expenses which may not exceed for any quarter .3125% of the Applicant's average daily net assets during the quarter (an amount approximately equivalent to 1.25% annually of Applicant's average daily net assets). Such amounts may be paid to Applicant's distributor as commissions for Applicant's shares actually sold after the inception of the 12b-1 Plan, all or part of which commissions will be allocated to selling dealers, and to enable the Adviser to pay dealers maintenance or other fees in respect of Applicant's shares sold by them after the inception of the 12b-1 Plan and remaining outstanding on the books of Applicant for specified periods.

Applicant represents that its directors have also approved the imposition of a contingent deferred sales charge on redemptions of Applicant's shares that were purchased on or after the date that the 12b-1 Plan is put into effect. The contingent deferred sales charge would be a declining percentage of the lesser of (1) the net asset value of Applicant's shares redeemed or (2) the total cost of such shares. Applicant states that no contingent deferred sales charge would be imposed on (a) amounts derived from increases in the value of his account above the total cost of shares being redeemed because of increases in the net asset value per share, (b) shares with respect to which no commission was paid on issuance, including shares acquired through reinvestment of dividend income or capital gains distributions and shares sold to the full-time employees (employed at least 90 days), directors and officers of the Applicant and the Adviser, (c) shares held in all or part of more than four calendar years, (d) shares held at the close of business on the day before the date that redemptions become subject to the charge, or (e) shares redeemed in connection with the death or permanent disability of the shareholder or his or her spouse.

According to the application, the amount of any contingent deferred sales charge is calculated by determining the year in which the purchase payment was made. When the contingent deferred sales charge is imposed, the amount of the charge will be 5% if the redemption occurs during the same calendar year during which the shares being redeemed were purchased; 3¾% if the redemption occurs during the first calendar year after the year of purchase; 2½% if the redemption occurs during the second calendar year after the year of purchase; 1¼% if the redemption occurs during the third calendar year after the year of purchase; and 0% if the redemption occurs during the fourth and subsequent calendar years following the year of purchase.

According to the application, the contingent deferred sales charge will initially be paid to Applicant. Applicant states, however, at any time when the commissions or other amounts paid by the Adviser exceed the amounts received in reimbursement under the 12b-1 Plan by $50,000 or more over a period of any four consecutive calendar quarters, its directors may determine that the deferred sales charges should be thereafter paid to the Adviser and will so inform Applicant's shareholders and investors.

Applicant further proposes an exchange privilege for the acquisition of Applicant's shares which would be limited to shares of the RPF Funds or any other investment company with the same investment adviser and distributor as Applicant and which does not impose a front-end sales charge. Applicant states that shares of any such investment company would be exchanged for Applicant's shares at their relative net asset values. The contingent deferred sales charge would apply to Applicant's shares received in exchange as follows: (1) If the shares tendered for exchange into Applicant's shares are subject to a deferred sales

charge, the exchanged shares would likewise continue to be subject to the charge in the same manner and on the same basis as the tendered shares. (2) If the shares tendered for exchange into Applicant's shares are not subject to a contingent deferred sales charge (i.e., RPFA Money Market Fund), the shares of Applicant received in the exchange would, nevertheless, be subject to the deferred sales charge, if any, applicable to Applicant's shares being acquired in the exchange. The period for determination of the amount of the charge would be calculated on the basis of the date of exchange. (3) Any exception to the applicable sales charge will continue to apply in respect to the shares of Applicant being acquired.

Applicant requests an exemption from Section 2(a)(32) of the Act which defines "redeemable security" to the extent necessary to permit Applicant to continue to qualify as an open-end company under Section 5(a)(1) of the Act. Applicant asserts that imposition of the contingent deferred sales charge in no way restricts a shareholder from receiving a proportionate share of Applicant's current net assets, but merely defers the deduction of a sales charge and makes it contingent upon an event which may never occur.

Applicant also requests exemptions from Sections 2(a)(35) and 22(c) of the Act and Rule 22c-1 thereunder to the extent necessary to permit Applicant to implement the proposed contingent deferred sales load. Applicant submits that the deferral of the sales charge, and its contingency upon the occurrence of an event which might not occur, does not change the basic nature of this charge, which is in every other respect a sales charge. Applicant submits further that when a redemption of its shares is effected, the price of the shares on redemption will be based on their current net asset value. The contingent deferred sales charge will merely be deducted from the redemption proceeds at the time of redemption in arriving at the shareholder's net proceeds payable on redemption.

Applicant asserts further that an exemption from the provisions of Section 22(d) of the Act is required to permit the contingent deferred sales charge to be waived in certain cases because the waiver provisions could result in Applicant's shares being sold at other than a uniform offering price, under circumstances not specifically exempted from Section 22(d) of the Act by Rule 22d-1 thereunder. Applicant represents that the proposed exceptions from imposition of the contingent deferred sales charge are fair and reasonable, competitively necessary and consistent with Applicant's objective to provide a long-term investment for its shareholders.

Applicant further seeks approval of the contingent deferred sales charge on the proposed exchanges into Applicant's shares to assure that exchanges subject to the charge do not violate Section 11(a) of the Act. Applicant asserts that the carryover of the deferred charge, holding period and exceptions to the charge and the imposition of the charge as a result of the exchange of a no-load fund's shares for shares of the Applicant is fair and necessary in order to preserve the integrity of the deferred sales charge and the dealer distribution system. Applicant asserts that if a shareholder could avoid the imposition of the charge by exchanging from one fund to another or into or from a fund whose shares are not subject to a charge, then the integrity of the deferred sales charge and the dealer distribution system would be impaired and there would be unfair discrimination between shareholders and dealers. Therefore, Applicant believes that the imposition of the deferred charge on a carryover basis where the shares being tendered are not subject to the deferred charge is fair and reasonable and the proper way to assure that all the shareholders, funds and dealers are treated fairly.

Applicant further asserts that the calculation of the holding period, in the case of the exchange from a no-load fund without any contingent deferred sales charge, from the date of acquisition of the Applicant's shares is fair and reasonable. In the event of such an exchange into Applicant's shares, it will be necessary to pay a commission for that sale of Applicant's shares. In order to obtain reimbursement for this expense, Applicant asserts that it is fair and reasonable that there be reimbursement through the deferred sales charge where its shares have not been held for a sufficient period to recover the sales expenses of the shares sold.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 1, 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 Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-3689 Filed 2-13-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21730; SR-CSE-84-3]

Self-Regulatory Organizations; Cincinnati Stock Exchange, Inc.; Order Approving Proposed Rule Change

February 8, 1985.

The Cincinnati Stock Exchange, Inc. ("CSE") 209 Dixie Terminal Building, Cincinnati, Ohio 45202, submitted on December 10, 1984, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend Rule 11.9 of its rules relating to the National Securities Trading System to enable a designated dealer for one or more designated issues to guarantee the execution of up to 1,099 shares of public agency market orders in designated issues for which he is the designated dealer. The CSE Securities Committee approves one or more applicant proprietary members of the Exchange as a designated dealer for one or more designated issues.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 21622, January 2, 1985) and by publication in the **Federal Register** (50 FR 1025, January 8, 1985). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-3687 Filed 2-13-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21727; SR-NASD-84-33]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc. Order Approving Proposed Rule Change

February 7, 1985.

The National Association of Securities Dealers, Inc. ("NASD"), 1735 K Street, NW., Washington, D.C., 20006, submitted on December 14, 1984, a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to amend its Rules of Fair Practice, Article III Section 19 ("Section 19") to provide, as part of the NASD's rules, that NASD members must comply with Rule 15c3-3 (17 CFR 240.15c3-3) ("Rule 15c3-3") under the Act and its requirements regarding possession and control of securities and the maintenance of cash reserves by a broker-dealer.

The NASD has eliminated from Section 19 the requirement that customers sign a separate written authorization to allow a member to lend that customer's securities because Rule 15c3-3 under the Act has its own written authorization requirements. The NASD also is proposing to change the standard for determining when it is acceptable for a member to lend securities carried for the account of a customer. The proposed standard for lending a security is the eligibility of a security to be pledged or loaned under Rule 15c3-3. Previously, Section 19 has a fair and reasonable standard. In addition, the NASD has eliminated the explanation of the Board of Governors accompanying paragraphs (b) and (c) of section 19. The NASD also has made technical changes to Section 19. The NASD states that the statutory basis for the proposed rule change is Section 15A(b)(2) of the Act. By eliminating duplicative and out of date provisions from Section 19 of the Rules of Fair Practice and adding an affirmative duty to comply with Rule 15c3-3 under the Act the NASD's ability to enforce compliance by members with its rules and with the Act will be enhanced.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 21598, December 24, 1984) and by publication in the **Federal Register** (50 FR 911, January 7, 1985). No comments were received with respect to the proposed rule change durign the comment period.[1]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

John Wheeler,

Secretary.

[FR Doc. 85-3688 Filed 2-13-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 85-013]

Registration of House Flag and Funnel Mark of American Overseas Marine Corp.

In accordance with 46 U.S.C. 12118, the Commandant, United States Coast Guard, has registered the house flag and funnel mark of American Overseas Marine Corporation as described below:

a. The house flag is rectangular in shape. The hoist is 3 feet and the fly is 5 feet. The flag consists of horizontal bands in width (inches) and color as follows: 6.375 blue, 1.125 white, 1.875 blue, 1.125 white, 15.0 red, 1.125 white, 1.875 blue, 1.125 white, and 6.375 blue. There is a slightly slanting white letter A measuring 1 foot in width at the base and 1 foot in height located in the center of the red field. The top of the A begins 2.375 feet from the edge of the hoist and is 6.75 inches wide at the top. The horizontal bars on the letter are 2.25 inches wide. The vertical sides of the letter are 2.375 inches wide.

b. The funnel mark is 31.5 feet high. The funnel mark consists of horizontal bands in width (feet) and color from the top of the funnel as follows: 4.167 blue, .75 white, 1.5 blue, 1.0 white, 11.0 red, .75 white, 1.667 blue, 1.167 white, and 9.5 blue. A slightly slanting white letter A is centered in the red band on both the port and starboard sides of the funnel. The letter A measures 8.75 feet in width at the base, 5.0 feet in width across the top, and 8.667 feet in height. The horizontal bars on the letter are 1.667 feet wide and the vertical sides of the letter are 2.0 feet wide.

Dated: February 11, 1985.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 85-3775 Filed 2-13-85; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

[Summary Notice No. PE-85-3]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: March 6, 1985.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received

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[1] One letter of comment was received with respect to the proposed rule change after the close of the comment period. That comment urged adoption of the proposal. Letter from John J. Cox, Vice President and Special Assistant, Blinder, Robinson & Co., Inc., to John Wheeler, Secretary, SEC, dated January 24, 1985. Mr. Cox further urged the Commission, along with other securities regulators, to make certain efforts to adopt uniform regulations for broker-dealers.

and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on February 8, 1985.

Donald P. Byrne,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

Petitions for Exemption

Docket No.	Petitioner	Regulations affected	Description of relief sought
24431	Herbert F. Ewald	14 CFR 121.383(c)	To allow petitioner to continue to serve as a pilot in operations conducted under part 121 after reaching petitioner's 60th birthday.
24433	Burlington Northern	14 CFR 21.181	To allow petitioner to operate a B-727-191 aircraft utilizing the provisions of a minimum equipment list.
24306	Peninsula Airways, Inc	14 CFR 135.243(d)(2)	To allow Messrs. Norman Tibbetts and George Tibbetts to serve as pilots in command for on-demand air carrier operations without holding instrument ratings.
22282	Regional Airline Association	14 CFR 135.261(b)	To extend the Feb. 28, 1985 termination date of Exemption 3535C. That exemption allows petitioner's members to assign a flight crewmember for duty during flight time if that assignment provides for at least 8, rather than 10, consecutive hours of rest during the 24-hour period proceeding the planned completion of the assignment.
24424	USAir	14 CFR 121.291(b)(2)	To allow petitioner to increase the passenger seating capacity on B-727-200 airplanes without conducting a partial demonstration of emergency evacuation procedures.
24388	TransBrasil	14 CFR 21.181	To allow petitioner to operate a B-707 airplane utilizing the provisions of minimum equipment list.
24438	Vecellio & Grogan, Inc	14 CFR 21.181	To allow petitioner to operate a Beech King Air 200 airplane utilizing the provisions of a minimum equipment list.
24440	American Flyers	14 CFR 141.91(a)	To allow petitioner to conduct ground and flight training at a satellite base located more than 25 nautical miles from its main base.
24328	William Addison Chisholm	14 CFR 61.107 and 61.39(a)(5)	To allow petitioner to obtain a private pilot certificate with a gyroplane rating without having instruction from a certified flight instructor.
22441	United Airlines	14 CFR 121.433, 121.441(a)(i), and 121.441(i)(e).	To extend the July 31, 1985 termination date of Exemption 3451A. That exemption allows petitioner to conduct an FAA-monitored program under which flight crewmembers are able to meet the annual ground and flight recurrent training requirements and the annual proficiency check requirements without specifically meeting requirements to the cited sections.

Dispositions of Petitions for Exemption

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
24443	First United Air Inc	14 CFR 91.307	To allow operation in the United States, under a service to small communities exemption, of specified two-engine airplanes identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than Jan. 1, 1988: 1 BAC 1-11: N455OT Granted Jan. 23, 1985.
24086	Airlift Int'l, Inc	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date contained in 14 CFR Part 91, Subpart E, to permit petitioner to operate noncomplaint four-engine aircraft in foreign air commerce until January 1, 1988. Petitioner also asks for relief sought under Pub. L. 98-473 with respect to Miami operations. Amended Partial Grant Jan. 25, 1985.
24356	Trans Global Airlines Inc	14 CFR 91.303	To allow petitioner to operate four Stage 1 DC-8-55 aircraft in noncompliance with the operating noise limits. Partial Grant Jan. 25, 1985.
24186	Arrow Air, Inc	14 CFR 91.303	To allow petitioner to operate Stage 1 Boeing 707 and DC-8 aircraft in noncompliance with the operating noise limits until compliance with the Part 36 noise standards can be achieved by installation of "hush kits." Amended Partial Grant Jan. 28, 1985.
24326	Hawaiian Airlines	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date contained in 14 CFR Part 91, Subpart E. Partial Grant Jan. 25, 1985.
24368	Minerve	14 CFR 91.303	To allow petitioner to operate cargo charter flights using a Stage 1 DC-8-62F in noncompliance with the operating noise limits until hush kits are installed. Denied Jan. 30, 1985.
24383	National Airlines, Inc	14 CFR 91.303	To allow petitioner to operate three Stage 1 DC-8-63 aircraft from Tinker Air Force Base, Philadelphia, and New York until hush kits are installed. Granted Jan. 31, 1985.
24146	So. Pacific Island Airways	14 CFR 91.303	To allow petitioner to operate four Stage 1 Boeing 707 airplanes in noncompliance with the operating noise limits until compliance with the Part 36 noise standards can be achieved by installation of quiet nacelles. Partial Grant Jan. 28, 1985.
24055	Ports of Call Travel	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date contained in 14 CFR Part 91, Subpart E. Partial Grant Jan. 29, 1985.
24421	Samoa Airlines	14 CFR 91.303	To allow petitioner to operate one Stage 1 Boeing 707 airplane until hush kits are installed. Granted Jan. 28, 1985.
24444	Saudi-Oger Ltd	14 CFR 91.307	To allow operation in the United States, under a service to small communities exemption, of specified two-engine airplanes identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than Jan. 1, 1988: BAC 1-11: HZ-HR Granted Jan. 29, 1985.
23928	Mead Corporation	14 CFR 21.181	To amend Exemption 3996. The requested amendment reflects that a new Dassault DA-50 model aircraft has been assigned registration number N435DM which was previously assigned to another aircraft. Granted Jan. 8, 1985.
23336	Simulator Training	14 CFR 61.63 and 61.57	To extend Exemption No. 3681 which allows trainees to complete a practical test for the issuance of a type rating to be added to any private, commercial, or airline transport pilot certificate, including those items and procedures approved for testing in an airplane simulator as set forth under the heading of nonvisual simulators in Appendix A of Part 61.17709. Granted Jan. 28, 1985.

DISPOSITIONS OF PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
22457	American Airlines	14 CFR 121.99 and 121.351	To extend the Jan. 31, 1985, termination date of Exemption 3462, as amended, to allow petitioner to operate airplanes in extended overwater operations on certain routes with one of two installed high frequency communications radio systems inoperative at the time of departure and with only one long-range navigational radio system as the primary means of navigation. Granted Jan. 31, 1985.
24239	Skydive, Inc	14 CFR 105.43(a)	To allow petitioner, employees, representatives, and customers to make parachute jumps and allow pilots in command to permit these jumps, from aircraft while wearing a dual harness, dual parachute pack having at least one main parachute and one approved auxiliary parachute. Denied Jan. 24, 1985.
18104	Flight Safety Int'l	14 CFR 61.57(a)(1)	Extension of Exemption 2592E to permit pilots to complete their biennial flight review in an aircraft simulator instead of an aircraft. Granted Jan. 29, 1985.
23063	Tenneco	14 CFR 21.181	To extend the Jan. 31, 1985, termination date of Exemption 3695 to allow petitioner to operate various airplanes utilizing the provisions of minimum equipment lists. Granted Jan. 29, 1985.
23796	Corporate Jets, Inc	14 CFR 135.261(b)	Extension of Exemption 3917A to allow the petitioner to operate its helicopters from the Center for Emergency Medicine in Pittsburgh, Pennsylvania, and other contracting hospitals, in a helicopter hospital emergency medical evacuation service without complying with the duty time limitations, subject to conditions and limitations. Granted Jan. 28, 1985.
24325	American Airlines, Inc	14 CFR 159.60	To allow petitioner to conduct four daily nonstop roundtrips between Washington National Airport (DCA) and Dallas/Ft. Worth Texas (DFW). Denied Jan. 2, 1985.
23469	Jet Fleet Int'l Airlines, Inc	14 CFR 91.307	To amend Exemption No. 3116b to add 1 aircraft. The present exemption allows operation in the United States, under a service to small communities exemption, of specified two-engine airplanes, identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than Jan. 1, 1985: 3 BAC 1-11: N800DM; N9WP; and N5022. Granted Feb. 4, 1985.
24338	Air Transport Int'l	14 CFR 91.303	To allow petitioner to operate two Stage 1 DC-8-33 aircraft in noncompliance with the operating noise limits until they are replaced by hush kitted DC-8-62 aircraft. Partial Grant Jan. 31, 1985.
24130	Worldways Canada, Ltd	14 CFR 91.303	To allow petitioner to operate Stage 1 DC-8 and Boeing 707 aircraft until Dec. 31, 1987, in noncompliance with the operating noise limits. Denied Jan. 30, 1985.

[FR Doc. 85-3720 Filed 2-13-85; 8:45 am]

BILLING CODE 4910-13-M

Parts Manufacturer Approval

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Availability; Parts Manufacturer Approval Program Evaluation, Phase I Report.

SUMMARY: This document announces the availability of an independent study team's report on the Federal Aviation Administration's (FAA) Parts Manufacturer Approval (PMA) program. In July 1984, the FAA commissioned the team to study the agency's PMA program after comments to a series of proposed PMA regulations in Notices of Proposed Rulemaking (NPRM's) Nos. 77-19 through 77-19D revealed a lack of uniformity among FAA's regional offices in implementing PMA, misunderstanding of some proposed revisions, and general confusion in the aviation community about the implementation of identicality determinations—one of several methods for approving a PMA applicant's design. This report presents the results of the study, offers an independent opinion on questions respecting the PMA program, and presents some options the FAA may consider in addressing the issue.

DATE: The report was available as of January 15, 1985.

ADDRESSES: Copies of the report may be obtained from the COMSIS Corporation, 11501 Georgia Avenue, Wheaton, Maryland 20902; Telephone (301) 933-9211. A copy of the report may be examined at the following FAA field locations.

(1) Boston Aircraft Certification Branch, 12 New England Executive Park, Burlington, MA 01803; Telephone (617) 273-7118.

(2) Aircraft Certification Division, 4400 Blue Mound Road, Fort Worth, TX 76101; Telephone (817) 877-2581.

(3) Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, KS 67209; Telephone (316) 946-4400.

(4) Chicago Aircraft Certification Office, 2300 East Devon Avenue, Room 232, Des Plaines, IL 60018; Telephone (312) 694-7357.

(5) Atlanta Aircraft Certification Office, 1075 Innerloop Road, College Park, GA 30337; Telephone (404) 763-7428.

(6) New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, NY 11581; Telephone (516) 791-6680.

(7) Seattle Aircraft Certification Office, 17900 Pacific Highway South, Seattle, WA 98168; Telephone (206) 431-2903.

(8) Anchorage Aircraft Certification Office, 701 C Street, Anchorage, AK 99513, Telephone (907) 271-5927.

(9) Denver Aircraft Certification Office, 10455 East 25th Avenue, Aurora, CO 80010; Telephone (303) 340-5575.

(10) Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, CA 90808; Telephone (213) 548-2861.

(11) Western Aircraft Certification Office, Worldway Postal Center, Hawthorne, CA 90009-2007; Telephone (213) 536-6351.

SUPPLEMENTARY INFORMATION: In July 1984, the Federal Aviation Administration (FAA) commissioned an independent investigative team to supply an impartial assessment of the agency's PMA program. Since its inception, the program has been controversial, and that controversy was underscored by FAA proposals to amend the PMA regulations in NPRM Nos. 77-19 through 77-19D. Public comment to these proposals suggested FAA disparity in applying PMA rules and confusion among aviation industry members and other Federal agencies concerning both the PMA process as it existed and the FAA's proposed changes.

The FAA determined that these problems made proceeding with proposed regulatory revisions impractical and unwise. The agency then withdrew its proposals and assembled a team to identify the national norm for administering the PMA program, discover whether

program variations existed, and document industry experience respecting PMA. The team gathered its information through independent research and a field evaluation that involved interviewing FAA engineers and production approval personnel in all 10 FAA regional offices as well as interviewing original equipment manufacturers (type certificate holders) and replacement and modification parts manufacturers in each region.

The team has completed its field evaluation and has published its findings, conclusions, and recommendations in a report prepared for the FAA titled "Parts Manufacturer Approval Program Evaluation, Phase I Report." The FAA will use the report as part of its administrative assessment of the PMA program and as guidance in determining the nature of any program change that may be warranted. As the report's title implies, the FAA anticipates that additional phases will be required before the agency can reach a full resolution of problems remaining with the PMA program.

Members of the public who are interested in reviewing the Phase I report may inspect it in Docket No. 17147 at FAA Headquarters, Room 915, 800 Independence Avenue, SW., Washington, DC 20591. The document may be inspected weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. In addition, the report is available for inspection at any of the FAA aircraft certification offices listed under the caption **ADDRESSES.**

If you have questions concerning the report, please contact the person listed under the caption **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on January 29, 1985.

M.C. Beard,

Director of Airworthiness.

[FR Doc. 85-3718 Filed 2-13-85; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA), Special Committee 149—Airborne Distance Measuring Equipment (DME); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 149 on Airborne Distance Measuring Equipment (DME) to be held on March 11-13, 1985 in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW, Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Tenth Meeting Held on December 5-7, 1984; (3) Report on Coordination with the European Organization for Civil Aviation Electronics (EUROCAE) Working Group 25; (4) Report on Coordination with RTCA Special Committee 151 on Airborne MLS Area Navigation Equipment; (5) Review Task Assignments From Previous Meeting; (6) Review of the Eleventh Draft Committee Report on Minimum Operational Performance Standards for Airborne Distance Measuring Equipment; and (7) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW, Suite 500, Washington, D.C. 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on February 5, 1985.

Karl F. Bierach,

Designated Officer.

[FR Doc. 85-3715 Filed 2-13-85; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA), Special Committee 150—Minimum System Performance Standards for Vertical Separation Above Flight Level 290; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 150 on Minimum System Performance Standards for Vertical Separation above Flight Level 290 to be held on March 6-8, 1985 in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW, Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Eighth Meeting Held on October 29-31, 1984; (3) Discussion of Initial Comments Received on Committee Draft Report Regarding Aircraft Altimeter Problems; (4) Review U.S. Aircraft Altitude Measurement Program Results; (5) Review Canadian and European Aircraft Altitude Measurement Programs; (6) Develop a Program to Validate Altimetry System Performance Requirements; (7) Review and Discussion of Working Group Activities on System Performance Requirements, Altimetry System Errors, and Flight Technical Errors; and (8) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW, Suite 500, Washington, D.C. 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on February 5, 1985.

Karl F. Bierach,

Designated Officer.

[FR Doc. 85-3716 Filed 2-13-85; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA) Special Committee 154—Airborne Thunderstorm Detection Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 154 on Airborne Thunderstorm Detection Equipment to be held on March 14-15, 1985 in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Fourth Meeting Held on November 1-2, 1984; (3) Review Results of Proposed Standards Test Verification Activity; (4) Review Task Assignments From Previous Meeting; (5) Review of Updated Third Draft of Committee Report on Minimum Operational Performance Standards for Airborne Thunderstorm Detection Equipment; and (6) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW, Suite 500, Washington, D.C. 20005; (202) 682-0266.

Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on February 5, 1985.

Karl F. Bierach,

Designated Officer.

[FR Doc. 85-3717 Filed 2-13-85; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Bennington, VT and Hoosick, NY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in the Towns of Bennington, Vermont and Hoosick, New York.

FOR FURTHER INFORMATION CONTACT: George A. Jensen, Federal Highway Administration, Federal Building, Montpelier, VT 05602, Telephone (802) 223-5294; or Arthur J. Goss, Chief of Design, Vermont Agency of Transportation, State Administration Building, Montpelier, VT 05602, Telephone (802) 828-2663.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Vermont Agency of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve U.S. Route 7 (U.S. 7) and Vermont Route 9 (VT 9) in the Town of Bennington, Vermont; and Route 7 (NY 7) in Hoosick, New York. This proposed project will begin on U.S. 7 about one mile north of the Pownal/Bennington Town Line and extend northerly to a terminus at the U.S. 7/VT 67 interchange, a distance of about four and one half miles. The VT 9/NY 7 portion of the project will begin at the US 7/VT 67 interchange and continue westerly to an intersection with either VT 9 or NY 7 depending on the alternate selected. Length of this section is also dependent on the alternate chosen. This proposed project is intended to reduce traffic congestion and to alleviate existing highway deficiencies in and around Bennington Village. Alternatives under consideration for this project include (1) do nothing, (2) upgrading the existing facility, (3) mass transit, (4) constructing beltline around Bennington Village on the east side, and (5) constructing a beltline around Bennington Village on the west side with a connection from U.S. 7 to VT 9 on the east. With alternates (4) and (5) VT 9/NY would be constructed on new location north of the existing highway. Beginning in the late 1950's meetings and public hearings were held on this project; and pursuant to the State of Vermont Action Plan, Federal, State and local agencies were contracted. In January 1980 a Notice of Intent to prepare an EIS was published in the **Federal Register**. Subsequently the scope of this project was reduced. This change in the extent of the proposed project, combined with the time elapsed, makes a complete re-evaluation of the project warranted.

All affected Federal, State, and local agencies will be contracted and input requested on the current proposal. No formal scoping meeting will be held for this project.

To insure that all significant issues related to the project are addressed, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or the VAOT at the addresses provided.

Issued on: February 5, 1985.

George A. Jensen,

Assistant Division Administrator, Montpelier, Vermont.

[FR Doc. 85-3698 Filed 2-13-85; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 114; Rev. 4]

Delegation of Authority; Competent Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: This delegation order designates officials of the Internal Revenue Service to act as "Competent Authority" under tax treaties and exchange of information agreements. The text of the delegation order appears below.

EFFECTIVE DATE: February 1, 1985.

FOR FURTHER INFORMATION CONTACT: Paul Rolli, FOD: 33, 1325 K. St., NW., Room 1320, Washington, D.C. 20224 Telephone number, 202-566-9450 (Not a Toll-Free telephone number).

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury directive appearing in the **Federal Register** for Wednesday, November 8, 1978.

Dianne Kanakis,

Chief, Tax Treaty and Technical Services, FOD: 3.

Handbook of Delegation Orders

Order No. 114 (Rev. 4)

Effective date: 2-1-85

Designation to Act as "Competent Authority" Under Tax Treaties and Exchange of Information Agreements Authorized Under the Caribbean Basin Economic Recovery Act (CBERA)

1. Pursuant to the authority delegated to me by Treasury Department Order No. 150-83 there is hereby delegated to the Associate, Commissioner (Operations) and to Director, Foreign Operations District as stated below, the authority to act as "competent or taxation authority" under the tax treaties of the United States and under exchange of information agreements authorized under CBERA

2. The Associate Commissioner (Operations) shall have the authority to administer all those functions derived from the operating provisions of the tax treaties and exchange of information agreements authorized under CBERA other than those delegated below to the Director, Foreign Operations District. This authority may be redelegated, but not lower than the Assistant Commissioner level.

3. The Associate Commissioner (Operations) is also delegated the authority to interpret and apply such tax treaties and exchange of information agreements authorized under CBERA but in such matters shall act only with the concurrence of the Associate Chief Counsel (Technical). This authority may be redelegated, but not lower than the Assistant Commissioner level.

4. The Director, Foreign Operations District, shall have the authority to administer the following functions deriving from the operating provisions of the tax treaties; the Routine and Specific Exchange of Information Programs and the Program for Mutual Assistance in Collection. This authority may be redelegated.

5. The Director, Foreign Operations District, shall have the authority to

administer the following functions deriving from the operating provisions of the exchange of information agreements authorized under CBERA: the Routine and Specific Exchange of Information Programs. This authority may not be redelegated.

6. Delegation Order No. 114 (Rev 3) effective March 21, 1982, is superseded.

Dated: February 1, 1985.

James I. Owens,

Deputy Commissioner.

Approved:

James I. Owens,

Deputy Commissioner.

[FR Doc. 85-3806 Filed 2-13-85; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 31
Thursday, February 14, 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).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, February 11, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C.T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Memorandum re: Furniture for the Corporation's Chicago Regional Office;
Memorandum re: Purchase of office space in the Ecker Square Condominium Office Building, San Francisco, California;
Memorandum and resolution regarding the implementation of a program whereby individual letters would be sent to the directors of troubled FDIC-insured banks at their homes, which letters would remind the directors of their responsibilities and solicit their assistance in obtaining necessary corrections and improvements in the management, operation, and condition of their banks; and
Memorandum and resolution re: Proposed amendments to Part 309 of the Corporation's rules and regulations, entitled "Disclosure of Information," which would provide for the release of notices of charges issued by the Corporation in administrative enforcement proceedings, as well as the release of final orders resulting from such proceedings.

By the same majority vote, the Board further determined that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: February 11, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-3903 Filed 2-12-85; 3:40 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 at 4:45 p.m. on Friday, February 8, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to adopt: (1) A resolution: (A) Making funds available for the payment of insured deposits in Peoples Bank & Trust Company, Wartburg, Tennessee, which was closed by the Commissioner of Financial Institutions for the State of Tennessee on Friday, February 8, 1985; (B) accepting the bid of Citizens Bank & Trust Company, Wartburg, Tennessee, an insured State nonmember bank, for the transfer of the insured and fully secured or preferred deposits of the closed bank; and (C) designating Citizens Bank & Trust Company as the agent for the Corporation for the payent of insured deposits of the closed bank; and (2) an Order approving the application of Citizens Bank & Trust Company, Wartburg, Tennessee, for consent to purchase certain assets of and assume the liability to pay certain deposits made in Peoples Bank & Trust Company, Wartburg, Tennessee, and for consent establish the three offices of Peoples Bank & Trust Company as branches of Citizens Bank & Trust Company.

The meeting was recessed at 4:52 p.m., and at 10:45 p.m. that same day the meeting was reconvened, by telephone conference call, at which time the Board of Directors: (1) Received bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in West Valley Bank, Los Angeles (Woodland Hills), California, which was closed by the Superintendent of Banks for the State of California on Friday, February 8, 1985; (2) accepted the bid for the transaction submitted by First Interstate Bank, Ltd., Los Angeles (Woodland Hills), California, a newly-chartered State nonmember bank; (3) approved the applications of First Interstate Bank, Ltd., Los Angeles (Woodland Hills), California, for Federal deposit insurance, for consent to purchase certain assets of and to assume the liability to pay deposits made in West Valley Bank, Los Angeles (Woodland Hills), California, and for consent to establish the sole branch of West Valley Bank as a branch of First Interstate Bank, Ltd; and (4) provided such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Michael A. Mancusi, acting in the place and stead of Director C.T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: February 12, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-3904 Filed 2-12-85; 3:40 pm]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on

Tuesday, February 19, 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.

Application for consent to purchase assets and assume liabilities and establish one branch:

Connecticut Community Bank, Greenwich, Connecticut, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay certain deposits made in the 389 West Main Street, Stamford, Connecticut, branch office of County Federal Savings and Loan Association of Westport, Westport, Connecticut, a non-FDIC-insured institution, and for consent to establish that office as a branch of Connecticut Community Bank.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Summary Audit Report re: Indian Springs Bank, Kansas City, Kansas, SR-455 (Memo dated January 15, 1985)

Summary Audit Report re: Brownfield State Bank & Trust Co., Brownfield, Texas, AP-375 (Memo dated January 31, 1985)

Summary Audit Report re: Audit of Travel Agency Services (Memo dated January 17, 1985)

Summary Audit Report re: Decimus Asset Management System, Southeast Regional Office Audit (Memo dated January 31, 1985)

Summary Audit Report re: General EDP Security Audit Report (Memo dated December 26, 1984)

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, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425

Dated: February 12, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-3905 Filed 2-12-85; 3:40 pm]

BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, February 19, 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)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: February 12, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-3906 Filed 2-12-85; 3:40 pm]

BILLING CODE 6714-01-M

5

FEDERAL ELECTION COMMISSION

[Federal Register No. 85-3247]

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, February 14, 1985, 10:00 a.m.

The following item has been continued from the meeting of February 7, 1985:

Suggested improvements in the MUR process

* * * * *

DATE AND TIME: Wednesday, February 20, 1985, 10:00 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

* * * * *

DATE AND TIME: Thursday, February 21, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (Fifth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Eligibility for candidates to receive presidential primary matching funds
Draft Advisory Opinion #1985-1—Ratchford for Congress Committee
Draft Advisory Opinion #1985-2—Shaffer for State Senate Committee
Revisions of 11 CFR Parts 9007 and 9038—Second Transmittal to Congress
Reclassification of Secretary (typing)—Office of the Staff Director
Routine Administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 85-3868 Filed 2-12-85; 2:55 pm]

BILLING CODE 6715-01-M

6

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 49 FR 5730, January 11, 1985.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., February 13, 1985.

CHANGE IN THE MEETING: The following docket numbers have been added to Items CAG–10 and CAG–11..

Item No., Docket No., and Company

CAG–10: RP85–13–00, Northwest Pipeline Corporation
CAG–11: RP84–94–000, Trailblazer Pipeline Company

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–3823 Filed 2–12–85; 10:28 am]

BILLING CODE 6717–02–M

7

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9:00 a.m., February 21, 1985.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, D.C. 20573.

STATUS: Closed.

MATTER TO BE CONSIDERED:

1. Docket No. 84–6: The Port Authority of New York and New Jersey v. New York Shipping Association, et al. and Docket No. 84–8: Puerto Rico Maritime Shipping Authority and Puerto Rico Marine Management, Inc. v. New York Shipping Association—Consideration of the record.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary (202) 523–5725.

Francis C. Hurney,

Secretary.

[FR Doc. 85–3913 Filed 2–12–85; 3:55 pm]

BILLING CODE 6730–01–M

8

FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50 FR 5030, February 5, 1985.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 12:00 noon, Monday, February 11, 1985.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting: Consideration of Federal Deposit Insurance Corporation proposal to regulate certain nonbanking activities of insured banks and their affiliates.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452–3204.

Dated: February 11, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–3808 Filed 2–11–85; 5:10 pm]

BILLING CODE 6210–01–M

9

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, February 20, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on December 14, 1984.)

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: February 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–3915 Filed 2–12–85; 3:55 pm]

BILLING CODE 6210–01–M

10

NATIONAL TRANSPORTATION SAFETY BOARD

[NM–85–3]

TIME AND DATE: 9 a.m., Monday, February 25, 1985.

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Ave., SW., Washington, D.C. 20594.

STATUS: Closed under exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. *Opinion and Order: Administrator* v. *Hegner*, Dkt. SE–6448; disposition of respondent's appeal.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming, (202) 382–6525.

Ray Smith,

Federal Register Liaison Officer.

February 12, 1985.

[FR Doc. 85–3881 Filed 2–12–85; 3:00 pm]

BILLING CODE 7533–01–M

11

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of February 18, 1985.

A closed meeting will be held on Tuesday, February 19, 1985, at 10:00 a.m. An open meeting will be held on Thursday, February 21, 1985, at 2:30 p.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Thursday, February 19, 1985, at 10:00 a.m., will be:

Formal orders of investigation
Settlement of injunctive action
Institution of administrative proceedings of an enforcement nature
Institution of injunctive actions
Subpoena enforcement actions
Opinions

The subject matter of the open meeting scheduled for Thursday, February 21, 1985, at 2:30 p.m., will be:

1. Consideration of whether to adopt amendments to Securities Exchange Act Rule 10b–4 (17 CFR 240.10b–4) to: (1) Require persons tendering shares by guarantee to deliver all guaranteed shares, and (2) prohibit hedge tendering through the writing of call options. For further information, please contact M. Blair Corkran at (202) 272–2853.

2. Consideration of whether to propose for public comment Rule 203(b) (3)–1 under the Investment Advisers Act of 1940 which would specify certain situations in which a limited partnership, rather than each of its limited partners, would be counted as a "client" of a general partner acting as an

investment adviser to the partnership for purposes of an exemption from registration provided by that Act. For further information, please contact Thomas S. Harman at (202) 272–2030.

3. Consideration of whether to adopt proposed Rule 22d-6 under the Investment Company Act of 1940, which would permit investment companies issuing redeemable securities, principal underwriters of such securities, and dealers therein to establish variations including negotiation in the sales loads on such securities under certain conditions. For further information, please contact Elizabeth M. Knoblock at (202) 272–2048.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postoned, please contact: Angela Hall at (202) 272–3085.

John Wheeler,

Secretary.

February 11, 1985.

[FR Doc. 85–3882 Filed 2–12–85; 4:06 pm

BILLING CODE 8010-01-M

federal register

Thursday
February 14, 1985

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 103

Regulation of Ultralight Vehicles; Eipper Aircraft, Inc.; Petition for Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 103

[Docket No. 24242; Petition Notice PR 85-1]

Eipper Aircraft, Inc.; Regulation of Ultralight Vehicles

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Petition for rulemaking.

SUMMARY: This petition for rulemaking seeks to amend current regulations to establish enforceable requirements for operation of ultralight vehicles. The petitioner proposes changes to (1) improve ultralight aircraft safety; (2) foster responsibility for safety by the ultralight industry and ultralight consumer through accountability; (3) simplify regulations, and thus (4) enhance uniform enforcement.

DATE: Comments must be received on or before April 15, 1985.

ADDRESS: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. 24242, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald W. Myres, General Aviation and Commercial Division, Office of Flight Operations, (202) 426-8150, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA, in publishing substantive parts of the petition for rulemaking, is inviting the public to comment and assist the FAA in determining the need, if any, for additional rules governing the operation of ultralight vehicles. Interested persons are requested to participate by reviewing the information provided by the petitioner and submitting such written data, views, and arguments as they may desire. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Comments should identify the docket number and be submitted in triplicate to the address listed above. It should be noted that this summary does not propose a regulatory rule for adoption, represent an FAA position, or otherwise commit the agency on the merits of the petition. The FAA intends to proceed to consider the petition under the applicable procedures of Part 11 and reach a conclusion on the merits of the petition after it has had an opportunity to evaluate it carefully in light of the comments received and other relevant matters presented. If the FAA concludes that it should initiate public rulemaking action on the petition, appropriate rulemaking action, including an evaluation of the proposal, will be published.

Background/Supportive Information

The petitioner has provided the following proposed amendments and information to support its proposals:

"This petition to amend Part 103 is submitted by Mr. Lyle Byrum, President of Eipper Aircraft, Inc., in the interest of ultralight safety. Eipper Aircraft, Inc., is the world's largest manufacturer of ultralight aircraft and has produced approximately one-third of all ultralights currently in existence. The petitioner's requested changes are as follows:

"Revise § 103.1(e)(1) as follows:

(e)(1) Weighs less than 331 pounds empty weight.

"Justification: A maximum empty weight of 331 pounds provides:

1. A realistic weight margin in which an ultralight can be designed and manufactured to an acceptable level of structural integrity, as defined by the Professional Ultralight Manufacturers Association (PUMA) Airworthiness Standards.

2. A weight margin that allows for the addition of noise suppression equipment without sacrificing structural integrity.

3. A weight that complies with the internationally recognized standard of 150 kilos.

4. A weight that eliminates the need for allowances for safety devices and floats.

5. A weight rule that is easily enforceable.

6. A weight that allows for 3-axis flight control systems, pilot enclosures, instrumentation, strut-braced wings, and other safety related equipment.

"Delete paragraph (e)(3) of § 103.1.

"Justification: The requirements of the change to (e)(4) in concert with the weight restriction and a mandatory airworthiness program will automatically limit the maximum speed.

"Revise § 103.1(e)(4) as follows:

(e)(4) Has a minimum wing area of 145 square feet with flaps, or a minimum main wing area of 160 square feet without flaps. (Minimum flap area equals 10 percent of total wing area; minimum flap deflection is 30°.

"Justification: The minimum wing area requirement will:

1. Aerodynamically insure an acceptable minimum stalling speed that complies with the intent of the original rule.

2. Aerodynamically insure, in concert with (e)(1), that the maximum level flight speed remains within the realm of low inertia flight.

3. Allow enforcement of the rule without the need for ambiguous calculations or flight test demonstrations.

"Revise § 103.7(a) and (b) as follows:

(a) Notwithstanding any other section pertaining to certification of aircraft or their parts or equipment, ultralight vehicles and their component parts and equipment are not required to meet the airworthiness and certification standards specified for aircraft or to have certificates of airworthiness, if the following conditions are met:

(1) Ultralight vehicles must comply with an approved airworthiness program as defined in Draft Advisory Circular 103-1, Section 2.

(2) Documentation of compliance with subparagraph (1) of this paragraph be available for inspection by the Administrator or his designee.

"Justification: This paragraph will insure adherence to safety standards recognized by the FAA as being necessary for the proper design and manufacturing of an ultralight air vehicle. This proposal would also quell the inclination of manufacturers to place economic gain ahead of safety, as is common in today's voluntary atmosphere.

(b) Notwithstanding any other section pertaining to airman certification, operators of ultralight vehicles are not required to have airman or medical certificate, if the following conditions are met:

(1) The operator of an ultralight vehicle must successfully complete an approved ultralight vehicle pilot competency program as described in Draft Advisory Circular 103-1, Section 1.

(2) Documentation of compliance with subparagraph (1) of this paragraph be made available for inspection by the Administrator or his designee.

"Justification: This paragraph will insure that no person shall legally operate an ultralight air vehicle without first demonstrating an acceptable minimum level of knowledge and competency as recognized by the FAA as being necessary for the safety of the participants. It is not reasonable to expect an unknowing consumer to make informed judgments in terms of knowledge, skill, and competency required to safely perform the duties of a pilot without first educating that consumer to a level where such judgments can be made. In today's

voluntary environment, some consumers do receive proper training and some do not, as evidenced by "tip of the iceberg" accident statistics.

"Revise § 103.7(c) as follows:

(c) Notwithstanding any other section pertaining to registration and marking of aircraft, ultralight vehicles are not required to be registered as aircraft, if the following conditions are met:

(1) Ultralight vehicles must be registered through an approved registration program as defined in Draft Advisory Circular 103–1, Section 3.

(2) Ultralight vehicles must bear markings as defined in Draft Advisory Circular 103–1, Section 3.

"Justification: This paragraph will provide the necessary basis for identification of individual ultralights and will facilitate: (1) Enforcement of regulations; (2) compilation of accident and incident data; and (3) dissemination of maintenance and other safety related information.

"Any ultralight that truly meets the requirements of current Part 103 will meet the proposed changes in terms of the flight envelope and the weight limit. Those that do not—will not. The true value of the proposed changes, as they relate to speed and weight, comes from the advantages of productive enforcement. The current procedures required for enforcement are man-hour intensive, and result, at best, with questionable findings. The changes will allow the FAA to economically enforce the rules as they were originally intended. The accountability through enforcement will greatly enhance the safety of ultralight air vehicle operations.

"This petition is intended as a package. Eipper Aircraft strongly recommends that the weight and speed criteria not be changed without the accompanying Airworthiness Standards, Pilot Certification Standards, and Vehicle Registration Program. Accountability must be mandated. There is no other way to insure the public's safety."

List of Subjects in 14 CFR Part 103

Ultralight, Certification, Registration.

Issued in Washington, D.C., February 5, 1985.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

[FR Doc. 3714 Filed 2–13–85; 8:45 am]

BILLING CODE 4910–13–M

federal register

Thursday
February 14, 1985

Part III

Environmental Protection Agency

40 CFR Part 60

Amendment and Innovative Technology Waiver for New Source Performance Standards for Kraft Pulp Mills; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2748-8]

Amendment and Innovative Technology Waiver for New Source Performance Standards for Kraft Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On September 6, 1984 (49 FR 35156), the EPA proposed to amend the standards of performance for kraft pulp mills by adding a provision for determining compliance on a mass equivalent basis for digester systems and to grant, subject to concurrence by the Governor of the State of Georgia, an innovative technology waiver for operation of a new batch digester at the Owens-Illinois, Incorporated (O-I) kraft pulp mill in Clyattville, Georgia, pursuant to section 111(j) of the Clean Air Act, as amended (the Act), 42 U.S.C. 7411(j). This action promulgates the amendment and grants the waiver.

This amendment is necessary because the standards on a concentration basis preclude process systems which may have larger emissions on a concentration basis because of lower air flow rates but at the same time have equal or lesser emissions on a mass basis.

This waiver provides an opportunity to demonstrate the capability of a batch digesting displacement heating system to achieve equal or greater emission reductions than required by the existing standards of performance for digestive systems at kraft pulp mills at lower costs. Considerable energy and environmental benefits would also be achieved with this technology.

EFFECTIVE DATE: February 14, 1985. Under section 307(b)(1) of the Clean Air Act, judical review of this amendment and waiver is available only by the filing of petitions for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings initiated to enforce these requirements.

ADDRESSES: *Docket.* Under section 307(d)(2), 42 U.S.C. 7607(d)(2), the Administrator is required to establish two separate rulemaking dockets for each rule that would apply only within the boundaries of one State. One copy of the docket (Docket No. A-84-16) is located in Washington, D.C., at EPA's Central Docket Section, West Tower Lobby, Gallery 1, 401 M Street, SW. A second copy is located at the EPA Regional Office in Atlanta, Georgia, at 345 Courtland Street.

The docket may be inspected at the listed addresses between 8:00 a.m. and 4:00 p.m. on weekdays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. James Eddinger, Industrial Studies Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5595.

SUPPLEMENTARY INFORMATION:

Background

Current Regulations

On September 24, 1976, standards of performance were proposed to limit emissions of particulate matter and total reduced sulfur compounds (TRS) from new, modified, and reconstructed kraft pulp mills (41 FR 42012). Final standards were published in the **Federal Register** on February 23, 1978 (43 FR 7568). Proposed revisions to the standards were published in the **Federal Register** on January 19, 1984 (49 FR 2448).

Section 111 of the Clean Air Act, as amended, requires that standards of performance be established at levels that reflect the performance of best demonstrated technology (BDT) for emission control. For digester systems, BDT for TRS emission control was determined to be incineration of exhaust gases. The digester TRS emission standard reflecting the performance of well-designed and well-operated incinerators was determined to be 5 parts per million (ppm).

Requirements of Section 111(j)

Section 111(j) of the Clean Air Act sets forth provisions for the issuance of waivers for the development of innovative technology. In the 1977 Amendments to the Clean Air Act, Congress added this provision to encourage the use of innovative technological systems of continuous emission reduction for the control of air pollutants. The intent in doing so was to provide a statutory incentive for the improvement of emission control technology and for reducing costs, environmental impacts, and energy usage of such technology.

Under section 111(j) of the Act, upon request by the owner or operator of a new source and with the consent of the Governor of the State in which the source is located, the Administrator is authorized to grant a waiver from the requirements of section 111 for a limited time period and under specific terms and conditions provided certain statutory prerequisites are satisfied. The Administrator must determine that:

a. The proposed system or systems have not been adequately demonstrated;

b. The proposed system or systems will operate effectively and there is a substantial likelihood that such system or systems will achieve greater continuous emission reduction than that required to be achieved under the standard of performance which would otherwise apply, or achieve at least an equivalent reduction at lower costs in terms of energy, economic, or nonair quality environmental impact;

c. The owner or operator of the proposed source has demonstrated to the satisfaction of the Administrator that the proposed system will not cause or contribute unreasonable risk to public health, welfare, or safety in its operation, function or malfunction; and

d. The number of waivers granted under section 111(j) with respect to a proposed technological system of continuous emission reduction shall not exceed such number as the Administrator finds necessary to ascertain whether or not such a system will achieve the conditions specified in "b" and "c" immediately above.

In making and determination under "b", the Administrator shall take into account any previous failure of such system or systems to operate effectively or to meet any requirement of the new source performance standards (NSPS). In determining whether an unreasonable risk exists under "c", the Administrator shall consider, among other factors, whether and to what extent the use of the proposed technological system will cause, increase, reduce, or eliminate emissions of any unregulated pollutants; available methods for reducing or eliminating any risk to public health, welfare, or safety which may be associated with the use of such system; and the availability of other technological systems which may be used to conform to standards under section 111 without causing or contributing to such unreasonable risk. The Administrator may conduct such tests and may require the owner or operator of the proposed source to conduct such tests and provide such information as is necessary to carry out "c". Such requirements shall include a requirement for prompt reporting of the emission of any unregulated pollutant from a system if such pollutant was not emitted, or was emitted in significantly

lesser amounts without use of such system.

Waiver Request

On March 11, 1984, Owens-Illinois, Incorporated (O–I) submitted a request for an innovative technology waiver for the batch digester and multiple effect evaporator system at its Valdosta kraft pulp mill in Clyattville, Georgia. O–I indicates that a waiver would permit it to install and operate a digester displacement heating system that eventually would enable the digester system to comply with the mass equivalent of the NSPS TRS emission limit of 5 ppm. Additionally, O–I indicates that the displacement heating system (DHS) would achieve emission reductions at least equivalent to those of the control technology on which the standard is based, but at lower cost.

O–I plans to install DHS on its 9 existing batch digesters late in 1984. A new digester with a DHS will be installed first to maintain production capacity as each of the 9 existing digesters are removed from operation singly to retrofit the DHS. It is the new digester system which would be subject to the NSPS. Neither the existing digesters nor the multiple effect evaporators are, or would be, subject to NSPS.

Laboratory analysis suggests that TRS emissions from digesters with DHS may be displaced to evaporator condensate and exhaust gases. O–I expects that the BOD content of the overall mill effluent will be reduced, or be at least the same, by the use of the DHS because the displacement feature of the system will result in a corresponding reduction in the BOD content of the effluent from the present pulp washing system. The displacement stage can be considered as a stage of the mill's pulp washing system.

Proposed Waiver

The Agency reviewed the waiver request with regard to the requirements under section 111(j) of the Act and concluded that this request met the requirements of the Act. Therefore, the Agency proposed on September 6, 1984, to grant an innovative technology waiver to the Owens-Illinois, Incorporated, kraft pulp mill in Clyattville, Georgia, subject to the concurrence of the Governor of Georgia.

Waiver

Summary of the Final Waiver

A waiver is granted to Owens-Illinois for the No. 10 batch digester being built at the kraft pulp mill in Clyattville, Georgia. The No. 10 digester is scheduled to start operation in late 1984. The waiver limits TRS emissions from the No. 10 digester to 0.02 lb TRS/ton of air dried pulp. The waiver also limits TRS emissions from the multiple effect evaporator system to the TRS level existing prior to installation of the No. 10 digester. The waiver is effective from No. 10 digester startup to December 31, 1986.

Governor's Concurrence

The Honorable Joe Frank Harris, Governor of the State of Georgia, has concurred in the innovative technology waiver as set forth herein under section 111(j)(A) of the Act, 42 U.S.C. 7411(j)(1)(A). Such a concurrence is a prerequisite for the granting of an innovative technology waiver by the Administrator under section 111(j) of the Act. The waiver as set forth herein is hereby granted.

Public Participation

The amendment and waiver were proposed and published in the **Federal Register** on September 6, 1984 (49 FR 35156). The preamble to the proposed amendment and waiver discussed in detail information relating to the DHS and the requirements of a waiver under section 111(j) of the Clean Air Act. Public comments were solicited at the time of proposal and interested persons were given the opportunity to request a public hearing on the amendment and waiver. No public hearing was requested. The public comment period was from September 6, 1984, to October 19, 1984. No public comments were received.

Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review (Section 307(d)(7)(A)).

Miscellaneous

The Paperwork Reduction Act of 1980 (Pub. L. 96–511) requires EPA to submit to the Office of Management and Budget (OMB) certain public reporting/recordkeeping requirements before proposal. This rulemaking does not involve a "collection of information".

The Administrator certifies that a regulatory flexibility analysis under 5 U.S.C. 601 et seq. is not required for this rulemaking because the rulemaking would not have a significant impact on a substantial number of small entities. The rulemaking would not impose any new requirements and, therefore, no additional costs would be imposed. It is, therefore, classified as nonmajor under Executive Order 12241.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by reference, Can surface coating, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fixed steam generators.

Dated: January 31, 1985.

Lee M. Thomas,

Acting Administrator.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Title 40 Part 60, Subpart BB of the code of Federal Regulations is amended to read as follows:

1. Section 60.283, is amended by adding paragraph (a)(1)(vi) to read as follows:

§ 60.283 Standard for total reduced sulfur (TRS).

(a) * * *

(1) * * *

(vi) The uncontrolled exhaust gases from a new, modified, or reconstructed digester system contain TRS less than 0.005 g/kg ADP (0.01 lb/ton ADP).

* * * * *

2. Section 60.286 is added to read as follows:

§ 60.286 Innovative technology waiver.

(a) Pursuant to section 111(j) or the Clean Air Act, 42 U.S.C. 7411(j), the No. 10 batch digester at Owens-Illinois Incorporated's Valdosta kraft pulp mill in Clyattville, Georgia, shall comply with the following conditions:

(1) Owens-Illinois, Incorporated shall obtain the necessary permits as required by Section 173 of the Clean Air Act, as

amended August 1977, to operate the No. 10 batch digester at the Valdosta mill.

(2) Commencing on [date of promulgation in **Federal Register**] and continuing for 2 years or to December 31, 1986, or until the displacement heating system that can achieve the standard specified in 40 CFR 60.283 is demonstrated to the Administrator's satisfaction, whichever comes first, Owens Illinois, Incorporated shall limit the discharge of TRS emissions to the atmosphere:

(i) From the No. 10 batch digester at the Valdosta mill to 0.02 lb of TRS per ton of air-dried pulp.

(ii) From the existing multiple-effect evaporators at the Valdosta mill to the TRS level existing prior to the modifications.

(3) Commencing the day after the expiration of the period described in (2) above, and continuing thereafter, emissions of TRS from the No. 10 batch digester shall not exceed the TRS level of 0.005 g/kg ADP (0.01 lb/ton ADP) as specified in 40 CFR 60.283.

(4) The No. 10 batch digester system shall comply with the provisions of §§ 60.284 and 60.285.

(5) A technology development report shall be sent to EPA, Emission Standards and Engineering Division (MD–13), Research Triangle Park, North Carolina 27711 and EPA Region IV, 345 Courtland, NE, Atlanta, Georgia 30365, postmarked before 60 days after the promulgation of this waiver and every 6 months thereafter while this waiver is in effect. The technology development report shall summarize the displacement heating system work including the results of tests of the various emission points being evaluated. The report shall include an updated schedule of attainment of 40 CFR 60.283 based on the most current information. Tests will be conducted prior to and after the digester modifications for TRS emissions and air flow rates on all vents to the atmosphere from the No. 10 digester system, the multiple effect evaporator system, and at the existing batch digester system. In addition, tests will be performed to determine the BOD content of the effluents from the multiple effect evaporator system, the brown stock washing system, and the mill prior to and after the digester modifications.

(b) This waiver shall be a federally promulgated standard of performance. As such, it shall be unlawful for Owens-Illinois, Incorporated to operate the No. 10 batch digester or the multiple-effect evaporators in violation of the requirements established in this waiver. Violations of the terms and conditions of this waiver shall subject Owens-Illinois, Incorporated to enforcement under section 113 (b) and (c), 42 U.S.C. 7412 (b) and (c), and Section 120, 42 U.S.C. 7420, of the Act as well as possible citizen enforcement under section 304 of the Act, 42 U.S.C. 7604.

3. Section 60.285 is amended by adding a new paragraph (d)(5) to read as follows:

§ 60.285 Test methods and procedures.

* * * * *

(d) * * *

(5) When determining compliance with § 60.283(a)(1)(vi), use the results of Method 2, Method 16, and the pulp production rate in the equation specified in § 60.285(d)(3), except substitute the pulp production rate (PPR) [kg/hr (tons/hr)] for the black liquor solids feed rate (BLS).

* * * * *

[FR Doc. 85–3230 Filed 2–13–85; 8:45 am]
BILLING CODE 6560–50–M

federal register

Thursday
February 14, 1985

Part IV

Environmental Protection Agency

40 CFR Part 300

Amendment to National Oil and Hazardous Substances Contingency Plan, National Priorities List, Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[WH-FRL-2749-4]

Amendment to National Oil and Hazardous Substances Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency ("EPA") is amending the National Oil and Hazardous Substances Contingency Plan ("NCP"), which was promulgated on July 16, 1982, pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") and Executive Order 12316. This amendment revises the National Priorities List ("NPL"), which initially was promulgated as Appendix B of the NCP on September 8, 1983, by adding the Glen Ridge Radium Site located in Glen Ridge, New Jersey, and the Montclair/West Orange Radium Site located in Montclair and West Orange, New Jersey, to the final NPL.

EFFECTIVE DATE: The promulgation date for this amendment to the NCP shall be March 18, 1985.[1]

FOR FURTHER INFORMATION CONTACT: Joseph R. Gearo, Jr., Hazardous Site Control Division, Office of Emergency and Remedial Response (WH-548E), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C., 20460, Phone (800) 424-9346 (or 382-3000 in the Washington, D.C., metropolitan area).

SUPPLEMENTARY INFORMATION: Table of Contents:

I. Background of the NPL
II. Background of the Glen Ridge and Montclair/West Orange, NJ, Radium Sites
III. Addition of the Glen Ridge and Montclair/West Orange, NJ, Radium Sites to the NPL
IV. Regulatory Impact
V. Regulatory Flexibility Act Analysis

I. Background of the NPL

Pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601-9657 ("CERCLA" or "the Act"), and Executive Order 12316 (46 FR 42237, August 20, 1981), the Environmental Protection Agency ("EPA" or "the Agency") promulgated the revised National Contingency Plan ("NCP"), 40 CFR Part 300, on July 16, 1982 (47 FR 31180). Those amendments to the NCP implemented responsibilities and authorities created by CERCLA to respond to releases and threatened releases of hazardous substances, pollutants, and contaminants.

Section 105(8)(A) of CERCLA requires that the NCP include criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, take into account the potential urgency of such action, for the purpose of taking removal action. Removal action involves cleanup or other actions that are taken in response to releases or threats of releases on a short-term or temporary basis (CERCLA section 101(23)). Remedial action tends to be long-term in nature and involves response actions which are consistent with a permanent remedy for a release (CERCLA section 101(24)). Criteria for determining priorities for possible Fund-financed remedial actions are included in the Hazard Ranking System ("HRS"), which EPA promulgated as Appendix A of the NCP (47 FR 31219, July 16, 1982).

Section 105(8)(B) of CERCLA requires that these criteria be used to prepare a list of national priorities among the known releases or threatened releases throughout the United States, and that to the extent practicable, at least 400 sites be designated individually on this National Priorities List (NPL). Section 105(8)(B) also requires that the list of priorities be revised at least annually. EPA has included on the NPL releases and threatened releases of designated hazardous substances as well as "pollutants or contaminants" which may present an imminent and substantial danger to the public health or welfare. CERCLA requires that the NPL be included as part of the NCP. An initial NPL of 406 sites was promulgated on September 8, 1983 (48 FR 40658). On May 8, 1984, EPA amended the NCP by adding four sites in San Gabriel, California, to the NPL. On September 21, 1984, EPA further amended the NCP by adding 128 sites to the NPL (49 FR 37070). The second proposed update was published in the **Federal Register** on October 15, 1984 (49 FR 40320). The second update proposed the addition of 244 sites, including the two sites which are the subject of this regulation.

Additional discussion on the purpose and development of the NPL and on generic issues relating to the HRS are included in the preambles to the NPL promulgated on September 8, 1983 (48 FR 40658), and amended on September 21, 1984 (49 FR 37070).

Section 300.68(a) of the NCP reserves Fund-financed remedial actions for sites on the NPL. Inclusion of a site on the NPL is not necessary for other types of response actions such as removal actions or enforcement actions. Moreover, a site need not be on the NPL to be the subject of a private action pursuant to section 107(a)(4)(B) of CERCLA.

II. Background of the Glen Ridge and Montclair/West Orange, NJ, Radium Sites

The Glen Ridge and Montclair/West Orange, NJ, Radium Sites were included in the proposed rulemaking for the second update of the NPL (49 FR 40320, October 15, 1984). These two sites are located in residential areas of Essex County. The Glen Ridge Radium Site, located in a suburban residential neighborhood area of about 0.25 square miles, contains approximately 9,000 cubic yards of soil contaminated with radioactive material, which is believed to be radium-processing waste. The Monclair/West Orange Radium Site, located in two suburban residential neighborhood areas of about 0.5 square miles, contains approximately 9,000 cubic yards of soil contaminated with radioactive material, also believed to be radium-processing waste.

Several years ago, the State of New Jersey investigated a radium-processing facility in Orange, NJ, that had ceased operation in the 1920's. The possibility of off-site disposal of radium-processing waste prompted an aerial survey of surrounding areas for gamma radiation. Based on the results of the aerial survey, field surveys conducted in July 1983 identified a number of suburban homes in Glen Ridge, Montclair, and West Orange, with high levels of radon gas. In December 1983, EPA started a major field investigation to define the extent of contamination and identify additional problem homes.

The special conditions at these two sites that warrant their expedited addition to the NPL are elevated concentrations of radon gas measured inside residential homes within the sites and the gamma radiation that has been detected both inside and outside a number of homes and at a nearby park. The Centers for Disease Control (CDC) have advised EPA to take remedial action to adequately address the

[1] CERCLA section 305 provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha*, —— U.S. ——, 103 S. Ct. 2764 (1983), cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives. If any action by Congress calls the effective date of this regulation into question, the Agency will publish a notice of clarification in the **Federal Register**.

emission of radon gas into residential basements and the gamma radiation in and around the homes. The Agency has taken emergency action under its CERCLA removal authority to temporarily address the release of radon gas by installing ventilation systems in and around many of the homes, but it is expected that additional, expedited actions will be necessary to further reduce radon to acceptable levels and to mitigate areas of high gamma radiation.

EPA is conducting remedial planning activities consistent with section 300.68 of the NCP to determine what remedial actions are justified by the actual or potential threat posed by the contaminated soil.

III. Addition of the Glen Ridge and Montclair/West Orange, NJ Radium Sites to NPL

The action being taken today will add the Glen Ridge Radium Site in Glen Ridge, NJ and the Montclair/West Orange Radium Site in Montclair and West Orange, NJ, to the NPL. No public comments were received by EPA on these two sites during the 60-day comment period, which concluded on December 14, 1984, following the proposed addition of these two sites to the NPL. EPA has reviewed the HRS score for each of these two sites and has determined that no information has come to the Agency's attention during the comment period that would justify a change in the HRS scores. The final scores for both sites are 49.14, substantially above the minimum score of 28.50 required for a site to be included on the NPL.

The decision to add these two sites to the NPL immediately rather than waiting until completion of rulemaking on the other 242 sites included in the October 15, 1984 (49 FR 40320), proposed rule, is based on the serious and immediate nature of the problem. In all probability, this release can be addressed most efficiently through a remedial rather than a removal action. Remedial actions are restricted to sites on the final NPL. The recommendation of the CDC was that remedial actions should be completed by December 1985. Immediate regulatory action must be taken in order to be able to complete remedial actions by that date.

IV. Regulatory Impact

The addition of these two sites to the final rulemaking on the NPL does not meet the Executive Order 12291 definition of the term "major rule."

The purpose of the NPL is primarily to serve as an informational tool for use by EPA in identifying sites that appear to present a significant risk to public health or the environment. The initial identification of a site on the NPL is intended primarily to guide EPA in determining which sites warrant further investigation designed to assess the nature and extent of the public health and environmental risks associated with the site and to determine what response action, if any, may be appropriate. Inclusion of a site on the NPL does not establish that EPA necessarily will undertake response actions. Moreover, listing does not require any action of any person, nor does it determine the liability of any person for the cost of cleanup at the site.

The HRS scores used to place sites on the NPL are helpful to the Agency in determining priorities for cleanup and other response activities among sites on the NPL. However, EPA does not rely on the scores as the sole means of determining such priorities, as discussed below. Neither can the HRS itself determine the approprite remedy for a site. The information collected to develop HRS scores to choose sites for the NPL is not sufficient in itself to determine the appropriate remedy for a particular site. EPA generally relies on further, more detailed studies conducted at the site to determine what response, if any, is appropriate. Decisions on the type and extent of action to be taken at these two sites will be made on the basis of such studies and in accordance with the criteria contained in Subpart F of the NCP.

A full assessment of the cost of remedial action at these two sites has not yet been developed by EPA. Cost estimates for remedial alternatives will be developed during the remedial planning activities. However, very preliminary analyses indicate that although the cost will almost certainly exceed $1 million, it is extremely unlikely that remedial action will cause an annual effect on the economy of $100 million or more. It is not expected that remedial action will cause a major increase in costs or prices, nor will it have significant adverse effects on competition, employment, investment or any other criteria of Executive Order 12291. Rather, beneficial effects are anticipated from any actions taken to reduce exposure to radon gas, radon progeny and gamma radiation.

V. Regulatory Flexibility Act Analysis

After reviewing the criteria for significant economic impact on substantial numbers of small entities as defined by the Regulatory Flexibility Act, EPA has concluded that promulgation of this rule will not have a significant effect on a substantial number of small entities.

In defining the purpose of the NPL (49 FR 40320, October 15, 1984), EPA has determined that listing does not require any action of any private party for the cost of cleanup at the site. Currently, EPA and the State of New Jersey expect to fund remedial activities at the two sites; however, a search for potentially responsible parties is underway. Should any potentially responsible parties be identified, EPA may seek to recover any costs of remedial activities conducted at these two sites. However, the cost of cleaning up these sites and the portion of costs that might be borne by any identifiable potentially responsible parties cannot be estimated at this time. Moreover, any costs borne by responsible parties would result from subsequent discretionary enforcement actions by EPA, not from listing the sites on the NPL. In addition, it is unlikely that any EPA remedial activities at these two sites would significantly affect a substantial number of small business entities.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: February 1, 1985.

Lee M. Thomas,
Acting Administrator.

PART 300—[AMENDED]

Appendix B—[Amended]

The National Priorities List, which is Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan, is hereby amended to add the following sites to Group 4:

EPA region	State	Site name	City	Response # category	Cleanup @ status
			Group 4		
2	NJ	Glen Ridge Radium Site	Glen Ridge	R	O
2	NJ	Montclair/West Orange Radium Site	Montclair/West Orange	R	O

#: V = Voluntary or Negotiated response; F = Federal enforcement; R = Federal and State response; S = State enforcement; D = Actions to be determined.

@: I = Implementation activity underway, one or more operable units; O = One or more operable units completed, others may be underway; C = Implementation activity completed for all operable units.

(42 U.S.C. 7605(a)(b) CERCLA 105)

[FR Doc. 85-3229 Filed 2-13-85; 8:45 am]

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federal register

Thursday
February 14, 1985

Part V

Office of Management and Budget

Deferrals and Rescissions and Deferrals; Cumulative Report; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

February 1, 1985.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of February 1, 1985, of 39 deferrals contained in the first four special messages of FY 1985. These messages were transmitted to the Congress on October 1, October 31, and November 29, 1984; and January 4, 1985.

Rescissions (Table A and Attachment A)

As of February 1, 1985, there were no rescission proposals pending before the Congress.

Deferrals (Table B and Attachment B)

As of February 1, 1985, $8,721.2 million in 1985 budget authority was being deferred from obligation and $9.1 million in 1985 outlays was being deferred from expenditure. Attachment B shows the history and status of each deferral reported during FY 1985.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals covered by this cumulative report are printed in the Federal Registers listed below:

Vol. 49, FR p. 39464, Friday, October 5, 1984

Vol. 49, FR p. 44870, Friday, November 9, 1984

Vol. 49, FR p. 47804, Thursday, December 6, 1984

Vol. 50, FR p. 1420, Thursday, January 10, 1985

David A. Stockman,

Director, Office of Management and Budget.

BILLING CODE 3110-01-M

TABLE A

STATUS OF 1985 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President	$ 0
Accepted by the Congress	0
Rejected by the Congress	0
Pending before the Congress	$ 0

****

TABLE B

STATUS OF 1985 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President	$ 12,945.8
Routine Executive releases through February 1, 1985 (OMB/Agency Releases of $4,215.6 million and cumulative adjustments of $0.1 million)	-4,215.5
Overturned by the Congress	0
Currently before the Congress	$ 8,730.3

a/ This amount includes $9.1 million in outlays for a Department of the Treasury deferral (D85-13).

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1985

As of February 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
NONE								

Attachment B - Status of Deferrals - Fiscal Year 1985

As of February 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 2-1-85
FUNDS APPROPRIATED TO THE PRESIDENT									
Appalachian Regional Development Programs									
Appalachian regional development programs..	D85-1	10,000		10-1-84					10,000
International Security Assistance									
Foreign military sales credit.....	D85-24	4,939,500		11-29-84	-1027000				3,912,500
Economic support fund.....	D85-2	280,500		10-1-84					
	D85-2A		3,826,000	11-29-84					
	D85-2B		73,233	1-4-85	-2247069				1,932,664
Military assistance.....	D85-3	18,500		10-1-84					
	D85-3A		782,770	11-29-84	-413900				387,370
International military education and training.....	D85-25	55,521		11-29-84	-55521				0
Peacekeeping operations.....	D85-38	7,000		1-4-85					7,000
DEPARTMENT OF AGRICULTURE									
Forest Service									
Timber salvage sales.....	D85-4	9,704		10-1-84	-5000				4,704
Expenses, brush disposal.....	D85-5	55,850		10-1-84					55,850
DEPARTMENT OF DEFENSE - MILITARY									
Military Construction									
Military construction, all services.....	D85-6	300,008		10-1-84					
	D85-6A		906,322	11-29-84	-218714				987,616
Family Housing									
Family housing, all services.....	D85-26	230,790		11-29-84	-100				230,690

Attachment B - Status of Deferrals - Fiscal Year 1985

As of February 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 2-1-85
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation	D85-7	1,127		10-1-84					
	D85-7A		64	1-4-85	-150			135	1,177
DEPARTMENT OF ENERGY									
Energy Programs									
Fossil energy research and development	D85-27	4,871		11-29-84					4,871
Fossil energy construction	D85-28	2,165		11-29-84					2,165
Naval petroleum and oil shale reserves	D85-29	23		11-29-84					23
Energy conservation	D85-30	3,398		11-29-84					3,398
Strategic petroleum reserve	D85-31	401		11-29-84					401
Energy security reserve and alternative production	D85-32	852		11-29-84					852
Power Marketing Administrations									
Southeastern Power Administration, Operation and maintenance	D85-16	12,467		10-31-84					12,467
Southwestern Power Administration, Operation and maintenance	D85-17	7,260		10-31-84					7,260
Western Area Power Administration, Construction, rehabilitation, operation and maintenance	D85-18	3,000		10-31-84					3,000
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Office of Assistant Secretary for Health									
Scientific activities overseas (special foreign currency program)	D85-8	424		10-1-84					
	D85-8A		590	1-4-85					1,013
Social Security Administration									
Limitation on administrative expenses (construction)	D85-9	15,488		10-1-84					15,488
DEPARTMENT OF THE INTERIOR									
Bureau of Land Management									
Payments for proceeds, sale of water, Mineral Leasing Act of 1920, sec. 40 (d)	D85-10	49		10-1-84					49
Bureau of Indian Affairs									
Construction	D85-33	8,918		11-29-84	-893				8,025
DEPARTMENT OF JUSTICE									
Federal Prison System									
Buildings and facilitie	D85-19	44,534		10-31-84					44,534
DEPARTMENT OF LABOR									
Employment and Training Administration									
State unemployment insurance and employment service operations	D85-34	3,767		11-29-84					3,767
Bureau of Labor Statistics									
Salaries and expenses	D85-35	5,000		11-29-84	-5000				0
DEPARTMENT OF STATE									
Other									
United States emergency refugee and migration assistance fund	D85-20	32,928		10-31-84					
	D85-20A		153	1-4-85	-24905				8,175

Attachment B - Status of Deferrals - Fiscal Year 1985

As of February 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 2-1-85
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Facilities and equipment (airport and airway trust)	D85-11	537,205		10-1-84					
	D85-11A		652,957	1-4-85	-163000				1,027,162
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing									
Local government fiscal assistance trust fund	D85-12	55,400		10-1-84	-32458				22,942
	D85-13	19,900		10-1-84	-10802				9,098
GENERAL SERVICES ADMINISTRATION									
National Archives and Records Service									
Operating expenses	D85-36	4,700		11-29-84					4,700
OTHER INDEPENDENT AGENCIES									
Board for International Broadcasting									
Grants and expenses	D85-21	4,408		10-1-84					4,408
Panama Canal Commission									
Operating expenses	D85-37	6,346		11-29-84	-6086				260
Pennsylvania Avenue Development Corporation									
Land acquisition and development fund	D85-14	14,300		10-1-84	-5000				9,300
Railroad Retirement Board									
Milwaukee railroad restructuring, administration	D85-15	108		10-1-84					108
U. S. Information Agency									
Salaries and expenses	D85-22	2,433		10-31-84					2,433
Salaries and expenses, special foreign currency program	D85-23	852		10-31-84					852
U.S. Institute of Peace									
U.S. Institute of Peace	D85-39	4,000		1-4-85					4,000
TOTAL, DEFERRALS		6,703,696	6,242,088		-4,215,599	0		135	8,730,321

Notes: All of the above amounts represent budget authority except the Local Government Fiscal Assistance Trust Fund (D85-13) of outlays only.

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S.J. Res. 36 / P.L. 99-2
To designate the week of February 10, 1985, through February 16, 1985, as "National DECA Week". (Feb. 11, 1985; 99 Stat. 4) Price: $1.00